

# Getting Governments to Cooperate against Looting: Insights from the American and British Experience

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## Abstract

**W**hy would countries that had long resisted the efforts against archaeological plunder reverse course and join these efforts? The article solves this puzzle by examining the American and British decisions to join the 1970 UNESCO Convention. Initially skeptical of UNESCO's endeavors, the United States and Britain changed their policies and came to support the international efforts in the early 1970s and early 2000s, respectively. I argue that the two countries' policy shifts had similar causes. First, archaeologists' advocacy made policymakers aware of the damage caused by the illicit antiquities trade and the art world's complicity. Second, public scandals exposed unethical behavior in the American and British art markets and demonstrated the need for regulation. Third, the U.S. and British governments established domestic consensus in favor of regulation through advisory panels that included the major stakeholders: archaeologists, dealers, and museums. Yet because of divergent bureaucratic attitudes, the U.S. government has ultimately been more vigorous in its efforts against the illicit antiquities trade than has the British government.

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**Keywords:** illicit antiquities, United States, Britain, 1970 UNESCO Convention, scandals, advisory panels.

## Introduction

In 1960, Mexico and Peru put the illicit antiquities trade on UNESCO's agenda and appealed for an international convention to address the problem.<sup>1</sup> This marked the beginning of an intense international controversy. Archaeologically rich countries, mostly in the developing world, have attempted to stem the plunder of their archaeological sites through stringent control of the antiquities trade. By contrast, rich market countries have sought to keep that trade free, in order to enjoy its cultural and economic benefits.<sup>2</sup> This divergence of interests has hindered the UNESCO-led regulatory efforts against plunder, as manifested in the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereafter the 1970 UNESCO Convention). In the view of market countries, this convention was highly undesirable: it constrained art markets and imposed a bureaucratic burden – to the benefit of foreign countries that failed to protect their archaeological heritage.<sup>3</sup> Indeed, market countries argued that the convention unjustifiably shifted the responsibility for suppressing the illicit antiquities trade – a responsibility that, in their opinion, rested primarily with the source countries.

And yet, market countries ultimately reversed their resistance to the UNESCO Convention and joined the efforts against looting. The United States was skeptical of UNESCO's endeavors throughout the 1960s, doubting the necessity and practicality of an international agreement. Soon after the 1970 adoption of the convention, however, the United States began the process of ratification and implementation. The British government maintained its opposition much longer. Only in 2002 did Britain accede to the convention which it had previously seen as “unrealistic and totally disproportionate to the end ... which it is designed to achieve.”<sup>4</sup>

The decisions of the United States and Britain to join the UNESCO Convention were critical turning points in the international efforts against the looting of antiquities. Given their status as major markets, the two countries' endorsement of the convention was of practical and symbolic importance. It signaled their acknowledgement that antiquities markets bore certain responsibility for looting and should contribute

to its prevention. Although the two decisions were far apart in temporal terms – separated by some three decades – they had much in common in terms of their underlying causes. Similar influences and circumstances brought the United States and Britain to reverse their liberal approach to the antiquities trade and to support UNESCO's regulatory efforts. By identifying and highlighting these similarities, this article solves an intriguing puzzle: Why would countries that had long resisted the efforts against looting choose to join these efforts? This question is of academic interest as well as practical importance. By understanding how longstanding skepticism of UNESCO's efforts turned into a willingness to cooperate, we may be able to facilitate other initiatives for the protection of the cultural heritage.

I identify three key commonalities in the American and British experience. First, advocacy by archaeologists raised policymakers' awareness of the illicit antiquities trade: the damage it caused and the art world's involvement. Second, highly publicized scandals revealed unethical behavior in the American and British art markets. These scandals generated public concern and convinced policymakers that government regulation was necessary. Third, both the U.S. and British governments established advisory panels in order to forge a consensus among all stakeholders. Most importantly, these panels allowed the two governments to obtain the dealers' approval for the regulatory measures – an approval that was deemed essential. This article examines these similarities in order, and concludes with an important distinction: divergent bureaucratic attitudes explain why the U.S. government has ultimately been more vigorous in its efforts against the illicit antiquities trade than has the British government.

## The Beginning: American and British Resistance to UNESCO's Efforts

During the interwar period, American and British opposition thwarted the Leagues of Nations' effort to regulate the movement of cultural objects – an effort inspired by the destruction of such objects in World War I and an increasing illicit trade.<sup>5</sup> The subject reappeared on the international agenda in the 1960s. Booming demand and the opening up of previously inaccessible areas resulted in unprecedented levels of looting, and developing countries asked UNESCO to fashion a response. Once again, the United States and Britain expressed serious concerns and reservations about the international protection of cultural objects. Specifically, the two countries were reluctant to establish import controls that would compensate for source countries' failure to enforce their export controls. In 1963, UNESCO proposed a recommendation stipulating that “[a]ll imports of cultural property from

1 UNESCO Doc. 11 C/DR/186, December 1, 1960.

2 For a scholarly expression of the contrasting approaches to the movement of antiquities, see Merryman 1986 and Gerstenblith 2007.

3 Market countries cited a variety of reasons for their reluctance to ratify the 1970 UNESCO Convention. The Netherlands, for example, argued that import “checks by customs officials have appeared impractical, if not impracticable.” UNESCO Doc. 22 C/93, August 30, 1983, 3. West Germany argued that the convention “may create considerable uncertainty for all persons concerned in trading in works of art.” Ibid. Switzerland believed that the convention entailed a “complicated and costly administrative apparatus.” UNESCO Doc. 20 C/84, September 15, 1978, 42.

4 Quoted in UK House of Commons 2000, 1:20–21.

5 Jote 1994, 193; O'Keefe 2000, 9–10, 14.

another State should be subject to control.”<sup>6</sup> Britain responded with the assertion that “[t]he burden of control should not be shifted to the importing countries.”<sup>7</sup> Similarly, the United States criticized the draft recommendation as “unworkable” and doubted “the practicability of controlling illicit traffic in cultural property at the international level.” The U.S. position was “that the problem of illicit traffic of cultural property cannot best be solved through an international agreement.” Rather, it was the responsibility of source countries “to control the export from their territory of materials which they believe should be retained.”<sup>8</sup> Despite these objections, the 1964 recommendation prohibited the import of cultural property, unless cleared from any restrictions imposed by the exporting state.<sup>9</sup>

