

ART REPATRIATION AND THE USE OF MBRSS IN CONFLICT RESOLUTION

by

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ABSTRACT

This study explores the use of MBRAs (Mutually Beneficial Repatriation Agreements) in the repatriation process of stolen art works to their original owners/ source countries of origin. The topic of cultural patrimony and stolen works of art is no longer just the subject of discussions in the museum field, but is now being played out in high profile legal battles involving museums such as the Getty Museum, the Metropolitan Museum of Art in New York, and Boston's Museum of Fine Art. This study explores what obligations museums, directors, and curators have in conduct that is in keeping with the current laws and sentiments societies are demanding from cultural institutions.

KEYWORDS

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Provenance

Repatriation

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SECTION I

INTRODUCTION

Problem Statement

The repatriation of stolen works of art has become of greater importance in the world today, as nations seek to strengthen their cultural identity by celebrating and promoting the artistic accomplishments of their past. Works of art can form the basis for tourism, and can translate into revenue for these countries. For individual owners, such as the victims of Nazi era looting, the return of stolen artwork can bring closure to the terrible injustices of war.

In regard to cultural patrimony, modern societies have a moral imperative to do what is just and right (Phelan, 2006). Museums and the art world are still in the process of navigating through these turbulent waters, trying to find a balance between their mission to display and care for works of art and the need to act responsibly in regard to works that may have been obtained illegally. By acting ethically, via the use of repatriation, museums can set a standard of behavior that is respectful of nations and individuals rights to exercise control over their cultural property, and in the process open up new opportunities for the exchange of art works and scholarly pursuits via the use of mutually beneficial repatriation agreements, or MBRA's (Wolkoff, 2010).

As Marilyn Phelan states in her article *Legal and Ethical Considerations in Museum Collecting* (Museum Philosophy for the Twenty-First Century, edited by Hugh H. Genoways, 2006):

All museum officials must recognize an ethical obligation to repatriate those objects in museum collections that have been acquired through questionable, if not illegal, means and, thus, should return such objects to their rightful owners. Once this occurs, museums can step forward to take leadership in a more clearly defined and more effective international effort to protect cultural property (p.39).

So how do museums, directors, and curators go about dealing with this problem? How far are they required to go in righting the wrongs of acquisition practices that in the past were legal, but are now no longer morally, and in some cases legally acceptable? These are the issues that will be explored in this paper, how museum officials are making the ethical and moral decisions in a time when the framework for dealing with such complex issues is still being codified.

In some cases, such as the ongoing controversy over the Parthenon Marbles, the issues involved can go back decades, even centuries, involving governments that no longer exist. Greece has been lobbying for the return of the marbles for decades, insisting that they were taken illegally by Lord Elgin, the ambassador from England, during a time when the country was under the occupation of the Ottoman Empire (Kimmelman, 2009).

And what of items that are purchased in good faith, but are later to be found to have fraudulent provenances? Who should be required to absorb the loss, and where does the responsibility lie? In one of the most high profile cases in recent memory, the Metropolitan Museum of Art in New York returned the Euphronios Krater, mischievously referred to as the "hot pot" by former Met director Thomas Hoving (Kimmelman, 2009). The Krater is a 6th century BC wine mixing vessel purchased in

1972 for one million dollars, and it repatriated back to Italy in 2008 under a framework that has since become the blueprint for contentious repatriation cases.

Though purchased with evidence supporting its owner's claim to have been legally obtained, allegations dogged the vessel for years (Kennedy, 2006). It was eventually proven that the provenance for the piece was fabricated, and the Met had to return the piece, and absorb the one million dollar loss.

How can the use of MBAs help ease the burden of repatriation in such cases? In the case of the Euphonious Krater, an agreement with the Italian government was reached in which the Met would return the vessel, and would not be charged with any liability for acquiring the Krater illegally, maintaining that the piece had been purchased in good faith (Kennedy, 2006).

The agreement between the Met and the Italian government has since been hailed as a landmark, one that could be used as a model for dealing with future repatriation issues. Seeing how museum professionals deal with the complex issues surrounding stolen art works, cultural patrimony, and how such cases are resolved legally (and "extra legally") are the issues that this research will try to shed some light on.

Conceptual Framework

The topic of art repatriation (and the conflicts surrounding it) is both broad and deep, and leads down many interesting paths. It is all too easy to get side tracked in this fascinating topic. To try to not get too far off the beaten path, the main issues in this

inquiry, which include repatriation, cultural patrimony/property, provenance, and MBRAs, will be addressed.

The path of a work of art from the hands of the artist to its current location is a circuitous one at best, and understanding the mechanics of how art moves through history and the factors that influence its course are the areas that will be explored in this research. Understanding what fuels the illicit trade in antiquities, museums' insatiable appetite for the collection of rare works of art, and the public's fascination with them, are all topics that will to be addressed to help understand these phenomenon.

Repatriation of art objects is a hotly debated subject in the world today. Nations are inquiring about objects from their cultural past residing outside of their borders now more than ever before. There are numerous reasons for this phenomenon – cultural pride, economic opportunities, and righting perceived wrongs of the past (Reppas, 2008).

When cultural objects are repatriated, especially after long and protracted legal battles, source nations often celebrate their return, as if a member of the family had come home. They become objects of national pride, symbols around which nations can rally in difficult times (Povoledo, 2008). For these reasons, nations are choosing to go the long and sometimes arduous route of repatriation in ever increasing numbers.

The idea of cultural patrimony/property is central to the motivations behind repatriation. Nations seeking to reclaim items they believe were taken from them often cite reasons that go beyond just monetary concerns; for them, they are points of national pride. Michael Reppas (2008), in his article *Empty International Museums* states that:

To a Nation State, the significance of treasures that represent their cultural property, beyond their economic value, are understood when the items themselves embody the personal identity of a people or a nation. In fact, “[c]ultural property is so central to [the] personal identity [of its people] that the International Conference on Cultural Property Rights of the United Nations termed it ‘ethnocide’ to withhold or destroy cultural property” (p. 95).

It is for reasons such as these that nations seek to reclaim their items of their cultural heritage.

Provenance is a means of determining who owns the work in question. This information is not always available, as in the case of works that have been “discovered” illegally. Without clear information on the history of the work, speculation as to its origin is the last resort.

MBRA's seem to hold promise in that they offer all sides a way to “save face”, a way to resolve the issues in a way that can be a “win-win” situation for both sides (Wolkoff, 2010). It also can help to avoid long and protracted legal battles that drain both sides of resources, and for this reason they are being looked at as the instrument for resolving the complex issues in repatriation suits.

Repatriation issues are influenced by all of the above factors; loss of cultural patrimony drives the desire for repatriation, provenance of the object(s) in question is used to generate legal claims, and MBRA's are increasingly the instruments of choice in settling disputes that can lead to the repatriation of a work of art to its owner/source nation.

In beginning this study, I viewed MBAs as requiring research to determine their usefulness in the repatriation process. A deeper understanding of how they are used in the legal process, their strengths and weaknesses, and their current track record would help in assessing their potential for resolving difficult repatriation issues. Through continued research into the available literature, I hoped to gather more information with which to be able to start drawing some informed conclusions.

Research Methodology

Purpose Statement

The purpose of this study is to examine the use of MBAs in the repatriation process, and the moral, ethical, and legal responsibilities that museums, directors, and curators have in the repatriation of stolen works of art.

So far, the basic concept of the obligation of the museum world and its responsibilities in repatriating stolen art has been introduced, and some of the major topics in this research have been touched upon.

Modern cultural institutions that have the responsibility to care for the cultural patrimony of world cultures also have the responsibility to act in a manner that is respectful of the cultures that produced these works of art, or those who claim these works as part of their past. What exactly are the bounds of cultural patrimony? How far back can a modern culture legitimately claim a link to a civilization that produced works of art found on their soil? Should there be statute of limitations as to how far back a work can be claimed as being taken “illegally” (Lynch, 2008)?

As cultural institutions invested with the public's trust, do museums and other cultural institutions have an obligation to be forthcoming about the provenances of the works of art in their collections? When purchasing new works of art for their permanent collection, how diligent should institutions be in researching the provenances of the prospective pieces? Is it enough for institutions to take the seller's work at face value, or do they have an obligation to do further research? At what point does their obligation end?

To add to this complex situation museums are finding themselves in is where these stolen works of art are coming from, and how they are getting on the market. Illicit trafficking of art not only robs cultures of their patrimony, it deprives the world of knowledge of the cultures that produced the works, leaving gaps in the historical record that can never be replaced. Some argue that illicit art trafficking actually does a service in that it brings to light works previously unknown, and that most of the information about the works can be gleaned from the works themselves. What role does the looting of archaeological sites play in the understanding of world culture?

As more and more countries seek the repatriation of works that they believe to have been wrongly taken from them, museums and institutions are trying to find ways in which they may comply with requests for repatriation without having to go through lengthy and costly legal battles. One method that seems to hold promise is the use of MBRA's. They have been used to help bring resolution to high profile cases involving such institutions as the Getty Museum and the Met in New York. Can MBRA's be the model for dealing with the complex and highly emotional issue of repatriation?

Repatriation is a complex issue with many facets, and understanding how museums and institutions come to terms with it was the focus of my research. An exploration of the reasons that make repatriation necessary (looting of archaeological sites, illicit trafficking, etc.) was also examined. A thorough review of the available literature on the subject seemed to be the best place to start, and focusing on one example as a case analysis that would serve as an example for the topic in general. Using the Euphronios Krater as the case analysis was the obvious choice, as it had led to a breakthrough in how repatriation can be employed to the advantage of both sides.

In sum, finding ways to make repatriation work for all involved I hope will lead to a greater understanding of our shared heritage as world citizens.

Methodological Paradigm

The methodological perspective from which I viewed my research was interpretive in nature. Having a firm and a well-grounded knowledge of how participants in a repatriation situation feel about their history, culture, and relationship to a contested work of art was key to understanding their position in regards to their case. Working from this vantage point allowed me to draw on contrasting materials from a variety of sources in the field of literature on the subject.

Role of the Researcher

Coming into this research, my personal biases are all over the map; I feel very strongly in favor of allowing cultures that either produced or are the source nations for stolen works of art to have full control over such works. Having spent the last year working in the Smithsonian Institution's American Art Museum, I also understand the

importance of having works available for public enjoyment and study, and would like to see works of art and antiquities made available for all to experience.

Even at this early stage, my bias is already being challenged; not all situations are as black and white as they seem on the surface. It has often been pointed out that if it were not for the actions of Thomas Bruce, the 7th Earl of Elgin, (who in some circles is viewed as a vandal at best, and a thief at worst), many of the Parthenon Marbles might have been lost to the vicissitudes of time. From my research, I hope be able to come away from this with a greater understanding of all sides of the issues surrounding art repatriation.

Questions – Main and Sub Questions

The main thrust of this research was in illuminating how MBRA's are used in the repatriation process. The moral and ethical responsibilities that museums, directors, and curators was also explored. To better understand all the component parts in this research, definitions of the major concepts were essential.

Definitions

Cultural patrimony/property refers to works of art and/or works of historical significance to the country in which they were produced or reside in. John Henry Merryman, in his article Two Ways of Thinking About Cultural Property (80 AM. J. Int'l L. 831, 831 (1986), says that the term “ *cultural property* “ refers to objects that have artistic, ethnographic, archeological, or historical value “. The works do not even have to have a connection to the current culture, which may be centuries, and even millennia removed from the culture that created the work; all that is necessary is a shared geography.

Illicit trafficking is the practice of selling stolen artwork, either on the black market, or to institutions and individuals through the use of false provenance. It has been estimated that the sales of stolen artwork and antiquities ranks fourth behind the sales of weapons, illegal drugs, and money laundering, generating upwards of four billion dollars a year (Adams & Bettelheim, 2007). Many works that are sold illegally come from archeological sites that have been looted of their objects, robbing scholars of valuable information about the cultures that produced these works (Felos, 2010).

MBRAs (Mutually Beneficial Repatriation Agreements) are extra legal agreements used by the two sides in a legal action to settle the issue of ownership to an object or objects in question (Wolkoff, 2010). They have been developed to help circumvent the often long and costly legal battles that result when a source nation (or individual owner) wishes to recover what they believe to be cultural property wrongly acquired by a museum, institution, or individual. *MBRAs* have been useful in helping to settle some rather contentious ownership issues in recent years, including the aforementioned Euphronios Krater. In that case, the Krater was returned to its source country, Italy, and all legal issues were mutually resolved. This agreement was beneficial for both sides, as Italy got the Krater returned, and the Metropolitan Museum of Art, in whose possession it had been since the early Seventies, got an agreement for sequential, four year loans of objects from Italy of historical importance and quality equal to that of the Krater. This is a case of a “win/win” situation for both parties involved, and has proven to be a model for other such deals (Wolkoff, 2010).

Provenance refers to the history of the ownership of an object. It is, by definition, the record of ownership of a work of art (or other such object) that is used as a guide to

its authenticity . In some cases, the *provenance* can be proven quite conclusively with a paper trail - documents proving ownership, such as a bill of sale, historical records, photographs. In other cases, such as that of antiquities and ancient artifacts, constructing a provenance can prove more challenging, and in the cases of looted artifacts that have no record to speak of, it can be extremely difficult, if not impossible. The *provenance* of an object is used to prove whether or not the object or work of art may be legally removed from its country of origin and sold on the open market.

The Oxford dictionary defines “ *repatriate* “ to mean “ to return to one’s country of origin ”. In terms of the repatriation of art work, it can also mean to return to the country from which it was “ discovered ”. This was the case with the Euphronios Krater (Kennedy, 2006). It was a 6th century BC wine mixing vessel, which was found in Italy and illegally exported to the US with a fraudulent provenance, but was actually made in Greece and exported for sale. In its most basic terms, *repatriation* means to return stolen or looted works of art to their rightful owners and/or their countries of origin.

Delimitations and Limitations – What I see as the delimitations in this study are the areas of inquiry in regard to repatriation that I will *not* be exploring, those being Nazi era theft and NAGPRA (Native American Graves Protection and Repatriation Act). I will choose to narrow the focus to the use of MBRA's and the legal considerations of their use. I will explore how MBRA's have worked in past by doing a case analysis of the Euphronios Krater. There could be limitations in only doing one case analysis, running the risk of drawing too many inferences, or too great a set of conclusions based on only one incident. My own conflicting biases also run the risk of “coloring” the interpretation of the data being reviewed.

Benefits of the study – The potential benefits of this study will be in illustrating how MBRA's can be used effectively in bringing resolution to cases of repatriation, sparing the litigants difficult and costly legal battles that, in the end, benefit no one. It will also show how MBRA's can open up new conduits for dialogue, exchanges of new works of art to the museums involved, and foster scholarly exchanges that previously may not have existed. This study could also highlight the need for a clear, unambiguous standard of conduct by the museum community in regard to the repatriation of stolen works of art.

Research Design

My main research question was how can MBRA's used to facilitate “win-win” results in cases of art repatriation? My sub questions were, is there a standard of conduct that museum professionals should be following in regards to art repatriation? What are the ethical and moral boundaries that museums, directors, and curators should adhere to when dealing with issues of repatriation? My research was interpretive in nature.

The research strategy I used was mostly, though not exclusively, qualitative, as the nature of the inquiry had less to do with statistics and more to do with human interactions. I reviewed the most pertinent literature available on both sides of the issue, and continued to add to my literature review.

For the purposes of my capstone, I drew on my experience working for the Smithsonian Institution's American Art Museum. Having spent an entire year working in the museum world gave me a unique insight into how art is handled, displayed, and

cared for; it also gave me a view as to how art is thought about in the museum world. I feel that these insights greatly aided me in my understanding of the emotional component in regard to the issue of repatriation.

This is a continually emerging topic in the art world, at both the national and international levels. Due to the great range of ideas, opinions, and legal cases, my research focused on just one case analysis involving one major museum in the United States that had been involved in a major repatriation action, the Metropolitan Museum in New York.

My proposed timeline was to continue to gather written materials over the Winter Break and term, and review and write about those materials in the Spring term. During January and February, I was to complete an outline of my final document. During March and April, I was going to further develop my chapter drafts, submitting them to my advisor as they were completed, and have a final first draft turned in by May 29th.

After that, the rest of my time was spent revising the draft, with the final full draft being turned in on June 1st . After the final draft was cleared, I sent the paper off to the printer, and turned in two bound copies to the University of Oregon's Arts & Administration department, in partial fulfillment of my Masters degree.

Gathering all of this disparate information and collating it into a plan of action in regard to dealing with the issues relating to art repatriation was challenging, but the topic was so rich in variety and drama that it more than made up for the work involved.

It was exciting to devise a plan through which a change in attitude might be brought about in how repatriation issues can be resolved. To move from an atmosphere

of acrimony and litigation to exploring an avenue that could lead to harmony and cooperation, through this research, was very gratifying.

So let us now take a look at the world of art repatriation, and the use of MBRAs in settling the most perplexing cultural property issues faced by countries and museums today.

SECTION II

REVIEW OF LAWS PERTAINING TO ART REPATRIATION

The laws pertaining to the art repatriation movement have taken a long and circuitous route through history. Though thought of as a modern construct, the concept of a body of statutes dealing specifically with cultural material has been around almost as long as there has been art.

The first recorded instance of a legal case involving a people's right to retain their own cultural property was that of Cicero's prosecution in 70 BC of the governor of Sicily, Gaius Verres. He was accused of plundering Sicily's art and monuments while on trial for extortion and misrule. Cicero states:

Ancient monuments given by wealthy monarchs to adorn the cities of Sicily... were ravaged and stripped bare, one and all, by this same governor. Nor was it only statues and public monuments that he treated in this manner. Among the most sacred and revered Sicilian sanctuaries, there was not a single one which he failed to plunder, not one single god, if only Verres detected a good work of art or valuable antique, did he leave in the possession of the Sicilians (Charney, 2007, p.1).

It might be said that the history of art repatriation began with this oration. There have been many attempts to deal with the problem of the theft of cultural property since then, mostly starting in the 19th century. I will focus on several of the most important of these laws and declarations to provide an overview of the trajectory of the art repatriation movement - the Lieber Code (General Order #100), the Hague 1954, and

the UNESCO and UNIDROIT declarations. These works have had a profound effect on shaping the way that countries, museums, dealers and collectors think and act in regard to works of art and cultural patrimony.

The Lieber Code (General Order #100), also known as *Instructions for the Government of Armies of the United States in the Field*, was crafted by Francis Lieber, a German American jurist and political philosopher, who was asked by President Abraham Lincoln in 1863 to craft a set of rules for dealing with conduct in regard to Confederate prisoners, non combatants, spies and property. In section II, articles 34, 35, and 36 deal with specific aspects of conduct in regard to cultural property. They state:

Art. 34. As a general rule, the property belonging to churches, to hospitals, or other establishments of an exclusively charitable character, to establishments of education, or foundations for the promotion of knowledge, whether public schools, universities, academies of learning or observatories, museums of the fine arts, or of a scientific character -- such property is not to be considered public property in the sense of paragraph 31; but it may be taxed or used when the public service may require it.

Art. 35. Classical works of art, libraries, scientific collections, or precious instruments, such as astronomical telescopes, as well as hospitals, must be secured against all avoidable injury, even when they are contained in fortified places whilst besieged or bombarded.

Art. 36. If such works of art, libraries, collections, or instruments belonging to a hostile nation or government, can be removed without injury, the ruler of the conquering state or nation may order them to be seized and removed for the benefit of the said nation. The ultimate ownership is to be settled by the ensuing treaty of peace. In no case shall they be sold or given away, if captured

by the armies of the United States, nor shall they ever be privately appropriated, or wantonly destroyed or injured. (Lieber Code,1863).

Unfortunately, these codes of conduct are not always stringently applied in the heat of battle. There are many such instances in which these recommendations are ignored, sometimes out of necessity, sometimes out of convenience, and sometimes out of spite; General William Tecumseh Sherman's March to the Sea during the American Civil War comes to mind. Though no specific cultural works were listed as lost, numerous buildings were destroyed in the process, and it is possible to infer the loss of artistic and cultural items. War does not always keep accurate accounts of the things it destroys.

During the Second World War, General Dwight D. Eisenhower, Supreme Commander of the Allied Forces, issued clear directions for the preservation of cultural property on two occasions, December 29,1943 and May 26,1944 (Merryman, 1986). He was acutely aware that sometimes it is necessary to sacrifice a well known landmark to ensure battlefield success; this principle is enshrined in the Lieber Code, article 15; "Military necessity ... allows of all destruction of property" (Lieber Code, 1863). He did not, however, want military necessity to be an excuse for poor judgement:

[T]he phrase 'military necessity' is sometimes used where it would be more truthful to speak of military convenience or even of personal convenience. I do not want it to cloak slackness or indifference (Merryman,1986, p. 838).

Unfortunately, Eisenhower's concerns about the misuse of this principle were to come true during the siege of Monte Cassino, an ancient and revered monastery outside of Rome. During the battle which lasted from January through May of 1944, the landmark was bombed repeatedly by Allied forces, certain that it was being used as a lookout by German forces. While German troops were stationed in the hills surrounding the abbey, it was later found that there were in fact no German soldiers using the building. Monte Cassino was completely destroyed, an irreplaceable landmark, gone forever.

Still, it is from this document that the basic concepts in regard to handling cultural property have evolved. It is the predecessor to all future documents dealing with this issue; the Hague 1954, UNESCO, and UNIDROIT can all claim to be its descendants (Merryman, 1986).

