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ILLEGAL TENDER: ANTIQUITIES PROTECTION AND U.S. IMPORT RESTRICTIONS ON CYPRIOT COINAGE

INTRODUCTION

In one of the Bush administration's final acts before leaving office, the United States concluded an agreement with China that banned the import of Chinese antiquities into the United States.¹ This agreement, known as a Memorandum of Understanding ("MOU"), was the most recent of fourteen bilateral accords the United States has signed with other countries for the avowed purpose of protecting cultural heritage.² One important aspect of the new agreement with China is the inclusion of a number of ancient coin-types among the protected materials.³ This is significant because it is only the second time that an MOU has included coins and demonstrates the increasing breadth of these agreements as the United States attempts to use cultural heritage protection for political gain.

Another example of the United States' use of antiquities protection for political motives, and the focus of this Note, is the first MOU to include coins: the agreement concluded between the United States and Cyprus on July 16, 2007.⁴ The accord extended a pre-existing MOU between the

1. Randy Kennedy, *Pact on Chinese Treasures Wins Praise*, N.Y. TIMES, Jan. 16, 2009.

2. See U.S. State Department, International Cultural Property Protection, <http://culturalheritage.state.gov/index.html> (last visited Feb. 10, 2009). For a full list of countries with agreements with the United States, see U.S. State Department, Implementation, <http://culturalheritage.state.gov/implemen.html> (last visited Feb. 11, 2009).

3. Import Restrictions Imposed on Certain Archaeological Material from China, 74 Fed. Reg. 2838, 2842 (Jan. 16, 2009).

4. Memorandum of Understanding Concerning the Imposition of Import Restrictions on Pre-Classical and Classical Archaeological Objects and Byzantine Period Ecclesiastical and Ritual Ethnological Material, U.S.-Cyprus, July 16, 2007, 46 I.L.M. 86 (2007), available at <http://culturalheritage.state.gov/CyprusExt2007AmendedAgreement.pdf> [hereinafter 2007 MOU]. A former British colony that gained its independence in 1960, Cyprus has struggled with tensions between its ethnic Greek majority and ethnic Turkish minority since its founding. In 1974, these tensions came to a head with a Greek-sponsored attempt to seize control of the government. In response, the Turkish government intervened militarily and soon gained control of one-third of the island. In 1983, the Turkish-controlled area declared its independence as the Turkish Republic of Northern Cyprus, but, to date, only Turkey has recognized it. Despite several attempts at reconciliation sponsored by the United Nations and European Union (of which the entire island is officially a member) the island remains divided. Central Intelligence Agency, World Fact Book: Cyprus, <https://www.cia.gov/library/publications/the-world-factbook/geos/cy.html> [hereinafter Fact Book] (last visited Dec. 21, 2007). For the purposes of this Note, the Cypriot government is the generally recognized Greek majority government of the Re-

two countries that imposed import restrictions on pre-classical and classical archaeological objects and Byzantine ecclesiastical and ritual ethnological material from the island nation.⁵ In effect for five years, the new MOU extends the previous agreement that the two countries signed in 2002.⁶ There is, however, one notable addition in the 2007 agreement: “[w]e note that the subcategory Coins of Cypriot Types has been added to the category entitled Metal”⁷

The inclusion of coins among the other restricted objects, such as statuary and architectural elements, was unprecedented⁸ and, as this Note will argue, has wide-ranging ramifications for the protection of cultural heritage both above and below the ground. In particular, this Note will suggest that political, rather than archaeological, concerns are the driving force behind the MOU and its inclusion of coinage.

One of the primary purposes behind restrictions on the trade of culturally significant objects is the prevention of the destruction of archaeological sites and the protection of source countries’ cultural heritage.⁹ According to the Federal Register Notice, coins, in particular, were included in the restriction because they “constitute an inseparable part of the archaeological record of [Cyprus], and . . . are vulnerable to pillage and illicit export.”¹⁰ The new restriction applies to “[c]oins of Cypriot types made of gold, silver, and bronze” dating from the sixth century

public of Cyprus. The bilateral agreement with the United States was signed with this government, but its terms apply to antiquities from throughout the island.

5. Extension of Import Restrictions Imposed on Pre-Classical and Classical Archaeological Objects and Byzantine Period Ecclesiastical and Ritual Ethnological Material from Cyprus, 72 Fed. Reg. 38,470 (July 16, 2007) [hereinafter Extension of Import Restrictions].

6. *Id.*

7. *Id.*

8. Three previous requests to include coins in MOUs were rejected by the Cultural Property Advisory Committee (“CPAC”), the group charged with advising the U.S. State Department regarding cultural object import restrictions. Interestingly, among these was a request made by Cyprus five years ago. The other two requests were from Italy. Wayne G. Sayles, *IAPN Questions State Department Actions*, July 30, 2007, <http://www.accg.us/issues/news/iapn-questions-state-department-actions>. On April 30, 2008, the Department of Homeland Security included coinage in new import restrictions on Iraqi archaeological and ethnological materials. Import Restrictions Imposed on Archaeological and Ethnological Material of Iraq, 73 Fed. Reg. 23,338 (Apr. 30, 2008).

9. See United Nations Educational, Scientific, Cultural Organization, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property art. 2, 823 U.N.T.S. 231 [hereinafter 1970 UNESCO Convention]; Convention on Cultural Property Implementation Act, 19 U.S.C. §§ 2601–13 (2000).

10. Extension of Import Restrictions, *supra* note 5, at 38,471.

BCE to 235 CE¹¹ and prohibits their importation into the United States unless they have an export permit issued by the Cypriot government or “verifiable documentation that they left Cyprus prior to the effective date of the restriction.”¹² Due to the past practice of coin collecting, especially the lack of documentation that accompanies coins and their wide geographic dispersal in antiquity,¹³ the restriction will make most Cypriot-type coins vulnerable to seizure by the government or restitution lawsuits.

Interested parties have both praised and vilified the new MOU’s inclusion of Cypriot-type coins.¹⁴ Cypriot politicians have praised the new agreement because it strengthens the protection of their nation’s cultural patrimony.¹⁵ Archaeologists and proponents of strong export/import laws, which are designed to eliminate the market for antiquities, also strongly support the new MOU, seeing it as an important step in stemming the looting of archaeological sites.¹⁶ Alternatively, a number of individuals, particularly American coin collectors and dealers, are vehement in their opposition to the inclusion of coins in the new agreement. Arguments as diverse as due process violations during the decision-making process,¹⁷ violations of EU law in allowing Cyprus to impose such restrictions,¹⁸ civil servant misconduct,¹⁹ and the operation of a secretive “anticollection cabal”²⁰ have been raised.

11. *Id.* at 38,473.

12. U.S. State Department, U.S. Protection of Pre-Classical and Classical Archaeological Material and Byzantine Period Ecclesiastical and Ritual Ethnological Material, <http://culturalheritage.state.gov/cyfactpc.html> [hereinafter Cyprus Archaeological Materials Information Page] (last visited Oct. 29, 2008).

13. *See infra* Part I.C.

14. Jeremy Kahn, *U.S. Imposes Restrictions on Importing Cypriot Coins*, N.Y. TIMES, July 18, 2007.

15. Nicholas Burns, Under Sec’y, U.S. Dep’t of State & Andreas Kakouris, Ambassador of Cyprus, Remarks at the Signing Ceremony: Preserving the Cultural, Archaeological, and Religious Heritage of Cyprus (July 19, 2007) (on file with Brooklyn Journal of International Law).

16. *See, e.g.*, Letter from C. Brian Rose, President, Archaeological Inst. of Am., to CPAC (Feb. 3, 2007), <http://archaeological.org/webinfo.php?page=10402>; Letter from Patty Gerstenblith, President, Lawyer’s Comm. for Cultural Heritage Prot. (Jan. 29, 2007) <http://www.archaeological.org/pdfs/archaeologywatch/CyprusRenewal.pdf>.

17. Peter K. Tompa & David Welsh, *Import Restrictions Imposed on Cypriot Coins*, Aug. 14, 2007, <http://www.accg.us/issues/news/import-restrictions-imposed-on-cypriot-coins?searchterm=cypriot+>.

18. Letter from Dr. Hubert Lanz, President, Fed’n of European Numismatic Trade Ass’n’s, to U.S. State Dep’t (July 25, 2007), <http://www.accg.us/issues/news/fenap-expresses-concern-to-us-state-department/>.

19. Sayles, *supra* note 8.

20. David Welsh, *Stealth UNIDROIT: The State Department’s War on Collecting*, ANCIENT COINS, Aug. 1, 2007, <http://classicalcoins.blogspot.com/2007/08/stealth-unidroit->

Though some of these critiques of the new MOU are somewhat exaggerated, there are legitimate objections to the restriction on coins and the policies that the United States and Cyprus are employing in the fight against looting. On a practical level, these objects very rarely carry the same kind of provenance²¹ documentation as other archaeological material. As a result, it will be very difficult to establish which coins can be properly imported and which cannot. Furthermore, customs officials will find it difficult to identify "Cypriot-types" coins properly without extensive training. There are even suggestions that the images that the State Department posted to instruct customs agents on how to identify Cypriot-types coins contain important errors,²² further compromising the enforcement of the legislation. These objections, however, only address the practicality of the restriction rather than the more fundamental question: are export and import restrictions the most effective means of curbing the looting of archaeological sites?

Many archaeologists and politicians from source nations²³ favor strict laws that prohibit the export, import, and even ownership of antiquities. There are two primary reasons they cite. First is the prevention of the illicit removal of antiquities (promoted by archaeologists), and second is the retention of cultural materials for nationalistic and political reasons

state-departments-war.html ("If this unholy cabal of narrow academic interests, entrenched bureaucrats and cultural officials in a few foreign nations can secretly and successfully hijack U.S. cultural policy in such a manner, the implications may reach far beyond what happens to coin collecting. . . . This development should concern not only coin collectors, but also every American citizen who values his or her personal freedom.").

21. For a discussion of the meaning of "provenance," see *infra* Part II.C.

22. Peter K. Tompa, *Slapdash Effort at DOS*, Sept. 26, 2007, <http://www.accg.us/issues/world/slapdash-effort-at-dos/>.

23. Though imperfect, the terms "source" nation and "market" nation, coined by John Henry Merryman, are helpful and often used in the cultural property debate. As Merryman defines them:

[T]he world divides itself into source nations and market nations. In source nations, the supply of desirable cultural property exceeds the internal demand. Nations like Mexico, Egypt, Greece and India are obvious examples. They are rich in cultural artifacts beyond any conceivable local use. In market nations, the demand exceeds the supply. France, Germany, Japan, the Scandinavian nations, Switzerland and the United States are examples. Demand in the market nation encourages export from the source nations. When, as is often (but not always) the case, the source nation is relatively poor and the market nation wealthy, an unrestricted market will encourage the net export of cultural property.

John H. Merryman, *Two Ways of Thinking About Cultural Property*, 80 AM. J. INT'L L. 832 [hereinafter *Two Ways of Thinking*].

(favored by politicians in source countries). Of the two, the protection of archaeological sites from pillaging is the more compelling justification.²⁴ Looting is incredibly destructive and is responsible for the irretrievable loss of precious contextual information fundamental to archaeological research.²⁵ It is undisputed that the value of an archaeological object is far greater than its inherent beauty.²⁶ As Renfrew and Bahn state, “A looted vase may be an attractive object for a collector, but far more could have been learnt about the society that produced it had archaeologists been able to record where it was found . . . and in association with what other artifacts or organic remains.”²⁷ Each time an object is looted, this context is destroyed, not only for the object looted, but also for all those around it and possibly for the entire site. Because archaeological objects and context are finite resources, even the smallest degree of destruction can lead to an irreplaceable loss.

All concerned agree that the prevention of looting and its consequent destruction is a worthwhile goal.²⁸ Many source nations and archaeologists are the strongest supporters of export and import restrictions as a means of preserving antiquities in context. They consider themselves “at war” with the market and argue that collecting antiquities is the equivalent of looting. They believe that the only way to stop the pillaging of archaeological sites is to create a legal system²⁹ and moral consensus that the trade in antiquities is akin to the trade in ivory or rare birds’ eggs.³⁰

24. COLIN RENFREW, *LOOT, LEGITIMACY AND OWNERSHIP* 20 (2000) (“While some national governments may still take the rather chauvinist view that ownership and possession of significant artefacts (within their territorial borders) is of primary importance, most now realise that the true disaster is the illicit excavation.”).

