Museums and Ethics: Long History, New Developments

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The International Council of Museums, with a broad-based membership of nearly one thousand museums throughout the world, adopted its Code of Professional Ethics *in 1986. The* Code *addresses both institutional and professional ethics and sets standards for the development of internal policies dealing with acquisitions, cooperation, loans and exhibitions, authentication, valuation, documentation, and the special problems raised by human remains. Although described as a conservative document that could garner widespread support from museums located in both market and "victim" nations, the* Code *nonetheless prohibits acquisition of material that was illegally exported from its country of origin or derives from unscientific excavation or destruction or damage to sites and monuments.*

THE INTERNATIONAL COUNCIL OF MUSEUMS (ICOM) is the official UNESCO–linked world body that brings together nearly 1,000 museums as institutions and over 14,000 individual museum professionals in 148 countries. Hence it represents (and is democratically controlled by) a membership that spans both the importing and the so-called victim countries in terms of the illicit trade in antiquities.

1 ADOPTING A CODE OF ETHICS

In 1970, ICOM issued an internal policy statement entitled "The Ethics of Acquisitions," and in 1984, its executive council resumed work on the preparation of a comprehensive code of professional ethics by appointing a broadly based ad hoc ethics committee to research and draft the required code. Part of the work of this committee was to carry out a comprehensive survey of museum practice at the national, local, and individual museum levels. This demonstrated that enforceable ethical codes were already in widespread use across the world at various levels from those of individual museums to regional and national museum professional bodies.

There was also very extensive consultation with ICOM's worldwide membership: under the terms of ICOM's constitution, adherence to a defined code of professional ethics is a condition of membership and provides for the termination of the membership of both institutional and individual members for "serious reasons relating to professional ethics" (Articles 2(2) and 9 (d) of the ICOM statutes). Hence, it was important to achieve the

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wholehearted support of the world's profession as represented in ICOM's membership.

Consequently, the *ICOM Code of Professional Ethics*, adopted unanimously by the Fifteenth General Assembly of ICOM held in Buenos Aires, Argentina, on November 4, 1986, was in essence a fairly conservative document, reflecting a consensus position of the common ground of the many existing codes examined. The ethics committee incorporated into the *Code* the views and representations submitted to it in response to the initial survey and request for evidence, and that resulted from the very extensive discussion and consultation during the first and second working drafts of the *Code* the committee prepared. Subsequently, in support of the effective implementation of the *Code*, ICOM set up a high-level standing Committee on Museum Ethics, consisting of distinguished members of the profession from around the world. The current chairperson is Mr. Geoffrey Lewis, who served as president of ICOM from 1983 to 1989.

2 ETHICS REGARDING COLLECTING AND ACQUIRING

As finally adopted, the *Code* falls into three parts: a general preamble and two separate sections on institutional ethics and professional ethics. The institutional ethics provisions applicable to the museum as a corporate institution are binding on governing bodies, directors, and other senior management staff, while the professional ethics provisions apply to all professionals, regardless of their position and status in the museum.

So far as the ethics of acquisition are concerned, the institutional ethics provisions of the *Code* (paragraph 3.1) requires all member museums to adopt, publish, and review from time to time (at least once every five years) a written collecting policy, setting out the museum's principles, policies, and objectives in relation to additions to the collections from whatever source—in accepting donations, bequests, or loans just as well as in relation to purchases. The institutional provisions continue:

> 3.2 Acquisition of Illicit Material
>
> The illicit trade in objects destined for public and private collections encourages the destruction of historic sites, local ethnic cultures, theft at both national and international levels, places at risk, endangered species of flora and fauna, and contravenes the spirit of national and international patrimony. Museums should recognize the relationship between the marketplace and the initial and often destructive taking of an object for the commercial market, and must recognize that it is highly unethical for a museum to support in any way, whether directly or indirectly, that illicit market.
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> A museum should not acquire, whether by purchase, gift, bequest or exchange, any work of art or object unless the governing body and responsible officer are satisfied that the museum can acquire a valid title to the specimen in particular, and that in particular it has not

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been acquired in, or exported from, its country of origin and/or any intermediate country in which it may have been legally owned (including the museum's own country) in violation of that country's laws. [The next sub-paragraph relating to biological and geological material has been omitted.]

So far as excavated material is concerned, in addition to the safeguards set out above, the museum should not acquire by purchase objects in any case where the governing body or responsible officer have reasonable cause to believe that their recovery involved the recent unscientific or intentional destruction or damage of ancient monuments or 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.

If appropriate and feasible, the same tests as are outlined in the above four paragraphs should be applied in determining whether or not to accept loans for exhibition or other purposes.

