

Neil Brodie (2003)

“Lessons from the trade in illicit antiquities.”

In:

Sara Oldfield (ed.), *The Trade in Wildlife: Regulation for Conservation* (London: Earthscan), 184-195.

Chapter 18

Lessons from the Trade in Illicit Antiquities

Neil Brodie

INTRODUCTION

The trade in illicit antiquities has exploded over the past 40 years. They are torn from standing monuments, secretly dug out from the ground, or stolen from museums. Sites that have a historical, cultural or religious significance are vandalized or destroyed to supply antiquities that are traded around the world before eventually coming to rest in the public and private collections of Europe and North America, and increasingly the Far East. Links have been demonstrated with other illegal activities including drugs trafficking and timber extraction.

The trade is largely underground so that its size, or the damage it causes, cannot easily be quantified. Estimates of its monetary value vary wildly from as little as US\$400 million up to US\$4 billion per year. More is known about damage caused on the ground. One study in 1982 showed that 58 per cent of all Mayan sites in Belize had been visited by looters (Gutchen, 1983). A regional survey in Mali in 1991 discovered 830 archaeological sites but 45 per cent had already been damaged, 17 per cent badly. In 1996 a sample of 80 were revisited and the incidence of looting had increased by 20 per cent (Bedaux and Rowlands, 2001). In Pakistan's northern Charsadda district nearly half of Buddhist shrines, stupas and monasteries have been badly damaged or destroyed by illegal excavations for saleable antiquities (Ali and Coningham, 1998).

Today, most countries have placed their archaeological heritage under some kind of state control, so that the unlicensed excavation or export of antiquities is illegal. This control may be strong, when the heritage is taken into state ownership, or weak, when private ownership of material is allowed within a

country but its export is regulated. These protectionist laws usually grow out of a desire to hold on to what is seen to be a national patrimony.

Archaeologists are more concerned with questions of access and preservation than of ownership, though when working as guests in a foreign country they are bound to respect the (sometimes onerous) rules that govern their activities. Occasionally they conspire to ignore them, or circumvent them, although this happens much less often today than it did in the past. That it doesn't is due in no small part to a reorientation of archaeological aims, away from the recovery of 'works of art' or the identification of historical events, towards what might be called the 'total reconstruction' of past societies and environments. This new research focus places less emphasis on the recovery of individual objects, and requires instead that more attention be paid to context: in effect, where an object is found and what is found with it.

The importance of context was recognized as archaeology came of age in the late 19th and early 20th centuries when the principles of stratigraphic excavation were first worked out, and wide-ranging chronological frameworks were constructed using objects of known age to date other material (of unknown age) which was found in close association. Both of these techniques were dependent upon the existence of discrete and undisturbed strata, or contexts. Since then, the introduction of scientific methods of dating, artefact analysis and environmental (including climatic) reconstruction have elevated the importance of context still further. So today, sites are excavated carefully and a full record is kept of all relationships, both among objects and between objects and their matrices. Indeed, in the expectation that methods of analysis will continue to improve, and given the fact that the archaeological record is a limited resource, there is growing recognition that where possible archaeological sites should be conserved intact for future generations.

Thus the interests of archaeologists and governments are concurrent, but not actually coincident. In theory, any laws which regulate the free flow of archaeological material should constrain the market and help to protect the integrity of archaeological sites. However, this is not a logic to which everybody subscribes. There is a countervailing view that overly strong regulation can deter people from declaring material which is discovered by chance, so that its find-spot and possible context are lost, and any subsequent trade is driven underground, with the criminalization and corruption that this entails. Rather than strong regulation, dealers and collectors, and some archaeologists too, favour the development of what they see to be more lenient and equitable laws, which would protect the most important archaeological finds, while allowing free circulation of the remainder. This would, they suggest, have the added cultural and educational benefits of allowing a large number of people to come into contact with pieces of the past, either as owners or museum visitors.

There is a sense in which these two viewpoints, of archaeologists on the one hand and dealers and collectors on the other, are not so much opposed as incompatible. Members of the trade (understandably) are concerned with

individual objects, and will make judgements about their significance which are based on aesthetic or monetary criteria. This is how it is possible for them to talk about important and unimportant pieces. For many archaeologists though the informational value of a piece is dependent upon context and cannot be judged from intrinsic qualities alone. What might appear to be an unimportant or mundane object might actually be highly significant if found in situ: the single coin that dates a site or the small pot that proves a trade contact. It is the integrity of the site that needs to be protected, not the individual objects it contains.

There is also a fundamental disagreement over causality. Proponents of more relaxed regulation adopt the premise that most archaeological objects coming on to the market are chance finds. In other words, they would be found anyway, but in the absence of a market thrown away or destroyed. In effect, the market rescues them. Most archaeologists are not convinced about the predominance of chance finds, although there are obviously some, and believe that the major part of new material has been deliberately looted, and without the market it would still be safely in the ground.

