

Culture Without Context



The Newsletter of the Illicit Antiquities Research Centre

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The Illicit Antiquities Research Centre is a project of the McDonald Institute for Archaeological Research.

Illicit Antiquities Research Centre

The Illicit Antiquities Research Centre (IARC) was established in May 1996, under the auspices of the McDonald Institute for Archaeological Research in Cambridge, England, and it commenced operations in October 1997. Its purpose is to monitor and report upon the damage caused to cultural heritage by the international trade in illicit antiquities (i.e. antiquities which have been stolen or clandestinely excavated and illegally exported). The enormous increase in the volume of this trade over the past twenty years has caused the large-scale plundering of archaeological sites and museums around the world. The IARC will raise public awareness of the problems caused by this trade and seek appropriate national and international legislation, codes of conduct and other conventions to place restraint upon it.

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Front cover. *Looting at Gilgit* (see p. 4).

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Correspondence relating to all aspects of the legal and illegal trade in antiquities is welcome; we will make an effort to print reasonable, non-libellous letters. No unsigned letters will be printed, but names will be withheld upon request.

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Editorial

An article in the March/April 2005 issue of *Archaeology* (M. Brunwasser, 'Thracian gold fever', 19–25) drew attention to a debilitating, though indirect, consequence of the trade in unprovenanced antiquities when it reported upon the rudimentary excavation techniques of the Bulgarian archaeologist Georgi Kitov. Kitov has achieved celebrity status in Bulgaria through his apparently extravagant historical claims about a series of spectacular finds he made during excavations in the so-called Valley of the Thracian Kings. Some of the finds are on display in Kazanluk's Iskra History Museum, others are at the National Archaeological Museum in Sofia, and all are drawing large crowds of visitors and becoming a focus of Bulgarian national pride. Unfortunately, not everyone is impressed. Bulgarian colleagues say Kitov works multiple sites at once with scant regard for documentation of stratigraphy and context, or for site conservation and preservation. He is accused of being little more than a treasure hunter. Kitov defends his methods, though, claiming that he has to work fast in order to remove objects from the ground before the looters do. The Bulgarian government has been quick to see the potential of Kitov's finds for attracting international tourists, and has provided him with financial support.

If media reports are anything to go by, the archaeological heritage of Bulgaria is more threatened by illegal digging seemingly than that of any other country in Europe. Professional archaeology cannot mount an effective response as it is state-controlled and under-resourced. But Kitov's quick and dirty excavations are not the answer. They are in contravention of Article 3 of the 1992 European Convention on the Protection of the Archaeological Heritage (the 'Valletta Convention'), implemented in Bulgaria in 1995, which requires that archaeological excavations proceed in a scientific manner and are undertaken by competent personnel. The Bulgarian government should be encouraged to meet obligations incurred by its ratification of the Valletta Convention, either by decentralizing and outsourcing archaeological provision, or by increasing central support.



In the spring 2004 Editorial I suggested that the Crown Prosecution Service had failed to proceed against a man arrested for illegal digging on the grounds that it would not be in the public interest because of the low monetary value of the artefacts found in his possession. I have now learned that in fact the case was dropped because forensic evidence indicated the person's innocence, and I would like to apologize to the person concerned for any hurt that might have been caused.

TV review: NRK (Norway) *Skriftsamleren* [*The Manuscript Collector*]

STAFFAN LUNDÉN

On 7 September and 14 September 2004, the Norwegian Broadcasting Corporation (NRK) aired the documentary *Skriftsamleren* [*The Manuscript Collector*], a well-researched and hard-hitting investigation into the collecting activities of the Norwegian multi-millionaire Martin Schøyen.¹ The documentary, produced by Ola Flyum and David Hebditch, with Pakistan researcher Sohail Qureshi, offered to a wide audience a clear-cut example of how the looting and destruction of archaeological heritage is

ultimately financed by wealthy collectors and legitimized by naive scholars.

The Buddhist manuscripts

In 2001 — the year that the Taliban blew up the Bamiyan Buddhas — Martin Schøyen made the headlines. In newspaper articles and radio interviews he revealed that he had in his possession a large collection of ancient (first- to seventh-century) Buddhist manuscripts and manuscript fragments that had been saved from the Taliban regime. In a radio interview, quoted in the NRK programme, Schøyen related the following story about the origin of the manuscripts: Buddhists in Afghanistan, seeking refuge from the regime and hiding in caves had discovered the manuscripts. The Buddhists sent out requests for help to save these ancient manuscripts and Schøyen mounted



Figure 2. Looting at Gilgit. (Photo courtesy of NRK.)

'a rescue operation to save a part of the world's cultural heritage, which otherwise would have been destroyed'. According to Schøyen, the manuscripts were smuggled out of Afghanistan by refugees fleeing over the mountains at altitudes of more than 4000 metres, closely followed by the Taliban. Schøyen also related that he had in his possession all the fragments of a book that — he claimed — had been below the hand of a Buddha statue the regime had blown up. Having rescued these manuscripts, Schøyen wanted them to remain in safety in Norway. He hoped the collection would be purchased by the Norwegian government for the National Library and placed in a new, specially-constructed building. When arguing for a Norwegian purchase he emphasized the prestige that would accrue to the country: 'For Norway the collection would mean as much for the country's reputation abroad as Ibsen, Nansen and Vigeland. It would be as important for the country as these ambassadors'. Schøyen's asking price for the collection is not known, but in 2003 he turned down an offer of over \$110 million (NOK 800 million). In short, according to Schøyen's own testimony, he had saved an important part of the global cultural heritage from certain destruction, and his implication was that for this altruistic 'rescue operation' he deserved public gratitude (and a monetary reward).²

Yet, the NRK investigators asked: what were

the exact circumstances of Schøyen's rescue operation? Were the manuscripts really saved from the Taliban? Where and when were they actually found?

To find out the answers to these questions, the NRK team went to Bamiyan, the alleged findspot of the manuscripts. At Bamiyan, they met with the archaeologist Kazuya Yamauchi, who was working at the site. Yamauchi explained that he had never found any manuscripts in the caves at Bamiyan, and that the caves had been thoroughly looted long before the Taliban came to power in 1998. But Yamauchi also told them that when he had visited the town of Zargaraan, east of Bamiyan, he had heard that in 1993 a landslide had uncovered a cave and a strong wind had blown manuscript fragments across the countryside. Yamauchi believed that Zargaraan could be the true find spot of the manuscripts in the Schøyen collection.

Schøyen refused to be interviewed for the documentary, but Jens Braarvig, professor in Religious Studies at Oslo University, and the person in charge of publishing the Schøyen manuscripts, admitted on camera that there is no reason to believe that the manuscripts are not from Zargaraan. If this is the case, the investigators concluded, then it means that the story about the manuscripts being saved from the Taliban is false. In 1993 there were no Taliban in Afghanistan.

The investigators uncovered more disturbing

facts about the collection's origins. During the civil war in Afghanistan the National Museum in Kabul was looted and lost over 70 per cent of its collections, including its collection of Buddhist manuscripts. The NRK programme revealed that two, probably six, manuscript fragments in the Schøyen collection came from the National Museum. This fact had been known to Schøyen, Braarvig and other scholars publishing the manuscripts since 1998, but they had not made it publicly known, nor had they informed the Kabul museum about the whereabouts of the fragments. It was not until the NRK investigators started to make inquiries that Schøyen wrote a letter to the Afghani authorities and offered to return the fragments to the Kabul museum.

Yet, there was more. The investigators discovered that many manuscript fragments in the Schøyen collection were not actually from Afghanistan. This part of the investigation threw some light on how Schøyen had 'rescued' some of these manuscripts. It appears that, after initial purchases from Sam Fogg and other London dealers, Schøyen attempted to cut out these intermediaries and to buy closer to the 'source'. The programme alleges that Schøyen started to deal directly with the smugglers.³ That Schøyen must have had knowledge of the recent illicit origin of the material he was purchasing is strongly suggested by an incriminating fax to which the investigators gained access, in which Schøyen writes to a dealer about one of his purchases:

All materials have [the] same origin, a cave high up in the border area between Afghanistan, China and Pakistan. My primary source said he was in the cave with the diggers...⁴

The place where the objects were said to have been dug up is not named, but the investigators concluded that it was probably the town of Gilgit in northern Pakistan, which is known for its archaeological remains. The fact that the Schøyen collection contains material from Gilgit was confirmed by one of Schøyen's suppliers, Bill Veres. Veres did not want to be interviewed, but in conversation with one of the NRK investigators (recorded with a hidden microphone) he said that in 1998 he had sold Schøyen a manuscript from Gilgit. The price paid was equivalent to NOK 160,000 (£13,000). When interviewed, Braarvig

reluctantly admitted that there were 'a few leaves [from Pakistan] which had crept into the collection'. After the broadcast of the first part of the programme, Schøyen confirmed that his collection contained between 200 and 300 manuscript fragments from Pakistan.

