



An Inquiry into the provenance of
654 Aramaic incantation bowls
delivered into the possession of UCL by,
or on the instruction of,
Mr Martin Schøyen

Report by
Mr David John Freeman (Chairman)
Ms Sally MacDonald
Professor Lord Renfrew of Kaimsthorn

Inquiry established by the Provost of UCL on
14th February 2005

David J. Freeman

CJ

Sally

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EXECUTIVE SUMMARY

I This Inquiry is concerned with a collection of 654 Aramaic incantation bowls delivered into the possession of the Department of Hebrew and Jewish Studies at University College London (UCL) in September 1995 by, or on the instruction of, Mr Martin Schøyen, a Norwegian businessman and collector.

II Following allegations that these bowls had been illegally exported from Iraq UCL took the decision to establish an independent Inquiry to investigate the provenance of the bowls and the history of their ownership. It was resolved that the Inquiry would also carry out a sample audit of collections held by the College and recommend sound principles for the future treatment of cultural objects; this will be the subject of a second report.

III This Inquiry was established on 14 February 2005 by the Provost of UCL. The Inquiry is chaired by Mr David Freeman, founder and senior partner of D. J. Freeman, solicitors (now Kendall Freeman) from 1952 to 1992. The other members are Professor Lord Renfrew of Kaimsthorn, Disney Professor Emeritus of Archaeology, University of Cambridge and Ms Sally MacDonald, Director, UCL Museums and Collections. The Inquiry has received legal advice from Professor Norman Palmer, CBE, since October 2005.

Conclusions

IV We conclude, on the balance of probabilities, that the bowls were removed from Iraq and that their removal was illegal under Iraqi law. We further conclude on the balance of probabilities that their removal took place after 6th August 1990, the relevant date of application of both the Iraq and Kuwait (United Nations Sanctions) Order 1990 and the Iraq (United Nations Sanctions) Order 2003.¹ We further conclude that their removal from Iraq was illegal even if they came out of Iraq before 1990, provided at least that they came out after the coming into force of the Antiquities Law 1924 (as to which see Appendix 8). We further conclude, on the balance of probabilities, that the importation of the bowls into the UK was at least a potential infringement of UK law.² We further conclude that by any ethical standards the bowls should be returned to Iraq, when it is safe to do so.

V Although UCL has in the past proposed that it return the bowls to Mr Schøyen, we conclude that UCL should do so only if UCL is convinced that Mr Schøyen can show on the balance of probabilities that he has the immediate right to the possession of the bowls. We are not able to conclude, with sufficient confidence to endorse the proposal, that Mr Schøyen would succeed in convincing a court that the state of mind with which he bought the bowls was sufficient to confer on him the immediate right to possession.

VI We conclude that the bowls are subject to the Iraq (United Nations Sanctions) Order 2003 as cultural objects illicitly removed from Iraq after 6 August 1990, and that UCL has therefore a duty to deliver them to a constable.

¹ The 1990 Order came into force on 9th August 1990 and the 2003 Order came into force on 14th June 2003. But the relevant provisions of both Orders apply to cultural objects unlawfully removed from Iraq after 6th August 1990. For a detailed analysis of these Orders, see Appendix 7.

² See further footnote 25 below, and Appendix 7.

VII We conclude that UCL did not undertake any diligence check when receiving the bowls from Mr Schøyen. Nor did UCL have in place appropriate procedures, reporting mechanisms and sanctions for dealing with such issues.

Recommendations

VIII We recommend that UCL publish this report in full, but that the following be sent copies of the report six months in advance of publication, provided that they undertake in writing not to disclose any part of the report except to their legal advisers:

- Mr Martin Schøyen
- The Department of Antiquities of the State of Iraq
- The Department of Antiquities of the Hashemite Kingdom of Jordan
- The Metropolitan Police
- Her Majesty's Customs and Excise
- The Department for Culture Media and Sport's Cultural Property Unit

We recommend that this be done in order that there may be a period of time for discussion and resolution.

IX We recommend that UCL should, within one month from the date of publication of this report, return or cause the return of the 654 incantation bowls to the Department of Antiquities of the State of Iraq. This recommendation is subject to confirmation that the State of Iraq is willing to accept this proposal, and to the obtaining of all necessary export and import licences, and to such other legal constraints as may appear.

X We recommend that UCL draw to the attention of the Director of Antiquities in Iraq the existence of the Museum of Temporary Safety established by UNESCO for the temporary safe custody of threatened heritage, should the Iraqi authorities feel there is a need for temporary safe haven.

XI In the light of our recommendation as to notification, it is open to Mr Schøyen, at any time after his receipt of this report, and before the expiry of the six months recommended in this report, to seek the return of the bowls to himself through the courts. In the event that such application is made and the State of Iraq indicates an intention to oppose the application, we recommend that UCL should approach the matter as one to be settled by appropriate proceedings between the claimants, should acknowledge that it maintains no personal interest in the bowls, and should apply to interplead.

XII We recommend that UCL give immediate consideration to the exclusion from all official and institutional records of all research derived from the bowls, subject to UCL's legal status and obligations at large.

XIII Our Inquiry is also charged with conducting a sample audit of relevant cultural objects and specimens entering UCL's Museums and Collections and Library Services since 1970, and with making recommendations on the measures necessary for UCL to adopt in relation to material acquired or received by UCL, in

order to comply with the law and with ethical standards. This will be the subject of our second report.

INTRODUCTION

1 As noted in the Executive Summary, this Inquiry is concerned with a collection of 654 Aramaic incantation bowls delivered into the possession of the Department of Hebrew and Jewish Studies at University College London (UCL) in September 1995 by, or on the instruction of, Mr Martin Schøyen, a Norwegian businessman and collector.

2 Following allegations that these bowls had been illegally exported from Iraq at some time after the imposition of sanctions on the exportation of, and dealing in, goods from Iraq in August 1990,³ UCL took the decision to establish an independent Inquiry to investigate the provenance of the bowls and the history of their ownership. It was resolved that the Inquiry would also carry out a sample audit of collections held by the College and recommend sound principles for the future treatment of cultural objects; this will be the subject of a second report. The full terms of reference are given as Appendix 1.

3 This Inquiry was established on 14 February 2005 by the Provost of UCL. The Inquiry is chaired by Mr David Freeman, founder and senior partner of D. J. Freeman, solicitors (now Kendall Freeman) from 1952 to 1992. The other members are Professor Lord Renfrew of Kaimsthorn, Disney Professor Emeritus of Archaeology, University of Cambridge and Ms Sally MacDonald, Director, UCL Museums and Collections. The Inquiry has received legal advice from Professor Norman Palmer, CBE since September 2005.

4 A list of witnesses who gave evidence to the Inquiry is given at Appendix 2.

FINDINGS: A CHRONOLOGY OF OWNERSHIP AND POSSESSION

5 In the ensuing paragraphs all findings of fact by the Inquiry are, unless otherwise stated, findings on the balance of probabilities.

Incantation bowls: a historical summary

6 Incantation bowls of this kind date from the 5th to the 8th century CE. They were almost always made of pottery and were inscribed on the inside with incantations in Aramaic writing, as a form of spiritual protection. They were buried, usually singly, upside down under the thresholds or entrances of private houses to protect the inhabitants from harmful demons. They were inscribed in various scripts; most of them are written in Jewish Aramaic, but some are in Mandaic Aramaic (the language of the Gnostics) and some are in Syriac Aramaic (the language of Christians and Manicheans).

7 At least two thousand Aramaic incantation bowls are known to exist, but to date only a few hundred of these have been published. The first such publication was A H Layard, *Discoveries among the ruins of Nineveh and Babylon* (1853), and other important publications include those by H V Hilprecht, *Explorations in the Bible*

³ Iraq and Kuwait (United Nations Sanctions) Order 1990, S I 1990 No 1651, which came into force on the 9th August 1990; see especially Articles 2(1), 2(2) *ibid*.

lands during the 19th century (1903) and J A Montgomery, *Aramaic Incantation Texts from Nippur* (1913). Hilprecht excavated around 100 such bowls. Unprovenanced bowls have been exported and have entered private and public collections since the 1850s, although in small numbers, and until the late 20th century they had a low value on the antiques market. The Baghdad Museum holds the largest public collection with over 600 bowls. The British Museum, and the Berlin and Philadelphia Museums, also have major collections of such bowls. There are two significant private collections; the Moussaieff collection and the Schøyen collection. The subject of this Inquiry is the Schøyen collection.

The origin of the bowls

8 Statements made in 1999 and 2003 by Professor Shaul Shaked of the Hebrew University of Jerusalem and Professor Markham Geller of UCL's Department of Hebrew and Jewish Studies – both world authorities on incantation bowls – indicated an assumption on their part that these incantation bowls were likely to have originated in Mesopotamia or Sassanian Iran. The Inquiry subsequently received statements from Professor Geller and Mr Martin Schøyen to the effect that incantation bowls have been found in Jordan, Syria and Iran as well as in Iraq. In the event, the Inquiry has discovered no positive and compelling evidence to substantiate the proposition that incantation bowls have been excavated at any site outside Mesopotamia (now Iraq).

9 Dr Erica Hunter of the University of Cambridge gave evidence that documented excavated incantation bowls had been found at the sites of Nimrud, Babylon, Nineveh and Nippur, and that the find locations are bordered by Nineveh in the north, Uruk in the south, Diwaniyah in the east and 'Ana in the west [see Fig 1: Map of Iraq].

10 Professor McGuire Gibson of the Oriental Institute, University of Chicago, stated that while such bowls occur in thousands in Iraq, where he had found such bowls on surface survey in sites as far north as Kutha and as far south as Uruk, he knew of no finds of incantation bowls in Jordan and had no concrete information on any in Syria. He had heard reports of incantation bowls being discovered in south-western Iran, but he knew nothing of their context. He concluded that '*it is overwhelmingly likely that the bowls you are dealing with are from Iraq*'. Professor Gibson did not examine the bowls in question, but founded his opinion on a detailed knowledge of incantation bowls in general.

11 Dr Steve Kaufman of the Hebrew Union College, Cincinnati, stated that almost all well-provenanced Aramaic bowls come from Nippur and Khουabir excavations, so that the Aramaic incantation bowl seems to be a '*Babylonian phenomenon*'. He said that he would not be surprised to discover that some bowls could come from south-western Iran, but without any certain information '*Iraq must be assumed to be the origin of any Aramaic magic bowl as far as I know*'. The Inquiry does not itself feel able to make or adopt assumptions, but has reached a similar view on the balance of probabilities after weighing all the evidence available to it.

12 Dr John Curtis of the British Museum has supplied information on finds from Tell Arban in Syria and on an inscribed jar from Susa in South Western Iran.

However, Dr Curtis concludes, '*What can certainly be said about Aramaic and Mandaic incantation bowls is that where the exact finds are known they all come from Mesopotamia and mostly from Iraq*'. He further commented that any large and unpublished collection of incantation bowls must have come from Iraq. As remarked earlier (paragraph 8) the Inquiry has sought to locate published examples of such incantation bowls excavated in other countries, without success.



Figure 1: Map of Iraq showing documented find sites of incantation bowls

In summary, although some scholars believe it to be possible that similar bowls originated elsewhere, the Inquiry has not, despite searching enquiry, been able to identify a single conclusively documented example from an excavated context outside Iraq. This situation prevails despite the Inquiry's receipt of both oral and written evidence from Mr Schøyen (see Appendix 11 for further details).

13 The specific site or sites at which the bowls in question were excavated and discovered cannot at present be identified. Such identification might, however, become possible in the future by using characterisation studies of the fabric of the bowls. It is also possible that study of the hands involved in the inscriptions may succeed in ascribing individual bowls to individual localities, in cases where earlier discoveries have been documented as to context.

The date of their removal from Iraq

14 Having concluded that Iraq was the state of origin of the bowls in question, the Inquiry has sought to establish the date when the bowls were exported from Iraq.

15 Mr Martin Schøyen and two of the antique dealers from whom he purchased - Mr Chris Martin and Mrs Kathy Williams - gave evidence to the Inquiry that the incantation bowls in question came from the Rihani Family collection in Amman, Jordan. Mrs Williams stated that it was her impression that this collection was in existence, in Jordan, before 1965. Mr Schøyen also stated that the collection was in existence before 1965 and further stated that the origins of the Rihani collection went back to around 1935.

16 The reference to the year 1935 is interesting, because it antedates by one year the enactment of the Antiquities Law 1936, No 59 of 1936,⁴ a wide-ranging statute governing both the discovery and possession of movable antiquities within Iraq, and the export of movable antiquities from Iraq. We refer to this enactment as 'the 1936 Law'. Three Articles of the 1936 Law are particularly relevant for the purposes of this Inquiry. These are the Articles that govern state property, registration and export respectively. A full analysis of these provisions is set out in Appendix 6.

17 Having regard to the 1936 Law, it appears to the Inquiry that the bowls in question can have been lawfully exported from Iraq only if exportation occurred before the coming into force of the 1936 Law, and then only if no pre-1936 Law was violated. In fact, however, there was in force in Iraq an earlier law, the Antiquities Law of 1924, which (like the 1936 Law) gave the State of Iraq an overriding original property in all antiquities located on or under Iraqi soil, and prohibited all unauthorised export. The Inquiry has concluded that, even if the bowls had been excavated and removed before the Law of 1936 came into force, the State of Iraq might well have had, by virtue of the 1924 Law, a sufficient enduring title to sue for the return of the bowls. Later dealings in the bowls might then have been ineffective in law⁵.

18 We note that certain provisions of the 1936 Law enabled collections assembled in Iraq before 1936 to be registered and, in certain circumstances, to be retained by their possessors. We have, despite protracted inquiry, uncovered no evidence that any collection formed by the Rihani family before the coming into force of the 1936 Law was ever registered in Iraq, pursuant to the 1936 Law, after it

⁴ As amended in 1974 and 1975.

⁵ We analyse the 1924 Law in detail in Appendix 6 below.

came into force. If a statutory duty to register was broken, we are of the opinion that such breach would arguably, without more, confer property in the unregistered bowls on the State of Iraq, sufficient to enable the State to recover the bowls in civil proceedings in England, but subject to any later divestment.

19 We have heard evidence from Dr Erica Hunter on the history of the collecting of such bowls. This has convinced us that it is highly unlikely that such a large collection – comparable in size with that of the Baghdad Museum, which has been assembled over several decades – could have been formed pre-1936 and have remained unpublished or unnoted in print.

20 We are of the opinion that the incantation bowls in question were removed from Iraq after 1936 and in contravention of the 1936 Law. We have been advised that the effect of the 1936 Law was to grant the State of Iraq a sufficient legal interest in antiquities present in Iraq after the Law came into effect to enable the State of Iraq to sue for their return if they were unlawfully removed from Iraq. Our legal advice on this point is set out in Appendix 6.

21 As observed in paragraph 15, the bowls in question are said by Mr Martin Schøyen, Mr Chris Martin and Mrs Kathy Williams to have come from the long-established family collection of Mr Ghassan Rihani (now deceased). According to these witnesses, Mr Rihani kept his collection in a 'private museum' in Amman, Jordan. An inventory was compiled of this collection and this is kept in the Jordanian Department of Antiquities office in Irbed, Jordan. Mr Chris Martin has given evidence that he has seen inventory records and photographs of the Rihani collection and estimates that it was in excess of 50,000 items. Mrs Kathy Williams states that she visited the Rihani family museum in Jordan in 1997.

22 Mr Schøyen has submitted to the Inquiry two pieces of documentation, both alleged to be issued by Jordanian authorities, to corroborate his evidence on the provenance of the bowls in general, and their membership of a long-established collection located in Jordan.

The 'gift' document

23 The first document [Fig 2] on which Mr Schøyen relies is an unsigned document headed 'To whom it may concern'. This document, dated '5/7/1965', purports to be issued under the name of 'Safwan El-Tal Antiquity Inspector Irbed-Jerash Governorate'. Its opening paragraph recounts as fact that Mr Ghassan Tameem Rihani:

"... has presented as a gift a collection of antiquities to Jerash and Irbed Archaeological Museum, which is registered in the museum."

The document further relates as fact that the same Mr Rihani

"owns a collection of stone, pottery and glass antiquities as well as Islamic currencies. Also he has plenty of quiniform (sic) tablets and other pottery magic bowls and inscribed

To whom it may concern

Mr. Ghassan Tameem Rihani has presented as a gift a collection of antiquities to Jerash and Irbed Archaeological Museum, which is registered in the museum. He owns a collection of stone, pottery and glass antiquities as well as Islamic currencies. Also he has plenty of quiniform tablets and other pottery magic bowls and inscribed cylinders.

The above-mentioned had purchased the items and inherited part of them from his ancestors.

We thank him dearly for his gift to the Jordanian museums.

Safwan El-Tal
Antiquity Inspector
Irbed-Jerash Governorate

5/7/1965

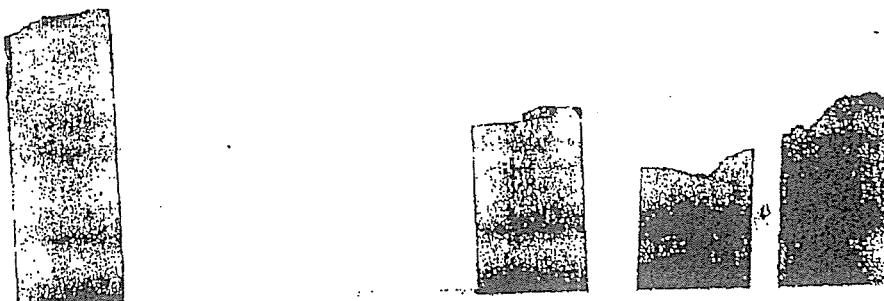


Figure 2: The 'gift' document

cylinders.”

The same document purports to give an account of Mr Rihani's mode of acquisition of these items:

“The above-mentioned had purchased the items and inherited part of them from his ancestors.”

The document concludes by expressing the Governorate's gratitude to Mr Rihani;

“We thank him dearly for his gift to the Jordanian museums.”

24 Several aspects of this document call for comment:

- a) The only version that we have seen is unsigned and appears to have been produced on a word-processor, which means that either that the version before us is a later and re-mastered version of an authentic document, or that it is inauthentic. We have not seen any document purporting to be the original.
- b) The document makes direct statements of fact on matters that cannot necessarily or conclusively be assumed to have been within the first-hand personal knowledge of the maker. The maker does not, for example, explain how he knows of the existence and nature of other items in Mr Rihani's collection, or the route by which Mr Rihani acquired them. Nor does he identify any ground for asserting that Mr Rihani “owns” his collection. That leaves open the possibility that the official in question was merely told these matters by Mr Rihani and took them (or purported to take them) as correct without external verification.
- c) We have no indication as to the inquiries that the Governorate made before accepting this purported gift, or as to the legal and ethical status of the gift at the time of donation, or as to the origin of the material to which the document refers.
- d) There is uncertainty as to identity of the “collection” to which the document refers, and in particular as to whether this refers to residual material not donated to the Jerash and Irbed Archaeological Museum, or to the donated material itself. In our judgment the former is the more likely interpretation, though this leaves open the question why the official in question would feel the need to comment on non-donated material, particularly as it is not even clear that this non-donated collection was situated in Jordan, or was before the official, at the time.
- e) Therefore it is a matter for speculation as to why the Governorate would have considered it appropriate or necessary to make anecdotal statements of an apparently otiose nature in an open document of this sort, or as to why Mr Rihani would wish or invite the Governorate to do so. It is hard to avoid the conclusion that this document was manufactured for the purpose of authenticating and legitimising material that was (at best) no business of the Governorate. Indeed, we have some difficulty in seeing how Mr Schøyen himself can have regarded this document as serious evidence in support of his own assertion of title.

25 All these matters cast doubt on the credibility of the document. There is a further matter, however, that reflects on the relevance of the document, whether it is authentic or not. At no point does the document identify the objects purportedly donated to the Governorate, or (more particularly) offer any indication that the 654 bowls now in the possession of UCL were among those donated. This omission suggests two possibilities. On the one hand, if the 654 bowls *were* included in the gift to the Governorate, we find it difficult to see how they could later have lawfully left the possession of the museum and travelled to England, given the provisions of the law of Jordan examined below. On the other hand, if the 654 bowls *were not* included in the gift, we are at a loss to see how the document affords evidence of the legitimacy of any later acquisition of the bowls outside Jordan, because the document does not touch on those bowls at all: to say that a donor has given 'Assortment A' to the museum says nothing about the ownership or destination of 'Assortment B'. In theory, the document might be construed as consistent with the proposition that the non-donated collection to which it refers included the 654 bowls later delivered to UCL. But that construction is speculative and in any event affords no positive and convincing evidence that any later exportation of the bowls was lawful. We do not believe that such reasoning can be seriously advanced as the foundation for a good root of title, or as showing the legitimacy of any later acquisition of the bowls outside Jordan.

The 'export' document

26 The second item submitted to the Inquiry as evidence of legitimate provenance is a purported Jordanian export licence dated 19 September 1988 and issued to Mr Rihani, together with an English translation, dated 12 October 1992. The licence is set out below [Figure 3], together with the later translation [Figure 4]. The document has a number 12/1/2034. The Department of Antiquities in Jordan has supplied from its files a copy of Mr Rihani's handwritten application for this licence, dated 12 September 1988, which we also set out below [Figure 5], together with a translation obtained by the Inquiry [Figure 6].

27 The licence refers, in surprisingly rounded figures, to 2000 various pottery vessels and 50 various stone pieces '*as shown in the attached pictures*'. No pictures have been found. Dr Fawwaz Al Khraysheh, the Director of the Department of Antiquities in Jordan, states that the Arabic could be translated as reading 'copies' rather than 'pictures' and could therefore refer to photocopies of additional information. However no such copies have been found.

28 Mr Schøyen purchased some of the bowls in question directly from Mr Ghassan Rihani and states that Mr Rihani supplied him with copies of the 1988 export licence and translation, along with photographs that linked some of them at least with the export licence. Mr Schøyen regrets that he did not keep copies of this evidence. He says that the photographs were of poor quality and therefore he did not in any case go through them in detail to ensure that all of the bowls were covered by the licence.

29 The permits either side of 2034, ie 2033 and 2035, could not be found by the Department of Antiquities and nor could any other permits issued to Mr Rihani.

ATTN. MARK GELLER
THE HASHEMITE KINGDOM OF JORDAN
Ministry of Culture & National Heritage
Department of Antiquities
Amman - Jordan



بُشْرَى الْعَالَمِ
الْمُلْكَةُ الْهَشَمِيَّةُ الْجَارِيَّةُ
وزَارَةُ الْإِتْرَافَةِ وَالزَّارَاتِ الْعُوْمَى
دَائِرَةُ الْأَثَارِ الْعَامَّةِ
عَمَانُ - الْأَرْدَنُ

Ref. _____
Date _____
Date _____

الرقم _____
تاريخ _____
الرالي _____

السيد غسان عصيم الشناوي
طاجير الأثار، رئيس ساقية
منصب، ٢٩٢ عمان - الأردن

المُلْكُ يُرَايِّنُ دَائِرَةَ الْأَثَارِ الْعَامَّةَ عَلَى شَلَّ مَلَكِيَّةِ (٠٠٠٠) الْمَلَكِ الْأَبْغَنِيَّةِ
مَنْتَوَةِ (٥٠) خَسْرَانَ قَطْعَةَ حِجْرَةَ مَنْتَوَةَ كَمَا هُوَ بَيْنَ فِي الصُّورِ الْمُرَفَّةِ إِلَى ابْتِكَانِ
عَمَانِ الْمُسَيَّبِيَّةِ فِي لَدُنِ الْمُنْتَهِيِّ لَكُمْ بِاِنْتِرَابِهِمْ بِالْبَلَادِ

يَا قَلْبِي نَاعِي الْأَمْمَاءِ

عَمَانُ دَائِرَةُ الْأَثَارِ الْعَامَّةِ

كلٌّ
جَانِبُ الْمُنْتَهِيِّ بِالْمُنْتَهِيِّ مُنْتَهِيُّ مُنْتَهِيٌّ مُنْتَهِيٌّ مُنْتَهِيٌّ مُنْتَهِيٌّ
Tel. 614216, 614275, 614321 - P. O. Box 81 - Amman - Jordan
جَانِبُ الْمُنْتَهِيِّ بِالْمُنْتَهِيِّ مُنْتَهِيُّ مُنْتَهِيٌّ مُنْتَهِيٌّ مُنْتَهِيٌّ مُنْتَهِيٌّ
فَرَارِ دِمْ ٤٧/١٢٦

Figure 3: The 'export' document

Jan 04 06:42 Schøyen The World 00 1 954 499 5288 P. 1
4/91 '94 ONS. 11:47 FAX 47 31283315 SCHØYEN 800

ATTN. MAYA GELLER

The Hashemite Kingdom of Jordan
Ministry of Culture & National Heritage
Department of Antiquities
Amman - Jordan

No. 12/1/2034
Date: 19/9/1988

Mr Ghassan Tameem Al Rihani
An ex-authorized Antiquity Merchant
P. O. Box 9763
Amman / Jordan

I would like to inform you about the approval of the Public Department of Antiquities to transfer the ownership of 2000 (Two thousand) various pottery utensils and 50 (fifty) various stone pieces as shown in the attached pictures, to your daughter May Ghassan Rihani currently residing in London and hereby giving you an exit permit to take them out of the country.

