

Legal or Illegal – Can we Afford a Market for (“Un”)Excavated Objects? Basics for a New Antiquities Law

Communication by Dr. Michael Müller-Karpe, Römisch-Germanisches Zentralmuseum Mainz, at the
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Ladies and Gentlemen,

The ongoing looting and destruction of archaeological sites in Iraq, caused by the insatiable demand of a voracious antiquities market lends dramatic relevance to the legislative initiative of the German Government to revise the grossly inadequate German antiquities law.

Looting archaeological sites is against the law in all countries. Consequently, the trade in looted items is illegal almost everywhere. Yet, not so in Germany! Selling and buying stolen antiquities there have almost no restrictions. The country whence I come is among the last countries that still have not ratified the UNESCO conventions of 1970 and 1995. Under these conventions an individual state agrees to respect laws that other states have implemented to protect the historical heritage and to prohibit their citizens from the import, export and trade of items which have been obtained under violation of these laws. In Germany trade in objects, which, according to Iraqi law are stolen, is still legal!

Thus, Germany, by default, is actually supporting the systematic destruction of our shared archaeological heritage.

[Slides: Here as an illustration of what we are discussing: recent aerial photographs of archaeological sites in Iraq. Ruins of cities, which had survived almost untouched for five thousand years, were ransacked by the looters. This photo shows the ultimate destruction of a unique window which, through proper excavation, would have allowed us to look into the world of people, from whom we are separated by time. This was their world – but it is also our own. The chance for obtaining knowledge about a decisive part of our history is missed. This loss is irreversible.]

After Britain and Switzerland ratified the UNESCO Convention of 1970 two years ago, Germany is now willing to end this embarrassing situation and intends to ratify at least the UNESCO Convention of 1970 by the year 2006.

However, there is a powerful opposition from a lobby of prosperous antiquities dealers, fiercely engaged in protecting endangered German jobs and the freedom of trade.

In October last year the German Government presented a first draft of the new law on antiquities.

Let me summarize and comment on some of its major aspects.

The regulations of the UNESCO Convention leave considerable amount of scope in the implementation into national law. The German Government therewith intends to take into consideration not only the goals of the UNESCO Convention, but also terms of practicability, legal security and the avoidance of unnecessary expenditure in order to sustainably strengthen Germany's central position in trade.

The government intends to extend the effects of the law to include the restitution of cultural property, which to date applies only to the member states of the European Union, to all signatories of the UNESCO Convention.

However, there would be limitations to this legislation:

1. In any case the regulations of European law would have priority over the demands of the UNESCO Convention. There should be no restrictions to any trade between the member states of the European Union.
2. Restrictions would be limited to so called national cultural property, i. e. items which have publicly been declared and registered by a state as being of national importance.

3. The present regulations concerning the burden of proof would not be changed, i. e. also in future a state demanding the return of an object, has to prove that a stolen item was not acquired in good faith.
4. Belated declaration of national cultural property would be irrelevant.
5. Acquisition in good faith of national cultural property would be impossible. However, acquisition by possession would also be possible in future.
6. The art market's obligation for recording would be extended. However, this would apply only to "important" items.
7. The new regulations would have only an effect "ex nunc", i.e. in the future. They would not, therefore, affect objects already brought into Germany before the new law has come into force. Hence, trade in these objects would have no restrictions, neither now nor in the future.
8. The government does not intend to ratify the UNIDROIT Convention of 1995, since this convention is considered less flexible and potentially contradictory to European regulations.

A new law, following these guiding principles would not be the decisive step forward.

Limiting the effect of the new law solely to objects listed in a published catalogue would exclude items looted from archaeological sites, since these objects are not registered anywhere and therefore cannot possibly appear in a catalogue or in lists. Thus, trade in objects looted from the sites would remain legal.

Limiting the effect of the new law to objects classified as "national cultural property" neglects the core of the problem. It is not only the national property of a distant exotic state that is endangered – Indeed, it is the roots of our own culture, our cultural heritage, which is being driven into extinction in Iraq and which we must protect!

Measuring the importance of an object upon its national relevance alone might help to protect the marshall's baton of a Hermann Göring but totally ignores our shared archaeological heritage, which is not of just national importance but the essentials for the cultural memory of mankind.

Limiting the effect of the new law to objects classified as "important", ignores the fact that the extent of destruction is not measured upon the yield of the illegal excavation alone. It is irrelevant whether an "important" (i.e. easy tradable) object is found or a less "important" object or even no object at all – digging pits into an archaeological site in any case destroys the archaeological context – and its inherent information.

Strengthening Germany's position as a centre of trade certainly requires some restrictions.

Cultural property or objects of cultural value, which can only be obtained by destroying cultural property, must be explicitly excluded from such trade.

Excavated objects belong to this category.

The value of an archaeological find for the history of mankind lies in the information it carries.

The main body of information is inseparably associated with the object's situation in the earth, that is, its archaeological context.

An archaeological object torn out of context has also lost its meaning, its real value – like a single letter, torn out of the pages of a history book.

The cultural property that needs our protection first and foremost is the archaeological context in the earth. Compared to this context, an object from an unknown context has little value. It has lost all its significance for research and promoting our historical awareness and knowledge – the consciousness which constitutes us as human beings.

It is apparent that objects offered on the antiquities market can only derive from illegal excavations, from the undocumented destruction of an archaeological context, since finds from legal, duly documented excavations, as a rule, are kept in museums – they are not for sale.

