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c) *Proposal for a Model Law on the Protection of Cultural Property*

(memorandum submitted by the Secretariat)

<i>Summary</i>	<i>Consideration of preparation of a Model law on the Protection of Cultural Property</i>
<i>Action to be taken</i>	<i>Future work</i>
<i>Mandate</i>	<i>Future Work Programme</i>
<i>Priority level</i>	<i>To be determined</i>
<i>Connected documents</i>	<i>UNIDROIT 2009 – C.D.(88) 7 Add. 5 et C.D.(88) 17, §§ 76-86</i>

1. At its 88th session, the Governing Council examined a proposal by UNESCO to co-operate with UNIDROIT in drafting a model law on the protection of cultural property that would offer a precise definition of the principle of State ownership of cultural property, particularly material of an archaeological nature. The chief objective of that proposal was to facilitate the application of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention as well as their ratification by as many States as possible. These were only preliminary soundings, until the UNESCO member States had been consulted at the 15th session of the *Intergovernmental Committee for Promoting the return of cultural property to its countries of origin or its restitution in case of illicit appropriation* which was to take place in May 2009.

2. The Council expressed its gratitude to UNESCO for its proposal and – pending the decision that was to be taken by the UNESCO member States on the basis of a more comprehensive proposal submitted to that Committee – decided to agree in principle to work with UNESCO in preparing such an instrument, leaving the method of work to be decided at a later stage.

3. At the 15th session of the UNESCO Intergovernmental Committee, the twenty-two members of the Committee came out in favour of pursuing this initiative and encouraged UNESCO and UNIDROIT to set up a committee of independent experts to draft model legislative provisions defining State ownership of cultural property, in particular the archaeological heritage. Such legal guidelines could, it was felt, form the basis for drafting national legislation and promote uniformity of the cultural terminology, the ultimate goal being for all States to adopt sufficiently explicit legal principles in this area.

4. The UNESCO and UNIDROIT Secretariats accordingly set up an Expert Committee, using the most representative geographical criteria. The members of the Committee, who are appointed in their personal capacity as independent experts, are:

- Mr Thomas Adlercreutz, Real Estate Attorney, National Fortifications Administration, Sweden (representing ICOMOS),
- Prof. Manlio Frigo, Professor of International Law, Università di Milano, Italy,
- Prof. Marc-André Renold, Professor of Law, Université de Genève, Switzerland,
- Dr Jorge Sanchez-Cordero, Centro de Derecho Uniforme, Mexico,
- Prof. Patrick O'Keefe, Honorary Professor, Australia,
- Dr Vincent Négri, Researcher at the National Center for Scientific Research, France,
- Dr James Ding, Senior Government Counsel, Hong Kong,
- Prof. Norman Palmer, Barrister, Chair, Treasure Valuation Committee, UK,
- Prof. Folarin Shyllon, Ibadan University, Nigeria.

5. The Committee recently appointed Professor Marc-André Renold as its Moderator. The Committee will initially carry out its work by electronic means. A meeting will be organised if necessary. The Committee has been asked to structure its deliberations around the following two working documents and to report on its findings by mid-April:

- a comparative study of different national legislations on State protection and ownership on cultural heritage, prepared by UNESCO and reviewed by UNIDROIT (CF. ANNEXE 1);
- a short comparative document on ownership of undiscovered archaeological material and cultural objects which presents an outline of some of the existing legislation regarding this issue.

6. Two other studies are currently being prepared: a comparative study of Scandinavian legislations on this topic (prepared by Mr T. Adlercreutz) and another dedicated to a comparison between legislations from different Latin American countries. Some members of the Committee already sent their contributions to the Moderator also in view to delimit more strictly the mandate of the Committee and to establish its working methods more precisely.

7. Mr M.-A. Renold and Mr J. Sánchez Cordero will present the Committee's objectives and initial findings to the 16th session of the UNESCO Intergovernmental Committee which will be held in Paris from 21 to 23 April next. A report on these discussions will be submitted to the Governing Council at its 89th session.