The Hague 1954 document was crafted in the years following the brutal devastation of World War II, and reflects what has been termed a "cultural internationalist" point of view. This is a concept in which all works of art and cultural material is considered to be the shared heritage of all of Humanity, and should be given special status and protection.

The document has, however, been criticized by some scholars as having a too distinct cultural internationalist slant, one that favors "market nations" over "source nations", and would have repercussions in the future in the the battle for the repatriation of cultural patrimony:

While it seems clear that such considerations underlay the protection of cultural property in Lieber's code and its successors, their expression in Hague 1954 is a significant innovation. The quoted language, which has been echoed in later international instruments, is a charter for cultural internationalism, with profound implications for law and policy concerning the international trade in and repatriation of cultural property (Merryman, 1986, p. 837).

Considering the terrible losses of art and cultural material during the conflict, it is understandable that its authors wanted to express their concern for the protection of the world's shared cultural patrimony. While this document may be faulted in hindsight for leaning too strongly towards an internationalist's perspective, the Hague 1954 document was instrumental in the recognition of Humanity's shared cultural heritage.

The 1970 UNESCO document is significant in that its main contribution to the repatriation movement is that it set a firm date by which artifacts might be considered "licit" or "illicit". Items with a provenance prior to the 1970 date were, and are, considered to be acceptable for sale on the open market. Items that do not have a provenance prior to 1970 are to be considered suspect, and should not be considered acceptable for purchase, as the item might have come from an illegal dig, be stolen, or looted, as in the case of Nazi war plunder.

As with the Hague document, UNESCO has its share of detractors on both sides of the repatriation issue. The main complaint is that rather than curbing the rampant destruction and theft from archeological sites, museums, churches and institutions, it has only added to the demand for these items on the black market, because of its restrictive nature in regard to the selling of art and cultural material (Bauer, 2007).

UNESCO differs sharply from the Hague 1954 in that rather than coming down on the side of the cultural internationalists and favoring a “shared Humanity” approach to cultural material, it favors source nations in their right to control and retain their rights to their own patrimony, regardless of when and under what circumstances the material was removed. There are many cases of this type, in which cultural works of art have been removed without the informed consent of the nation of its origin; the Parthenon / Elgin Marbles is considered to be the highest profile case of this kind.

The UNIDROIT declaration was an attempt to address some of the issues and criticisms surrounding the UNESCO declaration, in that it set out specific time limitations for making claims for the repatriation of stolen, looted, and illegally exported cultural material. Whereas UNESCO never specifically mentions time frames in regard to making claims for repatriation, UNIDROIT sets some specific provisions and time limitations:

- (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 declaration shall also be subject to that time limitation. (UNIDROIT Declaration, 1995).

These clarifications were implemented to strengthen the UNESCO declaration by setting forth specific conditions and limitations by which claimants might seek repatriation of disputed objects with other signatory states. UNIDROIT is consistent with UNESCO in many ways, such as stating the need to preserve cultural material, what constitutes cultural material, and prohibitions against the illegal looting of archeological sites.

UNESCO has often been criticized for being broad and sweeping, but not specific. For example, Weiss (2007) argues that "The UNESCO Convention provided a starting point for cultural property trade, but its vagueness and latitude for the implementing state legislation lead to inconsistency for future action in this arena, specifically with respect to museums' provenance and repatriation policies" (p. 846-847).

UNIDROIT addresses some these niggling issues by providing clarity in regard to statutes of limitations, but still allows for flexibility. The laws of signatory nations would still be in full force and not be overridden by the declaration. Signatory nations may, among themselves, enter into agreements that would strengthen cooperation between them in addition to the terms of the declaration. The declaration it would not prohibit

parties from availing themselves of remedies outside the framework of the UNIDROIT convention in settling repatriation claims (such as MBAs).

In spite of both its clarity and flexibility, this document has failed to generate the universal support; two of the largest “market nations”, the US and Great Britain, have failed to endorse it (Brodie, Doole, & Watson, 2000).

There are differing opinions as to why these and other nations have failed to adopt this declaration; as large “market nations”, UNIDROIT imposes strict regulations on nations such as the US and Great Britain in regard to the acquisition of cultural material, and hence constricts the market for these items. While both nations profess to support the retention of cultural materials by “source nations”, they also are two of the largest consumers of art works and cultural material (Art Market Information, 2012).

The desire of both private collectors and the museum world to purchase this kind of material puts these nations (and other “market nations”) in an awkward position, in that failing to support international agreements weakens their credibility on the world stage, and not allowing free market access to these materials inhibits commerce and the cross cultural exchange of ideas.

So what effect have these laws had in the prevention of the looting of archeological sites and the trade in illicit and stolen works of art and cultural material? The looting of sites and the illegal sales of antiquities has grown exponentially in the years since the UNESCO document was drafted (New York Times, 2006). Though it is hard to get an accurate assessment as to the extent of the trade in illicit and stolen works, it is estimated that anywhere from \$2 to \$4 billion dollars is exchanged on the black market every year (Adams & Bettelheim, 2007), and the numbers are growing.

Interpol has stated that the illicit trade in art and cultural material is the fourth biggest international crime racket after drug trafficking, money laundering, and weapons trafficking (Adams & Bettelheim, 2007), and that it is more and more frequently being linked with drug smuggling and money laundering (Brodie, Doole, & Watson, 2000).

These numbers, however, are in dispute with some members of the art community, most notably the now former director of the Metropolitan Museum of Art in New York City, Philippe de Montebello. He thinks that the market for both provenanced and unprovenanced antiquities is somewhere between \$80 - \$90 million worldwide (New York Times, 2006), a mere fraction of the amount that is frequently bandied about.

There are also some who feel that laws such as UNESCO and UNIDROIT are responsible for the *increase* in the looting of archeological sites and the illegal trade in cultural material. In his essay, *New Ways of Thinking About Cultural Property*, Alexander Bauer notes that; “[a]s Colin Renfrew, one of the strongest voices against the trade, noted only a few years ago, the looting and destruction of archaeological sites ‘has increased rather than diminished in the thirty succeeding years’ since the UNESCO Convention of 1970” (p. 694-695).

These laws have, however, emboldened more countries to seek the repatriation of lost cultural works than ever before; in just the last five years museums have returned nearly \$1 billion dollars worth of art works to Greece and Italy alone. Italy has been particularly proactive in seeking the repatriation of lost art treasures, having negotiated (some might say forced) landmark deals with the Metropolitan Museum in NYC, the Museum of Fine Arts in Boston, and the Getty Museum in Malibu, California (Smithsonian Magazine, November, 2010).

These agreements may be due to a number of different factors - the cost of lengthy legal battles, a shift in the attitudes of the museum going public, and, just maybe, the laws pertaining to repatriation. Since the UNESCO declaration in 1970, attitudes about illicit archeological digs, unprovenanced, stolen, and looted works of art and cultural material have changed dramatically. Codes of ethics for the acquisition of works of art and cultural material are now part of most museum's protocols, and auction houses such as Christie's and Sotheby's publish extensive catalogues listing their items for sale and the provenances of the pieces, when they are provided by the sellers.

Collectors are now more aware than ever about the plight of unprovenanced works of art, through the efforts of organizations such as the Art Loss Registry, and groups like the American Society of Appraisers. In her article, *Guarding Against Illegal Traffic of Cultural Property*, Pamela Bensoussan offers the following advice for individuals and organizations when purchasing works of art or cultural material.

The Association of Art Museum Directors (AAMD) recommends taking proactive steps BEFORE acquiring a work of art, such as conducting extensive research on how and when an item was brought into the country, and how it was acquired by the seller. Before purchasing or otherwise acquiring property, documentation papers must be aggressively sought and available databases on stolen art researched (such as ArtlossRegistry.com). Ancient and archeological items must have been legally imported prior to 1970, the date of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Additionally in cases where, after conducting appropriate research, provenance is found to be incomplete they recommend NOT acquiring works that have been in the US for less than 10 years. They encourage publication of each acquisition immediately after

and within the first two years of museum ownership (American Society of Appraisers, March, 2005).

The cautionary tales of museums and collectors having to hand over stolen and looted works of art back to their rightful owners have been making the news over the last few years, heightening the awareness of the pitfalls of buying unprovenanced works. Though critics contend that UNESCO and UNIDROIT have failed to stem the tide in the illicit trafficking of art and cultural material, these declarations have altered the way institutions and individuals think about purchasing these works.

Now armed with an understanding of how art repatriation laws came into being, let us examine how history shaped the need for these laws.

SECTION III

BRIEF OVERVIEW OF THE HISTORY OF ART REPATRIATION

Nations have been taking the art of other nations since the beginning of recorded history - plunder, spoils of war, call it what you will. Throughout the ages, the theft of art has been used for a variety of purposes, ranging from offerings to the Gods, a means of humiliating a vanquished foe, to assimilation of admired cultures (Miles, 2008). This section will briefly outline the history of art repatriation - its past, the concepts behind it, and even some of the heroes and villains.

The stealing of art works and cultural material is as old as human history; theft of this kind is so common that it's considered (somewhat humorously) as the "second oldest profession" (Brodie, Doole, & Watson, 2000, p. 2). Tomb raiding, temple looting, museum robbing and theft from individual collections has gone on since time immemorial. History is replete with accounts of the armies of nations carting off the cultural patrimony of conquered civilizations; the Romans take from the Etruscans, the French take from the Egyptians, the British take from the Greeks, the Nazis take from all of Europe. This trend continues on to the present day, and although it is not as brazen as in the past, the theft of works of art and cultural material is alive and well in the twenty-first century.

But instead of conquering armies parading the spoils of war through the streets of their nation's capitols upon return from battle, works of art and cultural material are paraded on the world stage via auction houses, the Internet, and in clandestine deals far from the scrutinizing eyes of governments, international bodies, and the public. Trafficking in art and cultural material is now covert and sophisticated in nature, and is

considered by some estimates to be a multi-billion dollar a year industry (Adams & Bettelheim, 2007). All this begs the question, how did it come to pass? What were and are the reasons for the coveting of art works and cultural material?

People have learned about other cultures through a variety of means throughout history with trade, travel, and war being among the main sources of transmission. As modes of travel became more sophisticated, trading with other nations exposed people to different cultural aesthetics. New religions, technologies, and artistic styles cross pollinated and created a demand for products.

One such example of this demand for the products of one nation by another is that of Attic pottery. The finest works of this kind of pottery, such as the Euphronios Krater and other vessels, were manufactured in Athens and shipped to the eager markets of discerning consumers in Etruria. The Etruscans were avid collectors of Athenian pottery, and Euphronios' work was especially coveted; his work was collected at the time as Rembrandt's work was during the Gilded Age (Kimmelman, 2009).

As populations became increasingly familiar with the products of the greater world, the methods of acquiring cultural items began to expand, in both legal *and* illegal ways. Plundering was not uncommon, not only by conquering armies, but even by the ruling authorities within their own jurisdictions. The Sicilian governor Gaius Verres was prosecuted in 70 BC by Roman statesman and lawyer Marcus Tullius Cicero for plundering the cities and temples in the territories that he governed (Charney, 2007). Egyptian tombs were broken into and looted almost as soon as their pharaohs were interred (Stephans, 2011). Lord Elgin removed sculptures and large sections of relief carvings from the Parthenon and brought them back to England. Why have items like

these been taken throughout history? The reason is simple; there has always been a market for exotic items of rare beauty, and there have always been people willing to break the law to make money.

Trying to list all of the art and cultural material that has been stolen, looted, plundered or disappeared mysteriously over the centuries is beyond the scope of this paper, so I will simply highlight just a few of the most notorious cases as examples.

Probably the most famous example of the loss of cultural materials is that of the Parthenon/Elgin Marbles. This ongoing controversy is practically the poster child for the art repatriation movement, and has all the elements of a Greek tragedy. The finest example of Greek culture at its zenith, damaged and neglected over the centuries, it is cut up and carted off by the British ambassador to the ruling government, the Ottoman Turks, who were considered an occupying force at the time.

Thomas Bruce, the 7th Earl of Elgin, was the British ambassador to the Ottoman Empire from 1799-1803. In 1801 he obtained permission in the form of a "firman" from Selim III, Sultan of the Ottoman Empire, that allowed Elgin and his team to:

fix scaffolding, make drawings, make mouldings in chalk or gypsum, measure the remains of the ruined buildings and excavate the foundations which may have become covered in the [*ghiaja*]; and...that when they wish to take away [*qualche* (meaning 'a few')] pieces of stone with old inscriptions or figures thereon, that no opposition be made thereto (Merryman, 1985, p. 1898).

However, in taking 17 statues from the East and West pediments, 15 metope panels, and 247 ft. of the Parthenon Frieze, as well as sculptures and relief carvings

from other buildings on the Acropolis, Elgin's interpretation of the firman could be considered "generous" at best. Some scholars feel that he may very well have exceeded the intentions of the document, and that while he had permission to carry out some excavations, "it is more reasonable to conclude that the Ottomans had a narrower intention, and that the firman provides slender authority for the massive removals from the Parthenon" (Merryman, 1985, p. 1898-1899).

By 1812, the excavation and removal to England of the Parthenon Marbles was "fait accompli". The Greek government has officially been demanding the return of the marbles since the 1980s, but the British Museum maintains that the marbles were legally obtained according to the customs and laws of the times, and hence are the rightful owners. The controversy surrounding the legality of their removal continues to the present day.

The Parthenon Marbles would not be the last of ancient works that would find their way into a British museum. Egypt's famed Rosetta Stone was discovered on July 15, 1799 by lieutenant Pierre-Francois Bouchard, a member of Napoleon's expeditionary army during his 1798 campaign in Egypt. The stone was uncovered just outside of the port town of Rashid; thinking it might be of some importance, Bouchard informed general Jacques-Francois Menou, who was then in the town of Rosetta, of the discovery. By the time the stone was transferred to Cairo where Napoleon himself inspected it, the name Rosetta Stone had stuck (Parkinson, Diffie, & Simpson, 1999).

The stone was to change hands due to the fortunes of war. The British Army defeated the French forces at Alexandria in August of 1801, and the stone fell into their

possession. It was sent to England and officially presented to King George III, who directed that the stone be placed in the British Museum, where it remains to this day.

Egypt has officially pressed for the return of the Rosetta Stone since July of 2003, which just happened to coincide with the 250th anniversary of the British Museum, a point not lost on Zahi Hawass. Hawass, until recently Egypt's chief of the Supreme Council on Antiquities, has passionately sought the return of many of Egypt's treasures now residing in foreign museums. "If the British want to be remembered, if they want to restore their reputation, they should volunteer to return the Rosetta Stone because it is the icon of our Egyptian identity" (Edwardes & Milner, 2003, p.1).

Several attempts to negotiate an agreement for the stone's return to Egypt have been proposed, but currently none of those agreements have come to fruition. In November of 2005, Hawass proposed that the British Museum loan the Rosetta Stone for three months, still with the goal of its eventual return to Egypt; the museum balked at the suggestion. He agreed in December of 2009 to drop the request for legal title to the stone if the British would loan it for the opening of the Grand Egyptian Museum at Giza in 2013, but again there has been no agreement to date for the stone's return.

In spite of the failure to negotiate a settlement, Mr Hawass continued to speak forcefully about the return of Egypt's cultural patrimony, and specifically about the Rosetta Stone. In a statement to the British Museum via the Reuters news agency, Hawass said that, "I will tell them [the British] that we need the Rosetta Stone to come back to Egypt for good.....It is an icon of our Egyptian identity, and its homeland should be Egypt" (Bradley, 2009, p. 2). Currently the Rosetta Stone remains at the British Museum.

No discussion of plundered art would be complete without mentioning Nazi Germany's infamous campaign of looting the public and private collections of the European countries they occupied during World War II. The scale on which the Nazi war machine systematically pilfered the art works and cultural material of Europe was unprecedented. German Chancellor Adolph Hitler had envisioned a new museum in his adopted hometown of Linz, Austria, his "Fuehrermuseum", which would reflect his own personal taste in art, and set the standard for what was acceptable in German society. According to Hitler's instructions, the Fuehrermuseum should only include six categories of works of Art:

- German masters of the 15th, 16th, and 17th centuries
- Romantics of the 19th century
- Rhenish masters as Januarius Zick, Heinius, and Schall
- French artists as Poussin, Lorrain, Boucher, Fragonard, Watteau
- Italian masters above all those of the XVth and XVIth centuries such as Bellini, Titian and Bordone and of the XVIII century as Teipolo, Canaletto, and Guardi
- Dutch Masters, above all Rubens (Cahier, 2009, p.1).

To this end, Hitler and the Third Reich went on the greatest plundering spree the world has even known, creating special military units for this purpose, most notably the "Einsatzstab, Reichsleiter Rosenberg", or the E.R.R. This organization was headed by Alfred Rosenberg, a rabid anti-semite, who worked in conjunction with the Gestapo, the SS and selected art experts to identify works to be obtained from museums throughout Europe that would supply the new super museum.

In 1940 Hitler's second in command, Hermann Goring, effectively changed the mission of the E.R.R. to that of seeking out and confiscating the art collections of Jews throughout the occupied countries. To this end, the Nazis confiscated thousands of works of Old Masters such as Raphael, Rubens and Titian, and newer ones from such artists as Renoir, Manet and Gustav Klimt from the collections of Jews throughout Europe.

Though it is impossible to know the full extent of the Nazi war atrocities, some experts estimate that 20-30% of all art treasures in Europe were stolen during the war by German forces, and that up to 100,000 pieces of art are still missing (Clements, 2012). By any standards, the Nazi plundering of the art treasures of Europe stands as the largest and most infamous art heist in history.

Though not as affected by WWII as some European nations (in part due to the fact that they sided with Germany during the conflict), Italy has had its share of problems with stolen and looted art works. Considered to be one of the richest "source nations" on Earth, responsible for, by some estimates, more than 60% of all the ancient art that has been discovered (Adams & Bettelheim, 2007), Italy has been waging a war on the loss of cultural patrimony for over a century. Unfortunately for them, most of their problems are internal in nature; it is their own people who are doing the looting.

In a nation so rich in cultural material from their past civilizations, its hard *not* to find sculptures, ceramics and architectural fragments every time a road is built or a foundation is dug. Italian art from all periods of its history have been and are highly prized on the international market, and buyers are always eager to purchase these items. The problem is that there is no consensus within the Italian community on exactly

how to address the growing loss of cultural material with the demand for those products on the international market.

The lucrative black market has encouraged local citizens to plunder their own cultural treasures lying in the ground, and sell them to unscrupulous dealers who, through a variety of channels, spirit these works out of the country to nations that have lax import/export laws and that at times turned a blind eye to this kind of cultural theft (Rosenbaum, 2006). This unfortunately is all too often the case in countries rich in source material, especially those poorer nations that lack the resources to protect and care for their treasures.

What is ironic is that these looters, or *tombaroli* as they are called in Italy, usually only receive a fraction of what the items they locate are worth (Alderman, 2008). Sadly, not only do they frequently destroy items of “lesser” quality in the process of locating the more “valuable” finds, they destroy vital contextual information about the items and the people who made and/or used them. It is this type of information that archaeologists consider extremely important, in that it places these items within their historical context, and gives meaning to them that is lost when the items are haphazardly removed from their site (Brodie, Doole, & Watson, 2000).

This short sighted approach is unfortunate in that these finds are of a finite nature; once they are out of the ground and sold to dealers, their value to the community is gone as soon as the money the *tombaroli* earn selling these items is spent. Properly excavated sites can realize benefits for the communities in which they are found, as these sites can be transformed into tourist attractions, and can provide jobs for members of the community for years to come (Alderman, 2008).

Italy has chosen to deal with this vexing problem by taking a hard line stance in regard to their cultural patrimony. In recent years they have become very pro-active in trying to reclaim works of art they feel have been illegally obtained by foreign museums and collectors (Adams & Bettelheim, 2007). This had led to some very high profile cases making the news, involving some of the top museums and collectors in the world, and coincidentally, the development of some new and novel ways of resolving these complex legal issues.

With this brief overview of some of the history and high profile cases of the art repatriation field in mind, let us turn to some of the concepts behind the subject. There are two very distinct points of view in the repatriation discussion, two sides that seem to be diametrically opposed to each other. These sides are referred to as the cultural nationalists and the cultural internationalists, and they have very different ideas about how works of art and cultural patrimony should be dealt with, and who should have control over them.

Cultural nationalists believe that source nations, or nations of origin, should be able to determine how their cultural material and art works are dealt with, and that they have a legitimate claim to have works illegally taken from their countries returned to them. They believe that source nations/nations of origin should have complete control over the destiny of their cultural objects, as they are the property of their people; they are the rightful heirs to their heritage.

Nations such as Italy, Greece and Egypt, as well as African and many Central and South American countries fall into this category. These nations are rich in art works and cultural material, and as such are frequently pressured by markets for these works.

Many poor countries in Africa and the Third World are especially vulnerable to these pressures, as the selling of just a few artifacts can bring enough money to care for a family for a year (Adams & Bettelheim, 2007). The temptation to sell their cultural patrimony for the few dollars is often too hard to resist. These countries are often at a disadvantage when it comes to trying to reclaim their items that inevitably find their way onto the international market.

