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Hoarding History: A Survey of Antiquity Looting and Black Market Trade

Alia Szopa

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HOARDING HISTORY: A SURVEY OF ANTIQUITY LOOTING AND BLACK MARKET TRADE

ALIA SZOPA*

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This comment analyzes the illicit antiquities trade from an international vantage point by reviewing cases and regulations from many different nations. An international perspective is essential in developing a comprehensive understanding of this subject, because illicit art trade is international in nature; it involves the transportation of antiquities across national boundaries. Yet, one must note the role the United States plays in the business because it “is the largest single buyers’ market for stolen or illegally exported cultural property.”¹

Additionally, in discussing the factors that facilitate illicit antiquity trade, one must remember that *one* factor or a combination of a *few* factors—as opposed to *all* factors—may provide the catalyst for this trade; there is no set

* Joint Degree Candidate, J.D./M.B.A., University of Miami School of Law and School of Business Administration, 2005. The author has clerked at the Office of the New Hampshire Attorney General and at the Coral Gables litigation firm of Oscar E. Marrero. She also served as an Article and Comments Editor for the UNIVERSITY OF MIAMI BUSINESS LAW REVIEW and is a member of the University of Miami School of Law Moot Court Board. A cum laude graduate of Vanderbilt University, the author earned a Bachelor of Arts in Communication Studies and Political Science. She thanks her parents Dr. Ronald and Jacqueline Szopa for their continued support, encouragement, and belief in their daughter. In addition, the author would like to thank the editors and staff of the UNIVERSITY OF MIAMI BUSINESS LAW REVIEW.

¹ JEANETTE GREENFIELD, THE RETURN OF CULTURAL TREASURERS 236-37 (1989).

formula followed. Thus, this comment strives only to offer possibilities of various factors that may contribute to the pervasive problem of illicit antiquity trade.

I. INTRODUCTION

A debonair businessman calmly enters a museum in a nation's art capital. He is a regular patron as evidenced by the ease and confidence with which he maneuvers through the structure. While several thugs cause a ruckus in one wing of the museum in an attempt to steal a priceless sculpture, the suave man effortlessly nabs a multimillion dollar painting off the wall and waltzes out the front door. Although the 1999 Hollywood remake of *Thomas Crown Affair* may utilize much artistic license and may even seem improbable in the real world, the movie is correct in at least one respect: art theft is a widespread international problem and the third largest area of international crime, following only illegal drug smuggling and arms trading.² The plundering of ancient sites for artifacts comprises nearly 90% of all art theft transpiring in the world today.³

This comment explains why there currently exists a climate that actually facilitates illicit trade in antiquities, and the factors contributing to it. In order to describe these factors effectively and analyze their contribution to the problem, this comment is divided into five Parts. Part I introduces the problems inherent in the trade of antiquities. Part II examines the nature of antiquity looting, which facilitates illicit trade because of (1) the difficulty of defining both antiquities and crimes against antiquities, (2) the circumstances surrounding liquidation of antiquities, and (3) ambiguous title law. Part III analyzes international and national measures taken in an attempt to prevent art theft and to aid in the restitution of stolen works. International and national regulations present a valid attempt to reduce the ease with which illicit art trade occurs, but specific failures in such regulations undercut their main purpose. Additionally, conflicts in these regulations net out their effectiveness. Part IV explores other factors—the supply and demand of the black art market, and the laundering of illicit objects by the legitimate art market (auction houses, dealers, collectors, and museums)—that facilitate the commission of art crimes. Part V provides a case study of the famous Elgin Marbles affair as a means of validating the ideas developed throughout the comment. Finally, this comment concludes, in Part VI, that the prob-

² Lisa J. Borodkin, *The Economics of Antiquities Looting and a Proposed Legal Alternative*, 95 COLUM. L. REV. 377, 377 (1995).

³ JOHN CONKLIN, ART CRIME 19 (1994).

lems inherent in the illegal antiquities trade are deeper and more pervasive than is commonly assumed.

II. THE LOOTING OF ANTIQUITIES

To facilitate an understanding of antiquities looting, this part first provides a brief historical overview of looting and quantifies the problem as it exists today. Next, a definition of *antiquity* is provided, as well as an explanation as to why the value, ease, and social circumstances surrounding the liquidation of antiquities encourage illicit art trade. Additionally, this part discusses the process that antiquities undergo to make their way from looter to smuggler to buyer, and how ambiguous title laws facilitate this passage. This part ends with an overview of secondary crimes that may occur after the initial looting. Although this part strives to illustrate how the nature of antiquities and social circumstances encourage looting, it is also designed to provide background information on how and why antiquities are looted, as well as acknowledge other crimes that are part and parcel to the initial thefts.

A. Overview

Looting is not a new phenomenon. One of the earliest recorded examples dates back to Ancient Egypt. Only fifteen years after King Tutankhamen's death in 1327 B.C., his tomb was pillaged of precious metals and jewels.⁴ Nearly two thousand years later, Napoleon paraded a famous group of bronze horses from the San Marco Basilica in Venice through the streets of Paris.⁵

Since World War II, the looting of art has become even more prolific. The International Criminal Police Organization ("INTERPOL") has collected data that documents a distinct increase in art theft between 1965 and 1990.⁶ This increase may be attributed to a highly publicized article written in 1969 by archeologist Clemency Chase Coggins. In the article, Coggins showed that many prominent and well-respected museums owned Pre-Columbian art collections which were, at one time, looted from ancient South American archeological sites.⁷ Before the Coggins article, the magnitude and harmful effects of the illicit antiquities trade were not well docu-

⁴ CONKLIN, *supra* note 3, at 158.

⁵ GREENFIELD, *supra* note 1, at 232.

⁶ See CONKLIN, *supra* note 3, at 5.

⁷ See Borodkin, *supra* note 2, at 382.

mented. Once this article was published, however, scholars in the area began to acknowledge the looting of antiquities as a problem.⁸

Today, international antiquities smuggling has become an epidemic affecting every continent and virtually every nation. Europe, the Middle East, Africa, Asia, Latin America, and North America have all felt the effects of antiquities smuggling.⁹ In fact, in the Mediterranean, Turkey and Italy have experienced the most severe problems.¹⁰ In Central and South America, Mayan sculptures, as well as Pre-Columbian ceramics and Costa Rican jade, have a history of heavy illegal traffic.¹¹ Ethnographic and primitive artifacts from Africa have also been desirable.¹² In addition, the past few decades have shown a sharp growth in antiquities smuggling from Southeast Asia, particularly India, Thailand, and Cambodia.¹³ For example, the United Nation's Educational, Scientific, and Cultural Organization ("UNESCO") "has estimated that more than 50,000 art objects have been smuggled out of India in the last 10 years alone."¹⁴

B. Antiquities

To understand the mechanics of looting, the first step is to define the term *antiquity*, a task easier said than done. Foremost, many different terms, such as *artifact*, *cultural property*, and *archeological resources* are readily found in literature and legal writings when referring to antiquities. Accordingly, the meanings of these words are broad and expansive. For this reason, both statutory law and case law have demonstrated great disparity in their definitions of antiquity. The United States defines an "archeological resource" as "any material remains of past human life or activities which are of archeological interest."¹⁵ The definition requires that such artifacts be at least one hundred years of age, and its scope includes but is not limited to "pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or any portion of structures, pit houses, rock paintings, rock carvings, intaglios, graves, human skeletal materials, or any portion or piece of any of the foregoing

⁸ See *id.*

⁹ *Id.*

¹⁰ Paul M. Bator, *An Essay on the International Trade in Art*, 34 STAN. L. REV. 275, 292 (1982).

¹¹ *Id.* at 292-93.

¹² *Id.* at 293.

¹³ *Id.*

¹⁴ GREENFIELD, *supra* note 1, at 240.

¹⁵ 16 U.S.C. § 470bb(1) (1994).

items.”¹⁶ This definition, however, is not the only acceptable one in the United States.

An Indiana statute describes an “artifact” as “an object made or shaped by human workmanship before December 11, 1816.”¹⁷ Virginia, on the other hand, defines “an object of antiquity” as “any relic, artifact, remain, including human skeletal remains, specimen, or other archeological article that may be found in or below the surface of the earth which has historic, scientific, archeological or educational value.”¹⁸ These are but two examples of a variety of definitions used in federal and state law.

Thus, these varying definitions create a climate where no common concrete definition of a *crime against antiquity* may exist. This conundrum not only facilitates looting, but it makes a systematic crackdown on antiquity crimes impossible. For purposes of clarity this comment will utilize the terms *antiquity*, *artifact*, and *cultural property* interchangeably to mean, in general, an article representing the cultural heritage of a society.

The next step in understanding looting is to recognize why antiquities are looted in the first place. Experts agree that antiquities are highly susceptible to looting because artifacts are very valuable; antiquities trace the evolution of a people, and can be easily liquidated by selling to museums, auction houses, and private collectors.¹⁹ Such susceptibility can become even more pronounced when the people of a country are in dire straits. This generally happens in times of political unrest (whether colonial or foreign occupation or war) or in times of poverty (whether in the wake of a natural disaster or in developing countries).

One of the greatest examples of looting in the wake of political unrest in the past century was Nazi Germany’s pillaging of Europe during World War II. In “the greatest mass theft in history,”²⁰ Nazi soldiers took what has been estimated to be hundreds of thousands of sculptures, drawings, and paintings, as well as millions of antiquities, including books and religious

¹⁶ *Id.*

¹⁷ IND. CODE ANN. § 14-21-1-2 (Michie 1995).

¹⁸ VA. CODE ANN. § 10.1-2300 (Michie 1989).

¹⁹ See Predita C. Rostomian, *Looted Art in the U.S. Market*, 55 RUTGERS L. REV. 271, 271-76 (2002).