Truly yours

Director General
Public Department of Antiquities

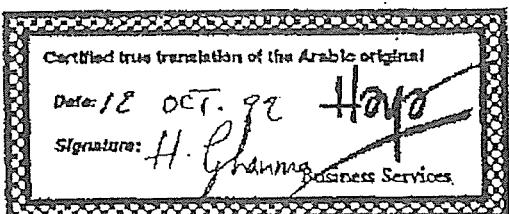


Figure 4: Translation of the 'export' document

FROM :

PHONE NO. : 064615848

JUL. 26 2005 05:00PM PS

بسم الله الرحمن الرحيم

Ghassan T. Rihani

جعفرية ريهانى ، منفذ جابر ، مادبا ، الأردن

Date ٢٠٠٥/٧/٢٦

عُذْنَى سِيرِ عَامِ الرَّسَارِ الْكَنْزِرِ عَنْنَى الْحَيَّى بِالْأَكْرَمِ
تَكِيهِ مَسْلِم

عَبْدَا لَوْ تَكْسِمُ بِالسَّمَاءِ فِي سَفَرِ رَكِيْهِ الْمَرْجِ
اَذْنَاهُ بِدَسْبِيْهِ الْمَنْهِيْهِ نَحْيَ نَزَّ

كَنْيَهُ مَتَّرِيْهِ ...
فَطَرِيْهُ هَبْرِيْهُ فَخَلْيَهُ

وَكَمْ مَنِيَ النَّكَرِ
كَرِيْهُ

عَلَّمَ اَنِي اَعْزَزَهُ اَنْ لَنْ اَقْلِ رَكِيْهِ اَمْ اَصْدِرَهُ اَمْ
نَكِيْهِ اَمْ اَسْلِمِيْهِ مِنْهَا كَانَتْ اَنْظَرَهُ خَدْرُ عَالَمِ
عَلَى مَا اَصْدَلَ شَرِيْهِ
شَرِيْهِ

مكتب المدير ٦٣ - ٦٣٨ - ٦٣٩ المزراع - ٦٣٩ - ٦٣٨ - ٦٣٧ - ٦٣٦ - ٦٣٥ - ٦٣٤
ج.ب ٦٣٣٦٢ توكى ٦٥٥٣ رihanji جرش - الأردن
Tel: 098093 / 020003 / Fax: 01553 Rihani Jd. Amanum Jordan
ج.ب ٦٣٣٦٢ توكى ٦٥٥٣ رihanji جرش - الأردن

Figure 5: Mr Rihani's application for the export document

By The Name of God, The Merciful, The Compassionate

Ghassan T. Rihani
Antiquities Export. Goldsmith & Jeweller [not clear]
Date 12/9/1988

His Excellency, General Director of Antiquities
Dr. Adnan Al-Hadidi, Esq.

Dear Sir

Would you be so kind as to give me permission to transfer the ownership of the following items to my daughter who is resident in London:

2000 vases of pottery
50 various pieces of stones [writing not clear]

Many thanks
Signed

Ghassan Rihani

P.S. I confirm and swear by God that under no circumstances, would I transfer the ownership or export any antique, Nabatean or Islamic.

Gassan Rihani

Exhibition Tel. 638093/628083. Home tel. 630607/623368. P.O.Box 9763 Telex.51553 Rihani
Jo. Amman – Jordan.
Rihani Museum/ Rihani Street – Irbid tel. [numbers not clear]

Figure 6: Translation of Mr Rihani's application for the 'export' document

30 Dr Ghazi Bisheh, who was the Director General of the Jordanian Department of Antiquities from 1 December 1988 until September 1991 and again from 1994 to 1999, stated that: '*I suspected the permit dated Sep 19, 1988 was a forgery because it ran contrary to the antiquities law – so I thought...later when I checked in the files of the DOA it turned out to be genuine –sadly, and the permit was signed by my predecessor*'. The current Director General, Dr Al Khrysheh, states that the licence is genuine and was signed by Dr Hadidi. He also states, however, that he cannot see any way of establishing whether or not the licence relates to the incantation bowls in question.

31 The Metropolitan police, when they conducted their inquiries in 2004, '*verified the authenticity of the licence with the Jordanian authorities*' and concluded that the licence was authentic, while commenting however that '*it is ambiguous in the way the property listed is described*'. Subsequently, however, they also commented to the Inquiry that they had received only a curt response from the Jordanian authorities to the effect that the export licence in question was all the documentation they held. They further commented that the present Inquiry was likely to be more thorough than that which the police had been able to mount, owing to lack of resources.

32 The efficacy of this document as proof of legitimate dealing and a secure line of ownership depends in part on the law of Jordan. A detailed exposition of our understanding of the applicable Jordanian law - the Antiquities Law 1976 - is given in Appendix 8. We have provisionally concluded that, if the bowls were unlawfully exported from Jordan, the Kingdom of Jordan did not by virtue of such export acquire an overriding property in the bowls, to the exclusion of the State of Iraq; and that any original property and right of possession vested in the State of Iraq would have survived such unlawful export.

33 If we assume that the 1988 licence is a genuine document, that the export of the bowls was fully compliant with the licence and that the bowls entered England on the strength of the licence, it must follow that the bowls cannot have been exported from Jordan to London earlier than around September 1988. The actual date of export from Jordan is important in that it may have a bearing on the date of export from Iraq. If the date of export from Iraq could have been later than 6th August 1990, we are required to consider the effect of the relevant Orders in Council: the Iraq and Kuwait (United Nations Sanctions) Order 1990 and the Iraq (United Nations Sanctions) Order 2003. If it could be proved that all of the bowls were exported from Jordan prior to 6th August 1990, those Orders would not apply, because the bowls must necessarily have left Iraq before they left Jordan. The Inquiry has, however, been unable to discover satisfactory direct evidence as to any date or dates on which the bowls were in fact exported from Jordan, and furthermore expresses no conclusive view as to whether any or all of the bowls were in fact exported at any time from Jordan.

34 It appears to the Inquiry that the 1988 licence, if genuine, was capable of sanctioning the periodic exportation of successive consignments of objects from Jordan, even those that entered Jordan only after the date of the licence. On the other hand, we do not feel able to conclude as a matter of fact that the 1988 licence authorised and rendered lawful the exportation of a total number of objects exceeding the number specified in the licence. Nor do we conclude as a matter of fact that any bowls exported from Iraq and Jordan came directly to London, and did not pass through some other country *en route*.

35 Whether or not the bowls passed through Jordan on their way to London, and

whether their emergence from Jordan was lawful or unlawful, the fact remains that in the opinion of the Inquiry the bowls originated in and were unlawfully removed from Iraq. On the basis of that central finding of fact, and for reasons that are set out in our analysis of the law of Jordan,⁶ we have provisionally concluded as follows: (i) that even if the bowls were unlawfully exported from Jordan, the Kingdom of Jordan did not by virtue of such export acquire an overriding property in the bowls, to the exclusion of the State of Iraq; and (ii) that any original property and right of possession vested in the State of Iraq would accordingly have endured, notwithstanding such unlawful export.

36 Mrs Kathy Williams states that she saw some incantation bowls in London early in 1989, when Mr Ghassan Rihani asked her to catalogue a part of his family's collection which he had recently shipped to London. With her father (now deceased) she visited one of Mr Rihani's several London storage facilities and on that occasion put aside pieces she was interested in purchasing and which were later delivered to her by Mr Rihani's driver. These included 85 incantation bowls, ten of which she later sold to Mr Schøyen. She says that she 'would have had sight of the relevant export and import documents as a matter of course' but was not given copies. She has since disposed of any documentation that she had obtained in respect of these purchases.

37 Mr Chris Martin writes that he was informed that the bowls he later sold to Mr Schøyen were part of the Rihani family collection, and that '*a vast part of the collection was transferred to London in 1988*'. He states that he viewed export licences from the Jordanian government and saw copies of '*various importation papers from HM Customs and Excise that were associated with these goods*'. He has not been able to supply the Inquiry with copies of these because he has not kept them. Mr Martin declined to give oral evidence before the Committee.

38 The Inquiry has given due weight to the evidence given by Mrs Williams and Mr Martin but, insofar as it conflicts with the impression received from other evidence, and without casting aspersions on the integrity of these witnesses, we prefer that other evidence. Nothing in this report is intended to derogate from the legal status of material held by Mrs Williams or Mr Martin. In regard to such material the Inquiry is not required to, and does not, express any conclusion.

39 In 1992 and 1993 Mr Rihani obtained affidavits in English from various individuals (Patrick Finn, Director of Spink & Son 2/4/1992; Bishop Eliya Khoury 11/9/1992; and the Manager of the Jordan National Bank, 16/5/1993), testifying to his trustworthiness and honesty. He later supplied copies of these to Mr Schøyen.

40 The Inquiry has seen no documentary evidence of the sale by the Rihanis of any of the 654 incantation bowls prior to 1994.

41 The Inquiry has heard evidence from Mr David Hebditch, a freelance television producer working with the Norwegian television company NRK, which made a documentary about Mr Schøyen, that prior to the first Gulf War there was little looting in Iraq, primarily because Mr Saddam Hussain did not approve. That political situation seemed to change in the aftermath of the military intervention following the invasion of Kuwait in 1990. Looting then became a widespread activity.

⁶ See Appendix 6 and paragraph 32 above.

42 Mr Hebditch stated that some of the plundering was in the north around Mosul, but most was in the south around Najaf. In particular Mr Hebditch gave evidence that around 1992 a large-scale looting operation took place in the area around Najaf. This looting yielded an unprecedented number of Aramaic incantation bowls. Senior Ba'ath Party members were, according to Mr Hebditch, collecting these bowls together and transporting illegally them by road to Amman in Jordan, in an operation organised by Mr Ghassan Rihani.

43 Mr Hebditch told the Inquiry that the source of this information was an Iraqi archaeologist whose identity he had undertaken not to reveal; in his evidence he referred to him as Source 'A'. Apparently A's family came from the area around Najaf and he had given very specific information about the dates and places of looting operations carried out by members of his own tribal clan and local villagers. Mr Hebditch gave evidence that Source A had been the subject of several assassination attempts through having worked for the Coalition Provisional Authority in Baghdad, and that this was the reason why he could not be named. The Inquiry has therefore approached this evidence with caution as uncorroborated hearsay, but feels that on balance its content is in harmony with other evidence.

44 Mr Hebditch's assertions are supported in part by a report by Martin Gottlieb and Barry Meier in the *New York Times* of 1 May 2003, which described pillaging in the aftermath of the first Gulf War, and named Mr Ghassan Rihani in connection with the trafficking through Jordan.

45 The problem of the illicit trafficking in antiquities has increased since the invasion of Iraq by Coalition forces in 2003. Iraq is one of several countries for which ICOM has compiled a *Red List* describing the types of artefacts most favoured by the illegal antiquities market. The list is designed as a tool for customs officials, police officers, art dealers and collectors and was compiled during a meeting held at Interpol headquarters in Lyons on 7 May 2003. One of the objects illustrated on the *Red List* is an incantation bowl, and the list specifically cites '*any object with Aramaic writing on it (alphabetic writing, mostly engraved or in ink)*'.

46 This evidence does not relate specifically to the incantation bowls in question. It does however suggest that there has been, since the first Gulf War in 1990, an active illicit trade and that many incantation bowls have been illicitly traded.

Mr Schøyen's purchase of the bowls

47 Mr Schøyen has told the Inquiry that he purchased 656 incantation bowls, of which he loaned 654 to UCL.

48 Mr Schøyen states that he purchased 656 bowls from a series of dealers, including Mr Ghassan Rihani, as follows:

Chris Martin (Coins) Ltd	444
Ghassan Rihani	174
Kathy Williams of Pars Antiques	10
Bernard Quaritch Ltd	3
2 London dealers*	25

TOTAL

*These dealers asked Mr Schøyen not to reveal their names.

49 All of these dealers, according to Mr Schøyen, had directly or indirectly acquired the bowls they sold to him from Mr Ghassan Rihani. Ms May Ghassan Rihani – who was, according to the export licence, the owner of the bowls since 1988 – does not appear to have been involved in any of these transactions.

50 Mr Chris Martin writes that he got to know Mr Ghassan Rihani in the late 1970s, and had business dealings with him in the 1980s. At some point after this he was approached by Mr Rihani '*to assist in the selling of some of the collection/ stock termed 'Rihani Institution property'*', and subsequently, over several years, he received numerous shipments from the Rihani family in Jordan, Germany and Switzerland. Mr Martin has supplied to the Inquiry a selection of documents relating to his purchases from and dealings with the Rihani family, which give an overview of the level of activity. His purchases from Mr Rihani included incantation bowls: a copy invoice of 11/10/1988 mentions '*incantation bowls*' and a further copy invoice of 4/2/1990 mentions 38 '*magic bowls*'. It has not however been possible to link these pre-1990 invoices to subsequent purchases by Mr Schøyen.⁷

51 Mr Schøyen states that he had been purchasing items, initially coins, from Mr Chris Martin since about 1990. He began to purchase incantation bowls between 1989 and 1993, but has not kept invoices or documentation from these early purchases. In Norway there is a legal requirement to retain invoices for 10 years but not beyond. Mr Schøyen's known purchases are summarised in the following table [Figure 7].

⁷ These invoices appear to indicate that incantation bowls were appearing in the UK, and that Mr Martin was dealing in them, before August 1990. This indication does not, however, persuade the Inquiry that the bowls currently in question arrived in the UK before 1990.

Source	Number said to have been purchased	Invoice dates	Total for which invoices seen	Notes
Chris Martin (Coins) Ltd	444	6/10/94 (114) 10/10/94 (unspecified number) 1/9/95 (214) 24/6/96 (19) 29/10/96 (1 jug)	347 + 1 jug	
Mr Ghassan Rihani	174	14/12/95 (22); 5/3/96 (29) 5/4/96 (14 + 1 jar) 25/4/96 (13) 2/9/96 (26) 19/8/96 (29)	133 + 1 jar	
Pars Ancient Antiques	10	11/12/96 (4); 11/01/99 (2)	6	
Bernard Quaritch Ltd	3	28/7/94 (2); 9/9/94 (1)	3	Purchased from Nicholas Reeves (13/7/94: two bowls and 18/8/94: one bowl) and by him from Annie Trotter (13/7/94: two bowls and 11/9/94: one bowl)
Anonymous dealers	25	N/a	0	
TOTAL	656		491	

Fig 7 Mr Schøyen's purchases

52 The Inquiry has been unable to obtain invoices for 165 of the 656 bowls that Mr Schøyen purchased.

53 Mrs Kathy Williams of Pars Antiques was unable to supply the Inquiry with copies of documentation relating to her purchases and sales. She purchased 85 bowls from Mr Rihani, and sold 10 to Mr Schøyen and 3 to other collectors. She has retained 72 bowls in her possession.

54 The three bowls sold by Bernard Quaritch Ltd had been purchased in two batches by Quaritch's almost immediately beforehand, from another dealer, Dr Nicholas Reeves. He in turn had purchased them from Ms Annie Trotter of Grays in the Mews, whom this Inquiry has failed to trace. It is notable that both batches changed hands three times within three weeks. We discuss this aspect further in paragraph 60 below.

55 Mr Schøyen has given evidence to the Inquiry that he first heard of Mr Rihani in mid-1994, when he purchased bowls from Mr Chris Martin and was told these were from the Rihani collection. At some time in 1995 – and therefore several

months after he began purchasing these bowls - he was given, by Mr Rihani, a copy of the 1988 export licence and its English translation. He expressed concern that it did not specifically mention incantation bowls. Mr Rihani also gave him a copy of the 'gift document' of 1965. Mr Schøyen also states (in his record of a conversation with Detective Constable Ian Lawson, of the Arts and Antiquities Squad) that he, Mr Schøyen, '*consulted the photos that came with the licence, but did not keep them due to the poor quality. Today I of course would have done so, but in 1992-95 it did not occur to me that I should be asked to produce them 10 years later.*'

56 By his own account, Mr Schøyen requested provenance documentation only in 1995, months after he began purchasing bowls, and by which time at least 117 were in his possession. We have seen no evidence that Mr Schøyen addressed the strong objective likelihood of an Iraqi origin for the bowls at the time he began to purchase them.

57 We have been supplied with a copy letter dated 15/9/95 from Mr Martin Schøyen to Mr Chris Martin, which includes the following: "*Rihani called me today to tell me he has 5 more Aramaic giant bowls (29-37cm diam) to offer me for 3000. I asked him to send them to you, but he insisted I pay him directly. Kindly call me when they arrive and tell me about condition (all should be intact, one with a hole in the bottom). I will add 10% commission to you for these as well.*" We find it hard to square this statement with Mr Schøyen's stated belief that he was purchasing items from Mr Rihani's long-established family collection, transported to London in 1988-9.

58 On 20 June 2001, Mrs Kathy Williams wrote to Mr Schøyen, apparently in response to an enquiry from him about the provenance of the bowls he had purchased from Pars Antiques, stating her belief that the Rihani collection was collected mainly prior to 1965.

59 On 25 March 2004, Mr Chris Martin wrote to Mr Schøyen, apparently in response to an enquiry from him about the provenance of the bowls he had purchased from Chris Martin (Coins) Ltd, stating that all the pieces purchased from him came from the Rihani collection, and attaching a statement signed by a Mr and Mrs Rihani, dated and witnessed 18 July 2003, stating that '*to the best of their knowledge and belief* all items sold to Mr Martin '*resided within the "Rihani collection" in Jordan, Geneva or London prior to August 6th 1990*'. It is not clear whether the Mr Rihani who signed this document was Mr Ghassan Rihani (who is no longer alive but whose exact date of death we have been unable to establish), or his son, Mr Al Tayib Rihani, who at one time was also involved in the antiquities trade.

60 On the balance of probabilities, we have reached the conclusion that, whatever the exact date of the exportation (if any) of the bowls from Jordan, they did not arrive in England until after 1990⁸. We regard it as improbable, bearing in mind the circumstances and rate of turnover of the trade in this type of antiquity, that Mr Rihani would have waited several years after having transferred such a large number of items overseas, before selling them. The English translation of the export

⁸ In so concluding, the Inquiry takes account of the possibility that the bowls (or some of them) travelled to countries other than Iraq or Jordan before arriving in England, but sees nothing in that prospect to convince it that the bowls left Iraq or Jordan before 6th August 1990.

licence, and the testimonials to Mr Rihani's good character, were not obtained until 1992 and 1993, and there are serious grounds for concluding that these documents were produced to accompany at least the later of the sales, which would mean of course that these sales did not precede the production of those documents. Moreover, the earliest documentary evidence that the Inquiry has seen of the presence of any of these bowls in this country is a copy invoice for two bowls purchased by Nicholas Reeves from Annie Trotter in 13/7/94. As has been shown above, bowls were changing hands very rapidly at this period.

61 On the strength of the evidence recounted in paragraphs 14 to 60, the Inquiry has concluded that the bowls in question were present in Iraq after the 1936 Law came into force and were exported from Iraq after 6th August 1990. It follows, in the view of the Inquiry, that the State of Iraq had an enduring interest in the bowls which survived despite their removal from Iraq. That interest survived until the occurrence of any event after the bowls left Iraq that was capable of divesting the State of Iraq of its title.

The delivery of the bowls to UCL

62 In 1995 Mr Martin Schøyen asked Professor Shaul Shaked of the Hebrew University in Jerusalem to catalogue Mr Schøyen's collection of incantation bowls. The possibility of shipping the collection to Israel was considered but was judged by Mr Schøyen to be too cumbersome. Professor Geller of the Department of Hebrew and Jewish Studies at UCL was a member of Professor Shaked's research group and was asked whether UCL might house the collection while cataloguing took place. He was keen to facilitate this as he hoped that after cataloguing the bowls might be made available for post-graduate and post-doctoral study at UCL. He referred the request to the then Head of Department of Hebrew and Jewish Studies at UCL, Professor John Klier, to see whether this might be possible. Professor Klier supported the request and, following discussion with Professor Michael Worton, then Dean of the Faculty of Arts and Humanities, arranged for bowls to be stored at a UCL store. UCL made no enquiries about the provenance of the bowls.

63 No written records were kept of the existence or terms of UCL's agreement to receive the bowls. However, the agreement appears to have been concluded by 8 September 1995, when Mr Schøyen wrote to Professor Geller with proposals for the transfer. According to the dates of the invoices supplied to the Inquiry, at this point only 456 bowls could have been in Mr Schøyen's possession. Over the next two to three years Mr Schøyen added a further 198 bowls to the collection held at UCL.

64 Mr Schøyen maintains a catalogue of his extensive collections, and each object has a unique number. In early September 1995 Mr Schøyen arranged – through Mr Chris Martin – for the collection to be conserved, photographed and packed in specially made numbered storage boxes. This was done at Mr Schøyen's expense. Subsequently Professor Shaked visited UCL regularly to catalogue the bowls and was provided with office space and reference works, and a student was assigned to fetch bowls for him from the store. The student was paid by Mr Schøyen, the funds for this being administered through an account in the Department of Hebrew and Jewish Studies.

Doubts raised about the collection

65 On 4 August 1999 Professor Lord Renfrew of Kaimsthorn, then Director of the Illicit Antiquities Research Centre at the McDonald Institute, University of Cambridge, wrote to Professor Mark Geller about a conference '*Officina Magica*', which had been held at the Warburg Institute 15-17 June 1999. At that conference Professor Shaul Shaked had given a lecture about a private collection of incantation bowls. Lord Renfrew wrote that he had been given to understand that these bowls might have been illegally exported from Iraq, and that he was concerned that the exhibition and discussion of these bowls at an academic conference might give legitimacy and authority to the academic handling of illegally acquired material. With his letter, which was copied to Professor Peter Ucko, Director of the Institute of Archaeology at UCL, he enclosed a copy of the 1998 resolution of the British Academy regarding the illicit trade in antiquities.

66 Professor Ucko did not reply. Professors Shaked and Geller responded to Lord Renfrew (letters dated 31 August and 3 September 1999), stating that the collection in question was an established private collection and open to scholars. Lord Renfrew in turn responded, saying that he did not wish to pursue the matter further but stating that the central allegation that the collection might have been looted had not been answered.

67 In December 1999 staff at UCL's Institute of Archaeology adopted a statement on the Illicit Trade in Antiquities (reproduced in full as Appendix 3). This statement requires compliance with the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. It prohibits the Institute of Archaeology from acquiring cultural objects by purchase, loan, gift or exchange unless satisfied that valid title to the object can be acquired, and unless it can be demonstrated that the object was not exported from its country of origin since 1970 in violation of that country's laws. Additionally it requires that – before agreeing to study, analyse or conserve archaeological material – individual members of staff must exercise due diligence in establishing that this material has not been illegally excavated or exported.

68 On 11 July 2000 UCL's Museums and Heritage Committee received and discussed this policy statement and agreed that the statement and the issues it raised should be referred to the Museums and Heritage Collections Committee and the proposed Museums and Heritage Teaching and Research Committee, and that these two committees be asked to report back to the Museums and Heritage Committee. At its meeting on 2 November 2000, the Museums and Heritage Collections Committee noted the implications of the policy statement for UCL departments generally and agreed to circulate the statement to Heads of UCL Departments, with the request that they initiate within their own departments discussion of the statement and the issues raised by it, and offer feedback.

69 The responses from departments were reported to the Museums and Heritage Committee at its meeting on 13 February 2001. Responses were received only from: the School of Library, Archive and Information Studies; the History of Art

Department; the School of Spanish and Latin American Studies and the Department of Hebrew and Jewish Studies. The first three of these were broadly in favour of the policy. The Department of Hebrew and Jewish Studies however, while noting the concerns of colleagues about the trade in stolen artefacts, found the proposal '*totally unacceptable on academic grounds*'. In their response (reproduced in full as Appendix 4) they argued:

- a) That while artefacts might belong to the cultural heritage of their country of origin, information preserved on artefacts belongs to the general heritage of humanity;
- b) That academics should not be responsible for checking the legal status of artefacts they study and
- c) that the proposed prohibition of study of stolen artefacts would represent an infringement of academic freedom.