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ANNEXE

**INTERGOVERNMENTAL COMMITTEE FOR
PROMOTING
THE RETURN OF CULTURAL PROPERTY TO ITS
COUNTRIES OF ORIGIN OR ITS RESTITUTION
IN CASE OF ILLICIT APPROPRIATION**

MODEL DRAFT LAW

ON THE OWNERSHIP OF CULTURAL PROPERTY¹

In a paper entitled *Unfinished Business: Following Through on Some Committee Initiatives*, Professor Patrick J. O'Keefe² reports three findings about legislation on undiscovered antiquities:

- national legislation is often too vague;
- people dealing with the object concerned are not aware of the legislation;
- the State does not enforce the legislation against its own citizens.

In support of these findings, Professor O'Keefe cites the case of *Iran v. Barakat*,³ stressing that there was no law whatsoever designating Iran as the owner of the archaeological items claimed after they were put on sale by a private gallery in London. Iran's claim was only accepted on appeal, although it was not recognized to have original title. The *Iran v. Barakat* judgement is significant in scope in that it allows States with imprecise legislation to claim ownership of stolen or illegally exported cultural objects in a court of law.

¹ This is a working document intended for the Expert Committee on the preparation of a model draft law defining State ownership of cultural property.

² Paper submitted on the occasion of the celebration of the thirtieth anniversary of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation, Seoul, 25 to 28 November 2008.

³ Republic of Iran v. Barakat Galleries (2007), EWCA Civ 1374.

The lack of precision in legislation is, however, often penalized. In *Ecuador v. Tajan*⁴ in 2007, the Paris Court of First Instance ruled that “the disputed movable property has never been inventoried, which is done only in the case of objects of exceptional importance. Nor [has] it been established that the disputed objects [are] the property of the State of Ecuador.” Ecuador’s claims were rejected.

It is therefore very important to address the issue of legislation of cultural property because it is, at best, very often antiquated or too imprecise and, at worst, non-existent. Consequently, States encounter numerous legal obstacles when requesting restitution, particularly in the case of archaeological objects from unlisted sites for which there is no inventory or documented provenance. States must be able to assert their right to ownership of this type of cultural heritage as an inalienable, imprescriptible right.

Greek legislation on the protection of antiquities and cultural heritage is a perfect example. Article 21 relating to the ownership of movable property provides that:

- “1. Movable ancient monuments dating up to 1453 belong to the State in terms of ownership and possession, are imprescriptible and *extra commercium* according to article 966 of the Civil Code.
2. The right of ownership of imported antiquities dating up to 1453 shall be recognized under the terms and the conditions of article 33, paragraph 3 and article 28, paragraphs 5 and 7.
3. Ancient movable monuments, which constitute finds from excavations or other archaeological research, regardless of their dating, belong to the State in terms of ownership and possession, are *extra commercium* and imprescriptible.
4. The right of ownership of other movable monuments dating after 1453 shall be exercised in accordance with the terms and conditions of this law.”

This will encourage States to develop effective legislation in order to establish their ownership of unrecorded and undiscovered archaeological artefacts, a problem shared by many countries and confirmed in the report of the 15th session of the *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation* which records the discussions that took place on a model draft law to define State ownership of cultural property.⁵

This approach was supported by Dr Jorge Sánchez-Cordero, Head of the Mexican Centre of Uniform Law. In his view, the project should also effectively promote the ratification of the 1970 UNESCO and 1995 UNIDROIT Conventions. In an article entitled *Proposal to be submitted to the agenda of the governing council of UNIDROIT*,⁶ Professor Sánchez-Cordero also emphasized that “one of the substantial problems is the enormous difficulty posed by the terminology used in the field of cultural property”. Thus, for example, while the term “State”, sometimes accompanied by that of local authority, remains the main reference, other terms such as “nation”, “government”, “people” and “crown” are used in some countries’

⁴ Republic of Ecuador v. S.A. Tajan, TGI Paris, First chamber, First Section, 24 January 2007.

⁵ Report of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation on its activities (2008-2009) and on its 15th session in Paris, 11 to 14 May 2009.

⁶ Paper submitted at the 15th session of the Committee in Paris, 11 to 14 May 2009.

legislation. Professor Sánchez-Cordero also stressed the efforts being made in Europe to produce a Dictionary of Cultural Terms.⁷

However, despite these differences, a convergence does seem possible. Terminological standardization should be fostered, taking into account not only the legal but also the ethical, philosophical and historical aspects specific to each State.