²⁰ Paulina McCarter Collins, *Has the “Lost Museum” Been Found? Declassification of Government Documents and Report on Holocaust Assets Offer Real Opportunity to “Do Justice” For Holocaust Victims on the Issue of Nazi Looted Art?*, 54 ME. L. REV. 115, 123 (quoting testimony from Stewart E. Eizenstat given during congressional testimony before the House Banking Committee on September 14, 1999 in an update to Congress on the work of the Holocaust Asset Commission).

scrolls.²¹ The main motivation of the Nazis was to collect art in order for Germany to become Europe's cultural hub.²²

A more recent example of looting in times of political unrest may be found in Iraq. There currently exists a breakdown in Iraqi social systems and agencies, including the police service and the antiquities department. This collapse has facilitated numerous antiquity lootings, primarily in the countryside. For example, a report in 2003 described systematic looting by a gang of over 300 men who were then digging in the Sumerian City of Umma for artifacts.²³

Political unrest is not the only social consequence that may heighten illicit antiquity loss. Poverty may have a similar effect. Increased looting has been well documented after natural disasters leave individuals homeless and penniless. For example, after a severe earthquake in 1976, many Guatemalans were left impoverished. Experts believe it was at this time that the poor first began stealing precious icons (some valued at over \$100,000) and Pre-Columbian pieces (with a greater demand and valued even higher than the icons) out of desperation for money. From this dire situation of the late 1970s, a thriving black market was born in Guatemala that continues to play a role in illicit art trade today.²⁴

General poverty is another situation where the value of antiquities is exploited. Antiquities are heavily looted in these developing countries which are often poor and in the process of developing; these countries are also known as "artifact-rich" or "source" nations.²⁵ When a country is barely holding itself together socially, politically, and economically,²⁶ two main conditions systematically follow. First, citizens are destitute and will do desperate acts to supplement meager incomes or, in some cases, to create incomes where none exist. Second, with few resources, successful law enforcement against looters and thieves is difficult to achieve.²⁷ It is unlikely that resources will be allocated to the patrolling of archeological sites when killing and other more dangerous felonies are taking place within a country's borders.²⁸

²¹ Rostomian, *supra* note 19, at 273-74.

²² *Id.* at 273.

²³ Nick Grimm, *Systematic Looting of Antiquities in Iraq*, (May 22, 2003), at <http://www.abc.net.au/worldtoday/content/2003/s861573.htm> (last visited Oct. 13, 2004).

²⁴ See Rostomian, *supra* note 19, at 275.

²⁵ See Borodkin, *supra* note 2, at 385.

²⁶ See CONKLIN, *supra* note 3, at 4.

²⁷ See *id.* (explaining that Peru has a difficult time preventing looting of their antiquities because the country is poor country and faces imminent threats from both terrorists and drug traffickers).

²⁸ Rostomian, *supra* note 19, at 275.

C. Operations

The process of looting antiquities is socially organized and requires a “multi-layered network of . . . [diggers], middlemen, and dealers.”²⁹ The actual taking of antiquities is often carried out by local diggers, referred to as either treasure hunters³⁰ or grave robbers.³¹ The treasure hunters and grave robbers view looting as a way to supplement their inadequate incomes earned from their legitimate jobs and legal jobs.³² The challenge to these individuals is locating the antiquities, but over time, these looters develop tremendous knowledge of where to locate³³ and how to value artifacts.³⁴ Once they have found the artifacts, it is relatively easy to obtain them, as archeological sites are often ill-protected or unknown to those outside of archaeological circles.³⁵ Ultimately, these individuals will sell their finds to a middleman in hopes of liquidation.

The middleman, in turn, sells the artifacts to either local or foreign dealers. A significant portion of the looted goods are smuggled out of the country via planes, trains, automobiles, and boats, and into art collecting countries, such as the United States, Switzerland, Germany, France, Japan, and Hong Kong—making illicit antiquities trade truly international in nature.³⁶ In fact, “[s]mugglers are said to come from all walks of life but are often times journalists, art brokers, and even diplomats who take advantage of the immunity from search given to diplomatic bags.”³⁷ Once abroad, most artifacts are sold privately through dealers. This whole process occurs on the black market. Yet, in the international art market there is a blurry distinction between criminal activity and shrewd business dealings.³⁸

Looting and smuggling are easy to carry out due to the ambiguities of passing title. Cases of stolen antiquities often hinge upon the issue of to whom the artifact belongs, and, to this extent, there are categories of potential owners: (1) the owner of the land on which the artifact was found,

²⁹ See CONKLIN, *supra* note 3, at 13.

³⁰ *Id.* at 158.

³¹ *Id.* at 161, 163 (discussing Italian grave-robbers, known as *tombatori*, and Latin American grave-robbers, called *huaqueros*).

³² *Id.* at 158-59.

³³ See *id.* at 160 (discussing Turkish peasants who wait for the rain to uncover ancient tombs and valuable objects).

³⁴ *Id.* at 159.

³⁵ *Id.* at 164.

³⁶ GREENFIELD, *supra* note 1, at 236-37.

³⁷ *Id.* at 241.

³⁸ The fine line distinction between participation in reputable business dealings and illicit trade is an important theme that should be kept firmly in mind throughout this comment.

(2) the individual who unearths the artifact, or (3) the government.³⁹ In the United States, the first of these arguments is the initial premise of property law, but this premise is not unconditional.⁴⁰ Three factors are taken into consideration when accessing title on objects found: location (private, Native American Tribal, or public land), nature of the article found (characteristics and intrinsic value of the article to society or the claimant, funerary remains, fossils, and Civil War artifacts), and the claimant's relationship to the article (landowner, prior owner, groups with attachments to artifacts, state or federal government, and finder).⁴¹ Courts use these various characteristics to determine property rights, but because there is no set formula employed to weigh these variables, the issue of ownership is still muddled.⁴²

Although some foreign countries have absolute laws defining property rights of cultural items,⁴³ many nations find themselves in an ambiguous situation similar to that of the United States. For example, in Ireland, a case arose in 1986 involving an eighteenth century chalice found on private property by a trespasser who later sold the chalice to the National Museum of Ireland. The issue before the High Court of Ireland was: who had title to the chalice?⁴⁴ Arguments made by the various parties included: a claim to title by the finder of the chalice, an argument by the landowner that the finder was trespassing and committing larceny when the chalice was seized, and a claim by the Museum that treasure troves belong to the state, a theory borrowed from English law.⁴⁵

Today, antiquities are generally thought of as "part of a nation's patrimony,"⁴⁶ not as the property of an individual. Thus, these items are not exportable unless some form of "official approval" has been obtained.⁴⁷ This belief is solidified in the passage of laws in many countries defining artifacts as property of the nation;⁴⁸ this is particularly true of many African nations.⁴⁹ Part III of this comment will explore national laws regarding international art crimes in greater depth.

³⁹ CONKLIN, *supra* note 3, at 122.

⁴⁰ See Zahra S. Karinshak, *The Relics of the Past-To Whom Do They Belong? The Effect of an Archeological Excavation on Property Rights*, 46 EMORY L.J. 867, 869 (1997).

⁴¹ *Id.* at 869-72.

⁴² *Id.* at 872.

⁴³ For example, China declares all archeological material property of the state. GREENFIELD, *supra* note 1, at 242.

⁴⁴ CONKLIN, *supra* note 3, at 122.

⁴⁵ *Id.* at 122-23.

⁴⁶ *Id.* at 122.

⁴⁷ *Id.*

⁴⁸ *Id.* at 158.

⁴⁹ *Id.* at 260.

D. *Secondary Crimes*

Often times, in order to steal and smuggle antiquities, looters must deface antiquities in order to ease transportation or make the object unrecognizable to law enforcement officials. This need for disguise leads to the further crime of vandalism. Tufts University Professor and criminology author John Conklin defines art vandalism as “the intentional or negligent destruction of a work of art.”⁵⁰ In their haste to gather antiquities, looters do not use the most careful method of excavating as would archeologists, and, therefore, looters frequently destroy or damage ancient objects. For example, Pre-Columbian monuments in Guatemala and Mexico, often weighing five tons or more, are hacked, sawed, and smashed into smaller pieces by looters in order to facilitate movement.⁵¹ In order to pass by customs officials, smugglers often break up articles and destroy or discard material because it may make their crime apparent to experts. For example, an ancient Greek vase acquired by the Metropolitan Museum of Art in 1972 was said to have been “expertly broken into small pieces for illegal export” and then reassembled after successfully being smuggled out of the source nation.⁵²

After the artifact is initially looted, perhaps vandalized, and sold to a buyer (private collector, museum, or gallery) via the black market, the artifact may be stolen, essentially for a second time, from the buyer. Thieves obtain illicit artifacts in several ways resulting in a variety of crimes. Some thieves simply take an object from a museum, gallery, church or house without force or illegal entry. This crime is *larceny*.⁵³ Others commit a *burglary* by breaking and entering into a building and then stealing the artifact. Finally, a thief may use force or the threat of force against people who own or guard artifacts before stealing in a *robbery*.⁵⁴

III. REGULATION

The first documentation of cultural property regulation was in 1464 when Pope Pius II prohibited the exportation of works of art from the Vatican and restricted archeological excavations.⁵⁵ Unfortunately, regulation has always been particularly difficult to execute successfully. After Napoleon’s plunder of England and the Battle at Waterloo, the English

⁵⁰ CONKLIN, *supra* note 3, at 227.

⁵¹ *Id.* at 228-29.

⁵² *Id.* at 252.

⁵³ *Id.* at 153-54.

⁵⁴ *Id.* at 154.

⁵⁵ GREENFIELD, *supra* note 1, at 232.

demanded restitution for cultural objects taken.⁵⁶ The French were “fiercely opposed to this restitution.”⁵⁷ The Louvre director, who had been responsible for shaping much of the museum’s collections, made his opposition particularly well known.⁵⁸ Although the program did restore many stolen treasures, many valuable works had already been dispersed around the world and sold, forever severing them from their country of origin. Still “other items were impossible to return because they had actually been incorporated into other structures, such as the marble pillars from the cathedral of Aachen which had been incorporated into the Louvre.”⁵⁹

This part of the comment first surveys various import/export and restitution regulations along with enforcement bodies adopted by the international community. Second, regulations and enforcement of individual nations, with a primary focus on the United States, are reviewed especially where such measures are deficient, because shortcomings essentially render illicit traffic permissible. Third, conflicts between international and national regulations as well as laws of different nations are explored. The intersection of international and national measures is of central importance in controlling black market antiquities trade; however, when intersection nets out potential effectiveness, a successful crackdown on black market antiquities trade is impeded.

