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Picked Clean: The Legality and Politics of Cambodian Cultural Heritage Objects

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File:Cambogia, brahma, da dintorni di vat baset, stile di koh ker, 925-950 ca. 00.JPG

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International art theft is one the largest sectors of international crime in terms of its geographic scope, generated income and historical legacy. With the illegal trade's far-reaching network and diverse actors, this criminal practice spans the globe, leaving no country a stranger to its impacts. The amount of illegal income generated by art crime is vast, estimated at around \$4-6 billion annually.¹ When art illegally crosses borders it not only fuels the black market but it simultaneously deprives nations of artifacts essential to their history and culture. Art, especially antiquities and other cultural objects on which this paper focuses, has played a key role in helping nations learn about their past. Antiquities tell provides insight into humankind's history, social developments, religious and political movements, and scientific advancements. In post-conflict nations, antiquities are fundamental to education, peace building, and national reconciliation and healing. Although many regard antiquities theft as a victimless crime, recent research negates this assumption, illustrating antiquities theft's debilitating impact on culture and its propensity to be conducted violently.²

This illicit trade is as memorialized in history as are the relics it traffics. International art theft has existed as early as the primal stages of human civilization and has been reported throughout almost every historical period. The plunder remains closely tied to conflict, with heavy involvement from both armed forces and organized criminals with no military affiliations.³ The Roman Empire, the Renaissance Era, the 20th century genocidal regimes, including Nazi Germany and the Khmer Rouge, and actors in 21st century Middle East conflicts, including the Syrian Civil War and ISIS insurgency in Iraq, are all among the beneficiaries of

¹ "FBI Art Theft Program." *FBI*. FBI, 18 Mar. 2013. Web. 28 July 2014.

² Carmichael, Robert. "Systematic Plundering of Cambodia's Cultural Heritage." *Australia Network News*. N.p., 3 July 2014. Web. 09 Aug. 2014. <<http://www.abc.net.au/news/2014-07-03/an-systematic-plundering-of-cambodia27s-cultural-heritage/5569964>>.

³ Mackenzie, Simon, and Tess Davis. "Temple Looting in Cambodia: Anatomy of a Statue Trafficking Network." *British Journal of Criminology* (2014): 10. Web. 29 July 2014.

stolen art from violent times.⁴ Organized looting networks take advantage of dire situations by recruiting local people who are paralyzed by fear of violence and deprived of human rights and economic opportunities to pillage historic sites and temples.⁵ The villagers then sell the looted goods to local dealers; the laundered goods work their way up the network, with profit being made at every exchange, until eventually the goods are sold to private collectors and museums around the world.⁶

Cambodia acts as a model case study to illustrate the effects that antiquities looting has had on a nation. Due to the large-scale plunder of its artifacts, Cambodia, a country rich with religious, artistic and cultural antiquities, has stood as a silent witness to this criminal greed. This practice was extremely prevalent in the late 1960s when Cambodia fell into political upheaval and its ancient temples fell victim to widespread looting. Even today in the wake of tragedy, Cambodian antiquities are still illegally transported to art dealers in Thailand and Singapore, eventually making their way to some of the most prominent and distinguished art institutions in Europe and America.

This paper will examine why, given the nature of art and the politics of the criminal trade, recovering stolen art is a difficult but possible mission. The recovery rate for stolen art is estimated to be as low as two to six percent, with even lower rates for successful prosecution.⁷ This arduous task stems from the lack of a large-scale, international cooperation mechanism, such as an umbrella institution monitoring and combating art theft. As a result of this vacuum,

⁴ See "Art in Time of War: Pillage, Plunder, Repression, Reparations & Restitution." *Harvard Law School Art Law*. Harvard Law School, n.d. Web. 9 Aug. 2014.

<http://www.law.harvard.edu/faculty/martin/art_law/war.htm>.

⁵ Mackenzie, 10-12.

⁶ Carmichael, Robert.

⁷ Charney, Noah, M.A., M.A., Paul Denton, M.B.A., M.S.C.J., and John Kleberg, M.Ed. "Protecting Cultural Heritage from Art Theft: International Challenge, Local Opportunity." *FBI Law Enforcement Bulletin*. The Federal Bureau of Investigation, 19 Mar. 2012. Web. 09 Aug. 2014. <<http://www.fbi.gov/stats-services/publications/law-enforcement-bulletin/march-2012/protecting-cultural-heritage-from-art-theft>>.

countries and invested actors lack unified laws and political responses for proving and recovering looted goods.

Through a Cambodian case study, this paper will suggest that the fight against antiquities trafficking requires the enhancement of legal instruments, strengthening of international cooperation, and the use of practical tools to disseminate information and to raise public awareness about the trade. Through these mechanisms, the successful repatriation of looted cultural objects increases and the criminal trade weakens, giving all countries stronger control of their history and artifacts.

Application

This paper aims to provide a brief summary of the historical, political, and legal background of antiquities trafficking. The following sections introduce some of the political concepts, international actors, and laws that make up, interact with, and govern the illegal antiquities market. This paper organizes and summarizes the current scholarship on Cambodia's lost cultural heritage objects while illustrating gaps in the field that require further research and advocacy efforts. Additionally, this paper suggests possible political and legal mechanisms to assist Cambodia in arguing for the return of Cambodian antiquities and highlights the potential difficulties Cambodia may face when asserting repatriation claims.

This paper should be used as a primer to quickly educate interested actors about Cambodian looted art but with the caveat that this paper is not an entirely comprehensive analysis of the topic and introduces many issues that require further research. Ideally this paper will be used to help the reader form an educated decision about the role the reader should play in the fight against antiquities trafficking and what route the reader should pursue for the repatriation of stolen goods. Through the prioritization section, the sections on political and legal

background, as well as the recommendations section, the reader should decide which tools at their disposal are the most practical for advocating for the return of Cambodian looted art—whether the tools be the courts, political pressure, education, or other efforts. The paper also identifies factors that effectuate the successfulness of these avenues. Interested organizations and persons should take their strengths and weaknesses into consideration to determine how they can best contribute to the fight against antiquities trafficking and in what ways they can advance the strongest Cambodian ownership claims of its cultural objects.

Definitions

In order to investigate possible political and juridical issues of both licit and illicit sales, baseline definitions of terms are required. It is important to differentiate between activities that while similar in their nature, vary greatly in terms of the law and ethics.

The definition of cultural property most useful for this paper, defined in Article 1 of the 1970 United Nations Educational Scientific and Cultural Organization (hereinafter “UNESCO”) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (hereinafter “UNESCO Treaty” or the “UNESCO Convention”), is:

Property related to history, including...social history; products of archaeological excavations (including regular and clandestine) or of archaeological discoveries; elements of artistic or historical monuments or archaeological sites which have been dismembered; antiquities more than one hundred years old; original works of statuary art and sculpture in any material.⁸

All pieces of ancient Cambodian art in museums, sold by auction houses, or owned by private collectors fit into this definition of cultural property.

⁸ "Article 1." Proc. of Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970, UNESCO, Paris. United Nations Educational, Scientific and Cultural Organization, n.d. Web. <http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html>.

Provenance is the origin or the earliest recognized ownership of an item. Stating that provenance is similar to a “pedigree,” Tess Davis, an attorney, researcher and expert on issues of Cambodian cultural heritage, asserted that item provenance, including “those known to have been published, exhibited, or to have come from collections already in existence- are usually more valuable than those without.”⁹ Provenance serves to document where an item came from, as well as the time frame it was acquired, for the purposes of both assuring its authenticity and legality. As Davis noted, sometimes a seller may not want to broadcast an item’s provenance for unknown, but benign reasons, or keep it concealed because it is incriminating, or if the provenance is unclear, which “suggests that unprovenanced antiquities at some point in their histories, were illegally acquired.”¹⁰ Consequently, provenance and due diligence are essential for determining whether a cultural heritage artifact can be returned to the country of origin through legal means.

The term looting refers to the illegal removal of cultural heritage objects from temples and archaeological sites. Looting cannot be disassociated from its illicit features, whether due to local, colonial, or international laws. The Archaeological Institute of America, in a report advising museums on best practices for acquisitions stated that, “Objects on the market without known provenience [sic]...can be presumed to have been illegally excavated and exported.”¹¹ This calls into question how large quantities of cultural heritage objects were obtained.

While pillaging is sometimes synonymous with looting, this paper uses the term pillage to specifically indicate the theft of cultural heritage objects during a time of war. Both interstate and intrastate conflicts can cause a breakdown in traditional norms and order and the weakening

⁹ Davis, Tess. "Supply and Demand: Exposing the Illicit Trade in Cambodian Antiquities through a Study of Sotheby's Auction House." *Crime, Law and Social Change* 56.2 (2011): 163-165. Web.

¹⁰ Ibid, 165-166.

¹¹ *Principles for Museum Acquisitions of Antiquities*. Rep. N.p.: Archaeological Institute of America, 2005. Print.

of the capacity of law enforcement agencies to protect important sites. Pillaging, whether by rebels, state troops, or paramilitary forces, is prohibited by Rule 40 of customary international humanitarian law as defined by the International Committee of the Red Cross.¹² Pillaging may be linked to a trade in goods for military hardware, or it may be for the purpose of enriching certain individuals.

Overview of Cambodia's Looted Art

General History Behind the Trade



Photo by Gerald Oskoboiny (Guimet Museum, France)

The modern trade of Cambodian artifacts began in the late 19th century when French explorers and colonial authorities brought statues back to France from Angkor and other temples. While the intention may have been to showcase the grandeur of ancient Khmer civilization and

¹² "Customary IHL - Rule 40. Respect for Cultural Property." *Customary IHL*. The International Committee of the Red Cross, n.d. Web. <http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule40>.

promote the process of French “discovery,” it was also the means by which Cambodian heritage was catalogued and taken out of the country. Colonial authorities established the École Française d'Extrême-Orient (hereinafter “EFEO”) in 1898 to preserve cultural sites and work to restore them.¹³ French efforts in Cambodia were not based on altruism, but on a colonizing project, and under this banner the Musée Guimet was founded in Lyon (later moved to Paris) in 1879.¹⁴ State sanctioned removal of cultural heritage artifacts took place on a massive scale, as did clearly illicit individual looting. Tess Davis noted, that even the future French Minister for Cultural Affairs, André Malraux, was arrested in 1925 when he took artifacts in the hopes of selling them to French museums.¹⁵

The Cambodian Civil War, occurring in several stages from 1970 to 1998, created new opportunities for those who wished to profit from the illicit antiquities trade. Large wars, especially civil wars, can lead to the collapse of traditional legal institutions and enforcement mechanisms. The Khmer Rouge (hereinafter “KR”) occupied large parts of Cambodia before they captured the entire country, and after their ouster by Vietnamese forces the KR retreated to the jungles bordering Thailand.¹⁶ In the late 1980s, trading networks developed in these areas between Thai companies, the government, and the communist guerillas.¹⁷ In exchange for Cambodian gems and timber, the Khmer Rouge was able to acquire needed Chinese weaponry, medicine and food supplies.¹⁸ While the KR itself was not officially involved in trafficking

¹³ Stark, Miriam T., and P. Bion Griffin. "Archaeological Research and Cultural Heritage Management in Cambodia's Mekong Delta: The Search for the "Cradle of Khmer Civilization"" *Marketing Heritage: Archaeology and the Consumption of the past*. By Yorke M. Rowan and Uzi Baram. Walnut Creek, CA: Rowman & Littlefield, 2004. 119. Print.

¹⁴ Ibid. (It should be noted that the original intentions of an institution do not necessarily carry over to the current mission of the same organizations).

¹⁵ Davis, “Supply and Demand,” 166.

¹⁶ Davis, “Supply and Demand,” 169.

¹⁷ Rungwasdisab, Puangthong. *Thailand's Response to the Cambodian Genocide. Cambodian Genocide Program*. Yale University, n.d. Web. 28 July 2014. <http://www.yale.edu/cgp/thailand_response.html#krbusiness>.

¹⁸ Ibid.

statues, some of its members were. The war created areas either devoid of law, or areas where the protection of temple artifacts was a lower priority than defense. Davis and Mackenzie noted that the post 1979 Khmer Rouge, as well as the Cambodian military, and irregular forces participated in pillaging, before trafficking goods into Thailand.¹⁹ Additionally, there were reports that North Vietnamese forces in the region of Angkor Wat were involved in pillaging.²⁰

John Mueller, an expert on national security issues and civil war asserted:

When governments become weak, it is likely (almost by definition) that criminal activity will increase...In some cases such organized criminal predation focuses on kidnapping, extortion, banditry, looting, armed robbery, [and] marauding...It may be especially likely to occur...in countries in which there is an exportable primary commodity, and particularly where that is just about the only thing around of value. Often the government itself, or even one from a neighboring country, can essentially become one of the criminal or warlord bands.²¹

The lack of effective law enforcement, weakening of societal prohibitions, destruction of the economy, easy access through certain border points, and the available supply of statues corresponding to a strong market demand, made for a perfect storm.

The recent case of the returned Bhima, Duryodhana, and Kneeling Attendant statues are a prime example of lax protection of antiquities during a civil war. The Khmer Rouge seized Koh Ker, in Preah Vihear province, in 1970; parts of the province still remained contested in 1974.²² When the statues were allegedly removed from the temple of Prasat Chen in 1972, the area was either under the weakening control of the Khmer Republic, or occupied by the Khmer Rouge. Despite the presence of these armed groups, they were unable or unwilling to prevent pillaging by criminal entrepreneurs. Davis noted that it was not until the early 1990s that looting in

¹⁹ Mackenzie, 9-10.

²⁰ Roasa, Dustin. "Fate of A Statue: The Case of the Duryodhana." *The Los Angeles Review of Books*. N.p., 20 Oct. 2013. Web. 30 July 2014.

²¹ Mueller, John E. *The Remnants of War*. Ithaca, NY: Cornell University Press, 2004. Print. 101.

²² "Thai Planes Patrol Cambodia; 6 Americans Die in 3 Clashes." *Chicago Tribune* 12 Jan. 1970: 2. *ProQuest Historical Newspapers*. Web. 28 July 2014.

Burgess, John. "Preah Vihear -- A Monument to Cambodia's Past Glories." *The Washington Post* 15 Sept. 1974, A12 sec.: n. pag. *ProQuest*. Web. 28 July 2014.

Cambodia became structured, due to the continued breakdown in order and the growing international demand for Cambodian cultural heritage objects.²³ The confluence of domestic turmoil and international demand calls for the labeling of pillaged cultural objects as conflict antiquities.²⁴

While elections in 1993 and the Khmer Rouge surrender in 1998 led to increased stability throughout Cambodia, poverty, lack of the enforcement of laws, and new accessibility to sites meant that organized looting adapted rather than disappeared.²⁵ Davis stated:

Looters quickly regrouped, attacking those temples and archaeological sites [...] which were isolated and rarely guarded [...] This newly opened territory also included some of the country's greatest temple complexes-such as Banteay Chmar, Koh Ker, and Preah Khan of Kompong Svay-all of which suffered great damage at the turn of the millennium.²⁶

While the country turned to reconciliation and economic development, systematic looting continued.

Auction House Database

Building off of Davis's "Supply and Demand: Exposing the Illicit Trade in Cambodian Antiquities Through A Study of Sotheby's Auction House," an excel sheet was created containing the name, description, estimated date, sale price, and provenance of auctions of Cambodian art from 2003 to 2013 at three auction houses: Christies, Bonhams, and Sotheby's.²⁷ The excel file contains 575 lots in total. It is intended to serve as a sample of Cambodian cultural

²³ Davis, "Supply and Demand," 169.

²⁴ Hardy, Sam. Web log post. *Conflict Antiquities: Illicit Antiquities Trading in Economic Crisis, Organised Crime and Political Violence*. N.p., n.d. Web. 28 July 2014.

This term is different from the "conflict resources" or "lootable resources" label because while armed groups may be involved, the purpose of conflict antiquities has been personal enrichment, and not necessarily the further arming of a state military, militia, or paramilitary organization. Consequently, it does not necessarily lead to the further proliferation of political violence, but rather it involves profiting from political violence.

²⁵ Davis, Supply and Demand, 170.

²⁶ Ibid.