The next step was to establish a legally binding agreement. American and British non-enthusiasm greeted the draft convention put forth by UNESCO in 1969. Britain indicated that it “could not adhere to a Convention on the lines of the present draft, which conflicts at so many points with the well-established principles on which the subject is dealt with in this country.”<sup>10</sup> The United States suggested that UNESCO’s efforts should not only aim to suppress the illicit trade, but also promote legitimate “international movement, exhibit, and study of artifacts and art objects of cultural importance.” In the American view, an obligation on importing countries to enforce foreign export-controls undermined the legitimate trade and imposed a heavy administrative burden. Given the difficulties presented by the draft convention, the United States concluded that “consideration should be given to alternative arrangements for international co-operation.”<sup>11</sup>

Throughout the 1960s, the United States and Britain were skeptical of UNESCO’s efforts against looting. From that point, however, their trajectories diverged. An American delegation attended the April 1970 meeting of governmental experts that negotiated the final text of the UNESCO Convention. The United States played a key role in the negotiations and soon thereafter launched the process of ratification and implementation. By contrast, Britain declined to attend the 1970 negotiations. In the three decades that followed, the British government kept insisting that the UNESCO Convention was onerous and impractical and that source countries should exercise the responsibility for controlling antiquities.<sup>12</sup> As late as February 2000, the government

announced that it would not join the convention “because significant practical difficulties remain in implementing its provisions into UK law.”<sup>13</sup> Yet in August 2002, Britain joined the convention it had long rejected.

As described above, both the United States and Britain initially judged the UNESCO Convention to be inconsistent with their interests. The two countries believed that the convention would harm their art markets and impose a heavy bureaucratic burden, while yielding little benefit in return. What, then, led the U.S. and British governments to reverse course in the early 1970s and early 2000s, respectively? Three key factors triggered and facilitated the change of policy: the advocacy of archaeologists; public scandals; and advisory panels that brought together the major stakeholders and forged a compromise.

### Archaeologists’ Advocacy

American and British archaeologists played a major role in bringing their governments to join the international efforts against the illicit antiquities trade. The archaeologists raised awareness of the problem of plunder and the complicity of art markets. They called for ratification of the UNESCO Convention and imposition of controls on antiquities.

#### *United States*

The initial American interest in the problem of looted antiquities can be attributed to a single archaeologist: Clemency Coggins. At the time a doctoral student of pre-Columbian art and archaeology at Harvard University, Coggins published in 1969 an article entitled “Illicit Traffic of Pre-Columbian Antiquities” in *Art Journal*.<sup>14</sup> The article documented the illicit removal and export of stelae from archaeological sites in Guatemala and Mexico. Coggins explained how looters had been cutting the large stones into small pieces which were then sold separately. While not the first account of archaeological plunder, the article was groundbreaking in the amount of attention it generated in policy circles. This political impact, however, was unintended. Coggins’s goal was to make museums aware of the dubious source of the antiquities they had been acquiring.<sup>15</sup> Why, then, did the article resonate so strongly with policymakers? The key to the article’s policy impact was a two-page fine-print list of specific looted items that came to rest in the collections of major American museums. The detailed information dramatized the problem

6 UNESCO/CUA/123, July 15, 1963, Annex, 14.

7 UNESCO/CUA/123 Add. I, March 21, 1964, Annex I, 22.

8 *Ibid.*, 23–24.

9 Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property, 1964, Art. II(4).

10 UNESCO Doc. SHC/MD/5 Add. 2, April 22, 1970, 3.

11 UNESCO Doc. SHC/MD/5, February 27, 1970, Annex I, 21–23.

12 UNESCO Doc. 20 C/84, September 15, 1978, 43–46; Office of Arts

and Libraries, “1970 UNESCO Convention concerning the Illicit Import, Export and Transfer of Ownership of Cultural Property,” n.d.

13 Hansard HC, vol. 344 col. 222W (February 9, 2000).

14 Coggins 1969.

15 Author’s Interview with Clemency Coggins, Boston, June 2008. At the time of writing, Coggins is a professor of archaeology and art history at Boston University.

and cast the breaking-into-pieces of monuments in tangible terms that were difficult to dismiss. Most importantly, by identifying museums as the beneficiaries of looting, Coggins ended their pretense of noninvolvement with the illicit antiquities trade. Respectable American institutions, it now became evident, were directly tied to the destruction and theft of archaeology abroad.<sup>16</sup>

In additional publications in the early 1970s, Coggins sought to reach a broad audience, outside the scholarly and museum communities. The establishment of the UNESCO Convention in 1970 made looted antiquities a policy issue, and educating policymakers was imperative. In articles published in *Smithsonian* and *Science*, Coggins repeated the charge against the U.S. art world in stronger terms, arguing that archaeological “plunder has been financed by the international art market, by collectors and by most museums.” She explained the motivations of the actors involved: the looter who is desperate for money to buy food; the art dealer who “has tempted the digger to destroy a part of his own past in order to offer” antiquities for sale, while at the same time enticing collectors to buy those antiquities and presenting them as a wise investment; collectors who see antiquities as beautiful objects or as manifestations of their own wealth; and American museums, whose educational aspirations resulted in “omnivorous” behavior and the acquisition of looted material. Coggins argued that a looted antiquity is devoid of historical meaning and can only be “beautiful but dumb.”<sup>17</sup>

Other archaeologists and archaeological associations, concerned about the plunder of antiquities and the role played by the U.S. art market, joined Coggins in educating policymakers about the problem and demanding American action against it. In December 1970, a month after UNESCO adopted the convention, the Archaeological Institute of America (AIA) issued a resolution expressing wholehearted support for that agreement and urging its earliest possible ratification by the United States; the Society for American Archaeology expressed similar support in 1971.<sup>18</sup> The Senate gave its advice and consent to ratification in August 1972, yet the process of enacting legislation to implement the convention stalled. That legislation was the subject of a fierce political battle throughout the 1970s and early 1980s, as antiquities

dealers and art museums tried to weaken the legislation or altogether prevent its passage.<sup>19</sup> The archaeological community sought to counter these pressures and convince Congress to implement the convention. Having witnessed archaeological destruction in Turkey and Iran, archaeologist Oscar Muscarella argued before Congress that the art market’s demand is the culprit: “numerous antiquities, the great majority, reach the West because of the conscious looting both encouraged and financed by dealers and their agents in the field. Every peasant in the world knows that dealers eagerly purchase antiquities, no matter how they are acquired, and they work vigorously to supply the never ending demand.” Muscarella maintained that the United States should bear some of the responsibility for protecting mankind’s archaeological heritage: “It is our ancient history, our heritage, we are discussing, and not merely the contents of tombs and mounds located in some far off land.”<sup>20</sup> In their statements before Congress and in meetings with and letters to legislators, the archaeologists argued that the United States should fulfill its responsibility by implementing the UNESCO Convention: “an important first step toward redressing a cultural and economic drain the United States has long imposed on many of these countries.”<sup>21</sup> The archaeologists further argued that implementation of the UNESCO Convention would curb the loss of historical knowledge that was looting’s result – looting motivated by market demand for antiquities.<sup>22</sup> As the legislative process slowly progressed, the archaeologists protested the delays as well as the revisions of the implementing legislation to accommodate the dealers’ demands. They also sought to refute the claims that the dealers had made in opposition of the legislation. In particular, the archaeologists countered the argument that the United States should only restrict import of antiquities in concert with other market countries, but not alone. The archaeologists insisted that the United States should act unilaterally, assert leadership, and set an example for additional countries to follow.<sup>23</sup>