To find out more about the source of the manuscripts, the NRK team travelled to Gilgit. After a long journey, passing through Peshawar, the main trading centre for drugs, arms and antiquities from Afghanistan, they eventually reached Gilgit. Here they met with Muzaffar Ali, a representative of the local administration. He related that for ages the ruins of monasteries and other archaeological remains had remained untouched because they were considered to be haunted by evil spirits. The situation changed one night in April 1994. That night a group of looters arrived. The looters were Pathans, the dominant ethnic group of Peshawar. They started digging in the ruins and found books and other antiquities. After the looters had left, the poor people from the neighbourhood also tried their luck in the ruins. Among them was the shepherd Mohammed Iqbal, who told the NRK team that he had dug up a book with several hundred pages. He sold the book for 270,000 rupees (£2500), which to him was equal to 10 years income. He was later told that the book had been sold in Peshawar for a price equivalent to NOK 0.5 million (£40,000). Its later whereabouts are unknown, but according to Bill Veres it may well have been the book he sold to a Japanese collector for a price equivalent to NOK 2.4 million (£200,000). Schøyen had been offered the book first but did not bid more than NOK 1 million (£80,000).

At Gilgit, the NRK team could document ample evidence for the destructive consequences of looting. The site was littered with pottery fragments. The Pathan looters had found the manuscripts stored in jars, and in their hurry to retrieve them they had broken the jars into pieces. This violent treatment had also damaged the manuscripts. The investigators were told by Iqbal that when he arrived at the site he had found around 500 manuscript fragments spread over the area. Believing that these were 'bewitched Hindu texts' — and apparently unaware that small manuscript fragments could also be sold — Iqbal and his friends used them as fuel when making tea.

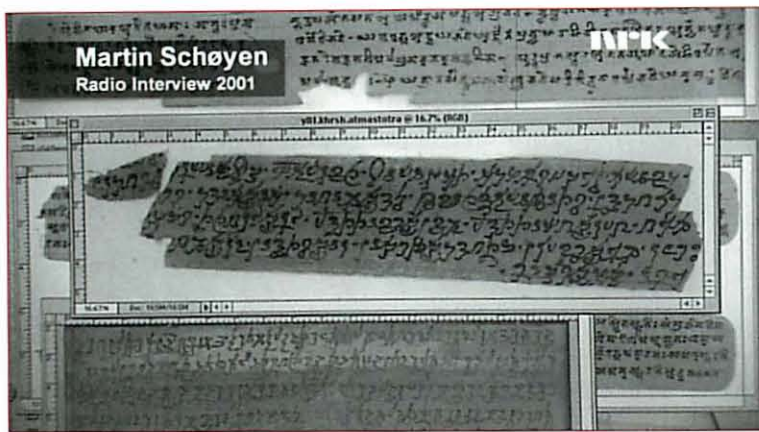


Figure 2. The 'Bamiyan' manuscripts. (Photo courtesy of NRK.)

At the site the NRK team was shown a shallow Buddha relief on a mountain slope around which the first group of Pathan looters had drilled holes for explosives. They had planned to detach the Buddha with dynamite, but aborted the attempt.

The investigators could only conclude that the true circumstances of the origins of the Buddhist manuscripts were less flattering for Schøyen than the saga he had told. The manuscripts were not saved from the Taliban in a rescue operation. They had come into his possession through a totally unrelated route. They had been bought on the art market, sometimes directly from smugglers. Some of the material was not even from Afghanistan. These facts had been known to Schøyen and a number of scholars for years, but they had kept the information to themselves.⁵

The magic bowls

Martin Schøyen possesses one of the world's largest collections of Mesopotamian so-called 'magic' (or 'incantation') bowls — ceramic bowls with magical texts in Aramaic, dating c. AD 400–700. The number of magic bowls in his collection is reported to be 600 to 700. The investigators decided to look into the origin, present location and legal status of this large collection. In their quest they were joined by the archaeologist Erica Hunter of Cambridge University, who has researched similar bowls in Baghdad's National Museum. She first heard about the Schøyen bowls in the 1990s and since then has been trying to learn more about them.

Hunter related that she had learned that the bowls were at University College London (UCL) and that professors Mark Geller, at the Institute of Jewish Studies UCL, and Shaul Shaked, at the Hebrew University of Jerusalem, were respon-

sible for the research and publication of the bowls. Geller and Shaked had, however, refused her permission to see the bowls. They also declined to be interviewed for the programme.

The UN sanctions against Iraq, first imposed in 1990, prohibit trade in antiquities which have left Iraq since that year. The ban on dealing in Iraqi antiquities was repeated in a resolution of the UN Security Council in 2003. Since then, in the UK, anyone dealing in, or possessing, Iraqi antiquities exported since 1990 may face a prison sentence of up to seven years. Individuals or institutions possessing such objects without informing an appropriate law enforcement agency also commit a criminal offence.⁶ In Norway, the UN resolution was implemented through a regulation of May 2003 and since then anyone found guilty of dealing in, or possessing, Iraqi antiquities is liable to a prison sentence of three years.

Already in 1999, Hunter and other scholars had asked UCL about the legal status of the bowls, but UCL had declined to investigate them. When the NRK investigators started to make enquiries, UCL appeared unhelpful. In an interview, a UCL spokesman confirmed that UCL had held some bowls for 'academic purposes' but that the bowls had been returned to their owner.

However, this turned out not to be true, and the investigators discovered that the bowls were still in storage at UCL. (They were promised a look at the bowls, but the offer was later withdrawn, because, it was claimed, the keys to the store could not be found). In a second interview, the UCL spokesman revealed that he had discovered the bowls were still at UCL. He added that UCL's legal advisors had said it would be inappropriate to hand them back until the putative owner could provide written evidence of title.

So what was the provenance of the incantation bowls? Were they exported from Iraq before or after 1990? Not surprisingly, there were conflicting answers to these questions. Braarvig claimed he had seen documentation confirming that the bowls had been in private collections since the 1930s. A letter from Schøyen's lawyer to NRK stated that the ownership history of the objects went back to before 1965.

Yet, according to the sources consulted by

the investigators, the bowls have a more recent origin. They allege that the bowls were illegally excavated in Iraq in 1992 or 1993,⁷ and that Schøyen bought them in London for about NOK 25 million (£2 million). The vendors were Pars Antiques and the Jordanian dealer Ghassan Rihani (now deceased). Rihani had close ties with the Jordanian royal family and had provided an export license to cover his shipments from Amman to London, though the investigators called the authenticity of this licence into question.

It may be noted also that the scholars publishing the bowls in the Schøyen collection acknowledge that many bowls are illegally on the market. In a recent article, Mark Geller, referring to the situation in Iraq, states: 'Within the past decade, hundreds of Aramaic incantation bowls have appeared on the antiquities market, collected from archaeological sites.' He also writes that: 'Antiquities which were recently exported from their country of origin, such as Iraq, cannot be bought, sold, handled, or studied.'⁸ In the NRK programme, the investigators filmed a lecture at UCL by Mark Geller and Dan Levene on the inscriptions on the magic bowls in the collection of Martin Schøyen.⁹ Erica Hunter asked from the audience about the provenance of the bowls. Levene replied that most of them were unprovenanced.

Scholarly collusion

To the viewers one of the most surprising revelations of the NRK programme probably was the extent of scholarly involvement there is in the trade. The point was made that when scholars and academic institutions enter into different forms of collaboration with collectors, and start to research and publish unprovenanced objects — in effect, they legitimize them. Therefore the programme questioned why respectable scholars, such as Jens Braarvig, Mark Geller, Dan Levene, Shaul Shaked and others, would publish objects in the Schøyen collection despite their questionable origin.

Although not explicitly stated in the programme, it also provided a didactic example of how scholars who publish such objects become dependent upon the goodwill of the collector and how this dependency influences scholarly judgement. Braarvig, responsible for publishing the Schøyen collection, stated in the programme that if there were illicit objects in the collection, he

would disclose the fact. Yet, as mentioned above, he had neglected to make known information that would have contradicted the official story of a rescue operation from the Taliban. From the interview it was also clear that Braarvig did not question Schøyen's legal or moral rights to own (or sell) the objects in his collection. This shows one additional motivation for collectors to give scholars the privilege to publish their collections: by doing so they gain steady allies — with all the credentials that come with academic titles — who are willing to stand up and defend their right to collect and to possess.¹⁰

One of the most interesting parts of the programme dealt with how Buddhist manuscripts came into vogue among the collectors — and it was implied that in this respect too scholars had become pawns in the games of the market-makers. The investigators managed to interview a London-based smuggler, who said that when the manuscripts started to come on to the market in 1993 and 1994, there was hardly any demand for them. The situation changed when the British Library acquired a number of manuscripts. When announcing the acquisition, the manuscripts were hailed as a sensational discovery and comparable in significance to the Dead Sea scrolls.¹¹ The programme interviewed Graham Shaw, who is responsible for the Asian collections at the British Library, and who said that the manuscripts were first brought to the Library 'for advice on conservation'. This sounds like an innocent motive for bringing texts to a library, but in the programme it was suggested that the real reason for making this material known to the British Library was more sinister. It may have been a marketing strategy, based on the calculation that an acquisition by such a prestigious institution would stimulate the market. Regardless of whether the British Library was deliberately manipulated or not, the news of its acquisition aroused the interest of collectors.¹² Among the collectors who were now eager to acquire this kind of material was Martin Schøyen, who in 1996 made his first purchase of Buddhist manuscript fragments from Sam Fogg. By 1998 he had bought 10,000 manuscript fragments.

