The War against the Illegal Antiquities Trade: Rules of Engagement for Source Nations

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The War Against the Illegal Antiquities Trade: Rules of Engagement for Source Nations

JASON McELROY*

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“Sed postquam Roma egressus est, fertur saepe eo tacitus respiciens postremo dixisse: 'urbem uenalem et mature perituram, si emptorem inuenerit.’”

The current war in Iraq has brought the world’s attention once again to the fate of our history and the means through which we know it. As the war in the country that now stands in the Fertile Crescent between the Tigris and the Euphrates rivers wore on, looters invaded museums and libraries and stole, burned or destroyed thousands of Sumerian, Akkadian, Assyrian, and Babylonian treasures. These treasures contained information about many of the world’s first known cities, legal systems and language—and much of this information may be lost forever. This problem is not isolated to Iraq, though, and it certainly has been around long before the United States and its allies invaded. The illicit trade in stolen art and artifacts is steadily growing in the United States, and has become the third largest contributor to international crime.

However, this paper is not proposing any changes to existing laws or the adoption of new legal systems to deal with this problem. Instead, this paper is proposing a set of guidelines by which source nations can better prepare themselves for the inevitable attempt to retrieve what has been taken from them. By recognizing the fact that the market for these antiquities is growing and has not been deterred by any current legislation, source nations can realistically focus on the process by which they must retrieve their valuable items. It is this paper’s hope that if source nations show a vigorous interest in retrieving their treasures, and become adept and successful at doing so, the demand for illicit antiquities will decrease as buyers become more cautious of what they are buying.

Part I of this paper briefly discusses the scale of looting throughout the world, and the problems these actions present. Part II is a detailed account of different nations successful battles to retrieve their stolen cultural treasures through settlements. Part III examines
the cases of *Autocephalous Greek Orthodox Church v. Goldberg*⁵ and *Solomon R. Guggenheim Foundation v. Lubell*⁶ for an explanation of different ways the statute of limitations can be tolled and how this will help source nations prevail in a U.S. civil suit of replevin. Part IV concludes with a list of recommended guidelines for source nations to follow so they can improve their chances of succeeding in attempts to recover their looted works of cultural treasure.

**I. Why Fight the Battle?**

Archaeology is defined as “[t]he systematic study of past human life and culture by the recovery and examination of remaining material evidence, such as graves, buildings, tools, and pottery.”⁷ In order to examine the remaining material evidence, it must in fact be remaining. Estimates place the number of stolen pieces of art from such developed western European nations as Italy at 30,000 per year.⁸ The problem is much worse in underdeveloped source nations such as China, where the government believes that antiquities have now become the country’s leading illegal export⁹:

Over the past five years, at least 220,000 ancient Chinese tombs have been broken into ... The dramatic ransacking of Baghdad’s national museum during the Iraq war may have grabbed headlines. ... but the consistent, widespread and largely unremarked looting of Asia is far more damaging. “There is a feeling that Asia is filled with endless supplies of cultural relics ... [b]ut if the looting continues at this pace, we'll soon have nothing left to remind us of our glorious past. Baghdad was just a few weeks of destruction. Our heritage is experiencing a major blow every week, every month, every year.”¹⁰

This is a widespread problem, from the tombaroli¹¹ in Italy to the tomb robbers in Asia. These artifacts then find their way, undocumented, into private collections and museums throughout the world.

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5. *Autocephalous Greek Church of Cyprus v. Goldberg*, 917 F.2d 278 (7th Cir. 1990).
9. *Id.*
One of the most criticized museums in the world for buying undocumented artifacts is the J. Paul Getty Museum in California.\textsuperscript{12} It has been repeatedly criticized for not making attempts to verify the documentation of pieces it buys, but has recently changed its buying philosophy and will no longer buy anything that does not have an established record of possession before November 1995.\textsuperscript{13} Not only have museums come under fire for not verifying provenance, but prominent private collectors have come under fire as well. In 2003, in \textit{U.S. v. Schultz}, the second circuit ruled against a collector named Schultz in New York.\textsuperscript{14} Schultz was a prominent New York collector who was convicted by the federal government for violations of the National Stolen Property Act ("NSPA") in connection with Egyptian artifacts he had bought.\textsuperscript{15} The NSPA is the implementation tool through which all international controls on the transfer of cultural property are enforceable in the United States.\textsuperscript{16}