The archaeologists’ continued pressure contributed to the successful, if belated, completion of the legislative process: the Convention on Cultural Property Implementation Act (CPIA) was signed into law in January 1983, allowing the United States to officially become a party to the UNESCO Convention. As I discuss below, the American participation in the convention was not only the product of the archaeologists’ advocacy efforts; additional influences contributed to the United States’ decision to join UNESCO’s efforts. Yet the

16 Bator 1983, 2–4. At the insistence of *Art Journal*, Coggins’s original article did not name the museums, instead referring to them as “American museums.” Coggins identified the museums in a list published in 1970. See that list in Meyer 1973, 213–218.

17 Coggins 1970, 10–14; Coggins 1972, 264.

18 Resolution adopted by the Archaeological Institute of America, December 30, 1970, reprinted in DuBoff 1975, 569; Resolution 2 of the Society for American Archaeology, adopted at the 1971 annual business meeting, *ibid.*, 571–572. In December 1973 the AIA issued a resolution calling on museums to adhere to the UNESCO Convention in determining the appropriateness of acquisitions. See the text in <http://www.archaeological.org/news/advocacy/101> (accessed July 30, 2012).

19 See, for example, U.S. House 1976, 17–23 (the American Association of Dealers in Ancient, Oriental, and Primitive Art); U.S. House 1979, 68–69 (Minneapolis Institute of Arts).

20 U.S. Senate 1978, 68–69. At the time, Muscarella was chairman of the AIA’s Committee on Professional Responsibilities.

21 U.S. House 1976, 53–54.

22 U.S. House 1976, 65; U.S. Senate 1978, 60–61, 68–69.

23 U.S. Senate 1978, 72, 75.

archaeologists did play a major role in placing the problem of looting on the national agenda. They educated policymakers about the consequences of archaeological plunder, the art market's complicity, and the necessity of a U.S. response. Their advocacy in favor of the UNESCO Convention was an important influence on the American decision to block the import of looted antiquities. The CPIA authorizes the establishment of import restrictions through bilateral agreements or on an emergency basis; to be imported into the United States, archaeological material that is subject to restrictions must be accompanied by documentation certifying the legality of export.

### *Britain*

Whereas archaeological plunder became a political issue in the United States in the early 1970s, the same occurred in Britain only three decades later. This had to do with the fact that Latin America was the main target of looting early on. As the main market for pre-Columbian antiquities, the United States had greater responsibility for the looting than Britain, where pre-Columbian archaeology had smaller presence. Yet the expanding scale and geographical scope of archaeological plunder in the 1990s motivated Britain's archaeologists to take political action. Like their American counterparts, they had a key role in placing the illicit antiquities trade on the national agenda and urging participation in UNESCO's efforts. Colin Renfrew, a prominent archaeologist and a member of the House of Lords, had long rebuked the London art market as a center of trade in looted antiquities; he also criticized the British government, denouncing the freedom to import looted material as a "thieves' kitchen" and calling the British rejection of the UNESCO Convention "a scandal."<sup>24</sup> Over the years, Renfrew repeatedly brought up the issue in the House of Lords by posing questions, which the government had to answer.<sup>25</sup> David Gill and Christopher Chippindale also raised awareness of the illicit antiquities trade. In seminal articles published in the *American Journal of Archaeology*, they documented the deleterious consequences of the looting fueled by antiquities collecting: destruction of the archaeological context and loss of historical knowledge.<sup>26</sup> These publications and others<sup>27</sup> generated public awareness and concern; so did the activities of the Illicit Antiquities Research Centre.

The Centre was founded in 1997 under Renfrew's directorship at the University of Cambridge's McDonald

Institute for Archaeological Research. Through lectures, conferences, exhibitions, and publications, the Centre worked to "raise public awareness of the problems caused by this trade [in looted antiquities] and seek appropriate national and international legislation ... to place restraint upon it."<sup>28</sup> In 2000, the Centre released its most influential publication: a report entitled *Stealing History: The Illicit Trade in Cultural Material*. Commissioned by the UK's Museums Association, *Stealing History* analyzed the causes and consequences of the illicit trade in antiquities as well as the involvement of the British art market. The report suggested that the vast majority of antiquities sold in London were unprovenanced and that these antiquities were likely looted. The report also contained specific policy recommendations for museums and for the government. Importantly, *Stealing History* urged the British government to ratify the 1970 UNESCO Convention and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (hereafter the UNIDROIT Convention). Ratification of the two conventions, the report suggested, would "prevent the United Kingdom [from] being used as a market place for material which was, in the first instance, obtained illegally." The report repudiated the argument that the ratification of the UNESCO Convention would harm the London art market. Rather, it was argued that elimination of the illicit trade may, in fact, improve the market's reputation. "By failing to ratify," the authors warned, "it can be argued that the United Kingdom condones criminal behaviour abroad."<sup>29</sup>

Like Clemency Coggins's article in *Art Journal* three decades earlier, *Stealing History* had a policy impact. Both publications brought attention to the illicit antiquities trade and raised awareness of looting outside the archaeological community. Both publications linked the plunder of antiquities in developing countries to art markets in rich countries and argued that the United States and Britain should do their part to address the problem. *Stealing History's* comprehensiveness made it a useful source of data and specific recommendations that policymakers could draw on. The Illicit Trade Advisory Panel, discussed below, indeed made use of this report. Yet in order to understand why archaeologists' publications managed to achieve a policy impact, one has to take into account the public atmosphere that grew increasingly concerned of the art market's practices. Policymakers were open to persuasion by archaeologists following a series of scandals that exposed the unethical behavior of the art community.

### **Public Scandals**

In both the United States and Britain, highly publicized

24 UK House of Commons 2000, 2:28–29, 33.

25 Author's interview with Colin Renfrew, professor of archaeology at the University of Cambridge and a member of the House of Lords, Cambridge, UK, June 2007.