²⁷ Appendix 1

Davis was the first to catalog Cambodian art sold at Sotheby's auction house, this effort builds on her groundbreaking study.

heritage objects sold in the international art and antiquities market. It by no means paints the full picture of what items Cambodia has lost, countless artifacts have been sold on the black market or are permanently located in inaccessible private collections. The 316 Christies lots totaled \$15,207,997 in sales—17% had a listed pre-1970 provenance, 38% had a post-1970 provenance, 39% had no listed provenance, and 6% had a provenance that did not indicate an acquisition date.²⁸ The sum of 194 Bonhams auction sales were \$132,041 and £215,607 (about \$501,508), with 8% of lots having a pre-1970 provenance, 25% had a post-1970 provenance, 43% had no provenance, and 24% had provenance that does not list an acquisition date²⁹. Sixty-five Sotheby's lots totaled \$4,120,254 in sales between 2003 and 2013; 18% possessed a post-1970 provenance, 23% had a post-1970 provenance, 48% had no listed provenance, and 11% had a provenance that did not list the date of acquisition.

Echoing Davis' findings, the lack of pre-1970 provenance, and the existence of weak provenance indicated that many of these objects were looted or taken out of Cambodia illegally.³⁰ The provenance statistics show the scope of the problem, it is not a small percentage of auctioned Cambodian cultural heritage objects that lack proper documentation. This suggests that even though the looting itself may not be recent, it is possible for people to still profit from it years later.

The Structure of the Trade

The civil war followed by lack of opportunity and weak rule of law provided the context in which looting took place, while the looters and smugglers helped complete the trafficking puzzle. Their indifference to cultural property items' lack of provenance fueled the trade. Every

²⁸ Appendix 1.

1970 is used as a cut off date because of the UNESCO convention of that year.

²⁹ "Average Exchange Rates | OANDA." *OANDA*. N.p., n.d. Web. 28 July 2014.

³⁰ Davis, "Supply and Demand," 171.

genuine statue in an auction house came from a temple and had to be smuggled out of the country one way or another. In “Temple Looting in Cambodia: Anatomy of a Statue Trafficking Network,” the first empirical study of an antiquities smuggling operation, Tess Davis and Simon Mackenzie identified the relationships between looters, middlemen, and dealers in Thailand. The authors found that at the bottom of the trafficking hierarchy, the actual looters were usually local people who were coerced into participating.³¹ During the Civil War, armed groups dragooned villagers into service. The villagers were paid about \$7 per night and had few options to contest their involvement.³² Further up, regional brokers commanded the looters, organizing them, and locating the exact object that was to be stolen.³³ These regional brokers would sometimes photograph pre-stolen statues to give to their superiors in order to haggle over the price.³⁴ Regional brokers would then sell the statues to slightly higher-ranking brokers within Cambodia who would then take them across the border to Thailand, where the art would then be sold to another individual, before arriving on the international market.³⁵ Mackenzie and Davis found that this process was extremely hierarchical, with delineated roles “essentially fixed for several decades [...] The involvement of organized criminals in this supply chain has precisely had the effect of encouraging the ‘promise of long-term agreements’ on pain of violent repercussions in the case of breach, since stable sources of income generation are the life blood of illicit business.”³⁶ Consequently, looting is a dangerous however seemingly routinized business in which roles, expectations, and patterns of behavior are established. Such a developed system suggests the desire for stable business practices leading to continuity.

³¹ Mackenzie and Davis, 9-10.

³² Ibid, 9.

³³ Ibid, 10-11.

³⁴ Ibid, 13.

³⁵ Ibid, 15.

³⁶ Ibid, 16.

Prioritizing Cambodia's Looted Art

In terms of prioritizing art to be returned, those objects pillaged during the Civil War or after the UNESCO Convention, or taken from the same sites as previously returned objects pose the best options for possible repatriation. The UNESCO Convention provides conditions for the return of cultural heritage objects illegally obtained following the adoption of the agreement—it is not a retroactive agreement. If it can be determined that an item in question was removed from Cambodia after the implementation of the accord, the Cambodian government, or interested parties, will have a much higher chance of bringing it back.

Even though looting of statues during the Civil War occurred after the UNESCO Treaty, there is an additionally strong political argument for their return. While some collectors consider themselves protectors of objects that would have otherwise been destroyed, these items, all of which have religious and cultural value to Cambodia, were removed during a period of mass violence and the destruction of state institutions. Many statues were looted during this time period, as armed groups and criminals took advantage of the situation, creating a larger supply. Statues from this period can be considered blood antiquities, and their recovery is of high priority.

Cultural heritage objects from the Preah Vihear Temple complex on the border between Cambodia and Thailand are also of special importance. The Cambodian and Thai governments have been involved in a territorial dispute over the area since the late 19th century, which has led to occasional violence between the two countries. The conflict has created opportunities for looting. The International Court of Justice (hereinafter “ICJ”) granted Cambodia sovereignty over the Preah Vihear complex starting in 1959, however occasional violent flare-ups have occurred.³⁷

³⁷ International Court of Justice, Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the *Temple of Preah Vihear (Cambodia v. Thailand)*, Cambodia v. Thailand, April 28, 2011.

The International Council of Museums (hereinafter “ICOM”) created the Red List of Cambodian Antiquities at Risk specifically to alert individuals and institutions that collect Cambodian art, as well as customs officials, of the types of pieces that have been looted.³⁸ While specific items included in the broad categories on the Red List may in fact have been legitimately acquired, ICOM encourages individuals and institutions to pay close attention to provenance, and the possibility that items lacking clear provenance may have been looted. Unsurprisingly, the auction lists in Appendix 1 contain almost exclusively items on the Red List. The fact that they are being sold at auction without properly displayed provenance, as well as a warning of the likelihood of illegal trafficking, creates a situation in which the possibility of illegality has been expressed, but with no redress in response.

General Political Background of International Art Theft

The International Affairs Angle

International politics is defined by anarchy, the concept that there is no organization hierarchically above states that can enforce rules, laws, or contracts. While international organizations and treaties can constrain state behavior, states can also disregard these rulings should they decide it to be in their best interest. The following section describes some of the international organizations and mechanisms involved in countering the trafficking of antiquities; in order for there to be compliance, states must follow the rules.

Additionally, there are many actors involved in trafficking and repatriation on a smaller unit level than states. Auction houses with operations in multiple countries, both private and public museums, and individuals all play a role in the market for cultural heritage objects. These entities should follow guidelines on responsible practices, however this is not always the case.

³⁸ "Red List of Cambodian Antiquities at Risk." *Red List of Cambodian Antiquities at Risk*. International Council of Museums, n.d. Web. 30 July 2014.

Depending on the legal system and the entity in question, governments may order museums to return cultural heritage. In other cases it can only be done voluntarily by the institution or through a court of law.

If repatriation was entirely a matter settled at the state level, the return of cultural heritage objects might be seen as a soft power opportunity, such as the return of the Duryodhana facilitated by the U.S. government in an effort to engender support in Cambodia.³⁹ States might have motives for aiding in repatriation efforts other than a moral mission, such as development of greater cooperation or cultivating influence. Actors such as individuals, auction houses, or museums, may have a different set of priorities and may prefer to hold on to a piece rather than return it in the absence of a legal order.

International Organizations Involved in Preserving or Repatriating Cultural Heritage

Founded in 1946, UNESCO is a specialized autonomous agency of the UN, whose purview includes protection of world heritage and helping countries develop and share knowledge, among other activities.⁴⁰ In addition to encouraging compliance with the UNESCO Convention, UNESCO operates regional hubs, including an office in Phnom Penh. UNESCO cannot request the repatriation of an object, but it can assist national governments in the process and can share information.

Affiliated with UNESCO, the non-governmental organization ICOM is an association of over 2,000 museums and 32,000 experts.⁴¹ ICOM designs and promulgates best practices regarding ethics, fighting trafficking, and industry standards. Similar to UNESCO, one of the major roles of ICOM is information sharing and the reduction of transaction costs between

³⁹ Roasa.

⁴⁰ "Building Knowledge Societies." UNESCO, n.d. Web. 31 July 2014.

⁴¹ "The World Museum Community." *ICOM- The International Council of Museums*. ICOM, n.d. Web. 31 July 2014.

different institutions. As an organization that promotes the exchange of ideas regarding cultural heritage, it serves as a forum for the creation of discourse within the international museum community. ICOM has also published the Red List of Cambodian Antiquities at Risk, in an effort to alert individuals, museums, law enforcement, and customs officials of types of cultural heritage objects that may have been looted, and whose provenance should be scrutinized.

Interpol, the International Criminal Police Organization, works as an intergovernmental organization that coordinates activity between national law enforcement organizations. It has expertise in two specialty areas relevant to repatriation: trafficking in illicit goods and counterfeiting, and the theft of works of art. The counter-trafficking mission of Interpol involves support for national and local law enforcement organizations working to disrupt organized networks, capacity building and training for those agencies, raising awareness in the international community, and legal assistance to world governments seeking to improve counter-trafficking legislation.⁴² Interpol's mission related to art theft is to keep track of stolen works of art, assist in its recovery and standardize object descriptions.⁴³ Additionally, Interpol works against the transnational smuggling of cultural heritage objects through the sharing of information, the stolen art database, assistance to state counter-trafficking agencies, and offering training for law enforcement agencies.⁴⁴ Organizations other than law enforcement agencies (such as government ministries, NGOs, and the private sector) can gain access with permission to the stolen art database, however an administrator must approve additions. In most cases, for a non-

⁴² "Trafficking in Illicit Goods and Counterfeiting." *Interpol - 100 Years of International Police Cooperation*. Interpol, n.d. Web. 31 July 2014.

⁴³ "Works of Art." *Interpol - 100 Years of International Police Cooperation*. Interpol, n.d. Web. 31 July 2014.

⁴⁴ Ibid.

governmental body to interact with Interpol, it would have to work through the National Central Bureau located in same country as the organization.⁴⁵

These organizations function within the realm of both international and local laws. An understanding of these frameworks is necessary in order to understand the mechanics of heritage repatriation.

General Legal Background

Both international agreements and national laws govern the field of international cultural heritage protection. With the absence of an overarching international body governing antiquities, many laws governing the ownership and repatriation of antiquities are in discord with one another. This field incorporates private, public, criminal, international, national, statutory, common, property, contract laws and more. As a result it is impossible to discuss all of the laws that govern this antiquities trafficking. This section presents a snapshot of international, Cambodian, and American laws, conventions, treaties, and bilateral agreements related to cultural heritage law.

Most stolen antiquities claims revolve around a determination of the rights of original owners pitted against those of the possessor, who often assert a good faith purchase defense. In order to determine the distribution of ownership rights, it is necessary to define ownership and subsequently theft.⁴⁶ Stolen art is acquired as a result of a wrongful act or where a person obtains possession of property that belongs to another, without permission, and with the intent to deprive the owner of ownership rights.⁴⁷ Since most Cambodian looted antiquities of interest are in

⁴⁵ Jouanny, Jean-Pierre. "The Role of INTERPOL in Countering the Traffic in Cultural Property." *International Preservation News* 45 (2008): 7+. *ProQuest*. Web. 31 July 2014.

⁴⁶ See Pecoraro, Choice of Law in Litigation to Recover National Cultural Property: Efforts at Harmonization in Private International Law, 31 Va. J. Int'l L. 1 (1990).

⁴⁷ See 2B Federal Jury Practice and Instructions § 59.13; *Leonardo Da Vinci's Horse, Inc. v. O'Brien*, 761 F. Supp. 1222 (E.D. Pa. 1991); *U.S. v. Hollinshead*, 495 F.2d 1154 (9th Cir. 1974).

Europe and the United States⁴⁸ it is necessary to examine not only Cambodian law, but also European and American domestic laws that govern stolen art and their repatriation. As students of American law and politics, the authors of this paper are ill equipped to fully investigate the impact of European laws on repatriation efforts but these regional and domestic laws present an opportunity for future research. To gain a general understanding of cultural heritage law, this paper will first look at the conventions that contextualized the international interpretation of this field, followed by an investigation into Cambodian laws that govern ownership of cultural objects, and ending with an examination of the American laws that govern the importation and sale of stolen antiquities and the procedures for their possible repatriation.

International Conventions

The contextual framework for a coherent understanding on cultural heritage law begins with a brief analysis of the international legal landscape.⁴⁹ The UNESCO Convention and its complementary United Nations International Institute for the Unification of Private Law (hereinafter “UNIDROIT”) Convention provide the frameworks that guide how institutions and legal bodies around the world address illegal art, and the Hague Convention and the World Heritage Convention have some influence as well. The international conventions on cultural property determine not only what cultural objects are protected, but also regulate stakeholders’ action. State parties to these treaties vow to implement domestic legislation to combat looting and trafficking, while also agreeing to balance the complexities of the field.⁵⁰ The conventions

⁴⁸ See appendix.

⁴⁹ Hoffman, Barbara T. *Art and Cultural Heritage: Law, Policy and Practice*. Cambridge: Cambridge UP, 2009. Print. 11.

⁵⁰ Seiff, Abby. "How Countries Are Successfully Using the Law to Get Looted Cultural Treasures Back - ABA Journal." *ABA Journal*. American Bar Association, 1 July 2014. Web. 09 Aug. 2014. <http://www.abajournal.com/magazine/article/how_countries_are_successfully_using_the_law_to_get_looted_cultural_treasures>.

have force regardless of the state parties' private international law rules.⁵¹ For instance, if the instrument obliges a possessor of stolen cultural property to return it, the international obligation remains even if the national laws would generally grant title to the possessor.⁵² While the conventions can provide state parties with a right of action against other states for the repatriation of art, the conventions' larger role is influencing national cultural heritage laws on and repatriation laws, as discussed in the sections that follow. Thus, in order to understand the national laws that govern cultural heritage, this section examines the international conventions of the field and the obligations of the state parties to these conventions.

1954: Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict

Following World War II, UNESCO adopted the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter "1954 Hague Convention). While limited in scope to the protection of cultural property during wartime, the 1954 Hague Convention, signed on May 14, 1954, is important since it affirmed the international community's dedication to the preservation of cultural heritage.⁵³ It introduced the term "cultural property" for the first time in an international agreement and defined the term broadly enough to encompass a very wide range of at-risk property.⁵⁴ The preamble stated, "The preservation of the cultural heritage is of great importance for all peoples of the world and that it is important that this heritage should receive international protection."⁵⁵ As of 2014, the 1954 Hague Convention had 126 state parties, with 103 parties ratifying the 1954 First Protocol, and 68 parties ratifying

⁵¹ Hoffman, 78.

⁵² Ibid.

⁵³ Boylan, Patrick J. "Implementing the 1954 Hague Convention and Its Protocols: Legal and Practical Implications." *Cultural Policy* (2006): 1-5. *Protecting Heritage*. The University of Chicago, Feb. 2006. Web. 9 Aug. 2014. <<http://culturalpolicy.uchicago.edu/papers/2006-protecting-heritage/Boylan.paper.pdf>>.

⁵⁴ Over, Harvey E. III, "The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict - Is It Working? A Case Study: The Persian Gulf War Experience," 23 *Colum.-VLA J.L. & Arts* 49 (1999)

⁵⁵ Preamble. "Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954."

the 1999 Second Protocol.⁵⁶ Cambodia has ratified both the 1954 Hague Convention and the two protocols.⁵⁷ France has not ratified the Second Protocol, while the United States and the United Kingdom have only signed this convention and have yet to ratify it.⁵⁸ Nonetheless, the fact that the United States, the United Kingdom, and France signed the 1954 Hague Convention is evidence that the nations at least conceptually agree with its framework.⁵⁹

The 1954 Hague Convention requires state parties to protect cultural property in times of war and provides for the return of cultural property illegally exported from occupied territories. State parties are also bound to apply this convention in the event of non-international conflicts within the territory of a state party.⁶⁰ Specifically, state parties undertake to safeguard against the foreseeable effects of armed conflict on all cultural property through peacetime preparations.⁶¹ This provision is especially important in the Cambodian context given the country's history of internal conflict. Parties agree to the creation of an armed forces unit whose purpose is to secure cultural property during a conflict and to put in place measures for the regulation and training of the armed forces.⁶² The 1954 Hague Convention also requests that cultural property is marked with a special emblem.⁶³ This request is not obligatory, but if state parties mark their objects, the item has the protected status of an official emblem under the Geneva Convention.⁶⁴

⁵⁶ "UNESCO around the World." *UNESCO*. N.p., n.d. Web. 09 Aug. 2014.
<<https://en.unesco.org/countries/countries-list>>.

⁵⁷ *Ibid*.

⁵⁸ *Ibid*.

⁵⁹ Letter from Ronald J. Bettauer, Office of the Legal Adviser, Department of State, to Anne Coffin Hanson, President of the College Art Association of America (in which Mr. Bettauer asserts that the reason the United States failed to ratify the Hague Convention is because adherence to the convention would "seriously limit the options of the United States in the event of nuclear war or even in some cases of conventional bombardment.") (reprinted in John Henry Merryman & Albert E. Elsen, *Law, Ethics and the Visual Arts* 57 (Kluwer Law Int'l Ltd. 3rd ed. 1998)).