25. In archaeology, “context consists of its immediate matrix (the material surrounding it, usually some sort of sediment such as gravel, sand, or clay), its provenience (horizontal and vertical position within the matrix), and its association with other finds (occurrence together with other archaeological remains, usually in the same matrix).” COLIN RENFREW & PAUL BAHN, *ARCHAEOLOGY: THEORIES METHODS AND PRACTICE* 50 (3rd ed. 2000) (emphasis omitted).

26. RENFREW, *supra* note 24, at 19–20.

27. RENFREW & BAHN, *supra* note 25, at 50. For an example of the importance of context, see RENFREW, *supra* note 18, at 22–26.

28. *See, e.g.*, Sayles, *supra* note 8 (citing the International Association of Professional Numismatists Code of Ethics, which states that Members will “never knowingly deal in any numismatic item that has been illegally removed from an official excavation site”); ANCIENT COIN COLLECTORS GUILD, *CODE OF ETHICS* (2005), available at <http://www.accg.us/issues/news/code> (“Coin Collectors and Sellers will not knowingly purchase coins illegally removed from scheduled archaeological sites . . . and will comply with all cultural property laws of their own country.”).

29. John Henry Merryman, *A Licit Trade in Cultural Objects*, in *LEGAL ASPECTS OF THE INTERNATIONAL TRADE IN ART* 3, 31 (Martine Briat & Judith A. Freedberg eds.,

It appears unlikely, however, that the trade in antiquities will ever become as stigmatized as the exploitation of endangered species. Objects that are now antiquities were always intended by their makers as items of exchange and, therefore, entail less flouting of moral impulses. Also, although the destruction of an archaeological site is lamentable, it is reasonable to elevate the protection of endangered species (which entails the protection of life) over the protection of archaeological sites. Therefore, for the time being, it appears that the antiquities market will continue.³¹

It is unclear, however, whether export and import restrictions are actually effective in deterring the looting of archaeological sites. As Professor Bator has suggested, "Most current export control systems are self-destructive. The international black market thrives because no alternative is allowed to exist for either buyers or sellers, so that all economic incentives are pushed in favor of the illegal trade."³²

Several alternative solutions to export and import restrictions have been suggested, most based on the premise that restrictions on the licit trade in antiquities creates a greater incentive for an illicit market, which, in turn, is fed by looting. Among these alternatives are suggestions for a more liberalized antiquities market,³³ increased direct regulation of the market through antiquities registration, greater criminal penalties for looters and smugglers,³⁴ increased indirect regulation of the market through instruments like museum taxation,³⁵ and a return to the partage system.³⁶

1996). This argument, however, is somewhat weakened by the recent U.N.-approved international ivory sale in Namibia. Alan Cowell, *Ivory for Sale, Legally (and Controversially)*, N.Y. TIMES, Oct. 28, 2008. This demonstrates that even objects that appear to have stronger moral support for their protection, a legal, though admittedly controversial, market still exists.

30. See RENFREW, *supra* note 24, at 20.

31. For example, a recent Time Magazine article's title proclaims "Antiquities: The Hottest Investment." The article suggests that antiquities are an excellent investment and for under \$10,000 a year, collectors can acquire a few quality pieces with an average increase in value of eight to nine percent annually. Maria Baugh, *Antiquities: The Hottest Investment*, TIME, Dec. 12, 2007, <http://www.time.com/time/business/article/0,8599,1693792,00.html>.

32. Paul M. Bator, *An Essay on the International Trade in Art*, 34 STAN. L. REV. 275, 318 (1982).

33. See, e.g., John Boardman, *Who Owns Antiquities? Review of Jonathan Tokeley, Rescuing the Past: The Cultural Heritage Crusade*, Jan. 19, 2007, <http://www.jonathan-tokeley.com/default.asp?Display=38>; Merryman, *supra* note 29.

34. S.M.R. MACKENZIE, GOING, GOING, GONE: REGULATING THE MARKET IN ILLICIT ANTIQUITIES (2005).

35. Patty Gerstenblith, *Controlling the International Market In Antiquities: Reducing the Harm, Preserving the Past*, 8 CHI. J. INT'L L. 169, 192-94 (2007).

36. JAMES CUNO, WHO OWNS ANTIQUITY? 14 (2008); RENFREW, *supra* note 24, at 21.

Ancient coinage is particularly important to this debate because of coinage's unique nature compared to other antiquities. Coins' archaeological value, such as their use in dating archeological sites,³⁷ compels authorities to do their utmost to protect their archaeological context. On the other hand, unlike many other prized objects, coins differ conceptually, as they were created to be items of exchange. Furthermore, coins have a long history as collectables, but rarely bear provenance information. Accordingly, there are innumerable ancient coins in private and public collections for which the owners cannot prove their provenance. Finally, import restrictions on coins are difficult to enforce, because of their portability and size, which make them easy to smuggle or mail. These factors make coins unique among antiquities and suggest that their regulation is more problematic, both practically and philosophically, than that of other objects. Accordingly, the question is whether or not the current rigid restriction on Cypriot coins is the most effective means of deterring illegal looting.

Much of the debate regarding import and export restrictions has been highly polarized, with the media portraying the debate as a question between stopping looters versus infringing on the rights of U.S. citizens.³⁸ The dangerous mixture of nationalism, scholarly interest, the admiration of beauty, and the awe and respect for our shared history acts as a catalyst for the clash of passionate points of view.

This Note argues that strict restrictions on the importation of Cypriot coins is less than ideal and may, in fact, be counterproductive. Until there is greater regulation of the antiquities market, particularly through strict requirements regarding the recording of provenance, import restrictions will be easily flouted and may drive a greater proportion of the market towards illicit antiquities, which, in turn, will foster increased looting. More balanced solutions are required to combat the illicit antiquities trade and the looting of archaeological sites.

Finally, there needs to be a shift in the debate regarding antiquities protection. The politicized discourse only serves to cloud the primary purpose of antiquities legislation: the protection of archaeological context. Moreover, there are suggestions that the United States may be using antiquities legislation to garner favor with source countries.³⁹ Cyprus, in

37. See *infra* Part II.A.

38. See Jeremy Kahn, *Is the U.S. Protecting Foreign Artifacts? Don't Ask.*, N.Y. TIMES, Apr. 8, 2007 (“[A]rchaeologists . . . say the art market fosters the looting of historic sites, and dealers . . . say that broad import restrictions threaten collecting by private individuals and museums in the United States.”).

39. CUNO, *supra* note 36, at 35–36.

particular, may be a target because of its important role in the “War on Terror,” the Iraq invasion, and Turkey’s entry into the European Union.

This Note advocates an increased focus on realistic, nuanced approaches to the protection of archaeological context and a shift away from politically driven regulatory regimes towards ones that focus on the actual protection of antiquities. Part I summarizes the importance of coinage in the archaeological context, the long history of coin collecting, and the difficulty of regulating the trade in coins. Part II reviews the existing U.S. and Cypriot legislative regimes used in the fight against looting. Part III analyzes the effectiveness or ineffectiveness of the current legislation in protecting archaeological sites from looting. Part IV examines alternative solutions to the looting problem and assesses whether their adoption is worth considering. Part V questions whether political motivations are affecting the U.S. and Cypriot anti-looting approaches.

I. COINS IN THE ARCHAEOLOGICAL AND COLLECTING CONTEXTS

A. *The Archaeological Importance of Coins*

Ancient coins are not only inherently valuable but also critically important to archaeological research.⁴⁰ First struck in western Turkey in the late seventh century BCE and minted in vast quantities ever since, coins have long been an essential part of organized society and, therefore, serve as an essential piece of the historical record.⁴¹ Ancient coins are found in a variety of different contexts, each of which serves as a valuable source of information on ancient cultures. This is particularly true when they are found *in situ*.⁴² Coins discovered in context can help archaeologists research trade and travel networks, locations of heavily trafficked areas of a given site, and social organization—particularly those of the issuing authority, and important *terminus post quem*⁴³ information. In fact, coins are so critical to archaeological research that they are among the few key artifacts that have their find spot recorded with three-dimensional precision.⁴⁴

40. RENFREW & BAHN, *supra* note 25, at 107.

41. Archaeological Inst. of Am., *Archaeology Watch: Coins and Archaeology*, Aug. 7, 2007, <http://www.archaeological.org/webinfo.php?page=10438> [hereinafter *Coins and Archaeology*].

42. Latin for “in place,” the term is used in archaeology to refer to objects that are in their original place of deposition. BARBARA ANN KIPFER, *ENCYCLOPEDIA OF ARCHAEOLOGY* 255 (2000).

43. Latin for “date after which,” the term is used in archaeology to denote the earliest possible absolute date for a given strata. *See* RENFREW & BAHN, *supra* note 25, at 131.

44. *Id.* at 107–08.

The illicit search for coins also damages an archaeological site as a whole and causes the destruction of other important artifacts. Looters' digging invariably destroys important stratigraphic⁴⁵ information, which is critical to archaeologists' understanding of a given site.⁴⁶ Furthermore, in a desire to find valuable coins, plunderers frequently destroy objects that they perceive as having less value in the market.⁴⁷

Despite arguments to the contrary,⁴⁸ even when found in isolated hoards outside of settlements sites, as are a significant number,⁴⁹ coins have considerable archaeological value. For example, these hoards help archaeologists determine which coins were in circulation at a given place and period.⁵⁰ Also, the location of the hoard in relation to other sites is archaeologically valuable.⁵¹ Moreover, researchers can derive important archaeological information from the relationship among coins in a given hoard.⁵² Furthermore, even for numismatists, the richness of the information that can be extracted from an ancient coin increases when its context is known.⁵³ For example, frequently found coin types, which add little to our store of knowledge without provenance, can, when found in context, be a crucial piece of evidence in unraveling the economic and social history of the ancient world.⁵⁴ As a consequence, even if one is unconcerned with archaeological context, a hoard's integrity comes into question when it appears on the market without provenance, and even the infor-

45. Stratigraphy "is the study and validating of stratification—the analysis in the vertical, time dimension of a series of layers in the horizontal space dimension (although in practice few layers are precisely horizontal)." *Id.* at 106.

46. *Id.*

47. For example, recent reports from Cyprus indicate that looters destroy ancient ceramics while attempting to discover gold and silver coins. Anna Hassapi, *Tomb Raiders Plundering Kouris Valley Antiquities*, CYPRUS MAIL, Aug. 19, 2008, <http://www.cyprus-mail.com/news/main.php?id=40932&archive=1>.

48. Peter K. Tompa & Ann M. Brose, *A Modern Challenge to an Age-Old Pursuit: Can Cultural Patrimony Claims and Coin Collecting Coexist?*, in WHO OWNS THE PAST?: CULTURAL POLICY, CULTURAL PROPERTY, AND THE LAW 205 (Kate Fitz Gibbon ed., 2005) [hereinafter WHO OWNS THE PAST?].

49. *Id.* Though, Rose points out that a great number of hoards are found within settlement site habitation levels. Rose, *supra* note 16.

50. Rose, *supra* note 16.

51. Nathan T. Elkins, *Why Coins Matter: Trafficking in Undocumented and Illegally Exported Ancient Coins in the North American Marketplace*, SAVING ANTIQUITIES FOR EVERYONE, http://www.savingantiquities.org/feature_coins.php (last visited Dec. 20, 2007).

52. David Gill, *The Intellectual Consequences of Collecting Classical Coins*, LOOTING MATTERS, Sept. 24, 2007, <http://lootingmatters.blogspot.com/2007/09/intellectual-consequences-of-collecting.html>.