A. *International Response*

The first international response to the looting of antiquities to gain worldwide acceptance came in 1970 when UNESCO held the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (“Convention”).⁶⁰ The goal of this Convention was to protect the cultural property of countries against “theft, pillage or misappropriation,”⁶¹ as well as to provide for the requisition of such property in times of war and peace.⁶² The reason for protecting this property is found in the fact that “cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ UNESCO Website, *Prevention of the Illicit Import, Export and Transfer of Ownership of Cultural Property*, at http://www.unesco.org/culture/legalprotection/theft/html_eng/index_en.shtml (last visited Jan. 21, 2005).

⁶¹ GREENFIELD, *supra* note 1, at 216.

⁶² *Id.* at 216-17.

its origin, history, and traditional setting.”⁶³ When antiquities are moved illegally, much valuable information regarding the object is lost forever. The purpose of the Convention was to preserve this priceless information by lessening the ease with which antiquity thieves can liquidate antiquities. If thieves cannot export and import artifacts to exchange their takings for money, the incentive for looters in taking artifacts in the first place will be significantly lessened.

The Convention lays out a multi-pronged plan. The General Assembly of all signatories to the Convention first selects which members will compose the World Heritage Committee, a group of twenty-one signatory states.⁶⁴ This decision-making committee determines what cultural property is “important for [a country’s] archaeology, prehistory, history, literature, art or science,” and designates this property as protected.⁶⁵ Next, each signatory implements special services to protect their designated cultural property, drafts laws against illicit import and export, establishes inventories of their nationally protected property, and promotes the principles of the Convention to museums, libraries, archives, and laboratories in order to ensure the preservation and presentation of cultural property.⁶⁶ The Convention acquires legal status only after it is signed by a nation.⁶⁷ As of May 1, 2004, 178 nations had signed the Convention.⁶⁸ Many of the signatories are Third World countries and source nations,⁶⁹ but large art importing nations such as Canada, France, the United States,⁷⁰ Switzerland, and Germany have also signed.⁷¹

⁶³ Harrie Leyten, *Illicit Traffic in Collections of Western Museums of Ethnography*, in *ILLICIT TRAFFIC IN CULTURAL PROPERTY: MUSEUMS AGAINST PILLAGE* 14, 18 (Harrie Leyten ed., 1995) (quoting the 1970 UNESCO Convention). See also UNESCO Website, *30th Anniversary of UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, at <http://www.unesco.org/bpi/eng/unescopress/2000/00-116e.shtml> (last visited February 4, 2005).

⁶⁴ UNESCO Website, *World Heritage Committee*, at <http://whc.unesco.org/committ.htm> (last visited February 22, 2005).

⁶⁵ UNESCO Website, *30th Anniversary of UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, at <http://www.unesco.org/bpi/eng/unescopress/2000/00-116e.shtml> (last visited February 4, 2005).

⁶⁶ Leyten, *supra* note 63, at 18 (quoting the 1970 UNESCO Convention).

⁶⁷ *Id.* at 19.

⁶⁸ World Heritage Website, *States Parties*, at <http://whc.unesco.org/pg.cfm?cid=246> (last visited February 22, 2005).

⁶⁹ CONKLIN, *supra* note 3, at 280.

⁷⁰ Howard N. Spiegel & Lawrence M. Kaye, *American Litigation to Recover Cultural Property: Obstacles, Options, and a Proposal*, in *TRADE IN ILLICIT ANTIQUITIES: THE DESTRUCTION OF THE WORLD’S ARCHEOLOGICAL HERITAGE* 121, 125 (Neil Brodie, Jennifer Doole & Colin Renfrew eds., 2001). See also World Heritage Website, *States Parties*, at <http://whc.unesco.org/pg.cfm?cid=246> (last visited February 22, 2005).

⁷¹ World Heritage Website, *States Parties*, at <http://whc.unesco.org/pg.cfm?cid=246> (last visited February 22, 2005).

Particularly important to the Convention is Article 7, which provides for the restitution of cultural objects.⁷² Import and export regulation attack illicit art trade as artifacts are being exported out of the source nation and into a new country, whereas restitution provides a remedy (return to the rightful owner) once the objects have already crossed borders. Import and export regulations alone will not curb illegal art trade effectively. Countries must implement import and export regulations along with a provision for the restitution of cultural objects. Thus, a provision like Article 7 completes the Convention's multi-pronged plan. Nevertheless, Article 7 creates no official international tribunal to handle disputes between parties over restitution, and instead leaves this responsibility to the individual states.⁷³ In theory, such disputes could go before the International Court of Justice in The Hague, but there are many difficulties with this, and restitution is not likely to follow.⁷⁴ Critics view this shortcoming as a major weakness to the Convention⁷⁵ because laws attempting to curb illicit antiquities trade are only as strong as the mechanism in place to uphold the law. Here the mechanism is missing.

Additional criticisms of the Convention are numerous. First, most of the signatory nations only agreed to its conditions in limited ways.⁷⁶ This circumstance tends to water down the ideas of the Convention and makes its pursuit of objectives less vigorous. Second, the Convention itself is restricted only to artifacts stolen from museums, public monuments, and similar institutions.⁷⁷ Therefore, antiquities yet to be unearthed and artifacts which are unearthed but held by private individuals are effectively excluded from the Convention. Third, there is a disconnection between definitions of important terminology. For example, each signatory is allowed to "define the cultural property that is to be protected."⁷⁸ Finally, the term "owner in good faith" is never defined by the Convention, leaving interpretation up to the individual member countries. Without harmonization of important nomenclature and some level of unification in the way such terminology is interpreted, the possibility of curbing illicit trade does not exist.⁷⁹

⁷² Sabine Gimbrere, *Illicit Traffic in Cultural Property and National and International Law*, in *ILLICIT TRAFFIC IN CULTURAL PROPERTY: MUSEUMS AGAINST PILLAGE* 53, 54 (Harrie Leyten ed., 1995).

⁷³ *Id.*

⁷⁴ GREENFIELD, *supra* note 1, at 258.

⁷⁵ Gimbrere, *supra* note 72, at 54.

⁷⁶ Spiegler & Kaye, *supra* note 70, at 125.

⁷⁷ GREENFIELD, *supra* note 1, at 258. *See also* Gimbrere, *supra* note 72, at 55.

⁷⁸ Michael Kelly, *Conflicting Trends in the Flourishing International Trade of Art and Antiquities: Restitutio in Integrum and Possessio animo Ferundi/Lucranda*, *DICK. J. INT'L L.* 31, 44 (1995).

⁷⁹ *See* Gimbrere, *supra* note 72, at 55.

In light of such problems, UNESCO approached the International Institute for the Unification of Private Law ("UNIDROIT") to help it improve the recovery of stolen and otherwise illegally removed cultural artifacts.⁸⁰ In June 1995, UNIDROIT completed a treaty that would greatly expand protection of cultural entities. The treaty, however, is not retroactive and does not apply to pieces stolen from the host country before its ratification.⁸¹ Currently, twenty-two countries have signed the treaty, eleven of which have ratified it,⁸² and thirteen countries have acceded to it.⁸³ The majority of the countries which have signed the treaty are source nations. Many market nations, including the United States, have yet to sign.⁸⁴ One reason market nations, particularly the United States, are apprehensive to sign is due to the negative response from art dealers. These dealers are concerned that they will no longer be able to exhibit or sell pieces in countries that have ratified the treaty because the source nations may be able to legally confiscate their artifacts.⁸⁵

In addition to UNIDROIT, several international, nongovernmental bodies have been established to help counter difficulties faced by UNESCO.⁸⁶ The two main organizations which focus on these efforts are INTERPOL and the International Council of Museums ("ICOM"). INTERPOL, headquartered in Lyon, France,⁸⁷ is the organization actually charged with patrolling the illicit traffic of antiquities.⁸⁸ Created "to facilitate cross-border criminal police cooperation,"⁸⁹ INTERPOL focuses on providing reliable communication to police around the globe in order to ease

⁸⁰ *Id.*

⁸¹ C. Noonan & J. Raskin, *Intellectual Property Crimes*, 38(3) AM. CRIM. L. REV. 971, 1016 (2001).

⁸² UNIDROIT Website, *Status Report: UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* (June 6, 1995, updated 2004), at <http://www.unidroit.org/english/implement/i-95.htm> (last visited Jan. 23, 2005).

⁸³ UNIDROIT Website, *Status Report: UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* (June 6, 1995, updated 2004), at <http://www.unidroit.org/english/implement/i-95.htm> (last visited Jan. 23, 2005).

⁸⁴ UNIDROIT Website, *Status Report: UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* (June 6, 1995, updated 2004), at <http://www.unidroit.org/english/implement/i-95.htm> (last visited Jan. 23, 2005).

⁸⁵ Noonan & Raskin, *supra* note 81, at 1016.

⁸⁶ See, e.g., Elizabeth des Portes, *The Fight Against Illicit Traffic in Cultural Property: a Priority for Museum Professionals*, in ILLICIT TRAFFIC IN CULTURAL PROPERTY: MUSEUMS AGAINST PILLAGE 34, 35 (Harrie Leyten ed., 1995).

⁸⁷ INTERPOL Website, *11 September Task Force at Interpol Headquarters* (Sept. 14, 2001), at <http://www.interpol.int/Public/ICPO/PressReleases/PR2001/PR200119.asp> (last visited Jan. 27, 2005).

⁸⁸ GREENFIELD, *supra* note 1, at 244.

