Chronicles

June 1996–July 1997

Robert K. Paterson* and Kurt Siehr**

Conviction in Canadian smuggling case – a Pyrrhic victory? June 1996

More than six years since being charged with importing cultural property into Canada that had been illegally exported from Bolivia, Roger Yorke was found guilty in June 1996, as charged, and subsequently fined C$ 10,000. To the writer's knowledge this is the first time anyone has been convicted under Canada's *Cultural Property Export and Import Act* [R. S. C. 1985, c C-51; s.37(2) (hereinafter called the "Cultural Property Act")] for illegally importing cultural property into Canada. [For a discussion of the history of the Yorke case prior to the final trial on the merits, see R. K. Paterson, *Bolivian Textiles in Canada*, 2 Int'l J. Cult. Prop. 359 (1993). The only other reported Canadian case on illegal import of illegally exported cultural property is *R. v. Heller*, (1983) 27 Alberta Law Reports (2d) 346; (1984) 30 Alberta Law Reports (2d) 130.]

The Yorke case strikingly attests to the difference between Canada and most other so-called market states, where the fact property has been smuggled out of another country usually has no legal consequence – civil or criminal – under the laws of the importing country. [The only other country to do so may be Australia, see Lyndel V. Prott and P. J. O'Keefe, *Law and the Cultural Heritage: Volume 3, Movement* (Butterworths, London and Edinburgh, 1989), at p. 754–755.] Canada's federal statute, however, makes such importations into Canada illegal and provides for fines up to $25,000 and jail terms of up to five years.

The effect of Canadian law is that any source country that is party to the 1970 UNESCO Convention may not only seek to obtain the return from Canada of property illegally exported under its laws, but may also have the satisfaction of seeing criminal charges laid in Canada against anyone involved who is subject to Canadian criminal jurisdiction. Mr. Yorke had been committed to stand trial under the *Cultural Property Export and Import Act* in November 1990. Yorke subsequently raised preliminary constitutional matters which, in large measure, led to the long delay in the commencement of his trial. Mr. Yorke's challenge of his committal, on constitutional grounds, did not succeed. When his trial first commenced in 1992,

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Mr. Yorke challenged the admissibility of evidence sought to be used against him and that had been seized at his Nova Scotia residence. Again, Mr. Yorke was not able to convince the courts that his constitutional rights had been infringed.

The trial took place before Mr. Justice Anderson of the Supreme Court of Nova Scotia, in Halifax, Nova Scotia. Before hearing the evidence against Mr. Yorke, the Court ruled on four submissions made on behalf of the accused dealing with jurisdiction and with section 7 of the *Canadian Charter of Rights and Freedoms* (see *Canadian Charter of Rights and Freedoms,* being Part 1 of Schedule B of the *Constitution Act,* R. S. C. 1985, Appendix 11, No. 44). As to jurisdiction, the accused argued that the charge against him, in effect, involved his prosecution for illegally exporting cultural property from Bolivia – an offence he contended was outside the territorial jurisdiction of the Nova Scotia Court. The Court found that, while it needed to determine whether what occurred was illegal under Bolivian law, the prosecution also had to prove separately all the elements of what was an offence established under Canadian law. The Court, therefore, conduded that it had jurisdiction in the matter before it.

The other preliminary matters raised by Mr. Yorke all involved section 7 of the *Canadian Charter of Rights and Freedoms* which guarantees as follows: "Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice."

The Court dismissed Mr. Yorke's argument that sections of the *Cultural Property Act* were so vague as to violate section 7. The Court also found no merit in Mr. Yorke's argument that section 7 was violated because the Act's provisions failed to meet minimum constitutional standards. Finally, the Court found the offence with which Mr. Yorke was charged to be one of strict (but not absolute) liability which also satisfied minimum constitutional standards.

Anderson, J. next reviewed the evidence against Mr. Yorke. He described how Mr. Yorke had lived in South America for nine years and while there collected textiles of indigenous inhabitants of Peru and Bolivia. Mr. Yorke had a store in La Paz, Bolivia, and used native buyers to acquire items for sale. While living in South America, Mr. Yorke formed a partnership with Steve Berger, an American citizen, to carry on the business of buying and selling Bolivian textiles. On dissolution of the partnership in 1984, Yorke had the responsibility of shipping textiles formerly held by the firm to both the United States and Canada. Anderson, J. was impressed with Mr. Yorke's extensive knowledge of the culture of Bolivia's indigenous peoples. On the other hand, Anderson, J. found that this very sophistication made it more likely that Mr. Yorke would know about Bolivian laws pertaining to his business activities in that country.

The Court reviewed some of the evidence of the Crown (prosecution) witnesses. These included customs and police officers who had

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been involved in the seizure of property at Mr. Yorke's residence and related activities. One Crown witness was a Bolivian lawyer who had been able to describe and interpret the cultural property laws of Bolivia. Another witness was another store owner in Bolivia – Ms. Cristina Bubba-Zamora – a Bolivian social psychiatrist, who was also regarded as qualified to give opinion evidence as to Bolivian cultural property law. The accused apparently saw her evidence as lacking credibility, particularly since she had formerly been his business competitor in La Paz.