26 Gill and Chippindale 1993; Chippindale and Gill 2000.

27 See, for example, a 1995 volume edited by Kathryn Walker Tubb of the Institute of Archaeology at University College London, *Antiquities: Trade or Betrayed: Legal, Ethical and Conservation Issues*.

28 Website of the Illicit Antiquities Research Centre, <http://www.mcdonald.cam.ac.uk/projects/iarc/info/us.htm> (accessed August 12, 2012). The Centre closed in 2007.

29 Brodie, Doole, and Watson 2000, 26–30, 38, 42.

scandals revealed the involvement of esteemed institutions and individuals with looted objects. The embarrassing revelations made policymakers realize that absence of art-market regulation had detrimental consequences and that a policy change was necessary.

### *United States*

Several scandals in the late 1960s and early 1970s revealed that American museums had been acquiring plundered material. Two of the most notable affairs involved the Metropolitan Museum of Art. In the first case, the Metropolitan acted responsibly. In 1968, the museum was offered the façade of a Mayan temple plundered from Mexico. Parts of the façade had arrived at the museum, but the museum ultimately declined the acquisition, and the façade returned to Mexico.<sup>30</sup> But only a few years later, in 1972, the Metropolitan chose to acquire an object that turned out to be looted: a Greek vase known as the Euphronios Krater. The museum was vague about the krater's origin. The official story was that the vase had been in a private family collection since circa World War I and that the owner's identity had to remain confidential. Appearing on NBC's *Today* show in November 1972, the director of the Metropolitan, Thomas Hoving, made claims to that effect. Yet three months later the *New York Times* published a different account, suggesting that the krater had been robbed from a tomb in Italy in 1971. The Italian authorities made a similar charge. Their investigation revealed that the robbed vase had passed through several convicted dealers before it was sold to the Metropolitan. The museum, however, vigorously defended the acquisition and rejected the tomb-robbing story. Only in 2008 did the Metropolitan return the vase to Italy.<sup>31</sup>

Additional scandals brought public attention to the unethical conduct of the U.S. art market. In several cases, antiquities illegally removed from Turkey turned up in American museums, prompting angry responses of the Turkish government and demands for return. These included Byzantine silver objects acquired by Dumbarton Oaks in 1963 (the "Sion Treasure"); a collection of Lydian objects that the Metropolitan bought between 1966 and 1968 (the "Lydian Hoard"); and pieces of gold jewelry bought by Boston's Museum of Fine Arts (MFA) for its 1970 centenary celebration.<sup>32</sup> Another acquisition for that celebration triggered

30 Freidel 2000; Meyer 1973, 22–26.

31 Bator 1983, 4–5 footnote 12; Meyer 1973, 86–100, 302, 305; Elisabetta Povledo, "Ancient Vase Comes Home to a Hero's Welcome," *New York Times*, January 19, 2008. On American museums' return of antiquities see also Gill and Chippindale 2006 and 2007.

32 Meyer 1973, 56–69; Waxman 2008, chap. 6. Between 1987 and 1993, The Lydian Hoard was at the center of a legal battle between Turkey and the Metropolitan. In 1993, the Metropolitan returned the objects to Turkey after admitting that museum staff had acquired the objects knowing them to be looted. Yet the rumors about the treasure's purchase by the museum began to swirl in the early 1970s.

a major scandal: the 1969 purchase of an unknown portrait by Raphael. The MFA argued that the painting had been bought in Switzerland from an old European collection, yet Italian authorities revealed an altogether different story. The museum apparently purchased the painting in Genoa; it was smuggled from Italy; and the seller was a criminally convicted dealer who had been barred from dealing art. Furthermore, U.S. Customs found that the museum had not declared the painting when bringing it to the United States. The portrait was seized by customs and returned to Italy.<sup>33</sup>

Several other incidents deserve mention.

- In 1965 it was revealed that stelae stolen from Guatemala were exhibited at the Brooklyn Museum and the Museum of Primitive Art. After prolonged negotiations, the Brooklyn Museum returned the stela, and the Primitive Art Museum kept the stela as a long-term loan.
- The Afo-A-Kom – a sacred wooden statue stolen from Cameroon in 1966 – appeared at a 1973 Dartmouth College exhibition. The College had received the object on loan from a New York art dealer who had obtained it from a Swiss dealer. Cameroon demanded the statue's return, and under pressure from the media and the State Department it was indeed returned shortly after its discovery at Dartmouth.
- In 1972, California collector Norton Simon bought a statue of dancing Shiva – the Sivapuram Nataraja – that had been stolen from a temple in India. The Indian government demanded the return of the object and pressured the Metropolitan to cancel an exhibition featuring it. A lawsuit filed by India was settled out of court.<sup>34</sup>

The various scandals received wide coverage in the American and international press. They led to further journalistic inquiries into the U.S. art market and its involvement with looted antiquities. In 1973 the *New York Times* published a series of articles by Robert Reinhold on the plunder of Mayan archaeology.<sup>35</sup> That same year, Karl Meyer exposed the American art market's unethical norms in his book *The Plundered Past*. "[N]o one who makes even a cursory inquiry," Meyer argued, "can doubt that the great majority of antiquities offered for sale is indeed smuggled goods."<sup>36</sup>

33 Bator 1983, 4 fn 11; Meyer 1973, 102–106.

34 Bator 1983, 5 fn 13–14, 7; Meyer 1973, 26–27, 144–145; "The Lost Totem," *Time*, November 5, 1973.

35 "Looters Impede Scholars Studying Maya Mystery," *New York Times*, March 26, 1973; "Traffic in Looted Maya Art is Diverse and Profitable," *New York Times*, March 27, 1973; "Elusive Maya Glyphs Yielding to Modern Technique," *New York Times*, March 28, 1973.

36 Meyer 1973, 123–124.

What was the impact of the media scandals and investigations? One response was within the museum community. Several museums – especially university museums – voluntarily adopted ethical acquisition policies. In April 1970, shortly before the UNESCO Convention negotiations, the University of Pennsylvania Museum announced it would only purchase antiquities accompanied by a pedigree, including information about the place of origin and the legality of export. In 1971, Harvard University prohibited the acquisition by its museums of illegally exported objects. Several other museums adopted similar policies.<sup>37</sup> These self-regulatory measures were intended to serve as precautions and as means to preserve the public trust in museums amid the scandals.

