

A FRAMEWORK FOR RESOLUTION OF CLAIMS FOR CULTURAL PROPERTY

by

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“A Framework for Resolution of Claims for Cultural Property,” a research project prepared by Laura Elizabeth Young in partial fulfillment of the requirements for the Master of Science degree in the Arts and Administration Program. This research has been approved and accepted by:

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Dr. Patricia Dewey, Research Advisor

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Date

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April 8, 2008

Dear Reader,

Shortly after publication of this research I was contacted by the Saint Louis Art Museum regarding incorrect usage of the Museum's April 25, 2007 Collections Management Policy in this research project. It was my understanding that the Museum was operating under the April 2007 Collections Management Policy however the April 2007 Policy was a *draft* policy that was never implemented by the Museum. The Museum currently functions under the April 11, 2005 policy.

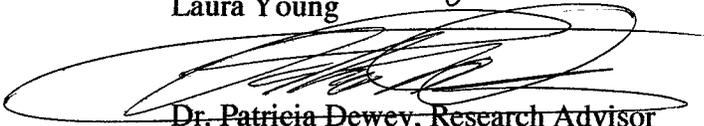
The distinction between the two policies is important to note as it relates to Chapter Five, the findings section of this research. The following protocol is found in the Saint Louis Art Museum's 2007 Policy but not in the 2005 Policy:

In addition, the Museum should not acquire any ancient work of art or archaeological material that was removed from its country of origin after November 1970 regardless of any applicable statutes of limitations and notwithstanding the fact that the U.S. did not accede to the Convention until 1983. If after rigorous research, it is not possible to obtain sufficient information to determine whether the acquisition would comply with applicable laws, the Museum may seek appropriate documentation showing that the work has been out of its country of origin for at least 10 years.

In the findings section of this research, I state on p. 89 that "the Saint Louis Art Museum has added the protocol to its Collections Management Policy that the Museum should not acquire any ancient work of art or archaeological material that was removed from its country of origin after November 1970 regardless of any applicable statutes of limitations and notwithstanding the fact that the U.S. did not accede to the Convention until 1983." On the contrary, the Saint Louis Art Museum has only considered adopting this stricter acquisition policy. While it is common practice for a museum's Collections Management Policy to be reviewed occasionally to ensure that it continues to reflect the most current practices sanctioned by the museum profession, the Saint Louis Art Museum's April 2007 Policy was only a revised draft and not an adopted policy.

Thank you for your attention to this matter and for making note accordingly in your own research endeavors.

  
Laura Young

  
Dr. Patricia Dewey, Research Advisor

## ABSTRACT

This study employs qualitative research methods to analyze how museums determine ownership of cultural property when there is no universally accepted standard to settle differences. I find a need exists for a consistent effort to bring together knowledge and expertise in international restitution processes. This research examines the cultural property dispute that arose in 2006 between the Saint Louis Art Museum and the Egyptian government involving ownership of the Ka-Nefer-Nefer Egyptian mummy mask. The legality of that acquisition and the ongoing dispute between the Egyptian government and the museum all serve in this paper as an illustrative example of the number of disputes that have arisen in the last twenty-five years between States and museums over looted cultural heritage.

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## **CHAPTER ONE: RESEARCH DESIGN**

**Statement of the Problem**

For centuries, objects excavated from historical sites have been smuggled abroad and sold to museums and other collectors. During the early 1900s, when major museums in the United States and Europe were developing their worldwide collections, a number of countries were placing their antiquities under controls, which in most cases severely limited or completely banned export. The flow onto the market of legitimate material slowed at a time when demand was increasing, and the resulting shortfall was fulfilled by looted material offered without accompanying information about ownership history (Brodie, 2006). In recent years there has been a considerable increase in the unlawful looting, plunder, illicit excavation, and smuggling of objects from artifact-rich nations by individuals for their personal collections or to sell to collectors or museums (Cohan, 2004). While institutions are increasingly cautious of purchasing stolen and/or illicitly exported objects, looted material still find their way into art-collecting countries such as the United States, Japan, Switzerland, Germany, England, and France, and into museum collections.

Today, there is no end to the worldwide controversy over the legal ownership of national treasures that remain in other countries' museums. The Egyptian government has claims for the return of the statue of Queen Nefertiti housed in Berlin, the Rosetta stone in the British Museum, and the Dendera zodiac in the Louvre in Paris. The Greek government continues its campaign to recover from the British Museum the Parthenon Marbles removed by British diplomat Lord Elgin in the early 1800s. Libya has appealed for the return of a statue of Venus from a museum in Rome, removed by Italian troops in

1912, a year after Libya became an Italian colony. Ethiopia has launched a campaign to reclaim objects seized by the British during an imperial dispute in the mid-19<sup>th</sup> century. The Italian government has had disputes with the J. Paul Getty Museum in Los Angeles, the Metropolitan Museum of Art in New York, and the Museum of Fine Arts in Boston. Some objects in question were acquired decades and even centuries ago, when virtually no ethical considerations prevailed, while others were acquired more recently after trade restrictions went into effect (Brodie, 2006; Cohan, 2004; Gerstenblith, 2004).

This study examines the problem of resolving cultural property ownership disputes involving American museums and foreign government authorities. Constraints and inadequacies of existing legal structures make recovery of stolen property through litigation difficult. Currently, there is no governing body with ultimate international jurisdiction to resolve cultural property disputes and few mechanisms are in place for reconciliation or accommodation among conflicting perspectives. In the absence of statutory guidance and precedence, much reliance is placed on individual institutions to determine the rightful owner of the object in question.

### **Research Questions**

The main question that guided this research project was: *what structures and processes are institutions devising in response to efforts to protect the cultural resources of individual nations?* This question is based on the assumption that the rise of laws and regulations concerned with protecting national property interests through trade restrictions on certain categories of objects vulnerable to pillage has severely limited

what objects museums can legally collect. In order to act in accordance with all laws that are applicable to and binding upon the museum, museums have been forced to transform themselves under the law's pressures.

The following sub questions were used to frame the examination of this main research question: what is the law related to cultural property; what precautions are museums taking to prevent the acquisition of stolen and/or illegally exported objects; whose responsibility is it to resolve cultural property disputes; does a need exist for leadership and expertise in international restitution processes? These questions pertain to efforts to protect the cultural resources of individual nations from the effects of the illicit trade, and structures concerned with the question of the return of cultural property.

### **Significance of this Study**

This study provides data that can inform those involved with dispute resolution and the interdisciplinary nature of the international trade of antiquities. Potential benefits of this research are a strengthening of scholarship in cultural heritage policy.

### **Conceptual Framework**

The purpose of this investigation was to explore the existing institutional framework involved in international restitution processes. Players involved in the return of cultural property removed from its territory of origin include intergovernmental organizations like UNESCO, nongovernmental organizations such as the International Council of Museums, and law enforcement agencies like Interpol. Each organization

works toward curbing illicit trafficking in cultural property, in particular by administrative and legal means, and at facilitating return of such property.

The conceptual framework designed for this research is titled “The International Institutional System of Restitution” and its components are discussed throughout this investigation. Taken as a whole, the International Institutional System of Restitution illustrates the changing ethical and legal environment that museums are operating in (see Figure 1).

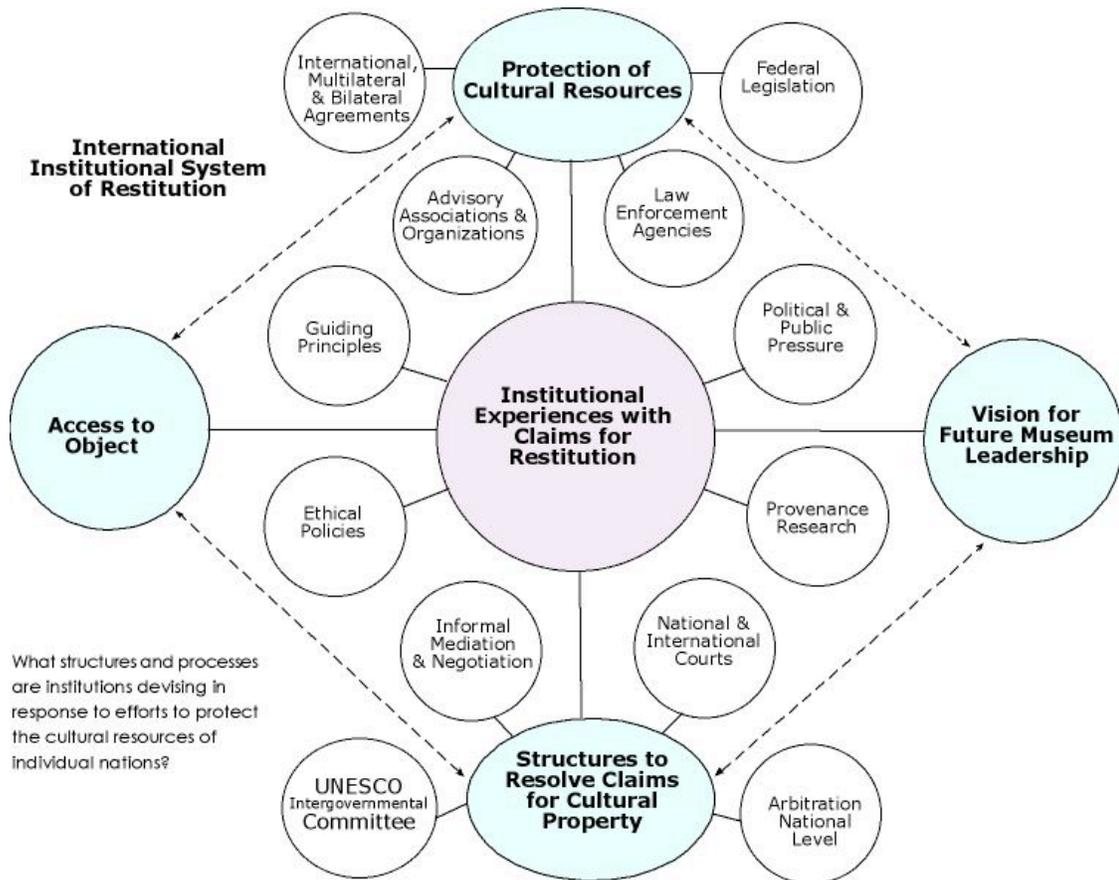


Figure 1: Renewed understandings of access and the ethics of collecting objects from various cultures and historic periods are changing the ethical and legal environment in which museums operate.

This investigation explores the existing institutional framework involved in international restitution processes as depicted in Figure 1 with an eye towards the vision for future museum leadership. I find a need exists for a consistent effort to bring together knowledge and expertise in international restitution processes. In the fall 2005 issue of the *International Journal of Arts Management, Law and Society*, Emily Goldsleger, program attorney for the International Intellectual Property Institute, explains “how the cultural property debate should signal to arts administrators that ethics and morals must serve as primary guidance for professional actions, including acquisitions, collection maintenance, and interactions with constituents” (p. 115). “While it is important to have policies in place, the more important and useful course to take to protect cultural property is to educate collectors, dealers, museum professionals, and government workers about cultural property dispersion and the current flaws in the system” (Torsen, 2006, p. 13).

At the top of Figure 1 are efforts to protect the cultural resources of individual nations from the effects of the illicit trade. At the bottom are structures to resolve claims for cultural property that may have been stolen and/or illicitly exported from its country of origin. In the middle are institutions, specifically museums, that collect objects from various cultures and historic periods. Museums with worldwide collections have had to exercise increased caution through provenance research and due diligence inquiry to prevent the acquisition of stolen and/or illicitly exported objects. In cases where illicit objects find their way into museums collections, a State can request the return of cultural property removed illegally from its territory of origin. Each institution must then

determine the rightful owner of the object in question. Structures concerned with resolution of cultural property disputes include UNESCO, the courts system, and nongovernmental organizations like the International Council of Museums, the International Law Association, and the International Institute for the Unification of Private Law. Methods explored for resolution of ownership disputes include litigation and alternative dispute resolution such as mediation and arbitration.

### **Methodological Paradigm**

As an interpretive researcher I want to learn what is meaningful or relevant to the people being studied and how individuals experience daily life. “The interpretive approach holds that social life is based on social interactions and socially constructed meaning systems” (Neuman, 2003, p. 77). The interpretive epistemology recognizes that there are multiple realities and multiple value systems. This approach can be contrasted to positivists who hold a view that science is value free, and that values have no place in science except when choosing a topic. Quite the opposite are critical social scientists who think that all science must begin with a value position, and that some positions are right and wrong. Midway are interpretivists who recognize that values are an integral part of social life and that no group’s values are wrong, only different (Neuman, 2003).

Most of what social researchers want to learn about can be studied only through the direct involvement of a researcher in the field (Douglas, 1976 as cited in Neuman, 2003). Field research is based on naturalism, which involves observing ordinary events in natural settings, rather than in researcher-created settings. Interpretive researchers often

use participant observations and field research, which require researchers spend many hours in direct personal contact with those being studied.

### **Strategy of Inquiry**

This study employed qualitative research methods to analyze how museums determine ownership of cultural property when there is no universally accepted standard to settle differences. The primary methods of data collection were an ongoing review of literature pertinent to the problem, case study, participant observation, document analysis, and interview. This research was rooted in grounded theory so theoretical ideas were refined as data was collected.

Field research was the primary strategy of inquiry for this investigation. Neuman (2003) describes that, “field research is appropriate when the research question involves learning about, understanding, or describing a group of interacting people” (p. 364). As stated earlier, the main research question for this investigation was: *what structures and processes are institutions devising in response to efforts to protect the cultural resources of individual nations?* Field research seemed to be the most logical method to examine a museum’s experience with a foreign government’s claim to ownership of an object in a museum’s collection. Additionally, field research provided access to documents necessary to inform this investigation.

The main case study examined was the experience of the Saint Louis Art Museum with Egypt’s 2006 claim to ownership of the Ka-Nefer-Nefer mummy mask. An intrinsic case study method was purposively selected to offer thick description of one case itself.

While this approach can provide a comprehensive description of one case, it can be limiting and exclusive to a single population (Stake, 1995).

As both a complete participant and participant as observer, I conducted field research at the Saint Louis Art Museum during the summer of 2006. As a summer intern, I worked on the museum's Nazi-Era Provenance Disclosure Project researching the provenance of two seventeenth century Dutch paintings that were in Europe and changed hands during the pertinent period of 1933-1945. As a researcher, I collected data on the case involving the Saint Louis Art Museum and Egypt's claim to ownership of the Ka-Nefer-Nefer mummy mask. While my research interests on the mummy mask were overt, I did not act as an employee who shared case sensitive information with insiders, as I did in the former role as intern.

In my field research, I collected data from primary and secondary sources for the main case study. Primary documents used to inform this investigation were the museum's collections management procedures and documents in the museum's open file of the Ka-Nefer-Nefer mummy mask. These included known ownership history, email correspondence between the museum and professional contacts, object condition reports, shipping and loan information, conservation documentation, scholar comments, lists containing provenance, photographs, and exhibition history. Secondary documents used to inform this research were code of ethics for museums, international agreements, legal documents, newspaper articles, and copies of relevant publications.

Documents used to research the provenance of the two seventeenth century Dutch paintings in the Nazi-Era Provenance Disclosure Project were accession records, minutes

of the Collections Committee, and museum archives. Open and closed files were also reviewed. Open files contain publicly accessible information as mentioned above. Closed document files contain information related to valuation: invoices, bills of sale, deeds of gift, wills and bequests, correspondence between dealers and previous owners, information about anonymous donors, and results of stolen art registries. Closed document files are not publicly accessible information, and thus, not reviewed for the main case examined in this research.

Secondary sources used to research the provenance of the two Dutch paintings were catalog raisonnés and auction catalogues either in the museum's collection or received through interlibrary loans. Databases and spoliation registries were searched in an effort to close any known gaps in ownership history, these included: the Provenance Database at the National Gallery of Art, the Provenance Index Database at the Getty Institute of Art, The Central Registry of Information on Looted Cultural Property, Auction catalog databases, Lost Art Internet Database, UK Searchable spoliation lists, Worldcat, International Telephone Directory, Grove Dictionary of Art, The Art Loss Register, Nazi-Era Provenance Internet Portal, New York business records, and Archives of American Art. Provenance websites of other museums and institutions, and general web searches for collector and dealer names were also searched.

An additional strategy of inquiry for this research was interviews. Interviews are a way to collect data through the case study method in addition to documents, archival records, direct observation, physical-observation, and physical artifacts (Tellis, 1997). Key informants were purposively selected for inclusion in this study based on their

leadership and expertise in cultural property deliberations and processes. Leaders were contacted from the following organizations: the Saint Louis Art Museum, Egypt's Supreme Council of Antiquities, and the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. Most individuals contacted for this study declined participation in an interview or did not respond to the interview request.

A semi-structured interview was conducted with Kathryn Zedde, Chair of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. This interview was ongoing and occurred during the fall 2006 to fall 2007. Kathryn Zedde's views expressed in this paper are purely her own, and do not necessarily reflect the positions of the Government of Canada, the Department of Canadian Heritage, or UNESCO.

### **Anticipated Ethical Issues**

This research study was benign in nature with minimal risk to participants. In an effort to reduce any potential social and economic risks, informed consent was sought from participants during each stage of this investigation. Individuals were contacted for participation in this study following University of Oregon Office of Human Subjects approval for this investigation, which was received in July 2006 and renewed in July 2007. Contact information for participants was publicly accessible. Once the organization and potential interviewees were identified, targeted research participants were sent a copy of the recruitment letter (see Appendices A and B for interview recruitment letter and

consent form). Formal recruitment letters and consent forms were used to obtain informed consent from participants during each stage of this investigation. After the recruitment and consent letters were returned to the investigator a phone interview or personal meeting with the participant was coordinated by email and scheduled at the convenience of the participant. Interviewees were asked to provide copies of relevant organizational documents, to participate in an in-person or telephone interview, and to be available for follow-up questioning via phone or email.

### **Data Collection**

The primary method of data recording employed for this investigation was jotted and direct observation notes. Once written, the notes remained private and confidentiality was protected. An interview protocol was created to assist with data collection (see Appendix C for interview protocol).

### **Preliminary Coding and Analysis Procedures**

Data was collected and categorized by the three main ideas examined in this research: (1) protection of cultural resources from the effects of the illicit trade; (2) institutional experiences with claims for restitution; (3) structures to resolve claims for cultural property. Data was organized through a filing system by sub-topic: international agreements, professional advisory associations, law enforcement agencies, federal legislation, museum guiding principles, ethical policies, provenance research, and political and public pressure were the sub-topical areas used. These topical areas were

selected because they illustrate the interdisciplinary nature of the cultural property debate, and the changing ethical and legal environment in which museums operate. As themes emerged, data was grouped accordingly.

### **Role of the Researcher**

I chose the Saint Louis Art Museum as both the site for field research and as the main case study for this research primarily because I am a native of St. Louis, Missouri. However, scholars Robert Bodgan and Steven Taylor (as cited in Neuman, 2003) suggest that researchers choose settings in which the subjects are strangers and in which they have no particular professional knowledge or expertise. Neuman (2003) describes further that in field research, “the relevance of a researcher’s emotional make-up, personal biography, and cultural experiences makes it important to be aware of his or her personal commitments and inner conflicts” (p. 370). As a St. Louis native and someone educated in museums studies I had an inclination to defend the Saint Louis Art Museum in the case involving Egypt’s claim to ownership of the mummy mask.

### **Delimitations**

This investigation focused on the main case study of the Saint Louis Art Museum and Egypt’s claim to ownership of the mummy mask. The complexity of each claim for restitution was a key rationale for limiting this study to one main case. While much of the evidence for this investigation comes from research conducted by scholars in the field of

art law and museum policy, primary data was collected from the Saint Louis Art Museum case study.

### **Limitations**

Because the main case study and key informants were selected through purposive sampling, this study cannot generalize the findings. An important limitation is that findings from this research can be interpreted differently depending on the researcher. Neuman (2003) describes that “a researcher’s state of mind, level of attention, and conditions in the field affect note taking” (p. 383).

### **DEFINITIONS**

**Antiquity:** An object more than one hundred years old, such as inscriptions, coins and engraved seals (UNESCO, 1970).

**Arbitration:** A private, voluntary dispute resolution process where the parties to a dispute agree in writing to submit the dispute for binding resolution to a third party neutral, chosen pursuant to the agreement of the parties (Love & Stulberg, 2006).