The reasons of the Court in respect of various defences raised by Mr. Yorke are very briefly stated. Anderson, J. reiterated his rejection of the constitutional arguments raised in relation to the *Cultural Property Act* based on section 7 of the *Charter of Rights and Freedoms.* Without giving reasons, the Court also rejected an argument that the Bolivian cultural property law did not conform to the 1970 UNESCO Convention and that the Crown had failed to prove the age and provenance of the textiles involved.

Since his conviction and sentencing, Mr. Yorke has applied to and been granted leave by the Nova Scotia Court of Appeal to appeal his conviction. Amongst the grounds of his appeal are that parts of Canada's *Cultural Property Act,* upon which Mr. Yorke's conviction was based, are unconstitutional and that Ms. Bubba-Zamora's evidence should not have been regarded as credible by the trial court.

While Canadian federal authorities are no doubt pleased to have obtained a conviction, others may question the efficacy of the strategy adopted. In the over six years that it has taken to convict Mr. Yorke, a valuable collection of fragile artifacts has faced the vicissitudes of changes in temperature, humidity, dust and light – not to mention insects! David Walden, Secretary of the Canadian Cultural Property Export Review Board (the Canadian agency responsible for the *Cultural Property Act)* has described how the seized objects in the *Yorke* case became contaminated by moths, which the initial use of pesticides failed to eliminate. (For the history of how these factors affected the collection in *Yorke,* see David A. Walden, *Canada's Cultural Property Export and Import Act: The Experience of Protecting Cultural Property,* [1995] Special Issue, University of British Columbia Law Rev. 203, 210–213). Furthermore, any claim Bolivia may have to recover physical possession of the textiles remains outstanding. Unlike the Canadian *Customs Act,* the *Cultural Property Act* has no forfeiture provisions in the case of illegal imports under the Act. The textiles are still in police custody, pending a possible Bolivian request that the Attorney-General of Canada seek a court order that they be returned to Bolivia R. S. C. 1985, c.C-5l, s.37(3)–(5).

Much of the delay in this case arose from its criminal nature and the concomittant heavy onus of proof on the Crown and extensive constitutional guarantees afforded the accused. I have already argued that such factors favour civil proceedings to secure the early return

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of illegally removed cultural property, see this Journal 1993, 365–67. Nothing surrounding Mr. Yorke's conviction has undermined the strength of these arguments.

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30 August 1996 *Agreement of New Zealand to return a Maori meeting house.*

The recent agreement to return a Maori meeting house (wharenui) in New Zealand represents the culmination of lengthy negotiations between the government of the country and the Bay of Plenty Maori tribe (iwi) of Ngati Awa.

Mataatua (the House) is a Maori meeting house that was built by the Ngati Awa tribe between 1872 and 1875, at Whakatane, on the North Island of New Zealand. In 1879, the New Zealand government asked the chiefs of Ngati Awa to allow the House to be dismantled and sent on to London where it was kept in storage at the Victoria and Albert Museum for some 40 years. In 1924, it was reassembled for display at the Wembley Exhibition in London. In 1925, Mataatua was returned to its homeland, for the Dunedin South Seas Exhibition of that year. Following that event, the House was given on permanent loan by the New Zealand government to the Otago Museum, in Dunedin, New Zealand where it remained until this year. See Hirini M. Mead, *The Mataatua Declaration and the Case of the Carved Meeting House Mataatua*, [1995] Special Issue, University of British Columbia Law Review 69.

A request for the return of the house to the Ngati Awa people was first made in 1983. In response to the request, the New Zealand Minister of Internal Affairs, referring to the statute of limitations, advised the tribe to negotiate directly with the trustees of the Otago Museum. Subsequently, the New Zealand government suggested that the tribe include the House amongst issues affecting it that were already before the Waitangi Tribunal (a specialized judicial body which resolves legal issues affecting New Zealand's Maori people). The Ngati Awa considered commencing civil proceedings in conversion against the New Zealand government but eventually decided against bringing court action.

Negotiations between the Ngati Awa and the New Zealand Minister of Justice, Douglas Graham, began in 1995 and eventually concluded with agreement that the House be returned. As part of this process, the New Zealand government agreed to pay the Otago Museum NZ$ 2.75 million for the House, and an agreement dated August 30, 1996, was executed by both sides. Simultaneously, a Deed of Settlement and a Covenant were signed between the New Zealand government and Ngati Awa whereby title to the House vested in the latter. A formal ceremony also took place at which two carved portions of the House were delivered to the Ngati Awa, who also received NZ$ 2 million from the government to help repair and reinstate the House and build a modern protective facility.

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The chair of the Otago Museum Trust Board, Elizabeth Hanan, has stated that her Board does not consider the return of the Mataatua constitutes a precedent for the return of other parts of the collection of her museum. She has also been quoted as saying that neither the New Zealand Crown nor the Ngati Awa could definitively prove legal title to the House. Her museum will use the compensation it has received to build another meeting house: see New Zealand Herald (Auckland), July 4, 1996.

Robert K. Paterson, Faculty of Law, University of British Columbia. The author wishes to acknowledge the kind assistance of Professor Hirini Moko Mead in providing him with information for this note.