⁸⁹ INTERPOL Website, *Introduction to Interpol*, at <http://www.interpol.com/Public/Icpo/introduction.asp> (last visited Jan. 25, 2005).

information transmission on stolen property and wanted suspects. In addition, it coordinates international investigations.⁹⁰

Specifically, INTERPOL's stolen art unit keeps track of all notices of major art thefts.⁹¹ Notices include date and place of theft, description of the work, a photograph, and details of local authorities to contact with information.⁹² INTERPOL then sends this information to all relevant agencies such as law enforcement and customs. These agencies are responsible for circulating the information to other members of the art industry.⁹³

INTERPOL faces a multitude of difficulties in accomplishing its mission. First, INTERPOL has other responsibilities. Because there are other pressing international crimes aside from art crimes,⁹⁴ valuable resources and manpower must be shared. Thus, art theft, and subsequently antiquity theft, is not a top priority. Second, in order for INTERPOL to get involved, the theft must involve the artifact being transported across national borders.⁹⁵ Third, the majority of information submitted to INTERPOL on art thefts and losses of cultural property comes from an array of geographically and culturally disperse nations, not from a single source or area. This factor, in effect, causes fluctuation in the volume of art and cultural property crimes reported by various countries. For example, in 1999, Jean-Pierre Jouanny of INTERPOL stated that close to 6,000 art thefts were reported in France, the location of INTERPOL's headquarters, whereas only 2,000 reports each from Russia, Germany, the Czech Republic, and Italy. Due in part to the modernization in transportation and communications, non-French reports were up from previous years.⁹⁶ Still, fewer than 100 tips per year are received from non-European nations.⁹⁷ Fourth, the agency has been criticized for being slow to disseminate information on thefts, failing to update records, and keeping incomplete records.⁹⁸

Unlike INTERPOL, ICOM has targeted the problem of illicit antiquities trade by applying pressure on museums to promote professional ethics internally.⁹⁹ "ICOM is an international organization of museums and

⁹⁰ GREENFIELD, *supra* note 1, at 244.

⁹¹ *Id.*

⁹² *Id.* at 245.

⁹³ *Id.* at 244-45.

⁹⁴ *Id.* at 245.

⁹⁵ CONKLIN, *supra* note 3, at 5.

⁹⁶ UNESCO Website, *Launch of Code of Ethics for Art Dealers at Anniversary Celebration of Convention on Ending Illicit Trade in Cultural Property* (Nov. 16, 2000), at <http://www.unesco.org/bpi/eng/unescopress/2000/00-119e.shtml> (last visited Jan. 25, 2005).

⁹⁷ GREENFIELD, *supra* note 1, at 245.

⁹⁸ CONKLIN, *supra* note 3, at 5.

⁹⁹ *Cf. des Portes, supra* note 86, at 35.

museum professionals which is committed to the conservation, continuation, and communication to society of the world's natural and cultural heritage, present and future, tangible and intangible."¹⁰⁰ The French-based council¹⁰¹ seeks to carry out this objective in three ways. First, ICOM provides guidelines for the training of museum personnel. Second, it helps museums improve their security by establishing inventories.¹⁰² The inventory index is extremely useful in museum security as it can prove a museum's ownership of an object and aid in the object's identification. ICOM has established a committee, the International Committee for Documentation ("ICDOC"), which aids various museums in setting up these inventories. Third, ICOM published a Professional Code of Ethics¹⁰³ ("ICOM Code") consisting of twenty recommendations and ethical principles to govern museums and museum professionals¹⁰⁴ and established a committee to police museums' adherence to the ICOM Code.¹⁰⁵

Of particular importance in the ICOM Code is its policy outlining the procedures that museum professionals must follow when acquiring a new piece of art. This policy states that museums shall acquire pieces only in cooperation with and in observance of the laws of the source nation.¹⁰⁶ Ramifications of the acquisition policy have been felt by museums in Australia, Canada, Israel, New Zealand, the United Kingdom, and the United States.¹⁰⁷

Communication with the international art community is of the utmost importance in curbing illicit art trade, and, thus, it is a central tenant to ICOM. For this reason, ICOM holds workshops around the world aimed at educating antiquity professionals. Past workshops have been held in Thailand, Cambodia, Hungary, Tanzania, and Western Africa.¹⁰⁸ ICOM also publishes a quarterly bulletin which is distributed to its thirteen thousand members in one hundred forty-five countries.¹⁰⁹ These bulletins announce missing objects that have been reported to INTERPOL and, in

¹⁰⁰ ICOM Website, *What is ICOM*, at <http://icom.museum/organization.html> (last updated Jan. 27, 2005).

¹⁰¹ ICOM Website, *What is ICOM*, at <http://icom.museum/organization.html> (last updated Jan. 27, 2005).

¹⁰² des Portes, *supra* note 86, at 35. See also GREENFIELD, *supra* note 1, at 244.

¹⁰³ des Portes, *supra* note 86, at 35 (stating that the ICOM Code was first published in 1986).

¹⁰⁴ GREENFIELD, *supra* note 1, at 245. See also des Portes, *supra* note 86, at 35.

¹⁰⁵ des Portes, *supra* note 86, at 35 (stating that the committee was established in 1989).

¹⁰⁶ GREENFIELD, *supra* note 1, at 244.

¹⁰⁷ *Id.*

¹⁰⁸ des Portes, *supra* note 86, at 37-38.

¹⁰⁹ ICOM Website, *ICOM News Thematic Files*, at <http://icom.museum/thematic.html> (last updated Aug. 5, 2004).

the past, have assisted in the location and restitution of several antiquities, such as Japanese objects stolen from a museum in Israel and a bronze head stolen from the Nigerian National Museum.¹¹⁰ Stemming from the success of the bulletin, ICOM created a publication entitled "A Hundred Missing Objects." The first edition featured items from a Cambodian site in Ankor which were recently the subject of systematic pillaging.¹¹¹ Immediately after the series went to publication, one of the featured objects was found with a Parisian antique dealer and was successfully returned to Cambodia.¹¹²

B. National Regulation

Today, many countries impose at least some type of restriction on the import and export of cultural property and may even have adopted a restitution provision.¹¹³ These regulations seldom extend regulation to articles less than fifty or one hundred years old.¹¹⁴ In addition, various countries impose different types and levels of regulation. Differing national legal controls on the illicit traffic of cultural property create considerable problems for cohesive multi-national regulation.

Regulations generally fall into four categories. The first category, adopted by much of Latin America for its Pre-Columbian and colonial artworks, is total prohibition of export.¹¹⁵ Turkey and Zaire also place an embargo against the export of cultural matter.¹¹⁶ The second category is total prohibition of specific items which are listed as being of great cultural importance. Most nations in the world, such as France, Italy,¹¹⁷ India, and Japan,¹¹⁸ adopt this approach,¹¹⁹ but these lists vary from general to specific. For example, extremely exhaustive lists have been crafted by the Ivory Coast, Ghana, Nigeria, Tanzania, and Sri Lanka.¹²⁰ Most European nations and countries such as Camaroon, Cambodia, Indonesia, Mali, Niger, and Senegal, have drafted more general lists of objects subject to export

¹¹⁰ des Portes, *supra* note 86, at 37.

¹¹¹ *Id.*

¹¹² *Id.*

¹¹³ Leyten, *supra* note 63, at 19.

¹¹⁴ JOHN HENRY MERRYMAN & ALBERT E. ELSEN, LAW, ETHICS AND THE VISUAL ARTS 70 (3d ed. 1998).

¹¹⁵ *Id.*

¹¹⁶ GREENFIELD, *supra* note 1, at 242.

¹¹⁷ MERRYMAN & ELSEN, *supra* note 114, at 70.

¹¹⁸ GREENFIELD, *supra* note 1, at 242.

¹¹⁹ *Id.*

¹²⁰ Leyten, *supra* note 63, at 19-20.

control.¹²¹ Other countries including, Thailand and Papua New Guinea, give very brief descriptions, such as “any object of art, registered or not.”¹²² Most of these nations also require a permit for the export of non-listed works. This process involves delay, and is therefore burdensome and undependable.¹²³

The third category of regulations exists in countries such as Canada and United Kingdom, where export permits are required for broad classes of items, but are generally easy to obtain without significant expense or delay.¹²⁴ Switzerland falls in the fourth category which consists of countries with no export restrictions. Although the United States fell into the aforementioned category at one time, it now limits the export of cultural artifacts.¹²⁵

Historically the United States has maintained a laissez-faire mentality with regards to cultural property.¹²⁶ This is likely due to the fact that the United States is one of the “largest buyer’s market in the world”¹²⁷ when it comes to artifacts obtained on the black market.¹²⁸ In many situations the illegally exported property finds its way to respectable museums and auction houses. In the early 1970s, this laissez-faire mentality began to shift for two reasons: (1) art museums began to adopt “self-restraint” resolutions in their collection policies,¹²⁹ and (2) the passage of the Pre-Columbian Monumental Sculpture and Murals Statute.¹³⁰

After several art museums, such as those at the University of Pennsylvania and Harvard University, decided to stop purchase artworks without information regarding prior ownership, place of origin, and export documents, the American Association of Museums (“AAM”) began to urge its members to abstain from purchasing or accepting donations of antiquities that were exported in violation of the UNESCO Convention. In some instances, museums voluntarily returned antiquities that had been previously illegally exported from their country of origin. In other situations, museums were forced by the United States government to return such works.¹³¹

The Pre-Columbian Monumental Sculpture and Murals Statute (the “Act”) is a unique statute that prohibits the import of large stone pieces of

¹²¹ *Id.* at 19.

¹²² *Id.* at 19-20.

¹²³ MERRYMAN & ELSEN, *supra* note 114, at 70.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ GREENFIELD, *supra* note 1, at 187.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ 19 U.S.C. §§ 2091-2095 (2000).

¹³¹ GREENFIELD, *supra* note 1, at 187-88.