53. Elkin, *supra* note 42.

54. Coins and Archaeology, *supra* note 41.

mation that one can glean from the composition of the hoard itself comes into question.⁵⁵

When looting occurs, all of this information becomes irretrievably lost. Therefore, regardless of one's opinion of the ethics of antiquities collecting, the importance of preserving the archaeological context and coinage's key place within it cannot be denied.⁵⁶

B. Coin Collecting

Coin collecting has a long and rich history. Both Emperors Caesar (100–44 BCE) and Augustus (63 BCE–14 CE) were documented collectors, and passages from Pliny the Elder suggest that there was a widespread interest in coins and a marketplace for their sale during the Roman era.⁵⁷ Also, the common practice by Greek, Roman, and Medieval rulers of reusing designs from earlier coin types suggests that earlier coins were held in high esteem during these times.⁵⁸ In the following centuries, coins were collected and studied by the likes of Petrarch, Louis XIV, Charles VI,⁵⁹ Napoleon, and the American Founding Fathers.⁶⁰

Over time, coin collecting has become more sophisticated and widespread, which, in turn, has led to an ever increasing market for coins.⁶¹ Both the opening of Eastern Europe after the Cold War and the increasingly frequent use of metal detectors⁶² have expanded the number of

55. *Id.*

56. RENFREW, *supra* note 24, at 22 (“[Looted objects] do not contribute to our knowledge of the past; indeed they are parasitic upon that knowledge, for they themselves can only be dated, authenticated and given any kind of interpretation by comparison with similar artefacts that have indeed been found within a coherent context.”).

57. Elkins, *supra* note 51.

58. Tompa & Brose, *supra* note 48, at 209.

59. The Habsburg Emperor, Charles VI, was such an avid collector that, in order to take his collection when he travelled, he had a special case constructed for his coins. He also placed coins he considered meaningful in the foundations of important churches he founded, such as Karlskirche in Vienna. W. OECHSLIN, *Fischer von Erlachs „Entwurf einer Historischen Architektur“: die Intergration einer erweiterten Geschichtsauffassung die Architektur im Zeichen des erstarkten Kaisertums in Wien*, in WIEN UND DER EUROPÄISCHE BAROCK. 7 XXV. INTERNATIONALER KONGRESS FUER KUNSTGESCHICHTE. 4-10. 9. 1983, 77, 80 (E. Lisker ed., 1986) (Austria).

60. Tompa & Brose, *supra* note 48, at 209.

61. Elkins, *supra* note 51.

62. Metal detectorists, as they are often known, are hobbyists who utilize metal detectors to hunt for archaeological materials for fun or profit, using metal detectors. The activities of metal detectorists are controversial as they lead to the destruction of the archaeological record. For a full discussion, see Heritage Action, Metal Detecting: Calling Time on Erosion, http://www.heritageaction.org/?page=heritagealerts_metaldetecting (last visited Dec. 20, 2007).

coins on the market.⁶³ The Internet, however, is perhaps the innovation with the greatest consequences to the trade in ancient coins. The Internet has revolutionized the way ancient coinage is bought and sold. First, there has been an explosion in the number of coins available for purchase in an instant. For example, on September 30, 2007, there were 5534 items for sale within eBay's "Coins: Ancient" category, ranging in "buy-it-now" prices from \$5 to \$800,000.⁶⁴ On the same day, a coin-centric competitor of eBay, VCoins, advertised that 116 dealers were selling 72,669 items with an approximate value of \$14,400,000.⁶⁵ Second, the Internet has allowed unscrupulous collectors to easily purchase coins in an instant from dealers and looters across the world.⁶⁶ There are even instances of online sellers boasting of coins for sale with the dirt still attached.⁶⁷ There is no way for buyers to vet these sellers, and it is difficult to regulate the market as it reaches across international borders.

The scale of the illicit antiquities market is difficult to quantify, let alone the market for ancient coinage, and accounts of its value vary.⁶⁸ Even harder to quantify is the number and value of coins exported out of Cyprus. Two recent arrests, however, give some indication of the scale of some looting operations. In 2002, the Italian Carabinieri discovered and arrested a criminal group operating a multimillion-Euro business selling illicit coinage over the Internet.⁶⁹ During a raid, the Carabinieri discovered 10,000 coins, of which approximately 150 were valuable silver coins from Cyprus.⁷⁰ Subsequent raids uncovered 19,000 more coins as well as

63. Elkins, *supra* note 51.

64. eBay, Coins: Ancient, Search Results, http://coins.listings.ebay.com/Coins-Ancient_W0QQfclZ3QQfromZR11QQsacatZ4733QQsocmdZListingItemList (last visited Oct. 31, 2008) [hereinafter eBay].

65. VCoins, the Online Coin Show, <http://vcoins.com/> (last visited Oct. 31, 2008).

66. See Christopher Chippindale & David W. J. Gill, *On-line Auctions: A New Venue for the Antiquities Market*, 9 CULTURE WITHOUT CONTEXT (Autumn 2001), <http://www.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue9/chippindale-gill.htm>.

67. See eBay, *supra* note 64.

68. See Kate Fitz Gibbon, *Editor's Note: The Illicit Trade—Fact or Fiction?*, in WHO OWNS THE PAST?, *supra* note 48, at 179, 179 (noting that there are no accurate calculations of the scale of the antiquities market); Malcolm Moore, *Tomb Raiders Strip Bulgaria of its Treasures*, DAILY TELEGRAPH, Aug. 8, 2007 (citing a Bulgarian police official's estimate that tomb-raiding in Bulgaria earns crime syndicates £4 billion a year); Miliken Inst., *Financial Innovations for Developing Archaeological Discovery and Conservation*, 7 FINANCIAL INNOVATIONS LAB REPORT (prepared by Caitlin MacLean & Glenn Yago) (Nov. 2008), available at <http://www.milkeninstitute.org/pdf/FIArchaeologyLab.pdf>.

69. Fabio Ficuciello, 'Stolen History' on the Internet, 15 CULTURE WITHOUT CONTEXT (Autumn 2004) <http://www.mcdonald.cam.ac.uk/projects/iarc/culturewithoutcontext/issue15/ficuciello.htm>.

70. *Id.*

another 650 archaeological objects.⁷¹ More recently, in October 2007, five men were arrested in connection with an antiquities smuggling ring in Cyprus.⁷² Police found that the men had hundreds of gold and bronze coins, as well as other antiquities, in their possession, with a total estimated value of over EUR 280,000.⁷³

Another piece of anecdotal evidence on the Cypriot trade in coins is a 2008 interview with a Cypriot metal detectorist in the Cyprus Mail.⁷⁴ In the interview, the metal detectorist, alias "Achilleas," claims that there is a thriving black market on the island and that looters can easily make a good living.⁷⁵ He refers to one acquaintance that uses a tomb he discovered "as a sort of bank" that he "visits whenever he wants cash."⁷⁶ Achilleas goes so far as to imply that found objects turned over to the government are purposefully "misplaced" and then sold on the international black market.⁷⁷ Though unsubstantiated, the account suggests the prevalence of sophisticated, educated looters on the island. As this example indicates, despite the growing concern of the international community, "the trade in undocumented ancient coins continues to grow and remains a serious problem for those wishing to preserve valuable information about the past and protect our common cultural heritage."⁷⁸

C. Coins and Provenance

Provenance (or sometimes provenience) can have two meanings depending on one's perspective. In the art historical terminology, the term generally refers to the past ownership of an item. Alternatively, archaeologists use the term provenance to refer to the precise location of an object during excavation, and it serves as one of the key factors in determining the context of any given archaeological object.⁷⁹ Because looting destroys the archaeological provenance of a coin, it is the latter use of the term that this Note will favor.

71. *Id.*

72. Anna Hassapi, *Police Bust Open Illegal Antiquities Ring*, CYPRUS MAIL, Oct. 6, 2007, http://www.cyprus-mail.com/news/main.php?id=35133&cat_id=1.

73. *Id.*

74. Jill Campbell Mackay, *Tomb Raider Opens Crypt on Why He's Breaking the Law*, CYPRUS MAIL, Jan. 27, 2008 <http://www.cyprus-mail.com/news/main.php?id=37233&archive=1>.

75. *Id.*

76. *Id.*

77. *Id.*

78. Elkins, *supra* note 51.

79. See RENFREW & BAHN, *supra* note 25, at 107.

The vast majority of coins, both in collections and on the market, lack provenance information (both for prior ownership and location) and when any indication of a coin's origin is given, it is often only for a city or region.⁸⁰ It is this widespread lack of provenance for coinage that is the central problem facing those who seek to prevent a market in looted coins and antiquities. If a coin lacks provenance, many, if not most, collectors and dealers will assume that it is licit, i.e., not looted. This allows collectors to turn a blind eye to the problems of looting.⁸¹ Therefore, it is instructive to analyze why coins in particular have little or no provenance information.

Coinage seems to lack good provenance because of three factors. First, unlike modern currency, ancient coins moved more freely across sovereign borders in antiquity because their value was tied to the metal's intrinsic value. This led to a far wider geographic dispersal of coins in comparison to contemporary money, which is generally limited to specific countries or economic zones.⁸² Therefore, a Cypriot coin might be found in Egypt, England, or Rome. Second, coins have been collected for centuries, indeed, since antiquity, and some coins have traded hands innumerable times.⁸³ This has resulted in the loss of provenance. Third, the very nature of coinage as a standardized means of exchange requires that sovereigns repeatedly reproduce near exact copies. This means that for many coins there are several duplicates, which can make attributing a coin to a particular find spot exceedingly difficult.⁸⁴ As an advocate for a free market in ancient coins has noted, "The very nature of this trade—added to the original wide dispersion of the coins themselves—makes determining the provenance of any particular coin virtually impossi-

80. Elkins, *supra* note 51. See also MACKENZIE, *supra* note 34, at 34–35 ("No provenance is still the norm today even for objects of considerable worth . . . Further down the financial scale [where coins are generally located], the notion that provenance might be passed with an object is seen as a ludicrous proposition.").

81. MACKENZIE, *supra* note 34, at 35 ("Many [dealers] adopt a strong opposition to the idea that unprovenanced objects should be viewed with suspicion. To them, this is tantamount to condemning most of the goods in the market to be off-limits to trade. . . . [They] dismiss the more sensible and balanced view that *some* unprovenanced objects on the market are probably looted and therefore *all* objects without provenance should be treated with at least a base level of suspicion . . .").

82. For example, Roman imperial coins have been found as far west as England and as far east as Sri Lanka. Tompa & Brose, *supra* note 48, at 206–07.

83. Elkins, *supra* note 51.

84. *Id.* (citing M.M. Kersel, *From the Ground to the Buyer: A Market Analysis of the Trade in Illegal Antiquities*, in *ARCHAEOLOGY, CULTURAL HERITAGE, AND THE ANTIQUITIES TRADE* 188–205 (N. Brodie et al. eds., 2006)).

ble.”⁸⁵ Without provenance information, a dealer or collector cannot ensure whether a coin is licit or not and, if the law assumes such coin is not licit, many coins will become untouchable.

II. EXISTING LEGAL INSTRUMENTS

A. *The 1970 UNESCO Convention*

The most important international instrument addressing the antiquities trade is the United Nations Educational, Scientific, and Cultural Organization's ("UNESCO") Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ("1970 UNESCO Convention").⁸⁶ The Convention's stated mission is as follows:

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom.
2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.⁸⁷

One of the Convention's important features is that it provides a customary legal definition of "cultural property." Thus, among the items that Article 1 identifies as cultural property are "products of archaeological excavations (including regular and clandestine) or of archaeological discoveries"⁸⁸ and "antiquities more than one hundred years old, such as inscriptions, coins and engraved seals."⁸⁹ It also establishes that any item that is imported, exported, or traded in contravention of the laws of a

85. Tompa & Brose, *supra* note 48, at 209.

86. PROTTE & O'KEEFE, 3 LAW AND THE CULTURAL HERITAGE: MOVEMENT 726 (1989). The other two major international treaties that affect antiquities are the Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 1954 U.N.T.S. 216 and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, 34 I.L.M. 1322. However, because the MOU between the United States and Cyprus is based on a mechanism developed from the 1970 UNESCO Convention, the other two treaties are beyond the scope of this Note.

87. 1970 UNESCO Convention, *supra* note 9, art. 2.

88. *Id.* art. 1(c).

89. *Id.* art. 1(e).

State Party in accordance with the articles of the convention will be considered illicit.⁹⁰

Another significant aspect of the Convention is Article 9:

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.⁹¹

This establishes a system through which States Parties can enter into bilateral agreements to protect a State's threatened cultural property. It is on this Article that the United States bases its implementing legislation.