When archaeological evidence is stolen from its original place, archaeologists do not know where exactly it came from or how it was situated when it was found. This makes it impossible for the researchers to "study and record exactly where and how each object was buried and how it relates to other objects."\textsuperscript{17} Once looters have taken an artifact from its original placement, even if it is found, it is virtually impossible to replace it to its original context.\textsuperscript{18} The stolen material can still be studied, however, and the retrieval of looted materials leads to a greater understanding of the overall context of

\begin{itemize}
  \item\textsuperscript{13} \textit{Id}.
  \item\textsuperscript{14} \textit{U.S. v. Schultz}, 333 F.3d 393 (2d Cir. 2003).
  \item\textsuperscript{15} \textit{Id.} See also Barry Meier & Martin Gottlieb, \textit{An Illicit Journey Out of Egypt, Only a Few Questions Asked}, N.Y. TIMES, Feb. 23, 2004, at A1 (detailing the tomb raiding process as well as the process through which the Egyptian artifacts in \textit{Schultz} came to rest in the U.S. and with Schultz.)
  \item\textsuperscript{17} Paul M. Bator, \textit{An Essay on the International Trade in Art}, 34 STAN. L. REV. 275, 301 (1982).
  \item\textsuperscript{18} "An art object which has been excavated by \textit{huaqueros} can rarely be traced to its place of origin even by experts. With no clear historical significance, therefore, the object can only be, forevermore, beautiful but dumb." Clemency Coggins, \textit{The Maya Scandal: How Thieves Strip Sites of Past Cultures}, SMITHSONIAN, Oct. 1970, at 8 quoted in Bator, 34 STAN. L. REV. at 301 ("\textit{huaquero}" is a Spanish term for tomb raider or pillager, particularly in Latin America).}
\end{itemize}
the site.\textsuperscript{19} Once the artifacts have been taken from their original context, though, much that can be learned from them is lost.

An unfortunate example of this problem is the statue referred to as the Weary Herakles, which currently sits in the Boston Museum of Fine Arts.\textsuperscript{20} This particular statue is called Weary Herakles because it shows Herakles leaning on his club.\textsuperscript{21} In 1980, Turkish archaeologist Jale Inan was the head of an archaeological site at Perga in southern Turkey.\textsuperscript{22} This site was a strong source of classical sculpture, and one day rumors began to spread about a large object that had been stolen.\textsuperscript{23} The team followed a suspicious worker home and found many stolen artifacts from the site, but it wasn’t until later in the summer that the team realized that something much larger had been taken.\textsuperscript{24} This realization came upon the discovery of the lower half of a three-quarter-life-size statue of a Weary Herakles.\textsuperscript{25}

Meanwhile, in 1981, the top half of a Weary Herakles statue had been bought by a collector named Leon Levy and his wife, Shelby White.\textsuperscript{26} They gave a partial interest to the Boston Museum of Fine Arts, which then began displaying the statue.\textsuperscript{27} Soon after the statue began its display at the Boston Museum of Fine Arts, photographs began to show up throughout the world of archaeology showing the resemblance between the two halves of the statue.\textsuperscript{28} The reaction caused by this resemblance led to the Turkish government’s commissioning a sculptor to make an exact replica of the bottom half of the statue.\textsuperscript{29} The replica was then flown to Boston, where the director of the museum, Cornelius Vermeule, allowed it to be

\begin{itemize}
\item \textsuperscript{19} Hellenic Ministry of Culture, \textit{available at} http://www.culture.gr/6/68/684/e68405.html. Speaking of the return of looted materials from a gravesite in Greece, the Greek Ministry of Culture said, “it valuably supplements the information gained from the systematic excavation of the Mycenaean cemetery at Aidonia. The treasure is now on exhibit in the Nemea Museum together with the finds of the excavation, providing a complete picture of one of the most important Mycenaean centers in Northeastern Peloponnese.”
\item \textsuperscript{21} Mark Rose and Ozgen Acar, \textit{Turkey’s War on the Illicit Antiquities Trade}, ARCHAEOLOGY, Mar./Apr. 1995 at 45.
\item \textsuperscript{22} Montalbano, \textit{supra} note 20, at A1.
\item \textsuperscript{23} \textit{Id.}
\item \textsuperscript{24} \textit{Id.}
\item \textsuperscript{25} \textit{Id.}
\item \textsuperscript{26} Rose & Acar, \textit{supra} note 21, at 48.
\item \textsuperscript{27} \textit{Id.}
\item \textsuperscript{28} Montalbano, \textit{supra} note 20, at A1.
\item \textsuperscript{29} \textit{Id.}
\end{itemize}
matched with the top half, and the two matched "as if they had been magnetized." ³⁰