November 1996

An important statue of a lion feasting on the head of a bearded man was discovered buried in the mud of the River Almond, just outside Edinburgh, Scotland. Of white sandstone, and measuring 150 x 80 cms, it is remarkably well-preserved and is thought to be one of a pair which flanked the tomb of a senior Roman officer. Nothing of this quality has been discovered before north of the line of Hadrian's Wall, and it is of particular interest as this part of Lowland Scotland only remained under Roman colonial rule for about 100 years (2nd/3rd centuries AD). Further excavation of the area is planned: *The Times*, 21 January 1997.

6 December 1996

A conference organised by the Incorporated Society of Valuers and Auctioneers under the title 'Art Crime and the Auctioneer' was held at the Metropolitan Police Headquarters. It was designed to help the salerooms deal with the problem of suspected stolen goods which they had been instructed to sell. The Conference examined a code of practice prepared by the Norfolk Constabulary for auctioneers in that county and confirmed the great need for specialist police officers who could work effectively with the salerooms. Information by Richard Crewdson, London.

16 December 1996

European Council Regulation (EC) No. 2469/96 amended the Annex to Regulation (EEC) No. 3911/92 of 9 December 1992 on the export of cultural goods (*supra* p. 379). This Annex is extended by a new category 3a: "Watercolours, gouaches and pastels" if worth more than 30.000 ecus. The Regulation (EEC) No. 3911/92 differed in this respect in some official languages.

December 1996

Ecuador agreed to exhibit Pre-Columbian art, illegally exported from Ecuador to Italy and labelled "Property of the State of Ecuador" in the Museum of Extraeuropean Cultures of Rimini (Italy) for a period of twenty years. The exhibited 195 artefacts were imported by an Italian collector of Biella (Italy). As in the famous *Danusso* case of the Tribunale di Torino of 25 March 1982 (Casa della cultura ecuadoriana c. Danusso), the honorary consul general of Ecuador in Torino brought suit against the collector and asked for return of the Ecuadorian State property. The lawsuit was successful

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and thereafter the exhibition agreement was stipulated: *The Art Newspaper*, February 1997, p. 21.

17 February 1997 — European Council Directive 96/100/EC amends the Annex to Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a member State (*supra* p. 387). The Annex is extended by a new category 3a: "Watercolours, gouaches and pastels" if worth more than 30.000 ecu. The Directive 93/7/EEC differed in this respect in some official languages. *Official Journal of the European Communities* L 60 of 1.3.1997, p. 59.

3 March 1997 — The United Kingdom introduced new export regulations by publication of the paper of the Department of National Heritage "Export Licencing for Cultural Goods". *The Art Newspaper*, April 1997, p. 7, and Richard Crewdson, Waverley Adrift, this Journal 1997, p. 353.

6/7 March 1997 — METRO, the institute for transnational legal research of the Maastricht University, organized, in collaboration with the European Fine Art Fair (TEFAF), a conference on "Law and Art – The Free Movement of Cultural Property" in Maastricht, Netherlands. The press release of METRO reads: "In the past few years, many international and European legal instruments concerning cultural property have been accepted .... The ratification process of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995) has begun. The Netherlands intends to ratify this Convention in the near future. All these regulations have serious consequences for the international trade in art and cultural objects.
The objective of the conference is to highlight and discuss the advantages and disadvantages of the international and European legal instruments in this field and their consequences for both the national legal order and the international trade in art. The conference is intended to provide lawyers (academics, civil servants and practitioners) and participants in the art market (art dealers, collectors, gallery directors and museum experts) with the opportunity to exchange experience with professionals from various countries and fields. Many internationally well-known experts will give presentations. Workshops and a Round Table shall be organized to deepen the discussion in some areas."

20 March 1997 — A judge has dismissed charges of desecration of a body that were brought against a Blanding physician and his wife following the unauthorized excavation of an ancient burial site in southeastern Utah. At a preliminary hearing in 7th District Court on 20 March 1997, Judge Lyle Anderson dismissed the felony counts, contending the law was not intended to apply to ancient bones. James and Jeanne Redd were charged in October 1996 with abuse or desecration of a dead human body and trespassing on state trust lands. The Redds were subsequently served notice that the Utah School and Institutional Trust Lands Administration has filed suit against them

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seeking at least $ 250,000 in damages. The complaint contends the "uncontrolled excavation of the site and removal of artifacts and human remains resulted in a permanent and substantial loss of information about the prehistory of southeastern Utah to the scientific community and Utah's schools." The site, in Cottonwood Wash just north of Bluff, is listed on the National Register of Historic Places. Local and federal law-enforcement officers described their investigation into a Jan. 6, 1996, report that the Redds and three of their children were raiding artifacts and bones from a prehistoric Pueblo site that includes remnants of a 30-foot-wide dwelling, ceremonial kiva, courtyard and midden burial site.
Information submitted by Anita Cohen-Williams, Auto Club of Southern California, to AIA-L electronic bulletin board.

March 1997

The prosecution of Jack Meador's heirs for dealing with the stolen treasure of Quedlinburg (see this Journal 1992, p. 215), dismissed in October 1996 (see this Journal 1997, p. 165), may be reopened: *The Art Newspaper*, April 1997, p. 8.