Though the treaty entered into force in 1972, the effect of the UNESCO Convention was limited because no market countries (with the notable exception of the United States) ratified the Convention until recently.⁹² In fact, the United States was the only market nation to participate in the Convention's drafting and the first to ratify it.⁹³ However, as issues of cultural property have gained prominence and public opinion has shifted towards favoring protection, important source nations like France, Japan, Switzerland, and the United Kingdom have joined the Convention.⁹⁴ Also, the treaty's 1970 effective date has served as a widely recognized bright-line cut-off date for many museum collection policies.⁹⁵ Still, commentators have continued to critique the Convention for

90. *Id.* art. 3.

91. *Id.* art. 9.

92. See States Parties to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, <http://erc.unesco.org/cp/convention.asp?KO=13039&language=E> (last visited Feb. 1, 2009) [hereinafter States Parties List].

93. PROTTS & O'KEEFE, *supra* note 86, at 726–28.

94. States Parties List, *supra* note 92.

95. For example, see the Association of Art Museum Director's ("AAMD") recently promulgated and widely adopted Report of the AAMD Task Force on the Acquisition of Archaeological Materials and Ancient Art, which states that "[m]ember museums normally should not acquire a work unless provenance research substantiates that the work was outside its country of probable modern discovery before 1970 or was legally exported from its probable country of modern discovery after 1970." ASS'N OF ART MUSEUM DIR., REPORT OF THE AAMD TASK FORCE ON THE ACQUISITION OF ARCHAEO-

favoring source nations' retentionist goals.⁹⁶ Despite these critiques, there is no denying the Convention's significance as a catalyst for changing attitudes towards the antiquities trade and a increasing the general recognition that the protection of antiquities is critically importance.⁹⁷

B. The Convention on Cultural Property Implementation Act

Though an original party to the 1970 UNESCO Convention, the United States did not implement the treaty domestically until 1983. The enacting legislation, the Convention on Cultural Property Implementation Act ("CPIA"),⁹⁸ specifically implemented Articles 7(b)⁹⁹ and 9 of the 1970 Convention. In essence, however, the CPIA reduces the 1970 UNESCO Convention to an "agreement to agree."¹⁰⁰ The CPIA grants the president the power to enter into bilateral agreements—MOUs—at the request of

LOGICAL MATERIALS AND ANCIENT ART § I.I.E (2008). Among the museums that have adopted the 1970 date are the J. Paul Getty, the British Museum, and, most recently, the Metropolitan Museum of Art. See J. PAUL GETTY MUSEUM, ACQUISITIONS BY THE J. PAUL GETTY MUSEUM § 4 (2006), available at http://www.getty.edu/about/governance/pdfs/acquisitions_policy.pdf; BRITISH MUSEUM, POLICY ON ACQUISITIONS § 2.5 (2007), available at <http://www.britishmuseum.org/pdf/Acquisitions.pdf>; METRO. MUSEUM OF ART, COLLECTIONS MANAGEMENT POLICY § 3 (2008), available at http://www.metmuseum.org/works_of_art/collection_database/collections_mgmt_policy.pdf.

96. See Merryman, *supra* note 29.

97. See PATRICK O'KEEFE, COMMENTARY ON THE UNESCO 1970 CONVENTION ON ILLICIT TRAFFIC 117 (2000). In recent years the Convention has also had a palpable effect on the antiquities market, as the prices of objects with good provenance fetch higher prices at auction. Souren Melikian, *Rare Antiquities Show Remarkable Success at New York Sales*, INT'L HERALD TRIB., Dec. 12, 2008, <http://www.iht.com/articles/2008/12/13/arts/melik13.php>. Souren Melikian, *A Wake-up Call for the Antiquities Market*, INT'L HERALD TRIB., June 12, 2008, <http://www.iht.com/articles/2008/06/14/arts/melik14.php> (noting that the adoption of the UNESCO treaty's 1970 date by the Association of Art Museum Directors has led to antiquities collectors putting a premium on antiquities that were clearly discovered before 1970).

98. 19 U.S.C. §§ 2601–13.

99. Article 7(b) of the 1970 UNESCO Convention declares that

[t]he States Parties to this Convention undertake . . . to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention . . . provided that such property is documented as appertaining to the inventory of that institution

1970 UNESCO Convention, *supra* note 9, art. 7(b)(I). It also provides for the repatriation of these items at the request of a State Party. *Id.* Though this is a very important provision, further discussion of it is beyond the scope of this Note.

100. O'KEEFE, *supra* note 97, at 110.

States Parties to the Convention, so long as certain criteria are satisfied.¹⁰¹ The president must determine

(A) that the cultural patrimony of the State Party is in jeopardy from the pillage of archaeological or ethnological materials of the State Party;

(B) that the State Party has taken measures consistent with the Convention to protect its cultural patrimony;

(C) that—

(i) the application of the import restrictions set forth in section 2606 of this title with respect to archaeological or ethnological material of the State Party, if applied in concert with similar restrictions implemented, or to be implemented within a reasonable period of time, by those nations (whether or not State Parties) individually having a significant import trade in such material, would be of substantial benefit in deterring a serious situation of pillage, and

(ii) remedies less drastic than the application of the restrictions set forth in such section are not available; and

(D) that the application of the import restrictions set forth in section 2606 of this title in the particular circumstances is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.¹⁰²

After an MOU enters into force, the parties must create “a list of archaeological or ethnological material of the State Party covered by the agreement”¹⁰³ Known as a “Designated List,”¹⁰⁴ it must be “sufficiently specific and precise to insure that (1) the import restrictions . . . are applied only to the archeological and ethnological material covered by the agreement . . . and (2) fair notice is given to importers and other persons as to what material is subject to such restrictions.”¹⁰⁵

Once an item is listed it may not be imported into the United States without certification or other documentation from the State Party that the object was legally exported or proof that it was exported from the State Party prior to the date such material was designated under Section

101. 19 U.S.C. § 2602.

102. *Id.* § 2602(a)(1).

103. *Id.* § 2604.

104. *See, e.g.*, Extension of Import Restrictions, *supra* note 5, at 38,470 (referring to the list of object subject to the import ban as the “Designated List”).

105. 19 U.S.C. § 2604.

2604.¹⁰⁶ If an item is imported in violation of Section 2606, it is subject to seizure and forfeiture.¹⁰⁷ If an object is forfeited, the United States will first offer it to the source country.¹⁰⁸ If the object is not returned to the source country, the United States will return the object to the claimant so long as the claimant establishes that he or she is the bona fide purchaser of the item with valid title.¹⁰⁹ Significantly, the CPIA only allows for civil enforcement, including the forfeiture of the cultural item in question.¹¹⁰

The maximum period an MOU can be in effect is five years.¹¹¹ They are, however, renewable for additional five-year periods if the government determines that the factors that justified entering into the initial agreement are still in effect.¹¹² The CPIA also allows the president to implement emergency import restrictions when certain conditions are satisfied.¹¹³ These are also limited to a five-year maximum and are only renewable for a further three-year period if the president determines that the emergency conditions still exist.¹¹⁴

To aid in its execution, the CPIA created an advisory committee to evaluate requests from States Parties.¹¹⁵ Known as the Cultural Property Advisory Committee ("CPAC"), this body is composed of eleven members: two representing museum interests; three experts in archaeology, anthropology, ethnology, or related areas; three experts in the international sale of archaeological, ethnological, and other cultural property; and three representing the general public.¹¹⁶ During the evaluation process, the CPAC invites public comment on MOU requests, but the original petitions for import restrictions and the recommendations that the CPAC make to the State Department are all classified.¹¹⁷ This practice has led many to criticize the CPAC's decision-making process as too secretive.¹¹⁸ There are also allegations that the State Department has filled the

106. *Id.* §§ 2606(a)–(b).

107. *Id.* § 2609(a).

108. *Id.* § 2609(b)(1).

109. *Id.* § 2609(b)(2).

110. *Id.* § 2609.

111. *Id.* § 2602(b).

112. *Id.* § 2602(e).

113. *Id.* § 2603.

114. *Id.* § 2603(c).

115. *Id.* § 2605.

116. *Id.*

117. Kahn, *supra* note 38.

118. *Id.*

CPAC with members who are sympathetic to the archaeologists' point of view—to the detriment of dealers and collectors.¹¹⁹

The United States' first action regarding Cyprus under the CPIA was the imposition of an emergency import restriction on Byzantine ecclesiastical and ritual ethnological material on April 12, 1999. This made Cyprus the first State that the United States protected under the CPIA in the Eastern Hemisphere.¹²⁰ But it was not until July 19, 2002, that the United States and Cyprus executed an MOU regarding import restrictions on pre-classical and classical archaeological material.¹²¹ This MOU applied to certain designated classes of archaeological material dating from approximately the eighth millennium BCE to 330 CE. The designated archaeological material list included ceramic vessels, sculpture, inscriptions, stone vessels, architectural elements, seals, amulets, stelae, mosaics, metal vessels, stands sculpture, and personal objects.¹²² Then, on August 17, 2006, the U.S. and Cypriot governments amended the MOU to include the Byzantine ecclesiastical and ritual ethnological material that were protected in the 1999 emergency import restriction, effectively extending the protection of this type of material until July 16, 2007.¹²³

The most recent MOU between the United States and Cyprus, effective July 16, 2007, extended the agreement for a further five years. The only amendment to the MOU was the addition of “[c]oins of Cypriot-types made of gold, silver, and bronze” to the archaeological material.¹²⁴ The new restriction includes a non-exhaustive list of common types of Cypriot coins that date from the sixth century BCE to 235 CE to illustrate the type of coins protected.¹²⁵ These coins include currency from ancient Cypriot and Hellenistic kingdoms, as well as from the Roman Empire.¹²⁶

Cyprus also has obligations under the MOU. Under the agreement, the Cypriot government “will expand its efforts to discourage pillage of cultural resources, and the unauthorized export of such material” through a

119. *Id.* (citing as an example the appointment of the CPAC's last two museum representatives from the Chicago Field Museum, a traditionally archaeologist-friendly institution).

120. Import Restrictions Imposed On Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus, 64 Fed. Reg. 17,529 (Apr. 12, 1999).

121. Extension of Import Restrictions Imposed on Pre-Classical and Classical Archaeological Objects and Byzantine Period Ecclesiastical and Ritual Ethnological Material from Cyprus, 67 Fed. Reg. 47,447 (July 19, 2002).

122. *Id.*

123. Cyprus Archaeological Materials Information Page, *supra* note 12.

124. Extension of Import Restrictions, *supra* note 5, at 38,473.

125. *Id.*

126. *Id.*

number of initiatives intended to satisfy Section 2602(a)(1).¹²⁷ The MOU further specifies that the Cypriot government will seek to expand the exchange of archaeological material where there is no threat to its cultural heritage, such as temporary and long-term loans.¹²⁸ The agreement also requires the United States to use its "best efforts" to expand exchanges between the two countries that promote greater understanding and preservation of Cypriot cultural heritage.¹²⁹ Finally, the MOU contains the caveat that the obligations and activities the governments are responsible for under the MOU are "subject to the laws and regulations of each Government, as applicable, including the availability of funds."¹³⁰ There is no regulation of antiquities once they have entered into the United States.

C. Cypriot Antiquities Legislation

A brief survey of Cypriot antiquities laws related to the issue of looted coinage is also necessary because, as previously noted, the CPIA requires that in order for the United States to conclude an MOU with a requesting State it must take internal measures to protect its cultural property.¹³¹ Furthermore, Cypriot antiquities laws are relevant because of their influence on the country's looting problem.

As is common in many source countries, the Cypriot Antiquities Law vests ownership of all undiscovered antiquities as of the date the legislation entered into force in the State.¹³² Under the Law, if an individual accidentally finds an antiquity and does not possess an excavation license, he or she must report the find to the local authorities.¹³³ If the antiquity is movable, the individual must bring the object with him or her to the local authorities and identify where the antiquity was found.¹³⁴ Provided that the find was not the result of illegal excavation, the Minister of

127. These include the following: expanding education programs regarding the importance of protecting and preserving cultural heritage, concluding similar agreements with other source countries, increasing enforcement of its own cultural heritage laws, completing a comprehensive inventory of "cultural resources" within Cyprus, developing management plans for the effective protection of archaeological sites, restricting metal detectors, using private cultural resource management entities for salvage archaeological projects, and studying means of preventing illegal exports. 2007 MOU, *supra* note 4, art. II(B)–(I).