70 The Museums and Heritage Committee noted these responses and agreed to solicit an additional response from the Department of Anthropology. It was noted that the Ministerial Advisory Panel on the Illicit Trade in Cultural Objects had recommended in December 2000 that the United Kingdom accede to the 1970 UNESCO Convention. It was agreed to wait to see whether the UK did accede to the Convention, and that subsequently Dr Nick Merriman, Curator of UCL Museums and Collections, would draft a series of best practice guidelines on any issues not covered by legislation, with a view to including these in the UCL Gold Book. In the event the Museums and Heritage Committee felt that the ratification by the UK of the UNESCO Convention was sufficient, and more specific guidelines were not produced. We comment further on this state of affairs in paragraphs 123 and 124 below.

71 On 30 May 2003 Mr David Hebditch, a freelance television producer, interviewed Dr Nick Merriman, who was then Chair of International Council of Museums (ICOM) UK, about the illicit trade in antiquities for a television programme NRK were making about Mr Martin Schøyen. NRK reporters had heard (according to Mr Hebditch, from the Illicit Antiquities Research Centre) that a collection of incantation bowls belonging to Mr Schøyen – and, they claimed, possibly illegally acquired – was housed at UCL, and they asked Dr Merriman about this. He was unaware of the loan of the bowls and promised to investigate. He reported the allegations to Professor Michael Worton, by then Vice Provost of UCL, who in turn reported them to the Provost, Professor Malcolm Grant. Dr Merriman and Professor Grant had not previously been aware of the fact that these bowls were on UCL property. Their initial response, and that of Professor Worton, was that they saw no reason for UCL to provide free storage for a private collection, and did not wish to be associated with questionable material. Professor Geller, who had arranged for the collection to be housed at UCL, argued that it was an important research resource, but Professor Worton instructed him in writing on 2 December 2003 to make arrangements to return the bowls to Mr Schøyen, claiming that '*UCL could be regarded as illegally holding them*'. This instruction was never carried out.

72 Meanwhile NRK repeatedly requested permission to film the bowls in storage, for the programme they were making. Professor Worton and Dr Merriman refused permission, wishing to avoid UCL's being associated with the bowls. At one point Dr Merriman stated to NRK that UCL had taken steps to remove from UCL premises material that was potentially (but not had not been proven to be) illicit *in*

an attempt to show that we have behaved responsibly'. He later wrote to Professor Geller to the effect that 'We do not want to house material on our premises at our cost and risk'. We comment further on this in paragraph 125 below.

73 NRK discovered that the bowls had not, in fact been removed, and managed to film secretly the storage facility where the bowls were held. They went on to complete the programme - *The Collector* - which alleged that the bowls now at UCL were looted from archaeological sites in southern Iraq in the early 1990s. The programme was shown in Norway on 7 and 14 September 2004. Mr Schøyen filed a complaint to the Norwegian Press Society Ethics Board challenging the allegations made in programme. After four months of deliberation the Board ruled in NRK's favour.

74 Early in January 2004, UCL took legal advice and were informed of the implications of the Iraq (United Nations Sanctions) Order 2003 no 1519 which attaches significant constraints and penalties to certain forms of treatment of cultural objects illicitly removed from Iraq after 6th August 1990 (paragraphs 108-111 below). On 9 January 2004, in accordance with this legal advice, UCL informed the Metropolitan Police of the existence of the bowls and their presence within the possession of UCL, at the same time notifying Mr Schøyen of this development.

75 The Metropolitan Police then investigated the matter. They were unable to arrange to meet Mr Schøyen, who was travelling abroad. On 6 October 2004, they advised that: *'There is insufficient evidence to seize the property under SI 1519 [the Iraq Order of 2003] or to mount a criminal prosecution in this country against Mr Schøyen for possession of the bowls... the Metropolitan police currently have no intention of taking any action in relation to the bowls currently held by UCL'.*

76 On 5 August 2004 UCL instructed Professor Norman Palmer of Counsel to deliver a formal opinion, and notified Mr Schøyen of this step. His opinion (reproduced in full as Appendix 5) was that, if UCL returned the bowls to Mr Schøyen, UCL might still be vulnerable to criminal prosecution and/or civil liability. In summary, it concluded:

The College occupies an anomalous and potentially damaging position. Any initiative could involve risk. To defuse the situation the College should:

- *Explain the position to Mr Schøyen and get his consent to the course proposed*
- *Investigate thoroughly the provenance and proprietary lineage of the bowls*
- *Defer any decision on redelivery of the bowls until the position is clarified*
- *Develop sound principles for the future treatment of cultural objects by College institutions*
- *Inform the media of its intentions and emphasise the new direction being taken*
- *Prepare a back-up plan for use should any of the foregoing prove unworkable'*

This Inquiry was established in order to carry out this work.

LEGAL LIABILITIES AND IMPLICATIONS

77 We observe in our detailed analysis of the law of Iraq⁹ that, by Article 3 of the Antiquities Law 1936 (as amended in 1974 and 1975):

"All antiquities in Iraq whether movable or immovable that are now on or under the surface of the soil shall be considered to be the common property of the State."¹⁰

78 In our opinion, the 1936 Law was effective to render the bowls the property of the State of Iraq from the date on which the Law came into force. The property that was thus conferred on the State of Iraq survived and subsisted, both throughout the presence of the bowls in Iraq and beyond the removal of the bowls from Iraq.

79 Further, the property conferred on the State of Iraq by Article 3 of the 1936 Law would be recognised by the law of England and Wales under principles of private international law.

80 It follows that the 1936 Law conferred a sufficient right of possession on the State of Iraq to enable the State of Iraq to recover the bowls in civil proceedings in England, subject to any later loss of the State's pre-existing property and right of possession.

81 Such later loss might have occurred by one of several methods: by expiry of the limitation period, on a sale or other disposal to a good faith acquirer while the bowls were in a country whose law recognised the disposal as conferring title on the acquirer, by abandonment on the part of the State of Iraq, or otherwise. Such divesting events would normally be matters for the current possessor to establish affirmatively, on a balance of probabilities.

82 We base our conclusions on the following findings of fact: that the bowls were present in Iraq when the 1936 Law came into force, that at the material time they were on or under the surface of the soil within the meaning of Article 3 of the 1936 Law, that no transaction concluded in Iraq before the removal of the bowls from Iraq divested the State of Iraq of the said property, and that no act or omission on the part of the State of Iraq precludes the State of Iraq from vindicating its property in the bowls. We further conclude, as a supplementary alternative conclusion, that had the bowls had been discovered before the coming into force of the Antiquities Law of 1936 but after the coming into force of the Antiquities Law of 1924, they would have been the property of the State of Iraq by virtue (at least) of Article 3 of the 1924 Law. We further conclude that in that event, as in the case of discovery after the coming into force of the 1936 Law, no transaction concluded in Iraq before the removal of the bowls from Iraq divested the State of Iraq of the said property, and that no act or omission on the part of the State of Iraq precludes the State of Iraq from vindicating its property in the bowls.

83 Our analysis of the evidence, and the grounds on which we reach these findings of fact, are set out in paragraphs 14 to 60 of this Report.

⁹ Appendix 6

¹⁰ Article 3 further provides that individuals and groups are prohibited from disposing of such property, or from claiming the ownership of such property, other than under the provisions of the 1936 Law. By Article 4 the ownership of land does not entitle the land owner to dispose of antiquities discovered on or under the surface of that land, or to excavate for antiquities in that land.

84 Our conclusion in regard to the document that purports to be a Jordanian export licence issued in 1988 is as follows:

- a) We cannot be certain (i) that (notwithstanding the evidence we have received from Jordan) the licence was lawfully issued, or (ii) that, if lawfully issued, the licence authorised the export of, and was actually used to export, the particular bowls in question, or (iii) that the bowls in question were in any event lawfully exported from Jordan.
- b) If the export (if any) from Jordan was illegal, there is a serious possibility (i) that the bowls were subject to the confiscation provisions of Jordanian law and (ii) that the Kingdom of Jordan became thereupon the owner of the bowls and had thereafter the immediate right to possession of them.
- c) However, these possibilities do not decisively convince us that the original title of the State of Iraq has been displaced or that the State of Iraq has ceased, by virtue of events in Jordan, to have the full ownership and right to possession of these bowls.

85 If the export licence from Jordan was lawful, this would do no more than prevent the Kingdom of Jordan from taking any action or asserting any personal entitlement in respect of the bowls, and would not displace or render ineffective the pre-existing property and right of possession vested in the State of Iraq. If the licence were unlawful, our conclusion is that any entitlement that might otherwise have arisen on the part of the state of Jordan, by the power of confiscation or otherwise, would be subordinate to the pre-existing entitlement of the State of Iraq.

Proceedings to recover the bowls

86 Under the law of England and Wales a person who seeks to recover chattels will normally sue for the tort of conversion. The act of conversion will normally be established by proof of a prior unauthorised dealing in the chattel, such as sale and purchase, or by a demand for its return followed by a refusal from the current possessor. Liability is normally strict: good faith and due diligence are irrelevant. Once conversion is established, the court can (according to circumstances) order the specific restitution of the chattel, or damages, or both.

87 The claimant must show a sufficient personal connection with the chattel to justify the award of a remedy. In cases of this nature, the claimant must normally show that he/she had either the possession, or the immediate right to the possession, of the chattel at the time of the alleged wrong.

88 We have already recorded our opinion the State of Iraq had at all material times, by virtue of Article 3 of the 1936 Law, the necessary immediate right of possession over

the bowls to sustain its qualification to sue in conversion. This conclusion is subject to the availability of certain defences, which we shall shortly examine.

Unlawful export

89 There is a further ground on which we conclude that the bowls were the property of the State of Iraq, though we do not place primary reliance on this ground. By Article 26 of the Antiquities Law 1936:

"Taking any antiquity outside Iraq is prohibited. Notwithstanding, it is possible for the Directorate to do this for scientific studies, exchange and exhibitions."

90 We conclude that the removal of the bowls from Iraq was illegal, and that this illegal removal activated Article 60(1) of the 1936 Law by which antiquities are confiscated whenever a person has smuggled, or intended or helped in smuggling, those antiquities.

91 In our judgment the confiscation contemplated by Article 60(1) takes effect before smuggled objects leave the territory of the State of Iraq. On that analysis, we conclude that Article 60(1) confers on the State of Iraq a sufficient property in, and right of possession to, the bowls to merit recognition in England and Wales under principles of private international law. Our opinion is confirmed by Article 68, which provides that:

"Any antiquity confiscated under the provisions of this Law, shall be delivered to the Department of Antiquities."

92 The remedial consequences for the State of Iraq are broadly equivalent to those set out in paragraphs 80-88 of this Report, and include a capability in the State of Iraq to sue for conversion in respect of an unauthorised dealing in the bowls, or on a refusal to return them after a reasonable demand.

93 Our reasoning on the question whether the foregoing property and right of possession have been displaced by a good faith purchase within the meaning of the Limitation Act 1980 is essentially the same as that adopted in relation to the property and right of possession conferred by Article 3 of the 1936 Law: see paragraphs 94 to 106 of this Report.

Defences: General

94 While the State of Iraq had, in our opinion, the original property in the bowls, that original property might in practice have been overridden by later transactions or events. Principal among these later events would be the expiry of a relevant limitation period. Other subsequent events might be the conclusion of a good faith purchase when the bowls were located in a country that recognised the purchase as conferring title on the buyer, the abandonment of property by the State of Iraq, or an estoppel precluding the State from asserting its title.

95 We have, after searching inquiry, discovered no evidence of any transaction or event, other perhaps than the sales of the bowls to Mr Schøyen, that would in our opinion support any positive conclusion that the State of Iraq was divested of its original property and right of possession.

Mr Schøyen's purchases and the expiry of the limitation period

96 We outline as Appendix 9 our understanding of the English law of limitations. Essentially, sections 3 and 4 of the Limitation Act 1980 require Mr Schøyen to demonstrate affirmatively that he bought the bowls in good faith. If he can prove that, the title of the State of Iraq would (subject to exceptions) be extinguished six years after the date of the purchase. Iraq would then no longer have that immediate right to possession that is necessary for it to sue in conversion to recover the bowls. In that event Mr Schøyen would take the bowls free of any prior title. It would make no difference that the bowls were stolen property or that they had been unlawfully exported from Iraq.

97 The interpretation of good faith that we have adopted for this purpose is one based on honesty rather than on the exercise of due diligence. We have been advised that a buyer should be regarded as satisfying the statutory requirement of good faith if he can demonstrate affirmatively (a) that he bought the bowls honestly, without knowing that they were stolen or otherwise unlawfully removed, and (b) that he did not acquire them with any wilful or reckless disregard for their true provenance, caring not whether they were stolen or otherwise unlawfully removed.

98 We construe the concept of 'blind-eye' knowledge in this case as requiring proof that the person whose state of mind is in question did not deliberately refrain from pursuing any obvious line of inquiry emerging from the facts before him/her, because he/she was under the apprehension that such inquiry would lead to the discovery of facts that he/she would not wish to know. We construe the concept of recklessness in this context as signifying an outright indifference on the part of the person whose state of mind is in question, as to whether or not the bowls were stolen or unlawfully removed, and not as signifying a simple want of diligence or reasonable care to establish their provenance. On the other hand, we bear in mind that a want of reasonable diligence or inquiry might itself constitute *evidence* of dishonesty or wilful blindness to or reckless disregard for the truth.

Evaluation on the facts: Matters adverse to Mr Schøyen

99 Among the arguments that might in principle inhibit a court from concluding that Mr Schøyen is able to discharge the burden of proving that he bought in good faith are:

- a) Mr Schøyen's failure to ask for or obtain any documentation on his original purchase from Mr Chris Martin.
- b) the obscure and questionable character of the two principal documents exhibited by Mr Schøyen to this Inquiry, with (*inter alia*) their lack of specific reference to the bowls in question and their evident capacity to be used in support of multiple transactions affecting a wide range of antiquities, such documents collectively indicating circumstances that

- should in any experienced and conscientious collector have invited the sharpest scepticism; the inherently unconvincing and self-corroborating nature of the document purportedly signed by a member of the Rihani family, testifying in guarded terms, not otherwise corroborated, to the departure of the bowls from Iraq before 6th August 1990;
- c) the general state of knowledge, current at the time of Mr Schøyen's purchases, concerning the scale of illegal removal of antiquities from Iraq and neighbouring countries, and the prohibitive nature of the contemporary laws regarding the possession and removal of antiquities in and from Iraq and neighbouring countries;
 - d) the scepticism with which any objective observer might reasonably respond to an offer of antiquities that are alleged by the vendor to derive from a long-established collection assembled before the coming into force of relevant laws, at least in the absence of concrete external evidence as to the existence, date of assembly, content, continuity, documentation and legal status of that collection;
 - e) statements of opinion by Professor Geller and other experts aware of the delivery of the bowls to UCL that the bowls came from Mesopotamia or Sassanian Iran, suggesting that similar opinions might reasonably be expected to have been known to Mr Schøyen when he bought the bowls, and the general body of academic opinion that such bowls come only from Iraq, a body of opinion of which Mr Schøyen might reasonably be taken to have been aware;
 - f) The large quantity of bowls comprised in Mr Schøyen's contracts, the high ratio of that quantity to the volume of other documented collections of bowls (some 2,000 in total), the short time over which the bowls were bought, the few transactions in which they were bought, the timing of the purchases (some four or five years after the 1990 hostilities in Iraq) and the fact that all or virtually all previously-known incantation bowls demonstrably emanated from Iraq, these factors collectively suggesting a sudden and intensive exodus of incantation bowls in the recent past from a region that had suddenly and recently become peculiarly vulnerable to the illicit removal of antiquities;
 - g) The letter from Mr Schøyen to Mr Martin referring to the purchase of five bowls transported from Mr Rihani, suggesting that the bowls were not part of a large, extant collection already in London;

Evaluation on the facts: Matters favourable to Mr Schøyen

100 Among the arguments that might in principle induce a court to conclude that Mr Schøyen is able to discharge the burden of proving that he bought in good faith are:

- a) the positive and unequivocal assurances given by Mr Schøyen to the Inquiry that he specifically inquired of his vendors about the origin and legal status of the bowls, looking beyond the formal documentation presented to him, and that he believed the facts that his vendors recounted to him, the Inquiry having discovered no direct evidence that positively contradicts or impugns Mr Schøyen's honesty on that point, or the truth of those assurances;

- b) the acquisition of the bowls from (in general) established and, in some instances, recommended specialist dealers with established clienteles and settled places of business, rather than from transient non-specialist vendors;
- c) the extensive documentation, in the form of invoices and other material, that was given to Mr Schøyen in support of his purchases, and which constituted a form of audit trail;
- d) the fact that Mr Schøyen paid for the bowls by bank transfer and did not pay for them in cash or by some other untraceable method;
- e) the openness with which Mr Schøyen dealt with the bowls shortly after his acquisition of them, and in particular his consent to their being the subject of a conference in 1999 and his preparedness to deliver them into the possession of UCL for the purposes of academic research and publication, substantially before the six-year limitation period prescribed by the Limitation Act 1980 would have expired;
- f) the less extensive scale of looting from Iraq over the period in question (say, 1990 to 1995), as compared to more recent depredations, suggesting a correspondingly fainter prospect that Mr Schøyen would or should reasonably have been aware that the bowls emanated (or might have emanated) unlawfully from Iraq;
- g) the conclusion of the police, expressed on two occasions over the past two years (the more recent in December 2005) that there was no sufficient factual foundation for prosecuting Mr Schøyen or other known participants in the sale and purchase of the bowls (but bearing in mind that criminal conviction normally depends on proof beyond reasonable doubt, and not on a balance of probabilities);

Assessment

101 We have borne in mind throughout our examination of these matters that, in any legal claim for the return of the bowls, Mr Schøyen would carry the burden of proving on a balance of probabilities that he acquired them in good faith. We are also aware that the requirement of good faith imposed by the Limitation Act 1980 substantially corresponds with that of honesty or lack of wilful or reckless disregard for the truth. It follows that any conclusion that the Inquiry reaches on this question does not necessarily constitute an affirmative finding of honesty or dishonesty, but reflects the burden and standard of proof in relation to the evidence at its disposal, in circumstances where much is unknown.

102 In our judgment the delicate equilibrium between these two sets of considerations, and the possible existence of other relevant facts not known to us, render it impossible for the Inquiry to determine with any certitude whether a court would hold that Mr Schøyen acquired the bowls in good faith. We accept that there exists a distinct possibility that Mr Schøyen would discharge the burden, and we renounce any intention to impugn Mr Schøyen's integrity. Nor do we recommend any action that would, or might reasonably be expected to, violate his private rights.

At the same time we recognise the perils that would confront UCL if it returned the bowls to someone other than the person legally entitled.¹¹

103 Having regard to these and other material circumstances, the Inquiry has determined that it cannot conclude with confidence that Mr Schøyen would succeed in satisfying an English court that the state of mind with which he acquired the bowls was such as to result in the conferment upon him of property in and the immediate right of possession to the bowls, or in the extinguishment of any pre-existing property and right of possession vested in the State of Iraq.

104 In the Inquiry's opinion, the determining factor in these circumstances should be, not merely the dictates of legal doctrine, but the demands of ethical principle and public decency.¹² UCL should adopt a position that unequivocally repudiates the illicit removal of cultural objects and demonstrates a responsible respect for cultural and academic integrity. These bowls came unlawfully from Iraq and should be returned to Iraq. The method of achieving that result is for UCL to determine.

105 In so proposing, we recognise the force of UCL's obligation to respect Mr Schøyen's legal rights, and we do not (as already observed) propose any violation of his rights. Nor do we seek to diminish the challenges that UCL would face in implementing our proposals. We do remark, however, that the task of reconciling what might appear as countervailing, if not irreconcilable, values is one that UCL has substantially brought on itself. The self-inflicted nature of its problems can be ascribed to an unacceptable degree of autonomy on matters of academic ethics among individual UCL departments, an irresponsible disregard for legal and ethical norms, and a systematic failure by various levels of management to pursue and meet head-on a clear continuing exposure to legal risk and ethical censure. This case affords, in fact, a text-book example of the dilemmas that can confront an institution that accepts possession of cultural material without sufficient regard for its ownership history or ethical standing. We now urge UCL to develop a model solution.

106 We recommend that, in developing its solution to this question, UCL pay close regard to certain arguments that might justify a refusal to return the bowls to Mr Schøyen, even in the event that UCL concludes that the State of Iraq has lost its original title by virtue of section 3 and 4 of the Limitation Act 1980. These arguments, which derive principally from the contract of bailment between Mr Schøyen and UCL and from the potential status of the bowls as criminal property under the Proceeds of Crime Act 2002, are outlined in Appendix 10.

Mr Schøyen's vendors

107 We realise that, in theory, the transactions by which Mr Schøyen's own vendors acquired the bowls might have divested the State of Iraq of its entitlement to the bowls. In our judgment, however, we have insufficient evidence of the salient facts of these

¹¹One risk is, of course, that a claimant other than the returnee will successfully sue UCL for conversion: *Marcq v Christie Manson & Woods Ltd* [2004] QB 286. Another is that the return might result in criminal liability on the part of UCL: see Appendix 7, and Appendix 10 paragraphs 9-10.

¹² Which concepts we take to include, but not to consist solely of, compliance with private law.

transactions to reach a definitive conclusion on this point. Among other considerations, we do not have decisive evidence as to the location of the bowls at the time of each of these sales. Moreover, Mr Chris Martin, the vendor of approximately two-thirds of the bowls, mainly supplied before Mr Schøyen made his direct purchases from Mr Rihani, and the person who introduced Mr Schøyen to Mr Rihani, declined to be examined by the Inquiry, though he did submit written evidence. It would therefore be unsafe for us to conclude that those sales defeated the State of Iraq's pre-existing property and right of possession. A similar conclusion attaches to any prior 'up-stream' purchase preceding the acquisitions by Mr Schøyen's own vendors.

Relevant law of the United Kingdom: The Iraq (United Nations Sanctions) Orders 1990 and 2003

108 Our conclusion on the balance of probabilities that the bowls were exported from Iraq after the 6th August 1990 requires us to consider the effect of the Iraq (United Nations Sanctions) Orders in Council of 1990 and 2003.

109 Under the 1990 Order,¹³ it was a criminal offence to export any goods from Iraq¹⁴ or to deal in any goods that had been exported from Iraq after the 6th August 1990,¹⁵ unless the activity was licensed. The maximum penalty was imprisonment for two years, or a fine, or both.¹⁶ The 1990 Order was revoked by the 2003 Order,¹⁷ but was in force at the time when Mr Schøyen bought the bowls and later delivered them to UCL. A fuller account of its provisions is given in Appendix 7.

110 Under the 2003 Order, the importation into the UK of cultural objects that have been illicitly removed from Iraq after the 6th August 1990 is prohibited.¹⁸ Further, it is a criminal offence to deal in such objects¹⁹ or (where a person holds or controls them) to fail to cause their transfer to a constable.²⁰ The maximum penalty is imprisonment for seven years, or a fine, or both.²¹ A detailed account of the scope of these offences is given in Appendix 7.

111 Several conclusions may be drawn from the presence of these laws on the statute book. First, if applicable, they could mean that UCL was committing one or more criminal offences by receiving and retaining the bowls.²² Secondly, they could also mean that any senior officer of UCL, to whose neglect the commission of an offence by UCL under these Orders could be attributed, was also guilty of an

¹³ Iraq and Kuwait (United Nations Sanctions) Order 1990, SI 1990 No 1651.

¹⁴ Ibid, Article 2(1).

¹⁵ Ibid, Article 2(2).

¹⁶ Ibid, Article 8(1).

¹⁷ Iraq (United Nations Sanctions) Order 2003, SI 2003 No 1519, Article 2.

¹⁸ Ibid, Article 8(1).

¹⁹ Ibid, Article 8(3).

²⁰ Ibid, Article 8(2).

²¹ Ibid, Article 20(1). See also sections 327-340 of the Proceeds of Crime Act 2002, set out in Appendix 10 paragraphs 9-10.

²² They also raise the possibility that might also have been a criminal offence for UCL to return the bowls to Mr Schøyen, though this is open to argument. On this, and generally, see also sections 327-340 of the Proceeds of Crime Act 2002, Appendix 10 paragraphs 9-10.

offence under the Orders.²³ Thirdly, they suggest that responsible members of the academic and commercial communities should reasonably have known of the perils of transacting in material from Iraq, and of the significant volume of illicit Iraqi material entering the antiquities market, around the time when these bowls were being delivered to and researched by UCL. Fourthly, they indicate the improvidence (if not the outright folly) of permitting the reception and retention by UCL of antiquities to persist unchecked, where there are grounds to believe that those antiquities have come from Iraq. We draw attention in this regard to clause 10.2 of the Museums Association Code of Ethics (2002), which requires members to keep up to date with developments in the law.²⁴ In our judgment this principle should be treated as axiomatic, regardless of the specific nature of the holding institution.