Cultural internationalists, on the other hand, believe that Humanity has a shared culture that does not necessarily belong to any one nation or people. They believe that the greatest good can only be done by insuring that cultural treasures are best cared for by those who have the means to do so, and that the widest possible access to these works should take precedent over any one nation's claim to them (Fincham, 2007). This concept reflects the attitude of many "market" nations, who do not have the wealth of cultural material that many source nations do. To the cultural internationalist, having these works displayed in museums in which they can be compared and contrasted with the artistic works of other cultures provides a greater service to the world.

This point of view is held by many of the major world museums, whose large collections of cultural works have fallen under scrutiny in recent years. To address this issue, eighteen of the world's premiere museums signed and issued a document in 2002, the *Declaration on the Importance and Value of Universal Museums*, to address the growing tide of criticism in regard to their stance on the repatriation issue. In it, they made a case for the value of such institutions, and the contributions they have made to the dissemination of world culture.

While they state emphatically that the illegal looting of archeological sites is a loss to Humanity and they are opposed to the practice, they support their right to retain objects in their collections acquired in the past:

The international museum community shares the conviction that illegal traffic in archaeological, artistic, and ethnic objects must be firmly discouraged. We should, however, recognize that objects acquired in earlier times must be viewed in the light of different sensitivities and values, reflective of that earlier era (Declaration on the Importance and Value of Universal Museums, 2002).

The cultural internationalist community sees their greatest responsibility is to the object and its display. The cultural nationalist sees their responsibility as to insuring that source nations/nations of origin have control of their cultural property/patrimony. But what exactly is "cultural property/patrimony" ?

According to the definition given in the *UNESCO Convention* document of 1970, 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 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 artist 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.

(*UNESCO Convention* document, 1970, Article 1).

The list of items is broad, open ended, and subject to interpretation, and at times has made it difficult to come to a consensus as to what exactly qualifies for each of these categories. What may be considered “as being of importance” can differ greatly from nation to nation.

Considering the vast range of material and the various interpretations of what is specifically designated as “important”, it is easy to understand why keeping track of and preventing the loss of art works and cultural property is so difficult. The black market for antiquities exploits these and other problems to its own advantage, and numerous parties benefit as a result. How does the market go about bringing these items to interested parties? There is a vast, interlocking web of thieves, tomb raiders, middle men, and complicit law enforcement personnel (Brodie, Doole, & Watson, 2000).

Purveyors on the black market employ a variety of techniques to “launder” the pieces of stolen works, from smuggling them to countries with lax import/export laws, creating false provenances for the items, to disguising them to look like modern tourist souvenirs. One such case is that of the *US vs Schultz*, in which a prominent Manhattan art dealer Fredrick Schultz was convicted of conspiring to receive smuggled Egyptian artifacts from a man named Jonathan Tokeley-Parry. Schultz and Parry developed a working relationship in which Parry would smuggle the artifacts out of Egypt and Schultz would find buyers for them. Parry would smuggle the artifacts out by coating them in plastic and painting them black, then adding gold leaf, turning them into tourist

souvenirs. Once out of the country, Parry would then restore the pieces and create a false provenance for them, claiming that they were part of the Thomas Alcock collection, which conveniently dated to the 1920's, predating Egypt's national patrimony legislation. Alcock was a distant relative of Parry's, and as such Parry was able to present himself as heir to the collection. He further perpetuated the hoax by creating fake labels for the pieces, dipping them in tea and baking them in the oven to create an "aged" appearance (DeAngelis, 2006). Parry would then ship the items to Schultz, who would sell them to his clientele. Parry was eventually apprehended by New Scotland Yard and served three years in prison for smuggling Egyptian artifacts; Schultz was convicted of conspiring to receive stolen goods, and served thirty-three months in prison (Fincham, 2005).

Smuggling also has a darker, more sinister side, as drug gangs have sought to get in on the lucrative illicit cultural materials trade. It is just as common in today's black market to find ancient artifacts being smuggled out next to bales of marijuana and bags of cocaine (Brodie, Doole, & Watson, 2000). The trade in illicit cultural materials is no longer just the domain of the genteel world of art dealers, museums and the wealthy; art trafficking is a multi-billion dollar industry in which the criminal underworld is more and more frequently involved.

Loose import/export laws in various countries have been exploited by both the individual smuggler and the organized crime syndicate, the gentleman art thief and the career criminal. Of all the countries involved in the movement of illicit art and cultural material, none is more renowned for being a safe haven than Switzerland. The laws in this country are conducive to the movement of stolen and looted works. Neil Brodie, the

coordinator of the Illicit Antiquities Research Centre in Cambridge, England, says that Switzerland, due to its neutrality stance, location, and importance in the art and antiquities trade is ideally suited for the trafficking of illegal art. “We know a lot of Italian material passes through Switzerland....the expertise and the financial resources are there” (Johnson & Mock, 2003, p.1). UNESCO’s Federal Office of Culture has said that Switzerland, the world’s fourth largest market for art, has gained a reputation as a “turntable for the illegal transfer of cultural goods” (Johnson & Mock, 2003, p.1).

What is it that makes Swiss law so agreeable to the illicit art trade? The main feature of Swiss law is that stolen property can be given a clean legal title to a buyer who has purchased an item “in good faith” - without the knowledge of the item being stolen or looted. They essentially can obtain a title that is superior to that of the original/rightful owner of an artwork, if the “good faith” designation stands up to judicial scrutiny. In order for the court to find in favor of the original/rightful owner, the plaintiff would have to prove that the defendant, through prior knowledge or suspicion, knew or doubted that the seller had the capacity to transfer clear legal title of the piece in question (Cohan, 2004). Swiss law give benefit of the doubt to the purchaser; they assume the buyer acted in good faith.

Another hurdle that individuals and nations seeking to reclaim stolen/looted items have to face is that under Swiss law, there is a five year statute of limitations in which the plaintiff can file claim to a missing item. Essentially, art works and cultural material that “finds its way” to Switzerland can be “parked” in a bank vault for five years, and then sold with a clear title superior to that of the original owner, who at that point has no legal recourse. An unscrupulous dealer who cannot provide a clear provenance to a

piece can launder a work without fear of retribution and legitimately sell it (Cohan, 2004).

One further reason that makes Switzerland an attractive place to make transactions in the art market is that they allow dealers to sell their works anonymously at auctions, using only a number for confidential identification. This additional degree of anonymity, along with a freshly laundered legal title, contributes to obscuring the trail of stolen/looted material (Pulimood, 2006).

These are some of the main features that make Switzerland a Mecca for the illegal art and antiquities trade. Straddling Austria, France, Germany and Italy, Switzerland is essentially at the heart of Europe, and stands at the crossroads of finance and culture for the continent.

So now that a hub for the laundering of illicit artwork has been identified, where does the art work and cultural material go to from here? The next link in this complex chain is the auction houses; it is through these institutions that the majority of these works find their homes. How these institutions are set up, how they work, and their role as facilitators in the illicit art trade will be explored. The two largest and most famous of the auction houses, Christie's and Sotheby's, will be examined, and some light will be shed on these sometimes secretive organizations.

The purpose of an auction house is to connect their clients (sellers) with potential buyers for their merchandise. The auction houses do not actually sell the "items" that are consigned to them by their clients; in reality what they are selling is the *title* to the item. What this means is that the responsibility for the title to the object in question lies with both the seller and the buyer. The seller provides the auction house with what

information that they have (or want to share) on their consigned item; they may provide as little or as much information as they want. As is too often the case, information on the provenance of a piece up for auction may be incomplete, or even fraudulent (Alderman, 2008). A seller that chooses to pursue this tactic runs the risk of having to deal with law enforcement officials on the local, national and international levels. The sometimes unscrupulous methods of sellers and dealers have come to light in some rather spectacular cases in recent years, involving very high profile works of art purchased by the world's premiere art museums (Rosenbaum, 2006), with troubling results for these institutions.

The phrase "caveat emptor" comes to mind in regard to the purchasing of antiquities and cultural material. The buyer of such items has the responsibility of researching the provenance of the piece or pieces they are thinking of purchasing. Ultimately, if the item purchased turns out to be stolen or looted, the buyer may be on the hook for the loss of the item, and in some cases, the money spent for the piece. This has been the case with many high profile museums, such as the Getty, the Met, and Boston's MFA (Povoledo, 2008). They all bought antiquities with weak and even suspect provenances only years later to have to return them to their countries of origin, absorbing the loss.

The buyer can protect themselves by doing what is referred to as their "due diligence" (Alderman, 2008, p.13). This means that the buyer researches the provenance of the piece through any of a number of website organizations that specialize in reporting stolen works of art and cultural material; the Art Loss Registry is one of many sites that list items that have been reported stolen. Buyers may also

adhere to common sense guidelines for the purchase of antiquities (Bensoussan, 2005), and refer to the principles set forth by both the *UNESCO* and *UNIDROIT* declarations.

While these practices will not prevent the buyer from having to return an item that is eventually proven to be stolen or looted, it can protect them from the financial loss. The best advice is that if a buyer has doubts about the provenance of an item up for sale, they should refrain from purchasing it; this is the only way to be truly safe. Buyers who purchase items in good faith that are later found to be stolen or looted can be, depending on the circumstances, reimbursed at a fair market value for the item or items they bought (Fincham, 2009).

The auction houses are unique in this situation in that they are not held legally responsible for an item that turns out to be either stolen or looted; they can only be held accountable if they sold an item that they *knew* had a defective title. They simply provide the service in which the seller's item is introduced to the buying public and facilitate the sale of the item. They are not legally responsible for researching the provenance of every item that they sell, as this would be an unacceptable and impossible burden on them (Alderman, 2008). Many auction houses do initiate background searches on prominent pieces, and also provide listings of items that are coming up for sale in the form of hard copy catalogues and web format listings (Christie's.com). Nations on the lookout for suspected looted items can track the items up for sale and contact the auctions houses about items they have questions about.

There have been cases in which items up for sale have been identified by nations seeking to track down stolen and looted art works, and these nations have requested the auction houses to suspend the sale pending further investigation. This is

the case with a recent offering of a 10th century Cambodian sandstone figure by Sotheby's. The carving was first offered for sale in March, 2011, but was pulled from the auction when Cambodia claimed that it was looted from Kor Ker, a site 80 miles northeast of Angkor Wat, during the country's 1970's civil war. The statue was featured in Sotheby's 2011 catalogue (Blumenthal & Mashberg, 2012).

Though auction houses comply with requests to suspend sales of questionable items, they are not always as guileless as they would have the public believe. The above mentioned case of the Cambodian sculpture illustrates this point quite well. Information has come to light that Sotheby's knew that the statue may have been illegally obtained, and proceeded with offering it for sale anyhow:

....in a series of internal e-mail exchanges obtained by investigators and included in the federal complaint filed Wednesday in United States District Court in New York, at least one Sotheby's officer is depicted as having been told in 2010 by a scholar in Cambodian art that Cambodian officials considered the statue a looted artifact (Blumenthal & Mashberg, 2012, p.1).

This was not an isolated incident involving one auction house, but an attitude that is tolerated throughout the industry. Auction houses are in the business to make money, and as they cannot be legally held liable for an art work having been stolen or looted (unless they knew the title was defective), it is not always in their best interest to delve too deeply into a piece's history. They provide the service of offering works for sale, and to that end they may, from time to time, tread a rather thin ethical line. So who are these auction houses who offer up the world's great treasures for sale? Two of the oldest, largest, and best known auction houses are Christie's and Sotheby's.

Christie's was founded by James Christie, and their first sale on record was on December 5, 1766. The company established itself as one of the leading auction houses in London, which was rapidly becoming an international center for the art trade after the French Revolution. Christie's is now the second largest fine arts auction house in the world, with some 2,000 employees in 85 offices located in 43 countries. In 2011, the company earned \$5.7 billion dollars. Some of the famous items it has sold in the past include the Stradivarius violin, "The Hammer", for \$3,544,000.00, Audrey Hepburn's black dress from *Breakfast At Tiffany's*, for \$467,200.00, and four paintings by Gustav Klimt for a total of \$192 million dollars (Christie's.com).

Sotheby's is the fourth oldest auction house in the world and also the largest, established in London in April of 1744. It currently has 1,446 employees world wide, with sales of \$831 million dollars in 2011. It has offered some famous items of its own in the past, including Mark Rothko's *White Center*, for \$72 million dollars, the ancient Mesopotamian sculpture, the *Guennol Lioness*, for \$57 million dollars, and J.K. Rowling's hand written and illustrated leather bound copy of her book, *The Tales of Beedle Bard*, for \$3,835,980 (Sotheby's.com).

Though they are the number one and two largest auction houses in the world, both Christie's and Sotheby's have had their share of legal controversies over the years. In 1997, a Channel 4 *Dispatches* program alleged that Sotheby's had been trading in antiquities with no published provenance, and that the organization continued to use dealers involved in the smuggling of artifacts (Daily Telegraph, 1997). In 2000, the two auction house giants were embroiled in a price fixing scandal that led to jail time for executives from Sotheby's. The company's largest shareholder, A. Alfred Taubman was

sentenced to one year in prison, and C.E.O. Dede Brooks was given a six month home confinement sentence and a penalty of \$350,000 (New York Art, 2007).

Though not the only sources for antiquities, Christie's and Sotheby's have been and continue to be major players in the art works and cultural materials market. Their clientele include the wealthy and the famous, as well as many of the premiere museum institutions in the world. In the complex story of the current art repatriation movement, there are two museums that have figured prominently in this unfolding saga; the Metropolitan Museum of Art in New York, the J. Paul Getty Museum in Malibu, California.

Over the years, these two institutions have purchased dozens of antiquities with thin to fraudulent provenances, sometimes paying record prices to acquire them, only years later to have to return them to the countries from which they were looted. In the case of each museum, there has been one work of art that personifies the triumphs and failures in the acquisition of great works of art.

For the Getty Museum, this work was the 2,400-year-old statue of a goddess deity thought to have been illegally removed from the town of Morgantina in Sicily, Italy. The statue, believed to be that of Aphrodite, the Greek goddess of love, was purchased by the Getty in 1988 for a then record setting price of \$18 million dollars (Frammolino, 2011). The work was offered by a London dealer who could provide no provenance for the statue. In spite of this the Getty, at the urging of their then antiquities curator Marion True, purchased the work. The museum did make inquiries into the history of the statue, and did consult with the Italian government, asking if they had any information on the work - they did not. The Getty unveiled their masterpiece in 1989, and it remained on

display until December of 2010 when it was repatriated, along with more than 40 other items, back to Italy.

The Metropolitan Museum acquired the Euphronios Krater in 1972 for the then unheard of sum of \$1 million dollars, setting off a firestorm that raged on and off for more than thirty years (Kimmelman, 2009). From the moment its purchase was announced, speculation was that the Krater had to have been looted from a tomb in the regions north of Rome, famous for their Etruscan burial sites. The fact that it was in near perfect condition and had never been seen or heard of before added to the suspicion of its being of dubious origin. That an unknown masterwork by the famed Athenian vase artist Euphronios had escaped the attention till now was more than the art world was willing to believe - it had to have been illegally excavated. The Met provided provenance on the piece, stating that it came from a private collection in Lebanon, and had been owned by the collector's father since before 1920 (Hoving, 1993). The truth of the matter was more convoluted than anyone could imagine, and although the Met did acquire the Krater "legally", they ended up returning it to Italy in 2008 (Frammolino, 2011), in a landmark accord that would become the blueprint for all modern day repatriation agreements.

Dealers and middlemen are the ones who bring these clandestine works of art to the attention of individual collectors and great institutions. They are also the ones who are most often shrouded in mystery and intrigue. Of the many individuals who populate the world of illicit art, Robert Hecht and Giacomo Medici are probably the most well known and most infamous. Both of these men are so intimately involved in the illicit art

world, and the art repatriation scandals that have plagued the museum establishment, that they could be considered two of the “founding fathers” of the modern illicit art trade.

Giacomo Medici is the middleman and tombarolo whose Geneva, Switzerland warehouse was raided by Italian authorities in 1995, leading to the discovery of over \$35 million dollars worth of illegally excavated antiquities, some still covered in dirt. Also discovered at the warehouse were thousands of Polaroid pictures of freshly dug up artifacts and documents related to the sales of these works. It was this cache of information that allowed to the Italian government's Carabinieri Art Squad to put together damaging cases for the repatriation of looted works against major American institutions (Silver, 2009). The Cleveland Art Museum, Boston's Museum of Fine Art, Princeton University, the J. Paul Getty Museum, and the Metropolitan Museum in New York were all caught up in the looted antiquities dragnet; Medici's evidence would prove instrumental in shedding light on the on the complicity of the auction houses, major museums, and the illicit art underworld.

Robert Hecht was an American born art dealer based in Rome, who was instrumental in bringing to market countless numbers of illicit art works, including some of the most famous art works that would later be returned to their homelands. His involvement with such institutions as the Getty and the Met would have lasting implications, and his personal relationships with such luminaries as Marion True and Thomas Hoving would profoundly influence their professional careers, actually being instrumental in ending one of them. But maybe his most important relationship was with Giacomo Medici. Hecht first met Medici in the late 1960's, and the two became business partners. Medici would locate and purchase antiquities he obtained through his network

of thieves and tombarolis, and prepare them for market; Hecht would purchase items from Medici and locate buyers from his extensive clientele list. His list would include many of the major American museums and some of the most renowned collectors in the world. Hecht would also be responsible for the sale of arguably the most famous art work in the whole art repatriation scandal; the Euphronious Krater.

SECTION IV

MUTUALLY BENEFICIAL REPATRIATION AGREEMENTS

Art repatriation in the 21st century has proven to be fluid, shifting, and unpredictable. Just twenty five years ago, the idea that major museums would be entering into landmark agreements with source nations for the return of their stolen and looted cultural patrimony would have been unheard of. As Michael Reppas (2008) writes in his paper, *Empty International Museums*,

[t]oday's society is intolerant of these lootings and demands that the international museums return them because they have no moral right to own and display such property. That our society is taking this approach and rebelling against the status-quo of *de facto* museum ownership of these looted items, is an indication that a swing in the pendulum, favoring the return of these treasures has occurred (p. 94).

The tides have shifted for a variety of reasons. It could be argued that the UNESCO and UNIDROIT declarations, as maligned and ineffective as they have been accused of being (Falkoff, 2007), have helped to change the moral climate of the debate about repatriation (Wolkoff, 2010). By bringing the problem to the world's attention, these documents have brought an awareness of repatriation to all the involved parties; museums, private collectors, and the auction houses. Even the participants in the illicit trade are now more aware of the issue.

Rising cultural nationalism has emboldened countries to seek the return of their long lost treasures for reasons that are emotional, economic, and political. The injustice

of the practices of the past are no longer acceptable in our modern society, and the public is supportive of the inherent fairness of returning stolen and looted cultural property to their nations of origin (Phelan, 2006). Elizabeth Stone, an anthropologist at the State University of New York at Stony Brook, put it rather succinctly in regard to the purchase of items with questionable provenances; “ You wouldn’t buy a house or a car that somebody hasn’t given you a legitimate title to. It should be the same with antiquities” (Adams & Bettelheim, 2007). Recent polling in England even suggests that a majority of British citizens now favor returning the Parthenon Marbles to Greece (Guardian, 2009).

The increase in cases of nations seeking the return of their cultural property/patrimony has also brought public scrutiny to the less than transparent process of museum acquisition. The fallout from such revelations has been detrimental to the image of museums as guardians of the public trust (Wolkoff, 2010), and the public relations damage incurred by such legal actions is no longer acceptable.

With this kind of major shift occurring in the museum world, how do the involved parties go about negotiating these complex legal issues? Straight repatriation is one solution, but there can be major drawbacks to taking this route. To begin with, it is expensive, time consuming, and can place undue burdens on poorer source nations seeking to reclaim their cultural patrimony (Falkoff, 2007). It can sometimes take years for source nations to gather enough evidence to bring a case against a museum institution. If the nations are signatories to the UNIDROIT declaration, there are problems with the statute of limitations (UNIDROIT Declaration). With antiquities that have been looted from undocumented archeological sites, making a claim of ownership

can prove challenging, with the chain of provenance being hard, if not impossible, to reconstruct. The issues in regard to jurisdiction can further complicate the issue, as there is no consistent body of laws governing the repatriation of cultural property; it is at best a patchwork of laws from nation to nation (Falkoff, 2007). Museums have also been known to be recalcitrant in dealing with the issue, using stalling tactics with nations, especially poorer ones, hoping that they will exhaust resources, give up, and go away.

So what is the best approach to navigating the sometimes treacherous waters of repatriation? One approach that is garnering increased interest is the use of mutually beneficial repatriation agreements, or MBRA's. MBRA's are being turned to more frequently in the unprecedented wave of repatriation claims being made by nations such as Italy, who has taken a leading role in the movement. Why are they so popular, and being turned to by leading museums with greater frequency?

The acronym "MBRA" was first coined by Stacey Falkoff in her 2007 article, *Mutually-Beneficial Repatriation Agreements: Returning Cultural Patrimony, Perpetuating The Illicit Antiquities Market* (Journal of Law and Policy). MBRA's are extra legal devices that allow the parties involved in a repatriation issue to have the flexibility to settle their dispute in a manner that is beneficial to both sides (Wolkoff, 2010). Though not new (Merryman, 2007), they are currently the favored instrument for dealing with the sensitive issues surrounding repatriation cases.