Pre-Columbian temples and murals into the United States¹³² and provides for the return of certain Pre-Columbian art to the country of origin.¹³³ The Act requires that an importer of Pre-Columbian monumental or architectural sculptures, murals, or fragments present proof regarding its legal exportation from the country of origin. If the importer cannot present such certificate of proof, the artifacts are forfeited to the United States government and remain in the government's possession until the country of origin requests their return.¹³⁴ Nonetheless, this legislation presents one main weakness: these artifacts are only in violation of the Act if the item was exported on or before October 27, 1972.¹³⁵

In 1983¹³⁶ the United States took another step toward the prevention of illicit antiquity circulation by implementing the UNESCO Convention through the Cultural Property Implementation Act ("CPIA").¹³⁷ The CPIA allows the United States to impose antiquity importation restrictions through the use of both bilateral and multilateral agreements.¹³⁸ In addition, the CPIA has an emergency provision under which the United States may restrict the importation of artifacts shown to be "in jeopardy from pillaging, dismantling, dispersal or fragmentation which is, or threatens to be of crisis proportions," even where no previous agreement exists.¹³⁹ Under the CPIA, if an antiquity enters the United States without documentation, and it is the subject of a bilateral or multilateral agreement or an emergency decree, the article risks seizure and forfeiture.¹⁴⁰

The CPIA was first invoked in 1987 via an emergency decree to ban imports of artifacts from the Cara Sucia region of El Salvador.¹⁴¹ It was not until several years later, in 1995, that the first bilateral agreement was signed.¹⁴² Since then, the United States has entered into agreements with several countries including El Salvador, Peru, Canada, and Italy.¹⁴³

¹³² CONKLIN, *supra* note 3, at 252.

¹³³ GREENFIELD, *supra* note 1, at 243.

¹³⁴ See 19 U.S.C. §§ 2092-2093 (1988).

¹³⁵ *Id.*

¹³⁶ United States State Department, Bureau of Educational and Cultural Affairs Website, *Convention on Cultural Property Implementation Act*, at <http://exchanges.state.gov/culprop/97-446.html> (last visited Jan. 21, 2005). See also US Code, 19 USC § 2600, available at <http://exchanges.state.gov/culprop/2600.html> (last visited February 22, 2005).

¹³⁷ Spiegler & Kaye, *supra* note 70, at 125.

¹³⁸ *Id.* at 125.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 125-26.

¹⁴¹ *Id.* at 126.

¹⁴² *Id.*

¹⁴³ *Id.*

The domestic body in the United States that patrols art theft is the Federal Bureau of Investigation ("FBI"), which maintains and regularly updates the National Stolen Art File ("NSAF") to record information about stolen property. NSAF catalogs stolen art in great detail but is underused, according to the Agency.¹⁴⁴ Additionally, the FBI's jurisdiction of art thefts is limited to investigations where stolen goods valued at more than \$5,000 have been transported across state boundaries.¹⁴⁵

C. *Conflicts in Regulation*

It is clear that international and national regulations of cultural property are sometimes flawed internally and are not always effective. These initial problems are further exacerbated when international and national laws conflict and where regulations of different countries are inconsistent.

National legislation regarding the illicit trade of cultural property is essential even where international regulation exists. For, without national support, any international attempts at controlling the problem of illicit trade are null and void. If, however, international and national legislations are not well coordinated, it is possible for an international regulation to actually limit the effectiveness of a national regulation. Such was the case in the 1983 Canadian situation involving the Nigerian Nok terracotta.¹⁴⁶ Canada had imposed a series of regulations for the restitution of illegally exported cultural property; however, because Canada was a signatory to the 1970 UNESCO Convention, Canada was unable to prove the terracotta was exported after the current restitution law was in place.¹⁴⁷ Therefore, the cultural object did not have to be returned. This was the situation in the Nigerian Nok case, as the terracotta was never in fact returned.¹⁴⁸

Similar problems can arise between laws of different nations. The nature of the black art market entails the passage of art through many hands scattered around the globe. This situation, compounded with the fact that countries choose to regulate illicit art trade in different ways, yield many instances where choice of law issues arise. In *Autocephalous Greek-Orthodox Church v. Goldberg*,¹⁴⁹ a 1989 case tried before a Federal District Court in

¹⁴⁴ CONKLIN, *supra* note 3, at 5.

¹⁴⁵ *Id.*

¹⁴⁶ See GREENFIELD, *supra* note 1, at 243.

¹⁴⁷ *Id.*

¹⁴⁸ See, e.g., Folarin Shyllon, *The Recovery of Cultural Objects by African States through the UNESCO and UNIDROIT Conventions and the Role of Arbitration*, at <http://www.unidroit.org/english/publications/review/articles/2000-2a.htm> (last visited November 21, 2003).

¹⁴⁹ 717 F. Supp. 1374, 1375 (S.D. Ind. 1989), *rehearing denied*, 917 F.2d 278 (7th Cir. 1990), *cert denied*, 502 U.S. 941, *petition for rehearing denied*, 502 U.S. 1050.

Indiana, one of the prevailing issues was what country's restitution laws should be applied.¹⁵⁰

The case centered on a sixth century Byzantine mosaic. In 1979, the mosaic was stolen from a Greek church in Lythrankomi, Cyprus, an area under Turkish sovereign.¹⁵¹ In the summer of 1988, an art dealer incorporated under the laws of Indiana ("Goldberg") traveled to Amsterdam to shop for art.¹⁵² Once there, she met up with a friend from Indiana ("Friend"), who introduced her to a Dutch art dealer ("Dutch Dealer").¹⁵³ Dutch Dealer told her of the mosaic, and referred her to a Turkish antiquities dealer in Munich ("Munich Dealer") who was in possession of the piece.¹⁵⁴ After obtaining a loan through her bank in Indiana, Goldberg met Munich Dealer in the Geneva airport and exchanged \$1,080,000 for the mosaic.¹⁵⁵ The money was split between Dutch Dealer, Munich Dealer, and Friend.¹⁵⁶ Proceeds from Goldberg's re-sale of the mosaic were to be split between Goldberg and the other three parties involved.¹⁵⁷ When Goldberg attempted to sell the mosaic, the potential buyer discovered the mosaic was stolen.¹⁵⁸ The Republic of Cyprus and Autocephalous Greek-Orthodox Church of Cyprus brought an action for replevin.¹⁵⁹

The court narrowed the choice of law question down to three possible locations: Germany (locus of the transaction), Switzerland (location of the mosaic at the time of the transaction), or Indiana (place from which the purchase was financed). The court ultimately applied Indiana law.¹⁶⁰ This case is a good illustration of how many actors of different nationalities may be involved in a single art transaction, thus giving rise to choice of law problems.

IV. ADDITIONAL FACTORS FACILITATING ILLICIT TRADE

There are several additional conditions of the international art market that facilitate the ease of illicit antiquity trade. This part of the comment begins by exploring the supply and demand for stolen antiquities in the art

¹⁵⁰ See Borodkin, *supra* note 2, at 400.

¹⁵¹ *Autocephalous*, 717 F. Supp. at 1378.

¹⁵² *Id.* at 1381.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 1382-83.

¹⁵⁶ *Id.* at 1383.

¹⁵⁷ *Id.* at 1384.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 1375.

¹⁶⁰ Borodkin, *supra* note 2, at 400.

market. The part ends with an analysis of how legitimate art establishments and actors, such as auction houses, dealers, collectors, and museums, launder illicit antiquities and, therefore, facilitate the ease of committing antiquity crimes.

A. Supply and Demand

The stolen art market is an industry estimated to be worth between two and six billion dollars.¹⁶¹ Both supply and demand of cultural objects appear to be increasing.

Four main factors contribute to growth in supply. First, there is continued exploration and discovery of archeological sites.¹⁶² Such discovery comes from both intentional and unintentional actors. Intentional actors include archeologists working according to recognized standards and within the official system, in addition to amateur archeologists and trophy hunters who illegally engage in searching for cultural objects.¹⁶³ Unintentional actors include land cultivators, who discover antiquities while turning the earth, and builders, who make such discoveries while excavating to build roads and structures.¹⁶⁴

Second, this increase results from new objects and new categories of objects becoming artifacts with the passage of time. According to art law experts John Merryman and Albert Elsen:

books, maps, and public documents created for practical use become historical artifacts as they age, and the same is true for many other made objects: automobiles become vintage cars, stamps and coins become collectors items, as do furniture, silver, jewelry, china, perfume bottles, clothing, musical instruments, scientific instruments, weapons, comic books, fruit box labels, the list is endless.¹⁶⁵

¹⁶¹ Robert L. Moshman, *Stolen Art*, at <http://financialcounsel.com/Articles/EstatePlanning/ARTEST0000046-StolenArt.asp> (last visited February 4, 2005). See also David Holmstrom, *Stolen-Art Market Is a Big Business at \$2 Billion A Year*, CHRISTIAN SCIENCE MONITOR, Aug. 11, 1994 at 1; Borodkin, *supra* note 2, at 377-78; CONKLIN, *supra* note 3, at 4 (stating that, although hard to quantify, the theft of art and antiquities was valued at a minimum of \$1 billion in 1994, and there is reason to believe this number has increased to the rapid rise in the price of art).

¹⁶² MERRYMAN & ELSÉN, *supra* note 114, at 69.

¹⁶³ *Id.*

¹⁶⁴ *See id.*

¹⁶⁵ *Id.*

The third factor, adding to the supply situation of illicit cultural property, is the increase of artist and artisan activity.¹⁶⁶ The fourth, and final factor, is the desire of artifact-rich nations to export cultural property in order to fund domestic growth.¹⁶⁷ Many artifact-rich nations have fragile economies and few domestic products to export.¹⁶⁸ Thus, their development policies tend to encourage export of all types in order to produce revenue.¹⁶⁹

To accompany this increase in supply is a strong and continual demand for quality works of art. Merryman and Elsen have correlated the increase to several social factors. The first factor is extended life expectancy,¹⁷⁰ which enables people to become more interested in collecting as a hobby because of increased discretionary incomes and leisure time.¹⁷¹ Hence, new private collections are constantly being assembled. Second, levels of education are increasing.¹⁷² More people are interested in learning about human history, and this interest increases museum and gallery visits.¹⁷³ As more people visit, more institutions open.¹⁷⁴

In discussing demand, it is important to note the sharp contrast between artifact-rich countries and artifact-poor countries. The latter are without much archeological wealth but nevertheless desire antiquities. They are the countries providing the demand in the stolen antiquities market. Without such demand, the market would be disabled.¹⁷⁵ It has been suggested by some scholars that the distinction between these two types of countries is becoming blurred as many nations today are both recipients and victims of illegal export.¹⁷⁶ However, the fact that the bifurcation is evident in the UNESCO Convention—through its reference to “source” and “market” nations¹⁷⁷—suggests that the distinction is still noteworthy.