March 1997

A list of 16.558 "degenerate" works of art seized by the Nazis has been "discovered" by Andreas Hüneke of Potsdam in the London Victoria & Albert Museum. The list had been compiled by the Institute for German Cultural and Economic Propaganda in 1941, was acquired by the late Heinrich (Harry) Fischer (no relation of Theodor Fischer of Lucerne), founder of the London Marlboro Fine Arts Gallery, and after his death donated with other papers to the Victoria & Albert Museum. This list may shed some new light upon the history of famous pieces of art: *The Art Newspaper*, May 1997, p. 4.

March 1997

On January 30, 1997, Sotheby's New York successfully auctioned a painting by Sandro Botticelli entitled "Portrait of a Young Man in a Red Cap" (1484), one of the few portraits by Botticelli which has survived. The sellers of the painting were Italian art traders who consigned the painting to Sotheby's through a New York intermediary.
Within days of the auction, and following a review of the Sotheby's auction catalogue, a demand was made on Sotheby's not to release the painting, because a competing ownership claim was made by a family of Holocaust survivors whose art collection had been looted by the Nazis. The claimants, Nick, Simon and Lilli Goodman, represented by Thomas R. Kline, Esq., of Andrews & Kurth LLP, asked that the painting be returned to them. Under New York law, theft victims stand a good chance of recovering their lost art – even against "good faith" purchasers, who may have owned the painting for many years, may have purchased the work for fair market value at auction, and may have had no idea that the work had once been stolen.
In March, the parties settled the dispute over the painting by allowing the auction sale to be completed with the parties each to share

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a percentage of the proceeds. The Goodmans have stated that they were most satisfied with the terms of the settlement.
The Goodmans are pursuing the recovery of several other paintings now in the U. S. and abroad which were once part of their family's collection. These efforts have included the presently-pending litigation against Daniel Searle, trustee of the Chicago Art Institute, for the recovery of a Degas painting valued at approximately $ 850.000. Press release of 16 April 1997 by the Society to Prevent Trade in Stolen Art, Washington, D. C.

March 1997 The Metropolitan Museum of Art in New York returned two ancient sandstone busts of the Angkor period of the Khmer empire to Cambodia. These pieces were illegally exported and recorded in a Cambodian list of lost art objects. One of the busts was donated to the Museum in 1985: *Neue Zürcher Zeitung*, 20 March 1997, p. 20.

March 1997 The case Erisoty v. Rizik (this Journal 1997, p. 164) was settled out-of-court while the case was on appeal to the U. S. Court of Appeals for the 3d Circuit. The District Court had held that an innocent buyer of a stolen work of art who must return the painting to the original owner is not entitled to compensation for money spent on restoration: 22 *ARTnewsletter* no. 17, 22 April 1997, p. 4.

Spring 1997 A prosecution of a hunting guide and his colleagues is taking place in California for illegal possession or obtaining of Native American human remains from a grave. The legal action follows a raid on Santa Cruz Island after National Park officials were notified by the local Chumash people that they suspected that graves were being disturbed. In the past the Chumash have allowed the exhumation of remains at Santa Cruz so that ancient DNA could be studied. This ancient DNA will now be matched against that of human bones turned over by one of the defendants, thus proving that they came from a Chumash grave. *Ground* notes that this could be the first time ancient DNA is used in a U. S. criminal case. 2 *Ground* (publication on archaeology and ethnology in the public interest of the National Park Service of the United States) No. 1, p. 9–10. Information by Lyndel Prott, Paris.

1 April 1997 The Swiss Federal Court upheld a decision of a Geneva court ordering the return of a painting by Alexandre-François Desportes (1661–1743) stolen in France and held by a collector in Geneva who claimed to have acquired it *bona fide*. The French application to return the painting was an application for international judicial assistance in criminal matters. Under Swiss law the person claiming to be the owner must give evidence for a *bona fide* purchase. This he could not do because he acquired the painting from an unknown seller, did not ask for the provenance and, as a connoisseur, paid little money for a valuable painting: 123 *Arrêts du Tribunal Fédéral Suisse*, part II, p. 134.

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Lithuania was the first State to ratify the Unidroit Convention of 24 June 1995 on Stolen or Illegally Exported Cultural Objects, 5 International Journal of Cultural Property 155 (1996). The Convention enters into force when five States have ratified, accepted, approved, or acceded to it: Unidroit 1997. Work Programme 1996–1998, Update 2, p. 33; 2 *Uniform Law Review N. S.* 314 (1997). — 4 April 1997

120 French museums started to exhibit about 1500 art objects of the 2058 objects of unknown private owners kept since 1949 as "Musées Nationaux Récupération" (MNR) by the Direction des Musées de France (DMF). The French Cour des comptes (court for public accounting) had reminded public museums to return treasures not belonging to them: *Le Journal des arts,* March 1997, p. 35; April 1997, p. 3; *22 ARTnewsletter* no. 17, 22 April 1997, p. 6; and Hector Feliciano, *The Lost Museum*, New York 1997, pp. 213 et seq. Also in other countries public collections have to divest themselves of treasures formerly owned by Jewish collectors. As to Germany, see 22 *ARTnewsletter* no. 18, 6 May 1997, p. 8; Italy, see *Neue Züricher Zeitung,* 24/25 May 1997, p. 9; Netherlands, see *Art*, August 1997, p. 115; Norway, see *Frankfurter Allgemeine Zeitung,* 19 June 1997, p. 35; Switzerland, see *Neue Zürcher Zeitung,* 22 January 1997, p. 43, and 7/8 June 1997, p. 14; United Kingdom, see *Neue Zürcher Zeitung,* 14 April 1997, p. 34. As to Austria, see supra p. 247: Seidl-Hohenveldern on the Mauerbach auction of Vienna in October 1996. — 8/9 April 1997