After this seemingly eventful day in 1992, the museum said it would return the statue in two weeks. ³¹ Sadly, the top half of the Weary Herakles statue still remains at the Boston Museum of Fine Arts. ³² The museum claims that there is no evidence that the statue was stolen or that the break is not an ancient one. ³³ Even more disconcerting is the fact that, before leaving office, President Bill Clinton appointed Shelby White, one of the co-owners of the Weary Herakles statue, as a member of the United States' official advisory group on preventing plundering. ³⁴ With people such as Schultz and White serving as the moral compass for the United States on this issue, the imperative to protect and retrieve cultural treasures weighs even more heavily on the shoulders of the source nations themselves.

II. Successful Retrieval Attempts in the United States

In order to attain a set of guidelines for source nations to follow while pursuing the retrieval of their cultural property, we must look at past successful attempts. One of the most prominent parties in U.S. courts is Turkey, but Greece and Italy ³⁵ have both been successful in retrieving looted material from the United States. With one very important exception, ³⁶ the majority of these cases have been settled out of court. This section will focus on these settlements and the important factors that made the private U.S. parties decide to settle with the source nations.

A. The Aidonia Treasure

The ancient Mycenaean city of Aidonia is located on the Greek Peloponnesus and was used as a gravesite for the Mycenaean

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³⁰ Id.
³¹ Id.
³³ Montalbano, supra note 20, at A1.
³⁵ See Ann Brickley, McClain Untarnished: The NSPA Shines Through the Phiale Controversy, 10 DEPAUL-LCA J. ART & ENT. L. & POL'Y 315 (2000) (detailing the "Steinhardt case" about a golden phiale platter from Italy and how it eventually returned there through the U.S. customs service).
³⁶ Autocephalous Greek Church of Cyprus v. Goldberg, 917 F.2d 278 (7th Cir. 1990).
people. 37 These gravesites are large tombs cut into the natural rocky landscape of the area and often contain extravagant funeral offerings. 38 Many of these tombs date back as far as 3,500 years ago, and some of the funeral offerings that have been found in these tombs are gold jewelry, diadems, beads, and sealing stones. 39 In 1978, the Greek Archaeological Service learned that grave robbers had dug into these tombs, and they immediately sealed the area and began damage control. 40 What they found was disturbing: eighteen graves had been plundered. 41 One of the most important things that the archaeological service found, however, was what the looters had not taken. There was one burial chamber that the looters failed to enter, and the archaeological service found golden rings, beads and other objects that would serve as a sample group to identify what types of treasure were taken from the other tombs. 42 This discovery would turn out to be an integral factor in the retrieval process.

For fifteen years after the raid of the tombs at Aidonia, no signs of the stolen treasure showed up anywhere in the world. 43 But in April of 1993, a trove of treasure showed up in the Michael Ward Gallery in New York City. 44 The gallery was selling the artifacts for $1.5 million, and the exhibition was entitled “Gold of the Mycenaeans.” 45 After being tipped off by American scholars that this collection probably held some of the stolen treasures from Aidonia, Greece began an investigation of its own, focusing on its own test sample from the unlooted gravesite and concluded that the treasure at the Ward Gallery was indeed from the looted tombs at Aidonia. 46 In accordance with the demand and refusal rule, which says that a plaintiff must demand the return of property and be refused its return before filing suit, 47 Greece demanded the return of the treasure and

38. Id.
40. Id.
41. Id.
42. Id.
43. Id.
45. Id.
46. Id.
the Ward Gallery refused to return it. Greece then filed suit against the gallery.\footnote{Id.}

While Michael Ward still insists to this day that there is no connection between the two treasures,\footnote{Walsh, supra note 39, at A1.} he nevertheless decided to settle with the Greek government.\footnote{Ehl, supra note 44, at 675.} The settlement that he worked out allowed him to donate the treasure to a U.S. non-profit organization, allowing Ward to take a tax deduction and retain most of his original investment.\footnote{Id.} The two treasures bore “striking common characteristics in terms of iconography, style, technique and material.”\footnote{Hellenic Ministry of Culture, available at http://www.culture.gr/6/68/684/e68403.html.} This similarity allows archaeologists to determine that the two treasures must have come from the same place.\footnote{Id.} This, undoubtedly, played a major part in Ward’s decision to settle.