⁶⁰ Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954), Article 19.

⁶¹ *Ibid* Article 3.

⁶² *Ibid*, Article 7.

⁶³ *Ibid*, Articles 6, 16 & 17.

⁶⁴ *Ibid*, Articles 6, 10, 12, 16, 17, 36.

The First Protocol deals primarily with issues relating to the protection of movable cultural property, the prohibition of their export during a conflict, and the eventual return of the property at the end of the conflict. The Second Protocol clarifies the range of peacetime safeguarding measures that States should undertake, including the preparation of inventories, measures for the emergency protection of buildings, and plans for the evacuation of movable cultural property.⁶⁵

Cambodia, as a signatory to the 1954 Hague Convention and the two protocols, can use this convention in any armed conflict in which it and another signatory country participates.⁶⁶ No contracting party can evade its obligation to protect another contracting party's cultural property.⁶⁷ Thus, Cambodia can use this convention to enlist a state party to help protect Cambodian cultural property if the state party has not met the 1954 Hague Convention's standards. Again, this convention is limited to times of armed conflict so the below conventions, which are newer and broader in scope, are more likely to help Cambodia reclaim looted goods.

1970: The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

The most powerful international antiquities agreement in place today is the UNESCO Convention.⁶⁸ Culminating on November 14, 1970, the UNESCO Convention illustrates the international community's fight to protect cultural heritage against plunder and illicit trade.⁶⁹ It was the first international legal document to fight against cultural property trafficking in times of

⁶⁵ Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 26 March 1999), Article 5.

⁶⁶ Harvey E. Oyer III, "The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict - Is It Working? A Case Study: The Persian Gulf War Experience," 23 Colum.-VLA J.L. & Arts 49 (1999)

⁶⁷ Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague, 14 May 1954), Article 4. (In short, the Geneva Convention finds the special protection for certain symbols in wartime and the desecration of these symbols constitutes a war crime.)

⁶⁸ "International Antiquities Law Since 1900." *Archaeology Archive*. Archaeological Institute of America, 22 Apr. 2002. Web. 10 Aug. 2014. <<http://archive.archaeology.org/online/features/schultz/intllaw.html>>.

⁶⁹ Mackenzie, 9.

peace.⁷⁰ The UNESCO Convention gives state parties the right to recover stolen or illegally exported antiquities from other member countries.⁷¹



File:Cambogia, divinità femminile alla danza, da prasat thom, stile di koh ker, 925-950 ca..JPG

In general, state parties must adopt protective measures in their territories, control the movement of cultural property, and return stolen cultural property.⁷² The UNESCO Convention

⁷⁰ UNESCO Headquarters. "The fight against the illicit trafficking of cultural objects the 1970 convention: Past and future." (2011): 1-34, 9. 15-16 Mar. 2011. Web. 10 Aug. 2014, <<http://unesdoc.unesco.org/images/0019/001916/191606e.pdf>>.

⁷¹ "International Antiquities Law Since 1900."

broadly defines cultural property as “property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science.”⁷³ The UNESCO Convention leaves state parties to precisely designate which objects fall within the category of specifically protected items.⁷⁴ Articles 2 and 3 state that all state parties undertake to help “make the necessary reparations” to oppose the “illicit import, export and transfer of ownership of cultural property.”⁷⁵

While the definition of cultural property is broad, the importation prohibition provision is limited. Article 7(b)(i) only prohibits the importation of property stolen from museums or other similar institutions that is documented in the inventory of that institution.⁷⁶ Article 7(b)(ii) states that all state parties will undertake the appropriate steps to recover and return cultural property imported after the UNESCO Convention, if the state party of origin requests its return.⁷⁷ It adds that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property.⁷⁸ Article 13 provides that all state parties must facilitate “the earliest possible restitution of illicitly exported cultural property to its rightful owner.”⁷⁹ If Cambodia is requesting repatriation from another state party to the Convention then Cambodia may have recourse under the provisions of Articles 3 and 7, but the object in question must have been inventoried.⁸⁰ Thus, as discussed in greater detail in the Cambodian section, Cambodia needs to create and enforce a systematic inventory of its cultural property.

⁷² Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970), Articles 5-9

⁷³ Ibid, Articles 1 & 4.

⁷⁴ Hoffman, 11.

⁷⁵ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970), Articles 2 & 3.

⁷⁶ Ibid, Article 7.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid, Article 13.

⁸⁰ Hoffman, 140.

One hundred twenty seven countries have signed onto the UNESCO Convention.⁸¹ Cambodia was the seventh state to ratify the UNESCO Convention, which entered into force in Cambodia on September 26, 1972.⁸² Other relevant state parties entered into the UNESCO Convention on the following dates: Italy ratified on October 2, 1978; United States acceded on September 2, 1983 by enactment of the Convention on Cultural Property Implementation Act (hereinafter “CPIA”)⁸³; France ratified in 1997; the United Kingdom acceded in 2002; and Germany ratified in 2007.⁸⁴ Thailand and Singapore have not signed on.⁸⁵

The UNESCO Convention is only applicable to cultural objects stolen or illicitly exported from one state party to another state party after the date of entry into force of the Convention for both States.⁸⁶ This restriction greatly limits the application of the UNESCO Convention. Statues with provenance pre-dating Cambodia’s ratification, or more restrictively the possessor’s country’s ratification, might preclude Cambodia’s ability to use the Convention.⁸⁷ Since most state parties housing Cambodia’s cultural objects acceded the Convention through the enactment of national laws, this provision will depend on the restriction set forth in those domestic laws.

1972: Convention Concerning the Protection of the World Cultural and Natural Heritage

The General Conference of UNESCO adopted the 1972 World Heritage Site Convention on November 16, 1972. UNESCO adopted this convention in response to the changing social and economic conditions that aggravated the destruction of the cultural and natural heritage

⁸¹ <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha>

⁸² Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970), Article 21. For ratification by Cambodia, see: <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha>

⁸³ 19 U.S.C.A. §§ 2601 to 2613.

⁸⁴ <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha>

⁸⁵ <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha>

⁸⁶ UNESCO Headquarters, 9.

⁸⁷ See *United States of America v. A 10th Century Cambodian Sandstone Sculpture*, Currently Located Sotheby’s in New York, New York. No.12-cv-2600-GBD. 28 Mar. 2013. 7.

sites.⁸⁸ Since its adoption, 191 state parties have ratified this convention, making it one of the most adhered to international instruments.⁸⁹ This convention founded the UNESCO World Heritage Site program, which catalogues, names and conserves cultural or natural sites important to the common heritage of humanity. Listed sites can receive funds from the World Heritage Fund. Cambodia accepted the 1972 Convention on November 28, 1991. Since then, Cambodia was successful in listing Angkor Complex and the Temple of Preah Vihear as Cultural World Heritage sites.⁹⁰ This UNESCO backing gives Cambodia an ample amount of power to reclaim stolen antiquities from these areas as it suggests the vast importance these sites have on Cambodian culture.

1995: UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

As a result of the enormous upsurge in the illegal trafficking of art and antiquities and the difficulty in the implementation of private law under Article 7(b)(ii) of the UNESCO convention, UNIDROIT was created on June 25, 1995.⁹¹ The UNIDROIT Convention forms a minimum uniform body of private law rules for international art trade and complements the public law provisions in the UNESCO Convention.⁹² The UNIDROIT Convention is more stringent and controversial than the UNESCO convention, but it is the most recent multilateral treaty negotiated on cultural property, thus making it extremely useful to Cambodia.⁹³

The UNIDROIT Convention distinguishes between stolen and illegally exported cultural objects and establishes different guidelines for their return. It broadens the UNESCO

⁸⁸ Hoffman, 12.

⁸⁹ UNESCO. "The State Parties: Convention concerning the Protection of the World Cultural and Natural Heritage. Paris, 16 November 1972." *Legal Instruments*. UNESCO, n.d. Web. 10 Aug. 2014. <<http://www.unesco.org/feri/fla/convention.asp?FKO%3D13055%26language%3DE%26order%3Dalpha>>.

⁹⁰ UNESCO. "The State Parties: Cambodia." *About World Heritage*. UNESCO, n.d. Web. 10 Aug. 2014. <<http://whc.unesco.org/en/statesparties/KH/>>.

⁹¹ Hoffman, 11.

⁹² UNESCO Headquarters, 10.

⁹³ "International Antiquities Law Since 1900."; Hoffman, 74.

Convention's limitation of recovery of stolen property from museums or similar institutions by stating, "[f]or the purposes of this Convention, a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place."⁹⁴ Importantly, it does not require that a cultural object be designated by a state to be covered.⁹⁵ It requires the return of all stolen antiquities, whether they were bought in good faith or not.⁹⁶ Yet Article 4 requires the item's original owners to compensate good-faith buyers.⁹⁷ Under the compensation clause, developing countries, like Cambodia, might have some difficulty recovering expensive antiquities.⁹⁸

The UNIDROIT Convention is controversial with both possessors and original owners.⁹⁹ One issue is the lengthy time limits for return requests.¹⁰⁰ Article 5(5) allows a request to be brought within three years from the time when the requesting State was aware of the details behind the cultural object, and within a period of 50 years from the date of the export on which the object should have been returned.¹⁰¹ Others contest the indemnity of the possessor clause.¹⁰² Article 6 entitles the good-faith possessors to reasonable compensation by the requesting State.¹⁰³ As a result of these controversial provisions there are only 36 Contracting States.¹⁰⁴ The United States was actively involved in writing the UNIDROIT Convention but has yet to sign it

⁹⁴ UNIDROIT Convention on Stolen or Illegal Exported Cultural Objects (Rome, 24 June 1995), Article 3.

⁹⁵ Hoffman, 11-12.

⁹⁶ UNIDROIT Convention on Stolen or Illegal Exported Cultural Objects (Rome, 24 June 1995), Article 4.

⁹⁷ Ibid.

⁹⁸ "International Antiquities Law Since 1900."

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ UNIDROIT Convention on Stolen or Illegal Exported Cultural Objects (Rome, 24 June 1995), Article 5(5).

¹⁰² "International Antiquities Law Since 1900."

¹⁰³ UNIDROIT Convention on Stolen or Illegal Exported Cultural Objects (Rome, 24 June 1995), Article 6.

¹⁰⁴ "Status: UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects." *UNIDROIT*. N.p., 24 June 2014. Web. 10 Aug. 2014. <<http://www.unidroit.org/status-cp>>.

due to a brief filed by a collection of American museums, art dealers and art collectors.¹⁰⁵

Similarly, both the United Kingdom and Germany have not signed; France signed but has not ratified.¹⁰⁶ Italy, however, ratified in 2000. It is important for Cambodia to advocate for the United States and the other European countries to become full partners in the Convention but for now, Cambodia will have to rely on these countries' national laws to repatriate their looted goods.

The conventions have legal effects on the protection and the repatriation of cultural objects but they have a profounder influence on invested actors' attitudes towards antiquities. For instance, as a result of these conventions the first decade of the 21st century saw museums increasing their due diligence in the acquisition of art, and more instances of voluntary repatriation in an effort to improve diplomatic relations among countries.¹⁰⁷ While changing behaviors is arguably the conventions greatest effect, these conventions have established legal norms that shape countries' national laws regarding cultural heritage protection and the return of illegally imported cultural objects. The following sections discuss Cambodia and U.S. national laws pertaining to cultural heritage.

Cambodian Laws

Proving ownership and lack of permission to sell or export the contested cultural object is the first element of a claim involving the repatriation of a stolen antiquity. A convincing legal argument requires strong documentation of the statute prior to its alleged theft, documentation of the theft (such as police reports or database records), and proof of the applicable Cambodian legislation at the time of the looting to establish ownership and the illegal transfer of the good.

¹⁰⁵ "International Antiquities Law Since 1900."

¹⁰⁶ Status: UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects."

¹⁰⁷ D.W.J. Gill, Looting Matters for Classical Antiquities: Contemporary Issues in Archaeological Ethics, "Present Pasts," Vol. 1, 2009.

As such, it is necessary to understand Cambodian cultural heritage laws over the course of Cambodian history.

Historically, there is evidence of extensive legal protections for Cambodian cultural heritage dating through the French colonial period, early years of independence, Khmer Rouge period, and modern times. The UNESCO Database of National Cultural Heritage Laws documents Cambodia having 18 laws relating to Cambodia's cultural heritage throughout history.¹⁰⁸ While the construction of the modern cultural laws provides the strongest legal argument for theft and repatriation, the historic laws are the most helpful for proving Cambodian ownership of art taken from Cambodia prior to the modern laws' enactment. The modern laws act as evidence that Cambodia has continued to pursue enforcement of its laws on cultural heritage. This section should be used after it is determined when the antiquity was stolen from Cambodia. Once the timeframe is known, the relevant law can be used to argue Cambodian ownership and to prove that the sale or export of the antiquity was illegal.

Ancient and Colonial Cultural Protection Laws

Under ancient Cambodian law, the King was the owner of all immovable property in the Kingdom of Cambodia, including the Kingdom's archaeological sites and antiquities.¹⁰⁹ An 1863 treaty established Cambodia as a protectorate of France.¹¹⁰ In 1884 a Convention between the Kingdom of Cambodia and France handed the administrative power of the State from the King to the French, subsequently giving the French Governor for Cambodia power over all territory

¹⁰⁸ "Cambodia." *UNESCO Database of National Cultural Heritage Laws*. UNESCO, n.d. Web. 10 Aug. 2014. <<http://www.unesco.org/culture/natlaws/>>.

¹⁰⁹ Land Law of Cambodia, A Study and Research Manual, East West Management Institute, Inc., Phnom Penh, Cambodia, 2003, p.19, citing Kleinpeter, Roger, *Le Problème foncier au Cambodge*, Thèse pour le Doctorat, Paris, Les Editions Domat-Montchrestien F.Loviton & Cie, 1937, p.40-41

¹¹⁰ United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby's in New York, New York. No. 12 Civ. 4 April 2012. Web. 35.

formerly held by the King.¹¹¹ The 1884 Convention also introduced the concept of private property.¹¹² Through these ancient laws and conventions it can weakly be argued that modern Cambodia owns all of its cultural objects because a Cambodian King originally built them and thereafter retained ownership of the property through the 1884 Convention.

Few foreign courts, however, have forfeited property under such a theory since most courts require foreign states to clearly and unambiguously declare their ownership in written laws.¹¹³ More successful legal claims about Cambodian ownership of antiquities deal with antiquities stolen from Cambodia during the French colonial time. A 1900 decree law and a 1925 decree expressly state Cambodian cultural artifacts to have always been the property of the state.¹¹⁴ Through the French colonial laws' operation, a legal argument can be developed claiming the protection of Cambodian antiquities since 1900 at the latest.¹¹⁵

On March 9, 1900, the French Governor General of Indochina issued an Arrêté, an administrative regulation, titled, "Order of the Governor General of Indochina on preservation of monuments and objects of historical or artistic interest." The decree established a baseline level of protection for art and archaeology in French Indochina, including Cambodia, and explicitly recognized that items, including statues that "exist on or in the soil" of immoveable properties, were part of the "national domain."¹¹⁶ The French translation of the phrase, "of French Indochina," indicates that items "belong to" French Indochina, and therefore now, to Cambodia.

¹¹¹ Land Law of Cambodia, A Study and Research Manual, East West Management Institute, Inc., Phnom Penh, Cambodia, 2003, p.21.

¹¹² Land Law of Cambodia, A Study and Research Manual, East West Management Institute, Inc., Phnom Penh, Cambodia, 2003, p.21. See also United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby's in New York, New York. No. 12 Civ. 4 April 2012. Web. 35.

¹¹³ United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby's in New York, New York. No.12-cv-2600-GBD. 28 Mar. 2013; See also NSPA mentioned in the below section

¹¹⁴ See Prakas of the Governor General of Indochina on preservation of monuments and objects of historical or artistic interest, March 9, 1900 and Prakas of the Governor General of Indochina of May 6, 1925

¹¹⁵ Davis, Tess. "Returning Duryodhana." *Bostonia*. Boston University, 2014. Web. 10 Aug. 2014. <http://www.bu.edu/bostonia/summer14/cambodia/>; Howlett, Malcom, 5.

¹¹⁶ Prakas of the Governor General of Indochina on preservation of monuments and objects of historical or artistic interest, March 9, 1900, Article 17.