ETHICAL CONSIDERATIONS

Acquisitions and Loans

112 In considering our recommendations, we find it necessary to review the ethical considerations in operation not only at the present time, but at the time of the loan of the bowls to UCL in 1995. In considering the provenance of the bowls it is necessary to bear in mind also the ethical considerations applying at the time of their discovery, of their original export from their country of origin, of their export (if any) from Jordan, and at subsequent sale transactions. We are very much aware that the situation on such matters changed significantly with the publication in 1970 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, with the publication in 1995 of the UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects, and again (in England) with the enactment in 2003 of the Dealing in Cultural Objects (Offences) Act and the two Orders in Council governing cultural objects from Iraq²⁵. Our evidence is that the impact of these conventions on institutional practice was considerable, despite the fact that the United Kingdom did not accede to the UNESCO Convention until 2002, and has still not acceded to the UNIDROIT Convention.

113 Following the adoption of the 1970 UNESCO Convention, many museums published policies stating that they would acquire objects exported from their country of origin after 1970 only if those objects were accompanied by documentary proof of legal export. Since the introduction of the Museums Registration Scheme (now Museums Accreditation Scheme) in 1988 any English museum wishing to achieve registered status has been required to include a statement to this effect in a published Acquisitions Policy. Several of UCL's museums – the Petrie Museum, the Art Collections, the Grant Museum and the Museum of Classical Archaeology – achieved registration in 1990. In each case, the acquisitions policy of the museum – containing the statement about compliance with the 1970 rule – was approved by UCL's Council.

²³ 1990 Order, paragraph 8(2); 2003 Order Article 20(6).

²⁴ This duty is underlined by clause 2.8 of the Code, which requires museums to understand legal responsibilities and make all policy and practice at the museum comply with the law, and by clause 7.7 which says that when dealing 'sensitively and promptly' with repatriation requests, museums must take the law into account.

²⁵ See paragraphs 108-111 above and Appendix 7.

114 Even for those governing bodies with unregistered collections, professional guidance was available. The Museums Association's *Code of Practice for Governing Bodies*, published in April 1995, states that

'In addition to statute law and the international obligations of the United Kingdom, the Museums Association endorses the wider Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of ownership of Cultural Property (UNESCO 1970) and all governing bodies should do the same'.

115 As has been shown, the Institute of Archaeology of UCL - which housed both registered and unregistered collections - resolved in 1999 to follow the '1970 rule' that no object be acquired :

'unless it can be demonstrated that the object was not exported from its country of origin since 1970 in violation of that country's laws'.

116 The Institute of Archaeology policy of 1999, and the current codes of practice promulgated by the International Council of Museums, the Museums Association of Great Britain, and the Department for Culture, Media and Sport, either stipulate or proceed on the presumption that the same ethical provisions should apply to loans as to permanent acquisitions. We are aware that the ethical codes of museums apply in the first instance to objects borrowed or acquired for the purposes of exhibition. It is clear to us, however, that the same considerations should apply to objects loaned, for instance to a university department, for the purposes of study, research or conservation.

117 Issues of restitution are currently much debated with respect to antiquities accessioned long ago into museums, in circumstances that would certainly not meet currently applicable ethical criteria. We feel however that a sharp distinction is to be drawn between those cultural objects which were removed prior to 1970, the date of the UK's ratification of the UNESCO Convention, and those which fall under the 1970 Rule. UCL finds itself in the unusual situation of being currently in possession of objects which, following the 1970 Rule, it could not and should not have accepted on loan and which it certainly could not accept today. If it had (however unwisely) received the incantation bowls as a gift from Mr Schøyen, the appropriate course of action, in the spirit of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, would have been to return the bowls to their country of origin, Iraq.

UCL's receipt of the bowls

118 In the context of the prevailing ethical and professional standards, we make the following comments about UCL's receipt of the bowls in 1995.

119 It is evident from the material examined above that the ethical position in relation to the acquisition and loan of antiquities was not as clear in 1995 as it is today, and that the position has become clearer since the United Kingdom acceded in 2002 to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and in consequence enacted the Dealing in Cultural Objects (Offences) Act of 2003.

120 Even so, we find it regrettable that those who accepted the bowls on behalf of UCL made no attempt at the time of the loan to pursue any independent inquiry or investigation designed to establish the provenance of the bowls, or the manner in which Mr Schøyen came to possess them, or their general ownership history. In our judgment, this lack of curiosity as to the legal status of the bowls and as to any possible infringement of the law by UCL in accepting them is especially regrettable. In particular, the Iraq and Kuwait (United Nations Sanctions) Order of 1990, SI 1990 No 1651, was already in force, and its potential application to objects which could be (and in this case were) presumed to have originated in Iraq should have been obvious. It is clear that the loan should not have been accepted on behalf of UCL.

121 Although in 1995 UCL was the governing body for four registered museums, UCL did not have in place an appropriate committee or management structure to ensure the application of commonly accepted ethical and professional standards pertaining to collections across the university. No attempt was made to inform all staff of the need for diligent inquiry into cultural objects accepted by UCL institutions and there was no mechanism for checking that such inquiry had been undertaken in such circumstances. The receipt of the bowls was not documented or authorised in writing.

122 When doubts about the provenance of the bowls were first raised with the Department of Hebrew and Jewish Studies and the Institute of Archaeology at UCL, these concerns were not raised with senior management, nor were any investigations undertaken.

123 In 2001, UCL's Museums and Heritage Committee proposed that the Institute of Archaeology's resolution be adopted across the university. The Department of Hebrew and Jewish Studies commented to the effect that it should not owe any responsibility to verify the legal status of material accepted by it, and that to prohibit the study by academics of stolen cultural artefacts would represent an infringement of academic freedom. We find it extraordinary that senior academics should have exhibited such indifference to the question whether activities practised by their Department were lawful. We also consider it reprehensible that the Museums and Heritage Committee did not challenge this position, when the situation called aloud for corrective treatment on principles both of public conscience and sound indoor management. In our judgment, the Committee should, at the very least, have pointed out that the position adopted by the Department involved a serious risk of both civil and criminal liability, and that academic freedom does not confer immunity from law.

124 We also find it reprehensible that the Committee's recommendation in favour of the compilation of university-wide guidelines was first of all shelved pending the UK Government's accession to the 1970 UNESCO Convention, and in the event never produced. The Committee should have been aware that the UNESCO Convention regulates the actions of, and the conduct of relationships among, sovereign States. It does not directly impose enforceable standards of conduct on particular institutions or individuals. The mere fact of accession to the Convention could not, in our opinion, reasonably have been regarded by any informed observer as a sufficient antidote to specific irregularities on the part of individual university

departments. In our opinion the prospect of accession to UNESCO was a flawed and unconvincing reason for the Committee's failure to address this issue squarely.

125 In 2003, when senior management and those responsible for heritage collections at UCL became aware that UCL had possession of the bowls, and had begun to appreciate the implications of that possession, prompt action should have been taken to redress the situation and to ensure due compliance with the law. Instead, UCL's initial and (it seems) instinctive response was to try to rid UCL of the immediate problem by ejecting the bowls from its possession. This policy involved a serious risk of both legal and ethical transgression, and disclosed a conspicuous failure to appreciate the obligations of a responsible academic institution towards the looted heritage of another nation. It was not until 2004 that UCL sought legal advice on the proper conduct of this matter, and took steps pursuant to the Iraq Order in Council to transfer the bowls to a constable as the Order requires.

Ethical conduct

126 It is clear to us that these bowls have been unlawfully removed from Iraq in two salient circumstances: first at a time when legislation in Iraq specifically forbade their removal and secondly through insensitive excavation which will have seriously impaired their archaeological context. Given the archaeological testimony that a single bowl or a group of bowls was often buried below the threshold of the house in question, these 654 bowls must have come from the ransacked sites of many houses of the period, and those sites must have been impaired or and destroyed through such looting. The inevitable result will have been a major loss to the archaeological heritage, and specifically to the cultural context from which the objects in question were removed. In these circumstances we believe it would be highly anomalous for an institution of learning, some of whose scholars profess a deep and undoubted interest in that heritage and context, to engage in conduct which might reasonably be regarded as legitimising or condoning the wrongful removal of that heritage or of exploiting the fruits of that removal.

127 Our general view is (a) that it is utterly inappropriate for an institution of enlightenment to be profiting from illegality or to be associating itself in any manner or for any purpose with a violation with the laws of another nation and (b) that as a matter of common sense any significant involvement in the illicit trade, including any significant profiting from the proceeds of that trade, is calculated to encourage and enhance that trade itself. On the second point we accept that in certain circumstances a direct causal connection may not be easy to substantiate, and that if a supposed link between contemporary acquisition and future illicit removal can be positively controverted in a specific case, different considerations may apply. That said, as a matter of common sense and basic morality, we believe that UCL should dissociate itself from any conduct which could reasonably be regarded by an informed observer as giving credence or comfort to the looting of antiquities.

128 Since 1970, informed opinion has increasingly recognised that the scholarly publication of illicit antiquities serves to legitimise them in the eyes of potential buyers, and adds monetary value²⁶. The 1999 Institute of Archaeology policy

²⁶ The Archaeological Institute of America was one of the first institutions to implement a publications policy discouraging the publication of illicit antiquities, for both its journals, *American Journal of Archaeology* and *Archaeology*. Its current policy states of its journals that 'they will not serve for the announcement or initial scholarly presentation of any object in a private or

resolved that '*staff must not undertake scholarly publication of unprovenanced material unless it can be clearly demonstrated that the artefact or specimen has been in a collection before 1970*'.

129 We recognise that UCL cannot ordinarily seek to regulate activities carried on by its staff within their own time, where those activities do not offend the laws of the United Kingdom. We are, however, of the opinion that, when members of the academic staff at UCL undertake research within, or for purposes connected with, their contract of employment, UCL should require them to follow the convention enshrined in the policy of the Institute of Archaeology (Appendix 3).

130 Having regard to the status of the bowls as unprovenanced and potentially illicit antiquities, it was in our opinion inappropriate that staff of the Department of Hebrew and Jewish Studies at UCL should have undertaken to publish or secure publication of them. Subject to the due observance of UCL's legal status and obligations at large, we therefore recommend that UCL give anxious and immediate consideration to the following propositions: (i) that UCL should not financially support or otherwise condone any publication of the bowls (ii) that such publication should not be taken into favourable consideration by UCL or by other academic bodies when research output is being considered in terms of job performance, promotion or research assessment, (iii) that UCL exclude from all official and institutional records any evidence of such research derived from the bowls.

CONCLUSIONS

131 We conclude on the balance of probabilities that the bowls were present in Iraq at the time of coming into force of the Antiquities Law No 59 of 1936. We further conclude that the bowls were on or under the soil of Iraq at that time for the purposes of Article 3 of that Law. On the aforesaid premises, the bowls were the property of the State of Iraq at the time of their removal from Iraq, and the State of Iraq had the immediate right to their possession at that time.

132 We further conclude on the balance of probabilities that under the Antiquities Law No 59 of 1936 the exportation or contemplated exportation of the bowls from Iraq would, in any event, have rendered them the property of the State of Iraq, and caused the immediate right to the possession of them to have vested in the State of Iraq, had the State of Iraq not already held such interests by virtue of the preceding paragraph.

133 We further conclude on a balance of probabilities that the date on which the bowls were removed from Iraq was after 6th August 1990. On the aforesaid premise, the removal of the bowls from Iraq was unlawful under the law then in force in Iraq, the importation of the bowls into the United Kingdom was (at least after 14th June 2003)²⁷ prohibited, and any dealing in or possession of the bowls was potentially a criminal offence.

²⁷ public collection acquired after December 30, 1973, unless its existence is documented before that date, or it was legally exported from its country of origin'.

²⁷ When the 2003 Order in Council came into force. There is a substantial case for saying that an importation for commercial purposes might also have constituted an offence under the 1990 Order in Council: see articles 2 (1), 2 (2) *ibid*. See further Appendix 7.

134 In summary, the bowls came from Iraq, were unlawfully removed from Iraq, are aside from the Limitation Act 1980 the property of Iraq, are the product of criminal dealings, and should by any acceptable ethical standards be returned to Iraq, when it is safe to do so.

135 We further conclude on a balance of probabilities that any passage of the bowls through the Kingdom of Jordan after their removal from Iraq did not *per se* legalise their removal from Iraq, or cause such property and immediate right of possession as was vested in the State of Iraq to cease.

136 On the above premises, a person who, while they were located in England, bought or sold the bowls at any time during the subsistence of the State of Iraq's property in, and immediate right to the possession of, the bowls committed the tort of conversion against the State of Iraq. This proposition should be read in conjunction with paragraphs 139 and paragraphs 143-5 below.

137 We express no settled opinion as to whether any act of importation, or sale or purchase, or other dealing or handling, conducted or concluded in relation to the bowls after their removal from Iraq, constituted a criminal offence under the law of England and Wales.

138 We note, however, that criminal offences might have been committed in the event of such dealing or handling, subject to the state of mind of the party dealing in or handling the bowls, and the available evidence as to that state of mind.

139 Subject to paragraph 135 above, we express no opinion as to whether any disposition of the bowls, concluded after the removal of the bowls from Iraq and while the bowls were situated in a country other than Iraq or England and Wales, conferred on any person other than the State of Iraq the property in and immediate right to the possession of the bowls, and correspondingly caused the property and immediate right of possession formerly vested in the State of Iraq to cease. We have heard no evidence of any such intermediate disposition and we propose to leave the prospect of any such disposition out of account, while noting its possible occurrence and legal effect.

140 Our reservation on this point extends to any disposition purporting to confer property in the bowls on the acquirer, whether by sale and purchase, gift, exchange, or other transaction.

141 Although UCL has in the past proposed that it return the bowls to Mr Schøyen, we conclude that UCL should do so only if UCL is convinced that Mr Schøyen has the immediate right to the possession of the bowls. We are not able to conclude, with sufficient confidence to endorse that proposal, that Mr Schøyen would succeed in convincing a court that the state of mind with which he bought the bowls was sufficient to confer on him the immediate right to possession of the bowls.

142 Our conclusion in the preceding paragraph does not constitute a positive finding that Mr Schøyen did not act in good faith in buying the bowls, but reflects the state of the evidence as it appears to us, on the material available to us and in the light of the statutory burden of proof.

143 There is a further reason why Mr Schøyen may lack the necessary immediate right of possession. On our view of the evidence, the bowls are subject to the 2003 Order as cultural objects illicitly removed from Iraq after 6 August 1990. It follows that UCL, being in possession of the bowls, should cause them to be delivered to a constable, and in principle commits a criminal offence by failing to do so.

144 It may follow from the statutory obligation to deliver to the police, that the police are entitled to the possession of the bowls, or at least are a serious contender for the immediate right to possession. While the police have declined to insist on any right to possession at present, that does not mean that they have waived or vacated such right of possession as they might have, or have authorised UCL to deliver the bowls to Mr Schøyen in the situation now found to exist. A similar obligation to deliver the bowls to the police would, in our view, exist on the part of Mr Schøyen in the event that, contrary to our advice, UCL delivered the bowls to him.

145 On the other hand, and again on the facts we have found, the police might reasonably be assumed to hold or exert any right of possession vested in them on behalf of or to the order of the State of Iraq from whose territory the bowls were illicitly removed. It would follow that, unless the bowls were required for use in the law enforcement process, the police would not object to a direct delivery to Iraq.

146 We conclude that UCL did not undertake any diligence check when receiving the bowls from Mr Schøyen. Nor did it have in place appropriate procedures, reporting mechanisms and sanctions for dealing with such issues. We shall make recommendations on these broader issues in Part 2 of our report.

RECOMMENDATIONS

147 We recommend that UCL publish this report in full, but that the following be sent copies of the report six months in advance of publication, provided that they undertake in writing not to disclose any part of the report except to their legal advisers:

- Mr Martin Schøyen
- The Department of Antiquities of the State of Iraq
- The Department of Antiquities of the Hashemite Kingdom of Jordan
- The Metropolitan Police
- Her Majesty's Customs and Excise
- The Department of Culture, Media and Sport's Cultural Property Unit

We recommend that this be done in order that there may be a period of time for discussion and resolution.

148 We recommend that UCL return, at UCL's expense, the 654 incantation bowls within one month of the publication of this report to the Department of Antiquities of the State of Iraq. This recommendation is subject to confirmation that the State of Iraq is willing to accept this proposal, and to the obtaining of all

necessary export and import licences, and to such other legal constraints as may appear.

149 We recommend that UCL draw to the attention of the Director of Antiquities in Iraq the existence of the Museum of Temporary Safety established by UNESCO for the temporary safe custody of threatened heritage, should the Iraqi authorities feel there is a need for temporary safe haven.

150 In the light of our recommendation as to notification, it is open to Mr Schøyen, at any time after his receipt of this report, and before the expiry of the six months recommended in this report, to seek the return of the bowls to himself through the courts. In the event that such application is made on grounds that appear to UCL to disclose a seriously arguable case, and the State of Iraq indicates an intention to oppose the application, we recommend that UCL should approach the matter as one to be settled by appropriate proceedings between the claimants, should acknowledge that it maintains no personal interest in the bowls, and should apply to interplead.

151 We recommend that UCL give immediate consideration to the exclusion from all official and institutional records of all research derived from the bowls, subject to UCL's legal status and obligations at large.

152 Our Inquiry is also charged with conducting a sample audit of relevant cultural objects and specimens entering UCL's Museums and Collections and Library Services since 1970, and with making recommendations on the measures necessary for UCL to adopt in relation to material acquired or received by UCL premises in order to comply with the law and with ethical standards. This will be the subject of our second report.

APPENDIX 1: TERMS OF REFERENCE OF THE INQUIRY

The Inquiry's terms of reference are as follows:

- i) To do all such acts and things as they consider necessary to ascertain the facts relevant to the acquisition of the Aramaic incantation bowls currently held by UCL on loan from Mr Martin Schøyen ("the bowls") and to prepare a chronology of ownership and possession of the bowls from 1970 to the present date.
- ii) To identify any further transactions and movements affecting the bowls from 1970 to the present date and any countries through which the bowls have passed.
- iii) To examine, in the light of the First and Second Terms of Reference:
 - (a) Any civil or criminal liability incurred by UCL by virtue of UCL's possession of the bowls, whether under the law of England and Wales or any other relevant system of law;
 - (b) The legal implications of any future course of conduct that might be contemplated by UCL in relation to the bowls.
- iv) To examine the ethical and professional considerations that arise from:
 - (a) the material disclosed by the First, Second and Third Terms of Reference
 - (b) UCL's possession of the bowls, in the light of contemporary standards, guidelines, regulations and conventions.
- v) To consider the evidence presented by a selective sample audit of relevant cultural objects and specimens entering UCL's Museums and Collections and Library Services since 1970.
- vi) To consider the measures that it would be appropriate for UCL to adopt in relation to the cultural objects and specimens referred to in Article v), and other material held for study in UCL premises in order to comply with the civil and criminal law of England and Wales and of any other relevant system of law, and to act in an ethically responsible manner; and to make recommendations accordingly.
- vii) To consider the measures that it would be appropriate for UCL to adopt in relation to any future acquisition or receipt of cultural objects (whether by sale, gift, loan or in connection with the performance of an individual's work) in order to comply with the civil and criminal law of England and Wales and of any other relevant system of law, and to enable UCL to act in an ethically responsible manner; and to make recommendations accordingly.
- viii) To advise UCL via its Museums and Heritage Committee whether the recommendations presented by the Enquiry might constructively be used as a general basis for the collective evolution of common standards affecting the acquisition and tenure of cultural objects and specimens by

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- ix) other Universities, and to make recommendations for the further collective development of such standards if appropriate.
To advise UCL via its Museums and Heritage Committee as to the proper manner in which UCL might manifest ethical and professional leadership in this field.

APPENDIX 2: WITNESSES FROM WHOM EVIDENCE WAS TAKEN

The Inquiry has been conducted by letters, interviews, emails, telephone and fax. The following people were contacted in the course of the Inquiry:

Professor Zainab Bahrani, Columbia University and former consultant to the Coalition Provisional Authority in Baghdad
Mr Philip Barden, Devonshires Solicitors to Mr Ghassan Rihani
Mr Lee Barham, Restrictions and Sanctions Team, Her Majesty's Customs and Excise
Dr Ghazi Bisheh, Director of the Department of Antiquities, Hashemite Kingdom of Jordan from 1/12/1988 to 9/1991 and from 1994 to 1999.
Dr Neil Brodie, McDonald Institute for Archaeological Research
Dr John Curtis, Keeper, Department of Ancient Near East, British Museum
Dr Okasha El Daly, Outreach Officer, Petrie Museum of Egyptian Archaeology
Mr Richard Ellis, member of Art and Antiques Squad, Scotland Yard, 1989-1999
Dr Irving Finkel, Curator, Ancient Near East Department, British Museum
Professor Bill Finlayson, Director, Council for British Research in the Levant
Professor Markham Geller, Department of Hebrew and Jewish Studies, UCL
Dr Donny George, Director, Iraq Museum, Baghdad
Professor McGuire Gibson Oriental Institute, University of Chicago
Mr Luay Hassan, Translator
Mr David Hebditch, Freelance television producer
Mr Charles Hill, Detective Chief Inspector in charge of the Art and Antiques Squad from 1994 to 1996
Dr Erica Hunter, Affiliated Lecturer in Aramaic, Faculty of Oriental Studies, University of Cambridge
Mr Gunnar Johannsson-Elfstrom, Curator, Cultural History Department, Malmo Museum
Dr Steve Kaufman, Hebrew Union College, Cincinnati
Dr Fawwaz Al-Khraysheh, currently Director General of the Department of Antiquities, Hashemite Kingdom of Jordan
Professor John Klier, Head of Department of Hebrew and Jewish Studies, UCL in 1995/6
DC Ian Lawson, Art and Antiquities Unit, Metropolitan Police
Mr R A Linenthal of Bernard Quaritch Ltd, an antique dealer
Dr Dan Levene, School of Humanities, Southampton University
Mr Chris Martin, of Chris Martin (Coins) Ltd, an antique dealer
Dr Roger Matthews, Institute of Archaeology, UCL
Mr Fergal Parkinson, reporter for BBC Television News
Dr Nicholas Reeves, formerly an antique dealer
Mr Tony Russell, formerly Detective Sergeant in the Metropolitan Police Art and Antiques Squad
Mr Martin Schøyen, Norwegian businessman and collector, who purchased the bowls and subsequently loaned them to UCL
Mr Geoffrey Tassie, former student, Institute of Archaeology, UCL
Dr Eric Thorstensen, Chair, National Committees for Research Ethics, Norway
Dr Susan Walker, Keeper of Antiquities, Ashmolean Museum
Mrs Kathy Williams, of Pars Ancient Antiques, an antique dealer
Mr Mark Wilson, business associate of Mrs Kathy Williams
Professor Michael Worton, Vice Provost, UCL and Chair of UCL's Museums and Heritage Committee

Interviews were held with Mr Martin Schøyen (22 March 2005), Mr Fergal Parkinson (22 July 2005), Mr David Hebditch (15 August 2005), Mrs Kathy Williams and Mr Mark Wilson (15 August 2005), Mr Richard Ellis (18 August 2005), Mr Charles Hill (3 November 2005).

Members of the Inquiry viewed the bowls in store on three occasions on 10 March, 26 April and 27 July 2005 (when a full audit was carried out). The bowls were transferred to more secure storage on 13 September 2005.

APPENDIX 3: STATEMENT ADOPTED BY THE INSTITUTE OF ARCHAEOLOGY, UCL, DECEMBER 1999

The Institute of Archaeology and the Illicit Trade in Antiquities

1. Introduction

As archaeological and heritage professionals Staff of the Institute deplore the looting of archaeological sites, the removal of material from context and the illicit trade in antiquities. Recent discussion within the Institute has focused on means of combatting looting and the illicit trade. Over the summer of 1998 the Director met with various staff to discuss 'how to develop Institute future policy and practice regarding the trading of antiquities' (Discussion document, Agenda Item 14, Staff Meeting 9 Dec 1998).

At the Staff Meeting of 9th December 1998, the following decision was taken:

It was agreed that the Institute should be seen to be amongst those urging the Government to: (a) sign and then ratify the UNESCO "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property" (1970) and (b) sign and then ratify the UNIDROIT Convention on Stolen and Illegally Exported Cultural Objects 1995.

Professor Ucko wrote to Alan Howarth of DCMS on 15th March 1999 correspondingly and received a reply dated 7th April 1999 to the effect that the Government was consulting on the subject of the UNIDROIT Convention after which a decision would be taken as to whether or not to sign it and that no view had been taken on whether to sign the UNESCO Convention.

At the 9th December 1998 Staff Meeting, Nick Merriman and Kathy Tubb agreed to draft a document outlining the implications to individual staff members of the Institute of signing up to the UNESCO and UNIDROIT conventions. This document was discussed at the Staff Meeting of 17 March 1999, when it was agreed that the document should be re-drafted to take account of the discussion at that meeting. This document has been formulated in the light of that discussion, and of discussions with members of the Heritage Studies Research Group.