Such standardization means that the most relevant, current legislation on the subject in the various countries must be studied and its content compared to determine the true points of convergence and the most significant distinctive features. A study of the relevant texts will reveal the different essential elements of a model draft law. The notion of cultural property must first be defined (I), so that ownership can be established (II), before defining the rights and duties incumbent upon the authorities concerned (III), and addressing the problem of the circulation of cultural property on the art market (IV).

I. The necessary definition of cultural property: reference to UNESCO standards

As there is a host of definitions of the term, each the result of a political, social and cultural history, the model draft law must necessarily be based on common references. The 1954 and 1970 UNESCO Conventions, the Recommendation concerning the International Exchange of Cultural Property adopted in Nairobi in 1976, and the 1995 UNIDROIT Convention are basic texts in the field of cultural property. Owing to their international standing, confirmed by their subsequent ratification, use must be made of the standards established by these texts. Through compulsory reference thereto, the terminology used in the various national laws could be standardized and a precise and effective definition could be ensured.

The Federal Act on the International Transfer of Cultural Property (LTBC), adopted by Switzerland in 2003, is a perfect illustration in this respect. Article 2 of the LTBC, entitled *Definition*, provides as follows:

“Cultural property is property important to archaeology, prehistory, history, literature, art, or science, for religious or secular reasons, belonging to a category set out in Article 1 of the UNESCO Convention of 1970.

Cultural heritage is cultural property belonging to a category set out in Article 4 of the UNESCO Convention of 1970.

States Parties are States that have ratified the UNESCO Convention of 1970.”

While reference to the UNESCO and UNIDROIT conventions entails standardization of cultural property terminology and definitions, such reference leads one to think that all places where such objects could be found may be covered. The site of discovery is extremely important and not all legislation provides for the three reference discovery points, namely the soil, the subsoil and the seabed.

⁷ See work by the International Research Group on Cultural Heritage and Art Law (GDRI) and the French study centre on international legal cooperation (CECOJI-CNRS-UMR) under the direction of Marie Cornu and Jérôme Fromageau.

The explicit reference in Italy's 2004 *Code of the Cultural and Landscape Heritage* to the *Convention on the Protection of the Underwater Cultural Heritage* adopted by UNESCO in 2001 is noteworthy. Article 94 of said code, whose exact title is "UNESCO Convention," provides that:

- "1. Archaeological and historical objects found in the seabed of areas of seawaters extending for twelve marine miles from the external boundary of national waters are protected under the 'Rules pertaining to measures for underwater cultural heritage' annexed to the UNESCO Convention on the protection of the Underwater Cultural Heritage, adopted in Paris on November 2, 2001."

In the final analysis, if the notion of "cultural property" is defined with reference to the UNESCO and UNIDROIT conventions, both the precision and scope of a model draft law could be established, which would consequently facilitate the determination of ownership of cultural property.

II. Determination of ownership of cultural property

Determining the ownership of cultural property is both crucial and delicate. There is some gradation in the determination of an authority's *ownership* of cultural property. It can be *nil* if the legislation grants an exclusive right of ownership to the inventor, *partial* if the legislation provides for shared ownership between the inventor and the authority and for a right of pre-emption in many instances, and *total* if the legislation grants an exclusive ownership to the relevant authority.

A comparative study of various laws on the subject shows that provisions vary considerably, thus permitting some flexibility and modularity. However, before examining some original solutions proposed by national lawmakers, emphasis must be laid on the existence of *common criteria*.

1. The distinction found most frequently is that between **movable property and immovable property**.

This is most aptly illustrated by the provisions of Egypt's legislation, in particular Articles 23 and 24 of *Law No. 117 of 1983* promulgating the *Antiquities Protection Act*, inasmuch as Article 23, concerning *unregistered immovable antiquities*, stipulates that:

"Every person who discovers an unregistered immovable antiquity shall notify the Antiquities Organization of his find, and every such find shall be deemed public property. The Organization shall take the necessary measures for safeguarding the find. Where the find is located on private property, this Organization shall decide within three months whether to remove the find, to initiate measures for expropriating the land upon which it is located, or to leave the antiquity in its place and register it in accordance with the provisions of this law. In assessing the value of expropriated lands, the value of any antiquities they may contain shall not be taken into consideration.