While the Arrêté created a classification system of immovable and movable monuments of historical and artistic interest, Article 17 stated there was no classification requirement to establish state ownership—all objects fitting within a list set out in Article 17 were automatically state-owned. As a state-owned property or an immovable property, the property could only be disposed of with the authorization of the Governor General; it also was not allowed to be the object of any repair, restoration or modification without the Governor General’s consent.¹¹⁷ No object could be exported without the authorization of the Governor General otherwise it would be seized.¹¹⁸

Subsequent legislation in 1913 and a decree issued in 1925 reaffirmed the protections set forth in the 1900 decree.¹¹⁹ Article 1 of an April 15, 1925 order stated, “[...] immovable and movable properties belonging to the French State [...] are classified among the historical monuments of Indochina.”¹²⁰ A May 6, 1925 decree reaffirmed that ownership of statues found on property belonging to the Cambodian state were retained by the state.¹²¹ No antiquity could be exported from French Indochina unless accompanied by a certificate of non-classification issued by the Director of the EFEO or his delegates specially appointed by him for that purpose.¹²² Soon after, a July 1925 decree reiterated the earlier protection regarding classification and added the criminalization of violators to the law.¹²³ Like the 1900 decree, the 1925 decree provided a

¹¹⁷ Prakas of the Governor General of Indochina on preservation of monuments and objects of historical or artistic interest, March 9, 1900, Article 2, 4.

¹¹⁸ Howlett, Malcom. 5.

¹¹⁹ *United States v. 10th Century Cambodian Sandstone Sculpture*, 2013 U.S. Dist. LEXIS 45903 (S.D.N.Y. Mar. 28, 2013), 4.

¹²⁰ *United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby’s in New York, New York*. No.12-cv-2600-GBD. 28 Mar. 2013. 20.

¹²¹ *United States v. 10th Century Cambodian Sandstone Sculpture*, 2013 U.S. Dist. LEXIS 45903 (S.D.N.Y. Mar. 28, 2013). 4-5.

¹²² Prakas of the Governor General of Indochina of May 6, 1925, pertaining to the classification of movable objects belonging to the colonial domain, Article 10 (with italics added).

¹²³ *United States v. 10th Century Cambodian Sandstone Sculpture*, 2013 U.S. Dist. LEXIS 45903 (S.D.N.Y. Mar. 28, 2013) 5.

list of classified historical objects and monuments.¹²⁴ Additionally, these laws classified that a movable object, such as a statue that was debased before the decree, that belonged to a classified immovable property, like all temples, were actually considered classified.¹²⁵ Thus, the classified movable object could not be exported from the region unless accompanied by a certificate of non-classification. Overall, these lists, accompanied by the decrees, act as another legal basis for recovery since all classified statutes on the list, or by virtue of their description through the decrees, exported after 1900 need to be accompanied by a certificate of non-classification to have been legally exported out of Cambodia.¹²⁶

It has been contested whether these French colonial decrees actually grant Cambodia ownership of its cultural objects. Some have argued that these decrees only act as a classification instrument.¹²⁷ The United States Attorney's Office of Southern District New York recently advanced a legal argument based on the 1925 decree declaring that all antiquities from Cambodia's multiple temples were part of the national domain and the exclusive property of the state.¹²⁸ While the case eventually ended in a settlement before there was a final decision, a United States District Court Judge suggested these colonial laws could prove Cambodian ownership when he denied the opposing party's motion to dismiss.¹²⁹

Similarly, the French government has also recognized Cambodian ownership of its antiquities based on these colonial decrees. The French colonial government used these decrees

¹²⁴ Prakas of the Governor General of Indochina of May 16, 1925, pertaining to the Classification of the historical monuments of Indochina, Article 1.

¹²⁵ Prakas of the Governor General of Indochina of May 6, 1925, pertaining to the classification of movable objects belonging to the colonial domain, Article 9.

¹²⁶ Howlett, Malcom. 6.

¹²⁷ *United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby's in New York, New York*. No.12-cv-2600-GBD. 28 Mar. 2013. 20.

¹²⁸ *United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby's in New York, New York*. No. 12 Civ. 4 April 2012. Web.

¹²⁹ *United States v. 10th Century Cambodian Sandstone Sculpture*, 2013 U.S. Dist. LEXIS 45903 (S.D.N.Y. Mar. 28, 2013)

to prove Cambodian ownership of ancient goods in the prosecution of André Malraux in 1925.¹³⁰ Malraux was originally sentenced to three years for the illegal removal of a bas-relief from Banteay Srei temple.¹³¹ Banteay Srei was not officially ‘classified’ as an archaeological site but EFEO warned Malraux prior to his exhibition to leave any discoveries in their place. This case not only showed that France recognizes the colonial decrees as ownership laws but also pressed the colonial administration to clarify its regulations concerning the protection of the historical sites of Cambodia.¹³² Thereafter, the colonial administration designated EFEO as the protector of the site and prohibited anyone without EFEO’s permission from removing artifacts from Indochina.¹³³ Thus, by operation of the 1925 decree and the 1900 decree, it is possible to use 1900 as the dividing point after which Cambodian artifacts taken without government permits can be treated as stolen property.¹³⁴

While the U.S. government, Cambodian government, the French government and UNESCO all think Cambodia can rely on the colonial laws to prove ownership over cultural antiquities, auction houses and museums are likely to advance strong legal objections to Cambodian ownership through colonial laws arguing that Cambodia did not enforce the colonial laws or that the laws are exportation laws not ownership laws.¹³⁵ Thus, it is important to understand Cambodia’s post-colonization laws dealing with cultural heritage not only to advance other legal claims about Cambodian ownership of looted art during the nearby time period, but also to use the laws as evidence that Cambodia did enforce the 1900 and 1925 decrees.

¹³⁰ French, Lindsay. "Hierarchies of Value at Angkor Wat." *Ethnos* 64.2 (1999): 170-91. *Academia*. Web. 10 Aug. 2014. <https://www.academia.edu/1247202/Hierarchies_of_value_at_Angkor_Wat>.

¹³¹ [http://www.palgraveconnect.com/pc/relphilext/browse/inside/inline/9780230390058.pdf?chapterDoi=%7Bchapter.getDoiWithoutPrefix\(\)%7D](http://www.palgraveconnect.com/pc/relphilext/browse/inside/inline/9780230390058.pdf?chapterDoi=%7Bchapter.getDoiWithoutPrefix()%7D)

¹³² French, Lindsay.

¹³³ *Ibid*.

¹³⁴ Mashberg, Tom, and Ralph Blumenthal. "Mythic Warrior Is Captive in Global Art Conflict." *The New York Times*. N.p., 28 Feb. 2012. Web. 4 Aug. 2014.

¹³⁵ "Request for Help." Message to the author. 31 July 2014. E-mail.

Independence to 1979 Cultural Protection Laws

File:Cambogia, divinità maschile, da prasat thom, stile di koh ker, 925-950 ca..JPG



If the piece was stolen prior to the 1960s, or if it is hard to prove that the piece was stolen after the 1960s, it is a more difficult legal claim but the below laws, in conjunction with the above laws, can be used to create a legal argument regarding Cambodian ownership. Overall, despite Cambodia's transition from a French Protectorate to an independent state, and the various regimes that established governance over Cambodia throughout 1953 and 1975, the 1900 and 1925 decrees relating to Cambodian ownership of cultural property remained intact. The various constitutions enacted by the different governments each had specific provisions in the constitution upholding the laws of the former regimes, with additional laws establishing greater protection of Cambodia's cultural sites and its objects.

As Cambodia moved towards independence the monarchy promulgated its first constitution in 1947. This constitution, which was in effect until 1964, and the subsequent 1972 constitution under the Khmer Republic, stated that the existing laws that were not inconsistent with the new state of Cambodia shall remain in force until explicitly replaced by new laws.¹³⁶ Even the Khmer Rouge Constitution, which went into effect on January 5, 1976, declared that all collective property belonged to the State—only property for everyday use remained in private hands.¹³⁷

In addition to provisions in the constitutions, these regimes engaged in other legislation that further established Cambodian ownership of its cultural objects. A 1949 Franco-Cambodian Cultural Agreement transferred the functions and powers for protection, classification and conservation of historical monuments in the territory of Cambodia from France to the Royal

¹³⁶ Constitution of the Kingdom of Cambodia, 1947-1964, Article 121, in Raoul M. Jennar, *The Cambodian Constitutions (1953-1993)*, White Lotus, Thailand: 1995, pp. 37-56.

¹³⁷ Constitution of Democratic Kampuchea, 1976, Article 2, in Raoul M. Jennar, *The Cambodian Constitutions (1953-1993)*, White Lotus, Thailand: 1995. Pp. 81-90

Government of Cambodia.¹³⁸ Cambodia, under King Sihanouk, created minutes and laws that further detailed the extent of Cambodian ownership of its antiquities. An August 9, 1951 Minute with an annexed list of 785 objects gave the power of conservation of immovable and movable objects in a list to Cambodia.¹³⁹ The Annex to the 1951 Minute referred to 785 listed objects whereas the 1925 Prakas, mentioned above, listed only 670 objects.¹⁴⁰ A March 7, 1968 law titled, “Law on the Organization of Suppressing the Acts of Stealing, Receipt of Stolen Goods and Destruction of Patrimony Relating to the National Heritage” further regulated the act of looting national cultural property by providing that any individual who misappropriates an object part of an ancient temple shall be punished for committing a first degree felony.¹⁴¹ These additional laws with the revised list of objects act as evidence that Cambodia owned its antiquities during this time, the process of classification was ongoing, and that Cambodia did enforce the 1900 and 1925 decree.

The Khmer Republic, who took power on October 9, 1970 after a coup d’état removing Prince Sihanouk from power, ratified the UNESCO Convention, which entered into force for Cambodia on September 26, 1972. Despite the political turmoil, Cambodia was the seventh state to ratify the 1970 Convention, once again showing its strong interest in preserving cultural heritage. It also previously ratified the 1954 Hague Convention and the Protocol to the Convention on April 4, 1962.

¹³⁸ Franco-Cambodian Cultural Agreement of November 8th, 1949, Article 38.

¹³⁹ Howlett, Malcom. 7.

¹⁴⁰ Minute (Procès-Verbal) of August 9, 1951, on the Transfer to the Royal Government of Cambodia of the Powers of Conservation of the Historical Monuments.

¹⁴¹ Law on the Organization of Suppressing the Acts of Stealing, Receipt of Stolen Goods and Destruction of Patrimony Relating to the National Heritage, March 7, 1968, Article 1.

1979 to Modern Cultural Protection Laws

After the Khmer Rouge fell on January 7, 1979, the People's Republic of Kampuchea (hereinafter "PRK") established itself as the government of Cambodia. The PRK Constitution, adopted on June 27, 1982, stated that all land and economic and cultural centers were the property of the State, with the added provision that the State was responsible for organizing the preservation of historical monuments and artifacts.¹⁴² The PRK's first comprehensive land law was enacted in 1992, providing all land in Cambodia, including historical patrimonies, to belong to the state and declared that no private rights were granted in cultural and historical patrimonies.¹⁴³ Even during Cambodia's transitional period, the transitional criminal law, which only contained 35 offenses, had an article on offenses concerning cultural property with six months to ten-year prison sentence.¹⁴⁴ Furthermore, on 1991, Cambodia finished the ratification of the three main international instruments for the protection of cultural property—the 1954 Hague Convention, the UNESCO Convention and the World Heritage Convention.¹⁴⁵

Current Cultural Protection Laws

As seen above, the protection of Cambodian national cultural and heritage sites through law has been a priority throughout all the regimes of Cambodia and will act as strong evidence in establishing Cambodian ownership claims of looted antiquities post-independence. The following section explains the modern laws currently in place that deal with property, cultural objects and heritage sites that can be used to repatriate goods stolen from Cambodia in modern

¹⁴² Constitution of the People's Republic of Kampuchea, 1981, Article 14, in Roul M. Jennar, *The Cambodian Constitutions (1953-1993)*, White Lotus, Thailand: 1995. Pp. 89-110

¹⁴³ State of Cambodia, Land Law, October 123, 1992, Articles 1,4, and 5.

¹⁴⁴ Provisions Relating to the Judiciary and Criminal Law and Procedure Applicable in Cambodia during the Transitional Period (the "Transitional Criminal Law"), Article 44.

¹⁴⁵ "International Measures." *Police*. APSARA, n.d. Web. 10 Aug. 2014.

<http://www.autoriteapsara.org/en/apsara/about_apsara/police/looting/international.html>.

times. These laws further act as evidence of Cambodia's continued interest and implementation of its cultural ownership laws.

Cambodia's current constitution, adopted on September 21, 1993, provides that land and cultural centers are the property of the State.¹⁴⁶ It also provides that the State shall conserve and protect national culture, including ancient monuments and artifacts and shall restore historic sites.¹⁴⁷ Since the adoption of the Constitution, Cambodia has established various other decrees relating to property and cultural laws that include zoning restrictions, environmental impact assessments, permits for archaeological excavations, GPS inventory of historical sites, the introduction of model management agreements for sites and general site managements of various cultural zones including Siem Reap/Angkor Area.¹⁴⁸

Specifically for Siem Reap, the Protection and Management of Angkor and the Region of Siem Reap (hereinafter "APSARA") authority was established for the preservation, maintenance and restoration of the site.¹⁴⁹ It also includes a cultural heritage police corps empowered to investigate and take measures against illegal dealings with cultural and historical heritage objects, including the ability to take into custody and search alleged offenders.¹⁵⁰ This law should be used in claims against looted antiquity from the Siem Reap area to prove Cambodia's continued concern and ownership of the antiquities in that area.

In 1996, Cambodia adopted a Law on the Protection of Cultural Heritage (hereinafter "1996 Law") to protect the national cultural heritage and cultural property against destruction,

¹⁴⁶ Constitution of the Kingdom of Cambodia, 1993, Article 58

¹⁴⁷ Constitution of the Kingdom of Cambodia, 1993, Article 69

¹⁴⁸ Royal Decree 001/NS of May 28, 1994, establishing Protected Cultural Zones in the Siem Reap/Angkor Region and Guidelines for their Management.

¹⁴⁹ Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996, Article 6.

¹⁵⁰ Sub-Decree No. 60/ANKR/PK of October 8, 1997, establishing special police corps for the protection of cultural heritage, Article 2.

modification, alteration, excavation, alienation and exportation.¹⁵¹ The 1996 Law, with additional sub-decrees, provides for the establishment of protected sites and the provisions for the registration of cultural property.¹⁵² Cultural property is defined as any work produced by human agency of a historic, religious, artistic or identified nature which bears witness to a certain stage in the development of a civilization, and whose protection is in the public interest.¹⁵³ Under this law, the export of any cultural object is prohibited, unless a special export license has been granted for the purpose.¹⁵⁴ It further regulates the trade in antiquities, including setting requirements for sales and purchase records.¹⁵⁵ The 1996 Law gives the State a right of pre-emption for the purchase of any cultural property in the inventory, as well as a right of expropriation over immovable cultural property.¹⁵⁶ This system of classification is similar to the one created by the 1900 and 1925 decree. The 1996 Law also provides for a series of offenses and penalties, including imprisonment and fines for alienating cultural property classified or proposed for classification; selling such property without informing the authorities (or the purchaser); exporting or attempting to export such cultural property without a license and for other offences against the law relating to the protection of such cultural property.¹⁵⁷

While the 1996 law is comprehensive on paper, some have argued that it is poorly executed and the force behind the law is weak.¹⁵⁸ For example, the law provides for the keeping

¹⁵¹ Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996, Article 1.

¹⁵² Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996; January 22, 1999 Royal Decree 001/NS Establishing Protected Cultural Zone; Sub-Decree No. 98 of September 17, 2002 on the Protection of Cultural Patrimony, Article 54.

¹⁵³ Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996, Article 2-4.

¹⁵⁴ Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996, Article 51.

¹⁵⁵ Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996, Articles 31-36.

¹⁵⁶ Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996, Articles 28-29.

¹⁵⁷ Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996, Articles 63-65.

¹⁵⁸ Sloniewski, Jan, and Pietro Bianchi. *Examination of Cultural Property Registration Laws*. Working paper. Phnom Penh: n.p., 2014. Print.

of an inventory and classification of public and private cultural property,¹⁵⁹ but no such inventory is readily available.¹⁶⁰ This weak enforcement may create an issue if Cambodia tries to assert a repatriation claim for stolen cultural property under the UNESCO Convention or in a U.S. court. Under the U.S. law that codifies the UNESCO convention, the CPIA, discussed in greater detail below, cultural property has to be stolen from an inventory of a historical site.¹⁶¹ The U.S. can choose to deny the repatriation request if it deems that the cultural object in question is in jeopardy of good protection. Cambodia's lack of a readily available inventory may suggest to the committee that the cultural patrimony is in jeopardy; thus, it is important for Cambodia to fully implement and add on to its 1996 Law in order to present its strongest claim under the United States law.