One of the biggest hurdles for source nations to jump in a case such as this is the determination of where the material originated.\footnote{Id.} In order to retrieve the looted material, the source nation must bring a replevin case.\footnote{See e.g., Kristin M. Romey, Corinth Loot Found under Fresh Fish, ARCHAEOLOGY, Nov./Dec. 1999 (telling how artifacts stolen from a Greek museum were recovered in Miami through the cooperative involvement of Greek authorities and the FBI) available at www.archaeology.org/9911/newsbriefs/corinth.html and Mark Rose, Back to Greece, ARCHAEOLOGY, Nov./Dec. 2000 (detailing an Australian Federal Police raid that resulted in objects being returned to Greece) available at http://www.archaeology.org/0011/newsbriefs/greece.html.} In a replevin action, “[t]he gist . . . is the defendant’s unlawful possession of the plaintiff’s property. The issue litigated is the present right to possession.”\footnote{Autocephalous Greek Church of Cyprus, 917 F.2d at 290.} A successful replevin claim must establish three factors: 1) right to possession, 2) unlawful detention of the property, and 3) the defendant wrongfully holds possession.\footnote{Id.} Like many other source nations, Greece has a national patrimony law, the Antiquities Act of 1932, which makes all ancient artifacts national property and prohibits digging for them and exporting them.\footnote{Walsh, supra note 39, at A1.} Thus, the right to possession is established as long as the treasures can be connected to a site within the source nation. In the case of the Aidonia treasure, the test sample found after the looters had left

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\footnote{48. Id.}
\footnote{49. Walsh, supra note 39, at A1.}
\footnote{50. Ehl, supra note 44, at 675.}
\footnote{51. Id.}
\footnote{52. Hellenic Ministry of Culture, available at http://www.culture.gr/6/68/684/e68403.html.}
\footnote{53. Id.}
\footnote{54. Walsh, supra note 39, at A1.}
\footnote{55. See e.g., Kristin M. Romey, Corinth Loot Found under Fresh Fish, ARCHAEOLOGY, Nov./Dec. 1999 (telling how artifacts stolen from a Greek museum were recovered in Miami through the cooperative involvement of Greek authorities and the FBI) available at www.archaeology.org/9911/newsbriefs/corinth.html and Mark Rose, Back to Greece, ARCHAEOLOGY, Nov./Dec. 2000 (detailing an Australian Federal Police raid that resulted in objects being returned to Greece) available at http://www.archaeology.org/0011/newsbriefs/greece.html.}
\footnote{56. Autocephalous Greek Church of Cyprus, 917 F.2d at 290.}
\footnote{57. Id.}
\footnote{58. Walsh, supra note 39, at A1.}
provided strong evidence that the treasure on display in the Ward Gallery was indeed from the site looted in 1983 (well after the effective date of the 1932 Greek Antiquities Act). Once the property has been stolen, it is unlawfully detained. In common law jurisdictions, such as the United States, a thief cannot convey good title.\(^{59}\) Thus the defendant would be wrongfully in possession of the property.

Through this analysis of the replevin standard, as used in *Autocephalous Greek Church of Cyprus v. Goldberg*,\(^ {60}\) we see that a large part of any replevin case brought by a source nation would revolve around the origin of the goods in question.\(^ {61}\) This emphasizes the importance of quick determination and documentation of the areas that have been looted, such as the Greeks did when they learned of the looting at Aidonia. This assures that a source nation will have its strongest case against a private person in the United States from the beginning.

**B. Turkey v. The Met**

In 1966, Turkish grave robbers looted several sixth century tombs in the region of Manisa and Usak.\(^ {62}\) The tombs were from the time of the Lydian King Croesus.\(^ {63}\) After the looters were arrested and prosecuted, the authorities recovered nearly one hundred pieces.\(^ {64}\) The rest of the treasure wound up in the New York Metropolitan Museum of Art ("the Met"), which bought the treasure sometime between 1966 and 1970 for approximately $1.5 million.\(^ {65}\) Though the Met never made any information about the treasure public through its central catalogue, former director of the museum

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60. 917 F.2d 278 (7th Cir. 1990).
61. *See* The Republic of Croatia v. The Trustee of the Marquess of Northampton 1987 Settlement, 610 N.Y.S.2d 263, 265 (1994) ("[T]he burden was solely on Croatia and Hungary to prove the find site of the treasure, and thus their claims of error lack merit."). *See also* Walsh, *supra* note 39, at A1 (explaining how Michael Ward still insists that there is no proof that the pieces came from the site at Aidonia, citing political implications as the real reason he returned the treasure). *See also* Peter K. Tompa, *Ancient Coins as Cultural Property: A Cause for Concern?*, 4 J. INT'L LEGAL STUDIES 69 (1998) (arguing against the application of foreign patrimony laws on personal property within the United States).
63. Ehl, *supra* note 44, at 672.
64. Rose & Acar, *supra* note 21, at 46.
65. *Id.*
Thomas Hoving admitted to the museum not only purchasing the treasure, but also knowing of its origins.\textsuperscript{66}