Yet the scandals heavily damaged museums' image and reputation and shook the public's confidence in them. Heretofore, museums were perceived as respectable institutions committed to high moral standards. The scandals, however, revealed a reality in which museums were complicit in crime and in the destruction of the cultural heritage. That reality shocked and embarrassed policymakers, making them sympathetic to the demands of archaeologists and foreign countries that the United States stop the import of looted antiquities. This was the case with Mark Feldman, the official most responsible for the U.S. policy shift. Then assistant legal adviser for inter-American affairs at the State Department, Feldman was introduced to the subject in 1969. A diplomatic note from Mexico requested that the United States assist in protecting Mexico's archaeological heritage, in exchange for Mexico's cooperation in the return of stolen American cars. Influenced by the scandals and by the strong evidence that archaeologists provided, Feldman became convinced that the U.S. art market was a part of the problem: the acquisition of plundered antiquities provided an incentive for the looting of archaeological sites abroad. He therefore recommended that the United States reverse its traditional policies of free trade in antiquities and non-enforcement of foreign legislation. Instead, Feldman suggested that measures be taken to control the antiquities trade – measures that would help foreign countries to prevent the illegal excavation and export of their antiquities.<sup>38</sup> The State Department accepted this position, as did the Justice and Treasury Departments. The new position recognized that the responsibility for the protection

of archaeology is to be shared between source countries and market countries. In 1970, Feldman expressed this view in his statement before the committee of governmental experts that negotiated the final text of the UNESCO Convention:

The cultural products of the civilization of man constitute an important element both of the national patrimony of the countries of origin and of the common heritage of all mankind. Thus, no country can be indifferent to clandestine activities that ravage the cultural heritage of another country. United States representatives have emphasized the importance of effective measures of prevention and control being taken by each country to safeguard its own cultural heritage, as no international approach can hope to be effective if determined local efforts are not made. The critical effort must be made at home. However, we recognize that there are limitations as to what any one country can do to meet this problem. We also recognize that the international art market does provide an inducement for exports that may aggravate the situation in certain countries. For these reasons the United States Government believes that measures of international cooperation should be taken to support the separate efforts of states to help create conditions in which irreplaceable cultural assets can be preserved for the benefit of the future generations of all countries.<sup>39</sup>

The various scandals, in fact, had a dual effect. By raising awareness of the problem of looted antiquities and exposing the questionable norms prevailing in the art market, the scandals convinced policymakers that “the U.S. art market is a major consumer of pillaged treasures;”<sup>40</sup> hence, “the United States has a responsibility to put its own house in order to the extent that the American art market is a major, if not the single most important, incentive for this despoliation.”<sup>41</sup> Since the market, left to its own devices, was prone to unethical conduct, the U.S. government had to take regulatory action and prevent the import of looted antiquities. Beyond their impact on policymakers, however, the scandals moderated the art community's resistance to regulation. In principle, antiquities dealers would have liked to maintain the traditional working of the art market based on the principle of free trade and without government control. Art museums held a similar preference.<sup>42</sup> Yet amid the scandals and the growing public concern, the dealers realized that the status quo was no longer sustainable and that the introduction of regulation

37 Among them were the Field Museum of Natural History in Chicago, the Brooklyn Museum, the University of California Museum in Berkeley, the Arizona State Museum, and the Smithsonian Institution.

38 Author's interview with Mark Feldman, Washington, D.C., May 2008. Throughout the Congressional debate over the UNESCO Convention, Feldman was the U.S. government's chief proponent of the implementing legislation, which he had drafted. He argued that the United States was morally obligated to act against archaeological plunder and could not continue to provide a market for looted antiquities. See, for example, U.S. House 1979, 3–8; U.S. Senate 1978, 16–19, 26–29.

39 Reprinted in Feldman and Bettauer 1970, 41.

40 U.S. Senate 1978, 19.

41 DuBoff et al. 1976, 115.

42 Author's interview with lawyer James Fitzpatrick, Washington, D.C., May 2008. Fitzpatrick has represented antiquities dealers since the mid-1970s.

was inevitable. In this changing environment, they could not remain adamantly opposed to any regulatory measure: it was in their interest to act cooperatively and strike a compromise. By adopting a conciliatory approach and working toward a solution, the dealers reasoned, it may be possible to minimize the U.S. government's interference with the antiquities trade. Such an approach, it was hoped, would also improve the art world's public image that had been tarnished by the scandals. As I discuss below, the dealers' pragmatism – while temporary – greatly facilitated the change of U.S. policy.

### *Britain*

In the 1990s, several scandals shook the London art market. In terms of their effects, these scandals were similar to the incidents involving American museums in the 1960s and early 1970s. The scandals undermined the respectable image of the art market, called public attention to its questionable practices, and raised the need for governmental regulation.

In 1994, the Royal Academy of Arts exhibited antiquities from the collection of George Ortiz. That exhibition generated controversy, as most objects had no verifiable provenance, that is, information on their findspot and ownership history. As Christopher Chippindale and David Gill showed in their detailed analysis, even when objects in the Ortiz collection had known provenances, these were “not necessarily archaeologically secure.” They also cast doubt on the belief, expressed by Ortiz and other collectors, that the majority of antiquities surfacing on the market were “chance finds.”<sup>43</sup>

Another controversy occurred in 1995, over the Royal Academy's exhibition *Africa: the Art of a Continent*. For the exhibition, the Academy decided to borrow collectors' terracotta figurines that had been looted from Mali and Nigeria. Museums criticized the decision and demanded that the Academy receive the African governments' approval for the display of the objects. The issue received wide publicity, as it turned into a confrontation between the Royal Academy and the British Museum.<sup>44</sup> The Sevso Treasure was the subject of a third scandal. This collection of Roman silver objects, bought by the Marquis of Northampton, sparked a legal dispute in the early 1990s: before a U.S. court, both Croatia and Hungary claimed ownership. The involvement of an aristocrat with antiquities that might be looted garnered wide media attention.<sup>45</sup>

The most highly publicized scandal concerned Sotheby's involvement in the illicit antiquities trade, as exposed by

Peter Watson on television and in his 1997 book. Based on documents provided by a former Sotheby's employee, Watson revealed that many of the unprovenanced antiquities sold by the reputable auction house in London had come from a Swiss dealer – Christian Boursaud – who acted as a “front” for the Italian dealer Giacomo Medici. Medici smuggled looted antiquities from Italy to Switzerland – a country whose loose regulation permitted the legal export of antiquities that had been plundered from the countries of origin. This allowed Sotheby's to argue that the antiquities had arrived in London legally. The immediate result of the exposé was investigations by the Italian and Swiss police, leading to Medici's trial and conviction, and to the discovery of thousands of antiquities in several warehouses in Geneva. Also found were a large number of photographs of antiquities that Medici had handled. More broadly, this scandal contradicted the conventional story about the origin of the antiquities sold in London.<sup>46</sup> Dealers and auction houses typically argued that many unprovenanced antiquities came from old family collections or were found in attics.<sup>47</sup> The Sotheby's scandal, however, showed that many of those seemingly legitimate antiquities were, in fact, illegally excavated and exported.