The fundamentals of economics dictate that a market cannot exist without both supply and demand. As supply and demand of cultural objects increase, the stolen art market is not only facilitated but actually grows.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.* at 70.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ *Id.* 69–70.

¹⁷² *Id.* at 69.

¹⁷³ *Id.*

¹⁷⁴ *Id.* at 69–70.

¹⁷⁵ Borodkin, *supra* note 2, at 385 (stating countries whose citizens may purchase artifacts are called “artifact-poor nations,” “collector nations,” or “demand nations”).

¹⁷⁶ Gimber, *supra* note 72, at 56.

¹⁷⁷ Spiegler & Kaye, *supra* note 70, at 29.

B. *Legitimate Art Market*

So far this comment has allocated blame for the continued trade of illicit antiquities on the valuable nature of antiquities, difficult social circumstances, inadequate regulation, and surging supply and demand. The legitimate art market, however, also contributes significantly to the illicit trade of art. The market fails to exercise due diligence when inquiring into an artifact's chain of ownership. This part of the comment analyzes how auction houses, art dealers, collectors, and museums effectively launder illicitly traded cultural property. This process makes a once-illicit antiquity valid, and even respectable, by affiliating the property, via either ownership or consignment, with an established art institution.

The first actor to be analyzed is the auction house. There are many instances of even the most prominent and reputable art houses cooperating with the black art market to obtain art and antiquities. Thomas Hoving, a former director of the Metropolitan Museum of Art in New York City, has stated that shady business dealings have plagued Sotheby's for years.¹⁷⁸ Further, Hoving states that auction houses have a first hand knowledge regarding:

how antiquities smuggled out of Turkey and Sicily are laundered in Switzerland and England and how false provenances are manufactured and how the goods are stored in warehouses owned by auction houses until statutes of limitations run out . . . and how bids are really rigged And how some auction houses once took pride in being able for a fee to have any work smuggled out of Italy or other countries. And how a bunch of furniture fakes were mysteriously sold as genuine despite the sharp eyes of auction professionals.¹⁷⁹

One of the most questionable practices amongst auction houses is the manner in which they query into an artifact's provenance. Linda Pinkerton, former Vice President of Christie's, admits that tracing the history of every object would be impossible due to high volumes of trade within auction houses.¹⁸⁰ Yet, the real truth is that auction houses do not even make an

¹⁷⁸ Tomas Hoving, *My Eye*. Artnet.com Magazine, February 28, 2000, at <http://www.artnet.com/magazine/features/hoving/hoving2-28-00.asp> (last visited Jan. 21, 2005).

¹⁷⁹ Tomas Hoving, *My Eye*. Artnet.com Magazine, February 28, 2000, at <http://www.artnet.com/magazine/features/hoving/hoving2-28-00.asp> (last visited Jan. 21, 2005).

¹⁸⁰ Rostomian, *supra* note 19, at 287 (quoting and paraphrasing Linda Pinkerton, *Museums Can Do Better: Acquisition Policies Concerning Stolen and Illegally Exported Art*, 5 VILL. SPORTS & ENT. L.J. 59, 60 (1998)).

attempt to inquire into an object's origin. For example, a teenager once consigned several paintings and decorative objects stolen from a Pennsylvania museum to a New York auction house claiming to have inherited them.¹⁸¹ The teenager was delighted with the ease with which he liquidated the objects: "[the auction houses] don't ask you any questions about who you are or where you got the paintings."¹⁸²

Actually, it is advantageous for an auction house to ask as few questions as possible because the law effectively discourages an auction house from inquiring into a piece's history. According to Pinkerton, "the less a dealer knows about [a work's] past, the better" as he does not have to disclose the unsavory past of the item, and possibly commit a crime himself, if he does not have the requisite knowledge.¹⁸³ Some auction house executives disagree, stating that documenting an artifact's country of origin dramatically increases the marketability and value of a piece.¹⁸⁴ Yet, between 85% and 90% of antiquities appearing in auction house catalogs do not have information regarding their country of origin.¹⁸⁵ This suggests that a failure to publish the country of origin indicates some illegality in the history of the antiquity.¹⁸⁶ Most auction house executives agree that they are not liable for illicit trade in art done through their establishments because the auction house merely handles and sells the object for the owner and has no actual property interest in the items they sell.¹⁸⁷

Aiding in an auction house's ability to facilitate illegal art trade is the fact that auction houses have historically been subject to relatively few legal controls. This has been a great problem, particularly in England and Switzerland.¹⁸⁸ The major auction houses in London have historically needed only to determine that the seller is the bonafide owner of the piece.¹⁸⁹ Investigation of ownership is difficult, and the English houses have not been required to guarantee title or examine origin.¹⁹⁰ Further, English

¹⁸¹ CONKLIN, *supra* note 3, at 141.

¹⁸² *Id.*

¹⁸³ Rostomian, *supra* note 19, at 287 (quoting and paraphrasing Pinkerton, *supra* note 180, at 60).

¹⁸⁴ Patty Gerstenblith, *Acquisition and Deacquisition of Museum Collectibles and the Fiduciary Obligations of Museums to the Public*, 11 CARDOZO J. INT'L & COMP. L. 409, 447 (2003).

¹⁸⁵ *Id.*

¹⁸⁶ *Id.* (paraphrasing hearings held by the House of Commons in May 23, 2000). For a full transcript of the aforementioned Hearings, see House of Commons Seventh Report- Cultural Property: Return and Illicit Trade, Vol. I (July 24, 2000), at www.publications.parliament.uk/pa/cm199900/cmselect/cmcmumed/cmcmumed.htm (last visited February 22, 2005).

¹⁸⁷ Rostomian, *supra* note 19, at 287.

¹⁸⁸ GREENFIELD, *supra* note 1, at 247.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

houses have traditionally included an exclusionary clause regarding authenticity and authorship in their sales contract. Thus, it has been virtually impossible to obtain and return illegally exported items appearing in auction showrooms.¹⁹¹

The smaller auction houses of Switzerland have contributed greatly to illegal art trade as well. According to the Bureau of Cultural Heritage in Switzerland, the country's lack of restriction on the import and export of art treasures has tremendously affected illicit art; Switzerland is the center of stolen art from Italy, Greece, Turkey, Tunisia, and Egypt.¹⁹²

Both England and Switzerland have recently acceded to the UNESCO Convention, in February of 2003¹⁹³ and June 2003¹⁹⁴ respectively. Since this accession is so recent, it is difficult to evaluate the impact the passage of the Convention has had in general, let alone amongst the auction houses in these countries.

Auction houses in France, on the other hand, are subject to much more stringent rules regarding guarantees of title. However, because the French auction system is very fragmented—its catalogs are poorly organized, vague, and distributed only locally—the detection of stolen art is unlikely.¹⁹⁵

In the United States, auction houses are not well regulated at the federal or state levels.¹⁹⁶ First, auctioneers are provided with no guidelines. Auctioneers are not required to complete any professional training, nor are there any necessary qualifications for an auctioneer in the area of appraisal.¹⁹⁷ Yet, many auctioneers offer opinions of authenticity and estimations of value.¹⁹⁸ It has been suggested that “because states do not license auctioneers, or regulate auctions,” *anyone* can enter into the auction business,¹⁹⁹ even those devoid of scruples.

Second, warranties of authenticity and title may be disclaimed. Under the Uniform Commercial Code (“UCC”) a warranty of authenticity of

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ The United Kingdom Parliament Website, *Lords Hansard text for 25 Feb 2003*, at <http://www.parliament.the-stationery-office.com/pa/ld199697/ldhansrd/pdvn/lds03/text/30225w03.htm> (last visited Jan. 21, 2005).

¹⁹⁴ SwissInfo Website, *Swiss Deal Blow to Art Traffickers* (June 17, 2003), at <http://www.swissinfo.org/sen/Swissinfo.html?siteSect=111&sid=3957866> (last visited Jan. 21, 2005).

¹⁹⁵ GREENFIELD, *supra* note 1, at 247-48.

¹⁹⁶ *Id.* at 247.

¹⁹⁷ William W. Stuart, *Authenticity and Authorship and the Auction Market*, 54 ME. L. REV. 71, 73 (2002).

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

authorship can be disclaimed.²⁰⁰ Auction houses often invoke this disclaimer to limit the possibility of auction purchasers rescinding a purchase once they discover authorship is not authentic.²⁰¹ Under the UCC, however, affirmative statements of fact about goods to be auctioned can infer a warranty.²⁰² Several states, such as Florida, Iowa, Michigan, and New York, have exceeded the protections provided by the UCC by enacting laws that provide assurance of authenticity.²⁰³ Under these laws, a non-merchant buyer may have a liability action against the auction house where the auctioneer has made any statement regarding authorship, excluding statements made that merely reflect the *opinion* of the auctioneer.²⁰⁴

When it comes to warranties of title, the UCC is more rigorous. Under the UCC, a seller is obligated to insure that both the title conveyed and the transfer are rightful.²⁰⁵ A disclaimer may only be made when the buyer has reason to know that the person selling the work (not the auctioneer who merely acts as a consignor) does not have rightful title himself.²⁰⁶ Such disclaimers are seldom used in the auctioning of antiquities.²⁰⁷

The second legitimate member of the art market to examine is the art dealer. In the world of illicit art trade, dealers effectively become risk absorbers, for a purchaser at an auction is only entitled to the title an auction house has acquired. Any deficiencies in the trade process, up to the point where the dealer acquires an artifact, are passed onto the dealer.²⁰⁸

A bona fide art dealer will make several inquiries upon buying.²⁰⁹ The dealer will begin by questioning if the price reflects the piece's quality.²¹⁰ Then, the dealer will query if the seller is bona fide.²¹¹ This is often difficult to determine, and intuition is usually the best guidance. If a dealer uses a seller or auction house frequently, a relationship and level of dependability and credibility will be established.²¹² Next, the dealer will question whether the piece was forged and if it has been legally acquired from the point of

²⁰⁰ See U.C.C. § 2-316(1) (2003).

²⁰¹ Stuart, *supra* note 197, at 74.