Some of the implications consequent upon endorsement of these conventions are identified for consideration below. On the basis that the Director's original discussion document examined more broadly the question of the antiquities trade, this is then followed by a section examining the general implications of a critical stance towards looting and the illicit trade for the Institute's staff.

2. Background note

1970 has been taken as the benchmark before which the principles of the conventions are not applied since neither the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* nor the 1995 UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects* are retroactive. In addition, the entry into force of the 1970 UNESCO Convention is regarded as having formally alerted the international

community to the problems that the Convention addresses. From this time onwards, ignorance of these issues can no longer be put forward as an excuse for trafficking in illicit cultural property. An allowance is thus made for the ways in which such material has been collected in the past while making it plain that continuation along these lines is unacceptable.

3. Implications of the 1970 UNESCO Convention for Staff

As the UNESCO Convention applies to national governments rather than individuals, it has no direct legal implications for Institute staff. However, in supporting the ratification of the Convention, staff by implication support its principles and can lend support to it in the following ways:

- Article 5 requires that States Parties to the Convention establish a series of services to protect the cultural heritage, including the following:
 - Article 5b covers the establishment of national inventories of protected property. Many States find this commitment is beyond their resources and struggle to meet it. This is probably the most commonly voiced lament expressed in fora where the convention is discussed. Staff could collaborate with those experiencing such difficulties and offer assistance.
 - Article 5f covers the duty to educate and make known the provisions of the Convention, and this should be reflected, both implicitly and explicitly, in our teaching and in our involvement with the wider community. In particular, it could be Institute policy that all students are taught about looting and the illicit trade in antiquities as part of their courses. Article 10 also advocates educating the public. To that end, we should strive to make clear the concept of context especially to collectors and dealers.
 - Article 5g requires that States see that 'appropriate publicity is given to the disappearance of any items of cultural property'. This implies that Staff Members should document, report to the authorities and urge appropriate public exposure of damage to sites caused by clandestine excavation, theft of artefacts and architectural elements when/if they are privy to such information.
- Article 6 requires States to provide certification of legal exportation of cultural property. The Standing Conference on Portable Antiquities is currently urging the government to re-evaluate the system in the UK. Since it has been alleged that the UK system is being used to establish false provenances for illicit material and since it has also been stated that our legislation does not adequately protect our own heritage we should support such a re-examination of the status quo. (See Brodie, Neil. 1999. 'Statistics, damned statistics, and the antiquities trade', *Antiquity* 73(280), 447-451 and Cook, Brian. 1995. 'The Antiquities Trade: a curator's view' in K.W. Tubb, (ed.), *Antiquities: Trade or Betrayed*, London: Archetype, 186-189.)
- Article 7 concerns taking steps to prevent the import of illicitly exported material and its acquisition by museums and similar institutions. By extension, although not specifically stated, such material has often been stolen also. The implication is

that, if we are shown material which we suspect to be illicit, we should alert the relevant authorities such as the Art and Antiques Squad of the Metropolitan Police, Interpol, Customs and Excise, the Cultural Property Unit of the Department of Culture, Media and Sport and the original owner. (Consult: Prott, Lyndel V., and Patrick J. O'Keefe, 1988. Handbook of national regulations concerning the export of cultural property. Paris: UNESCO).

4. Implications of the 1970 UNESCO Convention for the Institute Collections

The Convention has another series of implications for the Institute as a body that curates archaeological material as part of UCL's collections. In order to act as if the UK had implemented the Convention, it is suggested that the following two paragraphs are adopted as policy to cover all of the Institute's collections (including the Petrie Museum of Egyptian Archaeology and the collections of the former Museum of Classical Archaeology). Similar wording is already present in the ICOM (International Council of Museums) *Code of Professional Ethics*, the Museums and Galleries Commission *Registration Guidelines*, and the existing Acquisition and Disposal Policy of the Petrie Museum:

- 4.1. The Institute must not acquire by purchase, loan, gift, bequest or exchange any object or specimen unless the Director or curatorial staff are satisfied that valid title to the item in question can be acquired, and that in particular it has not been acquired in, or exported from, its country of origin (or any intermediate country in which it may have been legally owned) in violation of that country's laws (including the UK). This also applies to any objects that may be temporarily borrowed for exhibition in-house.
- 4.2. In addition, the Institute will not acquire objects in any case where the Director or curatorial staff has reasonable cause to believe that the circumstances of their recovery involved the recent (since 1970) unscientific or intentional destruction or damage of ancient monuments or other known archaeological sites, or involved a failure to disclose the finds to the owner or occupier of the land, or to the proper legal or governmental authorities.

5. Background to the UNIDROIT Convention: 'due diligence'

Recovery of illicit material under the terms of the 1970 UNESCO Convention was complicated by the fact that the civil law of individual countries falls into roughly two categories: the Common Law code and the Napoleonic Code. Under the former, the interests of the victim of a theft are protected over those of the unwitting purchaser of a stolen item. Generally, under Common Law, a thief cannot pass good title therefore all transactions following that theft are invalid (although there are some time limitations for the making of claims). By contrast, under the Napoleonic Code, the good faith purchaser's rights are given priority which may mean that the original owner loses his claim to the object or can only reclaim it if he pays the possessor compensation. UNESCO approached UNIDROIT (the International Institute for the Unification of Private Law) fifteen years ago to ask for its assistance in resolving this difficulty. The 1995 *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* is the product of those many years of deliberation. It focuses principally on

the concept of 'due diligence' and requires that the purchaser of a cultural object exercises due diligence in ensuring that the object has not been illicitly obtained. In Articles 4.1 and 4.4, the conflict between the thief not passing good title and protecting the good faith purchaser has been resolved by placing on the possessor a duty to have exercised due diligence before making the purchase. Inability to demonstrate such care revokes entitlement to compensation upon return of the item. The trade in cultural objects is characterised by secrecy. The due diligence requirement is designed to tackle this. Article 4.4 cites some of the criteria upon which a judgement as to whether due diligence had been exercised will be determined.

The 1995 UNIDROIT Convention also addresses the particular problem posed by unprovenanced archaeological material by making it possible to define such material as stolen (in a legal sense) for the purposes of this convention (see below).

6. Implications of the 1995 UNIDROIT Convention for Staff

It should be noted that, unlike the UNESCO Convention, under the UNIDROIT Convention individuals do have a statutory right of action under its terms. However, as UNIDROIT relates to the recovery of stolen cultural property rather than its study, it has no direct legal implications for staff unless they are involved in transactions themselves, or on behalf of the Institute for its collections (see below). Nevertheless, as with the UNESCO Convention, urging the UK to ratify the Convention assumes that staff support the principles of the Convention, which is to assist individuals and groups who have lost cultural property through illegal means, to recover their material.

Of particular relevance is Article 3.2, which states that unlawfully excavated objects or those which have been lawfully excavated but unlawfully retained 'shall be considered stolen' provided such a definition of the material is consistent with the law of the country in which the excavation took place.

This is significant because the size of the market in antiquities and the large turnover of artefacts is inconsistent with suggestions that material on the market all comes from long-standing collections made prior to 1970. A clear indication that an object has been looted and/or illegally exported from its country of origin is the lack of a provenance (and here a provenance would also include clear documentation that it had been in a collection before 1970). Recent research currently in press suggests that between 80 and 90% of the objects being traded have no clearly established provenance. Such unprovenanced material must be regarded with deep suspicion and, in the absence of evidence to the contrary, is deemed to have been unlawfully excavated or lawfully excavated but unlawfully retained. Under the terms of Article 3.2 of the Unidroit Convention, this material is considered stolen.

Staff Members must think of such material as stolen, treat it as such and alert the relevant authorities as stated above under Article 7 of the 1970 UNESCO Convention.

7. Summary

While neither Convention places legal obligations on staff members, staff support for their ratification presupposes a critical stance towards the widespread practices of illicit excavation, and the illicit export, import, and trade in antiquities. It is this general critical stance, rather than the specific strictures of the Conventions, that should inform the Institute's policy on illicit excavation and on the illicit antiquities trade. The policy must therefore be an ethical one rather than one which is purely driven by legal requirements. Some of the implications of an ethical position against illicit excavation and the illicit antiquities trade are outlined below.

The fact that the recent surveys of particular aspects of the antiquities market mentioned above suggest that around 80-90 per cent of the material on the market is unprovenanced and thought to be illicit, means that it is difficult to make a clear distinction between the so-called licit and illicit markets. Staff need therefore to be extremely cautious in their involvement with any aspect of the antiquities market, and in order to comply with the requirements of UNESCO and UNIDROIT must have no involvement with unprovenanced material.

8. Relevant ethical codes

Opposition to looting and to the illicit antiquities trade is enshrined in the ethical codes of most museum and archaeological professional bodies.

The ICOM *Code of Professional Ethics*, for example, opposes acting 'in any way that could be regarded as benefiting such illicit trade, directly or indirectly', and this was enshrined in the (then) Institute of Archaeology Services Division *Policy on the Acceptance of Objects and Materials* (1990) which states that "The Institute of Archaeology is totally opposed to the looting and illegal export of antiquities and adheres to the ICOM *Code of Professional Ethics*".

Article 1.6 of the Institute of Field Archaeologists *Code of Conduct* states that 'an archaeologist shall know and comply with all laws applicable to his or her archaeological activities whether as employer or employee, and with national and international agreements relating to the illicit import, export or transfer of ownership of archaeological material. An archaeologist shall not engage in, and shall seek to discourage, illicit or unethical dealings in antiquities.'

The Archaeological Institute of America's *Code of Ethics* advises archaeologists to refuse to participate in the trade in 'undocumented antiquities' by refraining from activities that enhance the commercial value of such objects. This Code identifies undocumented antiquities as 'those which are not documented as belonging to a public or private collection before December 30, 1970 ... or which have not been excavated and exported from their country of origin in accordance with the laws of that country'.

9. General ethical implications for Staff of a stance against the illicit trade in antiquities

The following ethical implications arise from a stance against looting and the illicit trade:

- Before agreeing to study, analyse or conserve material, staff must exercise due diligence in establishing that the material has not been illegally excavated, acquired, transferred and/or exported from its country of origin since 1970. Work must not be undertaken (except on behalf of the police, courts and government of origin) on objects where there is insufficient information to establish a licit provenance or where the material is known to have been illicit. (N.B. Metal-detecting on unscheduled sites is not illegal in England and Wales and artifacts recovered by this means are not subject to this stricture. However, Staff must ensure that finders have valid title to their objects).
- Staff must not undertake scholarly publication of unprovenanced material unless it can be demonstrated clearly that the artefact or specimen has been in a collection since before 1970. This is in line with the publishing policy of the *American Journal of Archaeology* which states that it 'will not serve for the announcement or initial scholarly presentation of any object in a private or public collection acquired after 30 December 1973, unless the object was part of a previously existing collection or has been legally exported from the country of origin'. This applies also to unpublished reports, including condition reports, given to the possessor of an object, which have also been used to enhance the value of such pieces on the market and should therefore not be undertaken on unprovenanced material.
- Staff Members must not undertake valuations of material, unless for insurance purposes for public bodies or to assist the authorities.
- The formation by Staff Members of personal teaching collections is permissible provided that the material has been acquired in compliance with all the above conditions. Any personal collections should be declared to the Director. Staff must not buy or sell such material.
- Staff Members must not buy or sell antiquities nor act as an intermediary for profit in any such transactions. Staff Members must not accept gifts or emoluments from dealers and collectors for professional services, in support of excavations or for research projects.
- Staff Members need to protect themselves at all times from situations of conflict of interest and must consult the proposed Ethics Panel in such situations. There is most danger of being compromised in the area of sponsorship and funding.
- Staff Members should strive to increase the dialogue between themselves and dealers, collectors, the government and the public to ensure archaeological concerns are heard and clearly understood and to ensure that we understand and have considered opposing viewpoints. In particular, staff should campaign for transparency in the dealings of the antiquities market.

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10. Need for an Ethics Panel

It is not practicable to elucidate how each of us should proceed in every situation which may arise. Broad guidelines can be fashioned but there is clearly a need for the establishment of an advisory ethics panel to help each of us reach decisions whose ramifications may not always be obvious at the outset.

11. Proposal

That the implications in Sections 3, 4, 6 and 9 be agreed as policy by Institute staff.

Note: Illicit is defined as unlawful or not allowable and, for the purposes of this document, refers to transactions involving archaeological material which has been stolen, looted and/or smuggled.

Addenda

I. 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*.

II. 1995 UNIDROIT *Convention on Stolen or Illegally Exported Cultural Objects*.

III. ICOM *Code of Professional Ethics*.

IV. Institute of Archaeology Services Division *Policy on the Acceptance of Objects and Materials*.

Nick Merriman & Kathy Tubb

December 1999

APPENDIX 4: RESPONSE OF THE DEPARTMENT OF HEBREW AND JEWISH STUDIES, UCL, 10 JANUARY 2000



APPENDIX MHC 00/2/11
*[Museums and Heritage Committee -
13 February 2001]*

Professor John D. Klier
Department of Hebrew and Jewish Studies
UNIVERSITY COLLEGE LONDON
Gower Street, London WC1E 6BT
Tel: 020 7679 3720 • Fax: 020 7209 1026
Email: j.klier@ucl.ac.uk

Professor Michael Worton
Vice-Provost
University College London
10 January 2000

Dear Michael,

Proposed College Policy on Artefacts

These comments are a response to the College invitation for comment on the proposed policy statement on the international trade in architectural artefacts.

Although we appreciate the concerns of our archaeology colleagues regarding the trade in stolen artefacts, nevertheless, we find that the statement proposed for UCL regarding such artefacts has serious flaws, which require correction. These relate to issues of academic freedom and the free flow of human knowledge.

1) Artefacts themselves clearly belong to the cultural heritage of their country of origin. Any, or similar information, preserved on objects belongs to the general historical heritage of humanity. We cannot afford to have such vital information lost or remain hidden, whether through the policies of individuals, institutions, or governments. It is therefore vital that the inscriptions on any artefacts be recorded for future study, no matter what the particular problems regarding the ownership of the objects themselves might be.

Epigraphers and philologists have a responsibility to record all such information, no matter under what circumstances this information appears. The inscription itself has nothing to do with the artefact

itself, and in fact the ownership of the object is irrelevant. The same criterion would apply to a painting (e.g. a Rembrandt) illegally smuggled out of the country of origin. Whatever the ownership questions entailed, the painting itself would carry significance for art history. It is an important principle that its description or even reproduction for scholarly study should not be impeded.

Our policy is that all relevant scientific information must be studied and published, and it makes no difference to us where the objects themselves are preserved, whether in a museum or private collection in this country or in their country of origin. The scientific value of the inscriptions belongs just as much to the world's cultural heritage as the objects themselves. This has an added importance when there is the possibility that an object might be lost or destroyed, even by its owner.

2) We are sympathetic to the objective of not aiding and abetting the sale or trade in stolen artefacts. However, members of this Department deal with private collections, not antiquities dealers, and we are told that everything has been legally acquired and is properly documented. Furthermore, the private collections with which we are in contact are catalogued and open for inspection and study, and no secret is made of the existence of these collections. The objects themselves are well conserved and looked after, under proper custodial conditions.

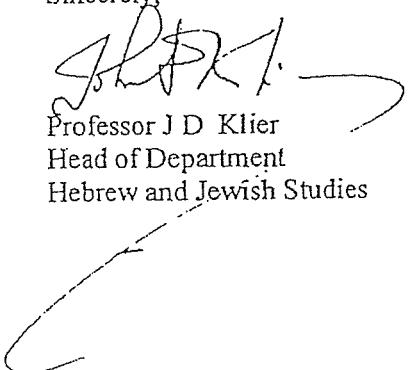
Therefore, if there is any legal problem regarding the ownership of the objects, then a legal case can be brought against the private collector and dealt with through normal channels. Academics are not responsible for such questions, nor should we be subject to such pressures, when legal measures exist already for dealing with such questions.

3) We are unhappy about the clause prohibiting scholars from reading inscriptions on such objects or publishing such information. This is an infringement of academic freedom which has very serious consequences, for it is an extremely dangerous policy for academics to be told what they can and cannot study and publish. This policy is totally unacceptable on academic grounds alone.

4) From the particular perspective of our Department, if this policy had been in effect in recent years, we would never have seen the publication of the Dead Sea Scrolls, which were also acquired through the antiquities trade, and the loss to the world heritage would be enormous. This is an example of how restrictive and counter-productive such a policy can be, and we cannot accept the logic or the practical consequences of such a policy.

We trust that these concerns will be taken into account when framing UCL policy on cultural artefacts.

Sincerely,



J D Klier
Professor J D Klier
Head of Department
Hebrew and Jewish Studies



Mark Geller
Professor Mark Geller
Director
Institute of Jewish Studies

APPENDIX 5: IN THE MATTER OF CERTAIN INCANTATION BOWLS IN THE CUSTODY OF UNIVERSITY COLLEGE LONDON

Opinion

The background

1. I am instructed to advise on the precautions that University College London ('the College') should take in relation to a collection of Mesopotamian incantation bowls ('the bowls') that are within the physical control of the College. The College is concerned both to safeguard its legal position and ensure the observance of applicable ethical standards.
2. The bowls have been in the possession of the College since 1996 or 1997. Custody of the bowls was received by Professor Mark Geller, the Professor of Jewish and Hebrew Studies. Professor Geller received them by agreement from Mr Martin Schoyen, a noted collector. Mr Schoyen gave Professor Geller to understand that he was the owner of the bowls and in lawful possession of them. Professor Geller did not at that time request formal proof of Mr Schoyen's title.
3. I assume for present purposes that Professor Geller received the bowls in his capacity as a professor of the College, for the purposes of his employment by the College and with the implied consent of the College. If that is the case, two consequences would appear to follow: the College became the possessor in law of the bowls from the time of receipt, Professor Geller having the mere custody, and the College became party to the agreement between Mr Schoyen and Professor Geller concerning the treatment of the bowls.
4. I understand that the bowls have remained throughout within the physical control of the College, having been transferred at some point to an off-site storage area outside the environs of the College.
5. Professor Geller performed the tasks of cataloguing and researching the bowls, in accordance with his agreement with Mr Schoyen. Towards the end of 2003 it became apparent that a Norwegian television company was taking an interest in the bowls and asserting that they had been unlawfully removed from their country of origin. At one point Mr David Hebditch, a director employed by the television company, was told by Mr Nick Merriman, Curator of Museums and Collections at the College, that the College no longer had possession of the bowls. This was an error. It was exposed through the efforts of the television company which traced the bowls to their place of storage and gained access to the place.
6. Professor Geller spoke to me informally about this matter shortly before Christmas 2003. I observed to Professor Geller that, if there existed any prospect that the College was in possession of unlawfully removed cultural objects, particularly objects emanating from Iraq, the advisable course was to inform the police of the situation and seek their instructions. Early in 2004 the College did inform the police. In due course the police advised the College that they saw no occasion for a prosecution at present. The attentions of the television company have nonetheless continued.
7. At some time in 2004, the College sent to the police copies of an export permit from Jordan and a translation of the permit, which it had received from Mr Schoyen. I have now seen these documents. They refer to a large quantity of material, but they do not (in the form supplied to me) provide identification of the specific items comprised in the

permit. I do not know whether Professor Geller or any other officer of the College had sight of these or all other relevant documents at any earlier time.

The legal risk

8. I begin with some general observations about the legal risks of acquiring cultural objects that have no secure ownership history. Having examined the legal position, I will examine the ethical questions that might be raised by a legally secure acquisition. I will conclude by making proposals as to the manner in which this situation should be handled.

Definitions

9. In this Opinion, the word 'supplier' denotes a person who grants to another an interest or right of enjoyment over a cultural object. The word 'acquirer' denotes the person to whom that right is granted. The interest supplied may be ownership or mere possession. A supplier may therefore supply by sale, loan, gift, lease or exchange. An acquirer may be a buyer, borrower, donee, lessee or exchangee of the object. In the present case, Mr Schoyen is the supplier and the College the acquirer.

The nature of the present acquisition

10. I am instructed that Mr Schoyen's delivery of possession to the College was unaccompanied by any formal contractual documentation or any agreed definition of its character in law. The legal nature of the delivery must therefore be inferred from the circumstances.

11. It is clear that Mr Schoyen intended no outright transfer of ownership to the College and intended to reserve title to himself. The relationship between him and the College was one of bailor and bailee. It is possible that the delivery to the College involved a mere gratuitous loan, that is, a bailment for the exclusive benefit of the College. A more persuasive analysis, however, may be that the arrangement was reciprocally beneficial, in that the delivery was to enable the College to carry out research the products of which would benefit the supplier as well as the College. I assume for this purpose that the findings were to be communicated to Mr Schoyen, if not published generally. On that assumption the bailment was one for mutual advantage.

12. The existence of reciprocal benefit in turn raises the possibility that the bailment was supported by a contract. The fact that the agreement was informally concluded and that its express terms were not recorded in writing does not necessarily debar that conclusion. If a contract did exist, that raises the further possibility that the contract was a contract of hire, in that the bowls were delivered for the temporary use and enjoyment of the College in return for some benefit to Mr Schoyen. A contract of hire can arise without any monetary consideration: section 6(3), Supply of Goods and Services Act 1982.

13. The identity of the transaction is important for several reasons. It may serve to determine (a) the College's duties to Mr Schoyen, (b) whether the College committed the tort of conversion against a third party by receiving the bowls, and (c) the prospect of an indemnity against Mr Schoyen should liability to a third party arise.

The question of title

General

14. Acquisition without provenance may involve the acquirer in both civil and criminal liability. If a cultural object is stolen, or if someone other than the supplier had a better right of possession when the acquirer received it, three main consequences can follow. First, the acquirer does not get a good title. Secondly, the acquirer may commit the tort of conversion against the true owner, either by acquiring or by retaining the object. Thirdly, the acquirer may commit the criminal offence of handling stolen goods, or certain special offences. These last include certain offences peculiar to cultural objects that have been unlawfully removed from Iraq.

Civil liability: conversion

Strict nature

15. Conversion is ordinarily a tort of strict liability: *MCC Proceeds v Lehman Bros* [1998] 4 All ER 675, CA. Liability may follow however innocently the acquirer behaved in the transaction, and however genuinely it believed that the vendor was the owner. This differs from criminal liability for handling, which requires proof that the defendant knew or believed that the object was stolen.

16. Once conversion is established, the person entitled to immediate possession of the object can sue for damages or for the specific restitution of cultural object (sometimes for both). Given the special nature of the object, the successful claimant would probably obtain an order for the specific redelivery of the object to the claimant, though an award of damages based on the value of the chattel is also possible. An award of damages is the normal remedy where the acquirer has already parted with possession. In certain circumstances a monetary award might include a sum to represent a reasonable hiring charge for the goods over the period of their detention.

Establishing the party entitled

17. Conversion consists of an unauthorised interference with another person's right to the possession of goods. To sue, a claimant must be entitled to the immediate possession of the goods: *MCC Proceeds v Lehman Bros* [1998] 4 All ER 675, CA. Criminal liability for handling stolen goods will not arise if the original owner ceased to have any right to recover the goods by the time of the defendant handled them: section 24(3) Theft Act 1968. Both civil and criminal liability might be avoided, therefore, where the third party never owned the goods, or where an original ownership in the third party was extinguished by some later event.

Original title: state ownership laws

18. At present, there is no compelling evidence that the bowls belong to anyone other than Mr Schoyen. A rival claimant might emerge, however, if the College now decides to

investigate the provenance of the bowls, or if the proposed television programme induces an overseas government to take action.

19. Such a claimant might be a museum or private collector from whom the bowls were stolen in the conventional sense of a burglary or casual theft. But cultural objects might also be stolen from an overseas country under whose law all unexcavated archaeological objects within the territory are the property of the state. Subject to possible reservations based on human rights, the English court might well regard such statutes as effective to confer national ownership: cf *Princess Paley Olga v Weisz* [1929] 1 KB 718, CA; *Kuwait Airways Corporation v Iraq Air Co (Nos 4 and 5)* [2002] 2 AC 883, HL. The country asserting such ownership might then sue for conversion, or instigate criminal proceedings for the handling of stolen goods.

20. Even where the overseas country does not have ownership, its law might provide that it has the immediate right of possession over discovered antiquities, for example by requiring that they be reported and delivered into official custody, and/or that the state has a right of pre-emption. Such legislation might well suffice to enable the country to sue in England for conversion, though whether it would found a criminal prosecution in England is more doubtful.

Succeeding title: unlawfully exported cultural objects

21. Where the object was not stolen from an overseas country in any of the senses outlined above, but was illegally exported from that country, the acquirer's exposure to risk may depend on the effect of the foreign law prohibiting export. If the overseas export prohibition purported to vest ownership of the object in the state by way of forfeiture or confiscation while the object was still within its territory, the state might then, as the party entitled to immediate possession, sue the acquirer for conversion of its property, or initiate criminal proceedings: cf *Attorney-General of New Zealand v Ortiz* [1984] 1 AC 1, HL.