They have especially come into prominence after the 1995 raid on Giacomo Medici's Swiss warehouse, and the fallout that ensued afterwards. The thousands of Polaroid pictures of illegally acquired antiquities and documents implicating many of the major museums created scandals that tarnished the reputations of some of the

country's leading institutions and their staff. From this trove of evidence it became clear that there was collusion between the tombarolis, black market dealers, and museum curators. These museums needed a way to weather the storm of bad publicity, cut their losses, and in the case of Marion True, avoid a lengthy jail sentence.

What is it about MBAs that make them the preferred route to travel in the art repatriation journey? MBAs have several prominent features to them that make them ideal for settling the complex and sometimes convoluted paths to settlements in cultural patrimony cases. The first of these features is that settlements are worked out by the opposing parties, and not in a courtroom. The issues of ownership and patrimony laws of the source country are resolved in a manner that avoids resorting to legal recourse. For museums caught up in the Medici scandal, as well as their unprincipled acquisition practices of the past, avoiding legal censure and the cost inherent in that process is a huge boon to their institutions.

Museums have always been looked to by the public as trusted guardians of national and international cultural patrimony. Highly publicized scandals involving corrupt practices have hurt their reputations, damaging their credibility. What MBAs allow museums to do in this situation is to be cleared of their *alleged* misdeeds, essentially being able to plead "no contest" to charges of cultural theft and avoid litigation that can prove to be lengthy, costly, and embarrassing.

In its landmark settlement with the government of Italy, the Metropolitan Museum of Art was able to craft a settlement that essentially allowed them to be absolved of charges of receiving illegally excavated and exported antiquities. These high profile items included the famed Euphronios Krater, mischievously nicknamed the "hot pot" by

the man who was instrumental in its purchase, the then director of the Met, Thomas Hoving. Its purchase touched off a firestorm of criticism, accusing the museum of buying a work that was of an obviously dubious provenance. Although the museum was able to provide a "legal" provenance for the piece from the dealer Robert Hecht, the accusations hounded the Krater and the Met for more than thirty years.

When the true history of the Krater was revealed and it was learned that the piece was in fact looted from an Etruscan tomb in Cerveteri, Italy, the Met had no choice but to repatriate it. What Philippe de Montebello, the then director of the Met was able to do was to work out an agreement with the Italian authorities that abrogated their complicity with the Krater's murky origins. In its 2006 agreement with Italy, the Met stated that:

[t]he Museum, rejecting any accusation that it had knowledge of the alleged illegal provenance in Italian territory of the assets claimed by Italy, has resolved to transfer the Requested Items in the context of this Agreement. This decision does not constitute any acknowledgement on the part of the Museum of any type of civil, administrative or criminal liability for the original acquisition or holding of the Requested Items. The Ministry and the Commission for Cultural and Environmental Heritage and Public Education of the Sicilian Region, in consequence of this Agreement, waives any legal action on the grounds of said categories of liability in relation to the requested Items (Met/Italy Agreement, 2006).

In essence what this agreement did was not only absolve the museum of any wrongdoing, it cleared its name in the arena of public opinion. In addition to skirting the consequences of their somewhat *cavalier* acquisitions practices, the Met was able to

secure consecutive, four year rotating loans of works of equal artistic beauty and historical significance (Met/Italy Agreement, 2006), as well as an ongoing agreement for future cooperation in regard to archeological efforts. This was a coup for de Montebello, and a major breakthrough for dealing with the repatriation of stolen and looted works of art. The Metropolitan's agreement with Italy would prove to be a model for future agreements with museums facing similar issues. Agreements between Italy and other major institutions such as the Getty Museum, the Cleveland Art Museum, and Boston's Museum of fine Art were to follow suit in rapid succession.

In all these cases, the major institutions were able to work out their issues with Italy through negotiated settlements, and still were able to continue to function as "Universal Museums"; this has been a point of contention with the "cultural internationalists" camp. They have felt that the repatriation movement would result in not only depriving patrons of being able to see premiere examples of world art, but the emptying of their major collections, crippling their ability to operate as "encyclopedic" museums. The use of MBAs balances the conflicting ideologies of the cultural nationalists and the cultural internationalists in a way that is advantageous to both sides; museums are allowed to "save face" and continue to exhibit high quality works from around the world, and source nations are able to reclaim their lost cultural treasures.

Another added plus to the concept of loaning equivalent works of art to replace works that have been repatriated is that the source nation will maintain a presence in the major museums, a visibility that can continue to encourage interest in their culture, and even promote tourism.

There are other features to MBRAs that make them particularly attractive in dealing with issues of cultural patrimony. In addition to allowing the concerned parties to work through their legal disputes outside of the judicial system, other benefits to using MBRAs include the goodwill that can be established by resolving outstanding issues (Falkoff, 2007). The loss of cultural property can be an intensely painful experience, whether through Colonialism, theft, or war. In some circles, cultural property is considered so essential to the well being of a nation that its theft constitutes a crime against the culture itself; “[c]ultural property is so central to [the] personal identity [of its people] that the International Conference on Cultural Property Rights of the United Nations termed it ‘ethnocide’ to withhold or destroy cultural property” (Reppas, 2008, p. 95).

With sensitivities being at times very delicate, the idea that a cultural institution, often viewed as a surrogate for the nation within it resides, would repatriate long lost items of a source nation’s heritage can be viewed as a gesture of goodwill. This can create positive repercussions between the two nations, leading to greater understanding of their cultures, and maybe even more importantly, greater cooperation in the future. Richer market nations can help poorer source nations to properly care for their art treasures, engage in joint archeological ventures, share scholarly research, and create traveling exhibitions to promote the source nation’s culture. This can be a “win-win” situation for the parties involved, and is another of the many features of an MBRA.

MBRAs seem like the perfect solution to the thorny issue of art repatriation, but is there a downside to them? Stacey Falkoff, the woman who coined the phrase “MBRAs”, thinks that there is. While acknowledging their utility and versatility, Ms. Falkoff believes

that their use helps to perpetuate the trade in illicit antiquities. Museum institutions can choose to use MBRAs to side step reform efforts in their acquisition practices:

Notwithstanding the benefits that flow from repatriation and MBRAs in particular, entrance into MBRAs is not the ideal means for solving cultural property disputes. By minimizing the inherent risks and padding any possible losses, MBRAs encourage museums to continue to acquire works of questionable provenance (Falkoff, 2007, p. 288).

In MBRAs, museums have found the perfect vehicle for allowing them to continue to purchase items with questionable provenance with a degree of impunity, knowing that if they are caught, they can negotiate a favorable settlement, using an MBRA. With the risks minimized and and potential losses offset, why would museums want to change their behavior?

Another downside to the use of MBRAs is that it puts off addressing the vexing problem of the lack of consistency in international art repatriation law. The difficult task of coming to a consensus on a consistent set of laws governing art repatriation is side stepped by using MBRAs:

[a]t the same, as a form of settlement, MBRAs detract form the formation of much needed legal precedent that would inform source nations as to the strength of their prospective legal claims and deter museums from participating in the illicit antiquities market (Falkoff, 2007).

Rather than go through a lengthy and costly legal settlement where the outcome is unclear, many nations take the default route and use MBRAs to resolve their repatriation claims. While providing a clear resolution to their issue, using a MBRA forces source nations settle with museums on terms favorable to *them*, and allowing museums “off the hook” for their illegal practices.

While MBRAs aren't a panacea for the problems of the repatriation of artworks and cultural material, after the pros and cons have been explored, they can and should be considered useful tools in the repatriation movement. They allow for all sides to come away from the table with a positive outcome. Instead of being a zero sum game situation, MBRAs can turn the issue into a “win-win” situation for both sides, with continuing benefits flowing from their agreements. Increased levels of cooperation, repatriation of cultural patrimony, and museum's ability to function as purveyors of the world's cultural heritage are all enhanced by the use of MBRAs.

SECTION V

EUPHRONIOUS KRATER



There are and have been many high profile works of art that have been caught up in the maelstrom of the art repatriation movement controversy; Nefertiti's Bust, the Rosetta Stone, and of course, the Parthenon Marbles. But of all of these contested works of art, one stands out among the rest, the Euphronios Krater. Its spectacular entry onto the international scene caused a sensation in 1972, being hailed as the acquisition of a lifetime (NY Times, 2008), not only for its magnificence as the finest example of Greek vase painting extant (NY Times, 2009), but for its mysterious appearance on the world art stage.

The Euphronios Krater is a 6th century (dated circa 515 B.C.) red figured calyx krater, a vessel used for mixing wine and water that was painted by the greatest of all Greek vase artists, Euphronios. The potter who created the krater was named Euxitheos, and was a student of Euphronios. The two master artists lived during a very fertile time of innovation in the history of the Greek arts, a period that has been likened to the Renaissance (Silver, 2009). Euphronios and Euxitheos were members of a

group of revolutionary artists dubbed the "Pioneers", and they were responsible for the new approach to vase painting.

The clay from which Attic potters fashioned their wares had a very high concentration of iron in it, imbuing it with a rich, red color. For generations, the approach was to paint figures and designs on the pots in black against the red background. What the Pioneers did was to reverse that approach; they let the natural red color of the fired clay vessel shine through, applying the black as the background color. In this way, they were able to achieve a more realistic representation of human figures, as opposed to the "silhouette" approach that had been favored in the past. This led to a revolution in technique, and a heightened sense of realism that changed the course of the ceramic arts in Greece (Hoving, 2001).

The vessel was produced in the area around Athens, Greece, and was exported to Etruria (modern day Italy) for Etruscan buyers, a market that highly prized his work. It is said that Euphronios' work was collected then the same way Gilded Era patrons collected the works of Rembrandt. The subject was taken from an obscure passage from Homer's *The Iliad*. The painting depicts the body of Sarpedon, the son of Zeus, being carried off by Hypnos (Sleep) and Thanatos (Death), both figures from Greek mythology. Euphronios' rendering of the scene in the confined space on the krater's side displays his masterful sense of composition, all the more amazing when considering the technique he used to decorate the vessel (Hoving, 1993).

First, the potter Euxitheos created the work to be painted from a mound of wet clay, fashioning it on a hand driven wheel. Once the piece was finished, he placed it in a damp room to cure. Euphronios received a work that was leather like in texture, but not

entirely dry. The technique of vase painting is similar to that of fresco painting, in which the scene is applied to wet plaster, and the pigments sink into the plaster, becoming part of it, not just paint sitting on the surface. Euphronios took the vessel and positioned it on his lap, and applied colors that were made of the finest clay “slip”, or refined clay pigment. He applied the pigments with a device that is similar to a pastry chef’s pastry bag, squeezing the colors onto the vessel through a slender nozzle made of wood or bone, applying one line at a time.

What makes this technique even more difficult is that the pigments are so similar in color at this stage of the work, that it is nearly impossible to tell one from the other. The artist would not really know how the colors would turn out until the piece was fired. Euphronios had to keep track of which colors are going where, and which lines overlap each other or not, without really being able to distinguish one color from another; he was essentially painting the Krater “blind”.

He [Euphronios] painted all ten of the massive figures, all the highly complex palmettes which abound, the hundreds of tiny, tiny delicate lines in the armor of Sleep and Death, their elaborate wings and feathers with hundreds upon hundreds of never-overlapping lines, the hair, the outlines of the bodies. He achieved all this complexity -- much more than the thousands of lines engraved on a ten-dollar bill -- without ever seeing clearly what he'd just drawn (Hoving, 1993, p. 310-311).

Add to this the fact that the artist has a relatively short period of time to apply the colors, maybe an hour or two before the vessel dries out, makes the rendering of such intricate and delicate scenes a marvel. As with fresco painting, the artist is in a race

against the clock, putting concentration at a premium. Euphronios was able to master all these variables and produce a work of such sublime quality that Thomas Hoving, the man who authorized the purchase of the Krater for the Metropolitan Museum of Fine Arts in New York, called it "the single most perfect work of art I had ever encountered" (Silver, 2009, p.65). Euphronios and Euxitheos knew that they had created a masterpiece, for they both signed the work. Euphronios is considered the first known artist in history to sign his work.

The work was purchased by the Met in 1972, for the then unheard of price of one million dollars. Met director Hoving once during an interview referred it as the "Hot Pot", and the name stuck. Its appearance caused a sensation in the art world, so great was its quality and condition. Hoving himself said that its discovery would lead to the entire history of Greek art having to be re-written (NY Times, 2006). It also stirred up almost immediate suspicion that the piece must have been illegally looted from a tomb; with only 27 examples of Euphronios' work extant and accounted for (Hoving, 1993), the appearance of such a masterwork was baffling. Hoving suspected as much, correctly guessing that the vessel came from the area that had once been the home of the Etruscans; "[a]ctually, I thought I knew where it must have come from. An intact red-figured Greek vase of the early sixth century, B.C. could only have been found in Etruscan territory in Italy, by illegal excavators" (Hoving, 1993, p.309). It was hard to believe that a piece of such high quality would have gone unnoticed throughout the ages.

The Met assured the public that the vessel was purchased legally, and had the proper provenance to accompany the work. The krater was purchased from an

American antiquities dealer named Robert Hecht, Jr., who lived in Rome; he was acting on behalf of a Lebanese client named Dikran Sarrafian, whose family had owned the piece since 1920. That was the official story - the real story is one that seems as if it had come straight out of an Indiana Jones movie.

The piece was actually discovered in 1971 by tomb raiders, or “tombarolis”, as they are known in Italy. It was used as a burial offering in an Etruscan tomb located near Cerveteri, outside of Rome, Italy. When they found it, it was in pieces, but in very good condition (Silver, 2009). They sold it to Giacomo Medici, an antiquities middle man, who in turn sold it to Hecht, who had it restored in Switzerland. He had a working relationship with Medici that went back to 1967. Hecht contacted several institutions, including the Met, offering the work for sale. He was confident that he could get Dietrich Von Bothmer, the Met’s Greek & Roman curator, to get Hoving to go for the vase.

Von Bothmer was an expert on Greek vases, having studied at Oxford under the renowned English vase scholar John Beazley. It was Beazley, professor of archeology and the world’s leading authority on Greek pots, who had created the system (still in use today) for attributing works to specific artists based on stylistic analysis (Silver, 2009). His classic work, *Attic Red Figure Vase-Painters*, is still considered the definitive tome on the subject.

Hecht sent several “coded” letters to Hoving and Bothmer, along with some black & white photos of the Krater, which led to a meeting in Zurich, Switzerland in 1972 at the home of Fritz Buerki, the man Hecht used to restore the vase (Hoving, 1993). Both Hoving and Bothmer were astounded by the piece, and after examining it extensively they were bound and determined to purchase it. After several months of negotiations

and a controversial sale of a collection of ancient coins by the Met to pay for it (NY Times, 1973), the Euphronios Krater made its way to New York from Switzerland in a 1st class seat next to Robert Hecht.

From the moment the Met announced its purchase of the Krater, a firestorm of controversy surrounded it. No fewer than 30 articles were written about it in the New York Times in the year following its purchase (Hoving, 1993), and the exchanges between Hoving, the Met, and the reporters covering the story could at times turn contentious. Questions about the vase and its mysterious past lingered on for years, all the while it was the star of the Metropolitan's vase collection; it was considered one of the three greatest pieces of art ever purchased by the Met.

It wasn't until 1995 that Italian authorities had the information they needed with which to make a challenge to the legality of the purchase. That year Italian Carabinieri, with the permission of the government of Switzerland, raided the secret Swiss warehouse of Giacomo Medici, who was under suspicion of trying to sell stolen antiquities through a sale at Sotheby's. There they discovered a virtual treasure trove of stolen, smuggled, and looted works of art, including another Euphronios piece, a companion kylix chalice to the Krater. Also found were records indicating that Medici laundered the illegal pieces and sold them to institutions, private collectors and dealers (Silver, 2009), including Robert Hecht.

The raid was instrumental in giving the Italian government the leverage it needed to go after numerous pieces of art that they had long suspected to have been looted, and now resided in major museums in the US and abroad. Medici was charged with numerous counts of looting and smuggling antiquities (Silver, 2009).

The Italian authorities confronted the Met with the evidence, and in 2006, after several years of negotiation, came to an agreement that the museum would return the Krater to Italy. In return, Italy agreed to drop all legal charges against the Met, and that they would enter into long term agreements for the exchange of works of art, on a four year rotating basis, of equivalent value and quality. They also agreed to work together to in the fields of archeology and scholarship, forging stronger mutual ties (Met/Italy Agreement, 2006).

Though the agreement was considered a “win-win” situation for both sides, and the best the Met could hope for given the circumstances, not everyone was happy with the deal. Philippe de Montebello expressed his dissatisfaction in interviews and articles with the process, and the art repatriation movement in general (NY Times, 2006). A confirmed cultural internationalist, de Montebello vented his frustration with the way in which the Italians had been aggressively strong arming museums, often waging public relations wars that undermined true dialogue on the issue. Despite these hard feelings, the agreement between Italy and the Met became the blueprint which other museum institutions caught up in the Medici scandal would use to settle their disputes (Falkoff, 2007). Extra legal agreements such as these are now referred to as MBRAs.

The Met was allowed, as part of the agreement, to keep the Euphronios Krater until 2008, which coincided with the opening of the Met’s revamped Greek & Roman wing. The Krater returned to Italy on January 16, 2008, (ironically on Thomas Hoving’s 77th birthday) to much fanfare and celebration. The Krater was featured live on Italian television, and was treated as a celebrity. It was also prominently included in a show featuring other returned works of art entitled ‘Nostoi: Recovered Masterpieces’ (NY

Times, 2007). The Euphronios Krater is now on permanent display at the Villa Giulia in Rome.

In a strange twist of fate, the truth of the matter surrounding the Euphronios Krater was that *both* sides were right. As in the best tradition of mystery movie thrillers, the ending proved to be Byzantine like in its unfoldment. The Italian government was correct in its assertion that the Krater had been looted by tomb robbers from a site near Cerveteri in 1971, and were well within their legal right to ask for its return. The Met was telling the truth when it said that the provenance Robert Hecht provided was legal, and were justified in arguing for their right to retain the piece which they had purchased.

What neither side knew was that *both* sides had been deceived by Hecht, who had performed a sleight of hand maneuver in regard to the paperwork. He *did* in fact provide a legal provenance to a work by Euphronios that was owned by Dikran Sarrafian. He *did* sell a work by Euphronios to the Met with that provenance. What he neglected to mention was that the piece owned by Sarrafian and the work he sold to the Met were *two different works*. Hecht sold the looted Euphronios that he purchased from Giacomo Medici to the Met with the legal provenance to the Sarrafian Euphronios, and paid his Lebanese client for his piece with money he got from the Met. None of the parties knew of the deception, and all sides were fooled (Hoving, 1993).

In the end, it seems that only the Krater came out of this situation with a remotely happy ending. The Met lost their prized masterwork, even though they purchased it in good faith, at a price tag of \$1 million dollars. Dikran Sarrafian and his wife were killed in a “mysterious” car crash in 1977, some circles speculating that it had something to do

with the Krater. Giacomo Medici was found guilty of selling looted antiquities; his case is currently on appeal. Sotheby's was tainted by their association with Medici and the sale of items with weak and fabricated provenances. Robert Hecht was caught up in the Medici scandal and was put on trial, along with Marion True, for trafficking looted antiquities. His trial was dismissed in January of 2012, as the statute of limitations had run out. He had little time to savor his victory, as he died just a few weeks later at the age of 92. In the end, the Euphronios Krater returned to the country in which it had resided for almost 2,500 years.



Figure 2: The Etruscan tomb from which the Euphronios Krater was looted.



Journalists and officials at a ceremony for the return of the Euphronios Krater to Rome.
Photo: Doris Dignatelli/Reuters

Figure 3: The Euphronios Krater returns to Italy in 2008.

SECTION VI

CONCLUSIONS

In researching a topic as deep and broad as Art Repatriation, even with the focus narrowed by just examining the use of MBRAs in the repatriation process, there are *many* conclusions one could come away with. This is a fact I have found to be true: there are as many conclusions to be found as there are avenues of inquiry to explore. But part of the discipline of research is being able to focus in on a few pertinent facets of the inquiry, and expound on them.

I have chosen to highlight three areas of inquiry in my closing thoughts: (1) reform of cultural patrimony laws at the international level, (2) continued reform of legal and ethical museum standards, and (3) the pros and cons of using MBRAs in art repatriation conflict resolutions.

I. Reform of Cultural Patrimony Laws at the International Level

At present, international cultural patrimony laws are at best a patchwork quilt, rarely working in harmony from one country to another. This problem is compounded by the fact that not all countries are signatories to the UNESCO and UNIDROIT documents, and as such are not necessarily bound to uphold the cultural patrimony laws of countries filing for redress in a repatriation issue (Alderman, 2008).

A good and necessary first step to address the issue of international obligation, in regard to the repatriation of cultural material, would be for all nations concerned to be signatories to the UNESCO and UNIDROIT documents. All countries who have signed

and ratified these documents are, from that time on, legally bound to honor requests from fellow signatory nations in repatriation claims (UNESCO,1970; UNIDROIT,1995).

While signing on to the UNESCO and UNIDROIT documents is a good step in the right direction, some reform advocates suggest that changing the cultural patrimony laws in source rich nations would go a long way to help combat the problem of illicit trafficking of cultural material. They feel that the retention laws of some nations, such as Italy, only serve to exacerbate the problem by restricting the flow of cultural materials.