As in the United States, the various scandals cracked the respectable image of the art market, generating public debate and concern. There was a growing recognition that the unethical behavior in the market was pervasive and that the market's self-regulation was insufficient: the problem required an official response that would deviate from the traditional *laissez-faire* approach to the antiquities trade. The scandals were particularly disconcerting for the Labor government that came to power in 1997. Upon assuming office, the new government committed to an ethical foreign policy<sup>48</sup> – one that was difficult to reconcile with British participation in the illicit antiquities trade. The government found the revelations of Britain's involvement in looting harmful to the national reputation; it wanted to reassure foreign countries that Britain would not knowingly be complicit in the plunder of antiquities. By taking measures against the illicit trade, the government meant to signal Britain's moral behavior and commitment to international cooperation. Labor's lesser dependence on business support compared with its Conservative predecessor facilitated the introduction of art-market regulation.

The scandals had two additional effects that were also seen in the American case. First, the London dealers and auction houses moderated their opposition to government regulation and adopted a more cooperative position. They sought to protect their reputation, while at the same time

43 Chippindale and Gill 2000, 484, 500.

44 Brodie, Doole, and Watson 2000, 53.

45 Alan Riding, “14 Roman Treasures, on View and Debated,” *New York Times*, October 25, 2006.

46 Watson 1997; Brodie, Doole, and Watson 2000, 26–27.

47 See, for example, UK House of Commons 2000, 2:59–60.

48 Wickham-Jones 2000.



guarding against a heavy regulatory burden.<sup>49</sup> Second, the Museums Association (MA) took a serious look at museums' acquisition policies and found that ethical policies had been adopted without procedures for implementation. To raise the awareness of museums and establish measures to prevent the acquisition of looted material, the MA commissioned the Illicit Antiquities Research Centre to produce a report. *Stealing History* was the result.<sup>50</sup>

### Advisory Panels

In the United States in the early 1970s and in Britain in the late 1990s, conditions were ripe for reversing the longstanding liberal approach to the antiquities trade. Thanks to the archaeologists and the public scandals, policymakers decided to participate in the efforts for the protection of the cultural heritage. Yet both the U.S. and British governments recognized that the establishment of regulation required a consensus and compromise among all relevant stakeholders: archaeologists, museums, and dealers. The latter's approval was deemed particularly essential. Without the trade's consent, policymakers reasoned, any plan for introducing regulation would be doomed: the American and British dealers possessed political influence that would have allowed them to derail regulatory initiatives. Their cooperation thus had to be secured. The means to forge a consensus among the stakeholders and obtain the trade's support was the same in the United States and Britain: a government-initiated panel that issued policy recommendations. While the history of the efforts against looting is replete with examples of panels that had limited impact,<sup>51</sup> the panels addressed here – domestic bodies that included all relevant stakeholders – have proven effective.

#### *United States*

In 1969, at the State Department's request, the American Society of International Law (ASIL) established a Panel on the International Movement of National Art Treasures (hereafter the ASIL Panel). The 22 members of the panel represented archaeologists, dealers, museums, collectors, and the State Department; experts in international law were included as well. The panel brought together rivals: Clemency Coggins,

who led the charges against the U.S. art market, and dealer André Emmerich, who represented that market, were both on the panel. Attorney William D. Rogers served as the panel's chair.

Through the ASIL Panel, the State Department gained support for a three-part program designed to control the movement of antiquities and prevent the import of looted material into the United States. The first measure was a bilateral treaty with Mexico for the recovery and return of stolen archaeological material, signed in July 1970.<sup>52</sup> The second measure was a 1972 statute prohibiting the import of pre-Columbian monumental art that was illegally exported from Latin America.<sup>53</sup> But it was the third part of the program that was the most significant: American membership in the 1970 UNESCO Convention.

The ASIL Panel examined the drafts circulated by UNESCO in preparation for the negotiations of the convention. Influenced by the panel's advice, the State Department heavily criticized the drafts as "unacceptable" documents that sought to establish a "blank check system of import controls."<sup>54</sup> Yet on April 3, 1970, ten days before the start of the negotiations in Paris, the panel submitted to the Secretary of State a supportive resolution:

Members of the Panel are of the view that the Congress of the United States should adopt legislation to enable the President to prohibit importation into the United States of such archaeological, architectural and other artistic and historic works constituting an essential part of the national cultural heritage of the country of origin as the President may from time to time designate and as shall have been exported, after such designation, from the country of origin contrary to its laws.<sup>55</sup>

In this resolution, the ASIL Panel recommended, in effect, a significant policy change. The United States had traditionally allowed unrestricted import of antiquities, including antiquities whose export from the countries of origin was illegal. Instead, the panel recommended that the

49 Author's interview with Anthony Browne, chairman of the British Art Market Federation, London, June 2007.

50 Author's interview with Maurice Davies, deputy director of the Museums Association, London, June 2007. A 1972 statement issued jointly by the Museums Association, the British Academy, and the Standing Commission on Museums and Galleries reaffirmed that museums in Britain would not acquire illegally exported material. Successive codes of conduct issued by the MA since 1977 required museums to conform to ethical acquisition guidelines.

51 An example is UNESCO's Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin and Its Restitution in Case of Illicit Appropriation.

52 Treaty of Cooperation between the United States of America and the United Mexican States Providing for the Recovery and Return of Stolen Archaeological, Historical and Cultural Properties, 1970.

53 Regulation of Importation of Pre-Columbian Monumental or Architectural Sculpture or Murals. The ASIL Panel's recommendation was that "urgent steps should be taken to prohibit the importation into the United States of pre-Columbian monumental and architectural sculpture and murals hereafter exported without the consent of the exporting country, and that, for their part, these countries should take effective action to deter defacement, destruction and illegal export of these works." Congressional Record, June 18, 1970, p. 20366.

