

Statement by the President of ICOM on current legal actions against museums for the return of illegally exported cultural property (especially Italy Vs the J Paul Getty Museum)

Clearly ICOM supports the right of the Italian government to take appropriate legal action against museums for the return of illegally exported cultural property. ICOM takes these and related matters involving illegal acquisition of looted antiquities by museums in the United States and other countries very seriously. As the principal international body for museum standards and principles of professional conduct for the museum profession world-wide, ICOM is bound to appraise appropriate actions that should be taken in response to such serious violations of the ICOM Code of Ethics for Museums.

It is ICOM's policy to support governments pursuing credible claims through national courts or international actions (whether by formal appeal or legal prosecution) seeking restitution of illicitly appropriated cultural property. While it is also ICOM's general policy to refrain from comment on specific cases in the process of being judged by a court, ICOM, and in particular, the ICOM Ethics Committee, continues and will continue to follow closely the information arising from Italian government actions in cases involving the Getty or other museums: to reaffirm ICOM's support of legal action by governments with credible, substantially documented claims concerning cultural property.

Although many actions by the Italian state are still ongoing (and technically sub judice), there is now a huge amount of collective evidence in the public domain of malpractice by major museums in acquiring antiquities without provenance - evidence yielded in years of effort by the special antiquities and heritage squad of the Carabinieri and associated legal actions (some already successful, some still in process), such that some public statement by ICOM is now due.

The ICOM Ethics Committee considers it timely for ICOM to reaffirm its position on the 'Ethics of Acquisition' (returning to the core of where ICOM began its public work on museum ethics). ICOM still affirms that document of 1970 - which can be found at the following website address: <http://icom.museum/acquisition.html> (see also : http://www.unesco.org/culture/laws/1970/html_eng/page1.shtml)

It is important to reiterate what ICOM expects all museums to uphold, especially in combating the appallingly extensive expansion of illicit trafficking in recent years, as thoroughly disclosed in a large number of actions being undertaken by various governments currently (of Italy, Greece, etc.) and by other parties.

It should be emphasized that the ICOM Code of Ethics for Museums, to which all individual and institutional members are bound, reaches beyond a lowest-level legal compliance framework of address to disputed ownership of cultural property from within the provisions of some national laws. Noting that ethical standards for the museum profession invoke a higher standard of due diligence than may be required under differing legal jurisdictions, ICOM prescribes the following minimal standards of good professional conduct, in stating, within its Code, these principles:

2.2 > Valid Title

No object or specimen should be acquired by purchase, gift, loan, bequest, or exchange unless the acquiring museum is satisfied that a valid title is held. Evidence of lawful ownership in a country is not necessarily valid title.

2.3 > Provenance and Due Diligence

Every effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained, in, or exported from its country of origin or any intermediate country in which it might have been owned legally (including the museum's own country). Due diligence in this regard should establish the full history of the item since discovery or production. (ICOM Code of Ethics for Museums (revised 2004; published ICOM, Paris, 2006)

The ICOM Code is available in full on ICOM's Website, in HTML & PDF formats at: <http://icom.museum/ethics.html>

It is clear that the curbing of illicit trafficking is directly dependent on the ethical principles and sanctions against acquisition of unprovenanced material applied by museums (as leading standards-setting institutions and price-controlling buyers in the art market internationally). The role of museums and their influence on illicit trafficking is not at all a marginal issue, as some commentators have sought to argue for many years.

ICOM also takes this opportunity to emphasize the importance of affirming and advancing broader work being undertaken on the retrospective provenancing of collections, to ensure that looted works are returned to rightful owners - as the increased effort to locate and return Holocaust-looted works has disclosed to be a burning issue of retrospective 'due diligence' required in recent years.

At the same time, ICOM does not simply focus on litigious actions or solutions-of-last resort in addressing contending claims as to ownership of cultural property or other material held by museums. ICOM (especially with the assistance of its Legal Affairs Committee) has taken a keen interest recently in encouraging many opportunities by museums for mediation or informal negotiation of competing claims as to cultural property ownership and return, in addition to exploring new kinds of constructive relationships opening up between institutions and many parties (including source-communities) for better care and management of collections and protection of heritage.

With regard to more constructive possibilities of resolving actual or potential cultural property disputes, ICOM again directs attention to its formal Statement of January 2006 (in English, French and Spanish) concerning mediation: Statement by the President of ICOM Alissandra Cummins Promoting the use of mediation in resolution of disputes over the ownership of objects in Museum Collections at: http://icom.museum/statement_mediation_eng.html

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