Where the Organization decides that a find is particularly important, it may pay compensation to the persons reporting it, the amount of such compensation to be determined by the appropriate Permanent Committee."

In relation to the *fortuitous finding of movable antiquities* or one or more parts of an immovable antiquity, Article 24 of said law provides that:

“Every person who fortuitously discovers a movable antiquity or a part or parts of an immovable antiquity, wherever it may be located, shall notify the nearest public authority within forty-eight hours of his discovery and safeguard it until the authorities take possession of it, failing which he shall be deemed to be in unauthorized possession of an antiquity. Upon being so notified, the said public authority shall inform the Organization of the find immediately.

The find shall be deemed public property, and once the Organization has assessed its importance, it may pay compensation to the person who has discovered and reported it, the amount of such compensation to be determined by the appropriate Permanent Committee.”

However, other criteria may prove to be of particular interest in making the legislative framework more flexible.

In Haitian law, for example, the possessor of the object may retain custody under Article 2 of the law of 1941. This determination is subject to the requirement that a declaration has been made to the Ethnology Bureau, *the Nation remains the owner of the object*.

Therefore, yet another solution is emerging in relation to the various degrees of ownership for which legislation often provides. *Recourse to the concept of separation of ownership rights to distinguish between the usufructary and bare owner*, could be an attractive solution to States for which conservation and preservation is financially burdensome, provided that the terms and conditions of the usufruct are strictly regulated.

2. In order to study an authority’s right of ownership to cultural property, the **very nature and duration of the right** must be addressed. As highlighted above, some countries, such as Greece, recognize an imprescriptible right to certain antiquities, sometimes declared to be *res extra commercium*.

The issue of imprescriptibility, often inherent in any listing or at least recognition of an authority’s exclusive and total ownership of the property, is sometimes accompanied by a *ratione temporis criterion*.

- Articles 7 and 21 of Greece’s legislation on the subject are cases in point. Article 7 concerning immovable property and Article 21 concerning movable property provide respectively that:

“1. Movable ancient monuments dating up to 1453 belong to the State in terms of ownership and possession, are imprescriptible and *extra commercium* according to Article 966 of the Civil Code.

2. The right of ownership of imported antiquities dating up to 1453 shall be recognized under the terms and the conditions of Article 33, paragraph 3 and Article 28, paragraphs 5 and 7.

3. Ancient movable monuments, which constitute finds from excavations or other archaeological research, regardless of their dating, belong to the State in terms of ownership and possession, are *extra commercium* and imprescriptible.

4. The right of ownership of other movable monuments dating after 1453 shall be exercised in accordance with the terms and conditions of this law.”

This distinction, with 1453 corresponding to the end of the Byzantine era in Greece, is also found in Article 2 concerning the definition of and distinction between *cultural object* and *monument*. A temporal distinction, too, is also made between “ancient monuments or antiquities” and “recent monuments,” using 1830—the year which corresponds historically to the establishment of the modern Greek State.

- The State of Bahrain also makes a *ratione temporis* distinction in its definition of the term “antiquity” in paragraph 2 of Part I of the 1970 *Bahrain Antiquities Ordinance*.

“Antiquity means:

- (a) any object whether movable or immovable which has been constructed, shaped, inscribed, erected, excavated or otherwise produced or modified by human agency earlier than the year 1780 A.D. together with any part thereof which has at a later date been added or reconstructed, and
- (b) human and animal remains of a date earlier than the year 600 A.D, and
- (c) any object whether movable or immovable of a date later than 1780 A.D. which the Rais in consultation with the Antiquities Section may declare to be antiquity.”

3. Some laws also distinguish the ownership of cultural property according to its **place of discovery**.

Accordingly, in Section 229.13(b) *Custody of archaeological resources* of Title 43 of the Code of Federal Regulations, the United States of America vests in Native Americans or Native American tribes the ownership of objects removed from their lands:

“Archaeological resources excavated or removed from Indian lands remain the property of the Indian or Indian tribe having rights of ownership over such resources.”