3.3 Field Study and Collecting

Museums should assume a position of leadership in the effort to halt the continuing degradation of the world's natural history, archaeological, ethnographic, historic and artistic resources. Each museum should develop policies that allow it to conduct its activities within appropriate national and international laws and treaty obligations, and with reasonable certainty that its approach is consistent with the spirit and intent of both national and international efforts to protect and enhance the cultural heritage.

3.4 Co-operation Between Museums in Collecting Policies

Each museum should recognize the need for co-operation and consultation between all museums with similar or overlapping interests and collecting policies, and should seek to consult with such other institutions both on specific acquisitions where a conflict of interest is thought possible and, more generally, on defining areas of specialization. Museums should respect the boundaries of the recognized collecting areas of other museums and should avoid acquiring material with special local connections or of special local interest from the collecting area of another museum without due notification of intent.

Apart from the more detailed practical provisions of the *Code*, the first sub-paragraph of paragraph 3.2 already quoted was of special significance. It unambiguously denounced the effects of the illicit trade in relation to the national and international patrimony, explicitly declaring that a relationship between the marketplace and the initial illicit collecting exists, and reflecting the widespread concern about illicit trafficking among the great majority of

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ICOM members. The inclusion of this preamble was especially important in terms of achieving an overall consensus over the final text of the *ICOM Code of Professional Ethics,* particularly since many institutional and individual members in all parts of the world covering museums of all types were no longer prepared to support the purchase of exhibits from the antiquities market under any circumstances.

Since 1986, the number of professionals taking this view—that the commercial trade in excavated antiquities, even that which is legal under relevant national laws, is inherently unethical—has grown. A significant evolution in museums' policies regarding objects with questionable provenance can be shown through different examples in very recent years. In 1995, the Getty Museum in Los Angeles decided to revise its acquisition policy, giving more importance to the documented provenance of the acquired objects. In 1997, the Metropolitan Museum of Art in New York returned one piece to Cambodia that had been stolen from Angkor. The Honolulu Academy of Arts in Honolulu did the same with two similar pieces. The Ethnographic Museum of Stockholm returned one piece looted from Guatemala.

A very interesting solution was found between Ecuador and the Rimini Museum in Italy: several thousands of objects that were requested for return to their country of origin were finally left in the Italian Museum on a long-term loan, once the ownership of the objects was properly established. This last example shows the advantages of dealing on a museum-to-museum basis, even though the governmental authorities played a critical role in this specific case.

This evolution in the mentality of museum professionals has also reached the players of the art market: collectors, dealers, and auction houses. For example, following the awareness campaign launched by ICOM through its publication *Looting in Angkor,* some private collectors, voluntary returned Khmer art without receiving indemnities from the country of origin. The same restitutions were won for different African pieces, the latest return coming from a collector who, in Brussels on November 28, 1997, returned to Zambia a Nalindele mask, which was featured in the ICOM publication *Looting in Africa.* Along the same lines, Sotheby's London issued a statement in July 1997 indicating its sensitivity to "issues of patrimony and heritage," which led to major changes in its Antiquities and Indian departments.

Indeed, we still have to deplore public statements or behaviors that are not yet in line with the *ICOM Code of Professional Ethics.* However, these appear to come from the last survivors of an old generation who try to perpetuate for their own selfish financial interests obsolete and unethical habits. The evolving mentality increasingly evident in the museum and antiquities professions and the change in habits this evolution brings must be reviewed when considering the evolution of laws.

Apart from the 1970 UNESCO Convention, whose relevance has to be

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underlined and ratification still encouraged by major art market countries (we should note that France finally ratified it in 1997), two important texts have considerably changed the legal environment: the 1993 European Directive and the 1995 Unidroit Convention. The principle of due diligence to be applied at the time of acquisition, which is stressed in the two texts, has helped considerably to provide a legal base to the principles of the *ICOM Code of Professional Ethics* and therefore reinforced the strength of its own requirements. The Native American Graves Protection and Repatriation Act (NAGPRA), adopted by the United States in 1990, also deserves special mention. This statute has altered considerably the situation in the United States and will certainly influence the future evolution of the museum profession worldwide.

3 LOANS AND EXHIBITIONS

The *ICOM Code* also includes two other very relevant provisions, as follows:

> 3.6 Loans to Museums
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> Both individual loans of objects and the mounting or borrowing of loan exhibitions can have an important role in enhancing the interest and quality of a museum and its services. However, the ethical principles outlined in paragraphs 3.1 to 3.5 above must apply to the consideration of proposed loans and loan exhibitions as to the acceptance or rejection of items offered to the permanent collections: loans should not be accepted nor exhibitions mounted if they do not have a valid educational, scientific or academic purpose.