When the NRK interviewer suggested to Shaw on screen that the British Library, by its act of acquisition, had stimulated the market and started off a looting campaign, Shaw did not seem very happy. He said he refused to answer such a

‘totally unfair question’, stood up, took off the microphone, and walked off.

The programme did not give further details on how the manuscripts were acquired by the British Library, but an article in *The Art Newspaper* reported that

the scrolls had been sold by Robert Senior, a coin dealer who is currently based in Somerset. The purchase price has never been disclosed, but it has been suggested that the texts were purchased and donated to the library by Neil Kreitman, a specialist in Gandharan art and son of the late Hyman Kreitman, chairman of Tesco supermarkets.

According to this article, the manuscripts are believed to have been looted near Hadda in Afghanistan in 1992.¹³ Another article reports that the purchase price was ‘a five-figure sum’.¹⁴ The British Library defended its acquisition by arguing that the manuscripts were in need of urgent conservation work and that the Library wanted to make them ‘available to the international scholarly community’.

Clearly there is a moral dilemma when material of great scholarly value but with uncertain provenance is offered on the market.¹⁵ Any scholar may instinctively feel an urge to rescue the material by acquiring it, especially if it comes from a war-torn country where there are no functioning institutions able to take care of it. Yet, in the case of the manuscripts acquired by the British Library, the alleged price throws some doubt on the notion that the British Library saved them. Does not the five-figure price suggest that there were other prospective saviours available and that the Library was in competition with them? Why did the British Library have to compete with them? Which collector, willing to pay a five-figure sum, would have refused to make the material available to scholars? Collectors do not hide away their collections. Collectors want their collections to be studied as it enhances their own social status, as well the collection’s economic value.

Looting will only come to a halt when collectors refuse to purchase unprovenanced material. Of course, even without a market, chance finds would still be made, and it could be argued that if the objects appearing this way were devoid of monetary value they would be destroyed. A case in point would be the above-mentioned Zargaraan manuscripts which started to blow over the

countryside after a landslide. Still, any acquisitions of material of great scholarly importance from another country should only be made by, or on behalf of, an internationally-recognized body, with the purpose of keeping the material in trust until conditions permit its return to the country of origin. The only acceptable forms of acquisition are by donation or, if purchase is absolutely necessary, by payment of modest sums that will not spur further looting.¹⁶ Public information about acquisitions has to be worded so as not to stimulate commercial interest in the type of material in question. Acquisitions should not be made by public or private collectors who confuse a desire to enrich their own collections with protecting the world’s cultural heritage, and who directly or indirectly inject large sums of money into the trade.

The effects of the broadcast

This truly shocking and excellently produced programme made an impact in Norway and abroad. Two days after the broadcast of the first part of the programme, Oslo University decided to put a halt to research on the manuscripts. The same day, the Pakistani ambassador to Norway demanded the return of the Gilgit manuscripts to Pakistan. Schøyen, apparently taken aback by the media attention, quickly replied that he agreed to repatriate them, and in March 2005 they were handed over to the Pakistani embassy. As related in the programme, Schøyen has also offered to return the manuscript fragments stolen from the Kabul museum. However, what Schøyen intends to do with the remaining Afghani manuscripts in his possession is uncertain. Afghanistan’s Minister of Culture, Sayyed Raheen, had already in 2003 made a claim for restitution. Schøyen refused to give them back at the time, and there is no indication that he has changed his mind since. In view of Schøyen’s indifference to the Afghan request, it might be worth quoting the words of Sayyed Raheen, who was interviewed in the programme. Raheen recalled the calamities which had befallen Afghanistan, with 1.5 million dead during 23 years of conflict, and said: ‘I hope everyone will think about the moral duty they have regarding the people of Afghanistan, and I am sure no man with clear mind and heart will take advantage of our disastrous situation.’

As a result of the programme, the Afghan gov-

ernment have now also requested the return of the scrolls in the British Library. A spokesman for the British Library has said that 'the library would be willing to consider a claim', but the outcome of this consideration is not yet known. UCL has launched an enquiry into the provenance of the magic bowls, though it has not yet reached any conclusions. In March 2005 Braarvig declared he would resign from his position as coordinator of research and publication of the material in the Schøyen collection. In April 2005 the programme was awarded a diploma for excellence in investigative journalism by the Norwegian Foundation for Investigative Journalism, Stiftelsen for en Kritisk och Undersøkende Presses (SKUP).

The human right to culture

Skriftsamleren is an eye-opening exposé of the illicit antiquities trade. In my opinion, one of the most powerful and thought-provoking moments was when the programme quoted a claim made by Schøyen in a radio interview that because there are regimes which are not able to take care of their own cultural heritage, others have to step in to save it. Cut to Mozaffar Ali, the representative of the local administration in Gilgit, standing in the Gilgit ruins saying:

Everyone knows that this is a historically important area. If the authorities had protected it, we could have had a museum here. But now there is nothing to stop the Pathans, the Europeans and others from enriching themselves. They have destroyed our cultural heritage.

The words of Ali so clearly capture what Schøyen and other collectors have failed to understand: that people of modest means in developing countries may also want, and have a right to, a cultural heritage. The wealthy collectors of the world support a trade which deprives human beings of this fundamental right. Ali's words also show that the trade cannot be justified on the grounds that certain regimes or countries are not interested in preserving their cultural heritage. Any such statement is a gross over-simplification of economic and political realities. Cultural heritage is the object of power struggles between different interest groups — those who seek to preserve it and those who seek to exploit it for monetary gain. In developing countries, the latter group often has the strongest financial resources

and the best political connections.

Those collectors who see themselves as benefactors of culture and have money to spend must choose which side to support in this conflict. Why did Schøyen, and the other bidders for Buddhist manuscripts, not put their money instead into a cultural heritage project in Gilgit? Such a project could have funded archaeological excavations, the creation of a local museum and perhaps also a travelling exhibition to Norway, the UK and Japan. Had Schøyen spent his money in this way he would have deserved the international gratitude he so much desires to gain.

The collecting of unprovenanced antiquities will continue as long as it is seen to be socially acceptable. For a change of attitude to happen, it is essential that the victims of the trade are allowed access to the public forum equal to that enjoyed by those who try to justify it. Clearly, the inhabitants of developing countries like Pakistan have far fewer opportunities to make themselves heard in the debate over the trade that is taking place in the market countries than do dealers, collectors and the retinue of scholars who support them. Perhaps the greatest merit of this programme was that it, for once, presented one of the least heard voices in the debate — the voice of one of the many who suffer the consequences of the trade.

Notes

1. The programme (in Norwegian but with many of the interviews in English) was shown in the NRK current affairs series 'Brennpunkt' and can be viewed through the NRK website (<http://www.nrk.no>). All translations from Norwegian in this article are by the author. After the broadcast Schøyen complained unsuccessfully to the Norwegian Press Complaints Commission, Pressens faglige utvalg (PFU). The submissions provided by Schøyen's lawyers and by NRK are publicly available from PFU (no. 184/04), and provide extensive background information for the contents of the programme. See also O. Flyum, 'SKUP-rapport for NRK Brennpunkts prosjekter. Skriftsamleren. De magiska krukene'. This document can be downloaded from the website 'Buddhist manuscripts from Afghanistan in the Schøyen collection' (<http://folk.uio.no/atleom/manuscripts.htm>). This website, maintained by Atle Omland of Oslo University, gives a wealth of material on the controversies surrounding the Schøyen collection. Omland's forthcoming article 'Claiming Gandhara: legitimising ownership of Buddhist manuscripts in the Schøyen collection, Norway', in: J. van Krieken (ed.), *Art and Archaeology in Afghanistan, its Fall and Survival*, together with Omland & Prescott (2002) and Prescott & Omland (2003) also discuss the issue. I am