²⁰² *Id.*

²⁰³ *Id.* at 78.

²⁰⁴ *Id.* at 78.

²⁰⁵ *Id.* at 75. See also U.C.C. § 2-312(2) (2003).

²⁰⁶ Stuart, *supra* note 197, at 75. See also U.C.C. § 2-312(2) (2003).

²⁰⁷ Stuart, *supra* note 197, at 75.

²⁰⁸ Borodkin, *supra* note 2, at 386-87.

²⁰⁹ W. Bouman, *The International Art Market, in ILLICIT TRAFFIC IN CULTURAL PROPERTY* 62 (Harrie Leyten ed., 1995).

²¹⁰ *Id.*

²¹¹ *Id.*

²¹² *Id.*

origin. The element of origin is particularly important yet difficult to determine.²¹³ For even where the item's country of origin is correctly communicated, dealers are rarely aware of the import and export laws specific to that country. It is easy to see how ignorance may make dealers an easy target in the laundering of illegitimate antiquities.

The art dealer is in an extremely difficult position because the dealer walks a fine line between making a profit, protecting himself against unforeseen circumstances,²¹⁴ and recognizing a new growing concern amongst dealers over the destruction of cultural heritage.²¹⁵ The need to develop and maintain a reputation of integrity is also a necessity, and has driven many dealers to adopt self-restraint policies and join dealer organizations touting codes of ethics.²¹⁶ For example, the English Code of Practice for the Control of International Trading in Works of Art has a growing membership and has been translated into and adopted by the French.²¹⁷ Additionally, the International Association of Dealers in Ancient Art ("IADAA") has adopted a Code of Ethics ("IADAA Code"). The IADAA Code reads:

[t]he members of the IADAA undertake to the best of their ability to make their purchases in good faith; they undertake not to purchase or sell objects until they have established to the best of their ability that such objects were not stolen from excavations, architectural monuments, public institutions, or private property.²¹⁸

Although such codes aid in the fight against stolen antiquities, how effective are they? Little data has been collected to answer this question. Most importantly, none of these codes speak *directly* to illicit traffic (although they do *indirectly* mention illicit trade). This reflects the complex nature of the problem and difficulties posed when addressing it.²¹⁹

In recognition of unscrupulous art dealers and the problems in addressing illicit art trade by the aforementioned codes, UNESCO launched an International Code of Ethics for Dealers in Cultural Property ("International Code") in November of 2000.²²⁰ Dealers who adopt the Inter-

²¹³ *Id.* at 63.

²¹⁴ *Id.*

²¹⁵ Leyten, *supra* note 63, at 73.

²¹⁶ *See id.* at 74.

²¹⁷ *Id.*

²¹⁸ *Id.*

²¹⁹ *Id.* at 74.

²²⁰ UNESCO Website, *Launch of Code of Ethics for Art Dealers at Anniversary Celebration of Convention on Ending Illicit Trade in Cultural Property* (Nov. 16, 2000), at <http://www.unesco.org/bpi/eng/unescopress/2000/00-119e.shtml> (last visited Jan. 25, 2005).

national Code agree “not to trade in objects which might be stolen, clandestinely excavated, or illegally exported,” and to cooperate in the return of such objects.²²¹ “The [International] Code was designed for those dealers who wish to make clear that they use their best efforts to avoid any association with illicit trade by checking carefully their sources of supply,”²²² declared Mounir Bouchenaki, UNESCO’s Assistant Director-General for Culture. Bouchenaki also added:

[t]he Code will be of use to dealers in any country who value their reputation for integrity and wish to spell it out for their customers to see It should encourage collectors to follow the ethics of the International Council of Museums and to do their best to ensure that they buy from sources who are meticulous in checking the origin of the goods they offer to their customers.²²³

The main weakness in the International Code is that it is not mandatory for dealers in countries that are Convention signatories. Therefore, dealers can opt in or out of the provision to suit their own purposes.

Private collectors also make purchases at auctions; accordingly, they are the third area of focus in understanding illicit trade. The law in the United States imposes upon the buyer the duty of diligence,²²⁴ which is a great burden. The law requires the buyer to perform “requisite checking”²²⁵ to discover if the item being bought has been legally obtained.²²⁶ This check sounds adequate, but two snags in the process exist. First, the potential buyer need not learn the actual truth about the object,²²⁷ which all but nullifies the duty in the first place. Second, most buyers lack the sophistication necessary to perform such an inquiry.²²⁸ For the most part, buyers

²²¹ UNESCO Website, *Launch of Code of Ethics for Art Dealers at Anniversary Celebration of Convention on Ending Illicit Trade in Cultural Property* (Nov. 16, 2000), at <http://www.unesco.org/bpi/eng/unescopress/2000/00-119e.shtml> (last visited Jan. 25, 2005).

²²² UNESCO Website, *Launch of Code of Ethics for Art Dealers at Anniversary Celebration of Convention on Ending Illicit Trade in Cultural Property* (Nov. 16, 2000), at <http://www.unesco.org/bpi/eng/unescopress/2000/00-119e.shtml> (last visited Jan. 25, 2005) (quoting Mounir Bouchenaki, UNESCO’s Assistant Director General of Culture).

²²³ UNESCO Website, *Launch of Code of Ethics for Art Dealers at Anniversary Celebration of Convention on Ending Illicit Trade in Cultural Property* (Nov. 16, 2000), at <http://www.unesco.org/bpi/eng/unescopress/2000/00-119e.shtml> (last visited Jan. 25, 2005).

²²⁴ Rostomian, *supra* note 19, at 288.

²²⁵ *Id.*

²²⁶ *See id.*

²²⁷ *See id.*

²²⁸ *Id.*

are incapable of performing the requisite check.²²⁹ Thus, the collector, for lack of correct knowledge and inability to execute a proper check, unknowingly may contribute to the illicit antiquity trade.

Museums, the fourth and final area of interest in understanding how the legitimate art market affects illicit trade, have a long history of supporting and fostering the black market. Former museum director Hoving publicly admitted that museum directors often purchase art and artifacts which they have good reason to believe were stolen and smuggled illegally out of their country of origin.²³⁰ Historically, museums have ignored the problem of buying and possessing looted cultural artifacts.

The most prominent example of this followed World War II. After the Holocaust, museums around the globe acquired a good number of stolen pieces of art and antiquities that were looted during wartime.²³¹ But for years, museums and collectors "seemed oblivious"²³² to the lasting effect this would impose upon the acquisition process for pieces added since the war.²³³ Over the past decade, however, there has been an increase in attention to the problem by the general public. In response, museums have grown more concerned that pieces within their collections may be subject to claims from original owners,²³⁴ and initiated extensive research into the origins of questionable pieces.²³⁵ Yet, in 1998 when Congress considered legislation to set standards for the return of Nazi looted art, museums were very much opposed.²³⁶ These actions seem to indicate reluctance on the part of museums to return illicit pieces to their rightful owners.

A more recent example of a museum's possession of illicit artifacts comes from the Lydian Hoard case.²³⁷ In the mid 1960s, over 360 Sixth Century B.C. antiquities (including fragments of wall paintings, marble sphinxes, vessels made of precious metals, and jewelry) were looted from a series of tombs in the central part of Turkey.²³⁸ This collection of artifacts, named the Lydian Hoard, was then smuggled out of the country, and sold

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Id.

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Kelly, *supra* note 78, at 31, 36.

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Gerstenblith, *supra* note 184, at 436-37

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Id. at 437.

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Id.

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Id.

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Id.

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Id.

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Id. at 409.

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Id.

to New York art dealers.²³⁹ Finally, the objects were purchased between 1966 and 1970 by New York's Metropolitan Museum of Art (the "Met").²⁴⁰

Thomas Hoving now admits the museum knew from the beginning that the Lydian Hoard consisted of looted artifacts.²⁴¹ The Met paid a reported \$1.2 million for the acquisition, and was aware at the time that the museum might have to return the objects one day.²⁴² Because the Met feared the discovery and potential loss of these artifacts, they remained in storage at the museum for a number of years.²⁴³ In 1984, when the artifacts were finally displayed, Turkish officials were notified.²⁴⁴ It seems the artifacts were mislabeled as *East Greek* in origin in an attempt to disguise the collection.²⁴⁵ The Met refused to return the collection to Turkey for seven years until a Federal District Court ruled the statute of limitations had not run and Turkey was entitled to the artifacts.²⁴⁶ In 1993, the Met finally returned the Lydian Hoard to Turkey.²⁴⁷

The museum's cavalier attitude towards the acquisition of the objects and the subsequent loss of historical, cultural, and scientific information seems shocking. Yet it is not unusual.²⁴⁸ One author on the international trade of art concluded that "America's museums have been partners of thieves, smugglers, and unethical dealers and collectors."²⁴⁹

Although the AAM, described above, has a Code of Ethics for Museums ("AAM Code") like the dealer codes previous to UNESCO, illicit trafficking still is not adequately addressed. The AAM Code focuses on the fact that museums are grounded in a tradition of public service and that their main mission is to collect, preserve, and interpret the "things of this world."²⁵⁰ Under the AAM Code's "Collections" provision, "public trust and responsibility" are stressed.²⁵¹ Additionally, the AAM Code requires the museum to ensure that "acquisition, disposal, and loan activities are conducted in a manner that respects the protection and preservation of natural and cultural

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.* at 410.

²⁴² *Id.*

²⁴³ *Id.* at 409.

²⁴⁴ *Id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ *Id.*

²⁴⁹ Kelly, *supra* note 78, at 33.

²⁵⁰ MERRYMAN & ELSEN, *supra* note 114, at 987 (quoting the AAM Code).

²⁵¹ *Id.* at 990.

resources and *discourages* illicit trade in such materials.”²⁵² This subtlety of language in “discourag[ing] illicit trade,”²⁵³ with no further qualifications, does not create an effective and straightforward method in addressing the problem of museums legitimizing illicit antiquities.

V. CASE STUDY

To validate the claims of this comment and increase understanding, it is useful to briefly examine a real world example. This part analyzes the famous Elgin Marbles case and shows how the forces previously discussed actually play out. First, an overview of the case is given, and then a survey of how legitimate actors eased trade and facilitated the laundering of the Elgin Marbles is provided.