> 4.4 Return and Restitution of Cultural Property
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> If a museum should come into possession of an object that can be demonstrated to have been exported or otherwise transferred in violation of the principles of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) and the country of origin seeks its return and demonstrates that it is part of the country's cultural heritage, the museum should, if legally free to do so, take responsible steps to cooperate in the return of the object to the country of origin.
>
> In the case of requests for the return of cultural property to the country of origin, museums should be prepared to initiate dialogues with an open-minded attitude on the basis of scientific and professional principles (in preference to action at a governmental or political level). The possibility of developing bilateral or multilateral co-operation schemes to assist museums in countries which are considered to have lost a significant part of their cultural heritage in the development of adequate museums and museum resources should be explored.

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Museums should also respect fully the terms of the Convention of Cultural Property in the Event of Armed Conflict (The Hague Convention, 1954) and, in support of this Convention, should in particular abstain from purchasing or otherwise appropriating or acquiring cultural objects from any occupied country, as these will in most cases have been illegally exported or illicitly removed.

In relation to paragraph 3.6, it is important to note that a growing number of museums are not only applying these principles to their own internal loans and exhibitions on their own premises, but also are refusing to lend their own collections to be shown elsewhere in what might be termed "doubtful company." For example, the British Museum's loans to the 1995 African Art exhibition at the Royal Academy in London were made conditional on the exclusion of certain items of allegedly extremely dubious provenance originally chosen for inclusion by the exhibition's curator.

4 DOCUMENTATION, HUMAN REMAINS

The professional conduct provisions in part III of the *ICOM Code* also address issues of relevance and in particular:

6.4 Documentation of Collections

The proper recording and documentation of both new acquisitions and existing collections in accordance with appropriate standards and the internal rules and conventions of the museum is a most important professional responsibility. It is particularly important that such documentation should include details of the source of each object and the conditions of acceptance of it by the museum. In addition, specimen data should be kept in a secure environment and be supported by adequate systems providing easy retrieval of the data by both the staff and by other bona fide users.

6.7 Human Remains and Material of Ritual Significance

Where a museum maintains and/or is developing collections of human remains and sacred objects, these should be securely housed and carefully maintained as archival collections in scholarly institutions, and should always be available to qualified researchers and educators, but not to the morbidly curious. Research on such objects and their housing and care must be accomplished in a manner acceptable not only to fellow professionals but also to those of various beliefs, including particular members of the community, ethnic or religious groups concerned. Although it is occasionally necessary to use human remains and other sensitive material in interpretative exhibits, this must be done with tact and with respect for the feelings of human dignity held by all peoples.

The very recent case of the Darder Museum in Spain, exhibiting a naturally preserved African Bushman, illustrates the relevance of article 6.7 of the *Code*.

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At the request of UNESCO and ICOM, the exhibit has been withdrawn from the public area and a proper solution of conservation for research is being sought.

5 AUTHENTICATION AND VALUATION

Finally, provisions of article 8.5 address the issue of valuation:

> 8.5 Authentication, Valuation, and Illicit Material
>
> Members of the museum profession are encouraged to share their professional knowledge and expertise with both colleagues and the general public. . . . Members of the museum profession should not identify or otherwise authenticate objects where they have reason to believe or suspect that these have been illegally or illicitly acquired, transferred, imported or exported. They should recognize that it is highly unethical for museums or the museum profession to support either directly or indirectly the illicit trade in cultural or natural objects (see paragraph 3.2 above), and under no circumstances should they act in a way that could be regarded as benefiting such illicit trade in any way, directly or indirectly. Where there is reason to believe or suspect illicit or illegal transfer, import or export, the competent authorities should be notified.

Considerable differences in practice appear in the museum profession, in the world, and sometimes within one country regarding authentication and valuation. While the vast majority of museum professionals refuse to value objects, a museum in Belgium has recently been attacked by an association of art dealers for unfair competition in this regard. Nevertheless, the provisions of the *Code* regarding valuation of illicit materials are very clear and should serve as a strict rule for the museum profession as well as for appraisers.

6 CONCLUSION

Recent cases allow for optimism regarding the application of the *ICOM Code of Professional Ethics* by the museum profession. The support provided by the new legal texts is critical. However, a strong diligence must be observed for these new assets not to be lost: the fight for a "global ethics" as stated in the Perez de Cuellar report on Culture and Development is not yet won.

SHORT BIBLIOGRAPHY

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