- indebted to Atle Omland for showing me his forthcoming article before publication.
2. The introduction page of the Schøyen collection's website informs us that the proceeds from the sale of the collection are to go to a fund named 'The Schøyen Human Rights Foundation' (<http://www.nb.no/baser/Schøyen/intro.html>). The fund will give emergency aid and fight poverty in emerging nations and promote freedom of speech and human rights worldwide. In the terminology of the sociologist Pierre Bourdieu, it could be said that Schøyen, by putting money into this fund, wants to transform his economic capital into social capital. It is a common behaviour among collectors to try to exchange their collections for social recognition, often by means of selling, donating or bequeathing the collection to a reputable museum or institution, on the condition that the collection retains the name of the collector for eternity. Schøyen attempts a slightly different strategy by selling the collection and using the proceeds for a fund named after himself.
 3. According to Flyum ('SKUP-rapport', 7), one of these was an infamous smuggler who also dealt in arms and drugs.
 4. In the fax (presented on the NRK website) Schøyen writes that he wants a refund of \$37,500 from the dealer for three 'Indus script' fragments that had turned out to be fakes. It seems that these fragments were the ones said to have come from the cave. Not surprisingly, market demand for ancient texts has led not only to looting but also to the production of forgeries. Looting is often described with the simile of tearing the pages of the book of history. With the production of fake texts, new pages are added and history is, quite literally, rewritten.
 5. In the wake of the programme, supporters of Schøyen and Braarvig claimed that the allegations of secrecy were false, because the scholars working on the material had revealed in academic lectures that some of the material originated from the Kabul museum and Gilgit. Yet it remains a fact that the scholars did not make this crucial information available to the general public in Norway, nor to the Afghan authorities, despite the facts that questions about the origin of the collection were repeatedly raised in Norway, and that the Afghan Minister of Culture had requested the return of the material.
 6. On the legislation, see Brodie (2003).
 7. According to the NRK submission to the PFU complaint and Flyum (SKUP-rapport, 18) a source inside Iraq had to be kept anonymous for security reasons. He had narrowly escaped two assassination attempts, in which one person was killed and another severely injured. These murder attempts were probably linked to his knowledge of the illicit trade. If nothing else, the toll of human lives taken by the trade (on which see Brodie *et al.* (2000, 16); further recent incidents include four police officers killed in Afghanistan in 2003 and eight in Iraq in 2004) should reveal the absurdity of the idea that society owes gratitude to dealers and collectors.
 8. 'Spies, thieves and the cultural heritage', at <http://www.ucl.ac.uk/hebrew-jewish/ijis/news.htm>.
 9. The lecture also dealt with bowls in the collection of Schlomo Moussaieff. According to the PFU documents the c. 50 bowls in Moussaieff's collection were also brought to the UK on the Rihani export licence.
 10. In earlier discussions in the Norwegian media Braarvig had also supported Schøyen's ownership. More recently, Braarvig has stated that Afghanistan, after all, is the right place for the manuscripts to be. He has suggested that the Norwegian state should purchase them from Schøyen and donate them to Afghanistan. Needless to say, if such a purchase were to take place it would send a signal down the chain of dealers and looters that there is still a market for Afghani loot and it would only serve to stimulate further pillaging.

As to scholarly ethics it may be mentioned that Braarvig and other scholars had already come into contact with Schøyen in 1997, when the collection of Buddhist manuscripts was still being augmented (the purchases continued until 2001). It would be interesting to know if any of these scholars ever had a discussion with Schøyen on the wisdom of purchasing these items. In 2003, Schøyen stated that he had decided to stop collecting archaeological objects. It seems that this decision came as a result of criticisms expressed in the Norwegian media, not because of advice from any of the scholars working on his collection. Anyway, Schøyen is to be congratulated for this decision.
 11. The manuscripts were acquired in 1994. They were then subject to a lengthy conservation before the British Library publicized the acquisition in 1996.
 12. That the British Library's acquisition boosted the market has also been observed by Matsuda Kazunobu (who belongs to the Schøyen collection research group). He writes: 'This news [i.e. the announcement of the acquisition] caused a sensation in the academic world. [...] Not only researchers, but the world's manuscript collectors paid attention to the news. Among them was a Norwegian, who promptly responded through dealers in London and built up an amazing collection in just one year's time' (2000, 99). Kazunobu's article is also interesting in that it gives a glimpse of just how much media attention the British Library's announcement created, including coverage in a Japanese TV documentary as well as in the magazine *National Geographic*. It is unfortunate that the British Library did not attempt, or failed in its attempts, to take this opportunity to inform the world's collectors on the ethics of collecting. For further remarks on how different scholarly outreach activities may stimulate the market, see Lundén (2004, especially 234, 240)
 13. Bailey (2004). Bailey refers to the programme as the source but as this information is not contained in programme broadcasted on NRK. I assume the information comes from a version of the programme which has been prepared for an international audience.
 14. Alberge (2004).
 15. On this so-called 'Rosetta stone dilemma', cf. Brodie *et al.* (2000) 46f.
 16. And when accepting donations care should be taken that they do not result in an economic or social benefit for the trade.

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Editor's note. The British Library has supplied *Culture Without Context* with a statement and documents relating to its acquisition of the manuscript fragments mentioned in this review. The British Library's statement will be printed in the next issue of *Culture Without Context* and its actions concerning the acquisition will be discussed in more detail.

In the News

NEIL BRODIE

African round-up

- In January, customs officers at Roissy Airport in Paris intercepted a cargo of about **850 artefacts from Niger** that was en route for Belgium. It included some dinosaur teeth, 668 Neolithic stone objects, and 29 Bura terracottas. **Bura terracotta figures** are on the ICOM Red List (see N. Brodie, 'Red alert in Nigeria', *CWC*, Issue 6, 2000, 13–15). 5620 artefacts from Niger had previously been seized at Roissy in March 2004. Writing in Niamey for the Inter Press Service ('Culture-Niger: archaeological treasures may soon become a thing of the past', 9 February 2005, available at <http://ipsnews.net/search.shtml>), Ousseini Issa points out that Niger's large size (1,267,000 km²) and high levels of poverty prevent any effective protection of its archaeological heritage. An archaeologist at Niger's Institute of Social Science Research was quoted as saying that, of the hundreds of sites in the Bura region, only one is properly protected. The problem of archaeological looting is growing worse as people inside
- Niger have become better acquainted with market values, and prices are rising. Pieces that would have commanded anything up to \$1.50 in the 1990s might now be worth from \$70 up to \$400 or more.
- In **Kenya**, attention is focusing on the **trade and theft of historical artefacts**, whether they be tribal regalia, World War II medals, or Mau Mau uniforms and weapons (John Kariuki, 'Crisis at the museum', *East African*, 4 April 2005).
- Recently declassified British government documents confirm that a **sixteenth-century Benin bronze head** presented to the Queen by the then Nigerian president General Yakubu Gowon in 1973 had been taken from the Lagos National Museum (M. Bailey, 'Government knew Nigerian gift to Queen was expropriated treasure', *Art Newspaper*, February 2005, 9).

Egypt

- Following on from the investigations that led to the conviction of Tarek al-Sweisi and

his accomplices for **antiquities smuggling** (see 'In the news', *CWC*, Issue 13, 2003, 13; 'In the news', *CWC*, Issue 15, 2004, 11), Egyptian police recovered **3052 artefacts** from an apartment that was co-owned by Mohamed Ali Farag.

- In April, a Los Angeles man was arrested on suspicion of smuggling Egyptian artefacts into the US and an investigation has been opened by US Immigration and Customs Enforcement (ICE).
- Sometime in 2002, **70 artefacts** from the **Egyptian Predynastic site of Ma'adi** were **stolen** from storage in Cairo University. The site of Ma'adi was excavated from the 1930s through to the 1950s, and full publication in a series of monographs is still ongoing.

Five stone and two ceramic vessels from Ma'adi turned up for sale at Bonhams in their October 2004 London 'Antiquities' sale (lots 1–4, 6, 8 & 9), but were recognized by Egyptologist Luc Watrin who alerted Bonhams and stopped their sale. The vessels were said to have been sold to the consignor by the grandson of one Joseph Garnish, who was said in turn to have acquired them while working in Cairo for a mining company in the 1930s. Bonhams arranged with the consignor that the pieces should be returned to Egypt, and they were delivered to the Egyptian Embassy in London in February. The identity of the consignor has not been revealed.

Another Ma'adi piece was sold for \$6573 through Christie's New York at their June 2004 'Antiquities' sale. It was lot 99, 'An Egyptian rose granite vessel', said to have been excavated at Ma'adi and in the Garnish collection since the 1930s. The purchaser (whose name has not been revealed) offered the piece on loan to the Metropolitan Museum of Art in New York, whereupon the Metropolitan's staff recognized the piece as stolen, and arranged with the owner for it to be returned to Egypt.