128. *Id.* art. II(J)–(K).

129. *Id.*

130. *Id.* art. III.

131. 19 U.S.C. § 2602(a)(1)(B).

132. Antiquities Law, 1996, Cap. 31 § 3, available at [http://www.mcw.gov.cy/mcw/DA/DA.nsf/All/A2ABFCFE258EFD71C22571A2003A2B9D/\\$file/law-en-1.pdf](http://www.mcw.gov.cy/mcw/DA/DA.nsf/All/A2ABFCFE258EFD71C22571A2003A2B9D/$file/law-en-1.pdf).

133. *Id.* § 4(1).

134. *Id.*

Communications and Works has the discretion to grant the finder a license to own the antiquity.¹³⁵ If the object is movable and the Minister decides that a national collection should acquire the antiquity, the government will pay the finder a gratuity that it deems appropriate under the circumstances.¹³⁶ Violators of this provision face criminal penalties and confiscation of the antiquity.¹³⁷

To address the problem of looting, the Cypriot government has also enacted legislation that makes it a criminal offense to possess or use metal detectors at or near archaeological sites and ancient monuments or to use them to find or detect antiquities.¹³⁸ The legislation further requires that antiquities dealers apply for a dealer's license from the Director of Antiquities.¹³⁹ The law also states that parties can only purchase antiquities from the Cyprus Museum, licensed antiquities dealers, or legal possessors of the objects.¹⁴⁰ Again, violations of these provisions carry criminal penalties.¹⁴¹

Finally, no individual can export antiquities out of Cyprus without first gaining an export license from a committee consisting of the Director, the Curator of Archaeological Museums and Surveys, and the Curator of Monuments.¹⁴² Licenses can only be granted for antiquities exported for the purpose of temporary exhibition, long-term loan to a cultural institution, or the scientific study of excavation material.¹⁴³ Importantly, a license cannot be granted for the export of an antiquity into a private collection.¹⁴⁴ Violators of this export scheme face the same penalties as those who engage in illegal excavations.¹⁴⁵

135. *Id.*

136. *Id.* § 5.

137. *Id.* § 4(3) (“Any person who fails to comply with any of the provisions of subsection (1) of this section shall be guilty of an offence and shall be liable to imprisonment not exceeding one year or to a fine not exceeding one thousand pounds or to both, and any antiquity in respect of which the offence has been committed shall be delivered to the Director and the finder shall not be entitled to any payment therefor.”).

138. *Id.* § 10(4).

139. *Id.* § 26(1).

140. *Id.* § 26(6).

141. *Id.* § 26(7).

142. *Id.* § 27(1).

143. *Id.* § 27(2).

144. *Id.* § 27(3).

145. *Id.* § 27(4).

III. ANTIQUITIES LAWS IN ACTION

A. *General Effectiveness of Antiquities Laws*

In light of the 1970 UNESCO Convention and the CPIA, the question remains: will these regimes effectively help prevent the looting of archaeological sites? The most obvious result of the 1970 UNESCO Convention and its legislative progeny is the increasing public awareness of the problem of looting and the public's changing attitudes towards antiquities issues.¹⁴⁶ In fact, this may be the only meaningful result of the legislation regarding coin-related looting. As noted above, the CPIA, which implements the 1970 UNESCO Convention, only provides for civil enforcement. Therefore, without criminal enforcement, source nations generally must commence civil litigation in order to vindicate their rights.¹⁴⁷

Though there have been some high profile restitutions to source countries in recent years,¹⁴⁸ for the most part, claims for antiquities have been for important, museum-quality works. There are several reasons why source countries have only brought claims for major works, but the most significant reason is the cost.¹⁴⁹ Of these, the greatest expense is the price of an attorney licensed in the United States. Added to this are the costs of proving complex evidentiary issues, such as proving the antiquity's country of origin, as well as issues regarding the statute of limitations and whether or not the antiquity was on the market prior to the entry into force of the relevant legislation. Though restitution of a major work or collection of works is often worth this outlay,¹⁵⁰ will it be so for coins, which are rarely valued at more than ten thousand dollars? Most likely not. Furthermore, the CPIA restrictions are rarely, if ever, relied upon for making restitution claims. Instead, these litigations tend to rely upon the

146. See *supra* note 97 and accompanying text.

147. MACKENZIE, *supra* note 34, at 117.

148. For example, in the shadow of the 1970 UNESCO Convention, the Metropolitan Museum of Art, J. Paul Getty Museum, Museum of Fine Arts in Boston, and Princeton University Art Museum have all recently agreed to return antiquities to Italy. Elisabetta Povoledo, *Progress Seen in Talks on Antiquities*, N.Y. TIMES, Dec. 1, 2007.

149. O'KEEFE, *supra* note 97, at 120.

150. For example three countries, Croatia, Hungary, and, Lebanon, all claimed the Sevso Treasure, a collection of late Roman silver valued at \$187 million. Alan Riding, *14 Roman Treasures, on View and Debated*, N.Y. TIMES, Oct. 25, 2006. For more on the Sevso Treasure, see RENFREW, *supra* note 24, at 46–51.

National Stolen Property Act¹⁵¹ and basic violations like falsification of customs forms.¹⁵²

Even if successful, it is not clear that these restitution claims and export/import restrictions have any effect on the initial looting of archaeological sites, which should be the primary goal of any regulation on antiquities. As Mackenzie notes:

Returns to source countries will ameliorate the destruction of context caused by looting only if they discourage prospective purchasers from buying illicit antiquities, thereby providing a disincentive to looters *before* the objects are taken from the ground. . . . [D]ata suggest[s] that currently market buyers feel no such deterrence.¹⁵³

Indeed, some argue that rather than protecting archaeological sites, export and import restrictions make matters worse. Merryman summarizes this position:

[E]xport controls are difficult and expensive to enforce and in many nations are easily evaded. By denying the opportunity for licit export such laws drive the trade underground, assuring the existence of an active, profitable and corrupting black market. In practice, there is a lively trade in objects smuggled out of the territories of source nations whose laws prohibit export. . . . Such laws assure undocumented decontextualization, resulting in irretrievable loss of information and the proliferation of orphaned objects about whose precise source and context nothing is known. . . . [I]f one set out to harm the cultural heritage of all mankind it would be difficult to devise a more effective way of doing so.¹⁵⁴

This is particularly true when looters, dealers, and collectors see the import and export controls as unfair and unduly restrictive, and therefore, not worthy of adherence. There is evidence to suggest that many looters realize that their activities are illegal, but do not think that they are morally wrong, believing that it is their right to exploit their own cultural heritage.¹⁵⁵ As for chance finders, unless there are greater incentives to do so, it is unlikely that they will report their discoveries to the proper authorities.¹⁵⁶

151. National Stolen Property Act, 18 U.S.C. § 2314 (2000) (providing for criminal penalties for those who possess stolen property).

152. See William G. Pearlstein, *Cultural Property, Congress, the Courts, and Customs*, in WHO OWNS THE PAST?, *supra* note 48, at 9.

153. MACKENZIE, *supra* note 34, at 118.

154. Merryman, *supra* note 29, at 13–14 (citations omitted).

155. *Id.* at 33.

156. Peter T. Wendel, *Protecting Newly Discovered Antiquities: Thinking Outside the Fee Simple Box*, 76 *FORDHAM L. REV.* 1015, 1018 (2007).

Dealers and collectors also find export and import restrictions disproportionately restrictive. In interviews, Mackenzie found that

[a]ntiquities dealers see blanket export restrictions by source countries as so grossly unfair to the free trade goals of the market that not only do they show a lack of respect for these laws in discourse, they go so far as hold these restrictive pieces of legislation responsible for the outflow of material. . . . Far from trying to abide by the export restrictions of source nations in practice . . . and endeavouring to avoid the purchase of an illegally exported antiquity, the dealers . . . saw these export restrictions as so unfair that they deserved to be ignored¹⁵⁷

From these findings, it can be extrapolated that similar attitudes exist regarding U.S. import restrictions. At the very least, the existence of import and export restrictions is not a successful deterrent to the looting of archaeological sites and, at worst, may help foster a thriving black market that feeds on looted antiquities.¹⁵⁸

B. The Effect of Antiquities Laws on the Protection of Cypriot Coinage

The CPIA regime, however, remains ineffective¹⁵⁹ and restrictions on Cypriot coinage will be no exception. Coin collecting has a long-standing tradition, and there are hundreds of thousands, if not millions, of ancient coins in circulation.¹⁶⁰ Of these, very few have provenance information and, for those that do, this information is often incomplete.

157. MACKENZIE, *supra* note 34, at 86 (emphasis omitted).

158. For example, Kremer and Wilkening, two Harvard economists, found that in poorer countries (which most source nations are) export restrictions “may lead to inadequate maintenance, black markets, and the permanent loss of art” Michael Kremer & Tom Wilkening, *Antiquities: Long-Term Leases as an Alternative to Export Restrictions* 3 (Sept. 11, 2007) (unpublished manuscript, available at <http://www.economics.harvard.edu/faculty/kremer/files/Antiquities%2011Sept2007cToSend.pdf>). The illegal market in antiquities not only harms the archaeological sites, it also has effects on the market. The Milken Institute found that

[i]n economic terms, the antiquities trade represents a classic case of market failure: illegally looted archaeological assets are un-priced, existing outside established markets. Distribution may occur under unlawful, inefficient, and often destructive circumstances, inflating prices and creating increased incentives to manipulate the market. The result is a distorted economic value and proliferation of an informal trade that inhibits the growth of a healthy legal market able to support proper discovery, development, and conservation initiatives.

Milken Inst., *supra* note 68, at 2.

159. Even former members of the CPAC criticize the CPIA regime. Kahn, *supra* note 38.

160. Tompa & Brose, *supra* note 48, at 205.

This creates a situation whereby collectors and dealers will readily be able to rationalize that a lack of provenance does not make any given coin illicitly excavated. Furthermore, collectors and dealers have vehemently criticized the recent import restriction on Cypriot coins. Looters will also find it simple to import illicit coins into the United States because of their small size and the ability to market and trade coins via the Internet.¹⁶¹

Repatriation claims, once coins have entered the United States, will also prove to be a poor means of deterring looting. For instance, because of the relatively small value of any given coin, it is doubtful that Cyprus will pursue a repatriation claim.¹⁶² Even if a repatriation claim is successfully pursued, it is unlikely that this will have an effect on looters because the claim will only punish the collector. To be sure, this will remove the incentive for some to collect, but only for U.S. collectors and only those who fear prosecution. In fact, in most cases the only effect a repatriation claim will have on a collector or dealer who does not actually smuggle the item will be the loss of the coin in question. Without criminal penalties attached to the possession of these items through the CPIA, the import restrictions appear to have little teeth.¹⁶³ Even if the restriction serves to reduce the market for Cypriot coins in the United States, without the participation of other source countries, the looters and middleman can simply sell their ill-gotten objects elsewhere.

As a result, until there are greater international restrictions on the antiquities market, local law is the only way to truly deter Cypriot looters. However, the fact that Cyprus' archaeological record "continues to be in jeopardy from pillage,"¹⁶⁴ despite having strongly worded antiquities laws since 1967, suggests that looters have little to fear at home. One factor undermining Cypriot antiquities protection is its perceived unfairness. Because it is somewhat draconian, market actors feel that it is illegitimate. For example, in a recent interview, a Cypriot metal detectorist referred to Cypriot antiquities legislation illegalizing unlicensed excava-

161. The difficulty in identifying "Cypriot-type" coins may be another barrier to the effective enforcement of the import restriction. *See, e.g.*, Wayne G. Sales, *Will the Real Zeus Salaminios Please Stand Up?*, Sept. 22, 2007, <http://www.accg.us/issues/news/will-the-real-zeus-salaminios-please-stand-up/> (challenging visitors to select the Cypriot coin from a group of four ancient coins).