In 2001, Cambodia adopted a new Land Law that defined public property of the State to include archaeological, cultural and historical patrimonies.¹⁶² Only if State public property loses its public interest use, can it be listed as private property and alienated.¹⁶³ In 2002, Cambodia adopted the UNIDRIOT Convention.¹⁶⁴ That same year they also adopted a sub-Decree of Cultural Patrimony, providing that if any cultural property had been exported illegally, the Minister of Culture of Fine Art, in cooperation with the Ministry of Foreign Affairs and International Affairs, will undertake all means, including diplomatic, administration and judicial to return the cultural properties to Cambodia.¹⁶⁵ Furthermore in 2007 Cambodia's modernized its customs law to provide for the power to prohibit or restrict the import or export of certain goods

¹⁵⁹ Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996, Article 18.

¹⁶⁰ Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996, Article 7-27; Sloniewski, Jan, and Pietro Bianchi.

¹⁶¹ 19 U.S.C.A. § 2607.

¹⁶² Land Law, August 30, 2001, as amended, Article 15.

¹⁶³ Land Law, August 30, 2001, as amended, Article 17.

¹⁶⁴ Law on the Adoption of the Treaty UNIDROIT on Cultural Properties Stolen or Illegally Exported, February 21, 2002.

¹⁶⁵ Sub-Decree No. 98 of September 17, 2002 on the Protection of Cultural Patrimony, Article 54.

for the protection of national treasures.¹⁶⁶ In 2009, Cambodia established a National World Heritage Committee to protect and develop its natural and cultural properties.¹⁶⁷

In sum, the above mentioned laws should be used to advance legal arguments that certain cultural properties, even if held by private owners, have been subject to Cambodia's control since creation; the legal sale and exportation of the antiquities required and still require approval. Thus, the removal of the cultural objects from Cambodia without this approval should result in civil and criminal penalties within Cambodia, including jail or fines, as well as the seizure of the item; and, through international and bilateral efforts, legal arguments can be advanced seeking the repatriation of the goods since Cambodia can establish ownership of the antiquity through its long history of cultural heritage laws.

Cambodian-Thailand Relations

Due to their shared border and the role in trafficking Cambodian looted art to the world, it is important to look at Cambodian-Thailand disputes and agreements over cultural heritage in conjunction with Cambodia's ownership laws. In 1953, Cambodia sent a diplomatic note to Thailand asking Thailand to withdraw their troops from the Preah Vihear Temple. The negotiations broke down and in 1959 Cambodia instituted proceedings in the ICJ asserting territorial sovereignty over the temple, which ruled in favor of Cambodia.¹⁶⁸ On July 15, 2008, using its power granted to them by the 1972 World Heritage Convention, Cambodia successfully applied to have the temple inscribed as a UNESCO World Heritage site.¹⁶⁹ As mentioned above,

Law on Customs, 20 July 2007. Article 8.

¹⁶⁷ Royal Decree in Establishment of the National Committee for World Heritage, July 29, 2009, Article 4.

¹⁶⁸ International Court of Justice, Case Concerning the Temple of Preah Vihear (Merits), Judgment of June 15, 1962, especially at 31-32

¹⁶⁹ UNESCO. "The State Parties: Cambodia."

this classification provides a strong basis for a claim against artifacts stolen from Preah Vihear removed without permission, especially those removed by the Thais.¹⁷⁰

In 2000, Cambodia entered into a bilateral agreement with Thailand to Combat Illicit Trafficking and Cross-Border Smuggling of Movable Cultural Property and to Restore to the Country of Origin.¹⁷¹ The agreement requests that both Cambodia and Thailand impose sanctions on natural persons responsible for the illicit import or export of cultural property.¹⁷² The agreement also includes provisions about information sharing and procedures for the countries to use to deliver and return stolen goods.¹⁷³ Under the agreement, Thailand returned two pieces from Banteay Chmar Temple to Cambodia. Similarly, in 1999 Thai authorities confiscated 50 Khmer artifacts from a museum in Bangkok—Cambodia has received seven of the pieces but negotiations are still ongoing over the remaining pieces.¹⁷⁴ While the Cambodian and Thai authorities have shown their potential for cooperation in their combined efforts to return these Khmer cultural artifacts, there have been continued military clashes with Thailand around the Preah Vihear Temple.¹⁷⁵ Consequently, Cambodia instituted another proceeding against Thailand at the ICJ in April 28, 2011 to reinterpret its 1962 judgment giving Cambodia territorial sovereignty over the temple.¹⁷⁶ Cambodia is still awaiting judgment. Nevertheless, Cambodia can use the bilateral agreement to enforce the repatriation of Cambodian stolen goods in Thailand.

¹⁷⁰ Howlett, Malcom. 9.

¹⁷¹ Bilateral Agreement Between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand to Combat Illicit Trafficking and Cross-Border Smuggling of Movable Cultural Property and to Restore to the Country of Origin. (Phnom Penh, 14 June 2000).

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ UNESCO Headquarters. 28.

¹⁷⁵ International Court of Justice, Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the *Temple of Preah Vihear (Cambodia v. Thailand)*, Cambodia v. Thailand, April 28, 2011

¹⁷⁶ International Court of Justice, Request for Interpretation of the Judgment of 15 June 1962 in the Case Concerning the *Temple of Preah Vihear (Cambodia v. Thailand)*, Cambodia v. Thailand, April 28, 2011

United States Laws

Using the above section to establish Cambodian ownership over the looted antiquities, this section highlights United States laws that may assist the Cambodian government in reclaiming their cultural objects through the U.S. legal system. Under U.S. law, potential repatriation claims may arise under both statutory provisions and under the common law in the form of replevin, conversion, negligence and contractual claims.¹⁷⁷ Since most recent actions involving looted cultural objects have dealt with the statutory provisions, this section will only look at the statutes that govern their possible return. Criminal prosecutions and forfeiture actions involving stolen antiquities deal with statutes under the National Stolen Property Act (hereinafter “NSPA”), the CPIA, and a few other statutes related to civil forfeitures. To establish a claim in U.S. court that a cultural object is stolen property belonging to a foreign country it is necessary to show that 1) the country had a national ownership law, 2) that there is enforcement of this law internally within the country, and 3) that the object left the country after the date that law went into effect.¹⁷⁸ The above section on Cambodian law highlights the possible ways to prove these elements. The below section explains in greater detail some possible claims the Cambodian government may wish to initiate in U.S. court to repatriate looted goods.

National Stolen Property Act

The NSPA, passed in 1934, is an important tool to combat the illegal cultural heritage trade and to help Cambodia reclaim its stolen antiquities.¹⁷⁹ The elements of a violation of the NPSA are (1) the transportation in interstate or foreign commerce of property, (2) valued at

¹⁷⁷ 77 Am. Jur. Proof of Facts 3d 259 (Originally published in 2004).

¹⁷⁸ Seiff, Abby.

¹⁷⁹ Seiff, Abby.

\$5,000 or more, (3) with knowledge that the property was stolen, converted or taken by fraud.¹⁸⁰

U.S. v. Schultz, *U.S. v. Portrait of Wally, A Painting By Egon Schiele* (hereinafter “*Portrait of Wally*”) and *U.S. v. An Antique Platter of Gold* affirmed that antiquities stolen in foreign

countries shipped to the U.S. are subject to the NSPA and provide grounds for the forfeiture.¹⁸¹

The NSPA requires the country seeking the return of looted goods to prove the works were

stolen within its borders, or that they were taken after the date of whatever relevant provenance

law came into effect.¹⁸² *United States v. McClain* established that the NSPA could only be

asserted when the country has clear national ownership laws enacted before the object was taken;

this is necessary for the object to be considered stolen.¹⁸³ As mentioned above, this stipulation

might cause issues for the repatriation of antiquities with unknown provenance that rely on

ancient and colonial Cambodian laws to prove ownership as some have argued these ancient

laws do not provide for clear ownership. Cambodia’s ability to use the NSPA is determined by

Cambodian patrimony laws, when they were incorporated, and what they encompass.¹⁸⁴ The

NSPA enhances foreign states' enforcement efforts, as well as the rights of property owners since

the NSPA uses foreign ownership laws as the basis for finding goods to be “stolen.”¹⁸⁵

After 1974’s landmark case where prosecutors successfully used the NSPA to convict traffickers of pre-Columbian antiquities from Guatemala, NSPA claims dealing with looted

¹⁸⁰ See 18 U.S.C.A. § 2314; *U.S. v. Schultz*, 333 F.3d 393 (2d Cir. 2003), cert. denied, 2004 WL 46669 (U.S. 2004); *U.S. v. Portrait of Wally, A Painting By Egon Schiele*, 2002 WL 553532 (S.D. N.Y. 2002); *U.S. v. Crawford*, 239 F.3d 1086, 56 Fed. R. Evid. Serv. 388, 1 (9th Cir. 2001), as amended, (Feb. 14, 2001), cert. denied, 534 U.S. 972, 122 S. Ct. 393, 151 L. Ed. 2d 298, 70 USLW 3279 (Oct 15, 2001) (NSPA's knowledge requirement did not require the government to prove that defendant knew the identity of the owner of a painting that she stole, only that she took the painting knowing that it did not belong to her); *U.S. v. McClain*, 545 F.2d 988 (5th Cir. 1977).

¹⁸¹ *U.S. v. Schultz*; *U.S. v. Portrait of Wally*; *U.S. v. An Antique Platter of Gold*

¹⁸² Seiff, Abby

¹⁸³ See *United States v. Schultz*.

¹⁸⁴ *United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby’s in New York, New York*. No.12-cv-2600-GBD. 28 Mar. 2013. 7.

¹⁸⁵ *U.S. v. Pre-Columbian Artifacts*, 845 F. Supp. 544 (N.D. Ill. 1993) (in forfeiture action, allegations that under Guatemalan law, artifacts became property of Republic of Guatemala were sufficient to state claim for seizure of artifacts as stolen property possessed in violation of NSPA).

antiquities are more common.¹⁸⁶ Prosecutors have even explored the criminal application of NSPA yet the burdensome requirement makes it very difficult to press a criminal case.¹⁸⁷ Despite the high burden of proof, there have been some successful criminal cases under the NSPA. The trial of Frederick Schultz became the first full criminal trial under the NSPA.¹⁸⁸ Thus Cambodia could use the NSPA to not only seek repatriation of its antiquities but to possibly seek criminal sanctions for those assisted in the trafficking.

Convention on Cultural Property Implementation Act

In 1983 the U.S. passed the CPIA, which codified the UNESCO Convention into U.S. Federal law.¹⁸⁹ The CPIA is the U.S. interpretation of Articles 7(b) and 9 of the UNESCO Convention.¹⁹⁰ These articles call for a collaborative action among nations to prevent trade in specific items of cultural property.¹⁹¹ In order to successfully prove a claim under the CPIA, the following elements must be met: 1) The article must be a cultural property, 2) the article must be imported to the United States and 3) the article must be stolen from a foreign museum or similar institution.¹⁹² Post Congress enactment of the Civil Asset Forfeiture Reform Act of 2000 (hereinafter “CAFRA”), the government has a raised burden of proof, by a preponderance of the evidence, in establishing that a forfeiture action is warranted.¹⁹³

In short, the CPIA is an import law, not a criminal law, which grants the U.S Government power to seize stolen property.¹⁹⁴ The CPIA regulates how the U.S. evaluates repatriation claims

¹⁸⁶ U.S. v. Pre-Columbian Artifacts.

¹⁸⁷ Seiff, Abby; <http://archive.archaeology.org/online/features/schultz/criminal.html>

¹⁸⁸ United States v. Schultz , 333 F.3d 393, 402-04 (2d Cir. 2003).

¹⁸⁹ 19 U.S.C.A. §§ 2601 to 2613.

¹⁹⁰ Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc., 917 F.2d 278 (7th Cir. 1990) (concurring opinion).

¹⁹¹ Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc., 917 F.2d 278 (7th Cir. 1990) (concurring opinion).

¹⁹² 77 Am. Jur. Proof of Facts 3d 259 48. (Originally published in 2004)

¹⁹³ 18 U.S.C.A. § 983.

¹⁹⁴ 19 U.S.C.A. §§ 2607, 2609.

made by other UNESCO signatories. As such, for Cambodia, CPIA is used most effectively when the provenance of the statute is dated after September 26, 1972, the date when Cambodia ratified the UNESCO convention. The CPIA's specific provision regarding stolen cultural property prohibits the importation of any article of cultural property that has been stolen from the inventory of a museum or religious or secular public monument or similar institution in any state party.¹⁹⁵ This provision suggests that for Cambodia to bolster its CPIA claims, Cambodia needs to have comprehensive inventories of all its cultural objects.

The CPIA also established an 11-member cultural property advisory committee in the State Department to review requests made by other countries. If the committee determines that "the cultural patrimony of the state party is in jeopardy from the pillage of archaeological or ethnological materials of the state party," it can choose to deny the request.¹⁹⁶ Thus, the CPIA gives the committee broad powers of interpretation to decide to what degree other nations' restrictions on exported cultural property will be followed.¹⁹⁷ Again, this further illustrates the need for Cambodia to fully enforce its 1996 Law and to create additional laws that legitimize Cambodian ownership of cultural property.

Under the CPIA, the U.S. has signed a number of bilateral agreements with Mesoamerican, South American, European, and Asian countries, including Cambodia. In 1999, Cambodia submitted a request to the U.S. to impose restrictions on the importation of Khmer cultural objects onto US territory.¹⁹⁸ As a result, a 2003 Memorandum of Understanding was issued that prevents certain categories of archaeological material and a designated list of Cambodian artifacts from being imported into the U.S. It also states that if the items are imported

¹⁹⁵ 19 U.S.C.A. §§ 2607, 2609.

¹⁹⁶ Seiff, Abby.

¹⁹⁷ Seiff, Abby.

¹⁹⁸ "International Measures."

into the U.S., the United States will offer to return the goods to Cambodia. In 2008, Cambodia and the United States renewed and extended the Memorandum.¹⁹⁹ Under the revised Memorandum, in 2010 the United States repatriated seven antiquities looted from Angkor Complex.²⁰⁰ This memorandum emphasizes Cambodia's continued interest and ownership claim in its cultural property and highlights the United States' commitment to aiding Cambodia claim ownership and possess its antiquities.

Other Civil Forfeiture Statutes and Potential Legal Issues

Additional statutes involving civil forfeiture of looted antiquities include that work in conjunction with the NSPA and the CPIA are 19 U.S.C.A § 1595(a)(c) and 18 U.S.C.A §§ 545 and 981(a)(1)(C). 19 U.S.C.A §1595a(c) is related to forfeitures and other penalties enacted as part of the Tariff Act of 1930. It authorizes the forfeiture of “[m]erchandise which is introduced [...] into the United States contrary to law [...] if [the merchandise] [...] is stolen, smuggled, or clandestinely imported or introduced.”²⁰¹ 18 U.S.C.A § 545 is a statute dealing with the smuggling of goods into the United States.²⁰² 18 U.S.C.A. § 981(a)(1)(C) specifically deals with civil forfeitures under which property constituting or “derived from proceeds traceable to a violation of [...] any offense constituting ‘specified unlawful activity’” is forfeitable to the United States.²⁰³ Usually, the contrary to law requirement is established by showing violations of the NSPA.²⁰⁴

¹⁹⁹ Memorandum of Understanding Between The Government of The Kingdom of Cambodia and the Government of the United States of America Concerning The Imposition of Import Restrictions on Archaeological Material from Cambodia from the Bronze Age through the Khmer Era, (Extended and amended by exchange of diplomatic notes on August 26, 2008)

²⁰⁰ http://cambodia.usembassy.gov/repatriation_ceremony_2010.html

²⁰¹ 19 U.S.C. § 1595a(c)(1)(A).

²⁰² 19 U.S.C.A. § 1595a (West); 18 U.S.C.A. § 545 (West); 18 U.S.C.A. § 981 (West)

²⁰³ 18 U.S.C.A. § 981 (a)(1)(C) (West)

²⁰⁴ United States v. Davis.