A large number of Ma'adi pots have

also appeared for sale on various websites. Part of the Ma'adi ceramic assemblage was published in 1987 (I. Rizkana & J. Seeher, *Maadi I. The Pottery of the Predynastic Settlement*, Mainz am Rhein: Philipp von Zabern), and on page 13 the authors state that their study of the pottery took place in 1984 and 1985, at which time the pottery was still in storage at the site. Therefore, any pottery from the publication can only have moved out of Egypt after 1983, the date of Egypt's patrimony law,

The pots offered for sale on the Internet are advertised with photographs, and sometimes an excavation number is provided, in which case they are easy to check against the Rizkana & Seeher publication. One pot, offered for sale by Michigan-based Orpheus Art with the description 'Predynastic opium poppy vase' (item no. 90069), had the excavation number 1915 and has been identified as Rizkana & Seeher plate 2.8. Its provenance was given as 'Johnson family collection, excavated in Egypt approx. 1932'. All of the Ma'adi pots offered for sale have the same Johnson provenance.

An apparent link between the Johnson family and Joseph Garnish was provided last year for a pot offered for sale at the Wallis Gallery of Antiquities. The previous owner was identified as the proprietor of Washington DC-based Sands of Time Antiquities, who was said to have acquired the piece in 2003. Sometime previously, it had been in the possession of Edward Johnson, who was said to be the grandson of Joseph Garner (sic.), who acquired the piece while working on a mining project in Cairo during the 1930s. Thus the Garnish/Garner–Johnson pedigree has the appearance of a false provenance constructed to cover the entry onto the market of material illegally exported from Egypt, and any object bearing that provenance must be viewed as suspect.

The proprietor of the Wallis Gallery has informed *Culture Without Context* that when he became aware of the question-mark hanging over his piece he returned it

to Sands of Time. In turn, Sands of Time is now working with the Art Loss Register to recover stolen material. Orpheus Art did not reply to a *Culture Without Context* enquiry, and the piece 90069 offered for sale by Orpheus has now been sold.



USA

- In January a newly-formed eight-person **FBI task force** specializing in art and cultural heritage crime met in Philadelphia with museum staff and representatives of the art trade. The Department of Justice has also designated two District Attorneys to support the new unit.
- In April, the Southern District of New York US Attorney's Office charged father and son dealers Edward and Samuel Merrin, owners of the Merrin Gallery, with **conspiring to defraud customers** out of millions of dollars. They are said to have entered into oral agreements with customers to deliver pieces at cost price plus an agreed commission of between 10 to 20 per cent, subsequently exaggerating the cost price by two to three times. From April 1989 to June 2000 they are said to have **sold hundreds of pieces** worth more than \$65 million under such agreements (see US Department of Justice press release at <http://www.usdoj.gov/usao/nys/Press%20Releases/March05/Merrin%20indictment%20PR.pdf>.)
- Elsewhere in the United States, **museums have been under attack**. In December 2004, California's Daggett Historical Society's museum's losses included two Acoma pots and a Navajo textile. More was taken from the Cabazon Cultural Museum, also in California. Then, in March, the Mid-America All-Indian Center museum in Wichita said that up to 270 artefacts had disappeared from storage. The FBI has since recovered 14 of the 17 stolen Cabazon artefacts.

- In South Dakota, Lake Oahe is at low level and many **new archaeological sites** have been **exposed**, ranging in date from prehistoric to nineteenth-century, and are attracting the usual crop of looters.
- Convictions included Californian Jerry David Hasson in January 2005 who pleaded guilty under the Archaeological Resources Protection Act (ARPA) to offering for sale on the Internet a **200-year-old skull** of a native Hawaiian that had been stolen from Maui in 1969 (<http://www.usdoj.gov/usao/cac/pr2005/010.html>), and in Denver Robert Hanson pleaded guilty in May 2005 under ARPA of illegally transporting artefacts dating back to AD 1200 stolen from the Ute Mountain Ute Tribal Park Museum (<http://www.usdoj.gov/usao/co/051305Frame1Source1.htm>).



Iran

- The Iranian Cultural Heritage News Agency (CHN) announced on 11 February that the Iranian Cultural Heritage and Tourism Organisation had **managed to stop illegal excavations at Jiroft**. The looting is said to have started in April 2001 when a chance find attracted local villagers to the site, and continued there for more than three years. It is believed that thousands of objects were removed. 300 people were arrested and two men were sentenced to death. The *Art Newspaper* (January 2005, 3) reported that perhaps 70 per cent of the looted Jiroft artefacts had passed through Britain. In March, 118 Jiroft artefacts that had been seized by UK customs at Heathrow in June 2004 were returned to Iran (CHN, 10 March 2005).
- Christie's auction house in London was forced to withdraw a piece of **Achaemenid stone relief sculpture** from its 20 April 'Antiquities' sale after the Iranian Government started legal proceedings for its return. The piece (lot 64), which shows

the head of a guardsman, is from the fifth-century BC Palace of Xerxes at Persepolis and had previously been sold at Sotheby's New York on 4 May 1974. Iran claims it was smuggled out of the country sometime between 1933 and 1974. The name of the owner was not revealed in the Christie's catalogue, but the *Daily Telegraph* reported that it is believed to be Denyse Berend (C. Hope, 'Christie's faces block on sale of Iranian artefact', 30 May 2005). The auction was a single-owner sale of 100 lots and was unusual in that 65 lots were accompanied by a provenance that included either the name of a previous owner or the time and place of purchase (65 per cent is a much higher percentage than is usual at antiquities auctions). Only a few of these provenances stretch back to before 1970, which presumably reflects the date of the collection's establishment, but nevertheless they provide basic information for further provenance research.



Israel

- In December, five men were indicted for **allegedly forging antiquities** on evidence gathered by the Israel Antiquities Authority and the Israeli police. They are Oded Golan, Shlomo Cohen, Robert Deutsch, Rafael Braun and Fayez al-Amaleh. The indictment claims that the group systematically faked or artificially 'enhanced' antiquities over a twenty-year period, including the 'James Ossuary' inscription, the 'Jehoash Stone' ('In the News', *CWC*, Issue 12, 2003, 14; 'In the News', *CWC*, Issue 13, 2003, 13), and an ivory pomegranate reputed to be an artefact from Jerusalem's first (Solomonic) temple for which in 1988 the Israel Museum paid \$550,000 into an anonymous Swiss bank account. The trial is due to commence on 4 September.

The March/April 2005 issue of *Biblical Archaeological Review* gives a good, though biased, account of the personalities

and objects that figure in the case ('Update – finds or fakes?', 58–69). The magazine's proprietor and editor Herschel Shanks has been a tireless and vocal defender of the authenticity of some of the objects, particularly the James Ossuary inscription, but the 25 March 2005 issue of the Canadian magazine *Maclean's* (Jonathon Gatehouse, 'Cashbox', 26–36) brought Shanks's own interest into focus — apparently he was paid \$28,000 by Canada's Royal Ontario Museum for his part in arranging that the Ossuary was displayed there.

- In the *Jerusalem Post*, Etgar Lefkovits reported that in 2004 there were **314 reported cases of antiquities theft** in Israel compared to fewer than 200 in 2003, and that eight Palestinians were arrested in March for illegal digging ('Construction workers held for antiquities theft', 8 March 2005). In January a man was convicted in Jerusalem and sentenced to five months in jail for illegal digging. Then, in May, Israeli postal workers discovered a bronze weight of the Bar Kochba period (AD 132–5) hidden inside a cut-out in a book. Also in May, two men were arrested in Jerusalem for trying to sell two ossuaries, which still contained bones. A few weeks later in June three men were arrested for allegedly conducting illegal excavations in a Modi'in cemetery.



Iraq

- A situation report on Iraq in *The Art Newspaper* (J. Kaufman, 'Museums closed and looting rampant', February 2005, 4) revealed that all **museums remain closed and looting is still endemic**. The Basra Museum was said to be occupied by squatters, museums at Kufa and Nejef occupied by Islamists, and Nasariya museum has been burned. The Iraqi State Board of Antiquities and Heritage (SBAH) has established a Facilities Protection Service (FPS) to guard archaeological sites, but although there

are 1750 recruits the force is still short of radios, vehicles and weapons. New security systems are now in place at the National Museum.