**Conciliation:** The concerned parties agree to submit their dispute to a neutral for investigation and efforts to effect a settlement. The neutral’s goal is to assist in reducing tension, clarifying issues, and getting the parties to communicate (Cooley, 2003).

**Cultural Property:** The term “cultural property” is defined in Article 1 of the 1970 UNESCO Convention to be 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 belong to one of 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 artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine or of archaeological discoveries);
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
  - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
  - (ii) original works of statuary art and sculpture in any material;
  - (iii) original engravings, prints and lithographs;
  - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

**Due diligence inquiry:** The phrase “due diligence” is used in the art trade to describe the search of title that a collector must conduct in deciding whether to acquire a particular artwork or cultural object. Due diligence in this regard includes checking the known

history of the work, international conventions, the laws of the country of origin, and databases maintained by the Art Loss Register, Interpol, and other law enforcement agencies (Gerstenblith, 2004). Due diligence should establish the full history of the item from discovery or production.

**Ethics:** Relates to how one goes about weighing what is right and wrong, and making the best judgment. Museum ethics must reflect an ongoing dialogue between the museum community and the society it serves. According to the Canadian Museums Association (1999) “ethics are based upon the underlying *values* of honesty, fairness, respect, excellence and accountability which the larger community applies to the rational evaluation of moral issues” (p. 2).

**Good faith:** In Section 2-103 the U.C.C. defines “good faith” in the case of a merchant as “honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade.” The UNIDROIT Convention of 1995 offers the following description:

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 (Article 4(4)).

**Litigation:** An involuntary, formal, public process for dispute resolution, where a government-appointed or elected judge and/or jury determines facts and decrees an

outcome to legal causes of action based on adversarial presentations by each party (Love & Stulberg, 2006).

**Mediation:** A private, voluntary resolution process in which a third party neutral, invited by all parties, assists the disputants in identifying issues of mutual concern, developing options for resolving those issues, and finding resolutions acceptable to all parties (Love & Stulberg, 2006). Mediation involves the utilization of an outside impartial party to bring the concerned parties to a dispute together and assist them in reaching a solution (UNESCO, 2005).

**Museum:** Consistent with the definition in 18 U.S.C. § 668(a)(1), museums are defined broadly in this research to include all organizations and permanent institutions, with an essentially educational or aesthetic purpose, which exhibit tangible objects to the public on a regular schedule. Museums are dedicated to the preservation of resources and associated knowledge, irrespective of the institution's size, ownership, or funding.

**Provenance:** The term "provenance" is used in this investigation to refer to the full history and ownership of an item from the time of its discovery or creation to the present day, from which authenticity and ownership is determined (International Council of Museums, 2004). This includes the names of private owners, dealers, auction houses, museums, and agents, along with dates and locations (St. Louis Art Museum, 2006). The term provenance is also used to mean the 'original findspot' of an item, in its usual

archaeological or geological sense. This is distinct from the normal fine-art usage of the term “provenance”, where it is used to mean “ownership history” (Brodie, Droole, & Watson, 2000, p. 4).

**Rightful Owner:** The term “rightful owner” is used in this research as understood in the United States legal system in civil actions to refer to the country of origin or the owner of title that can prove title to the property and the right to possession, or prove that the defendant took the property without the plaintiff’s consent (Lerner & Bresler, 2005).

**Restitution:** The term “restitution” is used in the 1970 UNESCO Convention to refer to the return of cultural property removed from its territory of origin. The International Council of Museums recommends that museums be prepared to initiate dialogues for the restitution of cultural property to a country or people of origin. Section 6. 3 of ICOM’s 2004 *Code of Ethics for Museums* states that:

When a country or people of origin seek the restitution of an object or specimen that can be demonstrated to have been exported or otherwise transferred in violation of the principles of international and national conventions, and shown to be part of the country’s or people’s cultural or natural heritage, the museum concerned should, if legally free to do so, take prompt and responsible steps to co-operate in its return.

## **Conclusion**

This study uses qualitative research methods to examine the problem of resolution of cultural property ownership disputes. Disconnects exist in research and understanding as to how ownership of cultural property is determined when there is no universally accepted standard to settle differences. The main case study examined in this research is the cultural property dispute that arose in 2006 between the Saint Louis Art Museum and the Egyptian government involving ownership of the exquisite Ka-Nefer-Nefer Egyptian mummy mask dating back to the nineteenth dynasty, 1307-1196 B.C. The legality of that acquisition and the ongoing dispute between the Egyptian government and the museum all serve in this paper as an illustrative example of the number of disputes that have arisen in the last twenty-five years between States and museums over looted cultural heritage.

The next chapter reviews laws and regulations concerned with protection of cultural resources from the effects of the illicit trade. Particular attention is on the development of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The 1970 UNESCO Convention is the keystone of a network of national and international attempts to deal with the illicit trade. A States Party to the Convention can request a five-year import restriction under the U.S. Cultural Property Implementation Act of 1983 on certain categories of archaeological or ethnological materials that are in jeopardy to pillage. For the import ban to be granted, the States Party must have a comprehensive cultural patrimony law in effect that demonstrates the country is seriously trying to prevent looting. If negotiated into a bilateral treaty, the import ban prohibits certain

categories of objects from entering the United States unless they are specifically approved for export by the requesting State.

American museums have taken increased caution through provenance research and due diligence inquiry to prevent the acquisition of stolen and/or illicitly exported objects. The phrase “due diligence” is now routinely used by sophisticated purchasers, particularly museums, to describe the search of title that they must conduct in deciding whether to acquire a particular artwork or cultural object. Codes of ethics have been devised by professional advisory associations, such as the International Council of Museums, the American Association of Museums, and the Association of Art Museum Directors to dictate certain ethical obligations to member institutions. Despite such efforts, looted objects still find their way into museums collections.

Institutional experiences with claims for restitution are discussed in chapter three. Nations rich in cultural objects like Italy and Egypt have actively sought the recovery of dispersed cultural material from major museums worldwide. The experience of the Saint Louis Art Museum with Egypt’s claim to ownership of the Ka-Nefer-Nefer mummy mask is examined in detail. Particular attention is on the museum’s guiding principles, ethical policies, provenance research, and due diligence inquiry as well as the weight attached to political and public pressure espoused by the Egyptian government.

Structures concerned with resolution of claims for cultural property are discussed in chapter four as they relate to the case involving the Saint Louis Art Museum and Egypt. A semi-structured interview was conducted with Kathryn Zedde, Chair of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to

its Countries of Origin or its Restitution in Case of Illicit Appropriation. Findings and recommendations are discussed in the final chapter of this investigation. A key finding is the need for a more collaborative framework for avoiding and settling disputes that concern cultural material.

**CHAPTER TWO: REVIEW OF LAWS  
AND REGULATIONS**

This literature review pertinent to the problem of resolution of cultural property ownership disputes examines laws and regulations concerned with the effects of the illicit trade. The efforts of an international community concerned with protection of the cultural resources of individual nations are depicted in Figure 2. These include international agreements devised by intergovernmental organizations like UNESCO; initiatives of professional advisory associations and organizations such as the “Red Lists” program of the International Council of Museums; actions for recovery by law enforcement agencies like Interpol; and federal legislation enacted by nation states, for instance Iraq, to restrict the trade of certain categories of objects vulnerable to pillage. The international community is concerned with curbing illicit trafficking in cultural property, in particular by administrative and legal means, and at facilitating return of such property.

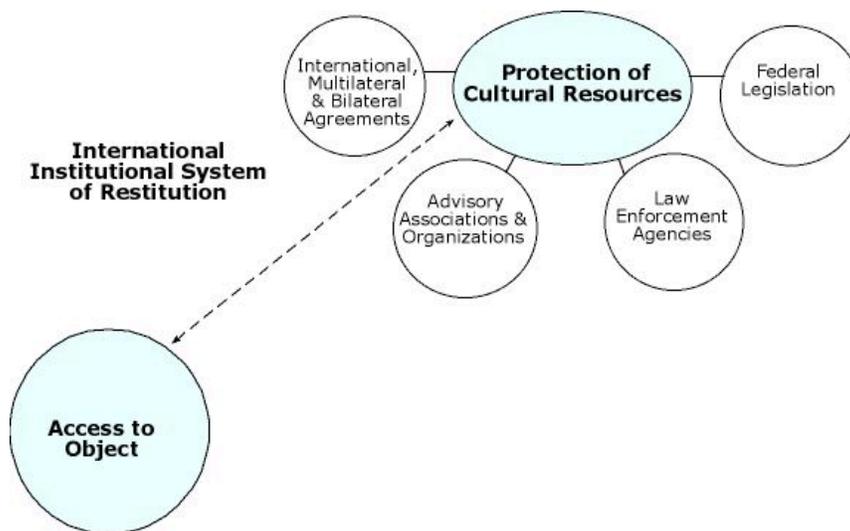


Figure 2: Efforts to protect the cultural resources of individual nations from the effects of the illicit trade have been initiated by intergovernmental and nongovernmental organizations on national and international levels.

Law enforcement personnel have worked with local and international agencies for recovery of stolen objects that are registered and documented. Governmental and non-governmental organizations as well as private museum associations in the U.S. and abroad have also offered assistance to law enforcement personnel in such instances. The U.S. Bureau of Immigration and Customs Enforcement, a part of the Department of Homeland Security, and the Federal Bureau of Investigation have recovered objects that have entered the United States in violation of U.S. trade restrictions. Collectively, these entities form an international community concerned with protection of cultural resources from the effects of the illicit trade.

### **The 1970 UNESCO Convention**

The development of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property signifies important steps taken by the international community to address the value of preservation of national patrimony. In 1968, UNESCO adopted a resolution calling for the drafting of an international convention on the subject of the illicit trade in national art treasures. Pursuant to this resolution, the UNESCO Secretariat prepared a preliminary draft convention that was circulated for comments by members, and revised accordingly by the Secretariat. The resulting document, the Secretariat Draft, constituted the “bill” serving as the point of departure for the legislative process that led to the 1970 UNESCO Convention (Bator, 1982). American legal scholar, Patty Gerstenblith (2004) describes this initiative as “sparked in particular by the work of Professor Clemency Coggins, who

brought world attention to the destruction of Maya architectural remains in Central America, and of Karl E. Meyer, *The Plundered Past* (1973), the world community under the leadership of UNESCO sought to find a way to deal with the illegal trade in art works, antiquities, and ethnographic objects” (p. 548).

During the 1960s Mayan monuments in Mexico, Guatemala, and Belize were being cut up and sold, often to museums in the United States (Brodie, Droole, & Watson, 2001). In 1969, Professor Clemency Coggins, an art historian specializing in pre-Columbian art published a short article in *Art Journal* that reported on the illegal traffic in art and antiquities, specifically the scale of destruction and removal of monuments from the Maya civilization from the jungles of Central America to American museums. Many of these objects were acknowledged masterpieces of pre-Columbian civilization and actually registered as national monuments (Bator, 1982; Coggins, 1969). With the help of archaeologist Ian Graham and his discovery of a magnificent collection of Maya ruins in 1961, Coggins traced several monuments from known sites in the jungles of Central America to some of American’s most respectable museums.

At the time of publication of Coggins’ article, several major museums were involved in high profile scandals involving recent acquisitions. The Metropolitan Museum of Art in New York City, for example, was under scrutiny by the Italian government for the museum’s 1972 purchase of a massive krater painted by the famous Greek vase painter Euphronios (Shirey, 1973). The Boston Museum of Fine Arts was under investigation by both Italian authorities and United States Customs Service agents for its purchase of a previously unknown Raphael portrait. American museums seemed to

be benefiting from the secret and corrupt practices that surround the smuggling of works of art out of their country of origin. An overwhelming consensus emerged that an irretrievable cultural catastrophe was in the making, and that U.S. collectors and museums had been extensively and especially enriched by the fruits of this catastrophe (Bator, 1982). The powerful position of museums to collect antiquities from around the world was now threatened by the development of an international community concerned with the effects of the illicit trade in art works, antiquities, and ethnographic objects.

The solution to combat the illicit trade was adoption of the 1970 UNESCO Convention, which is the keystone of a network of attempts to deal with the “illicit” international traffic in smuggled and/or stolen goods (Merryman, 2000). The Convention establishes principles for the control of trade in archaeological and ethnological materials as well as certain other cultural material. At the heart of the Convention is Article Nine, which states that:

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 States.

Article Two calls for States Parties to stop current practices of the illicit import, export, and transfer of ownership of cultural property since it 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 therefrom.”

The recent looting of the Iraq National Museum in Baghdad reinvigorated international attention to the illicit trade of cultural objects and the need for international cooperation to recover stolen artifacts (International Council of Museums, 2006). In 2003, recognizing that its cultural property was in jeopardy from pillage, Iraq called upon other States Parties to the 1970 UNESCO Convention to help recover cultural property stolen from the Iraq National Museum in Baghdad. The Iraq Museum is a national archaeological museum that serves as the repository for all artifacts from excavations in Iraq. Between approximately April 8 and April 12, 2003, fifteen thousand objects were stolen from the Iraq Museum, home of the world’s largest collection of Mesopotamian artifacts (Gerstenblith, 2006; Bogdanos, 2006). Dr. Donny George, acting director of the Iraq Museum, describes amongst the losses were hundreds of Sumerian, Akkadian, and Hatraean statues; thousands of cylinder seals from different periods; and dozens of gold and silver material, including necklaces and pendants (Gerstenblith, 2006). These objects are protected by Iraqi legislation, banned from export and may under no circumstances be imported or put on sale.

**Federal Legislation**

In his 1982 book, *The International Trade in Art*, Harvard law professor Paul Bator examines a variety of values that affect the international art trade. The fundamental value Bator describes is the preservation of art. The weight attached to the value of preservation grows insofar as the work of art is rare or important, or belongs to a category of art threatened with wholesale destruction. A value of preservation Bator discusses in detail is the value of preservation of national patrimony, which is one of the most pervasive themes in debates surrounding the international art trade. National patrimony consists of all works of art within the borders of a country and perhaps some outside that are subject to that country's power and jurisdiction. However, national ownership of cultural patrimony is complicated by the fact that the world changes, and with it the centrality of the state. A great deal of what people wish to protect as national patrimony was made before the modern system of nations came into being (Appiah, 2006; Merryman, 2000; Bator, 1982).

While some nations like Iraq have enacted cultural patrimony laws to declare state ownership of all excavated and unexcavated objects within their borders, other States such as the United States have enacted legislation to enforce the export controls of other nations. The U.S. has imposed both civil and criminal sanctions for dealing in stolen and/or illicitly exported objects. In the case of the monumental pre-Columbian sculptures removed from the jungles of Central America to American museums, the value of preservation of national patrimony grew insofar as the works of art belonged to a category of objects threatened with wholesale destruction. In the early 1970s, the U.S.

expressed a commitment to the international community to help stop the illegal export of Mexican cultural property: The United States signed the Treaty of Cooperation with the United Mexican States Providing for Recovery and Return of Stolen Archaeological, Historical and Cultural Properties of 1970 to assure U.S. cooperation in the repatriation of Mexican cultural property illicitly exported. Congress passed the regulation of Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals of 1972 to make illegal the importation of monumental pre-Columbian sculptures and frescoes that were exported illegally from their country of origin unless they were accompanied by an export license. The 1972 import ban curtailed the powerful position of American museums to acquire objects that were removed in violation of foreign property laws or before foreign governments had mechanisms for preventing or contesting their removal. These regulations made the export controls of Mexican States enforceable in the United States.

### **U.S. Cultural Property Implementation Act**

The 1970 UNESCO Convention is not self-executing so domestic legal means are necessary to carry out its obligations. While the United States was one of the first market nations to sign the 1970 UNESCO Convention and to enact legislation by which the Convention would be implemented into domestic law, the United States implementing legislation for the Convention was delayed for ten years. Part of this delay can be attributed to art dealers and others involved in the art trade who argued that if the United States undertook unilateral import controls, illegal cultural property would simply be sold

to art market countries lacking similar controls (Bator, 1982; Gerstenblith, 2004). The U.S. implementing legislation, known as the Convention on Cultural Property Implementation Act (1983) was finally enacted in December 1982. The Senate unanimously gave its advice and consent to ratification; subject to one reservation and six understandings. One of the understandings provided was that the U.S. viewed the Convention as executory in nature, meaning that for the Convention to have any legal effect in the United States, Congress would have to enact legislation by which the Convention would be implemented into domestic law.

During discussion for why the United States should implement the Cultural Property Implementation Act, the State Department commented that legislation is important to our foreign relations, including our international cultural relations. Because the United States is a principle market, the discovery of stolen or illegally exported artifacts in the U.S. can severely strain U.S. relations with the countries of origin, which often include close political allies (S. Rep. No. 97-564, 1972). The Senate concluded that on grounds of principle, good foreign relations, and concern for the preservation of the cultural heritage of mankind, it should render assistance in these kinds of situations.

The Cultural Property Implementation Act (CPIA) was eventually signed into law by President Ronald Reagan in January 1983. The CPIA is a civil law that prohibits importation of stolen objects that have been documented in the inventory of a public or secular institution in countries that are signatories to the 1970 UNESCO Convention. The Cultural Property Implementation Act explicitly implements only two sections of the 1970 UNESCO Convention, Article 7b and Article 9, which are concerned with pillaging

crisis situations. The CPIA provides a mechanism for foreign nations to request United States import restrictions on certain categories of cultural objects vulnerable to pillage and preserves the U.S. government's ability to limit restrictions through expert review. Under the CPIA, a State Party can bring a written request to the Cultural Property Advisory Committee for a five-year import restriction on certain categories of archaeological or ethnological materials that are in jeopardy of pillage. In order to satisfy the Committee, the State Party must have a comprehensive cultural patrimony law that demonstrates the country is seriously trying to prevent looting.

On May 27, 2004, the Government of the People's Republic of China requested U.S. import restrictions on Chinese archaeological material from the Paleolithic to the Qing Dynasty including, but not limited to, certain categories of metal implements, weapons, vessels, sculpture, and jewelry; pottery and porcelain vessels, sculpture, and architectural elements; stone implements, weapons, vessels, sculpture, jewelry and architectural elements; painting and calligraphy; textiles; lacquer; bone, ivory and horn wares; and wood and bamboo objects. Concerned that its cultural property is in jeopardy from pillage, the Government of the People's Republic of China made this request under Article Nine of the 1970 UNESCO Convention, which places the onus on each state to develop its own legislation to protect and preserve its cultural heritage, and to establish measures to facilitate the return of illegally exported cultural property to its country of origin (Public Notice 4780, 2004).

The Chinese government believes a bilateral agreement that imposes import restrictions on certain categories of archaeological materials from China would prove a

useful deterrent to the increase smuggling and illicit export to the United States (State Department, 2007). The Cultural Property Advisory Committee met on February 17-18, 2005 to consider this request and in 2006 the State Department delayed a decision. At issue is whether China has a comprehensive cultural patrimony law in effect that demonstrates the Chinese government is seriously trying to prevent looting of archaeological sites. If negotiated into a bilateral treaty, the import ban would likely prevent any artifact from entering the United States unless it was specifically approved for export by the Chinese government. If China's request is denied, it will be the first initial request denied by the U.S. government for import controls. China's import request has now pitted American archaeologists, who argue the art market fosters the looting of historic sites against collectors, who say that the import restrictions threaten collecting by private individuals and museums (Kahn, 2006).

U.S. import forms require the declaration of the country of origin of goods imported into the United States. The Cultural Property Implementation Act (1983) gives the U.S. Customs Service (now Bureau of Immigration and Customs Enforcement, a part of the Department of Homeland Security) the authority to seize property illegally imported into the United States. False declarations on customs importation papers may subject merchandise to civil forfeiture as the proceeds of crime or property otherwise barred from entering the United States. Gerstenblith (2004) explains that the country of origin of archaeological objects should be considered the place of discovery or excavation in modern times. However, this is difficult to apply in the case of

archaeological objects that were manufactured centuries ago and may have been moved across territories.