To advance a civil forfeiture claim upon these grounds, Cambodia, represented by the U.S. government, needs to establish probable cause that (1) the statute is stolen property introduced into the United States contrary to law; (2) it is merchandise which was knowingly brought into the United States contrary to law; and (3) it is property, real or personal, [2] which was derived from proceeds traceable to a violation of NSPA.²⁰⁵ As mentioned above, CAFRA places the burden of proof on the U.S. Government to establish, by a preponderance of the evidence, that the property is subject to forfeiture.²⁰⁶ To establish a reasonable basis for a claim under 18 U.S.C.A. § 545 pursuant to 18 U.S.C.A. § 2315 the U.S. Government needs only to plead facts that the possessor knew the statue was stolen when they possessed it in the United States.²⁰⁷ Under the NSPA, "stolen" includes "all felonious takings whether or not the theft constitutes common-law larceny."²⁰⁸

Given that looted antiquities often go through a series of buyers, all with progressively less knowledge of the work's history to reach the hands they are currently in, proving the current possessor of the statute knew the antiquity was stolen may present a challenge. To confront these difficulties it is necessary to investigate laws relating to good faith purchases. A good faith purchaser is a person who buys stolen work without notice of the circumstances that would put a person of ordinary prudence on inquiry as to the seller's title.²⁰⁹ To determine whether a buyer is a good faith purchaser, courts examine several factors to decide if the purchaser knew or should

²⁰⁵ United States v. A 10th Century Cambodian Sandstone Sculpture, 12 CIV. 2600 GBD, 2013 WL 1290515 (S.D.N.Y. Mar. 28, 2013)

²⁰⁶ 19 U.S.C.A. § 983(c) (West)

²⁰⁷ United States v. A 10th Century Cambodian Sandstone Sculpture, 12 CIV. 2600 GBD, 2013 WL 1290515 (S.D.N.Y. Mar. 28, 2013)

²⁰⁸ See 18 U.S.C.A. § 2314.

²⁰⁹ 77 Am. Jur. Proof of Facts 3d 259 11. (Originally published in 2004)

have known that the seller lacked title.²¹⁰ For instance, unexplained gaps in the provenance of the antiquity might suggest that the antiquity changed hands through illegitimate means, thus putting a responsible purchaser on notice.²¹¹ Even if it is determined that the current possessor of the looted antiquity is a good faith purchaser, they may not hold good title if the item is stolen property.²¹² Theft of an antiquity from its original owner constitutes a taking subject of void title; a purchaser cannot acquire good title from a thief and a person cannot convey better title than what they themselves have. Thus, with the principals of passing title in mind, along with the NSPA definition of stolen, the U.S. Government can support its claim that a good faith purchaser has void title and knew or should have known the antiquity was stolen.

Raising a good faith purchaser claim is one of many possible objections the U.S. Government may face when establishing a forfeiture claim. In every criminal prosecution, the U.S. government must prove each element of the offense; its inability or failure to do so warrants dismissal of the charges.²¹³ Other possible defenses to the aforementioned claims include statute of limitations, abandonment, prescribed possession and laches.²¹⁴ While mistake of U.S. Law is not a defense in a criminal prosecution or other forfeiture action, there are limited exceptions where the defendant can demonstrate that his or her actions were innocent or negligent and

²¹⁰ *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg & Feldman Fine Arts Inc.*, (art dealer's failure to make more than superficial inquiry into suspicious circumstances surrounding sale of ancient mosaics prevented her from being a good faith purchaser).

²¹¹ *U.S. v. Portrait of Wally, A Painting By Egon Schiele*, (converter of painting changed its provenance to reflect original owner's sale of painting to a third party, notwithstanding owner's denial of such sale and absence of the third party from earlier published statements of provenance).

²¹² *Kunstsammlungen Zu Weimar v. Elicofon*, 678 F.2d 1150 (2d Cir. 1982) (despite collector's good faith purchase of two Albrecht Durer portraits from an American soldier without knowledge that the soldier had stolen them from a German castle during World War II, the Federal Republic of Germany, successor to the original owner, could recover the portraits); *Solomon R. Guggenheim Foundation v. Lubell*, 77 N.Y.2d 311, 567 N.Y.S.2d 623, 569 N.E.2d 426 (1991) (museum could recover a Marc Chagall gouache that had been stolen by a mailroom employee, sold to a gallery, and subsequently bought by an unsuspecting couple).

²¹³ 77 Am. Jur. Proof of Facts 3d 259. (Originally published in 2004)

²¹⁴ *Ibid*, 49-50.

performed with unawareness that such conduct could result in criminal sanctions.²¹⁵ Notably, this defense is strengthened where an alleged violation of foreign law forms the basis for the prosecution.²¹⁶

Furthermore, due to the nature of stolen antiquities claims involving items brought to the United States from other countries, opponents of the claim try to use creative legal tactics to avoid United States jurisdiction. Opponents contest U.S. jurisdiction by arguing that this type of case conflicts with the interest of United States and international policies and thus divests United States' courts of jurisdiction.²¹⁷ These contestations usually are unfounded, however, since stolen antiquity claims do not interfere with the sovereignty of foreign states nor the conduct of foreign relations.²¹⁸ The court has found local jurisdiction where a stolen work is brought into a state due to the state's interest in resolving ownership disputes.²¹⁹ Also since the art claim involves litigants from foreign countries, federal court jurisdiction applies based on diversity of citizenship.²²⁰

Methods for Advocating For Repatriation: Pressure and Shaming

In addition to legal mechanisms, political methods for returning cultural heritage objects exist. These political practices, namely pressure and shaming, could ultimately be the most useful mechanisms leading to repatriation. Political mechanisms and legal action are not mutually exclusive, and can occur at the same time. These kinds of non-legal campaigns

²¹⁵ U.S. v. Schultz, 333 F.3d 393 (2d Cir. 2003) cert. denied, 2004 WL 46669 (U.S. 2004) (defendant, who was engaged in conspiracy to smuggle antiquities and defraud potential buyers, and who evidenced awareness of the illegality of his actions was demonstrated by his use of code to communicate, forging documents, and discussing with co-conspirators the possibility of serving jail time was not entitled to exception to general rule that mistake of U.S. law is not a defense);

²¹⁶ 77 Am. Jur. Proof of Facts 3d 259. (Originally published in 2004)

²¹⁷ 77 Am. Jur. Proof of Facts 3d 259 18. (Originally published in 2004)

²¹⁸ See, for example, U.S. v. Portrait of Wally, A Painting By Egon Schiele, 2002 WL 553532 (S.D. N.Y. 2002).

²¹⁹ U.S. v. Portrait of Wally, A Painting By Egon Schiele, 2002 WL 553532 (S.D. N.Y. 2002).

²²⁰ Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg and Feldman Fine Arts, Inc., 917 F.2d 278 (7th Cir. 1990)

ultimately rely on voluntary compliance, which is in itself a gamble. The tactics of diplomacy and negotiation must be employed so as to not alienate the institution in possession of cultural heritage objects; at the same time, an overly subdued effort would not produce the intended effect.

Political Pressure

Political pressure is a broad series of tactics used by states against other governments in order to gain a desirable outcome. Pressure can take many forms, from insinuations, threats, to actual action that damages relations. In order for this approach to work, high-ranking government officials must be willing to sacrifice certain connections with the other government. Ultimately, pressure is a form of bargaining, however, one in which threats to terminate certain cultural exchanges may not be believed, damaging credibility. Like any bargaining process, each side must have certain points that they are willing to yield; it may be best to start with an extreme demand, and then refine it over time. Bargaining also involves offering something in return so that both sides feel that they have won in some way. The application of political pressure does not concern all branches of government, or all relations, but very specific types of cultural interactions, such as museum or archaeological cooperation in the case of cultural heritage. The danger is that actual disruption of these links might prove damaging in the long run and endanger programs that actually benefit the country applying pressure. Consequently, risk is present when threats are made, and unless the cost is deemed appropriate, the effort may prove damaging.

Regarding repatriation of cultural heritage objects, the Cambodian government would have to exercise caution so as to not alienate important relations with states and institutions aiding in museum, archeological, and conservation efforts. Consequently, an all or nothing approach could prove detrimental to long-term projects. Any political pressure applied, whether

publically or through official channels, could result in unintended spillover effects. Alternatively, it is possible that foreign governments value their relationships with Cambodia to such a degree that they would continue to materially support programs despite the current environment.

Shaming

The process of shaming, coming from human rights discourse, is the process by which the negative actions of a target government are emphasized in public discourse to persuade them to change their behavior. Within the context of cultural heritage, shaming could be applied to non-governmental institutions such as museums, auction houses, or even private collectors. It is most effective when the government or institution in question values their international reputation. For instance, if a museum was publically criticized for their acquisition practices, the negative attention might be considered too risky, and a settlement reached. However, repatriation based on shaming, as compared to legal means, is completely voluntary. An institution might decide that it is better to wait out the storm of criticism than return valuable cultural heritage objects. For an institution to be compelled to return art, strong evidence of looting must be presented. The ongoing debate over the Hanuman statue at the Cleveland Museum of Art is one example of how a museum may choose to ignore calls for repatriation. Cambodian authorities have accused the museum of having a looted object from Prasat Chen in their collection, a Hanuman monkey god statue. The museum however, has claimed that their Hanuman is not from Prasat Chen, and has refused to cooperate.²²¹

Shaming tactics can take different forms. Letter writing campaigns from members of the public to specific institutions, as well as from prominent individuals in Cambodian politics or society could lead to increased emphasis on looted cultural heritage. Additionally, publicized

²²¹ Cascone, Sarah. "Cleveland Museum of Art Says Cambodia Statue Was Not Looted." *Artnet News*. N.p., 21 May 2014. Web. 01 Aug. 2014.

press releases or news conferences in which specific institutions are named for their poor acquisition and repatriation practices could put pressure on those entities. Requiring more risk, peaceful public demonstrations can raise awareness and shame institutions, such as protests in Peru in 2010 that specifically called for Yale University to return cultural heritage objects.²²²

Three Potential Forms of Shame

There are three approaches to shaming in the case of Cambodian looted heritage objects: the Civil War, the legacy of French colonialism, and the economic legacy of looting. The last method could be employed with either the Civil War, or the French colonial model.

Civil War Shaming

The fact that institutions such as museums and auction houses, as well as private collectors may have acquired their items during the Cambodian Civil War is deplorable. There are serious ethical complications in acquiring looted cultural heritage items when a country is torn apart by conflict, it is an additional injury inflicted on a people. Some collectors claim that their actions were noble, and that they were in fact performing a service by rescuing artifacts by bringing them out of the country.²²³ If this is in fact the case, these individuals should be willing to repatriate these works back to the country they were taken from to complete the caretaker cycle. The return of these cultural heritage objects is what will define individuals and institutions as benevolent custodians, or predatory collectors. The use of shame for returning objects suspected of being looted during the war could be extremely powerful in that it links members of generally high social status with vulture-like behavior.

Colonial Era Shaming

²²² Alderman, Kimberly. "Yale Agrees to Return Machu Picchu Artifacts to Peru: Ethics-Based Repatriation Efforts Gain Steam." *Cultural Heritage & Arts Review* (2010): 3-4. Harvard University. Web. 1 Aug. 2014.

²²³ Mashberg, Tom, and Ralph Blumenthal. "The Met Will Return a Pair of Statues to Cambodia." *Institute of Museum Ethics*. N.p., 3 May 2013. Web. 1 Aug. 2014.

For items removed from Cambodia during the French colonial era, looting takes on a different meaning. Similar to the Civil War, cultural heritage objects taken during this time were from a period where Cambodians had little control over their country, and consequently were unable to halt the French extractive process. It could be argued that institutions in possession of items taken from this era should return them in order to help alleviate historical injustices that have robbed Cambodians of their cultural heritage. Even though France constructed what is now the National Museum of Cambodia, and has aided in temple restoration plans, not to mention a myriad of other aid and political projects, this does not make amends for the injustices of the colonial past, including the transferring of archeologically significant works to Europe. For this argument to be successful, it might be useful to shame and “invite,” arguing for the repatriation of cultural heritage objects through the use of shame based on colonialism, but then to encourage the French government and museum institutions to actively take part in building a better future. In this way, French officials would be given the opportunity not only to change their present policy, but also to actively participate in a way that would increase France’s prestige. Presenting the return of art as a win-win does not take away from the aspect of shame, rather it offers an honorable path in which neither side has to be depicted as the loser.

Economic Shaming

The economic approach to shaming is similar to both the Civil War and the colonial arguments, however it focuses on the economic impact rather than the political or social details. Specifically, an argument can be made that the return of important cultural heritage items could increase revenue in Cambodia, whether through increased tourism, or the development of provincial museums. As temples and archeological sites other than Angkor Wat become tourist destinations, cultural heritage objects from the provinces, if brought back to their origin, could

draw visitors and create revenue for these areas. Similarly, the fact that institutions around the world are profiting in a small sense from looted objects could be interpreted as reaping rewards from the original crime.

These forms of shame could be used either alone, or in a combined strategy to help persuade institutions or individuals to return cultural heritage objects. Each situation of repatriation is different and may require a different approach. An analysis of previous repatriation efforts helps illustrate the strengths and faults in both the legal and non-legal methods.

Past Instances Where Cultural Property Has Been Returned

The APSARA website cites numerous examples of Cambodian cultural objects that have been restored to Cambodia since 1985.²²⁴ Notably, over the past decade, the United States has had only 30 to 40 civil forfeiture cases, and four or less criminal cases, none involving Cambodian art.²²⁵ As such, this section gives brief descriptions of a few key cases of Cambodian and other nations' cultural artifacts that have been returned through legal and non-legal means. These cases should be cited as precedent when Cambodia asserts repatriation claims of its stolen artifacts.

Cambodian Antiquity Returns that Used Non-Legal Methods

The Kneeling Attendants

In May of 2013, the Metropolitan Museum of Art in New York (hereinafter "Met") began the process of returning two statues originally from Koh Ker. Donated separately, the collector Douglas Latchford and the auction house Spink gifted one head and two torsos in 1987 and 1992

²²⁴ "International Measures."

²²⁵ Seiff, Abby.

respectively, a different individual donated the other head.²²⁶ Despite displaying both statues for over 20 years, the Met, upon learning that there was the possibility that the statues had been looted in the 1970s, opened talks with the Cambodian government. Officials were able to provide photographic evidence to the Met that the pieces in question had been looted in the 1970s during the Civil War, as well as interviews from Cambodians who had seen the statues intact in the early 1970s.²²⁷ Based on this evidence, the Met returned both Kneeling Attendants.

It is important to emphasize that the repatriation of both statues was voluntary. While strong evidence of looting played a crucial role, the final order was given by the Met. The museum acted appropriately; when evidence of looting was presented they sent emissaries to Cambodia to consult with government officials, and then decided that it was in their best interest to return the two works. Whether based on wanting to avoid a legal case or bad press, the Met returned both statues, and then emphasized their good behavior. Both the Cambodian government and the Met emerged triumphant, the government proved its case, and the Met acted as a good global citizen.

Six Bronzes Returned From the Guimet

In either Spring of 1996 or early 1997, the Musée Guimet returned six bronze pieces: one Ganesha, two Buddhas on Naga, one male divinity, one standing Buddha, and one Buddha in Dhyānamudrā, all of which had been sent to France in the early 1970s for restoration by the Lon Nol government.²²⁸ By the time the bronzes were ready to be shipped back to Cambodia, the Khmer Rouge had taken power and sealed the country's borders, making repatriation impossible.

²²⁶ "Metropolitan Museum of Art to Return Two Khmer Sculptures to Cambodia." *Home*. The Metropolitan Museum of Art, 3 May 2013. Web. 02 Aug. 2014.

²²⁷ Mashberg, Tom, and Ralph Blumenthal. "The Met Will Return a Pair of Statues to Cambodia." *The New York Times* 3 May 2013.

²²⁸ Mydans, Seth. "Treasures Trickle Back to a Plundered Cambodia." *The New York Times*. N.p., 20 Dec. 1996. Web. 4 Aug. 2014.

It was not until over 30 years later that the statues were returned to Cambodia. Despite the changes in Cambodia's government, and a long period of custodianship, the Guimet repatriated all six statues. It is an important distinction that the works were the documented legitimate property of Cambodia, and brought to France for conservation purposes, had they decided to keep them, it would have damaged relations between the two countries and could be interpreted as continuing the colonial legacy of extraction.

Cambodian Antiquity Returns that Used Legal Methods

United States v. 10th Century Cambodian Sandstone Sculpture (2013)

Given the lack of U.S. court cases that deal with Cambodian antiquities, this case dominates this section. It should be noted that this case never reached a final decision in U.S. court; however, the judge's dismissal of the claimant's motion to dismiss suggests that the legal arguments presented in this case can be used as precedent in future claims.