Noted legal scholars Alexander Bauer and John Henry Merryman mention in their respective works that the retention of duplicate cultural material in a source nation's collections fails to provide the kind of benefit that the cultural materials could provide, if they were made available on the open market. Bauer (2007) states, "...that there might be a benefit in allowing some of the excess materials in museum depots to be sold to collectors and foreign museums that would appreciate the opportunity to buy them" (p. 721). Merryman (1986) concurs, pointing out that "the practice of hoarding cultural objects, a practice that, while not necessarily damaging to the articles retained, serves no discernible domestic purpose other than asserting the right to keep them" (p. 847). He goes on to expound on this issue, pointing out that,

the achievements of earlier cultures of the source nation could be exhibited to a wider audience, the interest of foreigners in seeing and studying such works (their "common cultural heritage") could be accommodated, and the demand that is currently met through the illicit market could be partially satisfied by an open and licit trade in cultural property. It is widely believed that a number of source nations indiscriminately retain duplicates of objects beyond any conceivable domestic need, while refusing to make them available to museums, collectors

and dealers abroad. They forbid export but put much of what they retain to no use. In this way, they fail to spread their culture, they fail to exploit such objects as a valuable resource for trade and they contribute to the cultural impoverishment of people in other parts of the world. (Merryman, 1986, p. 847).

The creation of a "licit" market for antiquities would serve several purposes. While it would not completely solve the problem of clandestine digs and a black market for antiquities, it could relieve the pressure on the market for the illicit trafficking in cultural material. In providing the market with material that is actively sought by the public, the sale of cultural materials would become more transparent, and could foster a "legal" renewal in the sector.

By having an open, legal market for antiquities, jobs at all levels would be created; legal, controlled, and authorized digs could produce more material for the market, as well as contribute to new finds of artistic wonders. Duplicate material, presently in storage and inaccessible to the public, would be able to see the light of day through sales to museums and institutions. Private collectors would benefit in being able to choose from a larger selection of material, with the assurance that their purchases were both legal and ethical.

There are also the benefits to the source nation in making their cultural material available to the market in a controlled fashion - income from the sales, the spread of their culture, and the good will that it would generate in the world. The income earned from the sale of such material could be put back into the the cultural sector, and be used to better care for the cultural materials already in collections at home. The interest in the source nation's culture could have many positive repercussions, including an increase

in tourism (Falkoff, 2007). Also, the sale of such materials could lead to increased interactions between source nations and market nations, eager to purchase these cultural materials; cooperation on joint ventures could prove to be mutually beneficial (Adams & Bettelheim, 2007). With the increase in visibility on the world stage, source nations could elevate their position at the table of international affairs. Cultural materials could serve as ambassadors to nations all over the world in ways that people can't.

There are many beneficial outcomes from creating a licit market for antiquities, and in doing so could prove to be a practical solution to the problem of the illicit trade in cultural materials. It also could be seen as a way of bridging the gap between the viewpoints of the cultural nationalists and the cultural internationalists (Wolkoff, 2010), in that a licit market pays out dividends to both sides, and can be seen to be in harmony with their philosophies. This, however, can only be accomplished through a change in the laws of source nations.

II. Continuing Reform of Legal & Ethical Museum Standards

Museum behavior and ethics have come a long way since the free wheeling days prior to the UNESCO declaration of 1970. Since the implementation of the UNESCO (1970) and UNIDROIT (1995) documents, the museum world has undergone a radical transformation in regard to the purchasing of antiquities and cultural material. Gone are the days of "a wink and a nudge" in regard to the sketchy provenances for works of art. Thomas Hoving, the one time director of the Metropolitan Museum of Art, himself conceded that the "Age of Piracy" was over (Hoving, 1995).

This pendulum shift can be attributed to a variety of factors - the demise of Colonialism, increased Globalization, and the rise in Nationalism, just to name a few. In response to the new paradigm, museums and museum organizations have crafted ethical guidelines for the handling of antiquities and cultural material, and have raised the bar of awareness on the subject. In 2006, the International Council of Museums (ICOM) issued their best practices guidelines for ethical museum behavior, outlining what steps are to be taken in the purchase of such materials;

ACQUIRING COLLECTIONS

2.1 u Collections Policy

The governing body for each museum should adopt and publish a written collections policy that addresses the acquisition, care and use of collections. The policy should clarify the position of any material that will not be catalogued, conserved, or exhibited. (See 2.7; 2.8).

2.2 u Valid Title

No object or specimen should be acquired by purchase, gift, loan, bequest, or exchange unless the acquiring museum is satisfied that a valid title is held. Evidence of lawful ownership in a country is not necessarily valid title.

2.3 u Provenance and Due Diligence

Every effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained in, or exported from its country of origin or any intermediate country in which it might have been owned legally (including the museum's own country). Due diligence in this regard should establish the full history of the item since discovery or production.

2.4 u Objects and Specimens from Unauthorized or Unscientific Fieldwork

Museums should not acquire objects where there is reasonable cause to believe their recovery involved unauthorized or unscientific fieldwork, or intentional destruction or damage of monuments, archaeological or geological sites, or of species and natural habitats. In the same way, acquisition should not occur if there has been a failure to disclose the finds to the owner or occupier of the land, or to the proper legal or governmental authorities.

(ICOM, 2006).

These are worthy goals, which many museums have accepted either in principle or in fact. 2006 also saw the Canadian Museums Association update their 1999 guidelines, stating that “museums must ensure that legal title can be conveyed in written form and establish that the authenticity, source and provenance of the object is fully documented and ethically acceptable” (Ethics Guidelines, 2006, p.7). In 2011, the Association of Art Museum Directors (AAMD) revised their *Professional Practices In Art Museums*, as they do every ten years. In regard to acquisitions policy, they state that

[t]he director must ensure that best efforts are made to determine the ownership history of a work of art considered for acquisition. The director must not knowingly allow to be recommended for acquisition—or permit the museum to acquire—any work of art that has been stolen (without appropriate resolution of such theft) or illegally imported into the jurisdiction in which the museum is located (Professional Practices in Art Museums, 2011, p. 8).

These are just a sampling of the many guidelines that museums use to set high standards for ethical behavior. Some are more “all encompassing” than others, some address the issues of collection and repatriation with greater emphasis, and yet others

are vague on the issues. With the general trend marching forward on the ethics front, why would one have pause for concern?

There is reason for concern, because not everyone in the museum field believes as strongly in these principles as one might think. These principles can at times be diametrically opposed to the very mission of a museum - to acquire the finest works of art available for their collection.

Though this more “ethical” approach has been ongoing for more than forty years now, there are those who feel that, while the illicit antiquities trade *is* deplorable, the remedies have crippled their ability to continue to collect works of art, and serve the greater good in educating the public. Philippe de Montebello has lamented that as a result of the heightened awareness of the proper provenance of antiquities, the amount of cultural material being purchased by major institutions has been reduced greatly - American museums are simply no longer buying antiquities, especially items with a suspect past.

He goes on to point out that, though he in no way condones the looting of cultural sites and the illicit trade, there has been a positive side to the black market. “The truth is - as unattractive as it may be - the black market, to a certain extent, is responsible for the preservation of a great many objects” (Kennedy & Eakin, 2006, p.1).

De Montebello is clear about his skepticism to the black and white approach to dealing with antiquities, and the way their provenances are codified in documents such as UNESCO and UNIDROIT. And to a certain extent, it is understandable:

Between 1970 and 2006...a great number of very substantial objects of great merit have found their way into collections and onto the market. Archeologists say we should not buy them. Then what should be done with them? Condemn them to oblivion? Or bring them into the public domain and to the attention of possible claimant nations? (Adams & Bettelheim, 2007, p. 317).

De Montebello is not alone in having mixed feelings on the topic of repatriation, provenance, and the black market. James Cuno, the president and director of the Art Institute of Chicago, feels that the "zero tolerance" approach to works with questionable histories does not always benefit the museum going public, or the scholarly community.

"What about the Dead Sea Scrolls?" he asked during a forum held at the New School in New York after the Metropolitan Museum returned the Italian pieces. "We don't know where they were found. Some Bedouin showed up with them. Should we have said, 'Nope, sorry, we can't touch them?' That's the choice museums now are told to make." (Adams & Bettelheim, 2007, p. 322).

As one may surmise, not everyone is happy with the art repatriation movement, or the influence the UNESCO and UNIDROIT documents have had on the museum world. I would be remiss in failing to note that disagreement with certain aspects of the current legal climate does not equate with a disregard for such laws. I in no way wish to cast any aspersions upon the characters of Philippe de Montebello, James Cuno, or any other museum official who has a fundamental disagreement with the legal climate in which museums now operate. There are legitimate concerns on both sides of the issue that deserve to be examined.

It should be pointed out that de Montebello was instrumental in brokering the now landmark deal with Italy that paved the way for the use of MBRA's by other institutions embroiled in repatriation cases. Though he may have done it somewhat begrudgingly, being a dyed in the wool cultural internationalist, de Montebello did help usher in a new age in the art repatriation movement, via his use of an MBRA.

That being said, there are still instances in which museum officials have, whether through blissful ignorance or outright neglect to their due diligence responsibilities, continue to purchase items with questionable provenances. The sheer number of high profile repatriation cases, both resolved and ongoing, indicate that there are still individuals and institutions who are willing to operate outside of the law; such is the seduction of the beauty of art.

In reviewing the vast amount of material for this paper, it became apparent that there exists a lot of "gray area" in field of art repatriation, and that there are concerns on both sides of the issue that are legitimate and need to be addressed. While there will never be a perfect solution to the problem, a continued good will effort in refining the laws and ethical approaches to resolving art repatriation conflicts would go a long way in helping to solve this vexing challenge.

III. Pros & Cons of Using MBRA's in Art Repatriation Conflict Resolutions

MBRA's have been used to help settle some of the most high profile and contentious cases of art repatriation in the last decade. Their flexibility in being able to craft resolutions to contentious repatriation issues have made them the preferred

method of resolving these cases. Are they the panacea for all the woes of the art repatriation world?

MBRAs have many advantages in the repatriating of cultural material that make them the favored means of settling these disputes. They are flexible in nature, and can be crafted to accommodate the needs of the participants. They circumvent the use of the courts, saving both sides the time, expense, and possible embarrassment that high profile legal battles can incur. And not insignificantly, they allow both sides to come away with a measure of victory, a “win-win” situation.

Joshua Wolkoff (2010), in his article *Transcending Cultural Nationalist and Internationalist Tendencies: The Case For Mutually Beneficial Repatriation Agreements*, argues eloquently for the use of MBRAs, suggesting that they are emerging as the preferred method by which cultural disputes can be settled, and a clear alternative to the strict traditional repatriation trajectory, which involves going to court and incurring great legal expenses.

Wolkoff states that “[m]utually beneficial repatriation agreements are highly amorphous extrajudicial arrangements between source nations and cultural institutions. In recent years, they have emerged as an important tool for resolving issues of ownership and possession of cultural property” (p. 725). He goes on to list the numerous advantages MBRAs offer to both sides.

Not everyone involved in the art repatriation issue feels that MBRAs are the solution to all problems. In fact, there are some in the community that feel that they can actually have a detrimental effect on settling repatriation conflicts. Stacey Falkoff, the woman who coined the phrase MBRAs, sees a potential downside to their use. She

feels that MBRAS allow the international community to avoid the necessary work of crafting a consistent body of laws in dealing with repatriation (Falkoff, 2007). Falkoff also feels the MBRAS can be used by museums as a way of continuing their “business as usual” policy of purchasing works of questionable provenance:

Notwithstanding the benefits that flow from repatriation and MBRAS in particular, the entrance into MBRAS is not the ideal means for solving cultural property disputes. By minimizing the inherent risks and padding the possible losses, MBRAS encourage museums to continue to acquire works of questionable provenance. At the same time, MBRAS detract from the formation of much needed legal precedent that would inform source nations as to the strength of their prospective legal claims and deter museums from participating in the illicit antiquities market (Falkoff, 2007, p. 288).

Considering how many major museums have opted for MBRAS in settling their disputes with nations such as Italy, and the beneficial agreements that they were able to enter into, its easy to see why there could be reason for concern. Knowing that if caught, an institution could resort to using an MBRA to settle any outstanding legal actions, and even enter into an agreement that might prove to be a boon for the museum, might just be reason enough to take the risk in purchasing works of questionable provenance. An institution might even resort to using the “museum of last resort” defense - the concept of purchasing a work of murky provenance and making it “accessible to the public”, rather than having it disappear into a private collection.

Source countries, especially poorer ones, more often than not don't have the resources for a protracted legal battle over their cultural works. Museums know this, and

hypothetically, would wager that poor source countries would rather settle than take their chances in court.

With these situations in mind, it is understandable to see why the potential abuse of MBRA's in the repatriation process would give one pause for thought. This does not mean, however, that they should not be seen as a viable tool for settling contentious repatriation cases: in some instances, they could be the best route for both parties to travel in their journey towards a settlement.

The answer to settling the issue of art repatriation lies somewhere between the difficult work of crafting consistent international legislation, in regard to the treatment of cultural materials, and the use of extra legal devices. Until such a time as the international community sees fit to make standardized repatriation laws a priority, MBRA's may be the best option for resolving the challenging issue of who owns the past.

APPENDICES

HAGUE DOCUMENT, 1954

United Nations Educational, Scientific and Cultural Organization

The High Contracting Parties,

Recognizing that cultural property has suffered grave damage during recent armed conflicts and that, by reason of the developments in the technique of warfare, it is in increasing danger of destruction;

Being convinced that damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world;

Considering that the preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection;

Guided by the principles concerning the protection of cultural property during armed conflict, as established in the Conventions of The Hague of 1899 and of 1907 and in the Washington Pact of 15 April, 1935;

Being of the opinion that such protection cannot be effective unless both national and international measures have been taken to organize it in time of peace;

Being determined to take all possible steps to protect cultural property;

Have agreed upon the following provisions:

Chapter I. General provisions regarding protection

Article 1. Definition of cultural property

For the purposes of the present Convention, the term 'cultural property' shall cover, irrespective of origin or ownership:

(a) movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular; archaeological sites; groups of buildings which, as a whole, are of historical or artistic interest; works of art; manuscripts, books and other objects of artistic, historical or

archaeological interest; as well as scientific collections and important collections of books or archives or of reproductions of the property defined above;

(b) buildings whose main and effective purpose is to preserve or exhibit the movable cultural property defined in sub-paragraph (a) such as museums, large libraries and depositories of archives, and refuges intended to shelter, in the event of armed conflict, the movable cultural property defined in sub-paragraph (a);

(c) centers containing a large amount of cultural property as defined in sub-paragraphs (a) and (b), to be known as 'centers containing monuments'.

Article 2. Protection of cultural property

For the purposes of the present Convention, the protection of cultural property shall comprise the safeguarding of and respect for such property.

Article 3. Safeguarding of cultural property

The High Contracting Parties undertake to prepare in time of peace for the safeguarding of cultural property situated within their own territory against the foreseeable effects of an armed conflict, by taking such measures as they consider appropriate.

Article 4. Respect for cultural property

1. The High Contracting Parties undertake to respect cultural property situated within their own territory as well as within the territory of other High Contracting Parties by refraining from any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict; and by refraining from any act of hostility, directed against such property.

2. The obligations mentioned in paragraph 1 of the present Article may be waived only in cases where military necessity imperatively requires such a waiver.

3. The High Contracting Parties further undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.

4. They shall refrain from any act directed by way of reprisals against cultural property.

5. No High Contracting Party may evade the obligations incumbent upon it under the present Article, in respect of another High Contracting Party, by reason of the fact that the latter has not applied the measures of safeguard referred to in Article 3.

Article 5. Occupation

1. Any High Contracting Party in occupation of the whole or part of the territory of another High Contracting Party shall as far as possible support the competent national authorities of the occupied country in safeguarding and preserving its cultural property.
2. Should it prove necessary to take measures to preserve cultural property situated in occupied territory and damaged by military operations, and should the competent national authorities be unable to take such measures, the Occupying Power shall, as far as possible, and in close co-operation with such authorities, take the most necessary measures of preservation.
3. Any High Contracting Party whose government is considered their legitimate government by members of a resistance movement, shall, if possible, draw their attention to the obligation to comply with those provisions of the Convention dealing with respect for cultural property.

Article 6. Distinctive marking of cultural property

In accordance with the provisions of Article 16, cultural property may bear a distinctive emblem so as to facilitate its recognition.

Article 7. Military measures

1. The High Contracting Parties undertake to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples.
2. The High Contracting Parties undertake to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.

Chapter II. Special protection

Article 8. Granting of special protection

1. There may be placed under special protection a limited number of refuges intended to shelter movable cultural property in the event of armed conflict, of centers containing monuments and other immovable cultural property of very great importance, provided that they:

(a) are situated at an adequate distance from any large industrial center or from any important military objective constituting a vulnerable point, such as, for example, an aerodrome, broadcasting station, establishment engaged upon work of national defense, a port or railway station of relative importance or a main line of communication;

(b) are not used for military purposes.

2. A refuge for movable cultural property may also be placed under special protection, whatever its location, if it is so constructed that, in all probability, it will not be damaged by bombs.

3. A center containing monuments shall be deemed to be used for military purposes whenever it is used for the movement of military personnel or material, even in transit. The same shall apply whenever activities directly connected with military operations, the stationing of military personnel, or the production of war material are carried on within the center.

4. The guarding of cultural property mentioned in paragraph 1 above by armed custodians specially empowered to do so, or the presence, in the vicinity of such cultural property, of police forces normally responsible for the maintenance of public order shall not be deemed to be used for military purposes.

5. If any cultural property mentioned in paragraph 1 of the present Article is situated near an important military objective as defined in the said paragraph, it may nevertheless be placed under special protection if the High Contracting Party asking for that protection undertakes, in the event of armed conflict, to make no use of the objective and particularly, in the case of a port, railway station or aerodrome, to divert all traffic there from. In that event, such diversion shall be prepared in time of peace.

6. Special protection is granted to cultural property by its entry in the 'International Register of Cultural Property under Special Protection'. This entry shall only be made, in accordance with the provisions of the present Convention and under the conditions provided for in the Regulations for the execution of the Convention.

Article 9. Immunity of cultural property under special protection

The High Contracting Parties undertake to ensure the immunity of cultural property under special protection by refraining, from the time of entry in the International Register, from any act of hostility directed against such property and, except for the cases provided for in paragraph 5 of Article 8, from any use of such property or its surroundings for military purposes.

Article 10. Identification and control

During an armed conflict, cultural property under special protection shall be marked with the distinctive emblem described in Article 16, and shall be open to international control as provided for in the Regulations for the execution of the Convention.

Article 11. Withdrawal of immunity

1. If one of the High Contracting Parties commits, in respect of any item of cultural property under special protection, a violation of the obligations under Article 9, the opposing Party shall, so long as this violation persists, be released from the obligation to ensure the immunity of the property concerned. Nevertheless, whenever possible, the latter Party shall first request the cessation of such violation within a reasonable time.

2. Apart from the case provided for in paragraph 1 of the present Article, immunity shall be withdrawn from cultural property under special protection only in exceptional cases of unavoidable military necessity, and only for such time as that necessity continues. Such necessity can be established only by the officer commanding a force the equivalent of a division in size or larger. Whenever circumstances permit, the opposing Party shall be notified, a reasonable time in advance, of the decision to withdraw immunity.

3. The Party withdrawing immunity shall, as soon as possible, so inform the Commissioner-General for cultural property provided for in the Regulations for the execution of the Convention, in writing, stating the reasons.

Chapter III. Transport of cultural property

Article 12. Transport under special protection

1. Transport exclusively engaged in the transfer of cultural property, whether within a territory or to another territory, may, at the request of the High Contracting Party concerned, take place under special protection in accordance with the conditions specified in the Regulations for the execution of the Convention.

2. Transport under special protection shall take place under the international supervision provided for in the aforesaid Regulations and shall display the distinctive emblem described in Article 16.

3. The High Contracting Parties shall refrain from any act of hostility directed against transport under special protection.

Article 13. Transport in urgent cases

1. If a High Contracting Party considers that the safety of certain cultural property requires its transfer and that the matter is of such urgency that the procedure laid down

in Article 12 cannot be followed, especially at the beginning of an armed conflict, the transport may display the distinctive emblem described in Article 16, provided that an application for immunity referred to in Article 12 has not already been made and refused. As far as possible, notification of transfer should be made to the opposing Parties. Nevertheless, transport conveying cultural property to the territory of another country may not display the distinctive emblem unless immunity has been expressly granted to it.

2. The High Contracting Parties shall take, so far as possible, the necessary precautions to avoid acts of hostility directed against the transport described in paragraph 1 of the present Article and displaying the distinctive emblem.

Article 14. Immunity from seizure, capture and prize

1. Immunity from seizure, placing in prize, or capture shall be granted to:

(a) cultural property enjoying the protection provided for in Article 12 or that provided for in Article 13;

(b) the means of transport exclusively engaged in the transfer of such cultural property.

2. Nothing in the present Article shall limit the right of visit and search.

Chapter IV. Personnel

Article 15. Personnel

As far as is consistent with the interests of security, personnel engaged in the protection of cultural property shall, in the interests of such property, be respected and, if they fall into the hands of the opposing Party, shall be allowed to continue to carry out their duties whenever the cultural property for which they are responsible has also fallen into the hands of the opposing Party.