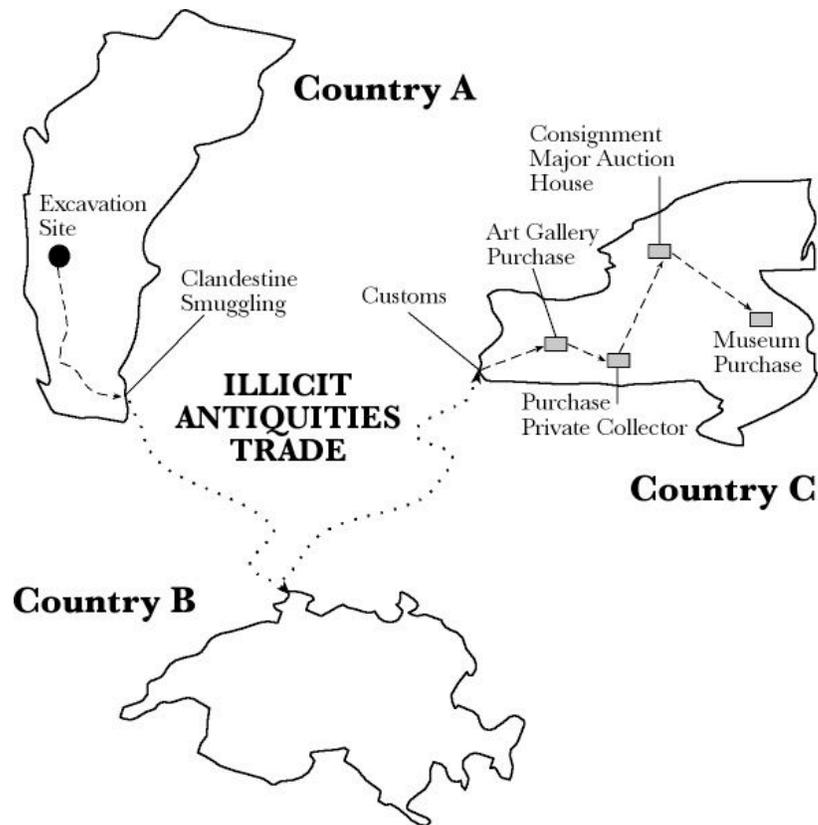


Figure 3: In *United States v. An Antique Platter of Gold* (1997), it was determined that the designation of Switzerland (Country B) as the country of origin of a gold platter of Sicilian origin on U.S. Customs importation documents was false.

Customs Directive No. 5230-15, regarding the detention and seizure of cultural property, advises customs officials to determine whether property was subject to a claim of foreign ownership and to seize the property. In *United States v. An Antique Platter of Gold* (1997), the Court found that the designation of Switzerland as the country of origin

of a gold platter of Sicilian origin and the listing of its value of \$250,000 were found to be false. The U.S. government claimed that the importation of the 4<sup>th</sup> century B.C. gold platter or "phiale" was illegal because it violated 18 U.S.C. § 542, which prohibits the importation of merchandise into the United States "contrary to law" and states that material imported in such a manner "shall be forfeited." The phiale was forfeited because the country of origin was falsified on U.S. customs forms.

### **National Stolen Property Act**

The U.S. National Stolen Property Act of 1934 is a criminal statute that establishes a felony offense for those who knowingly sell, transport, receive, or conceal goods, valued in excess of \$5,000 in interstate or foreign commerce. The National Stolen Property Act (NSPA) accepts the law of another nation as indicia of ownership that form the basis of the concept of theft of items removed from a country in violation of its patrimony laws. Until 1972, the National Stolen Property Act constituted only a theoretical threat against an importer of looted antiquities: Then, in the early 1970s, came the celebrated case of *United States v. Hollinshead* (1974). The Hollinshead case demonstrated that the U.S. government would convict those involved with transporting and conspiring to transport stolen property in interstate and foreign commerce under the National Stolen Property Act (1934).

*United States v. Hollinshead* (1974) was the first known occurrence in which a foreign government sought recovery of illicitly exported cultural property through the

American court system. The government of Guatemala, claiming as true owner of the pre-Columbian stela offered for sale by Clive Hollinshead, a California art dealer, filed an action against Hollinshead in a California state court for its return. In August 1972, Hollinshead and two co-conspirators were indicted by a federal grand jury for transporting and conspiring to transport stolen property in interstate and foreign commerce. In March 1973 the jury found Hollinshead and a co-defendant guilty on all counts, and in 1974 the Court of Appeals for the Ninth Circuit affirmed the convictions.

Shortly thereafter, *United States v. McClain* (1977) held that violations of the patrimony laws of other nations are enforceable by the National Stolen Property Act (1934). Under the McClain doctrine, when there is a claim of title by another country, the United States will confiscate the items for a determination of ownership. For the United States to accept another nation's ownership under the National Stolen Property Act the other nation must have a law indicating its assertion of right of ownership to its patrimony: a general export law is insufficient. While the NSPA is not formally a customs statute, it provides a basis for customs intervention as well as for the possible prosecution of one who possesses stolen goods after importation.

On July 16, 2001 Frederick Schultz, a prominent New York Art Dealer and former president of the National Association of Dealers in Ancient, Oriental and Primitive Art, was indicted on one count of conspiring to receive stolen Egyptian antiquities that had been transported in interstate and foreign commerce in violation of the National Stolen Property Act of 1934 (*United States v. Schultz*, 2003). Frederick Schultz was sentenced to 33 months in jail, and ordered to pay a fine of \$50,000 and to

return a relief still in his possession to Egypt. The case involved Jonathan Tokeley Parry, a British national who smuggled an ancient sculpture out of Egypt, and Robin Symes who purchased the sculpture from Schultz in 1992. Schultz and Parry provided a false provenance to legitimize the sale of a stolen ancient Egyptian sculpture: They claimed that the Egyptian sculpture had been brought out of Egypt in the 1920s by a relative of Parry and kept in an English private collection, known as the “Thomas Alcock Collection” since that time. In 1992, Robin Symes bought the sculpture from Schultz: In 1995 Symes asked Schultz to provide him with more details of the object’s origin once he learned the Egyptian government was seeking return of the sculpture since it had been illegally exported from Egypt.

Egyptian Law 117 makes illegal the private ownership of Egyptian antiquities not privately and legally owned prior to 1983; the question of whether Egypt’s Law 117 was truly an ownership law was one of the most crucial issues decided by the Second Circuit (Gerstenblith, 2004). The Court found that the National Stolen Property Act (1934) applies to property that is stolen from a foreign government, when the government asserts actual ownership of the property pursuant to a valid patrimony law. The 2003 conviction of New York art dealer Frederick Shultz on one count of conspiring to deal in stolen property from Egypt confirmed that the United States would enforce, under appropriate circumstances, the cultural patrimony laws of foreign nations.

### **Law Enforcement Agencies**

The U.S. Cultural Property Implementation Act of 1983 gives the Bureau of Immigration and Customs Enforcement the authority to seize property illegally imported into the United States. The Bureau of Immigration and Customs Enforcement, and the Federal Bureau of Investigation have assisted with the recovery of stolen archaeological and ethnological objects when they are registered and documented.

Interpol, an international law enforcement agency, disseminates information worldwide pertaining to cultural property dispersion. Interpol's activities are focused on the publishing and distributing international stolen property notices; maintaining a computerized cultural property database; and tracking *modus operandi* information which includes individuals and/or businesses suspected of trafficking in, receiving, or smuggling cultural property. Interpol Stolen Property Notices contain descriptions and photographs of stolen, seized and/or suspect cultural property reported to the Interpol Secretariat General by an Interpol member country. The Notices receive worldwide distribution to UNESCO, the International Council of Museums and the World Customs Organizations, as well as to Interpol member countries, which distribute the Notices to Police Forces, Customs Services, Museums, Art Dealers and others (U.S. National Central Bureau, 2006).

The U.S. National Central Bureau of Interpol maintains a computerized cultural property database and routinely forwards cultural property information to various laws enforcement agencies, Liaison Offices, and art organizations throughout the United States. The U.S. National Central Bureau is prohibited from processing requests from

individuals and organizations, other than law enforcement entities. Individuals and organizations report the loss or theft of fine art or other cultural property through their state or local police or the FBI providing as complete physical description as possible; including any numbers, trademarks, or other markings; color photographs; circumstances of loss or theft; value of the item; history of the item if relevant; and any other pertinent information available.

### **Advisory Associations & Organizations**

Advisory associations and organizations “have been active at every phase of the legal process affecting cultural material, from the formulation of general principles to the execution of prescribed rules and processes of international protection and cooperation” (Paterson, 2005, p. 65). Advisory associations and organizations have developed to meet the needs of professionals in the field and to dictate certain ethical obligations to members. The National Association of Dealers in Ancient, Oriental and Primitive Art is the primary association of dealers in antiquities; the International Council of Museums is the leading nongovernmental organization of museums; and the Archaeological Institute of America is the prime organization for promoting appropriate standards for archaeological fieldwork. Each advisory association has issued guidelines and codes on such matters as ethical acquisition practices and professional ethics in general.

The development of museums over the last hundred years has been accompanied by the establishment of professional advisory associations to serve their needs (Hersher, 2006). The International Council of Museums (ICOM) is a non-profit, non-governmental

organization dedicated to the development and advancement of museums and the museum profession. ICOM is in formal association with UNESCO, and has been granted advisory status by the United Nations Economic and Social Council. The “Red Lists” program of the International Council of Museums is designed as a tool for customs officials, police offices, art dealers, and collectors to help them to recognize objects that may have been stolen and/or illicitly exported. As of January 2005, the combined efforts of intergovernmental and nongovernmental organizations have contributed to the recovery of about four thousand Iraqi objects, which have been returned or recovered within Iraq or in foreign countries including the United States, Jordan, Syria, Iran, Kuwait, Saudi Arabia, and Turkey (Gerstenblith, 2006; Bogdanos, 2006).

Central to the work of the International Council of Museums is establishing a code of ethics for museums. ICOM’s 2004 *Code of Ethics for Museums* supports the 1970 UNESCO Convention, which implies a high level of involvement in promoting the restitution of illicitly acquired cultural property and international cultural exchanges, stressing due diligence inquiry and good provenance (Murphy, 2006). ICOM members agree to abide by the minimum standards of professional practice and behaviors established by the ethical codes. ICOM’s Ethics Committee responds to breaches of the Code with a ‘name and shame’ approach, which is consistent with the overall ethos of ICOM as an advisory association.

The Association of Art Museum Directors (AAMD) urges museum directors and others responsible for museum governance to accept and be guided by their professional practices and codes of ethics (2001). The Association of Art Museum Directors’

*Professional Practices in Art Museums* was first published in 1971, and has been revised every ten years thereafter. The 2001 edition represents a ten-year effort on the part of the AAMD to revisit and update the 1991 edition. The 2001 edition states that, “a museum director should not knowingly acquire or allow to be recommended for acquisition any object that has been stolen, removed in contravention of treaties or international conventions to which the United States is a signatory, or illegally imported in the United States” (p. 21). Member institutions of the AAMD, such as the Saint Louis Art Museum, have incorporated these recommendations into their museum governing policies.

The International Law Association, a non-governmental organization focused on the study, clarification, and development of both public and private international law, has also addressed the peculiarities of the illicit antiquities market. The membership of the International Law Association (ILA) is organized on a regional basis with over 3,500 members and some fifty branches around the world. The ILA has consultative status with a number of United Nations specialized agencies and works primarily through its committees and study groups, who undertake research in specialized areas of international law. The Committee on Cultural Heritage Law of the ILA was formed in 1988 and is currently chaired by Professor James A.R. Nafziger, who is also the President of the American branch of the ILA. The Committee’s membership includes representatives from Denmark, South Africa, New Zealand, Israel, Germany, the Netherlands, Japan, the United Kingdom, Australia, Nigeria, and India. The current work of the Cultural Heritage Law Committee of the ILA concerns the development of *Draft Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material*.

The principles provide minimal standards for requests involving the international transfer of cultural material. They specify the need for formal requests, reasons for the return justifiable on part of the claimant, reciprocity for addressing the claims, and provisions for alternative dispute resolution (Paterson, 2006). The 2006 principles will be discussed further in chapter four.

### **Literature Review Conclusion**

The focus of this literature review was on efforts to protect the cultural resources of individual nations from the effects of the illicit trade. An important step to deal with protection of national property interests was taken by the international community in 1968 when UNESCO adopted a resolution calling for the drafting of an international convention on the subject of the illicit trade in national art treasures. The resulting document, the Secretariat Draft, served as the point of departure for the legislative process that led to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The 1970 UNESCO Convention calls for each State to develop its own legislation to protect and preserve its cultural heritage, and to establish measures to facilitate the return of illegally exported cultural property to its country of origin. This might entail the control of exports and imports in specific materials that are vulnerable to pillage.

While the United States was one of the first market nations to sign the 1970 UNESCO Convention, it took ten years to enact legislation by which the Convention would be implemented into domestic law. The Senate concluded, that on grounds of

principle and to promote good foreign relations, the U.S. should render assistance in these kinds of situations. The U.S. implementing legislation for the 1970 UNESCO Convention is the Cultural Property Implementation Act (1983), which provides a mechanism for foreign nations to request U.S. import restrictions on certain categories of objects vulnerable to pillage and preserves the U.S. governments' ability to limit restrictions through expert review. Under the Cultural Property Implementation Act, a State Party can bring a written request to the Cultural Property Advisory Committee for a five-year import restriction on certain categories of archaeological or ethnological materials that are in jeopardy of pillage. China's request is currently pending before the Cultural Property Advisory Committee.

On the heels of Professor Clemency Coggins' (1969) publication "Illicit Traffic of Pre-Columbian Antiquities" and the finalization of the 1970 UNESCO Convention, was *United States v. Hollinshead* (1974), which is the first known occurrence in which a foreign government sought recovery of illicitly exported cultural property through the American court system. The U.S. National Stolen Property Act (1934) is a criminal law that accepts the law of another nation as indicia of ownership that form the basis of the concept of theft of items removed from a country in violation of its patrimony laws. The conviction of Frederick Shultz on one count of conspiring to deal in stolen property from Egypt confirmed that the United States would enforce, under appropriate circumstances, the cultural patrimony laws of foreign nations (*United States v. Schultz*, 2003). The theft at issue was not based on standard notions of ownership, but on a 1983 Egyptian law that

declares state ownership of all cultural property, including all undocumented and unexcavated cultural objects (DeAngelis, 2006).

Professional advisory associations and organizations on national and international levels have set forth initiatives to deal with the illicit trade and to dictate certain ethical guidelines to members. Museum professional advisory associations such as the International Council of Museums and the Association of Art Museum Directors advise member institutions to not acquire any object that has been stolen, removed in contravention of treaties or international conventions to which the United States is a signatory, or illegally imported in the United States. Despite such efforts of an international community, the illicit trade continues and stolen and/or illicitly exported objects still find their way into art-collecting countries and into museums collections. The next chapter discusses institutional experiences with foreign government claims to ownership of objects in museums collections that may have been stolen and/or illicitly exported. The experience of the Saint Louis Art Museum with Egypt's 2006 claim to ownership of the Ka-Nefer-Nefer mummy mask is examined in detail.

## **CHAPTER THREE: SAINT LOUIS ART MUSEUM**

### **CASE STUDY**

The Saint Louis Art Museum collects, presents, interprets, and conserves works of art of the highest quality across time and cultures; educates, inspires discovery, and elevates the human spirit; and preserves a legacy of artist achievement for the people of St. Louis and the world.

Saint Louis Art Museum Mission

The Saint Louis Art Museum was founded in 1879, at a time when art museums were being established in major cities in the eastern half of the United States. In the early 1900s financial support from the City of St. Louis allowed the museum to purchase works of art from various countries and historic periods. New acquisitions included Chinese sculptures from the Qi dynasty; European paintings from the 16<sup>th</sup> and 17<sup>th</sup> centuries; and Greek, Roman, Medieval, and Near Eastern antiquities. Following the Depression years and a decline in the international art market in 1934, the museum took the enviable opportunity to purchase works that expanded the collection of European and American paintings as well as African and Asian sculptures, Chinese bronzes, pre-Columbian objects, and decorative arts. The museum's approach to acquire only works of art of superlative merit from various countries and historic periods has inspired gifts and bequests of a similar variety (Saint Louis Art Museum, 2004).

More recently, one of the antiquities acquired by the Saint Louis Art Museum was the exquisite Ka-Nefer-Nefer Egyptian mummy mask dating back to the nineteenth dynasty, 1307-1196 B.C. (see Figure 4). Allegations later arose that the mummy mask was stolen from Egypt and is legally the property of Egypt's Supreme Council of Antiquities. Brent Benjamin, Director of the Saint Louis Art Museum, explained in a memorandum dated January 20, 2006 to commissioners, trustees and friends of the Saint

Louis Art Museum, that the museum had received inquiries regarding the provenance of the mummy mask (see Appendix D). The inquiries had resulted from an allegation posted on a website, which is devoted to art theft issues. Michael van Rijn is the proprietor of this website, based in the Netherlands. Attached to the memorandum was an article by reporter David Bonetti of the St. Louis Post Dispatch dated January 1, 2006 titled “A mystery behind Art Museum’s mummy mask”, which covers van Rijn’s allegations.



Courtesy The Saint Louis Art Museum

Figure 4: Mummy Mask; Egyptian, New Kingdom, 1550-1070 B.C., Dynasty 19, 1307-1196 B.C.; plaster, linen, resin, glass, wood, gold, and pigment; 21 1/16 x 14 9/16 x 9 3/4; Saint Louis Art Museum, Friends Fund and Funds given by Mr. and Mrs. Christian B. Peper, Mrs. Drew Philpott, the Longmire Fund of the Saint Louis Community, the Helen and Arthur Baer Charitable Foundation, an anonymous donor, Gary Wolff, Marge Getty, by exchange, Florence Heiman in memory of her husband, Theodore Heiman, Ellen D. Thompson, by exchange, Dr. and Mrs. G.R. Hansen, Sid Goldstein in memory of Donna and Earl Jacobs, Friends Fund, by exchange, and Museum Purchase 19:1998.

On February 14, 2006 Dr. Zahi Hawass, Secretary General of Egypt's Supreme Council of Antiquities and Egypt's chief archaeologist, sent a letter to the Saint Louis Art Museum that charged the mummy mask was clearly stolen from a storage facility in Saqqara, Egypt, where it had been excavated in the early 1950s (see Appendix E for letter). Hawass gave the museum a two-week deadline to begin the process of returning the mask to Egypt, and if the process was not underway by that time he threatened to contact Interpol and start legal proceedings.

The Saint Louis Art Museum responded immediately to Hawass' charge, stating that the museum was aware of unsubstantiated allegations but that it had received no credible information in support of that stance (see Appendix E). Along with the museum's response to Hawass' charge was a copy of the museum's information regarding the mask's provenance. The museum clarified that it had not, at any time, taken any measures to conceal any facts regarding its acquisition of or possession of the object. The museum asked Hawass to provide any information that supports his assertion that the mask was stolen.

A local St. Louis attorney who represents museums and practices with Blackwell Sanders Peper Martin represents the Saint Louis Art Museum in the case involving Egypt's claim to ownership of the Ka-Nefer-Nefer mummy mask. As of December 2007 the case remains unresolved. Challenges with resolution are evident: ownership records on both sides are obscure, the international reputation of the museum is at stake, and when the mask left Egypt is in question.

### **Provenance of the Ka-Nefer-Nefer Mummy Mask**

The provenance history of the Ka-Nefer-Nefer mummy mask begins with her discovery in Egypt in 1951/1952. On June 7, 1952 “The Illustrated London News” announced M. Zakaria Goneim’s discovery of a burial of a lady in Saqqara, the sprawling necropolis twenty miles south of Cairo, Egypt. In his 1956 book, *The Buried Pyramid*, Mohammed Zakaria Goneim, Keeper of the Antiquities of Saqqara, offers the following description of the discovery of a woman, whose remains dated to the nineteenth century dynasty:

The body was unummified and wrapped in a mat of palm-reeds. The head and shoulders were covered with a realistic mask of stuccoed pasteboard and canvas with gilding and painting, a necklace composed of beads made of glass coloured in imitation of semi-precious stones, together with amulets of green felspar and glass, and statuettes of alabaster, steatite, and wood (p. 54-55).

Goneim gave her the name Ka-Nefer-Nefer (“The Twice-beautiful *Ka*”) and published photographs of her mask in three subsequent books about the excavation.