Ozgen Acar, a Turkish journalist, spent many years investigating the treasure and collecting evidence through the smugglers themselves, but was never able to conclusively link the Met with the treasure until it was exhibited in 1984.\textsuperscript{67} Once Acar's conclusions were published, the Turkish government filed suit against the Met.\textsuperscript{68} As in the Aidonia treasure case, there were samples from the site against which to test the treasures in the Met, and the Turkish government had also captured the looters themselves and forced them to cooperate, establishing an even stronger connection to the treasure's origin in Turkey.

After a U.S. district judge ruled against the Met in a motion to dismiss,\textsuperscript{69} the pretrial discovery phase brought forth a wealth of information.\textsuperscript{70} Gaps in the walls at the tomb sites were matched with the treasures in the Met; the looters cooperated with the Turkish authorities to describe the pieces they stole. These descriptions matched those in the Met.\textsuperscript{71} Notes from the acquisition meetings were released, disclosing that the Met knew at the time of purchase that they were illegally excavated and exported from Turkey.\textsuperscript{72} In September of 1993, the Met made the decision to settle and return the treasure to Turkey, with the following press release:

Turkish authorities did provide evidence that most of the material in question may indeed have been removed clandestinely from tombs in the Usak region, much of it only months before the museum acquired it. And second, we learned through the legal process of discovery that our own records suggested that some staff during the 1960's were likely aware, even as they acquired these objects, that their provenance was controversial. Under this unique set of circumstances, the Metropolitan has chosen to follow the only course that it feels is fitting and proper.\textsuperscript{73}

Before its decision to settle, the museum had spent almost $3 million to defend its right of possession to property in which it knew it

\textsuperscript{66} Id.


\textsuperscript{68} Id.


\textsuperscript{70} Rose & Acar, supra note 21, at 47.

\textsuperscript{71} Id.

\textsuperscript{72} Id.

\textsuperscript{73} Id. at 47-48.
had no rights. Although Phillipe de Montebello (then director of the Met) called this case “a unique confluence of factors,” it was exactly these unique factors that allowed Turkey to succeed.

C. Turkey and the Elmali Hoard

The most recent settlement involving stolen antiquities involves one of the rarest finds in recent history. The Elmali Hoard, named so after the city in southern Turkey it was found near, consisted of almost two thousand coins. What was important about this find, though, was neither where it was found nor the number of coins that were found, but instead what type of coins was found. Among the two thousand coins were fourteen Athenian decadrachms, of which only thirteen were known to be in existence beforehand. The last one to be sold before this hoard was discovered went for $270,000 at an auction house. These are very rare coins, and the entire hoard was estimated to be worth more than $10 million. The hoard itself was found in 1984 and sold to a Turkish dealer in Istanbul for $692,000. The looters were later arrested by the Turkish government and recounted the looting story up to the point it was sold to the Turkish dealer. How the hoard left the country remains a mystery.

William I. Koch, a prominent New England industrialist, had never known much about coins, and only came to be interested in them after a business partner had told him of the value they posed as an investment. This business partner informed him of an opportunity to buy the “largest hoard of Greek coins ever discovered.” Koch bought the hoard of coins, along with his business partners, for $3.2 million. Mr. Koch, in addition to being a wealthy industrialist, was also a trustee at the Boston Museum of Fine Arts, where he sent a sample of the coins to be authenticated, after hearing

76. Tompa, supra note 61, at 86.
77. Rose & Acar, supra note 21, at 50.
78. Id.
79. Id.
80. Id.
81. Id.
83. Id.
84. Id.
that the Turkish government was looking for similar coins. The
director of the museum told Koch not to worry.

In 1987, Ozgen Acar had investigated the Elmali Hoard,
published an article about it, and was prodding the Turkish
government to take action. The Turkish government then filed suit
against Koch and his partners, OKS Partners, claiming that "under
the laws of the Republic of Turkey, plaintiff is and at all relevant
times was the owner and entitled to possession of the Elmali Hoard;
and the excavation and exportation from Turkey of the Elmali
Hoard, or any portion thereof, was and is unlawful." In July of 1992,
the court denied a motion on behalf of OKS to dismiss the suit,
and the same court later ruled that Turkey had standing to prosecute the
action. Turkey's national patrimony laws, which were issued as an
Ottoman decree in 1906 and reinforced through the Turkish Law on
Protection of Cultural and Natural Antiquities of 1983, would now
be recognized in the U.S. courts.