4. Argentina’s proposal on the subject is particularly interesting in that it deals, in a single article, with property found both **lawfully and unlawfully**.

The first part of Article 10 of the law of June 2006 on protection of the archaeological and palaeontological heritage provides that:

“Archaeological and palaeontological property from authorized diggings or resulting from seizure of goods belong to the national State, the provincial or municipal authorities depending on the case [...]”

5. Lastly, a distinction is sometimes made between **religious and non-religious objects**, while other laws recognize certain **legal particularities**, an example being the Egyptian Act which grants a different status to *waqfs*.⁸

In addition to the delicate question of determining the ownership of a cultural object is that of its protection, which imposes specific rights and duties on the State authority.

⁸ In the Islamic world, *waqf* is a perpetual endowment made by a private individual to a charitable or religious cause. The property, granted in usufruct, is held in trust and becomes inalienable. In the Maghrib, *waqf* is known as *habis*.

III Dual protection of cultural objects: rights and duties of States

In a paper entitled *State Ownership of Undiscovered Cultural Objects*,⁹ Professor Patrick J. O’Keefe stresses that “many States have laws on excavation which require that any person excavating cultural objects needs a permit to do so, no matter who owns the object. The application of these provisions can depend on the public or private character of the land on which excavation is carried out. The application of this may depend on whether the work is being done on public or private land. However, the usual outcome of an unlawful excavation is a prosecution for a criminal offence. This provides no basis for an action to recover the object if it is found in another country. To do so the State needs an ownership right which will be recognized by the courts in that country.”

If a State were to adopt the model provisions developed earlier, it would be appropriate to apply this analysis, too, in order to update the *various means of action available to a State to protect the cultural property that it owns*. Recourse to an **administrative authority** often facilitates application of the regulations relating to the excavation, issuing of permits, classification and inventory procedures, payment of necessary indemnities and compensations, implementation of adequate export, law enforcement and protection controls. These authorities sometimes have the task of alerting the public to problems arising from the specific character of cultural property.

Lastly, where particular legislation enables some property to be granted to the finder of the cultural objects, the decision in that regard is generally taken by an administrative authority. When granting ownership, the authority often considers the scientific or artistic value of the objects and whether or not similar items are already included in national collections.

- It is interesting to note that Malawi establishes this authority, known as the Monuments and Relics Advisory Council, at the heart of its legal machinery. This is reflected both formally in the law itself, in which it features prominently, and, more importantly, in the many references to its authority in the various provisions.
- This type of administrative authority exists in France, in Egypt, which has an *Antiquities Organization*, and in Greece, where its action includes the determination of protection zones A and B, corresponding to total restriction or limited permission respectively for the construction of buildings.
- The Cambodian legislation, too, is particularly attractive because of the importance given to this authority. Thus, Articles 5 to 7 of the *Decision on the National Heritage Protection Authority of Cambodia* of 10 February 1993 determine the jurisdiction, composition, organization and powers of the *National Heritage Protection Authority of Cambodia*. Article 6 accordingly provides that:

“The Authority has, in particular, the powers to:

- (a) make decisions required for the protection of cultural property;
- (b) make decisions on proposals to register or classify such property;
- (c) decide on any request for authorization covered by the terms of this decision;

⁹

Paper submitted at the 15th session of the Committee in Paris, 11 to 14 May 2009.

- (d) ensure generally the implementation of this decision.”

The Heritage Protection Authority is also tasked under the provisions of Cambodia's concise and effective legislation with establishing an inventory and classification system together with the possibility of determining an eventual indemnity for eviction or pre-emption. If amicable settlement fails, the matter is brought before the appropriate judicial authorities. Some laws, however, opt for recourse to an independent expert.

The action of the Heritage Protection Authority also reinforces the effectiveness of ownership by the Cambodian State, because the listing procedure entails imprescriptibility (Article 26) and inalienability (Article 27) of the objects concerned.

“Classified cultural property is imprescriptible.”

“Any classified property in public collective ownership or belonging to public enterprises is inalienable.”