54 Bator 1983, 95–97. See text accompanying note 11 above.

55 Congressional Record, June 18, 1970, p. 20366.

U.S. government regulate the import of antiquities and assist foreign countries in the enforcement of their export controls. Yet the recommended policy change was more circumscribed than what source countries had hoped for and what the UNESCO draft conventions envisioned. The panel did not recommend that the United States prohibit the import of *all* illegally exported antiquities. Such a broad prohibition would have been unacceptable to the dealers and art museums. Rather, the prohibition was to apply to precisely designated objects. Furthermore, the panel recommended that the designation be based upon the advice of a commission representing U.S. museums, scholars, dealers, and collectors. That commission would have to determine that the import prohibition was necessary to prevent serious jeopardy to the cultural heritage of the country of origin; and that the export policies of that country took into account the legitimate interests of the United States and other countries in the movement of cultural objects. The panel also recommended that “the United States should work with other countries toward a reexamination of their import and export programs and policies to assure that these reflect fair accommodation of the various values affected, including ... the significant educational and cultural values served by the lawful movement of art across international boundaries.”<sup>56</sup>

The panel’s recommendations reflected its goal of building a broad consensus for the U.S. policy shift. On the one hand, the panel endorsed an important new measure: the establishment of import controls to enforce foreign export-controls. This recommendation gave the State Department the go-ahead. It allowed the U.S. government to join the international efforts against plunder, responding to the pressures of the media, the archaeologists, and foreign countries. On the other hand, the dealers and art museums obtained important concessions: the import of antiquities would not be entirely blocked; art-market representatives would be consulted in the process of establishing import restrictions; and the United States would encourage foreign countries to allow greater export of antiquities. These concessions allowed the dealers and art museums to come on board. Although they would have preferred to maintain the trade free from restriction, the compromise was palatable to them.

It is important to note that the consensus did not last. The ASIL Panel examined the final text of the UNESCO Convention and recommended its ratification. Following this recommendation, the Senate gave its advice and consent in 1972, subject to one reservation and six understandings. In 1973, the State Department proposed legislation to implement the UNESCO Convention, based on the compromise forged by the ASIL panel. Yet the dealers withdrew their consent. They argued that the legislation exceeded the restrictions

that the panel had envisioned and “would tend to remove the United States from the flourishing international art market.”<sup>57</sup> When a revised legislation came before Congress, the dealers waged a lobbying effort against it. They condemned the legislation as a “Draconian” measure that spelled “a cultural disaster to the United States.”<sup>58</sup> The dealers’ resistance prolonged the legislative process and managed to weaken the legislation. Yet without their initial consent through the ASIL Panel, the Convention on Cultural Property Implementation Act would not have come into existence. Indeed, the CPIA broadly conformed to the ASIL panel’s recommendations. In particular, the authority to recommend the establishment of important restrictions was given to a Cultural Property Advisory Committee whose members represent the interests of museums, archaeologists, dealers, and the general public.

### *Britain*

Britain had opposed UNESCO’s efforts against looting from their onset in the 1960s. In 2000, however, following the revelations of unethical behavior in the London art market, the British government decided to reverse its longstanding opposition and join UNESCO’s efforts. Yet, like the U.S. government three decades earlier, the British government wished to forge a compromise that would be accepted by all stakeholders. Most importantly, that compromise had to receive the dealers’ approval. To establish the necessary consensus, the Minister for the Arts appointed the Illicit Trade Advisory Panel (ITAP) in May 2000.<sup>59</sup> Law professor and barrister Norman Palmer chaired the panel; the other eight members represented the archaeologists, the museums, and the trade. Like the ASIL Panel, ITAP brought together bitter rivals. The panel included archaeologist Colin Renfrew, the fiercest critic of the London art market, together with leaders of that market: Anthony Browne (chairman of the British Art Market Federation) and James Ede (chairman of the Antiquities Dealers Association).

ITAP was asked to examine the extent of Britain’s involvement in the illicit antiquities trade and to consider how the country can contribute to the prevention of that trade. Submitted in December 2000, the panel’s report captured Britain’s conflicting motivations, the same motivations that the United States had faced: on the one hand, the desire to maintain a thriving market in cultural objects and to enjoy its economic and cultural benefits; and, on the other hand, the need “to ensure that the UK is not used either as a repository

57 DuBoff et al. 1976, 111.

58 U.S. House 1977, 31, 42.

59 ITAP’s official title was Ministerial Advisory Panel on Illicit Trade. The immediate trigger for the establishment of ITAP was an inquiry into the illicit trade in cultural property launched by the House of Commons’ Culture, Media and Sport Committee. That inquiry increased the pressure on the government to conduct its own investigation.

56 Ibid.

or a transit point for [looted] material.”<sup>60</sup>

Like the ASIL panel, ITAP sought to establish a compromise between the archaeologists’ preference for strict regulation of antiquities and the dealers’ preference for minimal constraints. This compromise was clearly evident in the panel’s recommendations concerning the two international agreements: the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. The archaeologists on the panel wanted Britain to join both conventions; this was also the view of the Museums Association that was represented on the panel.<sup>61</sup> Yet the dealers strongly opposed the UNIDROIT Convention as excessively onerous, especially in light of the length of the limitation periods it established and the limited factors that triggered them. Although ITAP identified some virtues of the UNIDROIT Convention, it did not recommend joining this agreement that was unacceptable to the dealers. By contrast, the panel recommended that Britain accede to the 1970 UNESCO Convention.<sup>62</sup> This was a remarkable reversal of the longstanding British position that had seen the convention as overly burdensome for the trade and the bureaucracy. ITAP concluded that Britain, in fact, was already in compliance with the convention’s provisions. Accession therefore did not require significant legislative or administrative changes.

ITAP’s other recommendations included a new criminal offense of dealing in cultural objects while knowing or believing that the objects were stolen or illegally excavated; export controls to ensure that objects re-exported from London had been legally exported from the countries of origin; and databases that would assist the dealers in ascertaining objects’ legal status: a database of international legislative information and a database of cultural objects unlawfully removed from any place in the world. The government adopted the panel’s recommendations, but was less wholehearted about implementation, as explained in the next section.

### **American-British Divergence: Implementation of the Panels’ Proposals**

Thus far, I have identified several similarities in the American and British experience. Public scandals and archaeologists’ advocacy led to the ASIL Panel and ITAP: two bodies

that achieved an unprecedented consensus between the archaeologists and the dealers on a set of regulatory measures. Yet when it came to the implementation of the proposed measures, the U.S. and British governments differed. The ASIL panel’s recommendation was implemented: the executive branch received the authority to prohibit the import of illegally exported antiquities. This authority has indeed been exercised. As of July 2012, the United States was restricting the import of archaeological material from fourteen countries.<sup>63</sup> By contrast, the British government only partially implemented ITAP’s recommendations. Britain acceded to the UNESCO Convention in August 2002 – a step that, as per ITAP’s report, did not entail changes to British law and practice. Yet the government was in no rush to enact the new criminal offense. That legislation was passed with the government’s full support only after the 2003 invasion of Iraq.<sup>64</sup> In the aftermath of the looting of the Baghdad Museum, the government wanted to avoid the embarrassment of Iraqi objects appearing on the London market. The two other recommendations, however, were not carried out. The government’s lawyers thwarted the establishment of export control on the grounds of incompatibility with EU law, and the databases were ultimately considered too complex and expensive. In contrast to the American import controls, Britain has not established significant restrictions on the movement of antiquities. Furthermore, the impact of the new criminal offense has been rather small, as the British government failed to invest in enforcement. By contrast, American dealers were prosecuted and criminally convicted for dealing in looted material.<sup>65</sup> Indeed, the U.S. art market has not come into full compliance with ethical restrictions on acquisition;<sup>66</sup> but the import restrictions and the specter of criminal prosecution did produce a certain constraining effect.<sup>67</sup> The impact on U.S. art museums has been especially palpable. These museums, whose demand for antiquities has been a primary driver of looting, have increased their reliance on loans of objects and have become more cautious concerning gifts from collectors.<sup>68</sup>