However, according to the present regulations concerning the burden of proof, which the German Government is unwilling to change, pending proof to the contrary, every object is considered legal. It is assumed that the very item offered for sale is legal and not a looted item and therefore one of the few exceptions. Attempts of proving the contrary, despite all indications, have usually been futile.

Therefore, reversing the burden of proof is imperative. This measure, which has already been successfully implemented for the protection of endangered animal and plant species, should also be enforced to protect the cultural roots of our own, the human species.

Without a market for looted items and stolen goods, we would not have lootings, illegal diggings and thievery.

Those who participate in trading looted objects or who allow such trade are directly responsible for the destruction resulting from this trade.

Therefore, a legislator may never condone the trade in illegally excavated objects.

Faithful acquisition of illegally excavated objects in the future must be made impossible, regardless whether these items were looted before or after a certain date.

I am sure that in principle everyone detests and denounces the illegal market in antiquities.

Yet, the disastrous effect of the antiquities market not only applies to its illegal branch but to the so-called "legal" trade as well.

An example: The journal *Minerva* regularly publishes prices realised at auctions. Some time ago an Early Dynastic cylinder seal was sold at Sotheby's for the breathtaking sum of \$143,000 (*Minerva* 3/2, 1992, 27). The peculiarity about this seal is that it was proven to be legal. It came from a legal excavation (in Kish), was published in the official site report and legally went into private ownership (in the 1930s foreign expeditions were allowed to keep some of the excavated objects). A cylinder seal of comparable craftsmanship, equipped with the dealer's label "from an old Swiss collection" would cost \$2,000. A cylinder seal, freshly stolen from a looted site, sells for a few hundred dollars.

For the honourable buyer, who apparently would not accept buying stolen items, the cost of a clear conscience was \$143,000.

However, the broader effects of this 143,000 Dollar cylinder seal are devastating.

The poor farmer might receive only a few dollars, but the message sent out by this transaction to the embattled countryside is: A cylinder seal, found – let's say – in a pit and easily smuggled across the border makes \$143,000!

Against such lucrative prospects of profit any number of site guards will be futile, even in the face of the death penalty, which was in effect in Iraq until recently.

Academic Discussions in the West on "legal" and "illegal" do not impress the poor farmer. The efforts of foreign legislators and wealthy art dealers' lobbies to shift the border line between "legal" and "illegal" more in this or that direction have no effect in Anatolia or Cambodia or Iraq.

Whoever cares for the protection of our shared archaeological heritage and does not simply wish to "clear" his or her own collection, has only one choice:

We must call for a complete and irreversible end to any kind of trade in antiquities.

It is certainly not my intention to stigmatize trade in art in general. There is nothing wrong about \$5 million for a Picasso or a Gutenberg Bible - this money does not destroy. But money paid for excavated "unprovenanced objects" – regardless whether illegal or legal – directly sponsors and fosters further looting, further destruction.

Every Euro, every Dollar, every Yen paid for antiquities is an investment into annihilation of the foundations of our human race: our historical consciousness.

An effective protection of archaeological sites therefore can only be achieved by a general ban on any trade in any excavated objects. Only when the potential looter is convinced that he will not receive any money for his booty, will he refrain from his destructive activities.

This strict, clear cut regulation would be practicable: The criteria for the distinct identification of an archaeological find, excavated from the earth, would fit on a normal-sized page and could be memorized by a customs official within 15 minutes.

This regulation also would avoid disproportionately high expenditures, since the measures and methods that were successfully established in the protection of endangered animal and plant species could be adopted.

This regulation would also provide legal security, because questions of previous and present ownership would not be touched. The central issue here is avoidance of the disastrous effects of trade in excavated objects, a result of the aforementioned message sent out to the source countries by such transactions. Therefore the envisaged "ex nunc" regulation would suffice: The crucial point is that Germany should no longer promote lootings, now and in the future.

What can be done?

Raising public awareness is a number one priority – not only in Germany!

We need a powerful counterpart to resist the destruction lobby: We need a lobby for protection of our shared archaeological heritage.

Photos of baby seals, smudged with blood have turned public opinion toward the protection of endangered animal and plant species.

Our own species deserves protection too – protecting what makes us unique and constitutes us as human beings: our cultural memory.

These photographs of looted archaeological sites, with thousands of emptied eye sockets, staring at us should be gouged into our minds.

Museum curators and private collectors who feel obliged to enrich their collections with single letters, torn from our mutual history book, should know:

By acquiring "unprovenanced" objects you acquire responsibility, not only for the very looter's pit from which your trophy was stolen but also for future destruction which will be sponsored by your money.

The price for these objects is too high! No sum of money in this world could pay for or reverse the destruction of the cultural memory of mankind!

To end this paper, let me add another aspect:

Grand Ayatollah al-Sistani in Iraq has issued a fatwa condemning looting being contradictory to the ethical standards of Islam – but there was a counter-fatwa by Muqadda Sadr saying that digging for pre-Islamic items is acceptable, if part of the revenue is spent for the legitimate struggle against the infidels.

There is good reason to believe, that money, drawn from illegally excavated antiques directly sponsors terrorist acts.

Is the smart antiquities collector, travelling in the London, Berlin or New York Subway, aware, that his bargain has paid for the bomb which panics him?