Lastly, under Section 8 on Archaeological Excavations, Articles 47 to 49 and 52, the authority is responsible for the authorization of excavations, the determination of possible beneficiaries, the obligations of the excavator (recording of discoveries in a special register, conservation measures, access to interested researchers and publication), inspection and monitoring.

1. Rights of States

(a) *Expropriation*

Article 18 of the Greek legislation is an interesting **expropriation** model, because it is very precise. The expropriation procedure must be initiated to meet a need for protection raised by the Committee and can concern all or part of a movable or immovable monument and adjacent monuments. Expropriation remains the responsibility of the State or any other entity concerned and requires valuation of the monument concerned by an expert or a member of the Committee. A special procedure is binding and entails 30 days' notice to the party concerned. The consequence of expropriation, namely depriving a party of the use of a building, is addressed below.

(b) *Prohibition of exports*

The problem of removing lawfully or unlawfully possessed cultural property from a country remains delicate because it sometimes falls foul of the principle of freedom of movement. Owing to the particular nature of cultural property, however, special provisions are required. This concern has often been addressed in the legislation.

- The principle is always to prohibit the export of cultural property, as illustrated by Article 21, *Prohibition of Exports* in Korea's legislation and Article 34, *Export of Cultural Objects* in Greece's legislation, which provide that the export of monuments is prohibited except under certain conditions:

“The export of monuments from Greek territory shall be prohibited subject to the provisions of the following paragraphs...”

- Section 9 of the Cambodian law (Decision on the National Heritage Protection Authority of Cambodia of 10 February 1993) also addresses the question of the export of cultural property. Article 58 accordingly provides that “*The export of any cultural object from Cambodia is prohibited, unless the Authority has granted a special export licence for the purpose.*” The special licence is granted only under certain conditions listed in Article 61 which provides, in particular, that it will not result in the impoverishment of the national cultural heritage and that public collections already contain a cultural object similar to the one for which an export licence has been requested. The cultural object to be exported must not be invaluable to a particular branch of study of the past or to the human sciences in general. Several exceptions are tolerated, however, under Article 62 for objects exchanged or temporarily exported.

(c) *Claims*

Article 64, *Claims to Cultural Objects* of the Cambodian law, is an effective legal tool for combating trafficking in cultural property if the State does not have a title of ownership and provided that there is evidence of trafficking:

“The Authority may claim, on behalf of the public collections and against the payment of a fair price decided by mutual agreement, or fixed by an expert, any cultural object for which an export licence has been denied, provided there are strong indications that the cultural object may be the subject of a fraudulent export attempt.”

An authority may thus claim ownership of a cultural object before it leaves the country. However, the claim becomes more problematic once the object has been taken out of the country. In this case, a **recovery action** must be taken and is less difficult if the State has a genuine title of ownership of the object and a legal mechanism relating to such action.

In that connection, Article 87 of the Italian legislation, *Convention, Stolen or Illegally Exported Cultural Properties*, by referring explicitly to the 1995 UNIDROIT Convention, is a perfect illustration of an effective legal mechanism:

“1. The restitution of cultural properties indicated in the annex to the UNIDROIT Convention on the international return of stolen or illegally exported cultural properties is governed by the provisions of the aforesaid Convention and the related laws of ratification and enforcement.”

While the protection of cultural property requires that the State authority be granted a number of rights, some laws provide for the need to strike a balance by recognizing the duties incumbent upon the said authority.

2. **Duties of States**

Two types of duties emerge from a comparison of the various national cultural property laws:

- first, a duty to preserve the property is sometimes imposed;
- second, free access to heritage and, above all, public information is encouraged.

- Accordingly, Greece recognizes the importance of the following aspects in Article 3 of the law on the protection of antiquities and cultural heritage in general (Law No. 3028/8/2002):

“1. The protection of the cultural heritage of the country consists primarily in:

- (a) the location, research, recording, documentation and study of its elements;
- (b) its preservation and prevention of destruction, disfigurement or in general any kind of damage, direct or indirect, to it;
- (c) prevention of illegal excavations, theft and illegal export;
- (d) its conservation and, in appropriate circumstances, restoration”.