This American-British difference is surprising. In fact, one would have expected the British government to be more cooperative than its U.S. counterpart. First, the American participation in the efforts against looting was opposed by antiquities dealers as well as art museums. In Britain, by contrast, only the dealers resisted these efforts, while the

60 ITAP 2000, paras. 8–10.

61 Brodie, Doole, and Watson 2000, 42; UK House of Commons 2000, 2:11–22.

62 ITAP 2000, paras. 41–65. ITAP’s endorsement of the UNESCO Convention and rejection of the UNIDROIT Convention were the reverse of the recommendations made by the House of Commons’ Culture, Media, and Sport Committee. That committee’s report, published in 2000, recommended that Britain join the UNIDROIT Convention, rather than the UNESCO Convention. UK House of Commons 2000, 1:29. See also Gill and Chippindale 2002.

63 See <http://exchanges.state.gov/heritage/culprop/listactions.html> (last accessed July 31, 2012).

64 Dealing in Cultural Objects (Offences) Act (2003). On the legislative process, see Mackenzie and Green 2008.

65 *United States v. McClain*, 545 F.2d 988 (5<sup>th</sup> Cir. 1977); 593 F.2d 658 (5<sup>th</sup> Cir. 1979); *United States v. Schultz*, 333 F.3d 393 (2<sup>nd</sup> Cir. 2003).

66 See, for example, Elia 2009.

67 Pearlstein 2005.

68 See Association of Art Museum Directors, *Survey Shows Museum Antiquities Purchases are Less than 10% of Global Trade*, February 7, 2006.

museum community supported government action against the illicit antiquities trade. Second, Britain had a stronger incentive to participate in UNESCO's efforts, compared with the United States. In the 1970s, U.S. policymakers chose to join the UNESCO Convention out of concern about foreign antiquities. At the time, the looting of American archaeology was not seen as a major problem. By contrast, Britain was motivated by concerns about looting abroad *as well as concerns about the loss of Britain's cultural heritage*. In the 1980s and 1990s, with the rise of metal detecting, Britain experienced increasing archaeological plunder and destruction. In addition, Britain suffered from an outflow of nonarchaeological cultural objects stolen from local museums, churches, and historic houses.<sup>69</sup> The UNESCO Convention was seen as a means to recover objects illegally removed from Britain.

Why, then, has the U.S. government taken stronger measures against the illicit trade than the British government? The answer lies in the divergent attitudes of the American and British bureaucracies. The State Department has led the American efforts to stem the illicit antiquities trade, from negotiating the UNESCO Convention to drafting the implementing legislation to establishing import restrictions through bilateral agreements with source countries.<sup>70</sup> As the foreign-affairs arm of the U.S. government, the State Department was attentive to foreign countries' requests, concerned for the American image abroad, and interested in fostering international cooperation. Moreover, the State Department's status within the American bureaucracy allowed it to obtain the support of other U.S. agencies. In Britain, by contrast, it was not the Foreign Service that addressed the issue, but the Department for Culture, Media and Sport (DCMS). Compared with the State Department, the DCMS was less foreign-minded and less inclined to international cooperation. The DCMS had no equivalent of the State Department's Mark Feldman – a bureaucrat who strongly pushed for the ratification and implementation of the UNESCO Convention. Unlike the State Department, the DCMS also had a limited ability to lead an interagency effort and, in particular, to secure the commitment of the Home Office to the efforts against the illicit antiquities trade. Finally, the British bureaucracy paid greater deference to the dealers than did the American bureaucracy. Whereas U.S. government agencies were willing to confiscate antiquities and prosecute dealers, their British counterparts were less vigorous.<sup>71</sup>

This is not to say that the measures taken by the British government were immaterial. The establishment of ITAP, the accession to the UNESCO Convention, and the new criminal offense – all these raised the pressure on the market to ascertain antiquities' legal status. Internationally, the British accession made additional market-countries reconsider their longstanding opposition to the convention. Japan and Germany, among others, followed Britain's example and joined the UNESCO Convention. Yet as the British bureaucracy was not fully committed to combating the illicit trade, Britain's efforts have been weaker than those of the United States.

## Conclusion

The international efforts against the looting of antiquities have faced significant hurdles. Art markets and the governments that support them have long been reluctant to join these efforts. In their view, cooperation against the illicit antiquities trade compromised local interests to the benefit of foreign countries. Yet the experience of the UNESCO Convention demonstrates that previously-noncooperative countries may reverse course and join the international efforts. This article has identified several factors that may explain the change of policy. Public scandals put pressure on governments to ensure the ethical conduct of the art market and made the dealers more conducive to compromise; archaeologists reinforced the pressure for a government response and provided evidence of the looting fueled by the art market; and the policy response was facilitated through consultative mechanisms – advisory panels – that brought together all stakeholders and issued mutually agreed recommendations. This article has also found that the willingness to take action against looting varies across governments and bureaucracies as a function of their ideologies and constituencies. The Labor government in Britain was more inclined to impose constraints on the art market, as it was more committed to an ethical foreign policy and less dependent on business support than its Conservative predecessor; the State Department was responsive to foreign countries' pleas and concerned for the U.S.' international standing, while the British bureaucracy was more attentive to the dealers. This experience may prove useful for resolving other contentions and debates over the protection of the cultural heritage.

69 Brodie, Doole, and Watson 2000, 21–22; ITAP 2000, Annex A, paras. 14–32. One of the most notable losses was the Icklingham Bronzes. See Gill 2010.

70 The United States Information Agency (USIA) initially received the authority for the implementation of the CPIA. With the dissolution of the USIA in 1999, the State Department became responsible for the CPIA's implementation.

71 See Mackenzie and Green 2008, 148; Pearlstein 2005.

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