The French Council of Ministers adopted the bill reforming the sale by public auction and adjusting French law to EEC law by opening France for foreign auction houses: *Le Journal des arts,* May 1997, p. 27. — 9 April 1997

The European Parliament in Strasbourg voted in favour of adopting the proposed EEC Directive on the resale right for the benefit of the author of an original work of art, obliging all EEC countries to introduce a droit de suite of 2–4% of the value of a piece of art resold by public auction or through an agent: *The Art Newspaper,* July/August 1997, p. 51. — 9 April 1997

Police, Cultural, and Legal Attachés from more than forty countries gathered at the French Embassy's Maison Française in Washington for one of the largest privately-sponsored multi-national conferences ever held concerning stolen fine art and cultural property. — 10 April 1997

Stolen fine art may well be the second largest crime in the world. In terms of dollar amounts, it is surpassed only by illicit drug trafficking. Stolen works of art include paintings, sculpture, jewelry, books, manuscripts, and articles of religious, archaeological, or cultural significance. Because the United States is the "art capital of the world," a significant percentage of these treasures may already reside in public or private collections.

Organized by the non-profit Society to Prevent Trade in Stolen Art (S. T. O P.) and hosted by the French Embassy, the program's speak-

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ers from the F. B. I., U. S. Customs Service, INTERPOL, and the U. S. Department of Justice explained types of law enforcement assistance for individuals or foreign governments seeking to recover stolen art found in the United States. S. T. O P. representatives discussed civil and commercial remedies available in the U. S. "Cultural property which is inherent to one's own country is of inestimable value – so it is impossible to place a precise monetary value on how much stolen art is traded annually," says Angela Meadows, Senior Analyst of INTERPOL's Cultural Property Program. F. B. I. Supervisory Special Agent Richard Sylvest estimates that the figure may be as high as six billion dollars. "Unfortunately, the recovery rate for stolen art has been very low – approximately 6% worldwide."

Panelists nonetheless had several success stories to illuminate both the problems in dealing with stolen art and the resources available in tracking and recovering it. F. B. I. Program Analyst Lynne Richardson reported on the F. B. I.'s recovery in Los Angeles of nine stolen Old Masters valued at $ 9 million. Agents searching the house of a suspect found them hidden behind a sheet rock wall. The speakers agreed that a clear, detailed description of a stolen object, as well as photographs, are almost essential to recovery. These greatly aid in the distribution of information to the art world about works that have been stolen. Clear descriptions and photographs also enable identification and return to the rightful owner of already-recovered art and cultural objects. Press release of 21 April 1997 by S. T. O P.

12 April 1997 A fire destroyed parts of the cathedral of Torino (Italy), the famous chapel of the Holy Shroud designed by Guarino Guarini (1624–1683) and 84 paintings deposited in the neighbouring Royal Palace of Torino. *Il Giornale dell'arte,* May 1997, pp. 37 et seq.

This incident is one of the recent fire disasters striking famous monuments of art and cultural treasures. In August 1994 the Norwich Central Library lost more than 100.000 books (this Journal 1995, p. 150); in January 1996 the Venetian opera house "Teatro La Fenice" was destroyed completely (this Journal 1996, pp. 350); in September 1996 the library of Linkoeping (Sweden) lost 300.000 books (this Journal 1997, p. 163), and recently in July 1997 the Palais de Chaillot in Paris, housing two museums, caught fire.

21 April 1997 Exactly 2750 years after the traditional founding of Rome in 753 BC a copy of the equestrian statue of Marcus Aurelius (138–161 AD) was installed on the Capitol of Rome. This ancient statue escaped babarian and Christian vandalism because the rider was held to be Caesar Constantine (306–337 AD) who favoured Christianity. Now a sort of "ecological vandalism" struck Marcus Aurelius. Acid rain and the smog of Rome caused deterioration of the monument which withstood many centuries and also a bomb attack in 1979. The original was restored and placed in the new palace of the Museo Capitolino: *Frankfurter Allgemeine Zeitung*, 21 April 1997, p. 9.