Chapter V. The distinctive emblem

Article 16. Emblem of the convention

1. The distinctive emblem of the Convention shall take the form of a shield, pointed below, persaltire blue and white (a shield consisting of a royal-blue square, one of the angles of which forms the point of the shield, and of a royal-blue triangle above the square, the space on either side being taken up by a white triangle).

2. The emblem shall be used alone, or repeated three times in a triangular formation (one shield below), under the conditions provided for in Article 17.

Article 17. Use of the emblem

1. The distinctive emblem repeated three times may be used only as a means of identification of:

- (a) immovable cultural property under special protection;
- (b) the transport of cultural property under the conditions provided for in Articles 12 and 13;
- (c) improvised refuges, under the conditions provided for in the Regulations for the execution of the Convention.

2. The distinctive emblem may be used alone only as a means of identification of:

- (a) cultural property not under special protection;
- (b) the persons responsible for the duties of control in accordance with the Regulations for the execution of the Convention;
- (c) the personnel engaged in the protection of cultural property;
- (d) the identity cards mentioned in the Regulations for the execution of the Convention.

3. During an armed conflict, the use of the distinctive emblem in any other cases than those mentioned in the preceding paragraphs of the present Article, and the use for any purpose whatever of a sign resembling the distinctive emblem, shall be forbidden.

4. The distinctive emblem may not be placed on any immovable cultural property unless at the same time there is displayed an authorization duly dated and signed by the competent authority of the High Contracting Party.

Chapter VI. Scope of application of the Convention

Article 18. Application of the Convention

1. Apart from the provisions which shall take effect in time of peace, the present Convention shall apply in the event of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by, one or more of them.

2. The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

3. If one of the Powers in conflict is not a Party to the present Convention, the Powers which are Parties thereto shall nevertheless remain bound by it in their mutual relations. They shall furthermore be bound by the Convention, in relation to the said Power, if the latter has declared, that it accepts the provisions thereof and so long as it applies them.

Article 19. Conflicts not of an international character

1. In the event of an armed conflict not of an international character occurring within the territory of one of the High Contracting Parties, each party to the conflict shall be bound to apply, as, a minimum, the provisions of the present Convention which relate to respect for cultural property.

2. The parties to the conflict shall endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

3. The United Nations Educational, Scientific and Cultural Organization may offer its services to the parties to the conflict.

4. The application of the preceding provisions shall not affect the legal status of the parties to the conflict.

Chapter VII. Execution of the Convention

Article 20. Regulations for the execution of the Convention

The procedure by which the present Convention is to be applied is defined in the Regulations for its execution, which constitute an integral part thereof.

Article 21. Protecting powers

The present Convention and the Regulations for its execution shall be applied with the co-operation of the Protecting Powers responsible for safeguarding the interests of the Parties to the conflict.

Article 22. Conciliation procedure

1. The Protecting Powers shall lend their good offices in all cases where they may deem it useful in the interests of cultural property, particularly if there is disagreement between the Parties to the conflict as to the application or interpretation of the provisions of the present Convention or the Regulations for its execution.

2. For this purpose, each of the Protecting Powers may, either at the invitation of one Party, of the Director-General of the United Nations Educational, Scientific and Cultural Organization, or on its own initiative, propose to the Parties to the conflict a meeting of

their representatives, and in particular of the authorities responsible for the protection of cultural property, if considered appropriate on suitably chosen neutral territory. The Parties to the conflict shall be bound to give effect to the proposals for meeting made to them.

The Protecting Powers shall propose for approval by the Parties to the conflict a person belonging to a neutral Power or a person presented by the Director General of the United Nations Educational, Scientific and Cultural Organization, which person shall be invited to take part in such a meeting in the capacity of Chairman.

Article 23. Assistance of UNESCO

1. The High Contracting Parties may call upon the United Nations Educational, Scientific and Cultural Organization for technical assistance in organizing the protection of their cultural property, or in connexion with any other problem arising out of the application of the present Convention or the Regulations for its execution. The Organization shall accord such assistance within the limits fixed by its programme and by its resources.

2. The Organization is authorized to make, on its own initiative, proposals on this matter to the High Contracting Parties.

Article 24. Special agreements

1. The High Contracting Parties may conclude special agreements for all matters concerning which they deem it suitable to make separate provision.

2. No special agreement may be concluded which would diminish the protection afforded by the present Convention to cultural property and to the personnel engaged in its protection.

Article 25. Dissemination of the Convention

The High Contracting Parties undertake, in time of peace as in time of armed conflict, to disseminate the text of the present Convention and the Regulations for its execution as widely as possible in their respective countries. They undertake, in particular, to include the study thereof in their programmes of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property.

Article 26. Translations reports

1. The High Contracting Parties shall communicate to one another, through the Director-General of the United Nations Educational, Scientific and Cultural Organization, the official translations of the present Convention and of the Regulations for its execution.

2. Furthermore, at least once every four years, they shall forward to the Director-General a report giving whatever information they think suitable concerning any

measures being taken, prepared or contemplated by their respective administrations in fulfillment of the present Convention and of the Regulations for its execution.

Article 27. Meetings

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization may, with the approval of the Executive Board, convene meetings of representatives of the High Contracting Parties. He must convene such a meeting if at least one-fifth of the High Contracting Parties so request.
2. Without prejudice to any other functions which have been conferred on it by the present Convention or the Regulations for its execution, the purpose of the meeting will be to study problems concerning the application of the Convention and of the Regulations for its execution, and to formulate recommendations in respect thereof.
3. The meeting may further undertake a revision of the Convention or the Regulations for its execution if the majority of the High Contracting Parties are represented, and in accordance with the provisions of Article 39.

Article 28. Sanctions

The High Contracting Parties undertake to take, within the framework of their ordinary criminal jurisdiction, all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons, of whatever nationality, who commit or order to be committed a breach of the present Convention.

Final provisions

Article 29. Languages

1. The present Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.
2. The United Nations Educational, Scientific and Cultural Organization shall arrange for translations of the Convention into the other official languages of its General Conference.

Article 30. Signature

The present Convention shall bear the date of 14 May, 1954 and, until the date of 31 December, 1954, shall remain open for signature by all States invited to the Conference which met at The Hague from 21 April, 1954 to 14 May, 1954.

Article 31. Ratification

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

Article 32. Accession

From the date of its entry into force, the present Convention shall be open for accession by all States mentioned in Article 30 which have not signed it, as well as any other State invited to accede by the Executive Board of the United Nations Educational, Scientific and Cultural Organization. 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 33. Entry into force

1. The present Convention shall enter into force three months after five instruments of ratification have been deposited.
2. Thereafter, it shall enter into force, for each High Contracting Party, three months after the deposit of its instrument of ratification or accession.
3. The situations referred to in Articles 18 and 19 shall give immediate effect to ratifications or accessions deposited by the Parties to the conflict either before or after the beginning of hostilities or occupation. In such cases the Director-General of the United Nations Educational, Scientific and Cultural Organization shall transmit the communications referred to in Article 38 by the speediest method.

Article 34. Effective application

1. Each State Party to the Convention on the date of its entry into force shall take all necessary measures to ensure its effective application within a period of six months after such entry into force.
2. This period shall be six months from the date of deposit of the instruments of ratification or accession for any State which deposits its instrument of ratification or accession after the date of the entry into force of the Convention.

Article 35. Territorial extension of the Convention

Any High Contracting Party may, at the time of ratification or accession, or at any time thereafter, declare by notification addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, that the present Convention

shall extend to all or any of the territories for whose international relations it is responsible. The said notification shall take effect three months after the date of its receipt.

Article 36. Relation to previous conventions

1. In the relations between Powers which are bound by the Conventions of The Hague concerning the Laws and Customs of War on Land (IV) and concerning Naval Bombardment in Time of War (IX), whether those of 29 July, 1899 or those of 18 October, 1907, and which are Parties to the present Convention, this last Convention shall be supplementary to the aforementioned Convention (IX) and to the Regulations annexed to the aforementioned Convention (IV) and shall substitute for the emblem described in Article 5 of the aforementioned Convention (IX) the emblem described in Article 16 of the present Convention, in cases in which the present Convention and the Regulations for its execution provide for the use of this distinctive emblem.

2. In the relations between Powers which are bound by the Washington Pact of 15 April, 1935 for the Protection of Artistic and Scientific Institutions and of Historic Monuments (Roerich Pact) and which are Parties to the present Convention, the latter Convention shall be supplementary to the Roerich Pact and shall substitute for the distinguishing flag described in Article III of the Pact the emblem defined in Article 16 of the present Convention, in cases in which the present Convention and the Regulations for its execution provide for the use of this distinctive emblem.

Article 37. Denunciation

1. Each High Contracting Party may denounce the present 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 one year after the receipt of the instrument of denunciation. However, if, on the expiry of this period, the denouncing Party is involved in an armed conflict, the denunciation shall not take effect until the end of hostilities, or until the operations of repatriating cultural property are completed, whichever is the later.

Article 38. Notifications

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States referred to in Articles 30 and 32, as well as the United Nations, of the deposit of all the instruments of ratification, accession or acceptance provided for in Articles 31, 32 and 39 and of the notifications and denunciations provided for respectively in Articles 35, 37 and 39.

Article 39. Revision of the Convention and of the Regulations for its execution

1. Any High Contracting Party may propose amendments to the present Convention or the Regulations for its execution. The text of any proposed amendment shall be communicated to the Director-General of the United Nations Educational, Scientific and Cultural Organization who shall transmit it to each High Contracting Party with the request that such Party reply within four months stating whether it:

(a) desires that a Conference be convened to consider the proposed amendment;

(b) favours the acceptance of the proposed amendment without a Conference; or

(c) favours the rejection of the proposed amendment without a Conference.

2. The Director-General shall transmit the replies, received under paragraph 1 of the present Article, to all High Contracting Parties.

3. If all the High Contracting Parties which have, within the prescribed time-limit, stated their views to the Director-General of the United Nations Educational, Scientific and Cultural Organization, pursuant to paragraph 1(b) of this Article, inform him that they favour acceptance of the amendment without a Conference, notification of their decision shall be made by the Director-General in accordance with Article 38. The amendment shall become effective for all the High Contracting Parties on the expiry of ninety days from the date of such notification.

4. The Director-General shall convene a Conference of the High Contracting Parties to consider the proposed amendment if requested to do so by more than one-third of the High Contracting Parties.

5. Amendments to the Convention or to the Regulations for its execution, dealt with under the provisions of the preceding paragraph, shall enter into force only after they have been unanimously adopted by the High Contracting Parties represented at the Conference and accepted by each of the High Contracting Parties.

6. Acceptance by the High Contracting Parties of amendments to, the Convention or to the Regulations for its execution, which have been adopted by the Conference mentioned in paragraphs 4 and 5, shall be effected by the deposit of a formal instrument with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

7. After the entry into force of amendments to the present Convention or to the Regulations for its execution, only the text of the Convention or of the Regulations for its execution thus amended shall remain open for ratification or accession.

Article 40. Registration

In accordance with Article 102 of the Charter of the United Nations, the present 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.

IN FAITH WHEREOF the undersigned, duly authorized, have signed the present Convention.

Done at The Hague, this fourteenth day of May, 1954, in a single copy 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 30 and 32 as well as to the United Nations.

Regulations for the Execution of the Convention for the Protection of Cultural Property in the Event of Armed Conflict

Chapter I. Control

Article 1. International list of persons

On the entry into force of the Convention, the Director-General of the United Nations Educational, Scientific and Cultural Organization shall compile an international list consisting of all persons nominated by the High Contracting Parties as qualified to carry out the functions of Commissioner-General for Cultural Property. On the initiative of the Director-General of the United Nations Educational, Scientific and Cultural Organization, this list shall be periodically revised on the basis of requests formulated by the High Contracting Parties.

Article 2. Organization of control

As soon as any High Contracting Party is engaged in an armed conflict to which Article 18 of the Convention applies:

(a) It shall appoint a representative for cultural property situated in its territory; if it is in occupation of another territory, it shall appoint a special representative for cultural property situated in that territory;

(b) The Protecting Power acting for each of the Parties in conflict with such High Contracting Party shall appoint delegates accredited to the latter in conformity with Article 3 below;

(c) A Commissioner-General for Cultural Property shall be appointed to such High Contracting Party in accordance with Article 4.

Article 3. Appointment of delegates of Protecting Powers

The Protecting Power shall appoint its delegates from among the members of its diplomatic or consular staff or, with the approval of the Party to which they will be accredited, from among other persons.

Article 4. Appointment of 'Commissioner-General

1. The Commissioner-General for Cultural Property shall be chosen from the international list of persons by joint agreement between the Party to which he will be accredited and the Protecting Powers acting on behalf of the opposing Parties.
2. Should the Parties fail to reach agreement within three weeks from the beginning of their discussions on this point, they shall request the President of the International Court of Justice to appoint the Commissioner-General, who shall not take up his duties until the Party to which he is accredited has approved his appointment.

Article 5. Functions of delegates

The delegates of the Protecting Powers shall take note of violations of the Convention, investigate, with the approval of the Party to which they are accredited, the circumstances in which they have occurred, make representations locally to secure their cessation and, if necessary, notify the Commissioner-General of such violations. They shall keep him informed of their activities.

Article 6. Functions of the Commissioner-General

1. The Commissioner-General for Cultural Property shall deal with all matters referred to him in connexion with the application of the Convention, in conjunction with the representative of the Party to which he is accredited and with the delegates concerned.
2. He shall have powers of decision and appointment in the cases specified in the present Regulations.
3. With the agreement of the Party to which he is accredited, he shall have the right to order an investigation or to, conduct it himself.
4. He shall make any representations to the Parties to the conflict or to their Protecting Powers which he deems useful for the application of the Convention.

5. He shall draw up such reports as may be necessary on the application of the Convention and communicate them to the Parties concerned and to their Protecting Powers. He shall send copies to the Director-General of the United Nations Educational, Scientific and Cultural Organization, who may make use only of their technical contents.

6. If there is no Protecting Power, the Commissioner-General shall exercise the functions of the Protecting Power as laid down in Articles 21 and 22 of the Convention.

Article 7. Inspectors and experts

1. Whenever the Commissioner-General for Cultural Property considers it necessary, either at the request of the delegates concerned or after consultation with them, he shall propose, for the approval of the Party to which he is accredited, an inspector of cultural property to be charged with a specific mission. An inspector shall be responsible only to the Commissioner-General.

2. The Commissioner-General, delegates and inspectors may have recourse to the services of experts, who will also be proposed for the approval of the Party mentioned in the preceding paragraph.

Article 8. Discharge of the mission of control

The Commissioners-General for Cultural Property, delegates of the Protecting Powers, inspectors and experts shall in no case exceed their mandates. In particular, they shall take account of the security needs of the High Contracting Party to which they are accredited and shall in all circumstances act in accordance with the requirements of the military situation as communicated to them by that High Contracting Party.

Article 9. Substitutes for Protecting Powers

If a Party to the conflict does not benefit or ceases to benefit from the activities of a Protecting Power, a neutral State may be asked to undertake those functions of a Protecting Power which concern the appointment of a Commissioner-General for Cultural Property in accordance with the procedure laid down in Article 4 above. The Commissioner-General thus appointed shall, if need be, entrust to inspectors the functions of delegates of Protecting Powers as specified in the present Regulations.

Article 10. Expenses

The remuneration and expenses of the Commissioner-General for Cultural Property, inspectors and experts shall be met by the Party to which they are accredited. Remuneration and expenses of delegates of the Protecting Powers shall be subject to agreement between those Powers and the States whose interests they are safeguarding.

Chapter II. Special protection

Article 11. Improvised refuges

1. If, during an armed conflict, any High Contracting Party is induced by unforeseen circumstances to set up an improvised refuge and desires that it should be placed under special protection, it shall communicate this fact forthwith to the Commissioner-General accredited to that Party.

2. If the Commissioner-General considers that such a measure is justified by the circumstances and by the importance of the cultural property sheltered in' this improvised refuge, he may authorize the High Contracting Party to display on such refuge the distinctive emblem defined in Article 16 of the Convention. He shall communicate his decision without delay to the delegates of the Protecting Powers who are concerned, each of whom may, within a time limit of 30 days, order the immediate withdrawal of the emblem.

3. As soon as such delegates have signified their agreement or if the time limit of 30 days has passed without any of the delegates concerned having made an objection, and if, in the view of the Commissioner-General, the refuge fulfils the conditions laid down in Article 8 of the Convention, the Commissioner-General shall request the Director-General of the United Nations Educational, Scientific and Cultural Organization to enter the refuge in the Register of Cultural Property under Special Protection.

Article 12. International Register of Cultural Property under Special Protection

1. An 'International Register of Cultural Property under Special Protection' shall be prepared.

2. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall maintain this Register. He shall furnish copies to the Secretary-General of the United Nations and to the High Contracting Parties.

3. The Register shall be divided into sections, each in the name of a High Contracting Party. Each section shall be subdivided into three paragraphs, headed: Refuges, Centers containing Monuments, Other Immovable Cultural Property. The Director-General shall determine what details each section shall contain.

Article 13. Requests for registration

1. Any High Contracting Party may submit to the Director-General of the United Nations Educational, Scientific and Cultural Organization an application for the entry in the Register of certain refuges, centers containing monuments or other immovable cultural property situated within its territory. Such application shall contain a description of the location of such property and shall certify that the property complies with the provisions of Article 8 of the Convention.

2. In the event of occupation, the Occupying Power shall be competent to make such application.

3. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall, without delay, send copies of applications for registration to each of the High Contracting Parties.

Article 14. Objections

1. Any High Contracting Party may, by letter addressed to the Director-General of the United Nations Educational, Scientific and Cultural Organization, lodge an objection to the registration of cultural property. This letter must be received by him within four months of the day on which he sent a copy of the application for registration.

2. Such objection shall state the reasons giving rise to it, the only, valid grounds being that:

(a) the property is not cultural property;

(b) the property does not comply with the conditions mentioned in Article 8 of the Convention.

3. The Director-General shall send a copy of the letter of objection to the High Contracting Parties without delay. He shall, if necessary, seek the advice of the International Committee on Monuments, Artistic and Historical Sites and Archaeological Excavations and also, if he thinks fit, of any other competent organization or person.

4. The Director-General, or the High Contracting Party requesting registration, may make whatever representations they deem necessary to the High Contracting Parties which lodged the objection, with a view to causing the objection to 'be withdrawn.

5. If a High Contracting Party which has made an application for registration in time of peace becomes involved in an armed conflict before the entry has been made, the cultural property concerned shall at once be provisionally entered in the Register, by the Director-General, pending the confirmation, withdrawal or cancellation of any objection that may be, or may have been, made.

6. If, within a period of six months from the date of receipt of the letter of objection, the Director-General has not received from the High Contracting Party lodging the objection a communication stating that it has been withdrawn, the High Contracting Party applying for registration may request arbitration in accordance with the procedure in the following paragraph.

7. The request for arbitration shall not be made more than one year after the date of receipt by the Director-General of the letter of objection. Each of the two Parties to the

dispute shall appoint an arbitrator. When more than one objection has been lodged against an application for registration, the High Contracting Parties which have lodged the objections shall, by common consent, appoint a single arbitrator. These two arbitrators shall select a chief arbitrator from the international list mentioned in Article 1 of the present Regulations. If such arbitrators cannot agree upon their choice, they shall ask the President of the International Court of Justice to appoint a chief arbitrator who need not necessarily be chosen from the international list. The arbitral tribunal thus constituted shall fix its own procedure. There shall be no appeal from its decisions.

8. Each of the High Contracting Parties may declare, whenever a dispute to which it is a Party arises, that it does not wish to apply the arbitration procedure provided for in the preceding paragraph. In such cases, the objection to an application for registration shall be submitted by the Director-General to the High Contracting Parties. The objection will be confirmed only if the High Contracting Parties so decide by a two-third majority of the High Contracting Parties voting. The vote shall be taken by correspondence, unless the Director-General of the United Nations Educational, Scientific and Cultural Organization deems it essential to convene a meeting under the powers conferred upon him by Article 27 of the Convention. If the Director-General decides to proceed with the vote by correspondence, he shall invite the High Contracting Parties to transmit their votes by sealed letter within six months from the day on which they were invited to do so.

Article 15. Registration

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall cause to be entered in the Register, under a serial number, each item of property for which application for registration is made, provided that he has not received an objection within the time-limit prescribed in paragraph 1 of Article 14.

2. If an objection has been lodged, and without prejudice to the provision of paragraph 5 of Article 14, the Director-General shall enter property in the Register only if the objection has been withdrawn or has failed to be confirmed following the procedures laid down in either paragraph 7 or paragraph 8 of Article 14.

3. Whenever paragraph 3 of Article 11 applies, the Director-General shall enter property in the Register if so requested by the Commissioner-General for Cultural Property.

4. The Director-General shall send without delay to the Secretary-General of the United Nations, to the High Contracting Parties, and, at the request of the Party applying for registration, to all other States referred to in Articles 30 and 32 of the Convention, a certified copy of each entry in the Register. Entries shall become effective thirty days after dispatch of such copies.

Article 16. Cancellation

1. The Director-General of the United Nations Educational, Scientific and Cultural Organization shall cause the registration of any property to be cancelled:

(a) at the request of the High Contracting Party within whose territory the cultural property is situated;

(b) if the High Contracting Party which requested registration has denounced the Convention, and when that denunciation has taken effect;

(c) in the special case provided for in Article 14, paragraph 5, when an objection has been confirmed following the procedures mentioned either in paragraph 7 or in paragraph 8 or Article 14.

