

When Should Laws and  
Ethics Be Applied to the  
Management of the  
World's Cultural  
Heritage?

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PAPER FOR THE REGIONAL WORKSHOP ON THE CONVENTION ON THE MEANS OF  
PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF  
OWNERSHIP OF CULTURAL PROPERTY JOMTIEN, THAILAND, 24-28 FEBRUARY 1992

In my involvement for over the last two decades with anti-looting and ethics of collecting issues, I have written editorials in the *Silpakorn Journal* of the Fine Arts Department and a number of papers. In them I have urged cultural managers, law enforcement personnel and academics in the fields of art and archaeology to think more of the ethics, and intent of protective laws, than just the laws. On one occasion I was appointed representative of the Thai Government to testify in the public hearing before the Chicago City Council on October 25, 1988, for the return of the Phanom Rung lintel. My testimony is shown in Appendix A.

I would like also to be recorded here as an admirer and supporter of this Convention. In Appendix B is an unsent letter of acceptance I drafted in 1988 for the department's consideration.

In this paper, however, I would like to present my views on two issues in connection with the management and preservation of cultural resources. The following text is based on my suggestions to the Thai team on their request to bring to the attention of the meeting at the 79th Interparliamentary Council in Guatemala City, some time in 1988.

1. Means for ensuring that economic development does not endanger the cultural heritage of developing nations.

2. Means for bringing under control the international trade in antiquities, by:

a. Strengthening existing international

agreements on the illicit antiquities trade,

b. Bringing pressure to bear on nations and museums that continue to act unethically or illegally with respect to the acquisition of looted and smuggled antiquities, and

c. Promoting bilateral exchanges of cultural materials.

#### MEANS FOR HARMONIZING ECONOMIC DEVELOPMENT AND CULTURAL HERITAGE PRESERVATION

In the developing nations of the world, the damage caused by fixations on economic factors to the exclusion of environment and cultural factors is often very great. By now, most nations give lip service to protecting the natural environment. Yet many seem to be aware that their cultural environment is of equal importance, and equally in danger. Examples exist, in Asia and elsewhere, of nations that have given cultural preservation such a low priority that they have become virtually cultural deserts: sterile assemblages of modern structures in 'international' style, with citizens wearing international clothing and the artists among them producing second-rate, derivative 'international' art. Such nations have no consciousness of history or roots in the past; their cultural environment resembles that of a gigantic airport.

Not all nations follow this road. But the situation is rapidly getting worse. As of today, any one of several western European countries contains as many truly old buildings as do entire continents in the developing

world. Soon it may be necessary for Asians, Africans and Latin Americans to go to Europe or North America to see ancient cities, to observe ancient art, and to see traditional cultures that are still fertile and alive.

The solution is not just to create more government-run cultural institutes that will sponsor a little traditional music and literature, and design a few more 'traditional' buildings that resemble giant peasant's houses made of reinforced concrete. Instead, it is necessary to raise general cultural consciousness among a nation's people. Public and private enterprises should be urged to preserve historic buildings and sites even when this will inconvenience them. Individuals should be restrained from destroying or looting monuments, even when on private land. Efforts should be made to promote the popularity of genuinely traditional art, as well as works that represent a valid synthesis of the traditional and modern. Artists should be trained to know the difference between a valid and invalid synthesis. The world already has too many Asian ox-carts painted in the style of Van Gogh.

#### MEANS FOR BRINGING UNDER CONTROL THE INTERNATIONAL TRADE IN ILICIT ANTIQUITIES

The illegal excavation and export of ancient art objects is only one of the many problems faced by nations wishing to preserve their cultural heritage. Domestic markets for looted antiquities are often even more active than the international antiquities trade, which is a serious problem nonetheless. It causes the

destruction of many important historic monuments. And it is a symbol of exploitation of the poor by the rich and of arrogant disregard for the rights of the peoples of the developing world. As such, the international trade in illicit antiquities must be stopped.