162. MACKENZIE, *supra* note 34, at 117. It is probable that Cyprus would pursue a claim regarding a large coin hoard, but hoards are rare and may have little archaeological value.

163. It is for this reason that, when pursuing dealers and collectors in a criminal or civil suit, litigants rely on the use of the National Stolen Property Act.

164. Extension of Import Restrictions, *supra* note 5, at 38,471.

tions as "sheer nonsense."¹⁶⁵ The metal detectorist went on to assert that he began to sell the antiquities he finds on the black market only after he discovered the administration of the Cypriot antiquities scheme to be corrupt.¹⁶⁶ Whether or not this allegation is true, that it is believed and publicized only serves to undermine the legitimacy and effectiveness of the legislation.

IV. ALTERNATIVE SOLUTIONS

The above-noted failings of the current legislative scheme for antiquities protection suggest that alternative solutions are necessary. In fact, writers familiar with the problems antiquities looting presents have recognized that the current legislative regime, with its focus on import and export restrictions, is ineffective.¹⁶⁷ They have proposed several alternative regimes and each, if adopted, has the potential to help curb the looting of antiquities. However, none of these proposals alone will serve as a magic bullet. A more nuanced approach, which adopts aspects of each of these proposals, is therefore advisable. By analyzing the positive and negative points of some of these schemes, a comprehensive alternative regime can be devised that may have some effect on antiquities looting. What follows is not meant as an exhaustive survey of alternatives, but rather an introduction to a few proposals that may, together, form parts of a solution.

A. Free Antiquities Market

One prominent theory, championed by Merryman and Bator, is the liberalization of the antiquities market. This entails the relaxation of existing export and import restrictions so that they only apply to objects classified as national treasures or currently used for religious or ceremonial purposes.¹⁶⁸

Many of the justifications for the free market approach unsurprisingly focus on monetary factors. Among the arguments for the free international movement of antiquities is that by assigning antiquities a value, they will be more likely to receive the best care possible.¹⁶⁹ Furthermore, this market would allow the individual or institution that most "values"

165. Mackay, *supra* note 74.

166. *Id.*

167. See, e.g., MACKENZIE, *supra* note 34; Bator, *supra* note 32; Merryman, *supra* note 29.

168. See Merryman, *supra* note 29.

169. John H. Merryman, *The Free International Movement of Cultural Property*, 31 N.Y.U. J. INT'L L. & POL. 1, 9 (1998).

the object—defined through purchase price—to possess it.¹⁷⁰ This, it is argued, is a virtue because it allows for the party most likely to have the desire and resources for the care of the object to possess it.¹⁷¹

The free market proponents also argue that their model helps to prevent looting. The sale of available antiquities and the addition of applicable export duties offer source nations an opportunity to generate income off their cultural objects.¹⁷² This income can then be used in efforts to prevent looters and generally promote antiquities protection.¹⁷³ Supporters of the free market alternative also suggest that the steady increase in the supply of licit, authentic archaeological objects with firm provenance would appeal to museums, collectors, and dealers, reducing the demand for black market objects.¹⁷⁴ The desirability of legitimate antiquities would also mean that they could be sold at a premium over black market antiquities, creating an incentive for suppliers to sell legitimately.¹⁷⁵

An open market system also recognizes that the free movement of antiquities, if properly administered, is beneficial for worldwide cultural exchange.¹⁷⁶ Antiquities are a universal link to the past and, once their archaeological context is properly documented, the objects' cultural value is not diminished if they are housed in another country. The 1970

170. *Two Ways of Thinking*, *supra* note 23, at 849.

171. *Id.* Merryman uses the example of Peru, where archaeological objects are retained through restrictive export restrictions even though the materials are not adequately conserved or displayed. If these objects were allowed, through a free international market, to be bought and housed in a wealthier nation, they would likely be better preserved, displayed, and studied, as well as more widely appreciated. By preventing such a movement of these antiquities, Merryman suggests that Peru displays “destructive retention” or “covetous neglect” to the harm of not only the archaeological object, but also the world’s cultural heritage. *Id.*

172. Merryman, *supra* note 29, at 29. Merryman has also suggested that through managing the degree to which it sells its surplus, a source nation can seek to either maximize income (by carefully controlling the number of objects it allows on the market) or flood the market, thereby driving down prices and severely damaging the black market. *Id.*

173. *Id.*

174. *Id.* at 35–36.

175. Kremer & Wilkening, *supra* note 158, at 1. Collectors and museums pay a premium for objects with known provenance for the same reason that any object with good title is more valuable (i.e., the ability to exhibit, publish, or merely own the object without fear of civil or criminal proceedings, clean conscious, etc.). See *supra* note 97.

176. Free market proponents recognize that not all antiquities should be available on the open market. There are certain items that are “culturally immovable” and should not be tradable. Merryman identifies three criteria for identifying such objects: “1. the culture and belief system from which the object came were still alive; 2. the object was made to be used in religious/ceremonial ways by that culture according to that belief system; and 3. if returned, the object would again be put to those uses.” Merryman, *supra* note 29, at 18.

UNESCO Convention drafters recognized this when they wrote that “the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations.”¹⁷⁷ The benefits of an open antiquities trade for market nations are readily apparent: easy access to archaeological objects for both their cultural institutions and citizens. Less obvious, but equally important, is the advantage an open trade offers to source countries. As Bator noted, “Art is a good ambassador.”¹⁷⁸ Through exposure to art from various countries, viewers may become more interested in the countries of origin. By creating a taste for its art through export, a source country can encourage foreign tourists, scholars, and students to visit and study its culture.¹⁷⁹

B. Antiquities Leasing and Option Contracts

A prominent reason that source countries have not endorsed a free market in antiquities is the fear that certain objects of superlative cultural importance may be removed from their country of origin—no State wants a repeat of the Elgin Marbles.¹⁸⁰ There is also the threat that corrupt officials might deplete a country’s archaeological heritage for financial gain if an open market exists.¹⁸¹ In response to these concerns, some academics have suggested using long-term leasing or option contracts.¹⁸² This would allow private collectors and museums to lease antiquities for long periods or purchase the items while the source nations maintain an option to repurchase after a set time.¹⁸³ This system may offer a compromise between source countries and collectors because it will, as suggested by Kremer and Wilkening, “preserve local ownership and avoid alienation of the object while reducing looting, helping to preserve artifacts, and allowing international access.”¹⁸⁴

Kremer and Wilkening further argue that

177. 1970 UNESCO Convention, *supra* note 9, pmb1.

178. Bator, *supra* note 32, at 306.

179. *Id.* Coins are particularly good as “cultural ambassadors” because they were designed as potent symbols of the State and serve as tangible links to ancient daily life.

180. For the history and legal argument regarding the Elgin Marbles, see Kate Fitz Gibbon, *The Elgin Marbles: A Summary*, in WHO OWNS THE PAST?, *supra* note 48, at 109.

181. Kremer & Wilkening, *supra* note 158, at 4.

182. *See id.*

183. *Id.*

184. *Id.* at 5.

allowing lease markets could raise revenue for artifact-rich countries and create incentives for maintenance and preservation, while maintaining long-term ownership rights for the country of origin. By putting the object in the hands of the highest value consumer at each point of time, leases would generate incentives for protection of objects and funds that could be used for the legal excavation of at-risk sites or other needs. Since future ownership rights are preserved, a country could manage its cultural heritage without restricting objects from flowing to highest value use.¹⁸⁵

Using economic models, Kremer and Wilkening conclude that leasing and option contracts are better protections for many of the rationales that are raised for export and import restrictions.¹⁸⁶ They also suggest that giving limited leasing rights to chance finders of artifacts may encourage these finders to report the objects to the appropriate authorities rather than selling them on the black market,¹⁸⁷ a view shared by Wendel.¹⁸⁸

Wendel favors rewarding finders who come forward to the proper authorities with an ownership for a term of years while the source country maintains a future interest.¹⁸⁹ He reasons that, if given temporary possession, a finder will be more likely to come forward rather than going to the black market.¹⁹⁰ Wendel also suggests that incentivizing chance finders who leave objects *in situ* by awarding them an increased term of years can potentially result in a greater number of proper excavations.¹⁹¹

Leasing and options contracts, however, may not be the final solution. Many items, such as the average Cypriot coin, are not valuable enough to warrant making such elaborate arrangements. Instead, leasing and option contracts are more appropriate for rarer and more valuable antiquities. Also, even if a leasing scheme helps limit the black market,¹⁹² it will nonetheless be necessary to increase antiquities-related policing—perhaps with funds generated through leasing¹⁹³—in order to curb organized looting.

185. *Id.* at 2.

186. *Id.* at 42.

187. *Id.* at 58.

188. Wendel, *supra* note 156, at 1020.

189. *Id.* at 1052.

190. *Id.* at 1052–53. This is because finders typically receive a small fraction of an antiquity's value on the black market and there are added risks to selling it, such as fines or imprisonment.

191. *Id.* at 1053–54. Another advantage that Wendel notes is the ability to have foreign museums fund excavations in exchange for limited property rights over objects found.

192. As with a free market, leasing schemes would decrease the demand for black market antiquities by making legitimate objects more readily available. It would also incentivize individuals to protect possible antiquities on their private property. *Id.*

193. *See id.* at 1061.

C. Partage

Recently, an old system of distributing archaeological finds is gaining some ground among commentators. Known as *partage*, the system entails the sharing of archaeological finds between the source country and an archaeologist's affiliated museum or university.¹⁹⁴ This system was widely practiced during the twentieth century and was instrumental in the formation of some of the finest archaeological collections in Western museums and universities.¹⁹⁵ Though currently only used to a limited extent,¹⁹⁶ commentators, such as Cuno and Renfrew, favor a return to the practice as a means of allowing market countries to continue to collect newly excavated antiquities.¹⁹⁷ As they note, the advantage of *partage* is that it allows for the legitimate dispersal of antiquities after careful excavation. Furthermore, it incentivizes museums and universities to give greater financial and expert support to these excavations, particularly in the countries that require it the most. Part of this funding can help differ the costs of policing the sites and combating antiquities looting. One problem with this regime, however, is that it may not take into account private collectors. This is a concern if the goal is the creation of a legitimate licit antiquities market. Still, this issue could be addressed if a private *partage* system is adopted in which collectors can contribute financial funds to a dig in return for a small portion of the finds.¹⁹⁸

D. Antiquities Registration

Regardless of what type of cultural heritage regime a country favors, without obtaining the proper provenance information for newly discovered antiquities these alternatives can be easily manipulated and trans-

194. CUNO, *supra* note 36, at 14.

195. *Id.* (noting that *partage* led to the Ghandaran collection in the Musée Guimet in Paris, the Assyrian collection in the British Museum in London, the Lydian collection at the Metropolitan Museum in New York, the Egyptian collection in the Museum of Fine Arts in Boston, a number of the collections in the State Hermitage Museum in St. Petersburg, as well as the archaeological collections at such universities as Chicago, Harvard, Pennsylvania, and Yale). For a description of the *partage* system in Iraq in the early twentieth century, see also *id.* at 55.

196. David Gill, *Partage: Some Preliminary Thoughts*, LOOTING MATTERS, June 27, 2008, <http://lootingmatters.blogspot.com/2008/06/partage-some-preliminary-thoughts.html> (giving two examples of antiquities that the Fitzwilliam Museum in Cambridge acquired via *partage* from Egyptian excavations).