- The British Museum's Keeper of the Department of the Ancient Near East, **John Curtis**, visited the site of **Babylon** in December and in a report published in January he **catalogued the damage** that had been caused there by the expansion of a Coalition military base (available at <http://www.thebritishmuseum.ac.uk/news/babylon.html>). Coalition troops withdrew in January and the site was handed over to the FPS.
- A **five-year tour of museums** worldwide has been organized for an exhibition of Iraqi archaeological material, including the **Nimrud Gold**. It is hoped that the tour will raise over \$10 million which will be used to refurbish Iraq's National Museum.
- In February, **eight cylinder seals** that had been brought out of Iraq illegally by a US marine but voluntarily handed over to the FBI were **returned to the Iraqi authorities**. In May, a US Air Force officer was found guilty by a military judge of illegally exporting a large number of (modern) weapons and a statue looted from Iraq's National Museum.
- In an interview reported in the *Palestine Chronicle* (S. Nettnin, 'Iraq Museum's Director-General lectures about antiquities', 9 June 2005), Donny George, Director of Iraq's National Museum, revealed that an Iraqi **youth organization recovered 200 looted artefacts** between March and May 2005.
- The World Monuments Fund announced in June that because of widespread looting and war damage it had placed the entire **cultural heritage of Iraq** on its **list of 100 Most Endangered Sites**.
- Charles Onians, writing in the *Middle East*

Times ('Priceless mystery shrouds Iraq's missing artifacts', 20 June 2005) reported on **Iraqi efforts in Dhi Qar province to break up smuggling networks**. Over 60 suspects were identified in the single town of Fajir, 100 km north of Nassiriya with a population of 10,000.

- In June, Jordanian authorities announced that they had seized 1347 Iraqi artefacts over the preceding two years.



The fall of Sheikh Saud Al-Thani

The *Art Newspaper* has been busy investigating the affairs of **Sheikh Saud Al-Thani**. In April it reported that he had been **arrested in March** in the Qatari capital of Doha after an investigation into his use (or misuse) of public funds, which he had used to purchase material for five museums which are being built in Qatar, with a view to establishing Qatar as the region's foremost cultural centre. Sheikh Saud Al-Thani's position as Chairman of the National Council for Culture, Arts and Heritage (NCCA) was taken over by Dr Mohammed Abdulraheem. Dr Oliver Watson, chief curator of Qatar's Museum of Islamic Art, resigned his post to become the new Keeper of Asian Art at Oxford's Ashmolean Museum.

Sheikh Saud has been profligate in the market over the past eight years, and routinely paid many times over the estimated price to secure a desired purchase, sometimes operating through several agents at once at auction sales.

More revelations followed in The *Art Newspaper's* May and June issues, when it alleged that London dealer Oliver Hoare had on more than one occasion invoiced the Sheikh for sums of money in payment for objects that the Sheikh already owned and that were well in excess of market value, and that the Sheikh had then used these invoices to obtain money from the NCCA. The *Art Newspaper* further claimed (June 2005, 1) that the money does not appear in Hoare's published accounts. Oliver

Hoare did not confirm or deny the allegations, though the director of Copenhagen's David Collection, Kjeld von Folsach, came forward to defend him.

The Sheikh's withdrawal from the market had a depressing effect upon London's spring Islamic Art auctions.



Yemen

In March, the head of Yemen's General Organisation for Antiquities and Museums announced a **new get-tough policy on antiquities smuggling** with the creation of a special police unit and an increase in international cooperation. The results of this new policy are apparent in the Yemeni media. In February, police arrested five individuals, led by a Jordanian national, on suspicion of smuggling antiquities. Also in February, an Iraqi national, an employee of an international freight company, was arrested for smuggling and more than 300 artefacts were recovered. Apparently, the suspect admitted during interrogation to smuggling a similar number of artefacts out through the airport last year. In April, Yemeni police arrested a three-man gang trying to smuggle pre-Islamic antiquities over the border into Saudi Arabia. In May, the director of Yemen's Sana'a International Airport announced that 1200 artefacts of all dates had been seized there between December 2004 and April 2005. Two incidents involved Spanish nationals.



China

- The US Cultural Property Advisory Committee (CPAC) met in February to consider a request from the People's Republic of China for the United States to place **import controls on Chinese cultural material** from the Palaeolithic through to the end of the Qing Dynasty. A summary text of China's request (available at: <http://exchanges.state.gov/culprop/cn04sum.html>) reveals that:

- In 1997, Tianjin Customs intercepted a container load of over 4000 artefacts and later that year a further two shipments headed for South Korea containing 513 pieces. Also in 1997, an intercepted shipment from Beijing to the United States contained more than 2200 pieces.
- In 1996, 187 people looted over 199 tombs in Jiangxi Province. From March 1998 to August 1998 a gang plundered more than 600 tombs in Hunan Province.
- In Chifeng City (Inner Mongolia) over the past 20 years more than 6000 archaeological sites have been looted. Over 500 stone statues have been reported stolen from the area's Buddhist temples and monuments.
- The plunder of inscribed artefacts from the Tombs of the Marquis of the Jin State (in Shanxi Province) has disrupted the State's historical record.

At the US end, it was revealed that:

- In 1997 Seattle customs intercepted a large quantity of artefacts in containers inbound from Hong Kong that were subsequently returned to Hong Kong.
- In 1998 and 1999 shipments were discovered in New Jersey and San Diego.

At an open session of the CPAC meeting, the American Council for Cultural Policy, together with Directors of the Art Institute of Chicago, the Asian Art Museum of San Francisco, the Cleveland Museum of Art, and the Nelson-Atkins Museum of Art spoke against the application, while the Lawyers' Committee for Cultural Heritage Protection, Saving Antiquities For Everyone, and curators of the Chicago Field Museum spoke in favour.

- In the Chinese media the government reported that in 2002 **Chinese customs intercepted 8780 artefacts before export**, and that 40 individual cases of artefact theft were reported in 2004, involving 222 artefacts. The figure did not include illegal excavations. A stone head that had been sawn off a Buddha statute in Shangdong's Shentong Monastery in 1997 was returned

in November 2004 by Taiwan's Dharma Drum Mountain Foundation. Two Japanese nationals were arrested in April in China's eastern Zhejiang Province for trying to smuggle 310 pieces of early first-millennium pottery.

- In the *International Herald Tribune*, Souren Melikian has reported that although the **Chinese art market** is benefiting from an influx of mainland Chinese buyers, they are not interested in archaeological pieces — archaic bronzes, Tang figurines and the like — but rather they are buying later Ming and Qing material ('History drives Chinese sales', July 23–24 2005).



The rest of Asia

- In Cambodia, the Authority for Protection and Management of Angkor and the Region of Siem Reap (APSARA) suggests that the **Cambodian army has been involved in the theft and transport of temple sculpture** (J. Perlez, 'Siem Reap Journal; a cruel race to loot the splendor that was Angkor', *New York Times*, 22 March 2005). Rosita Boland in the *Irish Times* had more to say about looting in Cambodia and selling in Thailand ('Looter's paradise', 26 March 2005). In Bangkok she spoke to a dealer who explained to her the basic economic facts — the Cambodian looter receives at most \$130 (about five times the average monthly wage) for a piece which will be sold in Bangkok for \$30,000, and perhaps more. In a follow-up article she reported on the explosive growth of tourism in Cambodia — 1.05 million people in 2004, up from 180,000 in 2002 ('Nothing sacred for the tourists', 28 March 2005). Local people are being pushed aside by outside, often foreign, interests intent on profiting from the boom, and the concept of the museum seems to be morphing into that of the shopping mall. Boland was accompanied

by Frank Miller whose photographs are available at <http://www.ireland.com/focus/cambodia/>.

- In February, acting on information supplied by the US Department of Homeland Security, Thai police arrested Priya Wachaitphan in Bangkok. He was charged with illegal dealing on the Internet in dinosaur fossils (J. McGirk, 'Terror alert reveals eBay trade in dinosaurs', *Independent*, 26 February 2005). Meanwhile, in Ayutthaya province, **temples** have taken to **protecting their Buddha images** with elaborate anti-theft measures, and in April two images that had been stolen from Jetiyanusorn temple were recovered by Thai police.
- In India, the parliamentary committee on culture reported on **inadequate museum security**, and after some high-profile thefts the National Museum is planning to install infra-red and visual surveillance systems.
- In June, Pakistani **customs seized 1482 artefacts** ranging in date from Neolithic to Gandharan, thought to have been excavated illegally in Afghanistan and southwest Pakistan. The objects were discovered in Karachi alongside furniture in a container destined for Dubai.
- Legazpi Museum in the Philippines has learned that a **sunken eighteenth-century Spanish galleon** was probably discovered last year off the island of Rapu-Rapu, and emptied of its contents — estimated to more than a thousand coins — by local fishermen.



Across Europe

- Switzerland's new Cultural Property Transfer Act (CPTA) implementing the 1970 UNESCO Convention came into effect on 1 June 2005. Among other things,

it introduces a **criminal offence for intentionally dealing in stolen cultural objects**, it makes provision for time-limited import restrictions to be imposed on categories of material in special danger, it makes allowance for the repatriation of illegally-exported material, subject to a 30-year limitation period from time of export, and it aims to render the Swiss market more transparent by requiring that dealers keep documentary records for 30 years of provenance-related information for all transactions involving objects priced at more than SF 5,000 (\$4000). Thus the new law introduces what might be called a 'rolling 30-year-rule', whereby stolen or illegally-exported objects can only enter legitimate commerce after a time lapse of 30 years.

