

# The *Illicit* Cultural Property Trade and the 1970 UNESCO Convention

by Nicholas Dietz

In the past few years, the media has covered a number of stories relating to the looting of antiquities and other cultural property. The sacking of Iraq's National Museum soon after the fall of Baghdad in 2003 drew international headlines. The issue of looting re-emerged in 2005 with the Italian Government's indictment of Marion True, then Chief Curator of Antiquities at the Getty Museum in Los Angeles, for trafficking in looted Greek and Roman artifacts. As of this writing, True's trial is ongoing, and though it has not garnered the same level of attention as the looting in Iraq, the former case provides far greater insight into the inner workings of the illicit antiquities trade, specifically the involvement of many prominent museums.

Italy's investigations did not start, or stop, with Marion True and the Getty. The sordid tale began in the mid-1990's when Italian police followed antiquities dealer Giacomo Medici to a warehouse in Switzerland. A subsequent search of the warehouse uncovered a treasure trove of documents implicating

dozens of museums, collectors, dealers, looters, and smugglers from around the globe, underscoring the international nature of the black market trade.<sup>1</sup>

Medici's files revealed that many of the museums that had purchased looted works were American. The most celebrated of the looted objects was the "Euphronios krater," a large, 2,500-year-old



*The Euphronios krater*

photo by Jaime Ardiles-Arce

terra cotta vessel named for its painter, Euphronios,

<sup>1</sup> Aaron Kyle Briggs, *Consequences of the Met-Italy Accord for the International Restitution of Cultural Property*, 7 Chi. J. Int'l L. 623, 639-641 (Winter, 2007).

one of the most renowned Greek artists of the age. The krater had been in the collection of New York's Metropolitan Museum of Art since the early 1970's. Prior to appearing at the Met, however, the krater was looted from an archeological site in Southern Italy. After lengthy negotiations, and a great deal of bad publicity, the Met returned the piece to Italy in early 2008.<sup>2</sup>

Despite the media coverage, these and other examples of looting are generally considered to be rare, unrelated occurrences. The big picture is seldom examined – namely the very existence of an international, multi-billion dollar black market trade in looted and stolen antiquities. In fact, only two illegal markets in the world generate more money than the looted antiquities trade: drug smuggling and gun running.<sup>3</sup>

Nations have been pillaging other nations' most prized possessions from time immemorial, but the practice was not condemned by the "international community" until well into the 19<sup>th</sup> century. The 1899 and 1907 Hague Conventions were the first international agreements to call for the protection of cultural property. Two world wars later, with Europe, its monuments, and museums in ruins, a strengthened Hague Convention was promulgated in 1954.<sup>4</sup>

The 1954 Convention declared antiquities and other works of cultural property to be the collective heritage of mankind as a whole and thus inviolate. This sat well with the nations who drafted the agreement as they were primarily "market nations" – nations that imported cultural property, as opposed to "source nations" who had their cultural property removed. The notion, that cultural property belonged to all, supported market nations' contention that they had

just as much right to a given artifact as its country of origin.<sup>5</sup>

Not surprisingly, source nations were displeased with the 1954 Convention and, by 1970, had gained enough influence in the United Nations to push for a new agreement: the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Transport, Export and Transfer of Ownership of Cultural Property (the "UNESCO Convention"). Nearly 40 years later, the UNESCO Convention, with 110+ signatories, remains the most important international agreement on the subject of cultural property.<sup>6</sup> Unfortunately, this is not a positive state of affairs, as numerous subsequent proposals have been shot down by market nations on the grounds that they were overly restrictive.

Although the UNESCO Convention has succeeded in raising international awareness of the illicit cultural property trade and provided some guidance in efforts to combat the trade, its most significant contribution was the establishment of the year 1970 as the crucial date in resolving the majority of cultural property disputes. The fact that the Convention was adopted in 1970 has resulted in a division of the conflicts into "pre-1970" and "post-1970" categories.

It is now standard policy, for example, for nearly all American museums to return objects acquired after 1970, whose pre-1970 provenance (origins and ownership history) cannot be clearly established. However, the same museums usually retain items acquired prior to 1970 precisely because the UNESCO Convention does not apply to such works. To regain such an object, a source country bears the burden of proving the item was looted; museums are not required to demonstrate that it was acquired legally.<sup>7</sup> Consequently, the issue of who "owns" a specific

2 Briggs at 641-642.

3 The Association for Research into Crimes against Art, Art Crime Facts, at <http://www.artcrime.info/facts.htm> (last consulted on April 20, 2009).

4 Captain Joshua E. Kastenberg, USAF, The Legal Regime for Protecting Cultural Property During Armed Conflict, 42 A.F.L. Rev. 277, 277 (1997).

5 Kevin F. Jowers, International and National Legal Efforts to Protect Cultural Property: The 1970 UNESCO Convention, the United States, and Mexico, 38 Tex. Int'l L.J. 145, 147-148 (Winter, 2003).

6 *Id.* at 148-149.

7 Jowers at 153.

looted antiquity often turns on nothing more than the date the item was looted.

To Italy's delight and the Metropolitan Museum's dismay, the Euphronios krater was acquired after 1970. Had the Met purchased the krater under identical circumstances only a year earlier, it may well have remained at the museum – despite the fact it was looted. In the latter situation, the most effective weapon in a source nation's arsenal is not the UNESCO Convention, but the media spotlight. Negative publicity can often serve as a better deterrent than international regulations.

Each new, well-publicized discovery of looted objects in a museum's collection increases the likelihood that American museums will soon abandon their involvement in the illicit antiquities trade. Such a development would almost certainly drive news of the antiquities black market off the front pages but, unfortunately, would not significantly affect the market as a whole. Though the media's primary focus is on museum links to looted works, in point of fact, museum purchases account for only a fraction of the looted antiquities that change hands every year. The vast majority of these works end up in private collections – hidden from the prying eyes of the media and unknown to the general public. ↵

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