197. See *id.*; RENFREW, *supra* note 24, at 21.

198. There would, of course, need to be limits to what private contributors could receive. One possibility could be to restrict their portion to redundant pieces (particularly useful for coinage) and have stipulations regarding the housing of the finds as well as access to them.

gressed. The ultimate objective of any legislation (or lack thereof) must be the protection of archaeological context, but the lack of transparency regarding provenance in the present system is directly at odds with this goal. Without standardized provenance information, participants in the antiquities trade (i.e., dealers and collectors) can easily rationalize that any piece that lacks provenance is a licit, good faith, chance find.¹⁹⁹ Furthermore, the lack of any systematic notation of provenance greatly hinders any attempt at enforcing anti-looting laws and, because of evidentiary difficulties, makes repatriation claims more difficult.²⁰⁰ In order to combat this problem, Mackenzie has proposed instituting a mandatory public registration scheme for antiquities.²⁰¹ Several parties, including UNESCO, have suggested registration for buyers and sellers of antiquities, administered through dealers.²⁰² This type of scheme, however, does not cover transactions that do not go through a dealer, and would therefore fail to prevent the entry of illicit antiquities into the market.²⁰³

Instead, a more comprehensive scheme is necessary. As Mackenzie envisions it, public registration

would enable the tracing of antiquities through their stages of private and public ownership; would be useful for the purposes of insurance; would discourage the purchase from sellers within those countries of antiquities not listed, on the inference that they were looted; and would enable museums and historians to track down items they might care to inspect or borrow for the purposes of scholarship or display.²⁰⁴

In order for a registration system to work, one necessary sacrifice would be a type of amnesty, whereby all known antiquities within the system's jurisdiction would be registered and receive clean title, effectively wiping out any repatriation claims on items already out of the ground. As Mackenzie notes, however, if the goal is to prevent further looting, because these items' archaeological context is already lost, the focus should be on items still in the ground—not on repatriation claims.²⁰⁵ If the registration scheme is only enacted in limited jurisdictions, it will also be ne-

199. MACKENZIE, *supra* note 34, at 229.

200. *Id.* at 117.

201. *Id.* at 237–52.

202. *Id.* at 238–39.

203. *Id.* at 239.

204. *Id.* at 240.

205. *Id.* One possible side effect is the possibility that, upon hearing of the amnesty, looters will increase their efforts until the amnesty is over. This is a legitimate concern and could be difficult to combat. Some combination of secrecy in the planning process, a somewhat short time frame for the amnesty, and particularly heightened policing just before and during the amnesty seems necessary.

cessary to require that all archaeological items that subsequently enter the jurisdiction be accompanied by well-documented provenance in order to be registered.²⁰⁶ In conjunction with his registration plan, Mackenzie advocates for more effective criminal penalties, modeled after those used for white collar crimes.²⁰⁷ He suggests that the registration system, coupled with the threat of severe, yet appropriate, criminal penalties, would stem the trade in looted antiquities by making it more difficult for dealers to hide behind the "unknown" factor, and more dangerous for them to deal in illicit items.²⁰⁸

One flaw in Mackenzie's suggested system is that he does not account for the methods by which licit antiquities will continue to be available. If source countries continue to focus on retention and repatriation, there will be fewer new antiquities for the market. This could promote dishonesty in dealers and collectors, particularly if they are able to persist in rationalizing their behavior by relying on the belief that the source country's laws are unduly restrictive. Consequently, it is probably necessary to create a scheme that embraces both the mass registration of antiquities and a system similar to the leasing regime or open market approach.

Mass registration would also be costly, but technologies like computers and the Internet make registration more economically viable than ever before. More problematic are the costs necessary to police the sites and train archaeologists to properly locate and document the finds. These costs could perhaps be offset through the leasing and sale of antiquities, coupled with fees for granting export licenses and foreign aid.

V. POLITICAL MOTIVATIONS?

Having outlined some of the possible alternative regimes for the protection of antiquities, one must ask: why have countries persisted in using import/export restrictions to attempt to prevent antiquities looting? Cost is undoubtedly one factor. In particular, increased policing of archaeo-

206. *Id.* at 241.

207. *Id.* at 243. A public antiquities registration program would also make criminal prosecutions for dealing in illicit objects more efficient and effective. If criminal penalties were attached to mere possession of unregistered items, the *prima facie* case would simply be: (1) the item was within the group of items that must be registered; (2) the item was in the possession of the accused, who had a duty to register the item; and (3) the item was not registered. *Id.* at 246.

208. *Id.* at 244. Mackenzie also believes that by taking a more active role in the prosecution of dealers and possessors of illicit antiquities (made far more viable by the institution of a registration scheme), market countries will help relieve some of the financial strain on source countries, particularly regarding the costs of pursuing repatriation claims. *Id.* at 245.

logical sites and an administration registration system would be significantly more costly than the measures currently employed. Another important factor, however, appears to be political.

As Cuno has noted, “Antiquities . . . have a political meaning. They give modern nations a claim on an ancient past and legitimize politically dominant cultures as national cultures.”²⁰⁹ He argues that

[national cultures] are defined by and are meant to sustain the powerful elite within a nation, and they are defined by others as a way of distinguishing one national culture from another: ours from theirs. Antiquities play a role in this, either because the people of a modern nation feel a direct, racial link to those earlier peoples, or because more frequently a modern nation derives a particular (modern) benefit from them. That benefit may be financial, in terms of tourism, or political: important archaeological remains give a modern nation a place of prominence at international forums (such as UNESCO) that it might not otherwise have for is lack of political, economic, military, or strategic importance in the world’s affairs.²¹⁰

In light of this, commentators have noted the tendency of source nations to restrict the export of archaeological objects aggressively as the protection of patrimony increasingly becomes an important political tool.²¹¹ Meanwhile, the United States has exacerbated this tendency by acquiescing to source country demands because it is politically expedient.²¹² As a result, politicians make decisions regarding antiquities protection with an eye towards domestic and foreign relations rather than towards the best means of preserving our fragile archaeological record.²¹³

A. Cypriot Political Motivation

Though other countries are better known for using antiquities as political tools,²¹⁴ Cyprus is not immune to the practice. In particular, Cypriot

209. CUNO, *supra* note 36, at 9.

210. *Id.* at 12.

211. See, e.g., *id.*; Barbie Nadeau, *Political Antiques: Why Did Italian Leaders Wait Almost a Year to Unveil Rome’s Latest Archaeological Finds? The Answer Is as Old as the City Itself*, NEWSWEEK.COM, Dec. 13, 2007, <http://www.newsweek.com/id/77779>.

212. See *infra* Part VI.B.

213. CUNO, *supra* note 36, at 40 (“[G]overnments rarely, if ever, make decisions based on academic arguments about scholarly pursuits. There are always political trade-offs to consider, and to consider first.”).

214. Italy is a prominent example of this practice. For instance, the Italian Minister of Culture, Francesco Rutelli, made reference to the journey of antiquities in the exhibition entitled “Nostoi: Returned Masterpieces,” which featured recently repatriated Italian antiquities, in the following deeply politicized terms: “[t]he odyssey of these objects, which started with their brutal removal from the bowels of the earth, didn’t end on the

officials often employ the issue of looting as a means to focus attention on the occupation of northern Cyprus by Turkey in 1974.²¹⁵ This occupation was explicitly referenced by the Cypriot Ambassador to the United States, Andreas Kakouris, in his remarks at the MOU signing ceremony on July 19, 2007.²¹⁶ In fact, in most official remarks regarding looting, Cypriot sources almost exclusively refer to the problem as either only occurring in the Turkish-controlled portion of the island, or after 1974 (the date of the Turkish invasion).²¹⁷ During this ceremony, Ambassador Kakouris reiterated the mantra he used when speaking to pro-coin collecting individuals when he said: “[i]t may be your hobby, but it’s our heritage!”²¹⁸

When government officials fail to recognize that antiquities are the common heritage of the world and they use these objects as a nationalistic, political tool, it is not so much the protection of archaeological objects and context that are the focus of legislative regimes, but instead the

shelf of some American museum With nostalgia, they have returned. These beautiful pieces have reconquered their souls.” Jason Felch & Livia Borghese, *Italy Exhibits Its Recovered Masterpieces*, L.A. TIMES, Dec. 18, 2007. See also Nadeau, *supra* note 211 (noting that the unveiling of Rome’s most recent archaeological discoveries were timed for the greatest political impact, such as upstaging the formation of Silvio Berlusconi’s new political party). For examples of other nations’ use of antiquities for political purposes, see CUNO, *supra* note 36 (discussing the political use of antiquities by China, Iraq, and Turkey).

215. See, e.g., Jessica Dietzler, *The Case for Cyprus: SAFE Interviews Dr. Pavlos Flourentzos, Director of the Department of Antiquities of Cyprus*, SAVING ANTIQUITIES FOR EVERYONE, http://www.savingantiquities.org/feature_cyprusinterview.php (last visited Dec. 21, 2007); Republic of Cyprus, Ministry of Finance, Cyprus Problem—Destruction of Cultural Heritage, <http://www.cyprus.gov.cy/portal/portal.nsf/All/0D2ADD6BCD714FACC22570290037D1D1?OpenDocument> (last visited Dec. 21, 2007).

216. Burns, *supra* note 15.

217. For example, the head of the Cypriot Police Office of Cultural Property stated regarding antiquities looting that “[t]he problem we are faced with is a big one, with thousands of antiquities stolen, destroyed and illegally traded since 1974.” He made no reference, however, to the looting occurring in the Greek portion of the island. Leo Leonidou, *All Antiquities Belong to the State, and That’s That*, CYPRUS MAIL, Jan. 27, 2008. See also Department of Antiquities, *The Looting of Cultural Heritage in Occupied Cyprus*, http://www.mcw.gov.cy/mcw/da/da.nsf/DMLlooting_en/DMLlooting_en?OpenDocument (last visited Oct. 28, 2008) (only entry on looting focuses exclusively on the Turkish side of the island); Embassy of the Republic of Cyprus in Washington, D.C., *Destruction of Cultural Heritage*, <http://www.cyprusembassy.net/home/index.php?module=page&pid=22> (last visited Oct. 28, 2008) (only noting destruction of heritage in Turkish territory). But see Hasapi, *supra* note 47 (quoting the Cypriot Antiquities Department Director, Pavlos Flourentzos, “The illegal antiquities trade is a problem in Cyprus, even in the non-occupied part”).

218. Burns, *supra* note 15.

symbolic retention of the objects in the source country.²¹⁹ However, as Merryman has noted, “[T]he belief that cultural objects belong within the national territory and the rhetoric that supports that belief are themselves cultural relics; they are lingering expressions of the romantic nationalism that blossomed in the first half of the nineteenth century.”²²⁰

B. U.S. Political Motivations

Though certainly motivated by a desire to protect archaeological material, the United States also uses MOUs to gain political capital. To be sure, the United States has long supported antiquities protection.²²¹ It was also one of the first countries to enact the 1970 UNESCO Convention. Additionally, a recent Harris Poll found that ninety-six percent of Americans favored laws protecting archaeological sites.²²² The United States, however, continues to utilize the CPIA regime despite the questionable success of the legislation and the presence of several alternatives that potentially offer more effective approaches to the protection of antiquities. Furthermore, as noted above, most attempts at enforcement and repatriation utilize the National Stolen Property Act, making the CPIA “a sideshow” rather than the legal focal point of U.S. antiquities law.²²³ Why, then, does the United States continue to use the CPIA as the only regime for the protection of antiquities?

The answer may be that politics rather than the best interests of the antiquities are driving U.S. policy. To begin with, though partly motivated by a desire to protect archaeological objects and sites, the United States also based its involvement in the drafting of the 1970 UNESCO Convention on political considerations.²²⁴ Specifically, as developing nations became more integral participants in international organizations in the late 1960s, the United States saw the Convention as a means of fostering better relations with these States.²²⁵

219. Merryman, *supra* note 29, at 15.

220. *Id.* at 15.

221. The first national archaeological protection legislation was enacted in 1906 under Theodore Roosevelt. Rick St. Hilaire, *America's Commitment to Safeguarding Heritage*, SAVING ANTIQUITIES FOR EVERYONE, Aug. 20, 2007, <http://safecorner.savingantiquities.org/2007/08/americas-commitment-to-safeguarding.html>.

222. MARIA RAMOS & DAVID DUGANNE, SOC'Y FOR AM. ARCHAEOLOGY, EXPLORING PUBLIC PERCEPTIONS AND ATTITUDES ABOUT ARCHAEOLOGY 26 (2000), <http://www.saa.org/pubEdu/nrptdraft4.pdf>.