22. If the overseas export prohibition did not vest ownership of the object in the overseas state, the risk of a claim based on title is plainly much reduced. Even so, the acquisition of such objects is not without risk. Where the overseas export prohibition does not confer title, the overseas state might nonetheless seek a declaration from the English court that the export documents are forged or that the object has otherwise been illegally exported: *Kingdom of Spain v Christie Manson & Woods Ltd* [1986] 3 All ER 28. Such a declaration, while not necessarily subverting the exporter's title, could substantially embarrass a later acquirer such as the College. In cases where cultural objects have been unlawfully removed from other European Community member states, a Directive adopted by the UK in 1994 obliges the United Kingdom to make restitution to the requesting member state: Return of Cultural Objects Regulations 1994, SI 1994 No 501.

Loss of original or succeeding ownership

23. In what follows, it is assumed that the original removal of a cultural object violated some existing right of possession over the object, and that this right of possession could in principle entitle the holder to bring a claim in conversion against a later acquirer.

The lex situs principle

24. The acquirer of such an object might plead that, under the *lex situs* principle of private international law, some intervening transaction (occurring after the theft but before its own acquisition) displaced the original right of possession in the dispossessed party, and created a new and better right of possession in the acquirer. That result would ordinarily follow where an acquirer bought the object in good faith while it was situated in a country (such as Switzerland) whose law grants title to a good faith buyer: *Winkworth v Christie Manson & Woods Ltd* [1980] Ch 496. The first acquirer could then transmit that overriding right of possession to a later acquirer, to the continued prejudice of the original owner.

25. In principle this doctrine might be open to the parties in our case, assuming that the original removal of the bowls violated an existing right of possession. A good faith acquisition in a relevant country by Mr Schoyen could have eclipsed any earlier right of possession held (for example) by the country within whose territory the bowls were excavated, and could have conferred on Mr Schoyen a superior right of possession, which he then distributed to the College. But such a defence could involve extensive investigation of facts and foreign law, and might not appear wholly creditable in a responsible public institution.

Limitation periods

26. An intervening acquirer who bought the object in good faith might also gain title after six years under the Limitation Act 1980. Such a conclusion rests on the assumption that UK law is the applicable law of limitation. The gratuitous loan of an object would not appear to activate the limitation period. Moreover, proof of good faith could be demanding: the burden of proof would lie on the acquirer and could require evidence that the buyer conducted a conscientious pre-acquisition inquiry: cf *De Preval v Adrian Alan Ltd* (1997) unreported, Arden J. Even if established, this defence might not appear wholly creditable in a responsible public institution.

Liability of the College

27. If the bowls belonged not to Mr Schoyen but to a third party when the College received them, its receipt of possession could in theory be a conversion against the owner. Liability is by no means certain, however, because recent authority holds that merely to be in possession of another person's property without that person's consent is not a conversion: *Marcq v Christie Manson & Woods Ltd* [2004] QB 284, CA.

28. Such authority is helpful to the College, because it suggests that a mere receipt of possession under a gratuitous bailment by way of loan might not be a conversion. On the other hand, the leading practitioner text on the law of tort speculates that to receive

possession of goods from a non-owner under a purported contract of *hire* could be conversion: Clerk and Lindsell, *Law of Torts*. Liability in conversion would undoubtedly follow if the College had received possession under a contract of sale without the owner's authority, and there is arguably no material difference for this purpose between a sale and a long-term hiring. Certainly the College appears, through Professor Geller, to have had significant use and enjoyment of the bowls over the past seven or eight years. I have already observed that, by reason of the reciprocal benefits contemplated by the parties, the bailment between Mr Schoyen and the College could be seen as one of hire.

29. On the assumption that the College did not commit conversion by taking possession of the bowls from Mr Schoyen, the further question arises whether it would commit conversion by returning them to him. Again, recent authority supplies a partial answer. An auction house has been held to have committed no conversion where it received goods for auction but later returned them unsold to the consignor, having no knowledge or notice of the fact that they were stolen: *Marcq v Christie Manson & Woods Ltd* [2004] QB 284, CA. In that case, the immunity of the auction house was justified by reference to a special line of authority, peculiar to bailees of that character. Even so, the decision may support a more general proposition, that a defendant who possesses goods under a bailment, and whose original receipt or holding of them is not a conversion, does commit a conversion if he returns the goods to the person who delivered them to him, provided he has notice of an adverse claim by a third party. It further appears that the burden lies on the returning bailee to show on a balance of probabilities that he did not have notice, rather than on the claimant to show that he did. That was the opinion of Jack J in the first instance decision in *Marcq v Christie Manson & Woods Ltd* [2002] 4 All ER 1005, and nothing in the judgment of the Court of Appeal (which upheld Jack J generally) appears to contradict this.

30. The College appears at present to have no positive notice of an adverse claim. It is possible that no third party exists who is capable of showing a sufficient right of possession to support a claim. The most than can be said is that there are *potential* claimants, who might or might not emerge and whose claims might or might not be good in law. These facts suggest (but no more) that the College would not be committing conversion against any third party by redelivering to Mr Schoyen. It must be emphasised, however, that if a claimant later emerged, the burden would be on the College to disprove notice. Given that Mr Hebditch has already asserted in his dealings with the College the existence of "strong evidence" that the bowls are unlawfully removed Iraqi cultural property, and given also that the College has not yet invited Mr Hebditch to substantiate this assertion, the College may not feel wholly confident of its ability to discharge this burden.

Criminal liability

31. Since the police have advised that they have no intention of prosecuting in this case, after disclosure by the College of the material facts of the case, the following analysis is more in the nature of general guidance for future cases. Even so, the question of future criminal liability should not be lightly discounted. The position of the police appears to have been that they saw no occasion for a prosecution at present and that, so far as they were concerned, the bowls could be returned to Mr Schoyen. While reassuring, this does not suggest a guarantee of immunity. Moreover, there remains the prospect of a private prosecution.

Handling under the Theft Act 1968.

32. A person who handles an object knowing or believing it to have been stolen might commit the crime of handling stolen goods under section 22 of the Theft Act 1968. The crime can be committed though the goods were stolen under some overseas system of law rather than under English law: section 24 of the Theft Act 1968. The burden of proof that the defendant knew or believed that the object was stolen rests with the prosecution.

33. A conviction for handling also requires proof that the defendant acted dishonestly, which imports something additional to the normal mental requirement of knowledge and belief. Broadly, it requires that the act of the defendant be dishonest by the standards of ordinary right-thinking people and that the defendant should realise that fact. In general, a defendant will not be acting dishonestly if he believes that he has a right to perform the contested act in relation to the property, or believes that he has been authorised to perform it by someone who does have the necessary right, or believes that the party actually entitled to the chattel would have consented to the act if he had known. A defendant who acts with a genuine and honest intention of restoring the chattel to the party entitled may also not be acting dishonestly.

34. It seems clear that, even if the bowls were stolen goods, the College did not know or believe that they were stolen and did not commit the crime of handling stolen goods by receiving them from Mr Schoyen or by dealing with them in the ordinary course of its research. In present circumstances I believe that it would also be difficult to found a prosecution on the return of the bowls by the College to Mr Schoyen, though that position might change if the College received positive information that the bowls were stolen.

The Dealing in Cultural Objects (Offences) Act 2003

35. This statute creates a new criminal offence, viz, that of dealing in a cultural object knowing or believing it to be 'tainted': see generally R Harwood, 'The Dealing in Cultural Objects (Offences) Act 2003' in (2004) 9 Art Antiquity and Law 347. Very broadly, cultural objects are tainted when they have been unlawfully removed from specified locations (such as monuments or buildings) in circumstances not amounting to theft (where the appropriate offence is handling). An object can become tainted by (*inter alia*) illegal excavation, regardless of the consent of the owner of the land or the object. 'Dealing' in a cultural object includes lending and borrowing, and leasing out and hiring in, as well as sale, purchase, gift and acceptance by way of gift.

36. In common with the 'handling' provisions of the Theft Act 1968, the prosecution bears the burden of proving knowledge or belief, and the Act imposes an additional requirement of dishonesty, the burden of proving which is also borne by the prosecution. Special provision is made for corporate offences, and to impose criminal liability on senior corporate officers who fail to monitor other officers.

37. The offence covers unlawful removals committed both in England and Wales and in overseas countries. The Act is not retroactive, however, and applies only to unlawful removals that occur on or after 30th December 2003. On that ground alone it is plainly inapplicable to this case.

Dealing or possession under the Iraq (United Nations Sanctions) Order 2003

38. The Iraq (United Nations Sanctions) Order 2003, SI 2003 No 1519, by paragraphs 8(3) and 8(2), creates two new criminal offences affecting cultural objects that have been illegally removed from Iraq since 6th August 1990. The offences are (1) dealing in such objects and (2) being in possession or control of such objects and failing to cause their transfer to a constable.

39. In a prosecution for either offence, an exceptional burden applies. The burden is on the defendant to show that he did not know and did not have reason to suppose that the cultural object in question was illegally removed from Iraq since 6th August 1990. This burden as to the mental element can be discharged by evidence that satisfies the civil and not the criminal standard of proof, that is, on a balance of probabilities.

40. The defendant's burden of establishing the mental element comes into operation only when the prosecution has positively proved to the criminal standard of proof that the object is illegally removed Iraqi cultural property and that the defendant has dealt in the object, or failed to transfer it to a constable, in the terms of the offence. Even so, the reversal of the conventional burden of proof can operate harshly against an acquirer. The College might continue to be at some risk on this point if cogent evidence emerges that the bowls did emanate from Iraq after 6th August 1990.

41. The reach of the Iraq offences is further enlarged by the absence of any requirement of dishonesty. Again, this contrasts with the position under both the Theft Act 1968 and the Dealing in Cultural Objects (Offences) Act 2003. Because of the omission, a person who acquires post-6th August 1990 looted Iraqi material with the honest intention of returning it to its source may nonetheless commit the offence of dealing, and the offence of failing to cause the transfer of the object to a constable if he continues in possession other than momentarily.

42. There is no provision under the Iraq Order in Council (or indeed under the Dealing in Cultural Objects (Offences) Act 2003) equivalent to section 24(3) of the Theft Act 1968, by which goods are not to be regarded as continuing to be stolen goods if (*inter alia*) the person formerly entitled to them has ceased as regards the goods to have any right of restitution in respect of the theft. On the other hand, the Iraq Order in Council does not (at least expressly) purport to extinguish any title gained after removal from Iraq.

Destination of the bowls

Arguments for returning the bowls

43. In the absence of further evidence, several facts point in favour of the positive conclusion that Mr Schoyen owns the bowls. These include Mr Schoyen's prior undisturbed possession of them, his assertion that he bought them legitimately, the export licence from Jordan and the fact that no rival claimant has hitherto emerged. In these circumstances the College must consider seriously whether it should simply return the bowls to Mr Schoyen.

44. Several further factors might point in favour of such a course.

First, even if Mr Schøyen did not have original title to the bowls, he might have acquired title subsequently, for example on expiry of the limitation period or through purchase while they were located in a 'good faith' country.

Secondly, the longer the College retains the bowls the greater may be the prospect that it will receive notice of a third party claim, in which event it may be confronted by the need to make difficult decisions.

Thirdly, if Mr Schøyen is entitled to and demands possession of the bowls, and there exists no evident challenge to his title, a refusal by the College to return them to him on reasonable demand could be a conversion against Mr Schøyen.

Fourthly, as Mr Schøyen's bailee, the College may be estopped by law from denying Mr Schøyen's title.

Fifthly, in its capacity as his bailee, the College also owes Mr Schøyen a duty to exercise reasonable care in the protection of his interest. This general duty has been held to require a bailee to act reasonably to protect the bailor in the event of a third party claim; *a fortiori*, perhaps, before such a claim is made. In cases of bailment the bailee must prove on the balance of probabilities that he exercised the normal duty of care: *The Ruapehu* (1925) 21 LL LR Rep 310, CA; *Mitchell v Ealing London Borough Council* [1979] QB 1.

Sixthly, a bailee commits a statutory conversion if he allows the goods to be lost or destroyed in breach of his duty as bailee: Torts (Interference with Goods) Act 1977 section 2(2). This duty might be broken if the College pursued a course of conduct permanently detrimental to Mr Schøyen's interest, for example by first encouraging and then yielding to third party claims.

Seventhly, one view of the ethical obligations of an institution in the position of the College is that it should have nothing to do with unlawfully removed cultural objects or with objects whose provenance is not clearly established. Such self-denial might arguably demand the immediate return of the objects to Mr Schøyen, regardless of their academic value or even of their ultimate ownership.

The counter-arguments

45. The case against relinquishing the bowls immediately to Mr Schøyen would rely on a blend of legal and ethical considerations.

First, title to the bowls remains unsettled. The College cannot at present be sure that a third party does not have a right of possession superior to that of Mr Schøyen. In part this uncertainty stems from the College's failure to make more rigorous inquiries. A failure to follow up existing evidence of a third party title (for example, the assertions of Mr Hebditch) might invest the College with notice of those facts that it might have discovered had it made such inquiry. The College might also wish to avoid the embarrassment of appearing to dispose of the bowls, hastily and without inquiry, purely in order to preclude a future claim. If a third party later emerged and sued the College in conversion, obliging the College to discharge the burden of showing that it had no notice of an adverse

claim, evidence that the College had suddenly returned the bowls to Mr Schoyen following a threat of exposure by the media might not be helpful. It might also be argued that the College owes some moral responsibility to identify whether a third party owner exists.

Secondly, the legal duty to return goods to their owner on demand is not absolute, but is subject to a right in the possessor to detain the goods for a reasonable period in order to verify title: *Clayton v Le Roy* [1911] 2 KB 1031. This right of temporary detention could operate in favour of the College, notwithstanding the relationship of bailment with Mr Schoyen, and the normal estoppel to which a bailment gives rise.

Thirdly, the bailee's estoppel is not necessarily a determinative consideration here. If the College received the bowls under a contract of hire, section 7 of the Supply of Goods and Services Act 1982 would imply two terms in its favour: an implied term that Mr Schoyen had the right to lease the goods and an implied warranty that the College would have quiet possession. In such a case the normal estoppel, that would otherwise prevent the College as a bailee from asserting the title of a third party, would not operate. It is possible that similar terms would be implied into any other contract for the temporary use and possession of goods. But no implied terms would operate in the College's favour if it received the bowls under a non-contractual arrangement by way of simple loan.

Fourthly, there may be a case for saying that the emergence of a third party claim would not be an entirely disadvantageous event for the College, in that the claim would then enable the College to interplead, withdrawing from the transaction and leaving it to the new claimant and Mr Schoyen to resolve their differences. Against this, such a course might require the College to plead facts that it does not wish to advertise.

Fifthly, for the College to conclude without further inquiry that continued possession is undesirable could prejudice future research. It cannot necessarily be assumed that Mr Schoyen himself would favour an immediate return of the bowls, with the work unfinished, in the present circumstances. If Mr Schoyen does in fact own the bowls, a peremptory return to him without conscientious inquiry could damage the College's academic interests, its relations with him and its prospects of collaboration with other collectors.

Sixthly there is the broader ethical dimension, which we consider in detail below.

The ethical position

46. Alongside the civil and criminal laws that bear upon this issue, there exist various ethical commitments and statements of principle adopted by museums and university departments over the past decade. The main contemporary example is the Museums Association Code of Ethics (2002). A new set of guidelines for the acquisition of cultural objects by museums is also being developed under the aegis of the Illicit Trade Advisory Panel, and should be published by the end of 2004. While none of these sets of principle appears to apply directly to the present acquisition they afford guidance as to the standards by which the acquisition is likely to be judged.

Ethical principles in operation at the time of the acquisition (1997)

Museums Association Codes

47. When the College received possession of the bowls, the applicable ethical principles governing museums were probably the Museums Association Code of Conduct for People who work in Museums (1996) and Code of Practice for Museum Governing Bodies (1994). While they did not as such govern university departments, they offer significant guidance for the maintenance of standards among academic institutions in general.

48. The Code of Conduct for People who work in Museums provided by Article A.5 that Museums should not accept on loan, acquire, exhibit, or assist the current possessor of, any object that has been acquired in, or exported from, its country of origin (or from any intermediate country in which it may have been legally owned) in violation of that country's laws. This would appear to be a strict obligation rather than one based on due diligence.

49. When the College acquired the bowls, it did so without any definitive inquiry or independent information as to the country of origin. It does not appear to have inquired at any later point whether some country other than Jordan might have been the source of the bowls, or whether that other country's laws had been observed. The College probably assumed that the bowls originated in Jordan, and appears to have limited its check to the Jordanian export laws.

50. When considering whether to acquire an object, museum professionals were also required to obey the law and take account of the principles of the 1970 UNESCO Convention, the 1995 UNIDROIT Convention and regulations of the country or locality from which the object originated. If necessary, suspicions that an object had been illicitly obtained should have been reported to the appropriate authorities. In the present case, the College's possession of the bowls was reported to the Metropolitan Police in 2004. It may be a question whether the College should reasonably have entertained and acted on suspicions before that date.

51. The Code of Practice for Museum Governing Bodies complemented the Code of Conduct and was to be read in conjunction with it. Section 2.6 required every museum's Collections Management Policy to ensure, through appropriate documentation, that the museum (a) did not acquire or exhibit any stolen or illegally exported works and (b) did acquire legal title to items accessioned to its collections.

52. It is of course arguable that the present case did not involve an 'acquisition' in the sense intended by the Code. We have already observed that ownership was to be retained by Mr Schøyen and not transferred to the College. But had the Code applied to this matter, the College might have difficulty in showing compliance. It had no definitive proof that Mr Schøyen owned the bowls, and the 1988 export permit was highly general

in nature. The copy delivered to the College was unaccompanied by any schedules, photographs, documentary root of title or other material designed to identify the specific objects whose export was authorised. The College therefore had no proof that the bowls it received were included in the authorisation. It also had no information about the relationship between Mrs May Ghassan Rihani and Mr. Schøyen: for example, where were the bowls between 1988 and 1997?

53. A report commissioned in 2000 by ICOM UK and the Museums Association concluded that, in view of these guidelines, museums should in practice observe the following points.

Museums should not acquire provenanced items whose accompanying documentation fails to comply with the export regulation of their country of origin, unless there is reliable documentation to show that they were exported from their country of origin before 1970. The only document in the possession of the College suggests that the bowls were exported from Jordan in 1988. As observed, the College did not know the country of origin and cannot prove that the export laws of the latter have been observed. Moreover, the lack of information prevents the College from showing that the bowls were exported from this "unknown" country before 1970.

Museums should not acquire unprovenanced items because of the strong risk that they have been looted, unless for example there is reliable documentation to show that they were exported from their country of origin before 1970.

Museums should apply the same strict rules to gifts, bequests and loans as they do to purchases.

ICOM Code of Ethics for Museums (adopted in 1986 and amended in 2001)

54. Article 3.1 of the ICOM Code requires every museum authority to adopt and publish a written statement of its collections policy. The policy should include instructions on acquisitions, with conditions or limitations. In 1997, the College had not published any internal policy regarding collections and acquisitions.

55. Article 3.2 prohibits a museum from acquiring any object or specimen, whether by purchase, gift, loan, bequest or exchange, unless the governing body and responsible officer are satisfied that a valid title to it can be obtained. Every effort must be made to ensure that the object has not been illegally acquired in, or exported from, its country of origin, or from any intermediate country in which it may have been owned legally (including the museum's own country). Due diligence should be exercised, before a decision is made to acquire any object, to establish its full history from discovery or production. This obligation appears to override all academic considerations founded on the importance of the research to be conducted or the value of any information collected.

56. It appears that the governing body in the present case (through the curator of Museums and Collections) had not been consulted in 1997 and had not expressed satisfaction that the right of possession purported to be conferred had been conferred. Further, the College could not have established the full history of the bowls from their discovery.

57. According to Article 3.6, loans should not be accepted or exhibited if they are of undocumented origin.

Other ethical principles, applicable today²⁸

Policy Statement of the Institute of Archaeology

58. The Institute of Archaeology at University College London published in 1998 a Policy Statement regarding the Illicit Trade in Antiquities. While the Policy Statement purports to offer guidance for staff members and collections at the Institute, one might reasonably expect it to govern all archaeological material in the custody of the College.

59. The document requires compliance with the 1970 UNESCO Convention and the UNIDROIT Convention, and prohibits the Institute from acquiring cultural objects by purchase, loan, gift or exchange, unless it is satisfied that valid title to the object can be acquired, and that in particular it has not been acquired in, or exported from, its country of origin (or intermediate country in which it may have been legally owned) since 1970, in violation of that country's laws. This obligation also applies to objects that may be temporarily borrowed for exhibition in-house. In common with the position regarding the ICOM Code of Ethics, the College could well have difficulty in showing that it complied with this principle.²⁹

60. Further, it provides that work must not be undertaken (except on behalf of the police, courts or government of origin) on objects where there is insufficient information to establish a licit provenance or where the material is known to be illicit. Before agreeing to study, analyse or conserve material, staff must exercise due diligence in establishing that the material has not been illegally excavated, acquired, transferred and/or exported from its country of origin since 1970.

61. It might be argued that the College fulfilled Article 7 of the 1970 UNESCO Convention by alerting the Art and Antiques Squad in 2004.³⁰ Whether the College is has complied with other provisions in the Policy Statement is a different question.

²⁸ The ICOM Code of Ethics (which continues to apply) is analysed earlier.

²⁹ The Policy Statement also refers also to other relevant ethical codes, such the ICOM Code of Professional Ethics, the Institute of Field Archaeologists' Code of Conduct and the Archaeological Institute of America's Code of Ethics.

³⁰ Article 7 requires steps to be taken to prevent the import of illicitly exported material and its acquisition by museums and similar institutions.

MA Code of Ethics for Museums (2002)

62. The current Museums Association Code of Ethics for Museums came into force in April 2002, replacing the Code of Conduct for People who Work in Museums and the Code of Practice for Museum Governing Bodies. Although the 2002 Code was not effective when the College first received possession of the bowls, the College may find it advisable to consult its principles as a guide to future conduct, particularly as the College's relationship with Mr Schøyen is a continuing one.

63. Section 5 requires museums to reject items with dubious provenance. Museums must regularly review, publish and adhere to acquisition policies that are agreed by the governing body and realistic in terms of the resources required to sustain them. These policies address issues of the context and legitimacy of acquisitions, due diligence, long-term care, documentation and relevance to overriding, institutional aims. Objects are acquired on the basis that they will be retained in the public domain.

64. Museums are obliged to ensure that they exercise due diligence when considering an acquisition or a loan, to verify the ownership of any item being considered for acquisition or loan and to ensure that the current holder is legitimately able to transfer title or to lend: section 5.7. They should also ensure that they reject any item if there is any suspicion that it has been stolen unless, in exceptional circumstances, this is to bring it into the public domain, in consultation with the rightful owner: section 5.9.

65. Compliance with the 1970 UNESCO Convention requires that the museum should take care to reject any object in relation to which there exists a suspicion that, since 1970, it may have been stolen, illegally excavated or removed from a monument, site or wreck contrary to local law or otherwise acquired in or exported from its country of origin (including UK), or any intermediate country, in violation of that country's laws or any national and international treaties, unless the museum is able to obtain permission from authorities with the requisite jurisdiction in the country of origin: section 5.10. In addition, the museum should ensure that it rejects any item that lacks secure ownership history, unless there is reliable documentation to show that it was exported from its country of origin before 1970: section 5.11.

66. Section 5.17 requires the museum to clarify in writing the precise terms on which all parties are accepting transfer of title. Section 5.21 requires the museum to use agreed procedures for taking the final decision to acquire an item. Section 5.23 encourages museums to implement procedures approved by the governing body for loans from and to the museum, including historic loans.

67. It is at least arguable that the College has observed none of the above-mentioned standards regarding the further maintenance of the bowls, except for the requirement of due diligence in reporting any suspicion of criminal activity to the police: section 5.14. There is a case for recommending that the College should publish specific policies and procedures concerning loans and seek to establish the good title of Mr. Schøyen.

Museums Association Ethical Guidelines on Acquisition (second edition 2004)

68. The MA Ethical Guidelines on Acquisition draw heavily on the Code of Ethics for Museums, devoting a section to matters of due diligence, ownership history and illicit traffic; Section 4. Section 4.15 states that "If it is not possible to obtain documentation to confirm an item's provenance then it is acceptable instead to obtain a written statement from an individual who knows the item's history. In the case of high-risk categories of material these must be sworn statements (affidavits) made by the vendor/donor or his/her agent". This appears to apply, however, only where the museum has adopted the other precautions required and has no independent cause for suspicion that the object might otherwise fall below the standards set out elsewhere in section 4.