The Saint Louis Art Museum’s ex-collection provenance report of the mummy mask (object number 19:1998) is show in Figure 5. This report is based on the provenance history provided by the seller, Phoenix Ancient Art, S.A., and the museum’s own acts of due diligence inquiry. The provenance report reads as follows: the mummy mask entered the collection of Mohammed Zakaria Goneim in 1951/1952, but the museum does not know when it left; the museum knows the work was in an unknown collection in Brussels by 1952, but the museum does not know when it left; the museum

does not know when the work entered the Kaloterna Collection but it left in the early 1960s; the museum knows the work was in a private collection by the early 1960s, but the museum does not know when it left; by 1997 the mask was in the collection of Phoenix Ancient Art, S.A. and it left in 1998; on March 30, 1998 the mask was purchased by the Saint Louis Art Museum where it remains to the present date.

### **Ex-Collection Provenance Report**

#### ***19:1998 Mummy Mask***

1951/1952 –

Mohammed Zakaria Goneim excavated at Saqqara, Egypt

by 1952 –

Unknown Dealer, Brussels, Belgium

- early 1960s

Kaloterna Collection

early 1960s –

Private Collection, Switzerland, acquired from Kaloterna Collection

by 1997 – 1998

Phoenix Ancient Art, S.A. (Hicham Aboutaam), Geneva, Switzerland,  
purchased from private collection

1998/03/30

Saint Louis Art Museum, purchased from Phoenix Ancient Art, S.A.

Figure 5: Ex-collection provenance report as of February 14, 2006 of the Ka-Nefer-Nefer Mummy Mask in the collection of the Saint Louis Art Museum.

The Saint Louis Art Museum purchased the mask for a half-million dollars from Phoenix Ancient Art, S.A., an international antiquities dealer owned by the Lebanese brothers

Hicham and Ali Aboutaam. Funds to purchase the mask were provided by named and anonymous donors, charitable foundations, the Museum's Friends Funds, and the sale of other objects in the collection.

### **The Museum's Due Diligence Inquiry**

The Saint Louis Art Museum made public its own acts of due diligence inquiry following media inquiries related to the provenance history of the Ka-Nefer-Nefer mummy mask. In the memorandum dated January 20, 2006, Brent Benjamin gives the following description of the museum's actions of due diligence (see Appendix D):

The Art Museum acquired the mask in 1998 after extensive inquiries into its history of ownership. In addition to verifying the provenance supplied by the dealer, the Museum also contacted the Art Loss Register and Interpol, each of which maintains databases of stolen art, and neither of which listed such work as stolen. In addition, the Museum contacted Mohammed Saleh, then the director of the Egyptian Museum in Cairo. In his response, Dr. Saleh raised no concerns about the appropriateness of the Museum's pending acquisition (p. 1).

Benjamin states further that during these inquiries no authority even identified the mask as missing, lost, or stolen. Benjamin concludes "that the Art Museum undertook a significant and appropriate level of diligence at the time the work was acquired" (p. 1). These steps of due diligence are described in the next section. The level of due diligence conducted by the museum prior to its purchase of the mummy mask is discussed in chapter five.

**Provenance Provided by the Seller**

Benjamin said that the seller, Phoenix Ancient Art, S.A., provided the museum with provenance information prior to the museum's purchase of the mask. The open file of the mummy mask contained two letters of known ownership information that were written before the museum purchased the mask in 1998. The first letter states that the mask was seen at an antiquities dealer in Brussels, Belgium in 1952. This account stems from a letter handwritten on February 11, 1997 by a Swiss man named Charly Mathez to an unknown recipient. A translation of Mathez's letter states that "I confirm that I saw this Egyptian piece...in an important antiquities dealership in Brussels, Belgium in 1952...I remember this date very well because I often traveled to Belgium on business during this time, and this piece interested one of my clients" (Gay, 2006, p.13). This letter suggests that Mathez was an art dealer who possibly had business interest connections with Phoenix Ancient Art, S.A.

The second letter of known ownership provided by the seller was dated July 2, 1997 from a private Swiss collector, who requested anonymity, to Hicham Aboutaam of Phoenix Ancient Art, S.A. This letter verifies that the mask was in a private Swiss collection since the early 1960s until it was sold it to Hicham Aboutamm in 1997. In this letter the Swiss collector writes that, "this is to certify that I sold you the beautiful Egyptian cartonage mask of a lady...this mask was in my collection since the early 60s...My kind regards and I wish that this Egyptian Lady bring you many luck as she had brought to me" (Saint Louis Art Museum, 1997, p.1). There were no other documents in the open file to verify this ownership history.

Several actions were taken by the museum to validate the 1952 known ownership history provided by the seller *after* the museum purchased the mask. On September 29, 1999 Sidney Goldstein, Associate Director of the Saint Louis Art Museum and Curator of Ancient Art, sent a letter to Charly Mathez in the hope that he could recall the location of the Brussels gallery that he saw the mask in, and if he could provide any additional information. Mathez replied to Goldstein's inquiry with a handwritten letter dated October 5, 1999 that said "it's been a long time," and that he could not recall the name of the Brussels gallery (Saint Louis Art Museum, 1999, p.1). Mathez apologized that he could be of no further assistance.

Mathez's non-participation is significant since the 1952 provenance account of the mask in Brussels was supported by a sole document written by him. The fact that the letter from Mathez was the only document that supported this provenance is evident in a letter dated October 4, 1999 from Goldstein to Peter Lacovara, Curator of Ancient Art at the Michael C. Carlos Museum. Goldstein writes "finally a bit of news on the mummy mask front. It seems to have been seen by a dealer [Charly Mathez] in Europe in 1952. Stay tuned, I'm still trying to track down the exact location since the only comment I have is a note that it was seen in Brussels!" The next day Goldstein received the letter from Mathez that stated he could not recall the name of the Brussels gallery or be of any further assistance.

It is unclear why Goldstein is reporting to Lacovara on October 4, 1999 that he has just learned that the mask was seen in Brussels. He should have had the 1997 letter from Mathez in hand before the museum's purchase of the mask on March 30, 1998. If

Goldstein did not have the letter, then he had no information at the time the museum purchased the mask that it was out of Egypt by 1952. Without additional information to verify that the mask was in Brussels by 1952, the museum is unable to determine when exactly the mask left Egypt. If the mask did not leave Egypt by 1952, when exactly did it leave and did it leave legally?

### **Stolen Art Registries**

In the January 20, 2006 memorandum Benjamin said that the museum “contacted both the Art Loss Register and Interpol before making the purchase to verify that the mask had not been reported as missing, lost or stolen” (p.1). The Art Loss Register (ALR) is a searchable database and spoliation registry that tracks stolen and/or illicitly exported antiquities. The ALR was first established in 1991 and is now the world’s largest private database of lost and stolen art, antiques, and collectables. Its services include item registration, and search and recovery services to collectors, insurers, and worldwide law enforcement agencies. The origin of the ALR was the International Foundation of Art Research, a non-profit organization based in New York (The Art Loss Register, 2007). As a member of The Art Loss Register, the Saint Louis Art Museum has access to an international database of art to see if an item is reported loss or stolen. Since the mask was not reported stolen to The Art Loss Register or Interpol, an international law enforcement agency, the museum proceeded with the sale. In the Saint Louis Art Museum, all information related to spoliation registries, such as the ALR, are kept in an object’s closed file, which is not publicly accessible information.

**Egyptian Museum in Cairo**

Benjamin stated in the January 2006 memorandum that prior to its purchase of the mummy mask the museum contacted Dr. Mohammed Saleh, then director of the Cairo Museum, to ensure the appropriateness of the pending acquisition. An inquiry written by Goldstein was hand-delivered to Saleh “saying that there was an object that had been offered to the museum for acquisition, and did he know any reason why the museum should not do that. We got a written response from Dr. Saleh that raised no concerns about the acquisition” (Brent Benjamin as quoted in Gay, 2006, p. 14). While neither a copy of the letter sent to Saleh nor his written response was found in the open file of the mummy mask, Malcom Gay, a local St. Louis reporter, obtained a copy of the letter written by Goldstein to Saleh during data collection for his 2006 article “Out of Egypt.” An excerpt of the letter published in Gay’s 2006 article states:

...[The Saint Louis Art Museum has] been offered a mummy mask of the 19<sup>th</sup> dynasty and I was wondering if you know of any parallels to this object. I have never seen anything quite like it with a reddish copper-like face probably owing to the oxidation of the gold surface. It is currently on exhibition in the Egyptian exhibition at the Museum of Art and History in Geneva. I would greatly appreciate your thoughts on any parallels you might know of this piece and hope that I might have the opportunity to speak with you in several weeks by telephone about this opportunity (p. 14).

Goldstein sent a photograph and physical description of the mask to Saleh, but he did not mention the excavator by name nor did he refer to the 1951/1952 excavation (Gay, 2006).

**Was the Mask Awarded to the Excavator?**

The 1997 letter from Charly Mathez provided that the mask was in Brussels by 1952. If so, how did the mask get from the excavation site to Brussels? Based on his research conducted *after* the museum purchased the mask, Goldstein concludes “that the object was given to the excavator in 1952 and that he either had permission to take the piece out of Egypt or that he did not need permission since the antiquities laws had not changed at this point” (Saint Louis Art Museum, 2000, p.1). The weight of this account rests on a letter from scholar Peter Lacovara dated December 12, 1999, who contends that Egyptian nationals were allowed to keep a share of their finds. Lacovara writes that:

Egyptian nationals were allowed to keep a share of their finds, much as Europeans were given divisions. That is how the Metropolitan [Museum of Art] got those Middle Kingdom coffins from the Kashaba excavations. A lot of Goneim’s contemporaries did the same. There is material from Zaki Saad’s excavations in the late 40’s and early 50’s now for sale in Texas. Also, Selim Hassan and Ferdinand DeBono also were allowed to keep items and later sold some. I’m sure it would be a simple matter to trace if it weren’t for Goneim’s untimely death (Saint Louis Art Museum).

If Goneim was indeed given the mask then it may have been legally exported out of Egypt by 1952, and then sold to private collectors, and eventually to the Saint Louis Art Museum. In this scenario, unlike most finds from Saqqara, the mask never went to a storage facility in Saqqara, Egypt and then to the Cairo Museum. If however, the mask was sent to the Cairo Museum shortly after its discovery then the mask may have been

stolen and illegally exported from Egypt. The issue of whether or not the mask was awarded to Goneim, a government employee on a government sponsored dig, or taken to a storage facility in Saqqara, or to the Cairo Museum is complicated by the fact that no documents have been produced that state the mummy mask was part of the collection of the Cairo Museum.

In a letter dated December 12, 1999 from Lacovara to Goldstein, Lacovara discusses his recent trip to the Cairo Museum; the catalog numbers of objects from the Saqqara group cluster around 92649- (Saint Louis Art Museum, 1999). Lavovara suggests that since the group is together in the museum “they were put on display right after the excavation by Goneim, and that the mask was never retained by the Museum and probably awarded to the excavator himself. This would also then agree with its appearance on the market soon after” (1999, p. 1). On the contrary, an article found in the museum’s open file of the mummy mask states, that:

According to the Saqqara inspectorate records, which are well documented, the Ke-Nefer-Nefer mask and other objects discovered during Goneim’s excavations were taken to the Egyptian Museum in Tahrir Square for a special exhibition. A trawl through the museum’s documents, however, has produced no evidence that the splendid mask ever entered the Egyptian Museum [in Cairo]. Moreover, it was found that several of the other objects discovered by Goneim that had been sent immediately to the museum were stored unregistered until 1972 (Al-Ahram Weekly, 2006, p. 1).

If the mask was indeed awarded to Goneim, the gap in provenance could be closed with documentation provided by the Egyptian government or by Goneim himself that the mask was given to him, although, no such documentation has been provided to date. Given his death on January 12, 1959, the museum was unable to ask Goneim himself.

To close the gap in provenance as to whether the mask was awarded to Goneim, Goldstein wrote Audrey Davies on May 18, 2000, regarding her late husband, George John Davies, who was a great friend of Goneim. Goldstein states in his letter to Davies that, “following the purchase, I learned that the piece was excavated in Saqqara and was part of a group of objects excavated and published by Dr. Muhammad Goneim in 1951-52” (Saint Louis Art Museum, 2000, p.1). Goldstein asked Davies if she had any recollection of the mummy mask. On Friday May 19, 2000 Audrey Davies replied to Sidney Goldstein’s inquiry with the clarification that her husband was a book man, not an Egyptologist. She expressed a willingness to help with the mummy mask but provided no information about whether or not she had seen it. There was no other correspondence with Davies in the open file of the mummy mask.

The Saint Louis Art Museum concluded that the Ka-Nefer-Nefer mummy mask was given to the excavator in 1952, and that it was not missing, lost, or stolen since it had not been reported as such to The Art Loss Register, Interpol or any Egyptian authorities contacted by the museum. The museum determined that the mask had been legally exported from Egypt since it was in an unknown collection by 1952 and Egypt’s cultural patrimony law did not take effect until 1983. The museum proceeded with the purchase of the mummy mask under the impression that the mask was a legitimate find.

**Egypt's Position of When the Mask Left Egypt**

On February 14, 2006, Dr. Zahi Hawass, Secretary General of Egypt's Supreme Council of Antiquities and Egypt's chief archaeologist, charged that the St. Louis Art Museum's Ka-Nefer-Nefer mummy mask was "clearly stolen" from a storage room in Saqqara, Egypt, near the site where it was excavated in 1952. Hawass gave the museum a May 15, 2006 deadline for the mask's return to the Supreme Council of Antiquities. Hawass dismissed the Saint Louis Art Museum's provenance that the mask was awarded to the excavator, Goneim, upon its discovery in 1951/1952. Hawass clarified in a letter dated March 2, 2006 to the museum that "antiquities have never been awarded to Egyptian excavators, especially not to officials of the antiquities service. There is no way that Goneim would have had the mask legally in his possession" (p.1)

If the mask belonged to the Egyptian state when it left the country, Egypt could make a legal claim to the Ka-Nefer-Nefer mummy mask. Egypt adhered to the 1970 UNESCO Convention with enactment of presidential decree 117 in 1983. Article Six of Egyptian Law number 117 declares all antiquities to be public property and prohibits the trade in antiquities as of 1983. Article Eight of Egyptian Law 117 establishes that possession of antiquities shall be prohibited with the exception of antiquities whose ownership or possession was already established before 1983 or is established pursuant to this law's provisions. In *United States v. Schultz* (2003), Dr. Gaballa, Secretary General of Egypt's Supreme Council of Antiquities, clarified that people who owned antiquities prior to the adoption of Egyptian Law 117 are permitted to continue to possess the antiquities, but they may not transfer, dispose of, or relocate the antiquities without

notifying the Egyptian government. Gaballa explains further that pursuant to Law 117, when the Egyptian government learns that an antiquity has been discovered, agents of the government immediately take possession of the object and give it a number.

Egyptian Law 117 is the principle law that assigns power to the central and public offices concerned with the different cultural heritage categories in Egypt and which belong to a juridical sector of the Supreme Council of Antiquities (SCA). The Egyptian Antiquities Organization established in 1971 was transformed in 1994 into the Supreme Council of Antiquities belonging to the ministry of culture and its president is the minister himself. Dr. Zahi Hawass is currently in position as Egypt's Supreme Council of Antiquities.

Hawass states in his February 14, 2006 letter to Brent Benjamin of the Saint Louis Art Museum, that the mask was excavated at Saqqara by Zakaria Goneim in 1952, and published by him in *The Buried Pyramid* (1956). The mask was stored in the Saqqara magazine, and inventoried in Saqqara Antiquities Register Box #6, with the #6119. In his next letter dated March 2, 2006, Hawass explains that “the box in which the mask was stored was moved to the Cairo Museum in 1959, in preparation for an exhibition in Tokyo. There is no record of this mask or the piece that were with it after this point” (p.1). He states further that, “unfortunately, until recently, it has not been the practice of the SCA to inventory the magazines regularly. Therefore, the piece could have been stolen at any time between 1959 and the 1990s” (see Appendix E for letters).

Hawass determined that the 1952 account of the mask in Brussels is circumstantial and can hardly be considered legal. Since Mathez cannot remember the

name of the gallery, this is a dead end. Hawass concludes in his March 2, 2006 letter that the museum has:

...no solid evidence for the mask's provenance between 1959, when it was taken, most likely temporarily, to the Cairo Museum, and the 1990s, when it appeared in the U.S. Therefore, it could have been stolen from Saqqara anytime between these two dates. Since we know that the magazine in which it was originally stored was robbed in the 1980s, it is our guess that the mask was stolen at that time.

However, I repeat that the central issue is that there are no circumstance under which the mask could have reached your museum legally: whether it was stolen in the 1950s or the 1990s, or any time in between, it was certainly stolen.

You now have a choice to make. This is undoubtedly a stolen object. Buying antiquities in this day and age is a chancy business, as there are many crooks out there; fortunately, it seems that the gallery from which you bought the mask will reimburse you if you choose to return it to Egypt. I realize that you were not the museum's director when it was purchased, but you are a museum professional, and I [am] sure that you are aware that the provenance the museum was given is completely inadequate by any standards. If you are willing to cooperate, and give the mask back without any difficulties, I will be happy to make positive publicity for your museum and thank you publicly. If, however, you force me to take this matter to the authorities, your museum is very likely to be damaged by the negative publicity that will likely be generated. I remain hopeful that we can settle this amicably (p.2).

**The Museum's Response to Egypt's Allegation**

Brent Benjamin, Director of the Saint Louis Art Museum, describes that Hawass' charges "appear to stem from two web sites that made that same claim beginning in 2005 – without any facts to back that claim" (Saint Louis Art Museum, 2006, p. 1). In January 2006, Michael van Rijn, a one-time forger and art smuggler, accused the Saint Louis Art Museum of purchasing an Egyptian mummy mask that was stolen from storage at the pyramid of Saqqara. The accusation was made public and published in the local newspaper, the St. Louis Post Dispatch, along with the museum's response to the accusation who made public its own acts of due diligence (Bonetti, 2006). On January 20, 2006 the Saint Louis Art museum sent a memorandum to commissioners, trustees, and friends of the museum to discuss the press inquiries regarding the provenance of the mummy mask and van Rijn's allegation (see Appendix D).

The Saint Louis Art Museum promptly replied to Hawass' February 14, 2006 allegation saying that the museum takes seriously any suggestion that it illegally or improperly possesses any object in its collection. The museum stated that it has great respect for Egypt's Supreme Council of Antiquities and is prepared to investigate the claim (see Appendix E). To assist in this investigation, the museum asked Hawass to provide the museum with any information that supports his assertion that the mask was stolen. Specifically, the Register Book, a copy of inventory information from the Saqqara magazine, and the date on which the mask was first reported as stolen, along with any related documentation. The museum said it looks forward to reviewing the information that Egypt provides and working with the SCA toward a fair and amicable resolution of

this matter. The museum also sent a copy of its provenance information of the mask with its response to Hawass' February 14, 2006 letter.

In return, the museum received a copy of the page in question from the Saqqara Antiquities Register Book #6 in a letter from Hawass dated March 2, 2006. The museum requested more information about the precise nature of the document itself. In addition, the museum asked for information about the box in which the mask was stored and its move to the Cairo Museum in 1959 in preparation for an exhibition in Tokyo, as well as the robbery of the Saqqara magazine in the 1980s. The museum expressed its need to understand accurately and in detail Egypt's complete documentation of the mask, so that the museum can appropriately evaluate Egypt's request that the museum return the mask, and the Hawass' patience will be critical to developing an amicable and mutually agreed resolution of this matter. The museum believes it has been responsive to Hawass' request for information and that it has shared all of their findings with him. While Hawass has sent some materials to the Museum, none of them verify his claim.

Through the media, Hawass gave the Museum a May 15, 2006 deadline to return the mask to Egypt. The Saint Louis Art Museum reacted to the ongoing allegations by defending its right to ownership of the 3,200-year-old Egyptian mask. In a news release dated May 12, 2006 titled "Saint Louis Art Museum Calls on Egyptian Official to Disclose Documents Supporting Mummy Mask Allegations" Benjamin asks Hawass to provide conclusive documentation to show that the mummy mask was stolen from Egypt or cease his attacks on the museum (see Appendix F for news release). The May 15, 2006 deadline passed without the museum returning the mask. Egypt's charge that the Saint

Louis Art Museum's Ka-Nefer-Nefer mummy mask was stolen from a storage facility in Saqqara, Egypt was not reported in the initial documentation reviewed by the museum. If the mask was indeed stolen, the museum has expressed a willingness to reconsider who owns the mask.