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Fabrizio Lemme, professor of law in Siena, attorney-at-law in Rome, art collector and as "avvocato dell'arte" regular contributor to the Giornale dell'arte, donated twenty paintings of Roman artists of the 17th and 18th century to the Musée du Louvre in Paris. These paintings are permitted to be exported because Mr. Lemme donated 27 art objects to the Galleria Nazionale d'Arte Antica (Palazzo Barberini) in Rome and because the rest of his collection is notified as cultural treasure not to be exported unless permitted by a government licence. These donations are, as Mr. Lemme told the press, the expression of his "lonely battle for a Europeanization of culture" and his opposition to a nationalistic policy as advocated, especially by Italy, within the European Union and as expressed and enforced by the European Directive 93/7/EC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State: *Il Giornale dell'arte,* June 1997, pp. 1 and 9. — 24 April 1997

Seven miniature paintings, dating from around 1500, disappeared from the German state library at Kassel University around 1945. They were probably stolen by American soldiers at the end of World War II. In the mid-1970's, Mr. Chatalbash, of Boston, Massachusetts, purchased the paintings for a total of $ 200.00 – not a bad deal, considering that four of them are by Simon Bening, the most famous Flemish master of miniaturist painting, and that the paintings are collectively valued at approximately $ 500.000 to $ 1 million.
Furthermore, the fact that over fifty years have elapsed since the theft is also irrelevant. In most states of the U. S., including Massachusetts, the statute of limitations (defining the point when a victim can no longer sue in court to get the pieces back because too much time has elapsed) does not start until the moment when the theft victim – in this case, Kassel University – discovers, or should have discovered, the whereabouts of its missing art.
Collectors and dealers will be watching the upcoming trial with great interest: it is yet another example of artwork stolen during World War II which has recently surfaced on American soil. In all stolen art cases that have come to trial in the U. S. where an individual had not performed the "due diligence" research before purchasing the artwork, the original owners – the victims of the theft – recovered their works of art. Press release of 18 April 1997 by The Society to Prevent Trade in Stolen Art, Ltd., (S. T. O P), Washington, D. C. and *The Art Newspaper,* May 1997, p. 14; 22 *ARTnewsletter* no. 17, 22 April 1997, p. 3. — April 1997

A Utah pothunter who once boasted he had looted archaeological sites "thousands of times" must be resentenced, a federal appeals court ruled. A three-judge panel of the 10th Circuit Court of Appeals held that a federal district judge should not have enhanced Earl K. Shumway's sentence because of a "vulnerable victim" factor. In December 1995, U. S. District Chief Judge David Winder sentenced Shumway to 6 1/2 years in prison, the stiffest sentence ever imposed — 6 May 1997

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under the federal Archaeological Resources Protection Act of 1979. A jury found Shumway guilty of four counts of unauthorized excavation of two Anasazi sites, Dop-Ki Cave in Canyonlands National Park and Horse Rock Ruin near Allen Canyon in the Nanti-LaSal National Forest. At the trial, witnesses testified that Shumway and another man used a helicopter to reach the Dop-Ki Cave, where they excavated a number of artifacts, including the remains of an infant wrapped in a burial blanket. "When the damage to the site was later assessed, the only portion of the infant's skeleton remaining was the skull on top of the dirt pile," according to a court summary. While the appellate judges concluded that the sentence should not have been enhanced on the basis that the skeleton was a "vulnerable victim," they agreed with the District Court's assessment of damages, which is included as part of the sentencing criteria. "We agree with the district court the paltry sum of $ 9,122, the asserted cost of the artifact's fair market value and cost of restoration and repair, fails to reflect adequately the extent of damage Mr. Shumway inflicted," the court said. The amount was "grossly insufficient to quantify the devastating and irremediable cultural, scientific and spiritual damage Mr. Shumway caused to the American people in general and to the Native American community in particular," the judges said. According to court documents, Shumway admitted unter oath he had been digging artifacts from public lands ever since he was a child and that he had looted sites thousands of times. Information from Anita Cohen-Williams, Auto Club of Southern California submitted to the AIA-L electronic bulletin board.

7 May 1997 China acceded to the Unidroit Convention of 24 June 1995 on Stolen or Illegally Exported Cultural Objects, 5 *International Journal Cultural Property* 155 (1996). Unidroit 1997. Work Programme 1996–1998. Update 2, p. 33; 2 *Uniform Law Review N. S.* 314 (1997).

13 May 1997 The Russian Federation passed the Federal Law on Cultural Values that have been Displaced to the U. S. S. R. as a Result of World War II and are to be found in the Russian Federation Territory.
The first version of this Statute was passed by the Duma (Lower House of the Russian Parliament) on 5 July 1996 (this Journal 1996, p. 355). The Federation Council (Upper House) declined to agree to the bill. On 5 February 1997 the Duma passed a new version and on 5 March 1997 the Federation Council approved it. President Yeltsin exercised his veto. In April 1997 the Duma overruled this veto and on 13 May 1997 the Federation Council, by written ballot of the Council members not present in Moscow, gave its assent. In May 1997 President Yeltsin declined to sign the statute because only the *assembled* Federation Council can pass a statute. The Federation Council disagreed on 10 June 1997 and President Yeltsin may ask the Constitutional Court for a decision or the Federation Council may repeat the voting when it convenes next time.

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15 May 1997

The association "Art et Droit" of Golfe Juan (France) and the Faculty of Law of the University Lyon 3 held their first seminar in Lyon on "Works of Art and the Law of Succession". The main problem of the seminar was raised by the decision of the Cour de cassation of 17 October 1995 (Gazette du Palais 1996, Panor., p. 71): Are works of art part of the deceased's furniture and, up to a certain standard deduction, exempt from inheritance tax or are they, as an art collection, subject to taxation? Information submitted by Emmanuelle Nemoz-Nasseri, Association Art et Droit, Golfe Juan.