Confronted with the possibility of highly costly litigation, as well
as the many blows already handed to his legal defense, Koch had only
a defense of mistaken identity to rely on; the decadrachm hoard that
he bought was not the same as the Elmali Hoard. However, Turkey
had the unique nature of the treasures and the captured looters on its
side. A few weeks before the trial was to begin in 1999, Koch decided
to settle. While the details of the settlement were not released, the
Turkish government did release the following statement: "It should
be known that all historic artifacts that are smuggled out illegally will
be tracked down . . . and they will be returned to Turkey."

85. Id.
86. Id.
87. Tompa, supra note 61, at 89.
88. Id.
89. Amended Complaint at 4, 12, Republic of Turkey v. OKS Partners (D. Mass. June 8, 1994) (No. 89-3061) cited in Tompa, supra note 61, at 89.
91. Tompa, supra note 61, at 90-91 (stating that "[t]his ruling effectively provides
Turkey with a 'blank check' to seek enforcement of its confiscatory cultural property laws
without any exercise of 'independent judgment' on the matter.").
92. Id.
93. Id. at 92.
Once again, the determination of the source was integral to the settlement. The treasure in question was so unique that only one other cache of it has ever been found,96 and the people who found the Elmali Hoard were captured and subsequently able to connect the treasure with the site and the timeline. This sort of documentation is a key component in the battle against the illicit antiquities trade. As for collectors such as Mr. Koch, there are some rewards. Upon the return of the Elmali Hoard to the Turkish government, 1,700 coins in all, he received a medal from Turkey in gratitude; it was shaped like a coin.97

III. The Effect of Autocephalous Greek Church of Cyprus and Guggenheim

In most jurisdictions throughout the United States, the statute of limitations would typically bar a suit brought by a source nation against a private collector or museum, since most looted treasures are not found for many years after the looting has occurred. There are two ways for source nations to deal with this problem in the United States. They are laid out in two very prominent cases: Autocephalous Greek Church of Cyprus v. Goldberg,98 which lays out the discovery rule, and Solomon R. Guggenheim Foundation v. Lubell,99 which lays out the demand and refusal rule.

A. Autocephalous Greek Church of Cyprus v. Goldberg

This case involves mosaics from a church in the Turkish-occupied northern part of Cyprus.100 The Greek priests who resided in the church of Panagia Kanakaria in the Turkish occupied town of Lythrankomi were forced to flee their church in the summer of 1976.101 When they fled the church, the mosaics in question in this case were still intact.102 Soon afterwards, though, the government of Cyprus began hearing reports that the occupiers in the north were destroying and stealing artwork from churches, and in 1979 the government was informed that the Panagia Kanakaria church had been looted as well.103

97. Id.
98. 917 F.2d 278 (7th Cir. 1990).
100. Autocephalous Greek Church of Cyprus, 917 F.2d at 280 (giving a brief explanation of how Cyprus became the divided nation it now is).
101. Id.
102. Id.
103. Id. at 281.
What the Cypriot government did next would become an integral part of their case against the Indiana dealer who wound up in possession of the looted mosaics from the Panagia Kanakaria church. The Cypriot government began searching for the mosaics by contacting various organizations and individuals throughout the world, including the United Nations Educational, Scientific and Cultural Organization ("UNESCO"), the International Council of Museums ("ICOM"), the Council of Europe, auction houses such as Christie’s and Sotheby’s, and international scholars such as those at Harvard University’s Dumbarton Oaks Institute for Byzantine Studies. Cyprus also routinely gave information through its embassies to journalists, collectors, scholars, and others in the United States who may have come into contact with the artwork looted from the church. "The overall strategy behind these efforts was to get the word to the experts and scholars who would probably be involved in any ultimate sale of the mosaics." These actions paid off for Cyprus when they learned that Peg Goldberg, an art gallery owner from Indiana, had purchased the mosaics while on a buying trip to Europe in 1988. Goldberg had contacted UNESCO in Geneva to ask them whether or not items could be removed from northern Cyprus, but never mentioned the mosaics, or the fact that she was attempting to buy them. Once she had them in Indiana, she then attempted to sell them, and one of the people she contacted was Dr. Marion True, director of the J. Paul Getty Museum in California. Instead of being interested in buying them, Dr. True was interested in informing the Cypriot government of a dealer in Indiana who was attempting to sell mosaics that might be from Cyprus. Cyprus learned that the mosaics were in Goldberg’s possession, and subsequently filed a suit for their return in federal district court in Indiana.