2. The Director-General shall send without delay, to the Secretary-General of the United Nations and to all States which received a copy of the entry in the Register, a certified copy of its cancellation. Cancellation shall take effect thirty days after the dispatch of such copies.

Chapter III. Transport of cultural property

Article 17. Procedure to obtain immunity

1. The request mentioned in paragraph I of Article 12 of the Convention shall be addressed to the Commissioner-General for Cultural Property. It shall mention the reasons on which it is based and specify the approximate number and the importance of the objects to be transferred, their present location, the location now envisaged, the means of transport to be used, the route to be followed, the date proposed for the transfer, and any other relevant information.

2. If the Commissioner-General, after taking such opinions as he deems fit, considers that such transfer is justified, he shall consult those delegates of the Protecting Powers who are concerned, on the measures proposed for carrying it out. Following such consultation, he shall notify the Parties to the conflict concerned of the transfer, including in such notification all useful information.

3. The Commissioner-General shall appoint one or more inspectors, who shall satisfy themselves that only the property stated in the request is to be transferred and that the transport is to be by the approved methods and bears the distinctive emblem. The inspector or inspectors shall accompany the property to its destination.

Article 18. Transport abroad

Where the transfer under special protection is to the territory of another country, it shall be governed not only by Article 12 of the Convention and by Article 17 of the present Regulations, but by the following further provisions:

- (a) while the cultural property remains on the territory of another State, that State shall be its depositary and shall extend to it as great a measure of care as that which it bestows upon its own cultural property of comparable importance;
- (b) the depositary State shall return the property only on the cessation of the conflict; such return shall be effected within six months from the date on which it was requested;
- (c) during the various transfer operations, and while it remains on the territory of another State, the cultural property shall be exempt from confiscation and may not be disposed of either by the depositor or by the depositary. Nevertheless, when the safety of the property requires it, the depositary may, with the assent of the depositor, have the property transported to the territory of a third country, under the conditions laid down in the present article;
- (d) the request for special protection shall indicate that the State to whose territory the property is to be transferred accepts the provisions of the present Article.

Article 19. Occupied territory

Whenever a High Contracting Party occupying territory of another High Contracting Party transfers cultural property to a refuge situated elsewhere in that territory, without being able to follow the procedure provided for in Article 17 of the Regulations, the transfer in question shall not be regarded as misappropriation within the meaning of Article 4 of the Convention, provided that the Commissioner-General for Cultural Property certifies in writing, after having consulted the usual custodians, that such transfer was rendered necessary by circumstances.

Chapter IV. The distinctive emblem

Article 20. Affixing of the emblem

1. The placing of the distinctive emblem and its degree of visibility shall be left to the discretion of the competent authorities of each High Contracting Party. It may be displayed on flags or armlets; it may be painted on an object or represented in any other appropriate form.
2. However, without prejudice to any possible fuller markings, the emblem shall, in the event of armed conflict and in the cases mentioned in Articles 12 and 13 of the Convention, be placed on the vehicles of transport so as to be clearly visible in daylight from the air as well as from the ground. The emblem shall be visible from the ground:

(a) at regular intervals sufficient to indicate clearly the perimeter of a centre containing monuments under special protection;

(b) at the entrance to other immovable cultural property under special protection.

Article 21. Identification of persons

1. The persons mentioned in Article 17, paragraph 2(b) and (c) of the Convention may wear an armlet bearing the distinctive emblem, issued and stamped by the competent authorities.

2. Such persons shall carry a special identity card bearing the distinctive emblem. This card shall mention at least the surname and first names, the date of birth, the title or rank, and the function of the holder. The card shall bear the photograph of the holder as well as his signature or his fingerprints, or both. It shall bear the embossed stamp of the competent authorities.

3. Each High Contracting Party shall make out its own type of identity card,, guided by the model annexed, by way of example, to the present Regulations. The' High Contracting Parties shall transmit to each other a specimen of the model they are using. Identity cards shall be made out, if possible, at least in duplicate, one copy being kept by the issuing Power.

4. The said persons may not, without legitimate reason, be deprived of their identity card or of the right to wear the armlet.

Date of adoption
1954

UNESCO DOCUMENT, 1970

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970

Paris, 14 November 1970

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 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 artist 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 manu-factured 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 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 appertaining to 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 States 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.

Depositary :

UNESCO

Entry into force :

24 April 1972, in accordance with Article 21

Authoritative texts :

English, French, Russian and Spanish

Registration at the UN :

9 May 1972, No. 11806

States Parties

[List in alphabetical order](#)

[List in chronological order](#)

Declarations and Reservations :

Australia [at time of acceptance]

'The Government of Australia declares that Australia is not at present in a position to 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. Australia therefore accepts the Convention subject to a reservation as to Article 10, to the extent that it is unable to comply with the obligations imposed by that Article.' (see letter LA/Depositary/1989/20 of 10 January 1990).

Belgium

"Belgium interprets the term "cultural property" as confined to those objects listed in the Annex to Council Regulation (EEC) No 3911/92 of 9 December 1992, as amended, on the export of cultural goods and in the Annex to Council Directive 93/7/EEC of 15 March 1993, as amended, on the return of cultural objects unlawfully removed from the territory of a Member State." [Original: French, English, Flemish and German]

Byelorussian Soviet Socialist Republic [at time of ratification]

'The Byelorussian Soviet Socialist Republic declares that the provisions of Articles 12, 22 and 23 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, providing for the possibility for the contracting parties to extend its application to the territories for the international relations of which they are responsible, are outdated and contrary to the Declaration of the United Nations General Assembly on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514/XV of 14 December 1960).' (see letter LA/Depositary/1988/11 of 15 September 1988)

Cuba

(Translation) 'The Government of the Republic of Cuba considers that the implementation of the provisions contained in Articles 22 and 23 of the Convention is contrary to the Declaration on Granting Independence to Colonial Countries and Peoples (Resolution 1514) adopted by the United Nations General Assembly on 14

December 1960, which proclaims the necessity of bringing to a speedy and unconditional end colonialization in all its forms and manifestations.' (See letter LA/ Depository/1980/7 of 11 March 1980.)

Czechoslovakia

'Accepting the Convention, the Government of the Czechoslovak Socialist Republic wishes to declare that preservation of the state of dependence of certain countries from which the provisions of Articles 12, 22, and 23 proceed is in contradiction with the contents and objective of the Declaration of the United Nations General Assembly No. 1514 on the granting of independence to colonial countries and nations of 14 December 1960. The Government of the Czechoslovak Socialist Republic further declares in connection with Article 20 that the Convention, according to the problems it regulates, should be open also to non-Member States of the United Nations Educational, Scientific and Cultural Organization without the need of invitation by the Executive Council of the United Nations Educational, Scientific and Cultural Organization.' (See letter LA/ Depository/1977/6 of 8 April 1977)

Denmark [at the time of ratification]

The instrument contained the following temporary reservation:

"... until further decision, the Convention will apply neither to the Feroe Islands nor to Groenland" [Original: French],

and was accompanied by the following declaration:

'The property designated as "of importance for archaeology, prehistory, history, literature, art or science", in accordance with Article 1 of the Convention, are the properties covered by the Danish legislation concerning protection of cultural assets and the Danish Museum Act.

Act on Protection of Cultural Assets in Denmark

The Act on Protection of Cultural Assets in Denmark came into force on 1 January 1987. According to section 2(1) in the Act on Protection of Cultural Assets in Denmark the Act applies to the following cultural assets which are not publicly owned:

- cultural objects of the period before 1660;*
- cultural objects older than 100 years and valued at DKK 100,000 or more;*
- photographs (regardless of age) if they have a value of DKK 30,000 or more.*

In exceptional cases the Minister of Culture can decide that the Act is also applicable to other objects of cultural interest.

Coins and medals are the only cultural objects explicitly exempted from the regulations of the Act.

The above-mentioned assets must not be exported from Denmark without permission from the Commission on Export of Cultural Assets.

Museum Act

According to section 28 of the Museum Act, any person who finds an ancient relic or monument, including shipwrecks, cargo or parts of such wrecks, which at any time must be assumed lost more than 100 years ago, in watercourses, in lakes, in territorial waters or on the continental shelf, but not beyond 24 nautical miles from the base lines from which the width of outer territorial waters is measured, shall immediately notify the Minister of Culture. Such objects shall belong to the State, unless any person proves that he or she is the rightful owner. Any person who gathers up an object belonging to the State, and any person who gains possession of such an object, shall immediately deliver it to the Minister of Culture.

According to section 30 of the Museum Act objects of the past, including coins found in Denmark, of which no one can prove to be the rightful owner, shall be treasure trove (danefæ) if made of valuable material or being of a special cultural heritage value. Treasure trove shall belong to the State. Any person who finds treasure trove, and any person who gains possession of treasure trove, shall immediately deliver it to the National Museum of Denmark.

According to section 31 of the Museum Act, a geological object or a botanical or zoological object of a fossil or sub-fossil nature or a meteorite found in Denmark is fossil trove (danekræ) if the object is of unique scientific or exhibitional value. Fossil trove shall belong to the State. Any person who finds fossil trove, and any person, who gains possession of fossil trove, shall immediately deliver it to the Danish Museum of Natural History” (see letter LA/Depositary/2003/12)

Finland [at the time of ratification]

“The Government of Finland declares that it will implement the provisions of Article 7 (b) (ii) of this Convention in accordance with its obligations under Unidroit Convention on Stolen or Illegally Exported Cultural Objects done at Rome on 24 June 1995.”

France [at the time of ratification]

“The property designated as “of importance for archaeology, prehistory, history, literature, art, or science”, in accordance with Article 1 of the Convention, are the following properties whose value exceeds the thresholds indicated opposite:

-

Thresholds (in ECUs) (see note 3)

1. Archaeological objects more than 100 years old originating from :

- terrestrial and submarine excavations and discoveries,
- archaeological sites,
- archaeological collections

0

2. Elements more than 100 years old that form an integral part of artistic, historic or religious monuments which have been dismembered

0

3. Pictures and paintings produced entirely by hand on any support and in any material (see note 1)

150.000

4. Mosaics, other than those included in categories 1 ou 2, and drawings produced entirely by hand on any support and in any material (see note 1)

15.000

5. Original engravings, prints, serigraphs et lithographs and their respective matrices, and original posters (see note 1)

15.000

6. Original works of statutory art or sculpture and copies obtained by the same means as the original (see note 1), other than items included in category 1

50.000

7. Photographs, films and their negatives (see note 1)

15.000

8. Incunabula and manuscripts, including geographical maps and musical scores, singly or in collections (see note 1)

0

9. Books more than 100 years old, singly or in collections

50.000

10. Printed geographical maps more than 200 years old

15.000

11. Archives of any sort comprising elements more than 50 years old, whatever their medium

0

12. (a) Collections (see note 2) and specimens from collections of fauna, flora, minerals, and anatomy

50.000

(b) Collections (see note 2) of a historical, palaeontological, ethnographic or numismatic interest

50.000

13. Means of transport over 75 years old

50.000

14. Any other ancient object not included in categories 1 to 13 between 50 et 100 years old

(a)

- toys or games,

- glassware,

- objects made of precious metals,

- furniture and furnishings,

- optical, photographic or de cinematographic instruments,

- musical instruments,

- timepieces,

- objects made of wood,

- pottery,

- tapestries,

- carpets,

- wallpapers,

- weapons

50.000

(b) More than 100 years old

50.000

This list is in conformity with rules in force in France and subject to modification. The government of the French Republic will make known any modifications to it that may be made at a future date.” (See LA/DEP/1997/1).

Guatemala

‘The Republic of Guatemala, mindful that, in conformity with the Fundamental Statute of Government, monuments and archaeological vestiges are the property of the nation and that, furthermore, national law prohibits the unauthorized export of property constituting its cultural wealth, makes an express reservation concerning paragraph (b) (ii) of Article 7 of the Convention to the effect that it does not consider itself obliged to pay any compensation to any person or persons holding cultural property that has been looted or stolen in Guatemala or exported illicitly to another State Party and that, at the request of the Government of Guatemala, has been the subject of appropriate steps for its confiscation and/or restitution by that other State Party.

In any case, the Republic of Guatemala does not consider that the purchase of property forming part of its cultural wealth is in good faith solely through having been made in ignorance of the law.

Concerning Article 3 of the Convention, the Republic of Guatemala shall also consider to be illicit the import and transfer of ownership of cultural property effected contrary to the national provisions in force that are not in conflict with the provisions of the Convention’ (See letter LA/Depositary/1985/1).

Hungary

‘Articles 12, 22 and 23 of the Convention contradict United Nations General Assembly Resolution 1514(XV) of 14 December 1960, which proclaimed the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations. Article 20 of the Convention is not in conformity with the principle of the sovereign equality of States; in view of the matters it regulates, the Convention should be open to all States without restriction.’ (See letter LA/Depositary/1978/17 of 12 December 1978.)

Mexico

‘The Government of the United Mexican States has studied the text of the comments and reservations on the convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property made by the United States of America on 20 June 1983. It has reached the conclusion that these comments and reservations are not compatible with the purposes and aims of the Convention, and that their application would have the regrettable result of permitting the import into the United States of America of cultural property and its re-export to other countries, with

the possibility that the cultural heritage of Mexico might be affected.' (See letter LA/Depositary/1985/40 of 3 March 1986).

New-Zeland

“AND DECLARES that, consistent with the constitutional status of Tokelau and taking into account the commitment of the Government of New Zealand to the development of self-government for Tokelau through an act of self-determination under the Charter of the United Nations, this acceptance shall not extend to Tokelau unless and until a Declaration to this effect is lodged by the Government of New Zealand with the Depositary on the basis of appropriate consultation with that territory;”

Republic of Moldova

“Until the full re-establishment of the territorial integrity of the Republic of Moldova, the provisions of the convention shall be applied only on the territory controlled effectively by the authorities of the Republic of Moldova.”

Sweden

“The property designated as “of importance for archaeology, prehistory, history, literature, art or science”, in accordance with Article 1 of the Convention, are the following properties:

- 1. Archaeological objects – Swedish archaeological objects, regardless of material or value, dating from 1650 or before and not belonging to the State.*
- 2. Pictures and paintings*
 - (a) Swedish paintings more than 100 years old and worth more than SEK 50,000,*
 - (b) portraits picturing a Swede or other persons who were active in Sweden, which are more than 100 years old and worth more than SEK 20,000,*
 - (c) foreign paintings worth more than SEK 50,000.*
- 3. Drawings*
 - (a) Swedish drawings, water-colours, gouaches and pastels more than 100 years old and worth more than SEK 50,000,*
 - (b) portraits picturing a Swede or other persons who were active in Sweden, in the form of water-colours, gouaches and pastels more than 100 years old and worth more than SEK 20,000,*
 - (c) foreign drawings, water-colours, gouaches and pastels worth more than SEK 50,000.*
- 4. Original engravings – Swedish woodcut and copperplate engraving, made before 1650, regardless of value.*
- 5. Original sculptures*
 - (a) Swedish original sculptures and copies produced by the same process as the original, regardless of material, which are more than 100 years old and worth more than SEK 50,000,*

(b) foreign original sculptures and copies produced by the same process as the original, regardless of material, which are worth more than SEK 50,000.

6. Incunabula and manuscripts

(a) Swedish incunabula, regardless of value,

(b) Swedish manuscripts on parchment or paper produced before 1650, regardless of value,

(c) Swedish unprinted minutes, letters, diaries, manuscripts, music, accounts, hand-drawn maps and drawings, which are more than 50 years old and worth more than SEK 2,000,

(d) collections of foreign incunabula and Swedish unprinted material in category (b) and (c), which are older than 50 years and are worth more than SEK 50,000.

7. Books

(a) Swedish books printed before 1600, regardless of value,

(b) other Swedish books, which are older than 100 years and are worth more than SEK 10,000, (c) foreign books worth more than SEK 10,000.

8. Printed maps

(a) Swedish printed maps, which are older than 100 years and worth more than SEK 10,000,

(b) foreign printed maps, worth more than SEK 10,000.

9. Archives – Swedish unprinted minutes, letters, diaries, manuscripts, music, accounts, hand-drawn maps and drawings, which are more than 50 years and are worth more than SEK 2,000.

10. Means of transport

(a) Swedish means of transport which are older than 100 years and are worth more than SEK 50,000,

(b) foreign means of transport worth more than SEK 50,000.

11. Any other antique item not included in categories 1-10:

(a) Swedish items of wood, bone, pottery, metal or textile which are produced before 1650, regardless of value,

(b) Swedish furniture, mirrors and boxes which are made before 1860, regardless of value,

(c) Swedish drinking-vessels, harness and textile implements if they are made of wood and have painted or carved decorations, folk costumes and embroidered or pattern-woven traditional textiles, tapestry paintings, long-case clocks, wall clocks and brackets clocks, signed faience, firearms, edged weapons and defensive weapons and musical instruments, which are more than 100 years old, regardless of value,

(d) Swedish items of pottery, glass, porphyry, gold, silver or bronze, with exception of coins and medals, chandeliers, woven tapestries and tiled stoves, which are older than 100 years and worth more than SEK 50,000,

(e) Swedish technical models and prototypes and scientific instruments, which are older than 50 years and worth more than SEK 2,000,

(f) foreign furniture, mirrors, boxes, long-case clocks, wall clocks and brackets clocks, musical instruments, firearms, edged weapons and defensive weapons, items of pottery, glass, ivory, gold, silver or bronze, with exception of coins and medals, chandeliers and woven tapestries, which are worth more than SEK 50,000.

12. *Lapp (Sami) items which are more than 50 years and worth more than SEK 2,000. The term Swedish items of historic interest refers to items which were actually or presumably made in Sweden or in some other country by a Swede. The term foreign items of historic interest refers to items made in another country by a non-Swede. This list is in conformity with rules in force in Sweden at present."*

Ukrainian Soviet Socialist Republic [at time of ratification]

'The Ukrainian Soviet Socialist Republic declares that the provisions of Articles 12, 22 and 23 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, providing for the possibility for the contracting parties to extend its application to the territories for the international relations of which they are responsible, are outdated and contrary to the Declaration of the United Nations General Assembly on the Granting of Independence to Colonial Countries and Peoples (Resolution 1514/XV of 14 December 1960).' (see letter LA/Depositary/1988/12 of 15 September 1988).

Union of Soviet Socialist Republics [at time of ratification]

'The Union of Soviet Socialist Republics declares that the provisions of Articles 12, 22 and 23 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, providing for the possibility for the contracting parties to extend its application to the territories for the international relations of which they are responsible, are outdated and contrary to the Declaration of the United Nations General Assembly on the Granting of Independence to Colonial Countries and Peoples (resolution 1514/XV of 14 December 1960).' (see letter LA/Depositary/1988/13 of 15 September 1988).

United Kingdom of Great Britain and Northern Ireland

"(a) the United Kingdom interprets the term "cultural property" as confined to those objects listed in the Annex to Council Regulation (EEC) N° 3911/1992 of 9 December 1992, as amended, on the export of cultural goods and in the Annex to Council Directive 1993 / EEC of 15 March 1993, as amended, on the return of cultural objects unlawfully removed from the territory of a Member State;
(b) As between EC member states, the United Kingdom shall apply the relevant EC legislation to the extent that that legislation covers matters to which the Convention applies; and
(c) The United Kingdom interprets Article 7(b)(ii) to the effect that it may continue to apply its existing rules on limitation to claims made under this Article for the recovery and return of cultural objects" [Original : English] (see letter LA/Depositary/2002/31)

United States of America [at the time of ratification]

"United States reserves the right to determine whether or not to impose export controls over cultural property".

The United States understands the provisions of the Convention to be neither self-executing nor retroactive.

The United States understands Article 3 not to modify property interests in cultural property under the laws of the States parties.

The United States understands Article 7 (a) to apply to institutions whose acquisition policy is subject to national control under existing domestic legislation and not to require the enactment of new legislation to establish national control over other institutions.

The United States understands that Article 7(b) is without prejudice to other remedies, civil or penal, available under the laws of the States parties for the recovery of stolen cultural property to the rightful owner without payment of compensation.

The United States is further prepared to take the additional steps contemplated by Article 7(b) (ii) for the return of covered stolen cultural property without payment of compensation, except to the extent required by the Constitution of the United States, for those states parties that agree to do the same for the United States institutions.

The United States understands the words "as appropriate for each country" in Article 10 (a) as permitting each state party to determine the extent of regulation, if any, of antique dealers and declares that in the United States that determination would be made by the appropriate authorities of state and municipal governments.

The United States understands Article 13(d) as applying to objects removed from the country of origin after the entry into force of this Convention for the states concerned, and, as stated by the Chairman of the Special Committee of Governmental Experts that prepared the text, and reported in paragraph 28 of the Report of that Committee, the means of recovery of cultural property under subparagraph (d) are the judicial actions referred to in subparagraph (c) of Article 13, and that such actions are controlled by the law of the requested State, the requesting State having to submit necessary proofs.'