22 May 1997

The Italian Ministry of Cultural Property issued a circular letter on the temporary import of cultural objects of Member States of the European Union. According to this letter a temporary import will have to comply with several bureaucratic hurdles and therefore impede temporary exchanges: *Il Giornale dell'arte,* July/August 1997, p. 87.

29 May 1997

Christie's of New York withdrew a picture from a New York sale of Latin American paintings because the picture had belonged to a Havana family, was nationalised by Cuba, stored in the Museo Nacional of Havana and apparently offered for sale by the Government of Cuba: *The Art Newspaper,* July/August 1997, p. 1–2.
This seems to be another example of a State, presumed to be the guardian of the national cultural heritage, which is short of money and therefore decides to sell its treasures. This happened already once in the twenties and thirties when Stalin ordered the sale of the Codex Sinaiticus to the British Museum, valuable paintings from the Leningrad Hermitage to Mr. Mellon, Washington, and nationalised art objects at auction in Berlin (see Stroganoff-Scherbatoff v. Weldon, 420 F. Supp. 18 (S. D. N Y. 1997) and Anja Heuss, Stalin lässt versteigern, *Frankfurter Allgemeine Zeitung*, 8 March 1997, p. 41–42). Also the former German Democratic Republic organized to sell forfeited private art objects and national pieces of art in order to get hard currency (K. Siehr, The Return of Cultural Property Expropriated Abroad, in: *Comparative and Private International Law. Essays in Honor of John Henry Merryman*, Berlin 1990, pp. 431 et seq.).

May 1997

The International Council of Museums (ICOM) of Paris received reports about thefts at the "Institut des Musées Nationaux du Zaire" of Kinshasa (now: Republic of Kongo). Many treasures of this Institute had been transferred from Belgium (Musée de Tervuren) to Zaire in 1977. Now the stolen objects may surface in the art market. Similar incidents of vandalism have been reported from the former Yugoslavia and Albania: *The Art Newspaper,* July/August 1997, p. 5; *Le Journal des arts,* June 1997, p. 1.

May 1997

An agreement was signed between the United States and Canada. This instrument will allow Canadian authorities to repatriate scores of archaeological and ethnographic artifacts brought to the States

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without proper export permits. The agreement, which is not retroactive, was signed in accordance with provisions of the 1970 UNESCO Convention restricting illicit trade in cultural property. It will provide Canada with a legal mechanism to recover illegally exported artifacts associated with six Canadian Indian groups and various historic sites. American customs officials have been issued a 12-page Federal Register announcement listing the categories of Canadian Indian artifacts and items from historic sites that fall under the export restrictions: 22 *ARTnewsletter* no. 18, 6 May 1997, p. 6–8.

May 1997 A mosaic, likely to have been part of the Amber Room of the Tsar's residence close to St. Petersburg, plundered by German troops and since then lost, surfaced in Bremen (Germany) and was taken into police custody in Potsdam: *Il Giornale dell'arte,* June 1997, p. 2; *Frankfurter Allgemeine Zeitung,* 16 May 1997, p. 13.

May 1997 The lawsuit *City of Rome v. Barnes Foundation* was dismissed by the U. S. District Court in Philadelphia. The plaintiff alleged the breach of a contract with the defendant to exhibit the Barnes treasures in Rome after having been exhibited in Paris. Eventually the Barnes Foundation treasures went to Munich (Haus der Kunst) and not to Rome. The court denied a breach of contract and also tort liability: *The Art Newspaper,* September 1996, p. 3; June 1997, p. 2.

2 June 1997 Christie's in an announcement issued on the London stock exchange revealed that the firm had recently received a Grand Jury subpoena from the anti-trust division of the U. S. Department of Justice seeking documents relating to the conduct of the U. S. art market. The statement went on to say that Christie's Inc. understands that other U. S. auctioneers and several prominent New York art dealers also have been required to provide documents. Several sources acknowledged that the subpoenas request records dating back to 1992, relating primarily to attendance at auctions, credit arrangements with auction houses, and the practice of "rings" or "pools," that is, agreements between dealers not to compete against each other for particular works of art. Under such arrangements, the dealer or dealers agree not to compete at auction in return for a "shot" at the art after the sale in a "knock-out" competition. The losers in the "knock-out auction" receive financial compensation for not having bid at auction. Andrew Decker, 22 *ARTnewsletter* no. 21, 17 June 1997, p. 1–2.

4 June 1997 Sotheby's of New York sold at auction the de Menil collection of American Indian art. Although American Indian artifacts are subject to conflicting claims under the Native American Graves Protection and Repatriation Act (NAGPRA), 343 items were sold for $ 3.94 million. *The Art Newspaper,* July/August 1997, p. 36 and 55.

5 June 1997 In September 1995 several ancient art objects, allegedly stolen in Italy, were seized in Geneva. Italy asked for judicial assistance and

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transfer of these objects as pieces of evidence for an Italian trial of an Italian art dealer. The Swiss Federal Court declined to grant this assistance because the objects are needed for a Swiss trial and because not all objects have been proven to be of Italian provenance: *Neue Zürcher Zeitung,* 2 July 1997, p. 13.