Future policy

The case for an ethical approach

69. Regrettably, the College finds itself in a quandary from which there is no infallible escape. The world has changed over the past decade and the College must change with it. Unfortunately it must do so in the context of a continuing transaction concluded on older principles. The dilemma is complicated by the fact that so many material facts are unknown. No more reassuring is the diversity of ethical guidelines bearing on academic institutions and the gaps and overlaps among them.

70. Even so, the College might be able to turn this matter to its advantage. I believe that this episode offers the College a chance to create new standards, lead worthwhile change and derive substantial credit. Achieving this will demand adroit management and determination.

71. The former practice of many institutions and private collectors was to avoid asking awkward questions on being offered a cultural object and, at the first hint of trouble, to shuffle it back to the depositor. Modern ethical attitudes now expressly forbid the former and arguably preclude the latter. Unquestioning return to a depositor may also be *legally unsafe* if the institution has any inkling that its supplier was not the owner: see the *Marcq* case, above.

72. In modern conditions, it seems clear that the safest (perhaps the only safe) way for the College to safeguard itself against *future* legal and ethical transgression is to require cogent and unequivocal evidence of a secure chain of ownership and of a legitimate history of cross-border movement of objects offered to it. In its extreme form such inquiry would necessitate information about dates, locations and names, and meticulous documentation in support. It is notable that commercial institutions such as auction houses require vendors of cultural objects to warrant title and disclose doubts expressed about the provenance of objects. There appears no reason why any University department should be less rigorous.

Unanswered questions

73. On such an analysis, the College should be able to show not only that it knew nothing untoward about each cultural object in its possession on receipt, but that it positively and searchingly inquired into the provenance of such objects before accepting them. It should take the initiative in asking pertinent questions.

74. The questions that the College should ask, if offered possession of these bowls for the first time, would probably include:

Who sold the bowls to Mr Schøyen?³¹ Was Mr Schøyen's supplier a dealer, private collector, overseas government or some other entity? How did the bowls find their way to Mr Schøyen from Mr Rihani or his daughter? On what legal authority were the bowls supplied to Mr Schøyen?

Where is the written contract (if any), what was the price, how was the price paid, how did it compare to the market value of equivalent licit material, where was the deal struck, where was the material located at the time of the deal, was this an isolated transaction or one of a series, if it was one of a series did the other deals in the series take the same form?

Were the Jordanian export licences contemporary with the export itself? Would they have been in that form if Jordan were the country of origin, or if the export were to be permanent as opposed to merely temporary, for example for the purposes of an overseas loan? If not, what evidence do we have as to any possible origin other than Jordan? What is the relation between the 1988 licences and the 1965 gift by Mr Rihani to the Jerash and Irbed Archaeological Museum?

Did Mr Schøyen seek a root of title back beyond his immediate vendor? What independent checks did Mr Schøyen make or require to be made at the time? What title warranties did he exact?

Has Mr Schøyen ever sold any objects from the same purchase, and if so on what terms?

Retro-conformity with contemporary standards

75. In my opinion, the College should now ask equivalent questions before settling its future policy towards the bowls. Such proactive inquiry would appear consistent with the modern culture of transparency and active ethical engagement, and would appear justified before returning material acquired under less stringent conditions. The College should be able to show that it is as exacting in its investigation of objects that it expects to return as it is for objects that it expects to retain.

Expanding the commitment

76. There is a serious argument that the College should, by broadening its commitment, take this opportunity to guard against the occurrence of comparable situations in future. If the College were persuaded by that argument, the following initiatives would appear constructive:

An overhaul of the ethical guidance moderating College institutions involved with cultural objects

³¹ This question remains unanswered despite earlier inquiry.

The general extension of new guidance to all College institutions, avoiding fragmentation and ambiguity

An audit of existing collections to see what can be safely retained and what measures should be taken for the disposition of unsafe material

The yoking of the College's response in this specific case to those general initiatives

The negotiation of a new contract with Mr Schøyen, that concedes the necessary discretion in the College to act in an ethical manner and gives the College all necessary assurances and indemnities.

Balance and perspective

77. In investigating Mr Schøyen's title, the College must take account of the risks of indefinite detention. There is a serious prospect that, without a sufficiently persuasive explanation, Mr Schøyen will request the return of the bowls. In an extreme case he might threaten proceedings for conversion, or even invoke the right to peaceful enjoyment of his possessions under Article 1 of the First Protocol to the European Convention on Human Rights. In my opinion, there is a paramount need for the verification exercise to be undertaken in co-operation with Mr Schøyen, and for the College to enlist his support for a process that could be in his interest.

78. Moreover, the College must keep this issue in proportion and show a balanced regard for all relevant values. It needs to safeguard, and to order a scale of values that comprises, the following:

respect for human rights

respect for scholarship

respect for the principle *pacta sunt servanda*

compliance with general law

observance of ethical standards

the economic interests and reputation of the College, and its status as a charity

non-deterrence of future loans.

Method of resolution

79. Many of the questions that arise from the College's relationship with Mr Schoyen are factual and ethical rather than legal. Their resolution calls for a certain pragmatism and diplomacy. In these circumstances, it might be appropriate for the College's policy to be determined by an independent committee of inquiry.

80. The committee could be legally advised. Its terms of reference could include the relative assessment of the standards listed above and the evolution of new guidance for College institutions. Mr Hebditch might be invited to give evidence.

Conclusion

81. The College occupies an anomalous and potentially damaging position. Any initiative could involve risk. To defuse the situation the College should:

Explain the position to Mr Schoyen and get his consent to the course proposed

Investigate thoroughly the provenance and proprietary lineage of the bowls

Defer any decision on redelivery of the bowls until the position is clarified

Develop sound principles for the future treatment of cultural objects by all College institutions

Inform the media of its intentions and emphasise the new direction being taken

Prepare a back-up plan for use should any of the foregoing prove unworkable.

Line to take with the media

82. The following might be a constructive way of presenting this matter publicly:

In 1997 there was in force no specific ethical regulation governing the acceptance of cultural objects by the College department involved in this case, or by the College itself, or by universities at large.

Despite this, the College has sought and received documentary evidence that the bowls were lawfully exported, has voluntarily advised the police of objects in its possession and has been advised that the police propose no criminal proceedings.

The College's possession has now stretched into the post-2002 era when new principles and policies have emerged. Intelligence on the pillaging of archaeological sites has greatly increased in recent years and attitudes have changed.

In the light of those developments, the College now considers it appropriate to model its treatment of these bowls, and its future policy towards cultural objects

in general, on modern principles and to anchor its conduct in contemporary ethics.

It has therefore ordered a review of the conclusions to be drawn from this specific case, an audit of other objects currently owned and loaned, and the evolution of new principles for future acquisitions.

The College plans to carry out this exercise with the full co-operation of its lenders and donors and, subject to obligations of confidence, to publish its conclusions.

83. I understand that a conference on this matter has been arranged for Thursday 16th September at 2.30 pm. I will of course be happy to clarify any points that arise from this Opinion or to consider any further matters that my instructing solicitor and the College wish to raise.

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10th September 2004

APPENDIX 6: RELEVANT IRAQI LAW

Ownership of antiquities in Iraq

1 By Article 3 of the Antiquities Law 1936 (as amended in 1974 and 1975):

"All antiquities in Iraq whether movable or immovable that are now on or under the surface of the soil shall be considered to be the common property of the State."⁸²

In our opinion, had the bowls been on or under the surface of the soil of Iraq when the 1936 Law came into force, the 1936 Law would have vested property in the bowls in the State of Iraq from that time onwards. It is our further opinion that the property thus conferred on the State of Iraq would be recognised by the law of England and Wales under principles of private international law. It follows, in our judgment, that the 1936 Law would have granted to the State of Iraq a sufficient right of possession to enable it to recover the bowls in civil proceedings in England, subject to any later loss of the State's pre-existing property and right of possession.

2 Such later loss might have occurred by expiry of the limitation period, or by disposition by a possessor to a good faith acquirer while the bowls were in country whose law conferred property on the acquirer, or by abandonment on the part of the State of Iraq, or otherwise. Such divesting events would normally be matters for a later acquirer to establish affirmatively, on a balance of probabilities. In the absence of such divesting event, the property conferred on the State of Iraq by Article 3 of the 1936 Law would almost certainly have survived and subsisted, both throughout the presence of the bowls in Iraq and beyond the removal of the bowls from Iraq.

3 Our analysis of the evidence, and of the application of the 1936 law to our findings of fact, are set out in paragraphs 77 to 82 of this Report.

Registration

4 Under Art 16(3)(a) of the 1936 Law, private persons who were in possession of certain movable antiquities when the 1936 Law came into force might lawfully retain them subject to the control of the Directorate,⁸³ provided that they registered them with the relevant State authorities within one year and six months after the law came into force. Any possessor who registered a movable antiquity in accordance with the 1936 Law would be issued with a registration certificate.

5 By Article 58(1) of the 1936 Law, contraventions of Article 16(3) attract a dual sanction: imprisonment for a period not exceeding two years, and the confiscation of the antiquities in question. In our opinion it is arguable that, once the registration period had expired, the State of Iraq would have inherited the immediate right to the possession of

⁸² Article 3 further provides that individuals and groups are prohibited from disposing of such property, or from claiming the ownership of such property, other than under the provisions of the 1936 Law. By Article 4 the ownership of land does not entitle the land owner to dispose of antiquities discovered on or under the surface of that land, or to excavate for antiquities in that land.

⁸³ Article 16(4).

non-registered antiquities. It is also our opinion that the State's right of possession would be recognised by the English court as enabling the State of Iraq to sue in England for the recovery of such antiquities, subject to any divestment through later events.

6 We have been unable to discover any evidence that any collection to which any of the bowls belonged was registered in accordance with the 1936 Law.

Export

7 A further provision of the 1936 Law prohibited the exportation by any person of any antiquity outside Iraq. To this general bar there was a solitary exception, allowing removal by the Iraqi Antiquities Directorate for purposes of scientific study, exchange or exhibitions. By Article 26:

"Taking any antiquity outside Iraq is prohibited. Notwithstanding, it is possible for the Directorate to do this for scientific studies, exchange and exhibitions."

8 The current Chairman of the Iraqi State Board of Antiquities and Heritage (Dr Donny George) has testified that, apart from material exported for the exceptional purposes contemplated by the second sentence of Article 26, the only items that could be exported lawfully from Iraq after the coming into force of the 1936 Law were finds from excavations undertaken by officially approved foreign excavators. According to Dr George, the Iraqi authorities have no record of the lawful removal from Iraq after that date of any antiquities other than those comprised in the foregoing categories, for the simple reason that the law of Iraq prohibited any such removal.

9 Article 26 is fortified by Article 60(1), by which any person who has smuggled antiquities, or has intended or helped in the smuggling of antiquities, is liable to a dual sanction: imprisonment for a period not exceeding five years, and the confiscation of all antiquities "in respect of which the crime has been committed". The statutory confiscation further extends to all other antiquities in the offender's possession, whether registered or unregistered.

10 In our opinion, there is a realistic argument that Article 60(1) confers on the State of Iraq the immediate right to the possession of antiquities that are the subject of a proposed unlawful removal. We are further of the opinion that the right of possession conferred on the State of Iraq takes effect before the removal of the antiquities from Iraq, and would be recognised by the law of England and Wales under principles of private international law. On that analysis the State of Iraq would be entitled to bring proceedings in tort before the English court to recover antiquities that were unlawfully exported from Iraq contrary to Article 26 of the 1936 Law, *provided* that the State's original right of possession had not been displaced by later events.

Removal before 1936

11 We do not discount the possibility that the bowls in question were removed from Iraq before the 1936 Law came into force. Before the coming into force of the 1936 Law,

the principal statute governing the excavation, ownership and alienation of antiquities within Iraq, and their export from Iraq, was the Antiquities Law 1924.³⁴

12 Article 3 of that Law states the principle of state property over antiquities in similarly unconditional terms to Article 3 of the Law of 1936. By the first paragraph of Article 3 of the 1924 Law:

"Every antiquity whether movable or immovable that is now on or under the surface of the soil or hereafter shall be found thereon or thereunder shall be the property of the State."

In regard to movable antiquities such as the bowls in the present case, there are two ways of construing Article 3. The first is to apply it literally 'across the board' to all antiquities located within Iraq, even those that had been previously discovered and documented, and were already in lawful private or commercial ownership, when the 1924 Law came into force. The second is to apply it more moderately, to cover movable antiquities coming to light (by excavation or otherwise) after the 1924 Law came into force, while leaving unaffected any movable antiquities already discovered and in lawful private or commercial ownership on that date.

13 On balance, the latter construction seems preferable, partly because Article 8 of the 1924 Law imposes a duty to declare antiquities in the possession of private persons and dealers. Such declaration is to be followed by registration. The duty to declare is reinforced by a right in the State to purchase (at a price to be agreed) declared antiquities possessed by dealers. To confer on the State a right of purchase would be unusual if the antiquities in question were already the property of the State under Article 3. It is to be noted, however, that the State powers of confiscation and deprivation laid down in Articles 25 and 28 of the 1924 Law do not explicitly extend to antiquities that are the subject of a breach of Article 8. At first sight this might suggest that undeclared objects possessed by private persons or dealers are in any event by virtue of Article 3 already the property of the State, whether declared or not. Alternatively it might simply suggest that deprivation was not then viewed as a suitable penalty for breach of the duty to declare.

³⁴ Attention is drawn to a further Iraqi enactment, the Law Prohibiting the Smuggling of Antiquities 1926 (No 40 of 1926), Article 2 of which is set out in *The Protection of Movable Cultural Property*, a compendium of legislative texts published by UNESCO in 1984. Article 2 of the 1926 enactment empowers the State of Iraq to confiscate and return archaeological objects brought into Iraq from countries that had not authorised their removal. It states: '*The Government may confiscate any archaeological object brought into Iraq without the authorization of the government of the country from which it comes and return it in those cases where an agreement for reciprocal action in this field has been concluded between the governments of the two countries*'. The 1926 enactment does not appear to confer on the State of Iraq any independent right of possession (a) extending over antiquities originating from Iraq, and (b) becoming effective before the antiquities left Iraq. It therefore appears that, until the coming into force of the 1936 Law, State ownership of antiquities located on or under land in Iraq continued to be governed by the Law of 1924, which the 1936 Law repealed.

14 Article 9 of the 1924 Law requires discoverers of portable antiquities to report them within one month, following which the Director of Antiquities may "elect whether he may take the antiquity or not" and may "pay a suitable reward" to the finder, or he may elect to disclaim. The language of this and Article 28 of the 1924 Law appears consistent with, and not to derogate from, the recognition of pre-existing State property in discovered antiquities. Article 28 provides that a person who contrary to Article 9 fails to report the discovery of a movable antiquity "shall be liable to be deprived of such antiquity without compensation." It appears significant that Article 28 speaks not in terms of confiscation but in terms of deprivation, a neutral term which does not compellingly indicate that a pre-existing ownership is being removed.

15 A different ambiguity attaches to Article 13 of the Law of 1924, which prohibits the exportation of any antiquity "save under a permit issued by the Minister." The ambiguity lies not in Article 13 itself but in the related penal provision, Article 25(b). This states that, in addition to a fine, the unlawful exportation of antiquities shall attract a further penalty, in that "the antiquities in respect of which the offence is committed shall be liable to be confiscated." It might be thought that the words "shall be liable to be confiscated" do not convey with sufficient certainty the immediate reduction of such antiquities into State ownership, so as to satisfy the normal rule of private international law that State confiscations must take effect while the confiscated object is within the territory of the confiscating State. On the other hand, the confiscation provision applies not only when a person exports antiquities, but also whenever someone "attempts to export or abets the export of antiquities" contrary to Article 13: and those acts can clearly occur while the object is still within the relevant territory. Moreover, where antiquities are already State property by virtue of Article 3, the question whether the State has effectively reduced them into State ownership in the event of an unlawful export would appear to contribute very little if anything to the State's power to pursue those antiquities through civil (or criminal) proceedings overseas.

16 In the final analysis, therefore, it appears to the Inquiry that for present purposes the precise scope of Articles 3 and 13 of the Law of 1924 is substantially academic. Only if the bowls in question were already in private or commercial ownership before the 1924 Law came into force can there be the slightest doubt that they were the original property of the State of Iraq. The Inquiry has heard no testimony asserting any pre-1924 ownership on the part of any private person or dealer, and the Inquiry views that prospect as highly improbable. In the Inquiry's opinion, reached on a balance of probabilities, if the bowls were not unearthed within the territory of the State of Iraq after the coming into force of the 1936 Law, they were unearthed within the territory of the State of Iraq after the coming into force of the 1924 Law.

APPENDIX 7: RELEVANT UK LAW ON ANTIQUITIES FROM IRAQ

1 If the bowls were illegally removed from Iraq after 6th August 1990, their legal status may be affected by the Iraq (United Nations Sanctions) Order 2003.³⁵ This Order, made under section 1 of the United Nations Act 1946 pursuant to a resolution of the United Nations Security Council,³⁶ creates two criminal offences relating to cultural objects that have been unlawfully removed from Iraq after 6th August 1990. Those offences are (i) dealing in such objects,³⁷ and (ii) being in possession or control of such objects and failing to cause their transfer to a constable.³⁸

2 The conduct prohibited by these offences is not confined to transactions by way of sale and purchase. The offences also have a significant potential impact on those persons and institutions that lend and borrow cultural objects. "Dealing" within paragraph 8(3) of the Order is defined in similar manner to the equivalent concept of dealing in the Dealing in Cultural Objects (Offences) Act 2003, and therefore includes lending, borrowing, leasing out and hiring.³⁹ In relation to each of these offences, the burden is on the defendant to show that he did not know and did not have reason to suppose that the cultural object in question was illegally removed from Iraq during the relevant period.⁴⁰

3 A relevant officer of a body corporate that has committed an offence under the 2003 Order will be personally guilty of an offence under the Order if the commission of the offence by the body corporate was attributable to the neglect of the relevant officer, or was committed with that officer's consent or connivance.⁴¹ A relevant officer for this purpose is "any director, manager, secretary or other similar officer of the body corporate

³⁵ SI 2003 No 1519. The 2003 Iraq Order is supplemented by the Iraq (United Nations Sanctions) Order 2000, the survival of which is (subject to amendment) confirmed by Article 3 of the 2003 Iraq Order. See also, more generally sections 327-340 of the Proceeds of Crime Act 2002, analysed in Appendix 10, paragraphs 9-10.

³⁶ The United Nations Security Council Resolution 1483, adopted on 22nd May 2003. Further provision is contained in the Council Regulation (EC) No 1210/2003 of 7th July 2003 Concerning Certain Specific Restrictions on Economic and Financial Relations with Iraq and Repealing Regulation EC No. 2465/96 Article 3.

³⁷ The Iraq (United Nations Sanctions) Order 2003, Article 8(3).

³⁸ The Iraq (United Nations Sanctions) Order 2003, Article 8(2).

³⁹ The Iraq (United Nations Sanctions) Order 2003, Article 8(5). It also includes import and export.

⁴⁰ The Iraq (United Nations Sanctions) Order 2003, Articles 8(2), 8(3). The burden of establishing the appropriate mental element comes into operation only when the prosecution has positively proved to the criminal standard of proof that the object is illegally removed Iraqi cultural property and that the defendant has dealt in the object, or failed to transfer it to a constable, in the terms of the offence. The defendant can discharge the burden as to the mental element on the civil and not the criminal standard of proof, ie on a balance of probabilities. Even so, this reversal of the burden of proof represents a departure from normal policy in cases of criminal (as opposed to civil) liability for movable property, and might be susceptible to challenge under the Human Rights Act 1998. The Iraq offences are further widened by the absence of any requirement of dishonesty, again in contrast to the position under the Dealing in Cultural Objects (Offences) Act 2003. This last omission suggests that an institution that acquires post-6th August 1990 looted Iraqi material (or material which it has reason to suppose, but does not know, to be such material) with the honest intention of returning it to its source may nevertheless commit the offence of dealing, and the further offence of failing to cause the transfer of the object to a constable if it continues in possession other than momentarily.

⁴¹ 2003 Order, Article 20(6).

or any person who was purporting to act in any such capacity".⁴²

4 A further provision in the Iraq Order regulates the movement of Iraqi cultural objects to and from the United Kingdom. By paragraph 8(1) "The importation or exportation of any item of illegally removed Iraqi cultural property is prohibited." The effect of this prohibition is to make the import and export of Iraqi material an assigned matter within the Customs and Excise Management Act 1979, giving jurisdiction to the customs authorities. Under the 1979 Act, two relevant offences might be committed: being in possession of illegally imported or exported Iraqi cultural material, or the making of a false declaration in relation to such material.

5 The foregoing measures not only render criminal substantial areas of commercial activity in antiquities from Iraq, but will also have alerted experienced dealers and collectors to the scale of recent looting and the perils of transacting in Iraqi material. They may also have adversely affected the insurability of such material.

6 The Iraq legislation does not, however, directly affect matters of property and title. A person holding unlawfully removed Iraqi cultural objects could in theory be guilty of the two criminal offences created by paragraphs 8(2) and 8(3) of the 2003 Iraq Order while simultaneously owning the objects under principles of private law.⁴³

7 Before the enactment of the 2003 Order, the trade in goods from Iraq was regulated by the Iraq and Kuwait (United Nations Sanctions) Order 1990, SI 1990 No 1651, which the 2003 Order revoked. This Order came into force on 9th August 1990. Article 2 paragraph 2 and Article 4 paragraph 2 of the Order made it a criminal offence for any person to deal in any goods that had been exported from Iraq after 6th August 1990, unless the dealing in question was authorised by a licence granted under Article 2 paragraph 1.⁴⁴ For the purposes of this prohibition, a person was deemed to deal in goods whenever he or she "shall, by way of trade or otherwise for gain, acquire or dispose of such goods or of any property or interest in them or any right to or charge upon them or process them or do any act calculated to promote any such acquisition, disposal or processing by himself or any other person."⁴⁵ The importation of goods for commercial purposes into the UK would appear, at least potentially, to constitute a dealing for this purpose.

8 The prohibition was supplemented by a criminal prohibitions on the export of goods from Iraq,⁴⁶ which included a prohibition on the doing of any act "calculated to promote the exportation of any goods" from Iraq.⁴⁷ In common with the 2003 Order, the 1990 Order contained a special provision imposing criminal liability on certain senior officers of corporate bodies involved in the commission of an offence under the Order.⁴⁸

⁴² Ibid.

⁴³ For example, on expiry of the relevant limitation period (as to which see Appendix 9). Cf Theft Act 1968 section 24(3) in relation to the crime of handling stolen goods.

⁴⁴ Penalties include a term of imprisonment not exceeding two years, following conviction on indictment: Article 8(1)(a) of the 1990 Order.

⁴⁵ Article 2(2) of the 1990 Order. The prohibition governed (among others) all natural persons and corporate bodies within the United Kingdom: Article 4(1) Of the 1990 Order.

⁴⁶ Article 2(1) of the 1990 Order.

⁴⁷ Article 2(1)(c) of the 1990 Order.

⁴⁸ Article 8(2) of the 1990 Order; see Article 20(6) of the 2003 Order, above.

9 The 1990 Order was in force when Mr Schøyen contracted to buy the bowls and when UCL accepted possession of them from him. We have seen no evidence of a licence satisfying the requirements of Article 2(1). Having regard to the conclusions stated elsewhere in this report, the committee believes that UCL's acceptance of the bowls involved a serious risk of adverse legal consequences by reason of, or in connection with, the 1990 Order.

APPENDIX 8: RELEVANT LAWS OF THE HASHEMITE KINGDOM OF JORDAN

1 As to the lawfulness of any exportation of the bowls from Jordan after 1965, Article 24 of the Antiquities Law 1976 ('the 1976 Law') imposes a general prohibition on the export of antiquities:

"Subject to the provisions of article (23) of this law, it is forbidden to export movable antiquities abroad except with the consent of the Department, subject to the approval of the Minister allowing such sale or export."

2 It may be questioned whether the prohibition imposed by Article 24 applies to antiquities that originated in a country other than Jordan, but there is nothing explicit in the 1976 Law to limit the prohibition to local antiquities. Article 24 is reinforced by Articles 28(a)(i) and 29(a)(1), which respectively impose punishment by way of imprisonment and fine on any person who "Exports or deals with any antique contrary to the provisions of this law, including hiding it or smuggling it" and provide that any antiquities respecting which an offence is committed "shall be confiscated and shall become the property of the Department [of Antiquities]".