### **Conclusion**

At issue in the case involving the Saint Louis Art Museum and Egypt's claim to ownership of the mummy mask is whether the Ka-Nefer-Nefer mummy mask was legally acquired and exported from Egypt. The burden of proof is on the Egyptian government to prove more likely than not that the mask was stolen from Egypt. If the mask legally left Egypt before the effective date of Egypt's patrimony law of 1983, then the museum could acquire good title. Then again, if the mask was Egypt's property and stolen from a warehouse and exported after the patrimony law was in effect, then the dispute is just a stolen goods case.

As the Saint Louis Art Museum responds to Egypt's claim to ownership of the mask, the museum must consider different versions of the object's provenance. Egypt's provenance of the mummy mask places the object out of Egypt up to forty years later than the museum's provenance account. The weight of each account rests in verification of known ownership history through provenance research. While provenance research is intended to establish an unbroken chain of documented ownership from the moment of an object's creation to the present, an unbroken chain of documented ownership is the exception rather than the rule (Yeide, Akinsha & Walsch, 2001).

The Saint Louis Art Museum purchased the mummy mask under the museum's 1997 Museum Acquisition Guidelines, which did not require the same level of rigor of due diligence inquiry as expected under the 2007 Collections Management Policy. Under the 2007 policy, museum staff are expected to "take all reasonable precautions, which it will document, to assure itself that any object it acquires has not been appropriate (without subsequent restitution), exported from its country or origin, or imported in the United States in violation of laws which are applicable to and binding upon the Museum" (p. 5). This protocol stems from the recommendations of museum professional advisory associations, such as the AAMD and the ICOM, who promote awareness that collectors/museums should not purchase objects that have been stolen and/or illicitly exported or that lack a clear history of ownership.

A museum's collections management policy serves as a *modus operandi* by dictating certain guiding principles and ethical obligations to members of the institution. In the case of the Saint Louis Art Museum, the Board of Commissioners of the museum has oversight in collection matters holding the fiduciary responsibility for the care, acquisition, deaccession, and loan of works of art in the museum's collection. The governance and oversight responsibilities of the Board of Commissioners in such matters are delegated to the Collections Committee subject to the provisions of the Collections Management Policy. The Collections Management Policy of the Saint Louis Art Museum codifies long-standing institutional practices and professional standards in collection-related areas. The April 11, 2005 Collections Management Policy as revised on April 25, 2007 supercedes and replaces the Museum's Acquisitions Guidelines of February 1997.

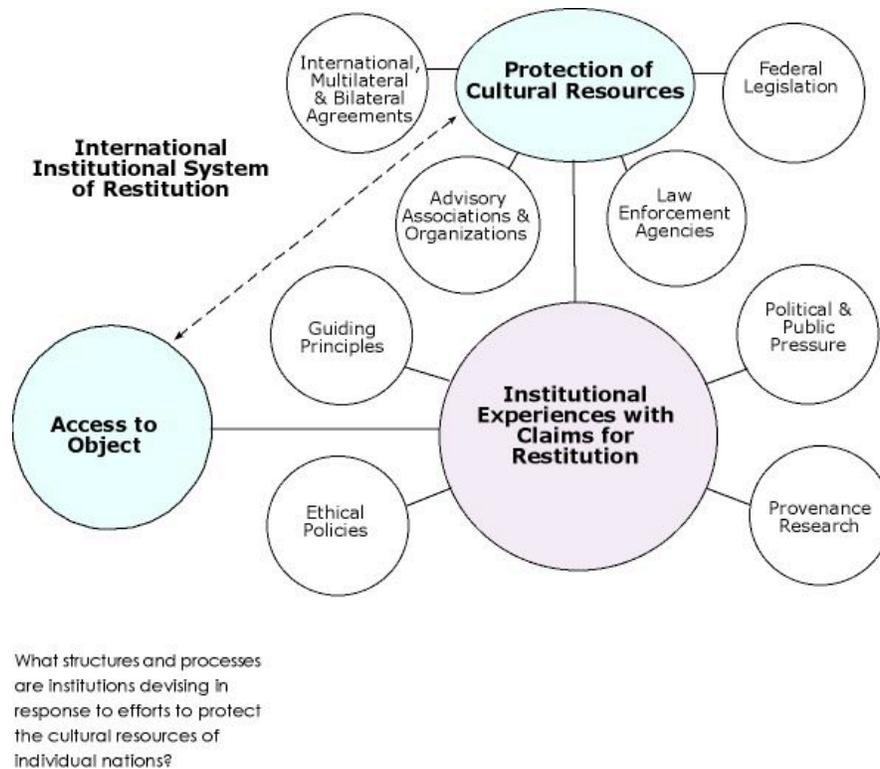


Figure 6: In 2006, the Egyptian government alleged that the Saint Louis Art Museum's Ka-Nefer-Nefer mummy mask was legally the property of Egypt's Supreme Council of Antiquities. The museum responded to Egypt's charge by sharing its information regarding the mask's provenance and asking the Egyptian government to provide any information that supports their assertion that the mask was stolen.

Factors for a museum to consider when involved in a cultural property ownership dispute include a museum's guiding principles, ethical policies, and provenance research (see Figure 6). Additionally, a museum must consider the weight of the political and public pressure espoused by the claimant. Through the media, Zahi Hawass gave the Saint Louis Art Museum a May 15, 2006 deadline to return the mask to Egypt. Hawass has used the media on local, national, and international levels to threaten the Saint Louis

Art Museum as well as other museums worldwide who allegedly have stolen Egyptian antiquities in their collection (see Hochfield, 2006).

Maintaining donor relations as opposed to alienating donors during the resolution process is of utmost importance. The Saint Louis Art Museum is morally responsible to the public, particularly the individuals who provided funds for the museum's purchase of the mask and the City of Saint Louis who has provided financial support to the museum. The court of public opinion is an additional dynamic the museum must consider as it evaluates Egypt's claim to ownership. In recent years, public opinion has shifted in favor of the return of objects to their rightful owner, as evident in cases involving objects removed during the Nazi-Era.

**CHAPTER FOUR: STRUCTURES CONCERNED WITH  
RESOLUTION**

This chapter examines structures and methods concerned with resolution of cultural property ownership disputes (see Figure 7) as they relate to resolution of the dispute involving the Saint Louis Art Museum and the Egyptian government, and ownership of the 3,200 year-old Ka-Nefer-Nefer mummy mask. Campaigns to recover looted artifacts are almost never won without substantial struggle: restitution movements generally meet sharp resistance (Cohan, 2004). A rare example of a relatively trouble-free restitution occurred in 2003 when the Michael Carlos Museum at Emory University in Atlanta, Georgia returned a mummy believed to be Ramses I that was looted from a tomb and smuggled out of Egypt by a Canadian doctor nearly 150 years ago. Zahi Hawass, Egypt's Supreme Council of Antiquities said that the return was a great, civilized gesture by the Emory museum (Cohan, 2004).

The UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation is a mediating body of advisory nature that seeks to facilitate bilateral negotiations for the restitution of cultural material to its country of origin. The UNESCO Intergovernmental Committee plays a role in cultural property ownership disputes between Member States. A Member State or Associate Member of UNESCO can request the international transfer of any cultural property that has a fundamental significance to the spiritual values and cultural heritage of the people of a Member State or Associate Member of UNESCO, and that has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation.

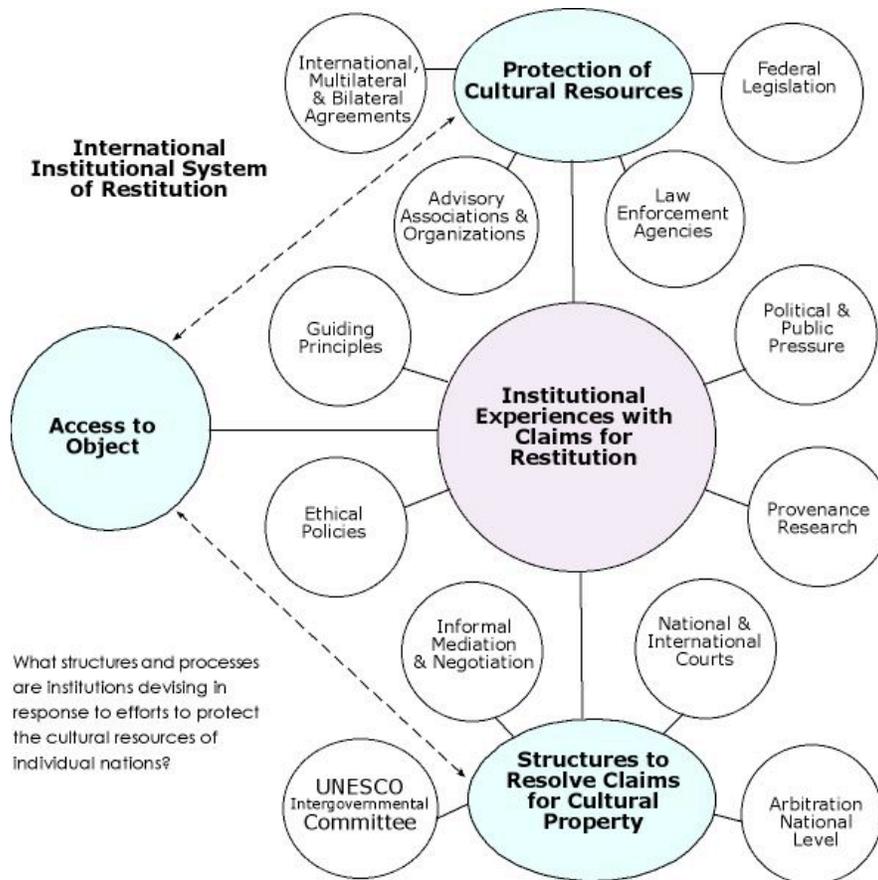


Figure 7: Much reliance is placed on individual institutions to determine the appropriate course of action when presented with a claim for restitution of an object in the museum's collection. A growing number of advisory associations and organizations have undertaken initiatives to address the issue of resolution of cultural property disputes.

Recently, nongovernmental organizations like the International Council of Museums and the International Law Association have concerned themselves with the question of the return of cultural property. In 2006, the International Council of Museums adopted the position to promote the principle of mediation to resolve disputes. That same year the International Law Association drafted *Principles for Cooperation in the Mutual*

*Protection and Transfer of Cultural Material*, which recognize the need to develop a more collaborative framework for avoiding and settling disputes that concern cultural material. These principles build on the negotiated agreement reached in 2006 between the Metropolitan Museum of Art and the Italian government involving, most notably, the Euphronios krater (Paterson, 2006).

Alternatives to litigation such as long-term loans, exchanges, and duplications are thought to be more cost-saving and flexible than resolution through the court systems. Negative outcomes of efforts to recover various objects through foreign courts may be a result of the complex issue of conflicts of laws and enforcement of foreign penal statutes. The following section examines how these structures and methods concerned with resolution of cultural property ownership disputes apply to the case involving Egypt's claim to ownership of the Ka-Nefer-Nefer mummy mask.

### **National & International Courts: 1995 UNIDROIT Convention**

In the case of the Saint Louis Art Museum and Egypt, the merit of Hawass' claim is in question. The museum is awaiting proof from the Egyptian government that the mask was stolen from a storage facility in Saqqara. If this dispute enters the courts system, the museum would have a good chance of winning the case unless Hawass produces the documentation that he claims to have that proves the mask was stolen. In this event, the museum would likely lose the case. In the United States, to prevail in a civil claim for repatriation of cultural property, the plaintiff must prove that the object in question was removed from the claiming country at a time when a cultural property law

was in effect that clearly vested ownership of the object in the government. Only if this test is met does the court consider whether it should enforce the foreign claim. No plaintiff to date has satisfied this initial burden.

Requests for the international transfer of cultural material encounter a dysfunctional legal pluralism in which there are fundamental differences between Civil and Common Law systems (Phelan, 2004). Although it has not been widely adopted, this issue has been addressed through an international convention devised by the International Institute for the Unification of Private Law (UNIDROIT). The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects establishes common legal rules for the restitution or return of cultural objects to their countries of origin. The UNIDROIT Convention provides that an owner must pay compensation to a good faith purchaser who returns stolen cultural objects and establishes a period of time after which any ownership rights to an object cease to exist. The limitation period of recovery under UNIDROIT is three years from the time one knows the location of the stolen property and the identity of possessor, and in any case, fifty years from the time of the theft.

In the dispute involving the Saint Louis Art Museum and Egypt's 2006 claim to ownership of the Ka-Nefer-Nefer mummy mask, the issue is when to run the fifty-year period for recovery. The museum would claim the mask was awarded to the excavator in 1951/1952 and that the fifty-year period for recovery under UNIDROIT has expired since Egypt did not seek recovery of the mask until 2006. The Egyptian government would claim that the theft occurred in the 1970s when the mask was stolen from a storage facility in Saqqara and that the fifty-year period for recovery has not expired. If so, Egypt

would have to compensate the Saint Louis Art Museum for the return of the Ka-Nefer-Nefer mummy mask. Under UNIDROIT, the country of origin has to compensate a good faith purchaser who returns stolen cultural objects. However, the museum purchased the mask for a half million dollars, and most countries are too poor to pay such costs.

Difficulties with recovery of stolen cultural property under UNIDROIT are the statute of limitations and compensation to a good faith purchaser. While the idea of limitations improves transparency in the art trade, there are practical problems with the overall rule of fifty years: police records are unlikely to exist, dealers and auctioneers such as those in the United Kingdom may not keep records further back than six years, and records disintegrate. This just means the owner has a much tougher time in proving their case. Despite its limitations, the 1995 UNIDROIT Convention is the result of negotiation, drafted by experts for over 12 years to deal with the peculiarities of the art market (O'Keefe, 2006).

While UNIDROIT seeks to establish international norms for conduct in the international art market, many nations refuse to endorse such broad based agreements because they require enforcement of foreign cultural patrimony laws (Lerner & Bresler, 2005). Only eleven UNESCO Member states have ratified the UNIDROIT Convention: the United States has not signed or ratified the Convention. Recovery of stolen cultural property through the legal system is a doubtful solution in the future, besides UNIDROIT nothing else is on the horizon. This leaves alternative dispute resolution as the only option for recovery of stolen cultural property.

**UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation**

A Committee of experts met in 1976 under the auspices of UNESCO to study the question of the return of cultural property. Following these discussions, the experts invited the Director-General of UNESCO to establish an international body to research ways to facilitate bilateral negotiations for the return of cultural property to its country of origin, and to encourage the countries concerned to reach bilateral agreements to this effect. The UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation was formed as a permanent intergovernmental body during the 20<sup>th</sup> session of the UNESCO General Conference in 1978 (UNESCO, 2001). As of October 21, 2005 the Committee is comprised of elected representatives from 22 Member States; Angola, Azerbaijan, Bolivia, Canada, China, Colombia, Democratic People's Republic of China, Egypt, Eritrea, Greece, Guatemala, Hungary, India, Iran (Islamic Republic of), Iraq, Lithuania, Mali, Mexico, Republic of Korea, Switzerland, Uganda, and United Republic of Tanzania. The UNESCO Intergovernmental Committee's mandate is to serve in an advisory capacity within a framework for discussion and negotiation in bilateral negotiations relating to the restitution of cultural material. The Committee is not empowered to act as a jurisdiction: it makes no ownership decisions.

In order for the dispute involving the Saint Louis Art Museum and the Egyptian government to be brought before the UNESCO Intergovernmental Committee, direct bilateral negotiations between the United States and Egypt must have already been

sought, but have reached an impasse. Egypt could then request the international transfer of the Ka-Nefer-Nefer mummy mask from the United States on the basis that the mask has a fundamental significance to the spiritual values and cultural heritage of the people of Egypt and has been lost as a result of illicit appropriation. Both the United States and Egypt would have to agree for the matter to be brought to the Committee, and complete an information form detailing the matter and their positions.

The information form concerning requests for return or restitution was established by the Intergovernmental Committee in 1986 as a mechanism for it to promote bilateral negotiations concerning the restitution of cultural property. It is intended to serve as a comprehensive yet flexible framework, which allows Member States to provide information as completely as possible. The requesting country uses the form to submit its request to the Secretariat of the Committee, who then transmits the document to the holding country concerned. The holding country uses the form to provide its reply to the request and then returns the form to the Secretariat of the Committee within a period of one year from the date of receipt.

The form collects information on: the current location of the object; ownership history; date of acquisition; mode of acquisition; legal status; state of conservation; bibliographic references; circumstances in which the object left its country or origin, e.g. trade, illicit appropriation, colonial or foreign occupation, exchange, gift, loan for repair and/or reproduction, temporary export license for scientific purposes including conservation or exhibition. The form also gathers information on the particular significance of the object for both the requesting country and the holding country, and

details of similar objects known to exist in its country or origin or elsewhere. Full references to the relevant articles of national legislation or regulation concerning illicit traffic is requested, both with respect to export of cultural property and its import from other countries as well as the previous negotiations carried out so far and what progress has been achieved (UNESCO, 1986).

Three requests for the international transfer of cultural property have been brought before the UNESCO Intergovernmental Committee: Greece's request for the return of the Parthenon marbles from the United Kingdom brought before the Committee in 1984; Turkey's request for the return of the Sphinx of Bogazköy from Germany brought before the Committee in 1987; and the United Republic of Tanzania's request for the return of the Makonde Mask brought before the Committee in 2007. Each of these requests remain pending before the Committee, and have been the subject of a recommendation presented jointly by the parties concerned, namely: Greece and the United Kingdom of Great Britain; Northern Ireland, Turkey and Germany; United Republic of Tanzania and Switzerland.

In the case of the Parthenon Sculptures and the Greek governments' campaign to recover its dispersed national treasures from the British Museum, the British Ministry of Culture maintains its position of rightful ownership of the sculptures based on their removal from the Parthenon during a time when Greece still belonged to the Turkish Ottoman empire. On May 4, 2007 Hellenic and British Ministries of Culture met together with observers from UNESCO and the British Museum to develop a solid and cordial basis for discussions. The discussion facilitated between the parties by the Director-

General has led to the development of valuable relationships with the aim of reaching a mutually acceptable solution towards the effective resolution of the dispute involving the Parthenon Marbles (UNESCO, 2007).

On the issue of Turkey's request for the return of the Sphinx of Bogazköy from Germany, the last bilateral negotiation took place on November 19, 2002 in Berlin, without reaching a solution. While the dispute over the Sphinx remains unresolved, 7,400 cuneiform tablets that were part of the original request of Turkey in 1987 were returned (UNESCO, 2007). Information to report on the third case before the Committee, the United Republic of Tanzania's request for the return of the Makonde Mask, is minimal since the case has just been brought before the Committee.

For over twenty years Greece's request for the return of the Parthenon marbles and Turkey's request for the return of the Sphinx of Bogazköy have remained before the Committee. Recognizing limitations of the Committee's mandate in dispute resolution, an agreement was reached during its thirteenth session meeting in 2005 to allow the UNESCO Intergovernmental Committee's mandate to expand to include mediation and conciliation. Unlike arbitration and judicial ruling, mediation and conciliation are not binding. The addition of mediation and conciliation of disputes to the Committee's mandate allows the Committee to serve in an advisory capacity within a framework for discussion and negotiation in bilateral negotiations relating to the restitution of cultural material. Kathryn Zedde, Chair of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, explains the difference between the Intergovernmental

Committee's capacity before and after the addition of mediation and conciliation to the Committee's mandate. Zedde gives the following explanation (personal communication, January 25, 2007):

Until recently the Statutes of the Committee were interpreted as allowing for direct participation in bilateral disputes through the provision of what, in UNESCO terms, is referred to as "good offices". This refers to a fairly passive role wherein the Committee and the relevant supporting Secretariat staff organize meetings, or attempt to organize meetings, between the relevant Member States, and in some cases, to participate in those meetings to assist in encouraging progress in negotiations.

At the 33<sup>rd</sup> General Conference of UNESCO, the Statutes of the Committee were amended to allow for mediation and conciliation of disputes, which would constitute a more active role than that of "good offices", but both parties would still have to agree to such mediation or conciliation procedures. The recommendation from the Committee that led to the General Conference decision also outlined some broad parameters for this new aspect of the Committee's efforts...we have yet to see how this new process will evolve.

In order for mediation or conciliation to occur, the parties to the dispute must agree to participate and share related costs. The person(s) to perform as mediator(s) or conciliator(s) is (are) to be selected by the parties concerned. Terms of settlement recommended by the third party are not obligatory for the parties concerned: they may reject them, and they have recourse to other dispute settlements mechanisms.