Territorial Application :

Notification by

Date of receipt of notification

Extension to

Denmark

27 May 2004

Greenland (see letter LA/DEP/2004/014)

Denmark

17 April 2008

Faroese

Norway

16 February 2007

Territory of the Kingdom of Norway and the Norwegian dependencies Bouvet Island, Peter I's Island and Queen Maud Land

Monitoring :

- Convention for which monitoring the Executive Board is responsible ([more information](#))

- Timetable of the 7th Consultation (2015)

- 6th Consultation (2011):
 - Presentation of the consolidated report at the General Conference at its 36th session (Autumn 2011)
 - [36 C/Resolution 102](#)
 - [Report of the Legal Committee \(36 C/79\)](#)
 - [Summary of the reports received from Member States on the measures taken to implement the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property \(36 C/25\)](#)
 -
 - Examination of the consolidated report by the Executive Board at its 187th session (Autumn 2011)
 - [187 EX/Decision 20 \(III\)](#)
 - [Report of the CR Committee \(187 EX/50\)](#)
 - [Application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property \(187 EX/20 Part III\)](#)
 -
 - Examination of guidelines by the Executive Board at its 184th session (Spring 2010)
 - [184 EX/Decision 25](#)
 - [Report of the CR Committee \(185 EX/39\)](#)
 - [Consideration of the draft guidelines for the preparation of reports by Member States on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property \(1970\) \(184 EX/25\)](#)
- 5th Consultation (2007):
 - [34 C/Resolution 45](#)
 - [Examination of the new report by Member States and other States Parties on measures taken in application of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property \(1970\) \(34 C/55\)](#)
- 4th Consultation (2003):
 - [32 C/Resolution 38](#)

- [Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property \(1970\): Reports by Member States and other States Parties on the action they have taken to implement the Convention \(32 C/24\)](#)
- 3rd Consultation (1995):
 - [28 C/Resolution 3.11](#)
 - [Reports of Member States on measures they have adopted to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 \(28 C/35\)](#)
- 2nd Consultation (1987):
 - [24 C/Resolution 11.3](#)
 - [Reports of Member States on the action taken by them to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property \(1970\) \(24 C/24\)](#)
- 1st Consultation (1978):
 - [20 C/Resolution 4/7.6/4](#)
 - [Reports of Member States on the action taken by them to implement the Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property \(1964\) and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property \(1970\) \(20 C/84\)](#)

Notes :

(1) More than 50 years old and not belonging to their creators.

(2) Objects for collections are objects that possess the necessary qualities for admission to a collection, that is to say, objects that are relatively rare, not normally used for their original purpose, are the subject of special transactions distinct from the normal trade in usable objects of a similar nature, and have a high value.

(3) The conversion value in national currencies of the amounts in ECUs is that in force on 1 January 1993.

UNIDROIT DOCUMENT

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 reasonable 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 recognize 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 nature 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 30 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 the 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) art

DECLARATION OF UNIVERSAL MUSEUMS

Declaration on the Importance and Value of Universal Museums

The international museum community shares the conviction that illegal traffic in archaeological, artistic, and ethnic objects must be firmly discouraged. We should, however, recognize that objects acquired in earlier times must be viewed in the light of different sensitivities and values, reflective of that earlier era. The objects and monumental works that were installed decades and even centuries ago in museums throughout Europe and America were acquired under conditions that are not comparable with current ones.

Over time, objects so acquired—whether by purchase, gift, or partage—have become part of the museums that have cared for them, and by extension part of the heritage of the nations which house them. Today we are especially sensitive to the subject of a work's original context, but we should not lose sight of the fact that museums too provide a valid and valuable context for objects that were long ago displaced from their original source.

The universal admiration for ancient civilizations would not be so deeply established today were it not for the influence exercised by the artifacts of these cultures, widely available to an international public in major museums. Indeed, the sculpture of classical Greece, to take but one example, is an excellent illustration of this point and of the importance of public collecting. The centuries-long history of appreciation of Greek art began in antiquity, was renewed in Renaissance Italy, and subsequently spread through the rest of Europe and to the Americas. Its accession into the collections of public museums throughout the world marked the significance of Greek sculpture for mankind as a whole and its enduring value for the contemporary world. Moreover, the distinctly Greek aesthetic of these works appears all the more strongly as the result of their being seen and studied in direct proximity to products of other great civilizations.

Calls to repatriate objects that have belonged to museum collections for many years have become an important issue for museums. Although each case has to be judged individually, we should acknowledge that museums serve not just the citizens of one nation but the people of every nation. Museums are agents in the development of culture, whose mission is to foster knowledge by a continuous process of reinterpretation. Each object contributes to that process. To narrow the focus of museums whose collections are diverse and multifaceted would therefore be a disservice to all visitors.

Signed by the Directors of

The Art Institute of Chicago

Bavarian State Museum, Munich (Alte Pinakothek,
Neue Pinakothek)

State Museums, Berlin

Cleveland Museum of Art

J. Paul Getty Museum, Los Angeles

Solomon R. Guggenheim Museum, New York

Los Angeles County Museum of Art

Louvre Museum, Paris

The Metropolitan Museum of Art, New York

The Museum of Fine Arts, Boston

The Museum of Modern Art, New York

Opificio delle Pietre Dure, Florence

Philadelphia Museum of Art

Prado Museum, Madrid

Rijksmuseum, Amsterdam

State Hermitage Museum, St. Petersburg

Thyssen-Bornemisza Museum, Madrid

Whitney Museum of American Art, New York

MET/ITALY ACCORD

The Ministry for Cultural Assets and Activities of the Italian Republic, in the persons of Prof. Giuseppe Proietti, Director of the Department of Research, Innovation and Organization, and Prof. Francesco Sicilia, Director of the Department of Cultural and Natural Assets (the "**Ministry for Cultural Assets and Activities of the Italian Republic**") and the **Commission for Cultural and Environmental Assets and Education of the Region of Sicily**, in the person of the pro tempore Commissioner, Hon. Alessandro Pagano

and

The Metropolitan Museum of Art, New York (the "**Museum**"), in the person of its Director, Philippe de Montebello

The Ministry for Cultural Assets and Activities of the Italian Republic and the Commission for Cultural Assets of the Region of Sicily and the Museum shall be referred to hereinafter as the "**Parties**."

Whereas

A) The Ministry for Cultural Assets and Activities of the Italian Republic is responsible for, among other things, the institutional protection, preservation and optimum utilization of the Italian archaeological heritage, which is the source of the national collective memory and a resource for historical and scientific research.

B) The archaeological heritage includes the structures, constructions, architectural complexes, archaeological sites, movable objects and monuments of other types as well as their contexts, whether they are located underground, on the surface or under water.

C) To preserve the archaeological heritage and guarantee the scientific character of archaeological research and exploration operations, Italian law sets forth procedures for the authorization and control of excavations and archaeological activities to prevent all illegal excavations or theft of items of the archaeological heritage and to ensure that all archaeological excavations and explorations are undertaken in a scientific manner by qualified and specially trained personnel, with the provision that non-destructive exploration methods will be used whenever possible.

D) The law applies to the permanent and temporary departure from Italian territory of archaeological objects discovered in Italian territory or present in Italian territory and in the possession of private individuals.

E) The Ministry for Cultural Assets and Activities of the Italian Republic has requested the Museum to transfer title to archaeological items that are in its collections ("**the Requested Items**," cited in Articles 3, 4 and 5, below) that the Ministry affirms were

illegally excavated in Italian territory and sold clandestinely in and outside Italian territory.

F) The Museum believes that the artistic achievements of all civilizations should be preserved and represented in art museums, which, uniquely, offer the public the opportunity to encounter works of art directly, in the context of their own and other cultures, and where these works may educate, inspire and be enjoyed by all. The interests of the public are served by art museums around the world working to preserve and interpret our shared cultural heritage.

G) The Museum deplores the illicit and unscientific excavation of archaeological materials and ancient art from archaeological sites, the destruction or defacing of ancient monuments, and the theft of works of art from individuals, museums, or other repositories.

H) The Museum is committed to the responsible acquisition of archaeological materials and ancient art according to the principle that all collecting be done with the highest criteria of ethical and professional practice.

I) The Museum, rejecting any accusation that it had knowledge of the alleged illegal provenance in Italian territory of the assets claimed by Italy, has resolved to transfer the Requested Items in the context of this Agreement. This decision does not constitute any acknowledgment on the part of the Museum of any type of civil, administrative or criminal liability for the original acquisition or holding of the Requested Items. The Ministry and the Commission for Cultural Assets of the Region of Sicily, in consequence of this Agreement, waives any legal action on the grounds of said categories of liability in relation to the Requested Items.

J) The Ministry and the Commission for Cultural Assets of the Region of Sicily and the Museum have agreed that the transfer of the Requested Items shall take place in the context of this Long-Term Cultural Cooperation Agreement (the "**Agreement**") to ensure the optimum utilization of the Italian cultural heritage, and as part of the policy of the Ministry to recover Italian archaeological assets.

K) This Agreement is part of a continuing program of cultural cooperation between Italy and the Museum involving reciprocal loans of archaeological artifacts and other works of art consistent with Article 67, Paragraph 1, letter (d) of the Code of Cultural and Natural Assets.

L) The Ministry and the Museum expect that every future controversy concerning archeological assets will be resolved with the same spirit of loyal collaboration that inspired the present agreement.

The Parties agree as follows:

1. Recitals

The preceding recitals form an integral part of this Agreement.

2. The Requested Items

The Museum agrees to transfer to the Ministry for Cultural Assets and Activities of the Italian Republic and to the Commission for Cultural Assets of the Region of Sicily, on the basis of this Agreement, title to the Requested Items as listed in Articles 3, 4 and 5 below of the Agreement.

3. The archaeological items

3.1. The Museum shall transfer to the Ministry for Cultural Assets and Activities of the Italian Republic title to the archaeological assets listed below:

- a) Laconian kylix (Photo 1),
- b) Red-figured Apulian Dinos attributed to the Darius painter (Photo 2),
- c) Red-figured psykter decorated with horsemen (Photo 3),
- d) Red-figured Attic amphora by the Berlin painter (Photo 4).

3.2. The Ministry for Cultural Assets and Activities of the Italian Republic, in the context of this Long-Term Cultural Cooperation Agreement, and to ensure the optimum utilization of the Italian cultural heritage, shall loan a first-quality Laconian artifact to the Museum for a period of four years and renewable thereafter.

4. The Euphronios Krater

4.1. The Museum shall transfer title to the Euphronios krater (Photo 5), to the Ministry of Cultural Assets and Activities of the Italian Republic under the following procedures:

- a) The Euphronios krater shall remain at the Museum on loan until January 15, 2008, and shall be exhibited with the legend: "Lent by the Republic of Italy:"
- b) To make possible the continued presence in the galleries of the Museum of cultural assets of equal beauty and historical and cultural significance to that of the Euphronios Krater, the Parties agree that, beginning on January 15, 2008 and for the duration of this Agreement, the Ministry of Cultural Assets and Activities of the Italian Republic shall make four-year loans to the Museum on an agreed, continuing and rotating basis selected from the following archaeological artifacts, or objects of equivalent beauty and artistic/historical significance, mutually agreed upon, in the same context where possible, or of the Euphronios Krater:

1. Attic vase, red figures on white background, signed by Charinos, Tarquinia, Museo Archeologico Nazionale, Inv. No. RC 6845.

2. Red-figured Attic kylix signed by Oltos as painter and Euxitheos as potter, with scenes of the Gods of Olympus, ca. 515-510 B.C., Tarquinia, Museo Archeologico Nazionale, Inv. No. RC 6848.
3. Red-figure Attic hydra from Nola, known as the "Vivenzio Hydra," attributed to the Painter Kleophrades, with a scene of the fall of Troy, ca. 480 B.C. Naples, Museo Archeologico Nazionale, Inv. No. 81669.
4. Bell-shaped Attic krater attributed to the Altamura Painter, with a scene of Dionysus and Oenopion, ca. 465 B.C., Ferrara, Museo Nazionale.
5. Large red-figured Attic kylix attributed to the painter Penthesileia, with the exploits of Theseus. ca. 480 - 460 B.C. Ferrara, Museo Archeologico Nazionale, Inv. No. T. 18 CUP.
6. Red-figured Attic stamnos from Nocera, attributed to the Dinos Painter, with scene of the cult of Dionysus, ca. 420 B.C., Naples, Museo Archeologico Nazionale, Inv. No. 81674.
7. Red-figured Attic hydria from Populonia, attributed to the Meidias Painter, with a scene of Phaon in a bower with Demonassa. ca. 410 B.C. Florence, Museo Archeologico Nazionale, Inv. No. 81947.
8. Red-figured spiral Attic krater from Spina, attributed to a follower (Bologna Painter 279) of the Niobid Painter, with scenes of the heroes of Marathon and the Seven Against Thebes. ca. 440 B.C. Ferrara, Museo Nazionale Inv. No. T. 579.
9. Red-figured Attic krater from Ruvo, attributed to the Pronomos Painter, with scene of the flute-player Pronomos. ca. late 5th Century BC, Naples, Museo Archeologico Nazionale, Inv. No. 3240 = No. 81673.
10. Red-figured spiral Attic krater, attributed to the Talos Painter, with scene of the death of Talos. ca. late 5th Century BC, Ruvo, Museo Nazionale, Inv. No. Jatta 1501.
11. Red-figured spiral Apulian krater, showing Orestes at Delphi and a chariot race, ca. mid-4th Century B.C., Ruvo, Museo Nazionale, Inv. No. J1492.
12. Red-figured krater from Southern Italy, from Paestum, of Python, with theatrical scene of Oedipus and the Sphinx. ca. 4th Century BC, Naples, Museo Archeologico Nazionale, Inv. No. 81417.

4.2. The Museum shall exhibit the archaeological assets with the legend: "Lent by the Republic of Italy."

4.3. The Parties may only modify the procedures for the loans indicated above on the basis of a specific written agreement.

5. Hellenistic Silver

5.1. The Museum shall transfer to the Republic of Italy title to the entire set of Hellenistic silver items (hereinafter referred to as the "**Hellenistic Silver**"), consisting of the items listed below:

- 1) deep concave cup: height 7 cm, diameter 22.8 cm, weight 407 g; 1981.11.20

- 2) deep concave cup: height 6.2 cm, diameter 22 cm, weight 418 g; 1981.11.21
- 3) circular set, composed of a plate with embossed decoration soldered to a plate having a flared shape, with upper profiling: height 2 cm, maximum diameter 10.5 cm, weight 81 g; 1981.11.22
- 4) hemispheric cup: height 7.7 cm, maximum diameter 14.4 cm, minimum diameter 13.8 cm, weight 151 g; 1981.11.16
- 5) skyphos, ovoid cup with raised handles: height 7.7 cm, with handles 8.8 cm, maximum diameter 13.3 cm, minimum diameter 12.6 cm, weight 299 g; 1981.11.17
- 6) kyathos: height 24.7 cm, basin diameter 5.5 cm, weight 119 g; 1981.11.15
- 7) vessel in the shape of a truncated cone with convex base provided with three forged metal supports with theatrical masks: height 19.6 cm, diameter 26.26 cm, weight 891.3 g; 1981.11.18
- 8) deep conical cup: height 6.8 cm, diameter 21 cm, weight 479 g; 1981.11.19
- 9) ovoid body olpe: height 9.1 cm, diameter at top 8.13 cm, weight 178 g; 1982.11.13
- 10) Phiale mesomphalos: height 2.3 cm, diameter 14.8 cm, weight 104 g; 1982.11.10
- 11) pyxis with figured medallion on the cover, currently consisting of three pieces: height 5.5 cm, diameter 8.3 cm, current total weight 148 g; 1982.11.11a-c, 1982.11.9e
- 12) cylindrical small altar on quadrangular base formed by four pieces: current height 11.3 cm, base 10.6 x 10.8 cm, current total weight 367.8 g; 1982.11.9a-d
- 13 & 14) pair of corrugated horns with pointed extremities: length 15.5 cm and weight 74.7 and 70 g; 1982.11.7-8
- 15) vessel in the shape of a truncated cone with convex base provided with three forged metal supports with theatrical masks: height 18.5 cm, diameter 26.8 cm, weight 820.5 g; 1982.11.12.

5.2. The Hellenistic Silver shall remain at the Museum on loan until January 15, 2010 and shall be exhibited with the legend: "Lent by the Republic of Italy - Region of Sicily."

5.3. To make possible the continued presence in the galleries of the Museum of cultural assets of equal beauty and historical and artistic significance to that of the Hellenistic Silver, the Parties agree that, beginning on January 15, 2010 and for the duration of this Agreement, the Italian Republic shall make to the Museum on an agreed, continuing and rotating sequential basis:

- a) the four-year loan of archaeological assets of equal beauty and artistic and historical significance, in the same context where possible, to that of the Hellenistic Silver;
- b) the four-year loan of the Hellenistic Silver.

5.4. The Parties may only modify the above referenced schedule of loans on a rotating and sequential basis by means of a specific written agreement.

5.5. The Museum shall transfer title to the pyxis inventoried under No. 1984.11.3 to the Italian Republic under the same conditions as stipulated in Article 5.3 and 5.4 above for the Hellenistic Silver.

6. Provisions applicable to the transfer of the Requested Items and of the Loaned Items

6.1. The Ministry and the Museum shall each obtain any authorizations required in Italy, including export licenses, and the United States respectively for the proper transfer of the Requested Items and the items loaned as provided in this Agreement ("**Loaned Items**").

6.2. The Museum shall display Requested Items and Loaned Items with the legend: "**Lent by the Republic of Italy.**"

6.3. The delivery of Requested Items and Loaned Items shall take place on the premises of the Museum. The Ministry shall guarantee to send a duly authorized employee to New York with the Loaned Items to be present at the transfer and to escort the Requested Items and Loaned Items during their transfer to and from Italy. The Museum shall pay the air travel expenses of the assigned escort and shall contribute to said escort's hotel and per-diem allowance at standard international courier rates for a maximum of three nights and four days.

6.4. The Museum shall arrange and bear the costs of packing, insurance and shipment of the Requested and Loaned Items for transit to and from Italy. The four-year loans will be accompanied by standard, written agreements, the purpose of which is to guarantee the safety and conservation of the loans and their optimum use.

7. Loans of items discovered during excavations financed by the Museum or restored by the Museum

7.1. The Ministry and the Commission for Cultural Assets of the Region of Sicily agree, on the basis of an appropriate agreement which shall define the procedures for the loan, to allow archaeological items originating from authorized excavations conducted on the initiative and at the expense of the Museum to leave Italy for the time necessary for their study and restoration.

7.2. The archaeological assets returned after their study and restoration, the times for which shall be agreed upon between the parties, shall be loaned to the Museum for exhibition for a period of four years, or for the maximum period that may be permitted by Italian law at the time the loan begins.

7.3. The Ministry and the Commission for Cultural Assets of the Region of Sicily, on the basis of appropriate contracts written for each individual case that will define the

procedures for the individual loans of objects, shall permit the temporary transfer from Italian territory of archaeological artifacts selected by the Ministry and the Commission for Cultural Assets of the Region of Sicily and accepted by the Museum to allow their restoration by the Museum's personnel, and their successive exhibition to the public in the galleries of the Museum, which shall bear the costs of transfer and restoration.

8. Additional provisions

8.1. This Agreement shall enter into force on the date of its execution. The term of the Agreement shall be forty years, renewable by agreement between the Parties.

8.2. This Agreement, and any negotiations and correspondence between the Ministry for Cultural Assets and Activities of the Italian Republic and the Commission for Cultural Assets of the Region of Sicily and the Museum regarding the subject matter herein (except all the proofing material transmitted by the Ministry to the Museum in the course of these negotiations) and the transfer of title to the Requested Items to the Italian Republic shall not be construed as an admission of any civil, administrative or criminal liability. The above mentioned documents shall not be received or voluntarily produced as an explicit or implicit admission, concession or presumption of any type, in any civil, criminal, administrative, arbitral or other proceedings, whether under the laws of Italy, the United States or elsewhere, and shall not be used for any purpose other than the performance of the Agreement itself. The Agreement, the negotiations and the correspondence between the Parties shall in no case be used as evidence of negligence or other misconduct.

8.3. The Ministry for Cultural Assets and Activities of the Italian Republic and the Commission for Cultural Assets of the Region of Sicily, as a result of this Agreement, waive their right to pursue or support any legal action against the Museum or its structures and executives, whether in Italy, the United States or elsewhere, on any grounds whatsoever, whether civil, administrative or criminal, in relation to the Requested Items.

8.4. The Agreement contains all of the agreements entered into between the parties.

8.5. The Agreement is written and signed in the Italian language and in the English language.

8.6. Each provision contained in this Agreement relative to the restoration of title to the transferred assets and to the related loan procedures shall be severable and distinct from any other provision.

If at any time one or more of such provisions is or becomes invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining such provisions shall not in any way be affected thereby.

9. Arbitral panel

9.1. The Parties shall make their best efforts to resolve and settle amicably any dispute between the Ministry for Cultural Assets and Activities of the Italian Republic and the Commission for Cultural Assets of the Region of Sicily and the Museum arising from or related to the interpretation and performance of this Agreement that may arise between the parties.

9.2. If the Parties are unable to reach a mutually satisfactory resolution to their dispute, the disputed issues shall be settled in private by arbitration on the basis of the Rules of Arbitration and Conciliation of the International Chamber of Commerce by three arbitrators appointed in accordance with said Rules.

Rome, February 21, 2006

The Metropolitan Museum of Art , New York

Philippe de Montebello

Director

(signature)

Ministry for Cultural Assets and Activities

[Name]

[Title]

(signature)

Ministry for Cultural Assets and Activities

[Name]

[Title]

(signature)

Commission for Cultural Assets of the Region of Sicily

Hon. Prof. Alessandro Pagano

Regional Commissioner

(signature)

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