Three methods for stopping it may be suggested:

A. The relevant international agreements must be strengthened. The existing UNESCO Convention on Cultural Property is badly compromised by Article 7, which contains the strange provision that nations from which objects have been stolen must pay "compensation" at market value in order to get those objects back. Either Article 7 should be altered by UNESCO or the issue of "compensation" should be the subject of supplementary bilateral and multilateral agreements among antiquity-exporting and antiquity-importing nations. Could this clause be amended, I wonder, to the extent that it clarifies "an innocent purchaser" as any person who has bought the property in good faith and which said property is accompanied by a permit from the solicited state? In this case, the "compensation" can be well accommodated in the article.

B. Pressure should be brought to bear on individual institutions as well as nations, to induce them to adhere to a correct ethical position with regard to the acquisition of illicit antiquities. Among the major antiquity-importing nations, only the United States has ratified the UNESCO Convention. The other

antiquity-importing nations should be persuaded to ratify it as soon as possible. Museums and other cultural institutions in importing nations should be urged to stop acquiring antiquities that are illicitly exported or illegally excavated. It is not enough for those institutions to say "We need proof that these objects were illicitly exported." Virtually all objects in certain categories are of illicit status from the point of view of the exporting country. Before acquiring such objects, the institutions should say, "We need proof that

these objects were ethically excavated and legally exported from their country of origin."

It is true, many nations are quite willing to allow the importation of objects that were illegally imported. A crime in Thai or Guatemalan law is not necessarily a crime in the laws of the United States or Switzerland. But pressure can be brought to bear.

One way to exert pressure on antiquity-importing nations and on antiquity-acquiring museums is to boycott them when international loan exhibitions of ancient art objects are sent out from antiquity-exporting countries. Nations that have not

ratified the UNESCO Convention could be made ineligible to receive such exhibitions. And museums known to be active in acquiring illicit antiquities should not be allowed to host those exhibitions.

The most practical way of implementing this suggestion would be through formal or informal agreements at the ministerial level among antiquity-exporting nations. No treaties or other binding documents would be needed. It would be sufficient for officials in nation 'A' to be able to contact officials in nation 'B' requesting that given exhibition not be loaned to a particular museum in nation 'C' until that museum has agreed to begin adopting an ethical attitude toward the acquisition of illicit antiquities. The simple fact that such an agreement existed, with antiquity-exporting nations cooperating to control the antiquities trade, would persuade many museums to be far more careful about the objects they acquired.

C. Strong encouragement should be given to the establishment of bilateral exchanges of objects between museums in antiquity-importing and antiquity-exporting nations. Exchanges of study collections with minimal market value could begin as soon as the relevant regulations on the part of national archaeological and museological services can be modified. Exchanges of objects with greater value and cultural importance would have to be considered more carefully and thus would take longer. But the benefits would be very great. Museums would be enabled to expand their collections, and to

acquire materials that would not only be interesting to the public but far better documented than most objects in their collections. This could be very damaging to the antiquities trade, which depends for its existence on the fact that museums have no other way of acquiring important objects of ancient art and thus are willing to purchase such objects even though these objects have no proper documentation and are often fakes.

If a regular method existed whereby museums could acquire important art objects through exchange with other museums, along with detailed information on provenance, interpretation and dating, museums in collecting countries would not feel forced to do business with the shady and often dishonest dealers who specialize in smuggled antiquities. At the same time, museums in antiquity-importing countries could improve their own collections. As noted above, national regulations and laws would in most cases (although not in Thailand, where the relevant law the Act on Ancient Monuments, Antiques, Objects of Art and National Museums of 1961 explicitly permits the exchange or sale of antiques "in excess of need") have to be altered for such exchanges to be possible. However, the effort involved would be worthwhile. The benefits would be great.