## **Arbitration**

For decades, arbitration has been the preferred method for settling international disputes. This is, in part, to avoid problems that can arise when dealing with foreign legal systems. The idea to use arbitration to resolve cultural property disputes was discussed during the third session of the UNESCO Intergovernmental Committee meeting held in Turkey in 1983. The Chairman suggested that if no resolution had been reached after one year of review then the Committee could perhaps arbitrate. This statement met controversy among Member States, with several declaring that “bilateral negotiations should be respected absolutely and that the role of the Committee was one of mediation, not arbitration” (Skrydstrup, 2004).

In his 2003 book *Arbitration Advocacy*, John W. Cooley, a former United States magistrate and founding member of Judicial Dispute Resolution in Chicago, IL, describes how in arbitration, the parties relinquish their decision-making right to a disinterested third party neutral who makes a decision for them. By preagreement, the neutral’s decision is either binding or nonbinding. In binding arbitration the decision is judicially enforceable. In nonbinding arbitration either party can reject the award, in which case the parties proceed to a trial *de novo* in court (Cooley, 2003).

If the Saint Louis Art Museum sought out arbitration to resolve the case involving ownership of the Ka-Nefer-Nefer mummy mask, the museum would first have to convince Egypt that resolution of the case through arbitration is reasonable. If agreed upon, the parties must cooperate in designing and preparing an arbitration process. The appropriate type of neutral would then be selected. Currently, many sole practitioners and

law firms offer alternative dispute resolution services in addition to nonprofit and for-profit organizations in the United States. Cooley (2003) notes that, “whether an arbitrator is selected or appointed by a party, an organization, the court, or other arbitrators, the most important attribute for an arbitrator to possess is impartiality” (p. 38).

The Permanent Court of Arbitration (PCA) in the Netherlands, for instance, is situated between public and private international law, and the rapidly evolving dispute resolution needs of the international community. The PCA administers arbitration, conciliation and fact finding in disputes involving various combinations of states, private parties, and intergovernmental organizations. If arbitration is administered through the Permanent Court of Arbitration or another institution, the dispute resolution organization may schedule an administrative conference to coordinate the exchange of information. If non-administered, the parties must decide how they will divide the administrative functions. All parties to the dispute must sign the submission, which normally includes, at minimum: the arbitrator(s) name, method of appointment and authority; the procedure to be used at the hearing; a statement of the matter in dispute; the amount of money in controversy; and the remedy sought (Cooley, 2003). The arbitration process follows with prehearing conferences, hearing, decision-making, and award.

On the face of it, arbitration combines the major advantages and the guarantees of existing dispute resolution mechanisms, these are privacy and confidentiality. While privacy is widely acknowledged in various international arbitration rules and in national legal systems, confidentiality is hardly reflected in the texts. The major limits of arbitration in relation to cultural property disputes appertain essentially “to the

*confidentiality and flexibility* of arbitration proceedings, and the consequent lack of *precedential effect* of the award” (Gazzini, 2004, p. 121).

### **Mediation & Negotiation**

Rather than seeking resolution of a cultural property dispute through the courts system like ordinary property disputes, a different approach is unfolding. An increasing number of American museums have entered into negotiated agreements to avoid endless legal battles over antiquity ownership. Recent agreements reached between major museums in the United States and the Italian Culture Ministry and Hellenic Ministry of Culture “are creating an emerging protocol on how museums and countries of the object’s origin can resolve the age-old question of who owns the treasures of antiquity – the finders or the country where the objects were found?” (Gertner, 2006, p. 1). However, coming to an agreement is never easy – and, at times, impossible.

In February 2006, in a joint news conference in Rome, the Metropolitan Museum of Art and the Italian government signed a watershed accord (see Appendix G for agreement) in which the museum agreed to return twenty-one objects to Italy, including the prized Euphronios krater and a set of Hellenistic silver. In exchange, the Italian government agreed to loan to the museum objects of equivalent beauty and artistic or historical significance. In September 26, 2007 the J. Paul Getty Museum signed a similar agreement with the Italian government to return forty antiquities. Yale University has recently agreed to return material from Machu Picchu to Peru as part of establishment of an ongoing partnership. These agreements will see increased circulation of significant

items in exchange for the return of disputed ones (Kathryn Zedde, personal communication, October 22, 2007).

Under the terms of the 2006 agreement negotiated between the Metropolitan Museum of Art and the Italian Culture Ministry, the museum immediately returned four objects to Italy that were all cited as evidence in the Italian prosecution of Giacomo Medici, an Italian antiquities dealer who was found guilty in late 2004 of trafficking looted antiquities. Court documents also cite Medici as a party in the sale of the Euphronios krater, which the Metropolitan Museum of Art bought from the American dealer Robert Hecht, who remains on trail in Rome along with Marion True, former antiquities curator of the J. Paul Getty Museum. The Euphronios krater will be returned to Italy by January 15, 2008. In exchange, Italy agreed to loan a first quality Laconian artifact to the museum for a renewable four-year period. The museum also agreed to transfer the title of a set of sixteen silver pieces dating from the third century B.C. that experts claim were illegally exported from Morgantina, an ancient site in central Sicily. The other pieces will remain on loan to the museum until January 15, 2010, when they are to be replaced by loans of antiquities of equal value and importance (see Appendix G for terms of agreement).

On numerous occasions the Metropolitan Museum of Art, the Ministry for Cultural Heritage and Activities of the Italian Republic, and the Commission for Cultural and Environmental Heritage and Public Education in the Sicilian Region convened to negotiate the terms of the agreement. The museum's Board of Trustees and the Italian government had to approve the final agreement. The accord, being the first of its kind

between Italy and a foreign museum is being hailed as a model for settling antiquities disputes involving other Western arts institutions.

If the Saint Louis Art Museum enters into a negotiated agreement that is similar to the one devised by the Metropolitan Museum of Art and Italy, a win-win solution could be reached that recognizes the values placed on the mummy mask by both parties involved and the legal frameworks that have influence over the case. A long-term arrangement could provide for the return of the mummy mask to Egypt at a certain point in time, and in exchange, long-term loans of objects of equivalent historical and aesthetic significance that can be displayed as a legacy of artist achievement for the people of St. Louis and the world. However, an important point to remember with such long-term agreements is that future generations of museums leaders and foreign government officials will be responsible for following the terms of such accords.

The International Council of Museums and the International Law Association have recently undertaken initiatives to support alternatives to litigation as the preferred choice for resolution of cultural property ownership disputes. In 2006, recognizing that no legal regime exists to address adequately the issues relating to the restitution of stolen and/or illicitly exported cultural property, the International Council of Museums adopted the position of promoting the use of mediation to resolve disputes in the belief that “mediation can build new bridges between potential partners adrift and create a new relationship between former adversaries” (Murphy, 2006).

The International Law Association’s 2006 *Draft Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material* promote the use of alternatives to

litigation to resolve ownership dispute. The 2006 principles provide minimal standards for requests involving the international transfer of cultural material. Accordingly, the requesting party should make its request in writing for the transfer of cultural material and include reasons that substantiate the request. The recipient of the request, such as a state, museum or other institution, should respond in good faith in a timely manner with a timeframe for resolution. If, after four years from the date of the request, agreement is not reached, both parties should submit the dispute to good offices, consultation, mediation, conciliation, *ad hoc* arbitration, or institutional arbitration (International Law Association, 2007).

**CHAPTER FIVE: FINDINGS AND  
RECOMMENDATIONS**

The purpose of this investigation was to explore the existing international framework involved in international restitution processes (see Figure 1 on page 5 for framework). A review of literature was conducted on laws and regulations concerned with protection of cultural resources from the effects of the illicit trade. The literature suggests that the value of preservation of national patrimony is one of the most pervasive themes in debates surrounding the international art trade. This value is evident in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which is the keystone of a network of national and international attempts to deal with the illicit trade. The Cultural Property Implementation Act (1983), the United States implementing legislation for the 1970 UNESCO Convention, provides a mechanism for foreign nations to request U.S. import restrictions on certain categories of cultural objects vulnerable to pillage and preserves the U.S. governments' ability to limit restrictions through expert review.

The main question that guided this research project was: what structures and processes are institutions devising in response to efforts to protect the cultural resources of individual nations? Data was collected through a case study analysis of the Saint Louis Art Museum's experience with Egypt's claim to ownership of the Ka-Nefer-Nefer mummy mask, which was purchased by the museum in 1998. Based on a review of the museum's acquisition guidelines from 1997 to 2007, I find that the museum has gradually adopted more stringent policies to prevent the acquisition of stolen and/or illicitly exported objects. In 2007, the protocol was added to the museum's Collections Management Policy that the museum should not acquire any ancient work of art or

archaeological material that was removed from its country of origin after November 1970 regardless of any applicable statutes of limitations and notwithstanding the fact that the U.S. did not accede to the 1970 UNESCO Convention until 1983. I find that other American museums have adopted similar protocols out of a sense of new ethical standards.

Using the data collected from the open file of the mummy mask at the Saint Louis Art Museum, I examined the due diligence inquiry conducted by the museum prior to its purchase of the mummy mask. I find that minimal efforts were taken by the museum to establish the facts of the case, particularly in identifying the source and history of the object. However, the museum satisfied its own standard of due diligence at the time the museum purchased the mask. While I criticize the museum's effort of due diligence inquiry, I find that there is no agreed upon standard as to how much due diligence inquiry is enough.

This study examined the problem of resolving cultural property ownership disputes involving American museums and foreign government authorities. A disconnect exists in research and understanding as to how institutions determine the rightful owner of an object in question when there is no governing body with ultimate international jurisdiction to resolve disputes. To address this problem, I examined the experience of the Saint Louis Art Museum with Egypt's 2006 claim to ownership of the Ka-Nefer-Nefer mummy mask. The Saint Louis Art Museum has expressed a willingness to reconsider who owns the mask if Egypt provides appropriate documentation to support its claim.

Intergovernmental and nongovernmental organizations on international, national, and regional levels have concerned themselves with the question of the return of cultural property. Recent initiatives of UNESCO, the International Council of Museums, the International Law Association, and the International Institute for the Unification of Private Law (UNIDROIT) were examined in this research as they relate to resolution of the case involving the Saint Louis Art Museum and Egypt over ownership of the mummy mask. Of those organizations examined in this investigation, each has adopted the position that traditional legal norms are often incapable of addressing the special problems of cultural property disputes. I find a need exists for a more collaborative framework for avoiding and settling disputes that concern cultural material.

This chapter examines the three main findings from this research: (1) a growing consensus that museums should not acquire any work of art or archaeological material that was removed from its country of origin after November 1970; (2) no agreed upon standard as to how much due diligence inquiry is enough; (3) the need for a more collaborative framework for avoiding and settling disputes that concern cultural material. This investigation concludes with a discussion of the main recommendation gathered from this investigation: agreement as to what is standard practice in the art trade for due diligence inquiry.

### **Finding One: Growing Consensus That Museums Should Not Acquire Any Object Found After 1970**

The literature suggests that there is a growing consensus museums should not acquire any work of art or archaeological material that was removed from its country of

origin after November 1970. This date signifies the adoption of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property by an international community concerned with the effects of the illicit trade. The 1970 UNESCO Convention establishes principles for the control of trade in archaeological and ethnological materials that is in jeopardy from pillage. Signatories to the 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” (Article Nine).

The United States implementing legislation for the 1970 UNESCO Convention, the Cultural Property Implementation Act (1983) passed in December 1982, did not include any provision dealing with the acquisition policies of museums, but the legislative history cites voluntary compliance by the museum profession (Brodie, 2005). Out of a sense of new ethical standards, American museums do not want to acquire an object that is likely subject to claims. Museums such as the Saint Louis Art Museum and the Metropolitan Museum of Art have recently imposed on themselves standards to not acquire any object that cannot be shown to have been out of its country for at least ten years or those that have been found after November 1970. Phillippe de Montebello, Director of the Metropolitan Museum of Art, recently told reporter Richard Lacayo of TIME magazine that these new ethical standards have “been very effective on one level – if you take pleasure in the fact the antiquities are practically no longer entering American collections” (2007, p.1).

The leading nongovernmental organization of museums – the International Council of Museums (ICOM) – has issued guidelines that support these ethical standards. Section 7.1 of the ICOM’s 2004 *Code of Ethics for Museums* states that “museums should conform to all national and local laws and respect the legislation of other states as they affect their operation.” While the ICOM standards lack legal compulsion they do operate as a kind of “soft law” whose persuasive qualities are enhanced by the status of ICOM itself (Patterson, 2005). Similarly, the Association of Art Museum Directors state in their 2001 *Professional Practices in Art Museums* that a “museum director should not knowingly acquire or allow to be recommended for acquisition any object that has been stolen, removed in contravention of treaties or international conventions to which the United States is a signatory, or illegally imported in the United States” (p. 21).

In April 2007, the Saint Louis Art Museum added the protocol to its Collections Management Policy that the museum should not acquire any ancient work of art or archaeological material that was removed from its country of origin after November 1970 regardless of any applicable statutes of limitations and notwithstanding the fact that the U.S. did not accede to the Convention until 1983. The Saint Louis Art Museum now requires vendors to provide a written warranty that the work(s) they sell to the museum are authentic, free of all liens and encumbrances, exported from their country of origin legally, imported into the United States legally, that they are the owners of the work(s) of art, and have the authority to make the sale, transferring full legal and equitable title to such work(s) of art to the museum (Saint Louis Art Museum, 2007).

While this research only reviewed the policies of one institution, the Saint Louis Art Museum, I find that other American museums have adopted similar protocols since museum professional advisory associations such as the International Council of Museums and the Association of Art Museum Directors stress that member institutions should not acquire any object that lacks a clear history of ownership. As early as April 1970, the Museum of the University of Pennsylvania announced that it would no longer acquire an antiquity without convincing documentation of ownership history. The Harvard University museums followed suit in 1971 and the Chicago Field Museum of Natural History in 1972 (Brodie, et. al, 2000). More recently, the Metropolitan Museum of Art added the protocol to its 2004 policy that the museum will not acquire any object that cannot be shown to have been out of its country of origin for at least ten years.

However, these efforts still leave unresolved the issue of objects in museums collections that were acquired before such policies existed. In the case of the Ka-Nefer-Nefer mummy mask, the Saint Louis Art Museum acquired the object in 1998 under the museum's 1997 acquisition guidelines, which did not include these standards. Even so, the museum was under the impression that that mummy mask had been legally removed from Egypt before 1970 because the known provenance supplied by the seller, Phoenix Ancient Art, S.A., placed the mask in Brussels, Belgium in 1952. However, Egypt claims that the mask was stolen from a storage facility in Saqqara, Egypt sometime during the late 1950s and the early 1990s. The question remains as to when the mask left Egypt - before or after 1970 - and did it leave legally.

Since acquiring the mummy mask, the Saint Louis Art Museum has voluntarily chosen to not collect any ancient work of art or archaeological material that was removed from its country of origin after November 1970. I find that this is in direct response to the development of U.S. laws and regulations concerned with protecting national property interests from the effects of the illicit trade through trade restrictions on certain categories of objects. United States import bans have deterred the powerful position of American museums to acquire objects from around the world that were removed in violation of foreign property laws or before foreign governments had a way or economic interest to prevent or contest their removal.

**Finding Two: No Agreed Upon Standard for How Museum Due Diligence is Enough**

An important function of today's museums is due diligence inquiry, which entails asking for provenance records and clearance about an object's legal status prior to acquisition. The Saint Louis Art Museum's ex-collection provenance report of the Ka-Nefer-Nefer mummy mask reveals an incomplete ownership history from the time of the mask's excavation in 1951/1952 until its purchase by the museum in 1998. Presumably, the Collections Committee of the Saint Louis Art Museum would not have approved the purchase of the mummy mask if the 2007 Collections Management Policy had been applicable at the time of purchase rather than the less stringent 1997 Museum Acquisition Guidelines, which did not require museum staff take all reasonable precautions, which it will document, to assure itself that any object it acquires has not been illicitly obtained.

First, a lack of clarity exists as to when the mask left Egypt. The Saint Louis Art

Museum claims that the mask was awarded to the excavator, Mohammed Goneim, upon its discovery, and was in a dealer's collection in Brussels, Belgium by 1952. Meanwhile, the Egyptian government alleges that the mummy mask was stolen from a storage facility in Saqqara, Egypt sometime between 1959 and the early 1990s. Malcom Gay (2006), the local reporter for *The Riverfront Times*, observed that "the archaeologist's own writings indicate that he did not own the mask: In the acknowledgements section of [his 1956 book] *The Buried Pyramid*, the author thanks the Department of Antiquities of the Egyptian Governments, Cairo, for permission to reproduce two photographs of the mask" (p. 14). This is compelling evidence that the mask was not awarded to Goneim, why else did Goneim have to ask permission? A reasonable inference from this acknowledgement is that the mask was in the possession of Egypt at the time the book was written.

The second reason relates to the level of rigor of due diligence inquiry conducted by the museum prior to its purchase of the mask. The museum claims to have made extensive inquiries into the history of ownership of the mask: it verified the provenance supplied by the dealer; the museum contacted the Art Loss Register and Interpol as well as Mohammed Saleh, then the director of the Egyptian Museum in Cairo, who raised no concerns about the appropriateness of the museum's pending acquisition (Saint Louis Art Museum, 2006). However, this level of due diligence inquiry conducted by the museum could hardly be considered rigorous. The museum did not take "all reasonable precautions, which it will document, to assure itself that any object it acquires has not been appropriate (without subsequent restitution), exported from its country or origin, or imported in the United States in violation of laws which are applicable to and binding

upon the Museum...” as specified in the museum’s 2007 Collections Management Policy (p. 5). Why else would the museum take so many actions to verify the provenance after the purchase of the mask?

Reporter Malcom Gay took action to verify the known ownership history of the mask during data collection for his 2006 article “Out of Egypt.” Once the name of the private Swiss collector, Zuzi Jelinek, was leaked to the press, Gay arranged for a search of the collector’s name in an 18,000-name database of museums, collectors, and dealers. The result came up negative. During a search through Swiss telephone listings, Gay found a Suzana Jelinek-Ronkuline whose phone number is identical to the one on the letter of known ownership history that the seller provided to the museum. Gay called the listed number and reached Suzana Jelinek-Ronkuline’s son, Ivo Jelinek, who says his mother never owned the Ka-Nefer-Nefer mask and that she has never had interest or invested money in such objects. Ivo said his mother’s name may be linked to the Ka-Nefer-Nefer mask for another reason: the Aboutaam brothers, owners of Phoenix Ancient Art S.A., rented another house she owns on Quai de Cologny but they no longer live there. Gay contacted Hicham Aboutamm of Phoenix Ancient Art about this information. Aboutamm directed the reporter to a woman identifying herself as Suzana Jelinek of Zagreb, Croatia. Jelinek told Gay that she bought the mask many years ago and sold it many years ago, and that she has so many things in her collection that her children do not know what all she has. Gay relayed this information back to Professor Malcom Bell of the University of Virginia who said ‘that’s very suspicious. That’s a very unconvincing sort of provenance that would not be acceptable anywhere’ (Gay, 2006, p. 14).

Thirdly, if the Collections Committee were using the 2007 Collections Management Policy as a *modus operandi*, the Committee would question the quality of the provenance provided by the seller. Like most antiquities sold in recent times, the sale of the Ka-Nefer-Nefer mummy mask was accompanied by a known provenance history supplied by the seller, Phoenix Ancient Art, S.A., a dealer whose practices were already under scrutiny by the U.S. and Egyptian governments for dealing in stolen cultural property from Egypt. The Collections Committee of the Saint Louis Art Museum might conclude that the provenance provided by the seller looks like self-serving letters that Phoenix Ancient Art arranged to give the mask a date earlier than the adoption of the 1970 UNESCO Convention and Egypt's effective date for its 1983 patrimony law.

The Saint Louis Art Museum's efforts of due diligence inquiry prior to purchase of the Ka-Nefer-Nefer mummy mask are criticized in this research since minimal efforts were taken to establish the facts of the case, particularly in identifying the source and history of the object prior to purchase. While the museum made inquiries into the history of ownership of the mummy mask, the museum did not take action to verify the known provenance provided by the seller until after the museum purchased the mask. The local reporter, Malcom Gay, appeared to have engaged in more provenance research during data collection for his 2006 article "Out of Egypt" than the museum did both before and after its purchase of the mummy mask. Despite their combined efforts, the years in between the discovery of the mummy mask in 1951/1952 to its purchase by the museum in 1998 remain vague. Nonetheless, the museum pieced together enough provenance history to satisfy its own standard of due diligence inquiry at the time of purchase.