Through a civil forfeiture claim pursuant to 19 U.S.C. § 1595a(c) and 18 U.S.C. §§ 545 and 981(a)(1)(C), the U.S. brought action against Sotheby's Auction House in New York City for a sandstone statue, now known as the Duryodhana.²²⁹ The U.S. advanced two legal theories to request the return of the statue to Cambodia: 1) Using the series of colonial-era orders detailed above, these French colonization laws declared Cambodia to be the owner of the statue, and 2) Using the "inherent right of kings" based on ancient Cambodian law declared Cambodia to be the owner of the statue.²³⁰ While Sotheby's poked holes in the U.S. Government's legal arguments and claimed that its research proved 'clear title' to the statue, Sotheby's voluntarily withdrew the statue from auction for fear of accusations that it knowingly transported stolen

²²⁹ United States v. 10th Century Cambodian Sandstone Sculpture, 2013 U.S. Dist. LEXIS 45903 (S.D.N.Y. Mar. 28, 2013)

²³⁰ United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby's in New York, New York. No. 12 Civ. 4 April 2012. Web. 35.

property.²³¹ After almost two years of litigation, on December 13, 2013, the parties settled.²³²

The agreement stated that Sotheby's and the Duryodhana's seller had "a good faith disagreement" with the United States over Cambodian ownership of the statue, but "further litigation of this action would be burdensome," so they "voluntarily determined" to transfer it to Cambodia.²³³

The statue was returned to Cambodia in June 2014.²³⁴

The Duryodhana, sculpted in the 10th Century, once stood at the Prasat Chen temple at the historic site of Koh Ker, the capital of the ancient Khmer Empire. The Duryodhana is an extraordinary piece of Cambodian cultural heritage because it represents a unique moment in the religious and artistic history of ancient Cambodia, when the great themes of the Indian epic texts became integrated into the temple space. In the 1970s, during Cambodia's Civil War and the Khmer Rouge period, statues and other valuable artifacts were looted from Cambodian temples, including those at Koh Ker. In or around 1972, the Duryodhana and the Bhima were among the looted objects. They were cut into pieces and delivered to a Thai dealer in Bangkok who then sold the pieces to a well-known collector of Khmer antiquities who then sold them to an auction house in the United Kingdom. It is documented that both the collector and the auction house were aware that the statues were looted from Koh Ker.

The Duryodhana made its way to England where it was sold and held in a private collection for more than 35 years, eventually landing in the hands of a widowed Belgium woman. Between 2008 and 2010, the widow entered into conversations with Sotheby's about the sale of the statue. In or about late March 2010, the widow entered into a consignment agreement,

²³¹ United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby's in New York, New York. No.12-cv-2600-GBD. 28 Mar. 201. 6, 7. and NYT

²³² Mashberg, Tom, and Ralph Blumenthal. "Disputed Statue to Be Returned to Cambodia." *The New York Times* 12 Dec 2013.

²³³ Davis, Tess. "Returning Duryodhana."

²³⁴ Barron, Laignee and Vong Sokheng. "Statues' 40-year reunion." *The Phnom Penh Post* 4 June 2014.

consigning the statue to Sotheby's for sale at an auction in New York. The statue arrived at JFK-International Airport on April 23, 2010.²³⁵

UNESCO notified Interpol of the impending sale of the statue on March 21, 2011, three days before the scheduled auction, claiming that the legs of statue were in their original place in Cambodia. UNESCO worked with the Cambodian Ministry of Culture to gather evidence confirming the item was Cambodian cultural property and that it belonged to Cambodia. Sotheby's argued against Cambodia's ownership claim asserting that the known provenance of the statue pre-dated Cambodia's ratification of the UNESCO convention.²³⁶ They cited the only comprehensive survey of Prasat Chen in 1939 that described the site where the Duryodhana allegedly stood but made no mention of it and only referred to statues nearby.²³⁷

While these legal arguments were never tried in court, the Court did rule on the U.S. Government's amended complaint and Sotheby's opposition to the amended complaint, siding in favor with the U.S. Government. Most significantly, the case shows that Cambodian colonial laws can prove Cambodian ownership of antiquities, necessary for cultural objects looted prior to the UNESCO Convention. Although this case highlights the near impossibility of legally fighting patrimony claims, it does have a substantial impact on the museums and auction houses' behaviors because it puts possessors of Cambodian looted antiquities on notice that they may be purchasing stolen property and therefore should be doing their due diligence to ensure the legality of the antiquity.²³⁸

Non-Cambodian Antiquity Returns that Used Non-Legal Methods

²³⁵ United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby's in New York, New York. No. 12 Civ. 4 April 2012. Web. 22.

²³⁶ United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby's in New York, New York. No.12-cv-2600-GBD. 28 Mar. 2013. 7.

²³⁷ United States of America v. A 10th Century Cambodian Sandstone Sculpture, Currently Located Sotheby's in New York, New York. No.12-cv-2600-GBD. 28 Mar. 2013. 7.

²³⁸ Seiff, Abby.

Egypt and Utilization of both Pressure and Shaming

In October of 2009, Egypt demanded the return of tomb wall fragments that were being displayed at the Louvre.²³⁹ Egypt's chief archeologist, Zahi Hawass, claimed that the objects were looted in the 1980s and illegally brought to the museum, which initially refused to consider repatriation, claiming that they acquired them in good faith.²⁴⁰ In response, Egypt officially cut ties with the Louvre, halted French archeological projects including work being done at Saqqara near Cairo, and refused to allow a former Louvre curator give a talk in Egypt.²⁴¹ In addition to the application of political pressure, a panel of 35 experts recommended that the Louvre return the antiquities in question. Officially due to the committee's decision, but most likely also in response to the Egyptian course of action, the French Culture Minister ordered the return of the fragments. By severing cooperation, Egypt increased the stakes by risking the future cultural relationship between the two countries. The "negotiation" aspect of the public argument was resolved when France was shamed (through the purchase of looted artifacts), and then pressured, through the threat of terminating relations.

A similar strategy could work in Cambodia regarding the return of specific works. Such an effort would require broad cooperation amongst government ministries, and the drastic move of threatening to cut archeological ties could lead to spillover effects in other areas of bilateral collaboration. Additionally, this strategy could only be employed a limited number of times, even twice might be too many, so as to be able to maintain credibility regarding the threat. If the threat is used too often, or there is dissention within the Cambodian government, cutting off archeological ties would be an empty ultimatum.

²³⁹ Charlton, Angela. "France to Return Egyptian Art after Louvre Row." *AP Worldstream*. N.p., 9 Oct. 2009. Web. 4 Aug. 2014.

²⁴⁰ "Egypt Severs Ties with Louvre Over 'Stolen' Ancient Egyptian Artifacts." *Voice of America News*. N.p., 9 Nov. 2009. Web. 4 Aug. 2014.

²⁴¹ Charlton

Nigeria's Benin Bronzes: Incomplete Repatriation

The Benin Bronzes are a collection of over 3,000 works of Nigerian art that were taken by British soldiers as war loot in 1897.²⁴² The government of Nigeria has tried to negotiate their return, however their success has been limited. Among the measures that Nigeria has pushed for are a digital archive from all participating institutions of the cultural heritage objects that will provide photos free of charge; access to the Benin Bronzes in Europe by Nigerian experts; and joint planning by Nigerians and Europeans of their exhibition in their future.²⁴³ In 2013, the main push was for cataloguing the Benin Bronzes held overseas. These tactics do not directly deal with repatriation, but instead are concerned with better access for Nigeria to its cultural heritage. Past attempts to have the Bronzes returned by Britain proved fruitless, tactics included appeals from Nigerian officials both through letters and in person at the House of Commons.²⁴⁴ Some of these artifacts had found their way to other museums, and at least one object in possession of the descendants of a soldier in the 1897 action was to be auctioned at Sotheby's until it was withdrawn by the consigners due to Internet protests.²⁴⁵ Other individuals have returned pieces of the Benin Bronzes that they inherited.²⁴⁶ Between 1950 and 1972, the British Museum sold over 30 pieces to Nigeria, however they halted sales in such a way that did not give hope for return through this method in the future.

The process of shaming, especially after such a violent act by the British in 1897, has had a larger impact on the choices of individuals than institutions. The two European museums with large collections of Benin Bronzes, the British Museum and the Ethnological Museum of Berlin,

²⁴² Uhakheme, Ozolua. "Mission to Repatriate Stolen Benin Artefacts." *The Nation Online*. N.p., 27 Feb. 2013. Web. 4 Aug. 2014.

²⁴³ Ibid.

²⁴⁴ Ibid.

²⁴⁵ Medeme, Ovwe. "Nigeria: Between the Country's Artefacts And Western Iconoclasts." *The Daily Independent*. AllAfrica, 4 Jan. 2011. Web. 4 Aug. 2014.

²⁴⁶ Aliu, Alemma-Ozioruva. "Nigeria: Will Other Holders of Benin Bronzes Return Them?" *Pambazuka News*. AllAfrica, 1 May 2014. Web. 4 Aug. 2014.

have been resistant to the process of repatriation. This suggests that certain tactics might be more effective when applied to individuals. Just as in the case of the Kneeling Attendants and Egyptian artifacts, repatriation was a voluntary act by individuals or institutions when presented either with evidence, expert advice, or shaming.

Non-Cambodian Antiquity Returns that Used Legal Methods

U.S. v. Portrait of Wally, A Painting By Egon Schiele (2002)

While there are many restitution claims that have come before and after this case, this case has had arguably the largest impact and has shaped the discussion pertaining to art restitution.²⁴⁷ *Portrait of Wally* was the first instance where an artwork loaned to a museum was seized by the authorities.²⁴⁸ The case showed that the U.S. was willing to expend national resources to seek justice and advocate for third parties.²⁴⁹

The U.S. Government commenced this forfeiture proceeding claiming that the contested painting was about to be exported in violation of the NSPA ban on transporting stolen goods.²⁵⁰ The *Portrait of Wally* originally belonged to Ms. Bondi, who was forced to give up the painting due to Nazi occupation. After World War II, the U.S. army seized Nazi looted art, including the contested portrait, and attempted to return the portrait to its rightful owner. Erroneously, it ended up in the wrong owner's hands, who then sold the work to an art gallery. Dr. Leopold acquired the painting from the art gallery and transferred possession to the Leopold Museum.²⁵¹ In 1997, the Leopold Museum loaned the work to the MOMA.²⁵² Thereafter, the New York County

²⁴⁷ <http://www.theartnewspaper.com/articles/What-makes-the-Portrait-of-Wally-case-so-significant/26309>

²⁴⁸ Howard Spiegler, "What the Lady Has Wrought: The Ramifications of the Portrait of Wally Case," *The Art Law Newsletter of Herrick, Feinstein LLP*, 7 (2010): 4.

²⁴⁹ <http://www.theartnewspaper.com/articles/What-makes-the-Portrait-of-Wally-case-so-significant/26309>

²⁵⁰ *U.S. v. Portrait of Wally, A Painting By Egon Schiele*, 2002 WL 553532 (S.D. N.Y. 2002)

²⁵¹ *Ibid.*

²⁵² *Ibid.*

District Attorney subpoenaed the portrait claiming it was improperly acquired Nazi loot.²⁵³

Following the subpoena, the District Attorney's office filed an action for civil forfeiture.²⁵⁴

The principal issue was whether the NSPA had been violated. In particular, the Court had to determine if the painting could be considered stolen, if the Museum imported the painting knowing that it was stolen, and if the painting remained stolen at the time it was imported.²⁵⁵ In order for the painting to be seized, the government used Austrian law to prove the painting was stolen and that the importation of the painting violated 18 U.S.C. § 2314 of the NSPA.²⁵⁶ While the parties settled before the beginning of the trial, the court dismissed the museum's motion for summary judgment. The District Court found that the Austrian law provided evidence that the Nazis stole the portrait and remained stolen at the time it was imported to the United States.²⁵⁷ Additionally, the Court stated that the United States had an interest in "enforcing its own laws as applied to conduct on its own soil" in pursuit of its "policy to prohibit knowing transportation of stolen or converted goods into the United States".²⁵⁸

This case is important for Cambodia's fight to reclaim looted antiquities for it shows that museums' knowledge of the legality of the antiquity is not necessary. Even if an American museum imports an antiquity without the knowledge of its illegal past, if the piece is still considered stolen, then the U.S. government can institute a civil forfeiture proceeding under the NSPA and CAFR.

U.S. v. Schultz (2003)

²⁵³ Ibid.

²⁵⁴ Ibid.

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

Until this case, it was unclear how the CPIA affected NSPA claims but this case held that the passage of CPIA does not limit the NSPA's application to antiquities stolen in foreign countries.²⁵⁹ Once reaching that conclusion, the case further defined NSPA's definition of stolen to apply to property stolen in violation of foreign patrimony laws and added clarity on what evidence maybe admissible in court for future NSPA claims.²⁶⁰ Specifically, the defendant Frederick Schultz was convicted of conspiracy to receive stolen Egyptian property that was transported in interstate and foreign commerce.²⁶¹

The stolen Egyptian antiquities required the court to analyze an Egyptian law that resembles Cambodia's 1996 Law. Egypt's Law 117 declares that all antiquities found in Egypt after 1983 are the property of the Egyptian government and criminalizes private possession of antiquities.²⁶² The defendant came into possession of the artifacts in the early 1990s and smuggled them out of Egypt.²⁶³ Whether the artifacts were "stolen" within the meaning of the NSPA rested on whether the antiquities were found in Egypt after 1983, retained by an individual, and subsequently removed from Egypt without the Egyptian government's consent.²⁶⁴ Admissible evidence included testimony from colleagues of the defendant as to their own understanding of Egyptian patrimony law, and particularly of what defendant's own employees knew of that law.²⁶⁵

This case will be most useful for arguing against possible objections to using Cambodian property laws to establish Cambodian ownership. One likely objection is that Cambodian laws are not ownership laws but are custom laws. Cambodia should cite this case to defeat that claim

²⁵⁹ United States v. Schultz, 333 F.3d 393, 409 (2d Cir. 2003)

²⁶⁰ Ibid., 395.

²⁶¹ Ibid.

²⁶² 77 Am. Jur. Proof of Facts 3d 259 48. (Originally published in 2004)

²⁶³ Ibid.

²⁶⁴ Ibid.

²⁶⁵ United States v. Schultz, 415.

since the Court found that the Egyptian law was an ownership law, not just an export restriction.²⁶⁶ The Court cited the Egyptian government's active enforcement of its ownership rights as proof of the intent of the law.²⁶⁷

U.S. v. Davis (2011)

The defendant in this case purchased the contested piece for its fair market value, unaware that it had recently been stolen from a French museum.²⁶⁸ When the piece's true provenance came to light 20 years later the United States Government brought a forfeiture action to return the property to France.²⁶⁹ This case is significant due to the defendant's innocence in acquiring stolen art. Notably, the court determined that an 'innocent owner' defense is invalid under forfeiture claims of this nature. As such, if Cambodia seeks repatriation of its looted antiquities through similar means, issues of good faith purchaser should be irrelevant as long as Cambodia can prove provenance of the statute.

Specifically the U.S. government's complaint alleged three separate forfeiture claims: one under 19 U.S.C. § 1595(a) and two under 18 U.S.C. § 981.²⁷⁰ In response, the defendant argued that under 19 U.S.C. § 1595(a), 'is stolen' referred to the contested property at the time of forfeiture, rather than the time it entered the U.S.²⁷¹ The Court found this argument unfounded and ruled that 'is stolen' refers to the property at the time it enters the United States. The defendant also argued that 'contrary to law' as required in 19 U.S.C. § 1595(a) only applies to

²⁶⁶ 77 Am. Jur. Proof of Facts 3d 259. (Originally published in 2004)

²⁶⁷ *United States v. Schultz*, 402.

²⁶⁸ *United States v. Davis*, 648 F.3d 84, 86 (2d Cir.2011)

²⁶⁹ *Ibid*, 86.

²⁷⁰ *Ibid*, 87.

²⁷¹ *Ibid*, 93.

violations of customs law.²⁷² The court disagreed and said ‘contrary to law’ includes violations of the NSPA.²⁷³

The defendant also asserted her status as an innocent owner claiming she was entitled to the continued possession of the piece.²⁷⁴ She backed her claim with 18 U.S.C. § 983(d), which provides “[a]n innocent owner's interest in property shall not be forfeited under any civil forfeiture statute.”²⁷⁵ The court ruled that 19 U.S.C. § 1595(a) does not provide for an innocent-owner defense, and CAFRA expressly excludes forfeiture actions brought under Title 19 from its innocent-owner provision.²⁷⁶ As such, *U.S. vs. Davis*, offers Cambodia significant precedent to defeat arguments that may be raised by innocent owners and museums when Cambodia asserts forfeiture claims under NSPA and the other relevant statutes.