Whatever is the outcome of this and other meetings in the future to attempt to curb the looting of archaeological sites and illicit trades in antiquities, the attitude of purchasers will never change. One excuse we are familiar with is that

artifacts can be better taken care of, better displayed, and seen by more people in bigger museums in richer countries. The fact that 'looted artifacts' are much less educational than scientifically and systematically excavated specimens have not been willingly acknowledged. I am not arguing that every object of antiquity should remain in their country of origin; what I want to emphasize is how we can collect them ethically, and legally, and how we can benefit from them, both educationally and economically. In turning a blind eye to plundering and illicit trading activities, we lose the entire history of mankind.

#### *Appendix A*

##### *A statement*

*given as testimony before the Chicago City Council Committee, Special Events and Cultural Affairs, in the public hearing considering Mr. Gutierrez's resolution asking the Art Institute of Chicago to return the stolen Vishnu Lintel, on October 25, 1988*

*by Mr. Pisit Charoenwongsa*

*Mr. Chairman, distinguished members of the committee, I am grateful for the opportunity to speak to you today and to clarify some aspects of the controversy which have been obscured.*

*I speak to you today as a representative of the Thai Government, which is seriously concerned with the Art Institute's failure to act. As a direct participant with firsthand knowledge of the recent events, I should like to outline*

*the history of the negotiations, and in doing so I base my remarks both on our correspondence and the Art Institute's public statements.*

*First, let me assure you that the lintel is stolen property and anyone who says otherwise is fiddling with semantics. It was removed from a protected national monument without knowledge of the competent authorities. That is illegal in Thailand, as it would be here, and is stealing. It was not sold on the open market because there is no open market for antiquities in Thailand. All antique dealers must keep a record of objects they are clearing for sale, and the lintel was not duly registered. Furthermore, by Thai law no antiquity can be legally exported without a permit from the Department of Fine Arts, and no such permit was obtained for the lintel. So it is, by definition, stolen property.*

*Still, we have never accused the Art Institute of stealing the lintel. Regrettably, however, the available evidence does conclusively demonstrate the Art Institute did not acquire the lintel in good faith. They were notified of its illegal removal on several occasions prior to accepting it as a donation. Notably, they were put on notice in 1972 verbally by Prince Diskul (when he and Hiram Woodward rediscovered it), several times in writing in 1973 by Woodward, in 1976 in writing by the Fine Arts Department, and again in 1982 in writing by Woodward shortly before it was accessioned.*

*The first response we received in writing was to our request of June 28, 1976. This remarkably brief letter of then president E. Laurence Chalmers is an exercise in lack of candor. The entire letter reads:*

Dear Dr. Chongkol:

This acknowledges your communication of June 28th.

The object to which you refer was exhibited for a period of time at the Art Institute of Chicago, but is no longer on display.

In answer to your request, this object is the property of the Alsdorf Foundation, Chicago, Illinois.

Sincerely yours, E. Laurence Chalmers"

Notice please that:

The Art Institute dissociates itself from the piece, suggesting they no longer have it;

No mention is made of the museum's close ties to Mr. Alsdorf, who was at that time Chairman of the Board of Trustees, and it can be safely assumed that he knew of the request and the museum's response;

An incomplete address is given for the Alsdorf Foundation.

(As an aside, I remind you that recently, as recently as yesterday, the Art Institute has been maintaining the lintel was on continuous public display from 1967 to 1988. Their own letter here as well as Woodward's 1982 letter show otherwise.)

After the response from Chalmers, we then, through our Embassy, sent a detailed letter dated November 4, 1976 to the Alsdorf Foundation. This letter provided proof that the lintel was stolen and included photostats of the lintel,

which was photographed at Phnom Rung in 1960. The Alsdorf Foundation allegedly sent two letters to the Thai Government in response, both asking for proof that the lintel was stolen. These letters were never received, and the Art Institute has never specifically said which department of the Thai Government they were allegedly sent to, nor have they produced the letters. If they did exist, this request for proof could only have been a superfluous stalling tactic since such proof had already been furnished in the Embassy letter.