Goldberg’s immediate response was that, since Cyprus had learned of the mosaics theft in 1979, their cause of action in 1989 was barred due to Indiana’s six-year statute of limitations. However,
under the discovery rule, which is used in Indiana, the statute begins to run when damage was "ascertained or ascertainable by due diligence." The discovery rule, in its simplest form, means that the statute of limitations will not begin to run until the plaintiff discovers that he has a cause of action. The central issue in a discovery rule determination then becomes whether or not the owner inquired into the whereabouts of the stolen property with due diligence.

In *O'Keefe v. Snyder*, the New Jersey Supreme Court ruled that the determination of due diligence is a fact-specific analysis. The court in *Autocephalous Greek Church of Cyprus* followed this reasoning, and applied the due diligence analysis to the actions of the Cypriot government. In this analysis of due diligence, the court took into account "a particular and non-recurring set of events" as well as the credibility of the witnesses who testified to Cyprus about the theft of the mosaics. The court stated that, even though Cyprus did not contact every organization the defendant would have contacted, they took "substantial and meaningful steps" when they learned of the looting to locate and recover them. The Cypriot government even renewed its efforts after reading a published account of where the mosaics might be in a Turkish newspaper, efforts that impressed the curator of the Walters Art Gallery in Maryland. Thus the court ruled that Cyprus should not have learned of the mosaics' whereabouts before 1988.

The rest of the case was virtually open and shut. The particular style in which the mosaics were painted existed in very few places. There were priests who lived in the church before the occupation that attested to the fact that the mosaics were once there. There were also visible outlines of where the mosaics were to match with the new mosaics and there was a book published by Harvard University.

113. *Id.* at 288.
115. *Id.*
117. *Autocephalous Greek Church of Cyprus*, 917 F.2d at 289.
118. *Id.*
119. *Id.* at 290.
120. *Id.*
121. *Id.*
123. *Id.* at 1378.
against which the mosaics could be compared. These are the unique factors that allowed Cyprus to determine the mosaics had actually come from Cyprus. Furthermore, the court recognized the fact that the Cypriot government gave the church, as an entity of the state, the right to regulate its property. The court also noted Cypriot law which gives churches the right to own and register property, as well as the fact that the Panagia Kanakaria church was registered in Cyprus pursuant to this law. Not only did Cyprus follow through with their search diligently, they also met the requisite components of a replevin action.

B. Solomon R. Guggenheim Foundation v. Lubell

Before Guggenheim was decided, New York used a demand and refusal rule that required due diligence, following the case of DeWeerth v. Baldinger. The demand and refusal rule requires both the plaintiff to make a demand from the person who is in possession of the property and the defendant to refuse its return before the statute of limitations may run. The court placed the due diligence burden on the demand and refusal rule out of a conception that "the thief was in a more enviable position than the innocent purchaser because as long as no demand was made against the purchaser, the statutory period did not accrue, and the purchaser remained subject to suit." The court basically thought that this rule favored thieves and true owners over the bona fide purchaser, and wanted to even out the odds.

Guggenheim, which involved a stolen gouache by Marc Chagall, recanted this addition to the traditional demand and refusal rule. The defendants, the Lubells, relying on DeWeerth, argued that the museum had not exercised its duty of due diligence, and in fact had not even contacted the local authorities, and thus the statute of limitations should not be tolled and the case barred. The
Guggenheim court did not bar the case, however, and instead rejected the imposition of a due diligence standard on the demand and refusal rule, saying that it obscures the demand rule's "straightforward protection of true owners." They went on to say that a diligence standard does not eliminate stale claims and that the DeWeerth court never specified when the claim actually accrues.

Thus, unlike the discovery rule, which imposes an affirmative obligation of due diligence, the demand and refusal rule merely makes the true owner demand the property's return and subsequently be refused its return. This is a much easier burden for source nations to comply with than the discovery rule, but if the source nations do not remain vigilant, they may not find the current possessors and will not be able to demand return.

IV. The Rules of Engagement: Recommended Guidelines for Source Nations to Follow

Having analyzed the facts of the settlements and the rules that have come from actual cases of stolen antiquities, a general guideline for success can be created. These guidelines can be simplified to documentation and due diligence, but both of them have overlapping factors.