According to Brent Benjamin, the Art Museum undertook a significant and appropriate level of diligence at the time the work was acquired to ensure the appropriateness of the pending acquisition.

THE SAINT LOUIS ART MUSEUM'S EXPECTATIONS OF DUE DILIGENCE INQUIRY UNDER 2007 POLICY
<ul style="list-style-type: none"> <li>• Take into account the provenance of the object</li> <li>• Consult appropriate governmental agencies</li> <li>• Seek to obtain copies of any and all relevant export licenses and permits, and any required documentation for the importation of the object into the U.S.</li> <li>• Document all precautions taken</li> <li>• Consult appropriate scholarly resources</li> <li>• Assure oneself that the object has not been stolen, illicitly exported, or illicitly imported</li> <li>• Consult the Art Loss Register and/or The International Foundation of Art Research</li> <li>• Act in accordance with the 1970 UNESCO Convention as implemented by the U.S. Cultural Property Act of 1983</li> <li>• Do not obtain any object removed from its country of origin after 1970</li> <li>• Seek appropriate documentation showing that the object has been out of its country of origin for at least 10 years</li> </ul>

Table 1: The 2007 Collections Management Policy of the Saint Louis Art Museum outlines criteria, ethics, and legalities that the museum shall take into account in every acquisition decision.

In April 2007, the Saint Louis Art Museum revised its 2005 Collections Management Policy, which replaces its 1997 Museum Acquisition Guidelines. The 2007 Policy specifies the following steps that the museum should take when considering an acquisition (see Table 1). These steps indicate an effort of due diligence inquiry that is greater than that taken in 1998 when the museum purchased the mummy mask. However, the level of depth that should be pursued in each step of due diligence inquiry is not specified. The one exception is the reference to *all* reasonable precautions and *all* relevant export licenses and permits. Who and what determines reasonable, relevant, and all? The International Council of Museums reiterates this reference to *all*; ICOM's 2004 *Code of Ethics for Museums* states the requirement that "every endeavour is made to establish the facts of a case before deciding a course of action, particularly in identifying the source and history of an item offered for acquisition or use before accepting it" (Section 2.3). Without an exhaustive list of reasonable precautions and relevant export licenses and permits, how is one supposed to know that they exercised a reasonable standard of due diligence inquiry?

According to the Association of Art Museum Director's 2001 *Professional Practices in Art Museums*, "the Director must ensure that best efforts are made to determine the provenance of a work of art considered for acquisition" (p. 9). While the Association of Art Museum Director's standard of due diligence inquiry is less rigorous than that of the International Council of Museums, both professional advisory associations emphasize one's own individual judgment as to how much due diligence is enough. This is problematic given that the mechanics of conducting provenance research

is a topic that has been mostly neglected in both art-historical literature and in academic programs, and that even the most experienced researcher will often be left with “gaps” in provenance (Yeide, et al., 2001). Such gaps exist because sufficient documentation on a place and time of purchase, and accompanying export and import permits, are extremely rare. Pertinent commercial records may have been destroyed, art historical scholarship may not exist, or the object may have been hidden in an unknown private collection. This all conflates the difficulties associated with establishing the facts of a case and determining the appropriateness of a pending acquisition. Thus, it is difficult to criticize the Saint Louis Art Museum’s efforts without an agreed upon standard as to how much due diligence inquiry is enough.

### **Finding Three: The Need for a More Collaborative Framework for Resolution**

This research addressed the need for leadership and expertise in international restitution processes. Intergovernmental organizations such as UNESCO and nongovernmental organizations like the International Council of Museums and the International Law Association have recently adopted the position to support alternatives to litigation as the preferred choice for resolution of cultural property ownership disputes. During its thirteenth session meeting in 2005, an agreement was reached to allow the mandate of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation to expand to include mediation and conciliation. In 2006, the International Council of Museums adopted the position to promote the use of mediation in resolution

of cultural property disputes so that there can be a win-win solution devised out of court at minimal costs. That same year the International Law Association addressed the need for a more collaborative framework for avoiding and settling disputes that concern cultural material through adoption of *Draft Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material*.

The UNESCO Intergovernmental Committee recognizes that in cases involving ownership disputes, the responsibility to assist with resolution extends beyond the museum or State on one end and the foreign government on the other. “Intergovernmental organizations, such as UNESCO, that are in a position to mediate disputes have an important responsibility to do so, as [do] international NGOs such as ICOM, who can influence the behavior of professionals and the institutions where they work” (Kathryn Zedde, personal communication, January 25, 2007). Through future activities, the UNESCO Intergovernmental Committee will bring together UNESCO Member States, the Secretariat and other international governmental and nongovernmental organizations concerned with the return and restitution of cultural property. For instance, an international seminar on the question of return and restitution will be held in 2008, in Greece. The conference of experts and actors in the field is being organized by the Director-General of UNESCO, in cooperation with the Hellenic Ministry of Culture who donated 50,000 euros to the UNESCO Intergovernmental Committee to hold such a seminar. The Committee will also hold an extraordinary session in 2008 in Seoul, on the occasion of the thirtieth anniversary of the Committee’s establishment. The Intergovernmental Committee “invites the Member States and

Observers to bring to this extraordinary session proposals and ideas for new approaches towards the issue of the return and restitution of cultural property and of international cooperation in this domain” (UNESCO, 2007, p. 5).

Recent initiatives of nongovernmental organizations such as the International Council of Museums and the International Law Association have also helped to broaden the debate related to the return and restitution of cultural property. The role the International Council of Museums should play in cultural property disputes was a topic of discussion throughout the 2004 triennial general conference of ICOM in Seoul, South Korea. During her keynote presentation entitled “Legal and Ethical Considerations in the Repatriation of Illegally Exported and Stolen Cultural Property: Is There a Means to Settle the Disputes?” Professor Marilyn Phelan delivered a call to action for members of the International Council of Museums to initiate some form of dispute resolution to resolve difficult restitution issues. Phelan’s central argument was that no legal regime exists to address adequately the issues relating to the restitution of illegally exported and/or stolen cultural property. Rather, a dysfunctional legal pluralism exists where the request for the international transfer of cultural material encounters fundamental differences between Civil and Common Law systems (Skrydstrup, 2004).

Phelan suggested that ICOM members focus on the possibility of establishing an international arbitration panel on cultural property where parties agree to binding arbitration through a contract between themselves. Manus Brinkman, the past secretary-General of ICOM (1998 – 2004) warned against Phelan’s suggestion to take ICOM into an arbitration endeavor; the process of resolution through an arbitrator is expensive and

the outcome results in a win-lose situation. Brinkman argues that cultural property disputes are irresolvable and politically loaded: ICOM's involvement in these disputes could jeopardize the prestige of the organization (Skrydstrup, 2004). However, there is no harm with ICOM also providing a mechanism for arbitration since it can only be warranted if both parties mutually agree, and by prearrangement the decision can be either binding or non-binding.

When Marilyn Phelan proposed arbitration to settle ownership disputes, ICOM was re-evaluating the role the organization should have in restitution claims. In 2006, the International Council of Museums issued a statement announcing ICOM's promotion of mediation, a mechanism that allows for a win-win solution devised out of court at minimal costs. Mediation can allow for museums to exchange, loan, and negotiate other mutually beneficial agreements to resolve their disputes.

In 2006, the International Law Association adopted *Draft Principles for Cooperation in the Mutual Protection and Transfer of Cultural Material*. These principles were founded on the belief of the Cultural Heritage Law Committee of the (ILA) that there was an impasse between the insistence on outright return of wrongfully acquired cultural property and the unqualified assertion of a right to possess cultural property. During the 1998 ILA Conference in Taipei a resolution was adopted that the Cultural Heritage Law Committee develop a set of recommendations designed to advance "a broader regime based on sharing and enhanced circulation of cultural heritage, rather than on reconciling principles of retention and return" (Paterson, 2005). In August 2004, the Cultural Heritage Law Committee presented its report titled *Draft Principles for*

*Cooperation in the Mutual Protection and Transfer of Cultural Material* to promote the use of alternatives to litigation to resolve ownership disputes and during the June 2006 meeting of the ILA in Toronto, Canada the principles were adopted.

Based on the culmination of these efforts, I find that “the knowledge and expertise exists and is expanding, along with a willingness by all players to look at new forms of negotiated resolutions – what is needed is a consistent effort to bring the various players together” (Kathryn Zedde, personal communication, November 5, 2007). The UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation can certainly function in this leadership role.

### **Recommendation: Standard Practice in the Art Trade for Due Diligence Inquiry**

The term “due diligence” has crept into the language of art ownership in two very different usages. The first use refers to investigating provenance, thus hopefully exposing facts that might reveal legal title impairments. This use is evident in Section 2.3 of the International Council of Museums’ 2004 *Code of Ethics for Museums* titled “Provenance and Due Diligence” that states “due diligence in this regard should establish the full history of the item from discovery or production” (p. 8). The “second use refers to the limitations of actions, i.e., the timeliness of the claimant in getting to the courthouse, thereby triggering defense and cross-claims like the statute of limitations, equitable estoppel, fraudulent concealment, laches and unclean hands” (Darraby, 1990, p. 4).

In *Porter v. Wertz* (1979) the dealer in this case, Richard Feigen, defended his failure to inquire concerning the identity and history of the consignor of a Maurice Utrillo painting entitled *Chateau de Lionsur-Mer* on the basis that it is standard practice in the art trade not to conduct such inquiries. While the court rejected this argument, art market professionals have often used this standard of industry practice to excuse this failure. This has been permitted to some extent by the U.C.C. definition of “good faith” in the case of a merchant as “honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade” (Gerstenblith, 2004). In *Porter v. Wertz* (1979) the Court found that while the U.C.C. definition of “good faith” by its terms embraces the “reasonable commercial standards of fair dealing in the trade,” it should not – and cannot – be interpreted to permit, countenance, or condone commercial standards of sharp trade practice or indifference as to the “provenance,” i.e., history of ownership or the right to possess or sell an object d’art.

An increasing number of American museums are asking for provenance records and clearance about an object’s legal status prior to purchase. The term “provenance” is universally acknowledged by the art community but without consensual definition. Little consensus exists as to how far back in the chain to go, how to treat gaps in the chain, what ought to be disclosed, and if disclosed, in what form, by whom and to whom (DeAngelis, 2006). While increased attention is on conducting provenance research, few tools are in place to guide practitioners through the process. Moreover, differences exist between a museum investigating provenance and a dealer or private collector. A museum has access to curatorial resources, conservation technology, libraries and a web of

contacts that is an essential communication network for conducting provenance research. “Both its stewardship over assets and its duties as a trustee require a museum to investigate provenance to a degree neither practical nor possible for private dealers and galleries” (Darraby, 1990, p. 4).

The level of due diligence inquiry required about an object’s past is increasing as U.S. law is being enforced more and more rigorously in response to international pressures to protect the world’s cultural heritage (DeAngelis, 2006). Museum professional advisory associations such as the International Council of Museums advise member institutions that “every endeavour is made to establish the facts of a case before deciding a course of action, particularly in identifying the source and history of an item offered for acquisition or use before accepting it” (2004, p. 4). While a reasonable standard of due diligence inquiry is expected for fair dealing in the art trade, there is no agreed upon standard as to how much due diligence inquiry is enough, as noted earlier.

The main recommendation that I have gathered from this investigation is the need for agreement as to what is standard practice in the art trade for due diligence inquiry. Perhaps it is an exhaustive list of all reasonable precautions and relevant export licenses and permits that one is expected to pursue when considering an acquisition. Such a list can build on the standards already being established by individual museums, dealers, and private collectors. This list might include what avenues should be explored to access provenance records and how to check for clearance about an object’s legal status prior to purchase. This list would serve as a useful tool for those mindful of the illicit trade in antiquities.

The legal, archaeological, and collecting communities have become entwined in the interdisciplinary nature of protecting the world's cultural heritage. I recommend that advisory associations and organizations on national and international levels hold a summit in the near future with the goal of establishing agreement as to what is standard practice in the art trade for due diligence inquiry. Such a standard would provide clarification of expectations and a threshold for evaluation as well as hold those accountable to an international community concerned with professional practices in the interdisciplinary nature of the art and antiquities trade. Agreement as to what is standard practice in the art trade for due diligence inquiry might also serve as a preventive tool against future claims for cultural property.

## **APPENDICES**

Appendix A: Interview Recruitment Letter

Date

Name

Address

City/State/Zip

Dear <POTENTIAL INTERVIEWEE>:

You are invited to participate in a research project titled, *A Framework for Resolution of Claims for Cultural Property*, conducted by Laura Young from the University of Oregon's Arts and Administration Program. If you agree to participate in this study you will be identified in the final publication of the research data, so your identity will not remain confidential. This research is for a master's degree in Arts Management from the University of Oregon.

The theoretical focus of this investigation is on international cultural heritage policy, with a specific investigation into definitions, processes, and deliberations associated with cultural property. My research interests reside in the infrastructure emerging to support museum professionals in provenance-based research and ethical decision-making. The objectives of this research are: (1) to identify the laws and regulations concerned with protection of cultural resources (2) to examine institutional strategies to resolve claims for restitution (3) to analyze the infrastructure emerging to support museum professionals. The purpose of this research is to address the need for leadership and expertise in international cultural heritage policy.

You were selected to participate in this study because of your leadership position with <NAME OF RELEVANT CASE STUDY ORGANIZATION>. If you decide to take part in this research project, you will be asked to provide organizational materials, such as governing documents, collections management procedures, provenance guidelines, and codes of ethics. You will also be asked by the investigator to participate in an in-person interview, lasting approximately one hour, during summer 2006 or before spring 2007. If you wish, interview questions will be provided beforehand for your consideration. Interviews will take place at <NAME OF ORGANIZATION>, or at a more conveniently located site. Interviews will be scheduled at your convenience. In addition to taking handwritten notes, with your permission, I will use an audio tape recorder for transcription and validation purposes. You may also be asked to provide follow-up information through phone calls or email.

If you have any questions, please feel free to contact me at (314) 306-5839 or [lyoung2@uoregon.edu](mailto:lyoung2@uoregon.edu) or Dr. Patricia Dewey at (541) 346-2050. Any questions regarding your rights as a research participant should be directed to the Office of Human Subjects Compliance, University of Oregon, Eugene, OR 97403, (541) 346-2510.

Thank you in advance for your interest and consideration. I will contact you shortly to speak about your potential involvement in this study.

Sincerely,

Laura Young  
Arts and Administration Program  
5230 University of Oregon  
Eugene, OR 97403-5230  
U.S.A.

Appendix B: Consent Form

Research Protocol Number: X631-06  
A Framework for Resolution of Claims for Cultural Property  
Laura Young, Principal Investigator  
University of Oregon Arts and Administration Program

You are invited to participate in a research project titled, *A Framework for Resolution of Claims for Cultural Property*, conducted by Laura Young from the University of Oregon's Arts and Administration Program. If you agree to participate in this study you will be identified in the final publication of the research data, so your identity will not remain confidential. This research is for a master's degree in Arts Management from the University of Oregon.

The theoretical focus of this investigation is on international cultural heritage policy, with a specific investigation into definitions, processes, and deliberations associated with cultural property. My research interests reside in the infrastructure emerging to support museum professionals in provenance-based research and ethical decision-making. The objectives of this research are: (1) to identify the laws and regulations concerned with protection of cultural resources (2) to examine institutional strategies to resolve claims for restitution (3) to analyze the infrastructure emerging to support museum professionals. The purpose of this research is to address the need for leadership and expertise in international cultural heritage policy.

You were selected to participate in this study because of your leadership position with <NAME OF RELEVANT CASE STUDY ORGANIZATION>. You will be asked by the investigator to participate in an in-person interview, lasting approximately one hour, during summer 2006 or before spring 2007, and to provide organizational materials, such as governing documents, collections management procedures, provenance guidelines, and codes of ethics. If you wish, interview questions will be provided beforehand for your consideration. Interviews will take place at <NAME OF ORGANIZATION>, or at a more conveniently located site. Interviews will be scheduled at your convenience. In addition to taking handwritten notes, with your permission, I will use an audio tape recorder for transcription and validation purposes. You may also be asked to provide follow-up information through phone calls or email.

There are minimal risks associated with participating in this study, particularly since this research is exploratory in nature. There are potential social/economic risks associate with participation in this study since topics related to cultural property can be controversial and sensitive. Using participants' names in written documents resulting from this study allows for the possibility of a participant's comments, as a representative of his or her institution, to displease that individual's colleagues and supervisor(s).

Information collected in this study will be associated with your name and organization. By participating in this study, you agree to be identified in the publication of this research data and understand that your identity will not remain confidential. I anticipate the results of this research will inform efforts towards resolution of claims for restitution. However, I cannot guarantee that you personally will receive any benefits from this research.

If you have any questions, please feel free to contact me at (314) 306-5839 or [lyoung2@uoregon.edu](mailto:lyoung2@uoregon.edu) or Dr. Patricia Dewey at (541) 346-2050. Any questions regarding your rights as a research participant should be directed to the Office of Human Subjects Compliance, University of Oregon, Eugene, OR 97403, (541) 346-2510.

Please read and initial each of the following statements to indicate your consent:

\_\_\_\_\_ I consent to the use of audiotapes and note taking during my interview.

\_\_\_\_\_ I consent to my identification as a participant in this study.

\_\_\_\_\_ I consent to the potential use of quotations from the interview.

\_\_\_\_\_ I consent to the use of information I provide regarding the organization with which I am associated.

\_\_\_\_\_ I wish to have the opportunity to review and possibly revise my comments and the information that I provide prior to these data appearing in the final version of any publications that may result from this study.

Your signature indicates that you have read and understand the information provided above, that you willingly agree to participate, that you may withdraw your consent at any time and discontinue participation without penalty, that you have received a copy of this form, and that you are not waiving any legal claims, rights or remedies. You have been given a copy of this letter to keep.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Thank you for your interest and participation in this study.

Sincerely,

Laura Young  
Arts and Administration Program  
5230 University of Oregon  
Eugene, OR 97403-5230  
U.S.A.

Appendix C: Interview Protocol

Date

Name

Address

City/State/Zip

<POTENTIAL INTERVIEWEE>:

<ORGANIZATION>

1. How do museum leaders and national governments work together to resolve claims for restitution?
2. How does the <NAME OF ORGANIZATION> encourage dialogue with constituents?
3. What terms are important to consider during the resolution process?
4. What tensions exist between structures that maintain the protectorate of art status accorded to museums, and the ability of a people to present their cultural heritage in their own territory?
5. How do you envision the infrastructure emerging to support museum professionals in provenance-based research and ethical decision-making?
6. What kinds of logistical arrangements need to be made to resolve claims for restitution?
7. In terms of negotiated agreements reached, what binds parties to their commitments?
8. What issues of control arise with resolution of claims for restitution?
9. What challenges and opportunities do you see for future museum leadership?
10. From your perspective as <TITLE OF POSITION, NAME OF ORGANIZATION>, what are flaws in the current system?

Appendix D: Memorandum

TO: Commissioners, Trustees and Friends of the Saint Louis Art Museum

FROM: Brent R. Benjamin

DATE: January 20, 2006

SUBJECT: Press Inquiry Regarding Provenance of Mummy Mask, 19.1998

The *St Louis Post-Dispatch*, the *Riverfront Times*, and the *Art Newspaper* have made inquiries regarding the provenance of the Museum's Mummy Mask, acquired in 1998. These inquiries resulted from an allegation, posted on an internet website, that the mask was stolen from storage of a Museum in Saqqarah, Egypt. You may visit the site at <http://www.michelvanrijn.nl/artnews/st-louis.htm>. In our opinion, it speaks for itself. Michael van Rijn is the proprietor of this website, based in the Netherlands, which is devoted to art theft issues. Mr. van Rijn has supplied no information in support of his accusation.

The Art Museum acquired the mask in 1998 after extensive inquiries into its history of ownership. In addition to verifying the provenance supplied by the dealer, the Museum also contacted the Art Loss Register and Interpol, each of which maintains databases of stolen art, and neither of which listed such work as stolen. In addition, the Museum contacted Mohammed Saleh, then the director of the Egyptian Museum in Cairo. In his response, Dr. Saleh raised no concerns about the appropriateness of the Museum's pending acquisition.