U.S. v. One Tyrannosaurus Bataar Skeleton (2012)

The U.S. Government commenced this civil action for the forfeiture of a Tyrannosaurus bataar skeleton that was taken out of Mongolia without permission from the Mongolian state and in violation of Mongolian law. Since 1924 Mongolian has prohibited personal ownership and criminalized the export of items of cultural significance, firmly establishing that all paleontological findings are government property. The U.S. acknowledged Mongolian ownership law and repatriated the skeleton back to Mongolia using three different federal statutes 18 U.S.C.

²⁷² Ibid, 92.

²⁷³ Ibid.

²⁷⁴ Ibid, 87.

²⁷⁵ Ibid.

²⁷⁶ Ibid, 93.

§§ 545, 981(a)(1)(C); 19 U.S.C. § 1595a(c).²⁷⁷ The case was cited as one of the most important repatriation of fossils in recent years.²⁷⁸

Also of importance, the U.S. government charged the codefendant who cosigned the skeleton to a Dallas-based Heritage Auction, with one count of conspiracy to smuggle illegal goods into the United States. The defendant's argument of innocent ownership was not sustained and as part of his plea agreement he agreed to give up his ownership claim.²⁷⁹ Less than a year after the Mongolian government requested the U.S. to assist in stopping the sale of the skeleton, the skeleton was repatriated to Mongolia.²⁸⁰ Cambodia can use this case as precedent when asserting ownership claims of its looted goods. By comparing Cambodian ownership laws to the Mongolian laws used in this case, the court should declare Cambodia as the original and rightful owner of the good in question.

Limitations

Given the complexities of the field, this paper is limited in its application. The major limitations of the paper include the following:

Researchers' Backgrounds. The researchers are familiar with international relations, international human rights law and American jurisprudence. The researchers lacked specific knowledge of international art crime before engaging in the research. Furthermore, the researchers knew very little about Cambodian law, art, culture or its politics. Using the analytic

²⁷⁷ United States v. One Tyrannosaurus Bataar Skeleton, 12 CIV. 4760 PKC, 2012 WL 5834899 (S.D.N.Y. Nov. 14, 2012)

²⁷⁸ "ICE and Manhattan US Attorney's Office Return Tyrannosaurus Bataar Skeleton to Mongolia." *News Room*. U.S. Immigration and Customs Enforcement, 6 May 2013. Web. 11 Aug. 2014. <<http://www.ice.gov/news/releases/1305/130506newyork.htm>>.

²⁷⁹ Jacobs, Deborah. "Stolen Dinosaur, Bought For \$1 Million At New York Auction, Will Be Returned To Mongolia." *Forbes*. N.p., 6 May. 2013. Web. 4 Aug. 2014.

²⁸⁰ "ICE and Manhattan US Attorney's Office Return Tyrannosaurus Bataar Skeleton to Mongolia."

and research skills they honed in the pursuit of their Masters and Professional degrees, the researchers were able to develop a unique understanding of Cambodian looted art that highlights their knowledge of international relations and the United State's court system. As a result, the specifics of Cambodian antiquities and the complex interaction of the cultural heritage laws need to be expanded upon.

Time and Manpower. The research was conducted over the course of two months by two researchers. Given that the researchers were new to the subject, two months only allowed the researchers to skim the surface of this intricate field. The paper simply introduces the reader to the various political and legal concepts that may influence Cambodia's claims of repatriation. Based on their limited research, the researchers made conclusions regarding the intersection of these concepts but realize with deeper exploration these conclusions are subject to change. With more time and more researchers the concepts of this paper should be elaborated on.

Scope and Depth. As suggested above, the paper should only be looked at as a primer from which further research should stem. As a result of the paper presenting a broad understanding of international art theft, the paper lacks true depth in the topics it covers. It also fails to investigate some topics that are worthy of extensive research. More research is required on other countries' laws regarding cultural heritage, theft and repatriation, especially French law and other European nations that house Cambodian cultural objects. This paper presents basic summaries of concepts and laws that govern the field, highlights other concepts and laws to research, and suggests that all topics require more research.

Language. The researchers are only fluent in English. Notably, they lack Khmer and French language capabilities. This limitation impacted the research since they were relying on English translations of important Cambodian and French documents, laws, and agreements. As a

result, some key concepts may have been lost in translation. Also due to this limitation, the researchers were unable to research French laws, an important area that requires further research by a fluent French speaker.



File:Skanda khmer.jpg

Recommendations

While this paper is limited in its scope and its application, the strengths of this paper are its recommendations. The researchers hope that with the information above and the recommendations that follow, an interested actor will be able to develop an educated plan using the recommended mechanisms to combat antiquities trafficking and to advance claims advocating for the return of Cambodian looted art. As the Deputy Director General of the Cultural Heritage Department at the Cambodian Ministry of Culture affirmed, “To protect the cultural heritage is not the duty of one ministry, it's not the duty of one nation, it's not the duty of one group - but it's the duty for all people, for everybody.”²⁸¹ Echoing the Deputy Director’s sentiment, the recommendations that follow are geared at all invested actors and aim to get more people interested in preserving cultural heritage. Through further research, greater information sharing between interested actors, educational outreach to raise awareness of the trade, increased political coordination among the interested actors, and the development of unified responses to key issues of the trade, the researchers believe this illegal industry can be halted and the goods it traffics returned to their rightful owners.

Additional Research. As suggested above, the researchers recommend that further time and money should be devoted to extensive research on the topics presented in this paper. Research should be conducted on other countries’ cultural heritage laws. This research will suggest to Cambodian lawmakers ways they can improve their cultural heritage laws, strengthen their ownership claims. Further research on laws regarding penalties and the forfeiture of stolen goods of various countries that house Cambodian art laws will be useful to help Cambodia initiate repatriation claims through the court. Most pressing, given the influence France has had on Cambodia’s development and the presence of Cambodian cultural objects in France, the

²⁸¹ Carmichael, Robert.

researchers recommend for a French legal scholar to conduct research pertaining to French laws on stolen cultural objects. This research should parallel the information provided in this paper on United States law.

Other topics of relevance that should be explored on an academic level are the development and application of the Conventions regarding cultural heritage, various countries' exportation and custom laws, the role and duty of UNESCO in preserving and reclaiming cultural heritage, theories related to modern re-colonization, the development and structure of the Claims Conference and its applicability to Cambodian looted art, the details and significance of other cases where cultural objects were repatriated, and the construction of international norms.

ICOM produces 'Red Lists' and 'Missing Objects' lists that classify endangered categories of archaeological objects in the most vulnerable areas of the world in order to prevent them from being sold or illegally exported.²⁸² In 1993, ICOM published "100 Missing Objects: Looting in Angkor," a compendium of 100 pieces stolen or missing from Cambodia. The list prompted the return of 10 items, including a head that was found at the Met.²⁸³ Given the impact the Missing Objects list has had on returning looted antiquities and preventing the illegal exportation and sale of other Cambodian artifacts, it is advised that more research be conducted to create a revised Cambodian Missing Objects list.

Additional research is also required to improve basic components of the laws, databases and management of cultural heritage sites and objects. For instance, there is a great need for a conservator's assessment of cultural sites in need of urgent attention. This will help Cambodia focus its efforts on preserving cultural heritage objects that are still within Cambodia, while reducing the amount of smuggling from these culturally rich sites. Further research related to

²⁸² "ICOM Red Lists." *Works of Art*. Interpol, n.d. Web. 10 Aug. 2014. <<http://www.interpol.int/Crime-areas/Works-of-art/ICOM-Red-Lists>>.

²⁸³ Loy, Irwin and Khouth Sophak Chakrya. "Red List aims to combat art theft." *The Phnom Penh Post* 11 Feb. 2010.

disaster preparedness is also needed. Museum conservators, archaeologists and the government should conduct research on the elements that compose an effective and efficient plan to protect cultural objects and their sites in times of disasters. The importance of this plan is highlighted in the 1954 Hague Convention. Research should also be conducted on supplementary factors needing to be added to existing databases to make the cataloguing and application of the database more useful. Additionally, those who specialize in cultural heritage should work more closely with researchers who study civil wars, in order to recognize the links between the looting of cultural heritage and armed civil conflicts. Overall, Cambodian looted art is a complex field that requires a great deal more research. The researchers recommend that interested organizations hire professionals and/or trained interns who can provide expertise in art law and illicit trafficking issues.

Information Sharing. As more research is conducted, it is important that the information gathered is shared with interested actors in the field, as well as with lay people who are affected by the trade. To reach scholars, the researchers suggest the creation of an academic journal that compiles articles from all fields—law, political science, international affairs, anthropology, archaeology, museum management, etc.—that relate to the field of antiquities trafficking. The journal should also include key updates in the field and a list of sources to consult for specific issues that may arise in the field. In addition, an annual conference should be held that gathers academics, politicians, lawyers, museum curators, lawmakers, diplomats, NGO heads and other interested actors for a conference on the illicit trafficking of cultural property. This conference should be used to present updates in the field and to develop joint views on cultural heritage and repatriation.

The researchers believe that a newspaper or magazine Op-Ed would have extreme value in reaching a wider range of interested actors. The researchers suggest that the Op-Ed be written through a Cambodian's perspective to illustrate the importance of these cultural objects to the people. In 2003, Time Magazine's cover page read "Tomb raiders: Thieves and smugglers are stripping away Asia's precious artifacts and selling them to dealers in Europe and the U.S. inside a global black market."²⁸⁴ This shows that the phenomenon of looted art is widely recognized even by non-specialists as a growing reality and threat but more attention paid to its ongoing effects and damage to culture needs to be drawn.²⁸⁵ Additionally to reach laypeople, a documentary on the trade and its effects on Cambodia and its people should be produced. It is also important to conduct village outreach in order to educate people about Cambodian cultural heritage, its objects and its temples. If a film is produced, this film will be a great medium to illustrate the importance of Cambodian culture to the villagers. The goal should be to make Cambodian's aware of the trade and to encourage them to take part in securing Cambodia's national heritage objects. At these village outreaches, cards should be distributed with information on who to contact if they witness a cultural object being moved. Through village outreaches the hope will be to reduce the number of local dealers and to show the rest of the world the importance Cambodian cultural objects have in Cambodian culture.

Political Coordination. It is imperative to create an umbrella institution that oversees and governs art theft. The lack of large-scale international cooperation mechanisms is the greatest challenge to policing the trade and for the advocating of the return of looted goods. All countries affected and involved in the trade need to have a role in the organization. Members of the organization should include government leaders such as the heads of the cultural department,

²⁸⁴ Hoffman, 71.

²⁸⁵ Hoffman, 71.

customs and tourism, legislatures, museum curators, researchers, customs and police enforcement agencies and cultural NGOs.

Most importantly, those countries that are actively trying to recover cultural objects need to form an international network, not only for information sharing purposes mentioned above, but to help create norms governing cultural object repatriation. Establishing a unified response that effectively communicates to possessor countries what items are of specific interest for repatriation is extremely important given the current opposition requesting parties face when asserting repatriation claims. Museums, auction houses, and possessor countries in general fear that facilitating the return of one item will set precedent for the return of all foreign cultural objects, depleting their inventory of world cultural objects. As such, it is important for requesting countries to develop a uniformed repatriation policy that highlights the reasons for the request of the specific items. In order for this norm to be effective, the requesting countries need to consider the desires of the museums, auction houses, and possessing countries. The norm established should mitigate the worry that the repatriation of one cultural object does not mean the repatriation of all cultural objects. It should also highlight that by repatriating cultural objects of greatest importance to the originating country does not mean this item is removed from the international art scene. It just grants the originating country real property rights over the object and they will decide how their cultural object should be shared with the world. The repatriation of looted objects does not impede culture sharing but promotes and encourages the legal sharing of cultural objects among countries.

Public Partnerships. An agreement between the Cambodian government and NGOs would allow greater control over both movable and immovable cultural heritage. Once created and defined, this partnership, strengthening over time, should assume some of the cultural

heritage protection duties currently performed by APSARA, UNESCO, and the other international organizations. This would allow for greater Cambodian control over its own archeological past, and the future of its cultural heritage. Such a partnership could be forged through the possibility of increased government revenue, as well as fulfilling the mission statements of NGOs or private organizations. Cambodian control over its cultural heritage should not end with repatriation; the Cambodian government should have a voice regarding how Cambodian culture best benefits the country.

As an initial step, an economist, a museum administration specialist, and an archeologist should write a report on the impacts of greater Cambodian control over movable and immovable cultural heritage. This study should investigate the economic effects of Cambodian control over cultural heritage objects, specifically identifying the likely increase in government revenue as a result. The report should be presented to the Cambodian government, UNESCO, EFEO, and any other interested parties to start a conversation on how Cambodia can generate more economic opportunities through culture.

Other Advocacy Points. There are additional programs, laws, and mechanisms that should be established to prevent the continued trafficking of cultural objects and to assist in the repatriation of looted goods. Specifically in regards to Cambodian law, as explained in detail in an unpublished student report, the Cambodian government should enforce in full and update its 1996 Law on the Protection of Cultural Heritage.²⁸⁶ While UNESCO may currently control the inventory process, the Cambodian government should work with UNESCO to make sure this list is comprehensive and readily available. The importance of an accurate and current inventory is vast. A comprehensive inventory significantly increases the likelihood of success of the Cambodian government's repatriation requests through legal means. The UNESCO Convention,

²⁸⁶ Sloniewski, Jan, and Pietro Bianchi.

Articles 3 and 7, and national laws derived from these articles declare that if Cambodia is requesting repatriation through these provisions the objects need to be inventoried. While UNIDROIT does not require the cultural object to be designated, this inventory project provides the Cambodian government with much more than the actual repatriation of the cultural object. By engaging in an extensive inventory project, the government will be able to assert more control over its cultural objects and sites, which will have a significant economic benefit for the government and its people. Thus the Cambodian government needs to enforce the 1996 provision of the establishment of a registry of cultural property and update the law.

When Cambodia looks to update its cultural heritage law, they should look at Portugal's cultural heritage law for guidance. Portuguese law no. 13/85 extends protections to immovable objects and entails several protective measures for cultural property like limitations on owner's disposal of the object, cataloguing of the object, state's preemptive right to purchase and limits to and in some cases prohibition of export.²⁸⁷ Another provision, which represents Portugal's openness toward foreign law and international solidarity against the illicit trade, states that any cultural property transaction in Portugal that violates the exporting country's legislation will be void.²⁸⁸ The reformed law should include different systems for classification of immoveable and moveable property, along with a grading system of classified immoveable property. This classification along with a grading system will relieve authorities of some of their obligations so they can better focus on the important tasks at hand.

Concerning museums, legislation should be drafted that better regulates museums and holds them accountable for the works they house. Countries should develop a national collections management policy that covers acquisition, documentation, management,

²⁸⁷ Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996, Article 2, 3, 15, 16, 19, 20, 27, 28, 31, 33-35

²⁸⁸ Law NS/RKM/0196/26 on the Protection of Cultural Heritage, January 25, 1996, Article 31, 2 and 3.

preservation and disposal of cultural property.²⁸⁹ Museums should be required to track the provenance of acquired goods and to explain gaps in the provenance. All large museums should have a full-time provenance expert, like the MFA.²⁹⁰ The acquisition of art depends heavily upon the ethics and self-restraint of individual curators and museums. Thus, acquisition procedures vary greatly among countries and uniform laws among countries may help decrease these discrepancies. It is also important for governments to conduct regular surveys of museums to assess the conditions museums have in place for the safekeeping of the objects and the preservation of the objects. Museums should have strategic plans in place that ensure their resources are used to maximize cultural sharing and national heritage.

Training of heritage police, custom officials and local authorities should also be a top priority. Law enforcement officers stationed at the borders are in the best position to stop the flow of illegal art. Through tighter regulation, these officials will be able to curb illegal transactions. To this end, it is advised that something similar to the Kimberly Process be created for cultural art. The Kimberly Process, through the establishment of requirements and self-regulation, reduced the exportation of conflict diamonds. Based on the current export control measures for cultural objects, a separate regime may not be necessary. The Kimberley Process requirements and self-regulations may be able to be added to the current system. Not only would this assist in reducing the power of criminal trafficking networks and other unsavory agents, but it would help strengthen museums' provenance claims over the artifacts they already possess. Further research should be conducted on the current control mechanisms to decide if a separate regime is necessary but regardless the enhancement of current export controls is necessary.

²⁸⁹ Please see 'Running a Museum: A practical Handbook—Collections Management for guidance on drafting a Collections management policy' for more guidance on drafting museum legislation

²⁹⁰ Seiff, Abby.