A. Documentation

In all of the cases examined, there has been some sort of documentation of the site as well as of the stolen treasure. The Aidonia treasure was taken from a set of multiple tombs where some were left unraided, and the government authorities attained a test sample. In the case of the Lydian King Croesus Hoard and the Met, there were tomb raiders caught by the authorities who testified about the treasure taken as well as pieces recovered from the looters to use as a test sample. In the case of the Elmali Hoard, the looters were also captured and they described what they had taken to the authorities. The Autocephalous Greek Church of Cyprus mosaics were well documented beforehand by the priests who lived and practiced in the church.

All of these cases also involve very unique pieces, things that, through proper documentation, can be attributed rather definitively to certain areas. These points are extremely important in determining

132. Guggenheim, 569 N.E.2d at 430.
the origin of the treasures. When a piece can be attributed definitively to one area of the world, then it removes a defense for the current possessors of the property, not allowing them to say a similar piece could have just as easily come from another part of the world.

Source nations should work ardently to document their current sites as well as possible. The more information that is known about a site before it is looted, the easier it is to concretely determine that any pieces came from that site, or that area. Documentation should not only be limited to newly found objects or currently known sites, but also be applied to objects currently in storage and to possible sites that may be looted. While it is not possible to know every place that may contain archaeological evidence, knowing the landscape of areas will better enable authorities to determine areas that have been looted quickly. And although documentation before looting is not always possible, source nations should document sites intricately after they have been looted. As discussed, anything that is left behind can be of great value when trying to retrieve artifacts.

B. Due Diligence

If documentation has been done properly, it also makes a source nation's duty of complying with the due diligence standard much easier. The more a source nation knows about the site and the material looted from the site, the more they can report to agencies throughout the world. When more information about looted material is available, there is a higher chance that someone will recognize the material upon seeing or hearing about it on the market.

Even though the demand and refusal rule does not require the use of due diligence, it is still in a source nation's best interest to use due diligence in trying to find any looted material. While the due diligence standard is not concrete and varies depending on the facts of each case, there are certain steps, exemplified by the actions of the Greek Church of Cyprus, which will never hurt the source nation in any situation, and will better situate source nations to prevail in a due diligence standard.

Source nations should always report any incidence of looting to their local authorities that deal with this problem. Furthermore, these incidents should also be reported to international criminal justice organizations such as Interpol as well as foreign criminal justice organizations such as the FBI. The combined databases of these

134. Guggenheim, 569 N.E.2d at 426.
135. Preziosi, supra note 114, at 237.
organizations will reach a much broader base of people than the source nations' criminal authorities themselves.

Other international organizations should always be notified also. UNESCO, ICOM, The Art Loss Register, world renowned museums, as well as prominent international auction houses such as Christie’s and Sotheby’s should all be notified immediately. Prominent scholars and universities around the world should also be notified in case someone comes to them for authentication of items or some similar purpose. Source nations should also notify all of their embassies and consulates throughout the world and have them notify pertinent local authorities. Source nations should essentially create the largest database of people who know of the looted material as possible. Furthermore, once all of these organizations have been notified, they should all be contacted again when the source nations learn any new information.

These actions of due diligence all assure that the source nation as the true owner is active and diligent in “investigating the potential cause of action.” This, in turn, will hopefully shift the burden onto the buyer, who will now have a large database of sources to inquire about the status of any possible purchases, and shift the advantage to the source nations, allowing them to retrieve their stolen property more easily.

**Conclusion**

As the problem of the illicit antiquities trade persists, source nations need to create harsher consequences on those who drive the market, the buyers. Turkey has been a forerunner in this field, and other countries such as Greece are beginning to follow suit. Through proper documentation and strict adherence to due diligence guidelines throughout searches for looted material, source nations can better prepare themselves to retrieve it through the U.S. civil court system when the looted material’s journey ends in the United States. Not only do these actions better prepare source nations to retrieve material found in the United States, but they also better inform the world at large about the problem of looting in general and the specific pieces a country may be looking for at that time. Finally, by following these guidelines, a source nation will better understand the complexities of a retrieval action, and the possibilities that they will succeed in such an action. If these countries bring only successful

136. *Autocephalous Greek Church of Cyprus*, 917 F.2d at 288.
actions, then the deterrent will be greater upon the market, allowing for a greater percentage of legitimate items being sold, and a smaller amount of priceless treasures being looted.