So the Art Institute knew well that the

legality of the lintel was questioned, and they knew we wanted it back. Nor is it likely they forgot. In 1982, shortly before they accessioned it in 1983, Woodward again wrote, this time to Mr. Wood, who was by now director, saying "I was saddened to see that the Alsdorf Foundation lintel...had been put back on display" and "my position today is the same as it was in 1973...no American museum should appear to condone such destruction by putting on display its fruits."

Not only did the Art Institute fail to follow accepted museum standards by not conducting an investigation of the

provenance of an object before accessioning it, they flaunted these standards by disregarding the hard evidence of questionable provenance that had been repeatedly laid in their laps.

As a matter of fact, although the Art Institute certainly knew the origin of the lintel by 1972, they continued to mislabel it, vaguely stating it was from Cambodia, perhaps out of fear of being implicated in illegality. By not properly identifying the lintel as belonging to the art-historically significant Phnom Rung temple (of the Lopburi style), but instead providing falsified information, the museum compromised its scholarly and educational duties.

We renewed our attempts to recover the lintel in February of this year, hoping to receive it in time for the inauguration of the restored temple. The inauguration was first scheduled for April, then postponed until May in the belief that progress was being made.

We invited the Art Institute officials, including Mr. Alsdorf, to attend the opening beside Princess Sirindhorn Mahachakri as she presided over the ceremonies. We sent them suggested wording for a plaque to be placed permanently at the temple in honour of the Art Institute. In short, we were very hopeful that the restoration of the lintel could mark the beginning of an enduring and friendly relation which would promote cultural exchange and bring other Thai cultural treasures to the Chicago public. We saw no reason that should prevent us from establishing close ties with the Art Institute, as we had done successfully before with the Smithsonian, the University Museum of the University of Pennsylvania, and other leading



museums.

In response, the Art Institute seemed unimpressed by gestures of good will, and they have demanded nothing short of an outright exchange. The ferocity with which they have issued this demand is extremely distasteful to us. They have even gone so far as to falsely claim we offered them a gift and then withdrew the offer. Let it be known that no such offer was ever tendered. And the Art Institute has made a mockery of the concept of negotiation, for they have acted with utter inflexibility, changing only the words, never the substance of their demand for ransom, whether it be designated "exchange," "gift," "permanent loan" or "revolving loan." Such uninspired, quibbling hardball is hardly the best way to fulfill the educational duties of a great museum. As a possible token of appreciation, we have made several generous offers, which could bring aesthetically better objects to the Chicago viewing public than a simple exchange settlement, yet not one of our offers was greeted with the slightest interest. (By the way, all of these statements can be substantiated by the correspondence.)

Specifically, at the negotiations of July 21, we offered to loan three of the very best pieces in our heritage to the Art Institute successively over a ten year period. We hoped that over the course of

that period we would develop a new relationship with the Art Institute leading to further cultural exchange beyond the next decade.

We had noble hopes, and suffered bitter disappointments. The negotiations broke down, because the Art Institute engendering an atmosphere of distrust again wanted to manipulate the offer into a permanent loan.

Why should we treat the Art Institute as a respected colleague when they persist in dealing with the Government of Thailand as if we were traders of shady ethics? And I finish with this question: if the Art Institute feels it necessary to treat us in this way, who, may we presume, has the disreputable intentions?

#### Appendix B

No. 0704/  
Fine Arts Department  
Na Phra Thart Road  
Bangkok, 10200  
Thailand  
May , 1988

Secretary-General  
UNESCO  
7 Place de Fontenoy, 75700 Paris  
France

Dear Sir,

Thailand is pleased to inform you that it has ratified the Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. However, in accordance with the provisions of Article 23 of the Convention, Thailand denounces the provisions of Article 7, (b), (ii) that requires the requesting State to pay compensation to the receivers of objects stolen from that State. Thailand reserves the right to demand the return without compensation and at the expense of the persons or institutions currently in possession of any object which the Thai Government deems to have been illicitly exported.

This letter constitutes the instrument in writing conveying a denunciation as described in Article 23, paragraph 2 of the Convention.

Yours sincerely,

Archaeology Division  
81/1 Sri Ayutthaya rd.  
Bangkok 10300