In 1803, a large portion of a frieze located on the north, south, and east sides of the Parthenon in Athens was dismantled and removed to England by Lord Elgin.²⁵⁴ Lord Elgin, or Thomas Bruce as he was formerly known, was the seventh Earl of Elgin, member of the House of Lords, and a career diplomat. He was appointed by the King to serve as the British ambassador to Turkey in the early 1800s. His objective was to participate in the expulsion of Napoleon while keeping friendly relations with the Turks. When Lord Elgin noticed the unique friezes on the Acropolis he simply had to have them.²⁵⁵ He immediately received permission from the Ottoman Empire government. At first, his intentions were to take only impressions of the friezes,²⁵⁶ and reproduce the works for his new mansion in Scotland.²⁵⁷ This ultimately turned into the destruction and outright looting of the friezes.²⁵⁸

After an investigation by a British Parliamentary Select Committee in 1816, the government was sufficiently convinced that the acquisition by Lord Elgin was legal and with the express permission from the then-government of Greece.²⁵⁹ Following the conclusion of the Select Committee, the Marbles were acquired by the Government of Great Britain for 35,000 pounds, and brought to the British Museum where they reside today.²⁶⁰

²⁵² *Id.*

²⁵³ *Id.*

²⁵⁴ GREENFIELD, *supra* note 1, at 62.

²⁵⁵ MERRYMAN & ELSEN, *supra* note 114, at 12-20. *See also* Kelly, *supra* note 78, at 31-32.

²⁵⁶ MERRYMAN & ELSEN, *supra* note 114, at 12-20

²⁵⁷ GREENFIELD, *supra* note 1, at 61.

²⁵⁸ MERRYMAN & ELSEN, *supra* note 114, at 12-20. *See also* Kelly, *supra* note 78, at 33.

²⁵⁹ GREENFIELD, *supra* note 1, at 63-71.

²⁶⁰ *Id.* at 71.

The Elgin Marbles case could quite possibly be the most famous case of looted antiquities in history. The great debate centers on whether Lord Elgin rightfully took the Marbles, or whether he looted from the people of Greece.²⁶¹ Recently, the 200-year-old debate took on a new twist and was again in the spotlight—this time at the center of a campaign to have the Marbles returned to Greece in time for the 2004 Olympics in Athens.²⁶² Much to the dismay of Greece, the British Museum again refused to return the Marbles in time for the Olympic games, and there is no indication that this cultural controversy will be resolved anytime soon.²⁶³ In light of this, and because a blurry distinction exists between the legitimate and illicit art market, the comment will not strive to make conjectures on the debate, but rather it will use this set of circumstances to provide a real world illustration of how several of the factors discussed above (particularly political circumstances, weak regulations, and lawful actors of the art market) conspire together to ease illicit antiquities trade.

First, the Elgin Marbles case illustrates abuse of diplomatic position. Although impoverished persons are often the ones who loot antiquities, it is important to remember that looted objects are only valued when they can be liquidated. And nations, or those acting with the power and influence of a nation behind them, have historically participated in looting antiquities, and cared little for cultural ramifications that may follow.²⁶⁴ Scholars maintain that no private person could have removed such a massive and important piece. “[I]t was the office of Lord Elgin that made his actions possible.”²⁶⁵

Second, the Elgin Marbles debate illustrates the effect political unrest has on illicit takings of antiquities. Elgin received permission from the

²⁶¹ *Id.* at 84–85 (stating that in a 1983 debate inside the House of Lords it was declared that the Elgin Marbles were never plundered from Greece and the return of the Marbles to Greece would be detrimental to the collection of universal art at the British Museum). *See also id.* at 47 (explaining that the Greeks, on the other hand, are well aware of the historical and cultural significance of the “Parthenon Marbles,” as they refer to them, and want them returned to their country of origin immediately). *See also id.* at 77–78 (paraphrasing the Greek Director of the Department of Culture in Athens, Yannis Tzedakis, who stated that the country where the Marbles were created has the right to recover significant cultural heritage lost during periods of colonial or foreign invasion).

²⁶² Parthenon 2004 Campaign Website, *Home*, at <http://www.parthenon2004.com/> (last visited February 22, 2005).

²⁶³ JCM Romero III, *Cultural Rift Behind 2004 Olympics*, *The Manila Times Internet Edition*, August 8, 2004, at <http://www.manilatimes.net/national/2004/aug/08/yehey/opinion/20040808opi5.html> (last visited February 22, 2005).

²⁶⁴ *See* KELLY, *supra* note 78, at 34.

²⁶⁵ GREENFIELD, *supra* note 1, at 95 (paraphrasing the Earl of Aberdeen and Dr. Philip Hunt, chaplain to the British Embassy in Constantinople, who both testified on the British Parliamentary Select Committee meeting in 1816 regarding the acquisition of the Marbles).

Ottoman Empire, or the Turkish government, in Constantinople to dig at the Acropolis and take artifacts away.²⁶⁶ Greece was ruled by the Ottoman Empire from 1443 until the 1800s. When the marbles were taken, Greece was under Turkish control.²⁶⁷ The Turks had no cultural interest in preserving Greek heritage.²⁶⁸ The transaction appears to be similar to a bribe, a chance for the Turks to win favor with the British.²⁶⁹

Third, the situation points out the futility of international regulations, in particular the 1970 UNESCO Convention and ICOM. In 1983, Greece made a formal request to UNESCO for the return of the Marbles.²⁷⁰ During the procedure, Greece argued that the cultural treasures belonged to the owner of the whole, here the Parthenon. Additionally it was argued that the Marbles were held by Britain in trust.²⁷¹ Britain was allowed one year to respond and did so in the negative.²⁷²

Interestingly, the Parthenon is not listed on UNESCO's list of World Culture Heritage,²⁷³ which raises the question of objectivity with regards to the Convention's procedure in creating the list. Further, Great Britain withdrew from UNESCO subsequent to these procedures.²⁷⁴ In this situation, UNESCO's Convention proved hugely ineffective. The ability for a UNESCO signatory to opt in and out of the Convention at whim when its right to possess a controversial artifact falls into dispute proves yet another shortcoming in the structure of the regulation.

Around the same time as the exercise of the UNESCO procedure, ICOM passed a resolution on the "Return of Cultural Property to its Countries of Origin."²⁷⁵ The resolution noted the moral rights of people to recover significant elements of their cultural heritage dispersed as a consequence of colonial or foreign occupation. The British museum delegates to ICOM took no part in these discussions. In effect the ICOM resolution, like the UNESCO Convention, did not aid Greece in recovering the Marbles.²⁷⁶

Fourth, the Marbles were acquired by a museum, giving the ultimate legitimacy to the antiquities. In this situation the British government, itself

²⁶⁶ *Id.* at 61.

²⁶⁷ *Id.*

²⁶⁸ Kelly, *supra* note 78, at 35.

²⁶⁹ *Id.*

²⁷⁰ GREENFIELD, *supra* note 1, at 84.

²⁷¹ *Id.* at 87.

²⁷² *Id.*

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ *Id.* at 78.

²⁷⁶ *Id.*

an ultimate actor in legitimizing illicit goods, purchased the Marbles and gave them to the British Museum.²⁷⁷ Although there was a Parliamentary inquisition (a far more thorough check than the average collector is capable of doing), Parliament was able to purchase the Marbles despite a questionable acquisition from Greece. This indicates that even a properly executed requisite check means very little in the curbing of illicit antiquities trade. Ultimately, the encasement of the Marbles under the glass of a museum display case somehow lends credence to the articles and method by which they were acquired.

VI. CONCLUSION

Although the legitimate art world is becoming more and more concerned with the legal implications of circulating illicit cultural property,²⁷⁸ illicit art trade is still a multi-billion dollar business. According to General Roberto Conforti, of Italy's Artistic Heritage Police, regardless of regulation and legal implications, "[w]here there is money, there is crime."²⁷⁹ In a market where items cross borders many times, and in an era of ever-increasing globalization, international cooperation is key to the crackdown on illicit antiquity trade.

Unfortunately, the very nature of antiquity looting contributes to illicit trade. Antiquities are very valuable and relatively easy to liquidate. Couple this with a situation of political unrest and/or poverty and it is commonsense that antiquities will be exported illegally. However, a multinational, cooperative approach to international and national regulation, along with tougher restrictions on legitimate art actors, should be able to better control antiquity trafficking.

Current regulations are weak and do little in preventing illicit trade. International conventions like UNESCO and UNIDROIT have made commendable attempts towards regulation but ultimately fall short in effectiveness. This is primarily because no international tribunal has been established to handle cases of illicit art trade, and countries are only governed by the conventions once they have become signatories. The realism of an opt-in, opt-out system renders any convention useless. Further, governmental institutions, such as ICOM and INTERPOL, face their own unique challenges in regulating and enforcing illicit trade.

²⁷⁷ *Id.* at 71.

²⁷⁸ Leyten, *supra* note 63, at 55.

²⁷⁹ UNESCO Website, *Launch of Code of Ethics For Art Dealers At Anniversary Celebration of Convention on Ending Illicit Trade in Cultural Property* (Nov. 16, 2000), at <http://www.unesco.org/bpi/eng/unescopress/2000/00-119e.shtml> (last visited Jan. 25, 2005).

National laws are distinctive to individual nations. This creates a challenge in the development of a cohesive, multinational approach to curb illicit trade. The United States' *laissez-faire* attitude has grown more proactive with the AAM regulations, Pre-Columbian Monumental Sculpture and Murals Statute, and, in particular, with the CPIA. But, many countries have not yet taken advantages of the bilateral agreements offered under the CPIA. Also, there are actual conflicts between the regulations of various nations presenting a choice of law issue.

Current regulation of legitimate auction houses, dealers, collectors, and museums hardly exists. And, it is these actors, united with a continual supply and demand for illicit antiquities, that significantly contribute to the relative ease with which antiquities move between the legitimate and illegitimate art markets. In the end, even factors that may seem relatively benign in nature actually conspire against lawfulness to facilitate illicit antiquity trade.