The second part of the provision, however, is more ambitious, as it calls for integration of the cultural heritage into social life through education in particular, the facilitation of access to and communication on the heritage:

- “(e) facilitation of access to and communication of the public with it;
- (f) its enhancement and integration into contemporary social life; and
- (g) education, aesthetic enjoyment and public awareness of the cultural heritage.”

- As in the Greek legislation, Viet Nam’s *2001 Law on Cultural Heritage* recognizes the necessary complementarity between the rights and duties of the organizations concerned and the complementarity between the protection and promotion of access to the cultural heritage. Accordingly, Chapter II is entitled *Rights and responsibilities of organizations and individuals towards cultural heritage*, and contains Article 14, paragraph 3, on *Respecting, preserving and promoting cultural heritage* while Chapter III is entitled *Protection and promotion of intangible cultural heritage* and contains Article 17 which provides that:

“The State shall encourage and create the conditions for organizations and individuals to carry out activities of research, collection, maintenance, communication and introduction of intangible cultural heritage in order to care for and promote the national cultural character and to enrich the treasured cultural heritage of the multi-ethnic Vietnamese community.”

Other countries are likewise concerned with raising **public awareness**; South Korea and Italy have included provisions to that end in their legislation.

The United States of America, too, has become aware of the importance of raising public awareness of issues relating to cultural property. This can be seen from section 1312.20 *Public awareness programs*, which provides that:

- (a) Each Federal land manager will establish a program to increase public awareness of the need to protect important archaeological resources located on public and Indian lands. Educational activities required by section 10(c) of the Act should be incorporated into other current agency public education and interpretation programs where appropriate.

- (b) Each Federal land manager annually will submit to the Secretary of the Interior the relevant information on public awareness activities required by section 10(c) of the Act for inclusion in the comprehensive report on activities required by section 13 of the Act.

Raising public awareness has proved crucial, not only in endeavours to moderate unlawful excavations but also in action to raise potential buyers' awareness of the consequences of purchasing objects excavated in this way. As a result of State reflection on these matters, dealers on the art market, the hub of trafficking in some items, must be taken into consideration.

IV. Towards the necessary acknowledgment of art market dealers

Although the need to regulate the art market has been a long-standing concern, it has only become a reality in recent times.

While Cambodia's legislation addresses trade in cultural objects in Section 6 and, more specifically, the obligations of dealers in Article 40, its concern is limited to the local market.

It is only in the provisions of more recent legislation on the subject that art market dealers feature significantly.

- In that regard, the Greek legislation, in Articles 31 and 32 of the law of 2002, contains specific provisions on collectors and dealers.
- However, it seems that the issue is approached most interestingly in The Federal Act on the International Transfer of Cultural Property (LTBC) adopted by Switzerland in 2003. Its Article 16 requires a "Duty of diligence" defined as follows:
 1. In the art trade and auctioneering business, cultural property may only be transferred when the person transferring the property may assume, under the circumstances, that the cultural property:
 - (a) was not stolen, nor lost against the will of the owner, and not illegally excavated;
 - (b) was not illicitly imported.
 2. Persons active in the art trade and auctioneering business are obligated:
 - (a) to establish the identity of the supplier or seller and require a written declaration from the same of his or her right to dispose of the cultural property;
 - (b) to inform their customers about existing import and export regulations of the contracting States;
 - (c) to maintain written records on the acquisition of cultural property by specifically recording the origin of the cultural property, to the extent

known, and the name and address of the supplier or seller, a description as well as the sales price of the cultural property;

- (d) to provide to the specialized body all necessary information on fulfilling this duty of diligence.
3. The records and receipts must be stored for 30 years. Article 962, paragraph 2, Swiss Law of Obligations, applies accordingly.

In the final analysis, the adoption of model provisions seems to be a solution to Professor Patrick J. O'Keefe's three findings, since a precise definition of cultural property and a clear determination of ownership would effectively remedy the lack of precision often noted in legislation. Awareness must be built among both the public – whether excavators, buyers or consumers – and art dealers of issues relating to the specific nature of cultural property, in particular by informing them of existing legislation so that it can be effectively and fairly enforced against all offenders.