I was interviewed earlier this week in regard to the acquisition, and I shared the extent of the Museum's research and its additional due diligence inquiries. I believe that the Art Museum undertook a significant and appropriate level of diligence at the time the work was acquired. I also reminded each reporter that research in these matters is seldom complete, and assured each reporter that if additional specific and credible information were forthcoming, we would of course review it thoroughly and proceed accordingly.

There may be additional press inquiries in the days ahead, and we will respond appropriately. Should you have any questions or require additional information, I would, as always, be delighted to hear from you.

Appendix E: Correspondence between Egypt and Museum



ARAB REPUBLIC OF EGYPT  
MINISTRY OF CULTURE  
SUPREME COUNCIL OF ANTIQUITIES

Tuesday, February 14, 2006

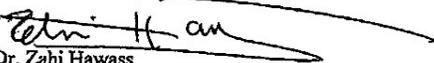
Brent Benjamin, Director  
St. Louis Art Museum  
One Fine Arts Drive  
Forst Park, St. Louis, MO 63110-1380  
Telephone 314.721.0072  
dzumwalt@slam.org

Dear Mr. Benjamin:

It has come to my attention that your museum is in possession of a 19<sup>th</sup> Dynasty mummy mask, belonging to a woman named Ka-nefer-nefer, which came into your collections in 1998. This mask was excavated at Saqqara by Zakaria Goneim in 1952, and published by him in *The Buried Pyramid*, Plate I.XVIII. It was stored in the Saqqara magazine, and inventoried in Saqqara Antiquities Register Book #6, with the number 6119.

This mask was clearly stolen from the Saqqara magazine where it was stored. It is legally the property of the Supreme Council of Antiquities, and must be returned immediately. I know that you have been aware of this for some time now, and am both surprised and disappointed that you did not contact me right away to set this matter straight.

You have two weeks to begin the process of returning this mask to Egypt. If the process is not underway by that time, I will contact Interpol and start legal proceedings. I hope that this will not be necessary.

  
Dr. Zahi Hawass  
Secretary General, SCA

3 El Adel Abou Bakr Street, Zamalek, Cairo, EGYPT • Phone: 736-5645 • Fax: 735-7239  
4D Fahry Abdel Nour Abbassa, Cairo, EGYPT • Phone: 684-3627 • Fax: 683-1117

SAINT LOUIS ART MUSEUM

VIA MAIL AND FACSIMILE

February 14, 2006

Dr. Zahi Hawass, Secretary General  
Supreme Council of Antiquities  
Ministry of Culture  
Arab Republic of Egypt,  
3 El Adel Abou Bakr Street  
Zamalek, Cairo, Egypt

Dear Dr. Hawass,

This responds to your letter of February 14, 2006, regarding the mummy mask that is a part of the collection of The Saint Louis Art Museum. The Museum takes seriously any suggestion that it illegally or improperly possess any object in its collection.

While the Museum is aware of unsubstantiated allegations that the mask was stolen, it has received no credible information in support of that stance. The Museum has answered these allegations by openly providing information regarding the mask's provenance and the Museum's pre-acquisition diligence. It has also advised those seeking information that if any person presents the Museum with credible information indicating that the mask was illegally or inappropriately held by the Museum, the Museum would investigate that information and respond accordingly. No such information has been forthcoming.

The Museum undertook substantial diligence prior to acquiring the mask. That diligence included contacting the Art Loss Register, Interpol, and Dr. Mohammed Saleh, director of the Cairo Museum. There were no reports that the object had been stolen. Enclosed please find a copy of the Museum's information regarding the mask's provenance. The Museum published its acquisition widely soon after completing its purchase of the object and has continuously displayed the mask in its galleries. The Museum has not, at any time, taken any measures to conceal any facts regarding its acquisition of or possession of the object.

Office of the Director  
One Fine Arts Drive, Forest Park  
St. Louis, Missouri 63110-1380  
Telephone 314.655.5220 Facsimile 314.721.0287  
[www.slam.org](http://www.slam.org)

The Museum has great respect for the Supreme Council of Antiquities and is prepared to investigate your claim, which, as noted above, is contrary to what the Museum discovered at the time the mask was acquired. To assist us in that investigation, we ask that you provide us with any information you have that supports your assertion that the mask was stolen. Specifically, your letter references a Register Book and an inventory number from the Saqqara magazine. Please provide us with a copy of that inventory information. Also, please advise us as to the date on which the mask was last inventoried in the Saqqara magazine and the date on which the mask was first reported as stolen, along with any related documentation.

Again, the Museum takes seriously any suggestion that it illegally or improperly possesses any object in its collection. Accordingly, we look forward to reviewing the information you provide us and working with you toward a fair and amicable resolution of this matter.

Sincerely,



---

Brent R. Benjamin  
Director

## Narrative Provenance Report

19:1998 *Mummy Mask,*

1951/1952 -

Mohammed Zakaria Goneim, excavated at Saqqara, Egypt [1]

by 1952 -

Unknown Dealer, Brussels, Belgium [2]

- early 1960s

Kaloterna Collection [3]

early 1960s -

Private Collection, Switzerland, acquired from Kaloterna collection [4]

by 1997 - 1998

Phoenix Art, S.A. (Hicham Aboutaam), Geneva, Switzerland, purchased from private collection [5]

1998/03/30 -

Saint Louis Art Museum, purchased from Phoenix Ancient Art, S.A. [6]

## Notes:

[1] Excavated by Mohammed Zakaria Goneim, Keeper of the Antiquities of Saqqara, at Saqqara, during his first season (1951-1952) at the site [Goneim, Mohammed Zakaria, "Excavations at Saqqara; Horus Sekhem-Khet, the Unfinished Step Pyramid at Saqqara." Vol. 1. Cairo: Imprimerie de L'Institut Français D'Archéologie Orientale, 1957].

A letter from a scholar, dated December 12, 1999, indicates that the other objects from the Saqqara excavation group were displayed together in the Cairo Museum, suggesting that they were put on display right after Goneim's excavation. The scholar suggests that the mask was never displayed with the other excavated objects and was probably awarded to the excavator himself. This would correspond with its appearance on the European art market soon after its excavation [SLAM document files].

[2] In a letter dated February 11, 1997, Charly Mathez confirms that he saw the mask in a gallery in Brussels in 1952. According to a letter dated October 5, 1999, he did not remember the name of the gallery [SLAM document files].

[3] In a letter dated March 19, 1998, Hicham Aboutaam indicated that an anonymous Swiss collector acquired the mask from the Kaloterna (possibly Kaliterna) family. In a letter of July 2, 1997, addressed to Hicham Aboutaam, the Swiss collector stated that this acquisition took place in the early 1960s [SLAM document files]. The name "Kaloterna" may be a misspelling of the common Croatian name "Kaliterna." The Swiss collector also had an address in Croatia, and it is possible that the collector

became acquainted with the Kaloterna (or Kaliterna) family there.

[4] See note [3]. The Swiss collector requested anonymity.

[5] The Swiss collector's letter of July 2, 1997 confirms the sale of the mask to Aboutaam [SLAM document files]. Aboutaam also states that the mask was in the United States from 1995 until 1997, possibly indicating that it was in the possession of the New York branch of Phoenix Ancient Art, S.A. during that time [letter, September 23, 1997, SLAM document files].

[6] Invoice to the Saint Louis Art Museum dated March 12, 1998 [SLAM document files]. Minutes of the Collections Committee of the Board of Trustees, Saint Louis Art Museum, March 18, 1998.

Arab Republic of Egypt  
Ministry of Culture

Supreme Council of Antiquities



Thursday, March 2, 2006  
Brent Benjamin, Director  
St. Louis Art Museum  
One Fine Arts Drive  
Forest Park, St. Louis, MO 63110-1380  
Telephone 314.721.0072  
[dzumwalt@slam.org](mailto:dzumwalt@slam.org)

Dear Dr. Benjamin:

I write in response to your letter of February 14, 2006, regarding the 19th Dynasty mummy mask from Saqqara in your collection.

1. There is no question about the original provenance of this mask. We clearly agree that it came from the excavations of Zakaria Goneim in the area of the Sekhemkhet enclosure.

2. In the second paragraph of your note [1], you say, "...[the mask] was probably awarded to the excavator himself." Antiquities have never been awarded to Egyptian excavators, especially not to officials of the antiquities service. There is no way that Goneim would have had this mask legally in his possession. This point makes the rest of your provenance moot in terms of legal ownership. The mask was certainly stolen.

3. As I mention in my previous letter, the mask was stored in the Saqqara magazine, and inventoried in Saqqara Antiquities Register Book #6, with the number 6119. I attach here a copy of the page in question.

According to this register, the box in which the mask was stored was moved to the Cairo Museum in 1959, in preparation for an exhibition in Tokyo. There is no record of this mask or the pieces that were with it after this point.

4. Unfortunately, until recently, it has not been the practice of the SCA to inventory the magazines regularly. Therefore, the piece could have been stolen at any time between 1959 and the 1990s.

5. The letters you cite from an un-named scholar speculating about whether or not it was displayed in Cairo, and from Charly Mathez dating from 1997 and 1999 saying that he saw the mask in a gallery in Brussels in 1952 can hardly be considered legal proof of anything. The first letter means nothing, and the Mathez information is circumstantial. Since he cannot even remember the name of the gallery, this is a dead end.

6. Again, letters back and forth in the late 1990s (from convicted criminals) about events from thirty years earlier, including misspelled names, does not

---

3 El Adel Abou Bakar St, Zamalek-Cairo  
Phone: 7365645 Fax: 7357239  
4 D Fakhary Abdel Nour Abbassia-Cairo  
Phone: 6843627 Fax: 6831117

Arab Republic of Egypt  
Ministry of Culture

Supreme Council of Antiquities



give anyone a good trail to follow.

7. It seems to me that you have no solid evidence for the mask's provenance between 1959, when it was taken, most likely temporarily, to the Cairo Museum, and the 1990s, when it appeared in the United States. Therefore, it could have been stolen from Saqqara anytime between these two dates. Since we know that the magazine in which it was originally stored was robbed in the 1980s, it is our guess that the mask was stolen at that time.

However, I repeat that the central issue is that there are no circumstances under which the mask could have reached your museum legally: whether it was stolen in the 1950s or the 1990s, or any time in between, it was certainly stolen.

You now have a choice to make. This is undoubtedly a stolen object. Buying antiquities in this day and age is a chancy business, as there are many crooks out there; fortunately, it seems that the gallery from which you bought the mask will reimburse you if you choose to return it to Egypt. I realize that you were not the museum's director when it was purchased, but you are a museum professional, and I sure that you are aware that the provenance the museum was given is completely inadequate by any standards. If you are willing to cooperate, and give the mask back without any difficulties, I will be happy to make positive publicity for your museum and thank you publicly. If, however, you force me to take this matter to the authorities, your museum is very likely to be damaged by the negative publicity that will likely be generated. I remain hopeful that we can settle this amicably.

Sincerely yours,

Dr. Zahi Hawass  
Secretary General, SCA



ARAB REPUBLIC OF EGYPT  
MINISTRY OF CULTURE  
SUPREME COUNCIL OF ANTIQUITIES

3/27/06 Copy to:  
Linda Thomas  
Sid Goldstein  
Janette F.  
Dave Lumbaker  
(for)

Sunday, March 26, 2006  
Brent Benjamin, Director  
St. Louis Art Museum  
One Fine Arts Drive  
Forest Park, St. Louis, MO 63110-1380  
Telephone 314.721.0072  
[dzumwalt@slam.org](mailto:dzumwalt@slam.org)

Dear Dr. Benjamin:

I have just returned from the United States, and fully expected to have a response from you waiting for me. I was most disappointed to find that this was not the case.

I would very much appreciate hearing from you within a week. As I have said in our previous correspondence, I am hoping to settle this matter amicably, to our mutual benefit rather than to your detriment. I am sure that you have confirmed by now that the mask was undoubtedly stolen. Therefore, you are morally obligated to return it. How can teachers bring school groups to your museum, and have to explain to them that this beautiful piece was stolen, and is in your museum illegally?

We would prefer not to have to resort to the legal system, which would certainly impact negatively on the good name of your museum. I don't want a fight; this would be a disaster. Other museums that have discovered they have stolen pieces in their collections have been able to work out long-term loans and the like with the countries that own these pieces; we would not, however, even be able to discuss a solution of this sort until you have made your decision and the mask has been officially given back into the care of Egypt. It is also my understanding that the people who sold you the mask gave you a guarantee, thus you would not lose financially in any case.

Sincerely yours,

Dr. Zahi Hawass  
Secretary General, SCA

3 El Adel Abou Bakr Street, Zamalek, Cairo, EGYPT • Phone: 736-5645 • Fax: 735-7239  
4D Fakhry Abdel Nour Abbassia, Cairo, EGYPT • Phone: 684-3627 • Fax: 683-1117

## SAINT LOUIS ART MUSEUM

March 28, 2006

Dr. Zahi Hawass, Secretary General  
Supreme Council of Antiquities  
Ministry of Culture  
Arab Republic of Egypt  
3 El Adel Abou Bakr Street  
Zamalek, Cairo, Egypt

Dear Dr. Hawass,

Thank you for your letter of March 2, and for subsequently providing a legible scan of the document you reference. As we have stated from our first communication, we regard your charge that the mask is stolen as a very serious matter and it is our sincere desire to resolve this issue properly and as expeditiously as possible. At the same time, the Museum may not act on allegations unsupported by verifiable facts or speculation. I am certain you will understand that any future action on the part of the Museum in regard to the status of the mask must be based on specific information.

We are very troubled by your assertions, particularly because, as a part of its research and diligence at the time it acquired the mask, the Museum made official inquiries of the Art Loss Register, Interpol, and the Egyptian Museum in Cairo, and received no indication of concern in connection with its potential acquisition of the mask.

I would accordingly like to request your patience and assistance in providing us with responses to the matters outlined below so that we can evaluate your allegations in light of the significant research performed by the Museum prior to the acquisition of the mask.

You state in your letter of March 2 that the document is a page from the Saqqara Antiquities Register Book #6. Although we have translated the document, it is difficult for us to understand from the single page the precise nature of the document itself, and in that regard, it would be most useful if you could provide the following information:

- information verifying the nature of the document, through, for example, a scanned image of the title page, introduction, table of contents, or similar identifying feature;
- documentation of the dates during which this volume was in use;

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St. Louis, Missouri 63110-1380  
Telephone 314.655.5220 Facsimile 314.721.0287  
www.slam.org

- an indication of whether it is possible to attach a specific date to the entry itself, and if so, on what basis;
- clarification of whether the entry is one in a sequence of meaningful entries--for example, are the amulets that were found with the mask listed in sequential, nearby entries--or if not, in what manner the entries in the book are ordered;
- whether an inventory of the contents of the Saqqara magazine was undertaken at any time before 1959, and if so, at what date(s); I understand from your letter that no inventories were performed between 1959 and the 1990s; and
- whether the mask was ever reported missing or stolen and, if so, when.

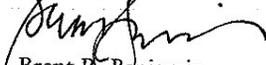
In your letter you also state that the box in which the mask was stored was moved to the Cairo Museum in 1959, in preparation for an exhibition in Tokyo. You further note that the removal of this box is documented in the Saqqara register. Would it be possible for you to provide us with the following information:

- a copy of the note in the Saqqara register regarding the removal of the box to Cairo;
- a list of the works that were in the box with the mask at the time of its removal from the Saqqara magazine;
- any documentation concerning the arrival of the box and its contents at the Cairo Museum and any documentation concerning the departure of the box and its contents from the Cairo Museum;
- any documentation concerning the exhibition in Tokyo.

Finally, may I ask you to provide us with information regarding the robbery of the Saqqara magazine in the 1980s that you reference in your letter.

I know that you will appreciate our need to understand accurately and in detail your complete documentation of this work, so that we can appropriately evaluate your request that the Museum return the work to Egypt. We appreciate your willingness to provide us with the information outlined above. Our receipt of that information and your patience while we review the materials will be critical to developing an amicable and mutually agreeable resolution to this matter.

Sincerely,

  
Brent R. Benjamin  
Director

**SAINT LOUIS ART MUSEUM CALLS ON EGYPTIAN OFFICIAL  
TO DISCLOSE DOCUMENTS SUPPORTING MUMMY MASK ALLEGATIONS**

ST. LOUIS, MO, May 12, 2006 - The Saint Louis Art Museum today defended its ownership of a 3, 200-year-old Egyptian mummy mask in its collection and called upon the head of Egypt's Supreme Council of Antiquities to provide conclusive documentation or cease his unsubstantiated accusations about the mask's provenance.

In February, Dr. Zahi Hawass, Secretary General of Egypt's Supreme Council of Antiquities, charged that the mask was stolen from a storage facility in Saqqara, Egypt, where it had been excavated. Dr. Hawass' charges appear to stem from two web sites that made that same claim beginning in 2005 – without any facts to back that claim. Through the media, he recently gave the Museum a May 15 deadline to return the mask to Egypt. While Dr. Hawass has sent some materials to the Museum, none of them verify his claim.

In 1998, the Saint Louis Art Museum purchased the mummy mask from Phoenix Ancient Art in Geneva, Switzerland. The dealer provided detailed, documented provenance on this important Egyptian antiquity. The Museum then conducted its own additional research and diligence.

“The Museum independently verified the mask's known ownership history and contacted both the Art Loss Register and Interpol before making the purchase to verify that the mask had not been reported as missing, lost or stolen,” said Museum Director Brent R. Benjamin. In addition, the Museum contacted Dr. Mohammed Saleh, then director of the Egyptian Museum in Cairo, to ensure the appropriateness of the pending acquisition. In all of this research, no authority ever identified the mask as lost, missing, or stolen, Benjamin said. “We take these charges very seriously. We have been responsive to Dr. Hawass' request for information and have shared all of our findings with him. Although Dr. Hawass has challenged the integrity of the Saint Louis Art Museum, he has not provided conclusive evidence to support his claim,” Benjamin said. “Our public trust and mission demand that we respond to facts, and not unsubstantiated allegations.”

“It is unfortunate that Dr. Hawass has chosen to issue false and misleading statements that directly attack the integrity of the Saint Louis Art Museum and its trustees, rather than sharing with the Art Museum documents that might support his claim, as the Museum has requested,” Benjamin said. “The Museum remains willing to evaluate its proper ownership of the mask in light of valid documentation.”

“We call upon Dr. Hawass either to provide documentation to show that the mask was stolen or cease his attacks on the Museum,” Benjamin said.

## AGREEMENT

between

The Ministry for Cultural Heritage 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 Environmental Heritage and Public Education (the “Ministry for Cultural Heritage and Activities of the Italian Republic”) and the Commission for Cultural and Environmental Heritage and Public Education of the Sicilian Region, 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 Heritage and Activities of the Italian Republic and the Commission for Cultural Heritage of the Sicilian Region and the Museum shall be referred to hereinafter as the “Parties.”

### Whereas

A) The Ministry for Cultural Heritage 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 Heritage 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 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.
- J) The Ministry and the Commission for Cultural and Environmental Heritage and Public Administration of the Sicilian Region 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 Heritage and Activities of the Italian Republic and to the Commission for Cultural and Environmental Heritage and Public Education of the Sicilian Region, 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 Heritage 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 Heritage 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 Heritage 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 Heritage 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 – Sicilian Region."

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 and Environmental Heritage and Public Administration of the Sicilian Region 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 and Environmental Heritage and Public Administration of the Sicilian Region, 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 and Environmental Heritage and Public Administration of the Sicilian Region 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 Heritage and Activities of the Italian Republic and the Commission for Cultural and Environmental Heritage and Public Administration of the Sicilian Region 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 Heritage and Activities of the Italian Republic and the Commission for Cultural and Environmental Heritage and Public Administration of the Sicilian Region, as a result of this Agreement, waive their right to pursue or support any legal action against the Museum or its staff and officers, 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 Heritage and Activities of the Italian Republic and the Commission for Cultural and Environmental Heritage and Public Administration of the Sicilian Region 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 Heritage and Activities

[Name]

[Title]

(signature)

Ministry for Cultural Heritage and Activities

[Name]

[Title]

(signature)

Commission for Cultural and Environmental Heritage and Public Administration of the  
Sicilian Region

Hon. Prof. Alessandro Pagano

Regional Commissioner

(signature)

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