223. Pearlstein, *supra* note 152, at 11.

224. See PROTTE & O'KEEFE, *supra* note 86, at 727.

225. *Id.*

Even the United States' present participation in UNESCO is dictated by foreign policy. In 1984, the United States, feeling that the organization's policies were adverse to Western interests, formally withdrew from UNESCO.²²⁶ It was not until 2003, under the shadow of the second Iraq War, that the United States rejoined the organization.²²⁷ Statements from various U.S. government officials at the time demonstrated the clear foreign policy rationale for the United States' return.²²⁸ The United States has followed the same logic expressed by Cuno, who argues, "Participation in the working of UNESCO is determined by national political self-interest. If a country believes it is to the benefit of its political position in the world to participate in UNESCO, it will. If it believes it is not, it won't."²²⁹

The MOU process itself is also fraught with political considerations. Because it is housed within the State Department, CPAC's recommendations regarding MOU requests are considered with U.S. foreign policy objectives in mind.²³⁰ One former CPAC member has noted that the Committee's Executive Director, Maria Kouroupas, must ensure that the group's decisions "reflect the wishes of her State Department superiors. And those wishes are clear: [c]ultural objects exist to make international friends and create better diplomatic relations."²³¹ That this is the case is further suggested by the fact that the State Department keeps classified most of the material the CPAC uses in its deliberations, including the original MOU request, as well as the final recommendation the Committee makes to the Department.²³² If the only consideration was whether

226. For example, Assistant Secretary of State Gregory Newell wrote in a report to the Senate regarding the decision: "UNESCO programs and personnel are heavily politicized and answer to an agenda that is often inimical to U.S. interests Most UNESCO programs are aimed almost exclusively at the Third World and have little or no direct impact on U.S. interests." CUNO, *supra* note 36, at 150.

227. UNESCO—Member States, <http://erc.unesco.org/portal/UNESCOMemberStates.asp?language=en> (last visited Feb. 19, 2009).

228. For example, in a speech at UNESCO headquarters, Laura Bush stated that "[a]s the civilized world stands against terror, UNESCO's work can make an enormous difference. Together we can construct, as UNESCO's constitution states, the defences of peace in the minds of men." CUNO, *supra* note 36, at 150–51.

229. *Id.* at 151.

230. CUNO, *supra* note 36, at 36.

231. *Id.* at 178 n.30. Some dealers and collectors have gone so far as to claim that the State Department's professional staff has manipulated the nomination process in order to stack the Committee with individuals who favor broad-reaching importer restrictions. Kahn, *supra* note 38.

232. Kahn, *supra* note 38. *See also* CUNO, *supra* note 36, at 37–38.

import restrictions would assist in the protection of antiquities, why the need for secrecy?²³³

Recently, a group of coin collecting organizations filed a complaint against the U.S. State Department asking for declaratory and injunctive relief under the Freedom of Information Act.²³⁴ Through the suit, the plaintiffs seek to compel the government to shed light on the decision-making process of the CPAC and the State Department.²³⁵ Some commentators see this lawsuit as a means to investigate the motivation for U.S. willingness to side with source nations, as many in the art world “suspect that the [United States] is too quick to sacrifice the interests of American museums to help secure the cooperation of foreign nations in matters like drug trafficking and the war on terror.”²³⁶

Though some of the pro-coin collecting lobby claims are wrong-headed at best, there appears to be some foundation for the belief that U.S. antiquities policy is focused more towards appeasing valuable political allies rather than on protecting artifacts and archaeological sites. Statements from U.S. officials as well as treaties and initiatives consummated between the two countries attest to the close relationship between Cyprus and the United States, particularly in relation to the U.S. wars in Iraq and Afghanistan.

In 2006, the U.S. Assistant Secretary of State for European and Eurasian Affairs, Daniel Fried, said in a public address, “Cyprus is an important friend and a key partner on vital issues such as security and counter-terrorism.”²³⁷ Furthermore, “[t]hroughout the wars in Afghanistan and

233. There is also a possibility that the State Department is violating the CIA in entering some of the current MOUs. In particular, it is unclear, in part due to the secrecy surrounding the process, the extent to which the MOUs satisfy the requirements of 19 U.S.C. § 2602(a)(1), such as whether the agreement is part of an effort at antiquities protection that includes other market countries, to what degree the MOUs are part of an effort that includes other market nations, whether there are less drastic measures available to achieve the MOU’s goals, and if the MOU “is consistent with the general interest of the international community in the interchange of cultural property among nations for scientific, cultural, and educational purposes.” 19 U.S.C. § 2602(a)(1).

234. Jeremy Kahn, *Coin Collectors Sue State Department over Import Rules*, N.Y. TIMES, Nov. 17, 2007. The complaint is available at <http://accg.us/issues/news/complaint.pdf>.

235. *Id.*

236. Richard Lacayo, *Can Coin Collectors Make Change?*, LOOKING AROUND, Nov. 19, 2007, http://lookingaround.blogs.time.com/2007/11/19/can_coin_collectors_make_chang/. See also Lee Rosenbaum, *Numismatists Sue Secretive Cultural Property Advisory Committee for Transparency*, CULTUREGRRRL, Nov. 20, 2007, http://www.artsjournal.com/culturegrrl/2007/11/numismatists_sue_secretive_cul.html.

237. Daniel Fried, Remarks at the 17th Annual Cyprus Conference (June 8, 2006), available at <http://www.cyprusembassy.net/home/uploads/pdf/Miscellaneous/Fried%20remarks%20at%2017%20PSEKA%20conference%208.6.06.pdf>.

Iraq, Cyprus has provided over-flight and landing rights to U.S. aircraft and port access for U.S. ships.”²³⁸ During this time, “[a]pproximately 800 U.S. military flights have used Cyprus’s airports, transporting troops and cargo to Iraq.”²³⁹ Finally, in his remarks at the MOU signing ceremony, U.S. State Department Under Secretary Nicholas Burns made reference not only to Cypriot aid in evacuating 15,000 Americans from Lebanon during its civil war, but also to Cyprus’ current status as an important partner in U.S. foreign policy.²⁴⁰ He stated,

Cyprus, of course, is also a partner in our war to keep—in our efforts to keep the world peaceful and stable. Cyprus was the very first member of the European Union that signed a bilateral ship boarding agreement under our Proliferation Security Initiative, which has become our flag-ship operation to try to help prevent the spread of terrorism in the world.²⁴¹

Together, these statements and agreements demonstrate the close political ties between the two countries. It also suggests that the United States might equate appeasing Cyprus’ retentionist policies with winning the “Global War on Terror.”

Another area where the United States is apparently seeking to curry Cyprus’ favor is the entry of Turkey into the European Union. Turkey has long been an important American strategic ally and its most important ally in the Muslim world.²⁴² But, recent events, in particular the Iraq War, have strained the relationship between the two countries.²⁴³ In order to strengthen its ties with Turkey, the United States is seeking to aid the Mediterranean State by endorsing its application for EU membership.²⁴⁴ Of the factors delaying Turkey’s possible acceptance, the “Cyprus Ques-

238. Embassy of the Republic of Cyprus in Washington D.C., *Allies in the Fight Against Terror*, <http://www.cyprusembassy.net/home/index.php?module=page&cid=1002> (last visited Oct. 28, 2008).

239. *Id.*

240. Burns, *supra* note 15.

241. *Id.*

242. *See Ally Needs Us*, L.A. TIMES, Oct. 22, 2007, at A20 (stating that the United States and Turkey have “[fifty] years of strong relations” and noting that Turkey is “the only Muslim country in NATO, a key ally in Afghanistan and an essential transit route into Iraq”); Sebnem Arsu & Sabrina Tavernise, *Turkey Resolves to Give Go-Ahead for Raids in Iraq*, N.Y. TIMES, Oct. 18, 2007 (noting “Turkey’s importance as an ally in Iraq”); Jim Vandhei, *Bush Praises Turkey, Offers Ally Little More*, WASH. POST, Jun. 9, 2005, at A18.

243. *See id.*

244. Craig T. Smith, *Ride ‘Em, Cowboy. Well, Not Exactly*, N.Y. TIMES, May 13, 2007 (noting that President Bush heavily endorses EU membership for Turkey as “a way of building a bridge between the West and the Muslim world”).

tion” is one of the most prominent.²⁴⁵ Part of this problem is the Greek-Cypriots’ reluctance to unify the island. In 2004, Greek-Cypriots voted down a referendum, which Turkish-Cypriots approved, to reunite the island.²⁴⁶ Additionally, Cypriot representatives have continually thwarted EU attempts at ending northern Cyprus’ isolation.²⁴⁷ However, after a new Greek-Cypriot president was elected in 2008, the island’s Greek and Turkish factions have begun to restart reunification talks.²⁴⁸ Could the United States be working in the background to help move this process along? And, if so, did the generous MOU, even if only subconsciously, help “grease the wheels”?

The above factors suggest that rather than purely seeking to protect archaeological materials in an effective way, the United States is using the CPIA to gain political capital, which it can use to carry out its other goals, such as the “war on terror.”

CONCLUSION

Though unprecedented, the inclusion of Cypriot coins in the U.S. MOU with Cyprus is simply another example of an attempt by the international community to protect archaeological sites from looting and artifacts from losing their all-important context. Regardless of the type of object being regulated, the current U.S. approach to antiquities protection is highly flawed. Although interested parties, including academics and commentators, have proposed several alternative regimes, the existing system persists. It is possible that, given time and stronger enforcement, the CPIA will become an effective tool against the global looting of antiquities. But as Prohibition, the “War on Drugs,” and similar enforcement regimes that rely on strict import restrictions demonstrate, such measures are not always effective. Furthermore, without addressing the critical matter of standardizing provenance information no regime can hope to succeed. It is also self-evident that no matter what protection scheme is favored, its effectiveness would increase exponentially as the number of States that adhere to it increases. If only the United States restricts the import of Cypriot coins, there are still buyers available in other States such as France, Japan, Switzerland, and the United Kingdom. Every party with an interest in the protection of archaeological sites should seek wide-reaching international solutions.

245. *Turkey and Cyprus: Island Trouble*, ECONOMIST, Jan. 28, 2006.

246. Susan Sachs, *Greek Cypriots Reject UN Peace Plan*, N.Y. TIMES, Apr. 25, 2004.

247. *No Love Lost. The Two Halves of Aphrodite’s Island Remain at Loggerheads*, ECONOMIST, May 29, 2008.

248. Sebnem Arsu, *Cypriots Restart Reunification Talks*, N.Y. TIMES, Sept. 3, 2008.

This suggests the political motivations of the MOU; if the United States is concerned with actually protecting antiquities it would take steps to create a multilateral regime that more effectively addressed the international antiquities market, rather than solely utilizing agreements consummated with individual States. The debate over antiquities protection by the United States is marred by the suggestion that the United States may be using MOUs as a carrot to gain political capital. This the United States should not do, because it ignores the important place that archaeological information holds in the human experience.

Because Cypriot coins have proven to be a flash point on which proponents on either side of the dealer/collector and archaeologist/source country divide have focused their attention, they may serve to promote important change. Over the course of this often-heated debate, both sides have been forced to reevaluate the effectiveness of the CPIA and the importance of legislative protection for antiquities. Vocal commentators from both points of view have suggested fostering a “forum for constructive dialogue,”²⁴⁹ and coupled with the continued mainstream media attention devoted to the issue, this development may prove critical for the evolution of global antiquities protection. Coin collector groups have filed Freedom of Information Act lawsuits in order to shed light on the CPIA evaluation process. This may help reveal the extent to which the process is politicized.

In an online post, Rosenbaum addressed the importance of developing a “ceasefire in the cultural-property wars.”²⁵⁰ It appears that the attention garnered by restrictions on Cypriot coin importation may be an important factor in achieving this goal, and the debate may serve as a stepping-stone to more effective global antiquities protection schemes.

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249. Nathan T. Elkins, *Towards a Forum for Constructive Dialogue*, SAVING ANTIQUITIES FOR EVERYONE, Dec. 13, 2007, <http://safecorner.savingantiquities.org/2007/12/towards-forum-for-constructive-dialogue.html> (with comments from Peter Tompa and Wayne G. Sayles).

250. Lee Rosenbaum, *Penn Professor-for-a-Day: My Ceasefire Proposals for the Cultural-Property Wars—Part II*, CULTUREGRRRL, Nov. 19, 2007, http://www.artsjournal.com/culturegrrl2007/11/professorforaday_at_penn_cease.html.

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