In Washington, D. C., the Government of the United States of America and the Government of Peru signed the Memorandum of Understanding on import restrictions with respect to pre-Columbian archaeological artefacts, according to Article 9 of the UNESCO Convention of 1970 and according to § 303 of the U. S. Cultural Property Implementation Act (19 U. S. C. § 2602). Information received from Ms. Maria Ofelia Cerro Moral, Lima. — 9 June 1997

Auction of the contents of the Castle of Duino near Trieste (Italy) by the Paris auctioneers Beaussant & Lefevre. Having sold their treasures in Germany the family Thurn and Taxis now liquidated their estate in Duino for $ 5.87 million. Several art objects were not sold because they were notified as being subject to an Italian export ban. All this may have been the last "Duino Elegy": *22 ARTnewsletter*, 1 July 1997, p. 7; *Le Journal des arts,* July 1997, p. 53. — 11–14 June 1997

The Simon Wiesenthal Centre, an international Jewish human rights organization with headquarters in Los Angeles and a membership of over 400,000, convened a conference in Geneva entitled "Property and Restitution – A Moral Responsibility to History". — 23–25 June 1997

Twenty-seven experts from eighteen countries and three continents assembled in Geneva to present their findings on gold, real estate, objets d'art and other property plundered from the victims. Information from Shimon Samuels, Director for International Liaison, Simon Wiesenthal Centre, Paris.

In 1993 the altar of the Mayan ruler Ah Chak Wayib (Great Dreamer) was found at the Usumacinta River running along the border of Mexico and Guatemala. The Mexican government decided to extricate Ah Chak Waib from the jungle and preserve the altar in a safe place. On 27 June 1997 Peter Mathews of Australia and Mario Aliphat of Mexico, heading the rescue mission, were violently prevented by native people from removing the alter. "And that means the Great Dreamer remains in the jungle, perhaps now contemplating rescue, or perhaps his own destruction." Information by Paul Sherman in: *Time*, 14 July 1997, p. 48. — 27 June 1997

The Wadsworth Atheneum in Hartford, Connecticut, returned to Italy the painting "Toilet of Bathsheba" by Jacopo Zucchi (1541–1589) which disappeared from the Italian embassy in Berlin in 1945 and was purchased *bona fide* by the Atheneum in 1965 (L'opera da ritrovare, Rome 1995, p. 92 and 94, no. 169). In appreciation of this return the thankful Italian government will open next Spring in Hartford an exhibition of paintings of Caravaggio and his Italian follow- — June 1997

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ers from the Palazzo Barberini, Rome: *The Art Newspaper,* February 1997, p. 7, and July/August 1997, p. 10.

3 July 1997 The "Rudolf Staechelin Family Foundation" of Basel (Switzerland) issued this press release:
The UNIDROIT Convention of 1995 on the return of stolen or illegally exported cultural objects has been endorsed by a bare majority of the Swiss Federal Council. The general consensus among the most important Swiss art museums and collectors with respect to this Convention is that it will lastingly prejudice private and public art collections in Switzerland.
The Rudolf Staechelin Family Foundation feels compelled to relocate its collection outside of Switzerland. During the course of this summer, the Foundation will be withdrawing the collection holdings deposited for the past fifty years mainly at the Basel Kunstmuseum and, to a lesser degree, at the Geneva Musée d'Art et d'Histoire.
The Foundation deeply regrets that the very two museums with which it has so successfully collaborated over several decades, and which are so strongly opposed to the UNIDROIT Convention, should become the first victims of the pro-UNIDROIT biased and anti-culture policy of the Swiss Federal Office of Culture.
The collection will go on display at the Kimbell Art Museum of Fort Worth, Texas, for a three-year period starting in October 1997. The twenty-six works on loan comprise paintings by Impressionists (Manet, Monet, Pissarro, Degas), Post-Impressionists (Gauguin, van Gogh, Cézanne), and classic modernists (Picasso, Matisse), as well as a body of works by Ferdinand Holder.
Should a satisfactory solution with respect to UNIDROIT enable the resumption of our collaboration with the Basel Kunstmuseum, it would be the express wish of the Foundation to again put a core portion of its collection on public display in Basel, once the loan agreement with the Kimbell Art Museum expires. See also *Neue Zürcher Zeitung,* 4 July 1997, p. 14 and 11 July 1997, p. 43; *Frankfurter Allgemeine Zeitung*, 12 July 1997, p. 34; *22 ARTnewsletter* no. 23, 15 July 1997, p. 3.

17 July 1997 The London High Court decided the case *Nahum v. Royal Holloway College* in favour of the art dealer Peter Nahum. The Royal Holloway College sold three paintings of its collection in 1995: Chong, The Case of Thomas Holloway's Picture Collection, 5 International Journal of Cultural Property 167 (1996). Mr. Nahum claimed that he was owed a commission on the £6.7 million sale of John Constable's "View on the Stour" (illustration in 5 International Journal of Cultural Property p. 178): 22 *ARTnewsletter* no. 23, 15 July 1997, p. 3, and no. 24 of 29 July 1997, p. 4.

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