- In May, the deputy-chief of the Russian Federal Surveillance Service for Compliance with the Law in Mass Communications and Cultural Heritage (Rosokhrankultura) suggested that the annual black market turnover in stolen cultural heritage is \$80–100 million, and called for the **introduction of a legal market** to allow closer monitoring. Russian authorities are also trying to extradite from Israel Ze'ev (Vladimir) Feinberg, who is accused of stealing more than 7000 documents from historical archives in St Petersburg in 1994. Feinberg claims to have bought the documents not knowing that they were stolen.
- In January, a **theft at the British Museum's Greek and Roman galleries was foiled** when security guards caught a man trying to open a display case with a pair of pliers. Egyptian shabti figures with a combined estimated value of £15,000 were stolen from Batley's Bagshaw Museum (Yorkshire) in March. A teaching collection of artefacts was stolen from a car in Birmingham in February. In Devon and Cornwall, monuments are being 'tagged' with microchips to guard them against theft after a failed attempt last year to steal a granite cross from Dartmoor.

In May, Manchester Museum's John Prag discovered that an Archaic Greek kouros he was hoping to acquire from London dealer James Ede had been stolen from Samos Museum sometime after 1942. Though under no legal obligation, Mr Ede returned the piece to Greece and waived a reward.

- In January, **Greek police seized 100 illegally-excavated clay figurines** in Athens, and in February, they recovered a further 4000 artefacts from a farmer's house 40 kilometres east of Thessaloniki. Also in February, the Orthodox Church suspended the priest Iakovos Giosakis who was subsequently arrested on charges of antiquities smuggling. Giosakis denies the charges. Still in February, fears were raised that new draft legislation aimed at protecting designated underwater archaeological sites could herald an open season on uncharted shipwrecks. In June, a Thessaloniki man was arrested and charged with possession of 100 illegally-obtained artefacts, including a gold funerary mask.
- In March, Odyssey Marine Exploration's deep ocean platform Odyssey Explorer arrived off the coast of Spain to begin work on the wreck of the **HMS Sussex** ('Editorial', *CWC*, Issue 11, 2002, 3–4). The project was interrupted when the Andalucia Guardia Civil sent out patrol boats to stop work. In a press release dated 20 April Odyssey announced that it had suspended operations until the dispute over jurisdiction between the Spanish and British governments is resolved.
- In April, Spanish **police recovered 10,358 cultural objects**, including 7442 archaeological pieces, and 467 tools that could be used for faking, when they arrested 16 people across the country in Valencia, Seville, Barcelona, Madrid, Malaga and Bilbao, and charged them with illegally excavating, trading or forging objects.
- In January, Bulgarian **customs officers**

intercepted a car with UK number plates attempting to cross the border into Serbia carrying 706 artefacts.

- Alma Lama, writing for the Institute for War and Peace Reporting, claimed that four Polish UNMIK (United Nations Mission in Kosovo) **police officers have been caught metal detecting and digging** at the protected medieval fort of Novobrdo in Kosovo, although UNMIK has not confirmed this report ('Foreign raiders plunder Kosovo's heritage', *BCR* 561, 23 June 2005).



Italy

- In December, **Giacomo Medici was sentenced to 10 years in jail** and ordered to pay damages of €10 million (see P. Watson, 'The sequestered warehouses', *CWC*, Issue 2, 1998, 11–14; P. Watson, 'Euphronius kylix update', *CWC*, Issue 5, 1999, 4). He has appealed.
- In January, an **amendment** to Italy's 2005 Budget Bill put forward by MP Gianfranco Conte **intended to declare an amnesty for looted archaeological material was rejected**. The amendment proposed that the possessors of illegally-obtained archaeological objects would be able to gain legal title through payment of five per cent of the object's monetary value to the State.

- In May, Marion True, **former curator** of antiquities at the J. Paul Getty Museum, was **indicted in Italy** on charges concerning the acquisition of 40 antiquities removed illegally from Italy. One is the acrolithic statue of Aphrodite acquired in 1987 (see 'Aphrodite', *CWC* no.11, 2002, 24–5). The trial is due to begin in July (T. Wilkinson & S. Muchnic, 'Indictment targets Getty's acquisitions', *Los Angeles Times*, 20 May 2005).



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International law for the protection of the underwater cultural heritage: can our past be salvaged?

MARINA PAPA SOKAL¹

The term ‘underwater cultural heritage’ (or UCH for short) refers to all remains of human activities lying on the seabed, on riverbeds, or at the bottom of lakes. It includes shipwrecks and other objects lost at sea, as well as prehistoric sites, sunken towns, and ancient ports that were once on the dry land and were eventually submerged due to climatic or geological changes. UCH forms an integral part of our common archaeological and historical heritage, and can give us invaluable information about cultural and economic contacts, migration and trade patterns, and production and export.

In this paper I will briefly outline the current state of international law for the protection of UCH. I will concentrate on the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage, which is at present the only international agreement specifically directed at the protection of UCH (O’Keefe 2002). However, since this Convention has not yet entered into force (and may not do so for some time), I will also look at other legal instruments that bear on the protection of UCH (available at <http://www.unesco.org>).

UNCLOS

First, some basic background concerning maritime law in general. The most comprehensive international legal regime dealing with maritime affairs that is currently in force is the Third United Nations Law of the Sea Convention (or UNCLOS for short), which was adopted in 1982 and went into force in 1994. For jurisdictional purposes UNCLOS recognizes five main maritime zones:

- First, we have the internal waters of a country: these include lakes and rivers, as well as archipelagic waters, and are normally treated as an integral part of a State’s territory. A majority of countries have national legislation covering

the protection of cultural heritage, and these laws usually apply to both land and underwater sites.

- Secondly, the territorial sea: UNCLOS allows States to proclaim sovereignty over an area extending up to 12 nautical miles from the coastline. In this zone the coastal State has total control on any activity; ships belonging to other States have only the right of innocent passage.
- Third, the contiguous zone: a State may claim a further zone up to a total of 24 miles from the coast in order to enforce its customs, tax, immigration and sanitary laws.
- Fourth, the continental shelf and an Exclusive Economic Zone (EEZ) up to 200 miles from the coast can be claimed to exploit the natural resources of the seabed and the water above.
- And finally, the high seas, also called the Area, where no country has exclusive jurisdiction or sovereign rights.

UNCLOS is primarily concerned with trade, fishing rights, commercial exploitation of natural resources in the seabed, and environmental protection. In fact, questions related to the protection of underwater cultural heritage only entered the negotiations at a late stage. As a result, only two articles of UNCLOS refer directly to UCH.

Article 303 declares that ‘States have the duty to protect objects of an archaeological and historical nature found at sea and shall co-operate for this purpose’, but provides no details. This article also gives coastal states limited rights to protect cultural heritage within the contiguous zone. However, Article 303 also adds that it is ‘without prejudice to other international agreements and rules of international law regarding the protection of objects of an archaeological and historical nature’, effectively leaving the door open to new international agreements such as the 2001 UNESCO Convention.

Article 149 of UNCLOS states that ‘all objects of an archaeological and historical nature found in the Area [that is, on the seabed underneath the high seas] shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin’. So, not only is Article 149 limited to the Area, but the provisions for exactly what

to do with UCH as well the definitions of what constitute country of origin are both extremely vague and confusing.

So far, UNCLOS has been ratified by 146 nations (<http://www.un.org/los/>). It is, however, clearly inadequate to guarantee proper, scientific, long-term protection of underwater cultural heritage at an international level. Moreover, it leaves a dangerous gap in the regulation of UCH situated between the outer limit of the contiguous zone and the beginning of the Area.

For these reasons, even before UNCLOS entered into force, the International Law Association (or ILA), a private organization based in London, started work in 1988 on a draft convention for the protection of UCH. This draft was eventually finalized and adopted in Buenos Aires in 1994 and was forwarded to UNESCO, which was judged the most appropriate organization to examine and adopt it as an international convention (O'Keefe 2002).

UNESCO Convention on the Protection of the Underwater Cultural Heritage

Already in 1993, the Executive Board of UNESCO had asked the Director General to examine the feasibility of an international instrument for the protection of UCH. The ILA draft was taken into consideration in the report which was submitted by the UNESCO Secretariat to the Executive Board in March 1995. This study highlighted some of the shortcomings of the existing legal regime, and strongly recommended the drafting of a new international normative instrument for the protection of UCH.

To begin with, the report observed that none of the other three UNESCO Conventions concerned with the protection of the world cultural heritage — namely, the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage — include provisions directed at UCH.

The other major concern expressed in the report is that the technological advances in SCUBA diving since World War II and the ever-increasing interest in underwater exploration for both recreational and commercial purposes pose a real

and growing threat to the preservation of cultural and historical resources.