3 Taken alone, these provisions indicate that the 1976 Law allows no legal exportation of antiquities from Jordan, and that any illegal exportation of antiquities from Jordan causes the property in those antiquities to vest in the Kingdom of Jordan. It is not entirely clear, however, whether the confiscatory provision in Article 29(a)(1) is designed to take effect immediately on the performance within Jordan of acts directed towards export, and thus to bite upon the antiquities in question while they are still in Jordan. This uncertainty renders it unclear whether the Kingdom of Jordan could have become the owner of the bowls by reason of their unlawful exportation from Jordan, because no effect is given by the law of England and Wales to a foreign confiscatory law that purports to take effect only when the confiscated object is no longer within the territory of the confiscating state. It is also uncertain whether Article 29(a)(1) would be regarded under Jordanian law as extinguishing any prior title in the State of Iraq in favour of a new title in the Kingdom of Jordan. For these and other reasons, and giving due weight to arguments to the contrary, we have provisionally concluded that if the bowls were unlawfully exported from Jordan, the Kingdom of Jordan did not by virtue of such export acquire an overriding property in the bowls, to the exclusion of the State of Iraq; and that any original property and right of possession vested in the State of Iraq would accordingly have endured, notwithstanding such illegal export.

4 There are other provisions of the law of Jordan potentially relevant to this case. Article 21 provides that all antiquities found during excavations carried out by any authority or body whatsoever "shall be regarded as the common property of the State." While the position is not clear, we have interpreted this provision as applying only to material excavated in Jordan, and we further consider that it may be limited to excavations undertaken by the Department of Antiquities, the sole entity empowered to excavate in Jordan: Article 16. Article 21 is in any event qualified by Article 15 which requires the reporting within ten days of antiquities found by persons not having authority to excavate, and empowers the granting of rewards.

5 More directly relevant, perhaps, is Article 5(a), by which "the Royal State shall be the exclusive owner of movable antiquities ..." and no other authority may appropriate

antiquities or oppose that ownership. Again, however, we are not conclusively persuaded that this provision should be interpreted as causing antiquities originating in Iraq and still owned by Iraq at the time of their entry into Jordan to vest immediately upon entry in the Kingdom of Jordan. We note that Article 5(d) of the 1976 Law empowers the Government to "expropriate or buy any land or antiquity if it is in the interest of the Department to expropriate or buy it", which suggests that the Kingdom of Jordan did not assert a blanket ownership or immediate right of possession over all antiquities located within Jordan: see also Article 5(d).

6 The 1976 Law does, however, contain provisions banning the trade in antiquities, cancelling all pre-existent trading licences, requiring current holders of antiquities to register them within two months of the coming into force of the Law, giving the Department the power to buy those which they wished to acquire, and granting to individuals the power to retain and transfer ownership of certain items on certain strict conditions, both as to the time of transfer and as to the knowledge of the Department: Article 26. Subject to that, the trading in antiquities was forbidden: Article 23.

APPENDIX 9: MR SCHØYEN'S PURCHASES AND THE EXPIRY OF THE LIMITATION PERIOD

1 This question requires the Inquiry to predict the outcome of a hypothetical legal claim brought by the State of Iraq in England, the country where the bowls are currently situated, for specific restitution of the bowls. Our expectation is that such a claim would be brought under section 3(2)(a) of the Torts (Interference with Goods) Act 1977.

2 The Inquiry has received more evidence on the circumstances of Mr Schøyen's acquisition of the bowls than it has received on the circumstances of any preceding acquisition. In particular, it has received oral and documentary evidence from Mr Schøyen himself, which he has amplified in an email to the Secretary to the Inquiry, dated [11th] December 2005.

3 The Inquiry's judgment on this matter is predicated on certain assumptions:

- i) that the bowls were excavated in Iraq,
- ii) that they were unlawfully removed from Iraq,
- iii) that Iraq had title to the bowls at the time of their removal,
- iv) that Iraq's title endured until Mr Schøyen acquired the bowls, and
- v) that Iraq is now claiming the return of the bowls in civil proceedings for conversion before the English court.

Assumptions (i) to (iv) are matters on which the Inquiry has already in fact reached an affirmative conclusion on the balance of probabilities. The fifth is a matter of speculation, but one critical to the proper conduct of this Inquiry. The committee feels strongly that it should not recommend to UCL a course of conduct that infringes or threatens to infringe legal rights, even where those rights have not yet been tested in any legal proceedings.

4 It is in principle possible that an original title in the State of Iraq has been overridden by the expiry of a relevant limitation period. The committee's principal concern, given the location of the bowls in England, is the effect of the *English* law of limitations on any original title held by the State of Iraq. The committee acknowledges that, under the Foreign Limitation Periods Act 1984, some other country's law of limitations might also be applicable. For the present, however, it confines itself to the law of England and Wales, as the primarily (and possibly exclusively) applicable legal system.

5 The relevant provisions of English law are sections 3 and 4 of the Limitation Act 1980. While the drafting of these sections has been judicially described as "impenetrable", their broad effect can for present purposes be shortly stated.⁴⁹ If Mr

⁴⁹ *De Preval v Adrian Alan Ltd* (1997) unreported 24th January, QBD (Arden J). And see *Bumper Development Corporation v Commissioner of Police of the Metropolis* (1991) unreported 13th February, CA.

Schøyen bought the bowls in good faith, any right in the State of Iraq to sue for their return will (subject to certain exceptions) have expired six years after that purchase. A purchase in good faith in 1995 will therefore have resulted in the extinguishment of the Iraqi title in 2001.

6 The burden of proving that he bought the bowls in good faith would be borne by Mr Schøyen, who would have to establish his own good faith affirmatively, on a balance of probabilities. If that were shown, the limitation period would begin to run, and it would have to run for six years in order to be effective in his favour. Once the limitation period expires, the former title in the State of Iraq would be extinguished and would presumably (though the Limitation Act 1980 does not expressly say this) be replaced by a title in Mr Schøyen. In any event, the effect of expiry would be to deprive the State of Iraq of that immediate right of possession that is necessary to enable any claimant to sue for the tort of conversion. Mr Schøyen would, moreover, then be able to confer an unassailable title on a third party acquirer, even one who knew at the time of acquisition that the bowls were stolen. One consequence would be that the State of Iraq would be unable to sue UCL for the return of the bowls, because UCL would derive its own right of possession from a party who had a better right of possession than the State of Iraq.

7 The question of good faith must be answered according to the circumstances existing at the time of Mr Schøyen's purchase and not in the light of any circumstances that may have emerged later. That said, the burden imposed on him is a heavy one. Its incidence is partly justified by the consideration that it is for the acquirer, as the party in possession of the relevant facts, to prove the necessary state of mind.

8 With these considerations in mind, two questions arise: the definition of good faith, and whether Mr Schøyen can satisfy that definition on the relevant facts.

Definition of good faith

Honesty

9 The Limitation Act 1980 offers no guidance on the meaning of good faith. Such guidance is, however, afforded by another statute to which the concept of good faith is material, the Sale of Goods Act 1979. By section 61(3) of that Act:

"A thing is deemed to be done in good faith within the meaning of this Act when it is in fact done honestly, whether it is done negligently or not."

10 The fact that one statute defines good faith in this limited manner does not necessarily mean that the concept would be similarly construed for the purposes of another statute, such as the Limitation Act 1980. On the other hand, an English court might well prefer to construe the concept of good faith consistently among statutes at large. Moreover, the approach of the Sale of Goods Act accords with a general propensity in the common law to equate the lack of good faith with a lack of honesty, rather than (for example) with a lack of due diligence or with the possession of constructive (as opposed to actual) knowledge of some prior unlawful dealing. In a recent decision in a different context, the judge said that the term "good faith" had long been recognised as requiring only that a person act "genuinely

and honestly".⁵⁰ In other words, the term should be construed subjectively rather than according to some objective standard of reasonable conduct.

11 It is true that a recent decision on the Limitation Act 1980 contains suggestions that a failure on the part of the buyer to make prior inquiries about the provenance of a cultural object might be a factor in disabling that buyer from showing good faith.⁵¹ But in that case the object (a Barye candelabra) was of a highly distinctive individual character, the court had already concluded that the evidence of the buyer was unreliable on other points, and the buyer had effectively adduced no affirmative evidence on the question of his own good faith. In those circumstances the general statutory presumption remained free to take effect unimpeded.

'Blind-eye' knowledge

12 On the other hand, there are suggestions that a person's wilful or 'Nelsonian' blindness to particular facts (sometimes referred to as 'blind-eye' knowledge) may count as knowledge of those facts, and thus prevent that person from proving that he or she acquired in good faith, if it was pursued for the purpose of avoiding unwelcome knowledge. In the words of one judge:

"... you will be justified in finding that there was notice, or an absence of good faith, if you find anything to shew that the person taking the security made no inquiries about it, or where it came from, because he feared the answer which he might get, and feared that he might get an answer which shewed that something was wrong."

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13 This analysis is confirmed by more recent authority. We are advised that a person has blind-eye knowledge where he or she has a suspicion as to some relevant fact and deliberately decides not to check that fact. The decision not to check the fact must be taken because he or she does not want to know the truth for certain. It is not enough that he or she fails to follow up his or her suspicion because of laziness, indifference, gross negligence or some lack of firm belief that anything was wrong. The test is subjective: did he or she deliberately refrain from inquiring in order to avoid gaining direct knowledge?⁵³

⁵⁰ *Barclays Bank v TOSG Trust Fund* [1984] BCLC 1 at 18 per Nourse J.

⁵¹ *De Preval v Adrian Alan Ltd* (1997) unreported 24th January QBD (Arden J).

⁵² *Whitehorn Bros v Davison* [1911] 1 KB 463 at 478, per Vaughan Williams LJ.

⁵³ The foregoing analysis is based particularly on the speech of Lord Hobhouse of Woodborough in *Manifest Shipping Co Ltd v Uni-Polaris Insurance C Ltd and others* [2003] 1 AC 469 at 486-487 (a case involving marine insurance). In the words of Lord Clyde in the same case at 485: "Blind-eye knowledge in my judgment requires a conscious reason for blinding the eye. There must be at least a suspicion of a truth about which you do not want to know and which you refuse to investigate." In the words of Lord Scott of Foscote in the same case at 517: "In summary, blind-eye knowledge requires, in my opinion, a suspicion that the relevant facts do exist and a deliberate decision to avoid confirming that they exist In my opinion, in order for there to be blind-eye knowledge, the suspicion must be firmly grounded and targeted on specific facts. The deliberate decision must be a decision to avoid obtaining confirmation of facts in whose existence the individual has good reason to believe. To allow blind-eye knowledge to be constituted by a decision not to inquire into an untargeted or speculative suspicion would be to allow negligence, albeit gross, to be the basis of a finding .." Lord Scott's expression of the test was applied by the Court of Appeal

Recklessness

14 The committee construes the concept of recklessness in this context as signifying an outright indifference to the question whether or not the bowls were stolen or unlawfully removed, and not as signifying a simple want of diligence or reasonable care to establish their provenance. On the other hand, it bears in mind that a want of reasonable diligence or inquiry might itself constitute *evidence* of dishonesty or wilful blindness or reckless disregard for the truth.

The applicable test

15 Having regard to these matters the committee feels that it would not be appropriate to apply to the present transactions any higher standard than that of honesty or absence of wilful or reckless disregard for the truth. In short, the buyer should be regarded as satisfying the Limitation Act 1980 if he can demonstrate affirmatively (a) that he bought the bowls honestly, without knowing that they were stolen or otherwise unlawfully removed, and (b) that he did not acquire them with any calculated or reckless disregard for their provenance, caring not whether they were stolen or otherwise unlawfully removed.

in *Bank of India v Morris* [2005] EWCA 693, [2005] BCLC 328. See further *Barlow Clowes International Ltd v Eurotrust International Ltd (Isle of Man)* [2005] UKPC 37.

APPENDIX 10: JUSTIFICATIONS FOR A REFUSAL TO RETURN TO THE BAILOR

General

1 This short analysis examines whether there are any circumstances in which a bailee might lawfully refuse to deliver up bailed goods to the bailor, even though the goods belong to the bailor.⁵⁴ It is not designed to offer a definitive statement of the legal position, but to outline the general field of debate.

2 It should be borne in mind that, if the bailor has the property in the goods, and the bailee claims to be entitled to do any act that purports to override that property, the bailor might sue for the tort of conversion. A bailee contemplating such a course must therefore exercise circumspection.

3 In the Inquiry's view, there are three relevant situations where a refusal to return to the bailor might not be unlawful.

Terms of the Agreement

4 One defence might be to show that the agreement between the bailor and bailee, far from prohibiting the course proposed by the bailee, actually warranted or contemplated it. In the present situation, UCL might argue (i) that Mr Schøyen, in his agreement with UCL, impliedly promised that the bowls were not stolen property or otherwise unlawfully removed from any country, (ii) that Mr Schøyen is in breach of that undertaking, and (iii) that the said breach is repudiatory, (iv) that the commission by Mr Schøyen of the said repudiatory breach releases UCL from its original (presumably implied) undertaking to return the bowls to Mr Schøyen and entitles UCL instead to return them to the country from which they were unlawfully removed.

5 The necessary agreement might be grounded on the terms implied by section 7 of the Supply of Goods and Services Act 1982, provided that the bailment can be characterised as one of hire.⁵⁵ Alternatively, it might be justified by reference to some common law equivalent to the statutory terms.

6 Section 7(1) of the 1982 Act provides that in a contract for the hire of goods there is an implied condition on the part of the bailor that in the case of a bailment he has a right to transfer possession of the goods by way of hire for the period of the bailment and in the case of an agreement to bail he will have such a right at the time of the bailment. Section 7(2) provides that in a contract for the hire of goods there is

⁵⁴ The word 'belong' in this context is meant to signify that the bailor has the general property in the objects. The bailor might have acquired such property, even though the goods belonged originally to another person from whom they were unlawfully removed, through expiry of the relevant limitation period, or by virtue of a prior good faith acquisition, or otherwise. Whether the bailor has the immediate right of possession depends, at least in part, on the arguments examined in this Appendix.

⁵⁵ It is to be noted from section 6(3) of the Supply of Goods and Services Act 1982 that, in most cases, a contract can be a contract for the hire of goods whatever the nature of the consideration involved. This means that a contract can be one of hire even though (as in the present bailment) the bailee gives and the bailor receives no *financial* benefit in return for the bailee's receiving possession of the goods.

an implied warranty that the bailee will enjoy quiet possession of the goods for the period of the bailment except so far as the possession may be disturbed by the owner or other person entitled to the benefit of any charge or encumbrance disclosed or known to the bailee before the contract is made. Section 7(3) provides that sub-sections 7(2) and (3) do not affect the right of the bailor to repossess the goods under an express or implied term of the contract.

7 To succeed, the assertion by UCL of a breach of some guarantee as to security of tenure in its favour would need to be squared with the statutory limitation periods and with the normal common law principle that a bailee is estopped (that is, precluded by law) from denying its bailor's title. Depending on the evidence, UCL might contend that the normal bailee's estoppel has been displaced in this instance by the specific terms (express or implied) of the particular agreement. UCL must also be prepared to meet an argument that those officers of UCL who received or authorised the delivery of the bowls to UCL had at least as clear an idea of their illicit origin as Mr Schøyen.

Illegality and Frustration

8 A second line of defence might be to show that any original agreement (express or implied) that UCL made to return the goods to Mr Shoyen was either illegal *ab initio*, or was frustrated by supervening illegality. The prospect that the delivery of the bowls to UCL constituted a 'dealing' in unlawfully removed Iraqi cultural objects, involving a breach of the Iraq Orders of 1990 and 2003, appears relevant in this regard. The operation of these concepts on the particular facts would require careful examination; at present, while the point is not without substance, there can be no certainty that defences of illegality or frustration would succeed.

Criminal Property

9 A third argument might rely on the potential status of the bowls as criminal property as defined by section 340 of the Proceeds of Crime Act 2002.⁵⁶ By section 340(3), property is criminal property if it constitutes or represents a person's benefit⁵⁷ from criminal conduct,⁵⁸ and if the alleged offender knows or suspects that it constitutes or represents such a benefit.⁵⁹ In that event it is irrelevant whether the criminal conduct in question occurred before or after the Act was enacted.⁶⁰ It might be alleged⁶¹ that the bowls are criminal property in that they are (or represent) the benefit of the crime of unlawful removal from Iraq contrary to the legislation there in force, or of one of the crimes created by the Iraq Orders of 1990 and 2003.

⁵⁶ This argument might also contribute to the preceding two.

⁵⁷ Proceeds of Crime Act 2002, section 340(3)(a). As to benefit, see section 340(5).

⁵⁸ Criminal conduct is defined by sections 340(2)(a) and (b) as conduct which "constitutes an offence in any part of the United Kingdom, or would constitute an offence in any part of the United Kingdom if it occurred there."

⁵⁹ Ibid. section 340(3)(b).

⁶⁰ Ibid., section 340(4)(c).

⁶¹ The Inquiry makes no determination as to the commission of criminal acts by any person, but notes that the provisions under discussion can in theory apply without any conviction for a criminal offence.

If the bowls do qualify as criminal property within the meaning of section 340(3), various further offences might be committed in relation to them. Probably the most directly relevant in the present context are the offences of acquiring, using and having possession of criminal property under section 329 of the 2002 Act.⁶² For most of the past decade, UCL has had undoubted possession of the bowls and used them for the purposes of research. It is true that no person commits these offences where he acquired, used or had possession of the property for adequate consideration, and that consideration is inadequate if the value of the consideration is significantly less than the value of the use or possession.⁶³ In the light of this provision, it might be argued that the value of the benefits that were to be conferred on Mr Schøyen, in return for UCL's being granted possession of the bowls, corresponds broadly to the value to UCL of that possession and use itself, thus satisfying the requirement of adequate consideration. Alternatively, evidence that Mr Schøyen paid to his vendors a sum broadly equivalent to the market value of the bowls might count against their characterisation as criminal property in his hands. But on the material available, the Inquiry cannot be sure that the 2002 Act is inapplicable, whether on these or other grounds.⁶⁴

10 If the bowls are criminal property, they are vulnerable to seizure and other legal process at the instance of law enforcement authorities. In these circumstances, it might be argued that UCL are under no compelling commitment to hand the bowls to Mr Schøyen, or indeed to any person other than a law enforcement officer or the entity from which they were unlawfully removed.

⁶² *Ibid.*, section 329(1). For further offences see sections 327 (concealing, disguising, converting etc criminal property) and 328 (arrangements that facilitate the acquisition, retention, use of control of criminal property). Criminal liability under sections 327, 328 and 329 can be avoided by making an 'authorised disclosure' to a constable, customs officer or other nominated officer in the terms prescribed by sections 338 and 339 of the 2002 Act.

⁶³ *Ibid.*, sections 329(2)(c), 329(3)(b).

⁶⁴ A further possibility of criminal liability might arise under section 327(1)(e) of the 2002 Act (removing criminal property from England and Wales). If UCL gave up possession of the bowls in the knowledge that they would then leave the jurisdiction, there is a risk that UCL might be a party to that offence, by aiding and abetting the removal of criminal property from England and Wales. Criminal liability under sections 327, 328 and 329 can be avoided by making an 'authorised disclosure' in the terms prescribed by sections 338 and 339 of the 2002 Act.

APPENDIX 11: POSSIBLE FINDS OF ARAMAIC INCANTATION BOWLS OUTSIDE IRAQ

1. As noted in the body of the Report, all those known Aramaic incantation bowls that derive from properly published archaeological excavations can be authoritatively shown to have been excavated from sites within the territory of the modern State of Iraq.
2. Suggestions have been made, however, that other known examples of Aramaic incantation bowls have originated from locations in Syria, Jordan and Iran.
3. Our conclusions on these further proposed examples are as follows:
 - i) Even if they exist, such finds would appear to be highly exceptional and incapable of being authoritatively attributed to any properly documented excavation.
 - ii) It is not unusual, when the distribution of finds of any specific category of archaeological artefact is considered, for claims to be made which turn out, on closer examination, to refer to place of acquisition, often by purchase, rather than to the place of actual discovery.
 - iii) We have considered all those published finds that are alleged to have derived from a find spot outside Iraq. Some relate to other vessel forms, and do not fall in the category of incantation bowl. Others do indeed suggest purchase outside (but still close to) the borders of Iraq, but they generally lack adequate corroborative detail.
 - iv) In none of these cases does any published testimony from the actual finder authoritatively document a location of discovery outside Iraq for any Aramaic incantation bowl.
4. These points are reflected in the list of proposed find spots outside Iraq that Mr. Schøyen and others have made available to us. The complete list is as follows:

Museum of Malmo, Sweden: a bowl published by C.H. Gordon, 'Aramaic incantation bowls', Orientalia 10 (1941), pp. 354-355; reportedly from Hamadan, Iran.

There is no evidence that this bowl comes from a published excavation. Dr Gunnar Johansson of the Museum of Malmo has commented: 'Bowl MM 25498 is part of a collection of prehistoric ceramics once assembled by the consul-general of Sweden in Teheran. The collection consists of some 40 items from different periods and different cultural regions in Mesopotamia. The collection was purchased by Malmo Museum in 1935 through an agreement with Baron Dickson. I have had a look at the bowl and there is an old label marked "Hamadan" on the bottom of the bowl. I believe that this label must have been put there before the bowl reached the museum'.

A bowl in Oxford, Ashmolean Museum 1931, 473, published in the same article by C.H. Gordon, p. 278, reportedly found in Persia near the Tigris.

Dr Susan Walker of the Ashmolean Museum states that this bowl was presented to the Ashmolean by Sir Charles Marston, who 'bought' it in Persia.

Teheran Archaeological Museum, a bowl found in Khuzistan, Iran, published by C.H. Gordon, 'Two magic bowls in Teheran', Orientalia 20 (1951), p. 306.

Cyrus Gordon in his article says: 'fragment of an Aramaic bowl excavated in Khuzistan' (in south-west Iran), but no reference is made to an excavation report and the name of the site where the excavation took place is not given. Nor is that of the excavator.

Vienna, Österreichische Nationalbibliothek, Aram. 0.7 and Aram. 0.8, two bowls said to come from Syria/Jordan.

The Committee wrote to the Nationalbibliothek on 29 December 2005 requesting further provenance information, but did not receive a reply.

A jar found in Sar-i-Osyo, Uzbekistan, inscribed with a Syriac incantation text, published by Ph. Gignoux, 'Une nouvelle jarre inscrite en syriaque d'Asie centrale', in: Conegno internazionale sul tema: La Persia et l'Asia Centrale da Alessandro al X secolo (Atti dei convegni Lincei, 127), Roma: Accademia nazionale dei Lincei, 1996, pp. 39-48.

The Committee concluded that this jar – because it is not an incantation bowl - was not immediately relevant to the Inquiry. A jar, with its contents, may have been the object of contemporary trade, which we cannot assume to have been the case for incantation bowls.

A jar with an Aramaic magical inscription found at Aqaba, Jordan, by a British archaeological team, studied by M.J. Geller, to be published soon.

The Committee concluded that this jar – because it is not an incantation bowl - was not immediately relevant to the Inquiry. A jar, with its contents, may have been the object of contemporary trade, which we cannot assume to have been the case for incantation bowls.

A bowl in the British Museum catalogued as excavated in Syria.

The Committee contacted Dr John Curtis of the British Museum on 5 July 2006. Dr Curtis responded as follows: 'The bowl in question is N1847 that was apparently obtained by Austen Henry Layard at Tell Arban in Syria in 1850. The British Museum register records that the bowl was "brought by Mr Layard" and the provenance is given as Tell Arban. It is unclear whether Layard found the bowl during his excavations at Tell Arban, which lasted from March 19th - April 10th 1850, or whether he purchased the bowl at the site or in its vicinity. My colleague Paul Collins has been to the British Library to check Layard's diary but there is no information there of the bowl'.

Dr Curtis also drew the Committee's attention to 'another isolated example from Susa in south west Iran'. This example is now in Bombay and is published in Umvala, J.M., "An Aramaic Incantation Vase from Susa," The Indian Historical Research Institute Silver Jubilee Commemoration Volume (Bombay, 1953): 410-414. The piece in question is in fact a jar, and again the Committee concluded that it was not immediately relevant to the Inquiry. A jar, with its contents, may have been the object of contemporary trade, which we cannot assume to have been the case for incantation bowls.

Umvala goes on to mention that '[t]his vase with the incantation text is the third one known up to date. It was found on the eastern border of the Tell at the Royal City at

Susa and can be dated at the earliest the seventh century of the Christian era. Of the two other vases, one has an inscription in the Estrangelo-Syriac script, the other has an Arabic inscription. The former was acquired by me in Ahwaz in 1927 with a bowl having nine lines of a Syriac inscription written on its inner surface. Both the vase and bowl have been presented to the K.R.Cama Oriental Institute. They are exhibited at present in the Prince of Wales' Museum. Their inscriptions remain as yet undeciphered. The vase with the Arabic script was acquired by me in Teheran in 1934. It has been published by me in the Dinshah Irani Memorial Volume, Bombay, 1943 pp. 222-231.¹ From Umvala's comments it is not clear that the bowl was found during excavation – it was more likely a surface, incidental find, and the find circumstances are not documented.

David J. Freeman.
John Remfry

Sally Macdonald