Following the recommendation expressed in this feasibility study, the UNESCO executive board convened a group of governmental experts with the task of drafting a new convention. The negotiations took place in four meetings between June 1998 and July 2001. A total of four separate drafts were drawn, using the ILA draft as a basis. Although much of the spirit of the ILA draft was retained, the final text of the convention also differs in important ways both from the ILA draft and from the earlier UNESCO drafts. This is the result of lengthy, and at times contentious, debates, in a process that was marred by numerous problems such as a high turnover of delegates, who were sometimes not fully informed about the issues involved. Finally, in an unusually extended meeting on 8 July 2001, the governmental experts, unable to reach a full consensus, approved the draft text by vote. The Convention was formally adopted by the 31st General Conference of UNESCO on 2 November 2001, by 87 votes in favour, 4 against (Russia, Norway, Turkey and Venezuela) and 15 abstentions (among which were Brazil, France, Greece, the Netherlands and the UK). The US, although invited to participate in the negotiations, did not have the right to vote as it was not a member of UNESCO at the time (the US rejoined UNESCO in October 2003).

The Convention consists of a main body of 35 articles and an Annex of 36 Rules concerning activities directed at UCH, which were developed by the International Council of Monuments and Sites (ICOMOS) and are to be considered as an integral part of the Convention.

In Article 1, UCH is defined as

all traces of human existence having a cultural, historical or archaeological character which have been partially or totally underwater, periodically or continuously, for at least 100 years such as: sites, structures, buildings, artefacts and human remains ...; vessels, aircraft ... [and] their cargo, together with their archaeological and natural context; and objects of prehistoric character.

The 100-year time limit automatically excludes more recent materials such as (at least for the near future) relics from the two World Wars or others of particular historical significance like the Titanic.

The main objective of the Convention is the protection and conservation of UCH ‘for the benefit of humanity’ as a whole, with a strong emphasis put on *in situ* preservation. As has been often observed, underwater sites, in particular shipwrecks, are like time capsules, or as one commentator put it, ‘snapshots of history at a particular point in time’ (O’Keefe 2002) where all the finds are closely related to each other in a well-defined spatial and chronological context. Moreover, underwater sites are often surprisingly well preserved, especially when lying in the deep seabed where the moist environment protects materials such as wood, while the lack of oxygen prevents the decay of metals. It is only when such stable conditions are disturbed, for instance by excavation, that materials can very quickly deteriorate. A further reason to favour *in situ* preservation is that, because of the continual advances in technology, we may have better chances in the future to study such sites in more precise but less invasive ways. Therefore, the Convention recommends that only when the safety of a site is seriously threatened — whether by natural causes or by man-made ones, such as the laying of cables, oil drilling or other resource exploitation, or of course looting — should underwater sites be scientifically ‘excavated’, in the sense that the finds are carefully removed and catalogued, and provisions are made for their long-term storage and conservation. In any case, all activities directed at UCH should ‘only be undertaken under the direction and control of ... a qualified underwater archaeologist with scientific competence appropriate to the project’ (Rule 22). For this purpose, the Convention actively encourages co-operation and the sharing of information and technology among States. Furthermore, it recognizes the public’s right to ‘enjoy the educational and recreational benefit of responsible, non-intrusive access to *in situ* cultural heritage’ and the importance of public education to raise awareness regarding the value and significance of UCH and the need for protecting it. The same regime of protection applies to all the maritime zones.

One of the key points of the Convention is its declaration — in Article 4 — that the law of salvage and the law of finds will NOT be applicable to underwater cultural heritage. The law of salvage has ancient roots, and its main function is to encourage the rescue of vessels in sea peril and the recovery of goods from shipwrecks on

behalf of the owner. Salvors do not obtain ownership rights in the goods recovered, but do obtain a right to generous compensation for their labours. The law of finds, by contrast, applies to property that has been long lost or abandoned, and grants title to the first finder. In either case, the emphasis is on the adjudication of property rights, not on the protection of archaeological context. Indeed, ‘salvage’ activities on an underwater site are not very different from looting an archaeological site on land. Clearly the idea of salvage applied to UCH is completely against the spirit of the Convention and totally inconsistent with its main principle of *in situ* preservation. Therefore, Rule 2 of the Convention states unambiguously that ‘the commercial exploitation of UCH for trade or speculation or its irretrievable dispersal is fundamentally incompatible with its protection and proper management. UCH shall not be traded, sold, bought or bartered as commercial goods’.

As I mentioned earlier, in the course of the negotiations a number of disagreements emerged, which the delegates were unable to resolve to everyone’s satisfaction in the final text of the Convention; and these remain the main concerns preventing some of the major maritime nations from joining. One important concern, shared particularly by the US, UK and Russia, involves issues of sovereign immunity for sunken State vessels and warships as well as the security and freedom of their armed forces to operate in the high seas without interference. The US is also especially worried about jeopardizing the economic interests of its thriving commercial and recreational diving industry. The UK, for its part, objected to the Convention’s extension of mandatory protection to all shipwrecks over 100 years old, preferring the approach of its own Protection of Wrecks Act, which applies only to wrecks of ‘historical, archaeological or artistic importance’.

US domestic legislation on UCH

The US has not ratified either UNCLOS or the 2001 UNESCO Convention. In addition to sovereign rights in its territorial sea, the US has at various times declared its jurisdiction over the contiguous zone, the continental shelf and the Exclusive Economic Zone, covering therefore an area up to 200 nautical miles from the coastline. The only federal law directed exclusively at UCH is the Abandoned Shipwreck Act of 1987, by which

the federal government asserts ownership over certain classes of abandoned shipwrecks considered to be of historic significance (and then transfers title to the states). There are, however, serious limitations in this statute: in particular, it deals only with shipwrecks and not with other types of submerged sites; its application is limited to the territorial sea up to three miles from the coast; and most importantly, it covers only shipwrecks deemed to be 'abandoned', but without providing any precise definition of this term. This has created a paradoxical situation in which commercial salvors, who used to prefer to have a shipwreck declared abandoned so that they could get title to it under the law of finds, are now trying to win salvage rights by convincing admiralty courts that even ancient shipwrecks have not really been abandoned and are therefore not covered by Abandoned Shipwreck Act. Unfortunately, some recent court cases, in particular that of the Brother Jonathan,² which sank in 1865, seem to prove that this strategy may actually work!

The only other important federal law concerned with UCH is the National Marine Sanctuaries Act of 1972.³ This law authorizes the Secretary of Commerce, through the National Oceanic and Atmospheric Administration (NOAA), to designate discrete marine areas, within 200 nautical miles of the coast,⁴ which are deemed to be of national importance for a variety of reasons including the area's 'historical, cultural, archaeological, or paleontological significance'. There are at present 12 national marine sanctuaries scattered along the coasts of the US. In these zones NOAA has the authority to regulate any activity directed at UCH. There are also three historic preservation statutes that, although primarily intended for the preservation of historical sites on land, can under certain circumstances be applied to the protection of UCH. These are the Antiquities Act of 1906, the National Historic Preservation Act of 1966, and the Archaeological Resources Protection Act of 1979.

Conclusion

The 2001 UNESCO Convention needs to be ratified by at least 20 States to enter into force. So far only five countries have ratified: Panama, Bulgaria, Croatia, Spain and Libya. This is unfortunate, as this convention is the most comprehensive legal instrument available at present

for ensuring the protection of UCH beyond territorial waters. It is therefore imperative to put pressure on governments to ratify the Convention. In the meantime, States should strengthen their domestic legislation by declaring sovereign rights out to 200 nautical miles, as allowed by UNCLOS, and applying strict rules to the management and protection of UCH within that zone. Indeed, as Sarah Dromgoole (forthcoming) has pointed out, the Rules embedded in the UNESCO Convention could serve as a model for national legislation. It is important that major maritime nations such as the US, the UK, and Australia take the lead at the domestic level as well as becoming signatories to the Convention. To its credit, the US was in 1983 the first major art-importing country to ratify the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which now has 100 State Parties including France, the UK, Switzerland and Japan. The 2001 Convention could have an impact on UCH similar to the positive impact that the 1970 Convention has had for the protection of the archaeological heritage on land.

To conclude, I believe that it is absolutely necessary to recognize that only through a broad concerted effort and international commitment can the preservation of our rich, yet extremely fragile underwater patrimony be guaranteed for future generations.

Notes

1. This paper was presented at the Archaeological Institute of America Annual Meeting, January 2005.
2. *Deep Sea Research, Inc. v. The Brother Jonathan*, 883 F. Supp, 1343 (1995); 89 F. 3d 680 (1996); 102 F. 3d 379 (1996); 118 S. Ct. 1464 (1998); 143 F. 3d 1299 (1998).
3. 16 USCS sections 1431–1445.
4. 43 USCS sections 2101–2106.

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