COMPARATIVE PERSPECTIVES

The dual object of any strategy aimed at combating the trade in illicit antiquities is to take it out of the hands of criminals while at the same time protecting the archaeological resource. To this end, the effects of regulatory solutions on other illegal trades are often used for purposes of comparison. Many archaeologists, for instance, who are generally in favour of regulation, look to what is the perceived success of CITES, while opponents of regulation point to the failure of prohibition to stem the trade in drugs or alcohol. However, it is not at all clear that all comparisons are equally valid, because while all illicit trades might share some broad resemblances, there are also likely to be significant points of difference. For example, there are several similarities between the trade in illicit antiquities and the drugs trade: they are both demand-driven, they are international in scope, and they are both socially harmful. However, these are generic characteristics and are probably also typical of the various trades in endangered species. For a more focused response to an illicit trade it is necessary to go beyond generalities, and identify what might be the unique or defining features of the trade in question. Otherwise there is a danger of adopting inappropriate countermeasures that are expensive and ineffective, and which might even be counterproductive.

One characteristic of the antiquities trade that has attracted attention is that it is neither completely licit, nor completely illicit. Nor are there parallel licit and illicit trades. The trade is, in effect, sequential. Material that at source is illegally excavated or exported is eventually sold openly and legally in the salesrooms and auction houses of Europe and North America. At some point in the

trading-chain it is 'laundered' by passage through what Polk (2000) terms a 'portal', which facilitates entry on to the legitimate market. A portal is a jurisdiction that allows free trade of material and supplies documentation that will legitimize exports for import into a third country. Hong Kong and to a lesser extent Taiwan play this role for China; Brussels and Paris for West Africa, and Switzerland for Italy. Provenances can easily be lost or invented when an object passes through a portal, and information about illicit origins is suppressed. It is this peculiarity of the antiquities trade which led to the adoption of the rather loose term 'illicit antiquity' to describe an antiquity whose first means of acquisition was illicit, whatever its subsequent status in law. Thus the trade in illicit antiquities is different from, and much larger than, the illicit trade in antiquities. It is a nice distinction, but unfortunately one that has no legal basis.

This division of the trade into two discrete spheres, legal on the demand side but with a largely illegal supply, is matched by its geographical and economic polarity. Ultimate demand is located in the rich G7 countries, while supply is concentrated in poorer countries, the so-called source countries. There are some exceptions: archaeological sites in the US and UK are open to plunder, and Italy takes an ambiguous place in the ranks of the source countries, but the generalization remains broadly true. It has some unfortunate consequences. The social costs associated with the trade, which can briefly be summarized as loss or destruction of cultural heritage (which might also in the long term be an economic resource) and the socially harmful behaviour associated with criminal activity or the disbursement and laundering of criminal proceeds, are also concentrated on the supply side. The benefits accrue on the demand side. Museums fill up with material for public edification and there is a legal economic gain derived from sales and from increased employment in museums and the market. This marked imbalance between costs and benefits finds its reflection in regulation. The source countries that bear most of the costs have strong protectionist legislation, while the laws of beneficiary countries facilitate free trade.

A second but related point is that demand is socially circumscribed, or it was until very recently. Antiquities collecting has traditionally been a rich person's pastime. Part of the allure is that an antiquities collection allows easy entry into the gala world of museum receptions and gallery tours. The investment opportunities that antiquities present have not been overlooked either. However, the advent of the Internet of virtual auctions has reinforced a drive down-market that was already apparent with the development of mail-order sales and the move out of specialist salesrooms into department stores. Nevertheless, it remains the case the market receives its impetus from the big collectors and museums.

The move down-market has a bearing on the evolving debate over regulation. Internet and mail-order sales are obvious marketing strategies aimed at enlarging the demand base, and particularly at creating a demand for poorer

quality antiquities that in the past would have been discarded. Antiquities are now as likely to be sold as ornaments as works of art. This suggests that although the trade is demand led, demand can be manufactured to fit supply. In other words, if supply increases, the trade becomes more commercialized, and new markets are created. Thus while it can be claimed that the logical counterpart of strong regulation is criminalization, it seems equally true that the corollary of weak regulation is commercialization.

A third distinguishing feature of the antiquities trade is that its commodity is non-renewable. Archaeological sites are a finite resource so that, in the long term, there can be no strategy of legal but sustainable exploitation.

Finally, for the wealthy collector, all antiquities are not alike. There will always be a demand for the exceptional or unique that will not be assuaged by lesser pieces. The collector George Ortiz has called his illustrated catalogue *In Pursuit of the Absolute: Art of the Ancient World* (Ortiz, 1996). Presumably, the absolute is unattainable and the pursuit will never end. If regulation was relaxed around the world, allowing a freer flow of what dealers call less important material, it seems probable that there would still be an illegal market for objects of high monetary value.

Thus, to recap, there are at least four characteristics of the antiquities trade which serve to distinguish it from other illicit trades, and which must be borne in mind when discussing regulation:

- 1 The importance of portals for laundering illicit material.
- 2 Demand is geographically and socially circumscribed.
- 3 The archaeological resource is limited and not renewable.
- 4 There will always be a demand for the unique piece.

Points 3 and 4 imply that any effort to eradicate illicit trade by the legitimate exploitation of archaeological sites for saleable antiquities will fail both in the short and long term. Point 2 has most relevance for the present discussion. It suggests that any efforts made to combat the trade in illicit antiquities should be aimed at reducing demand, which is relatively accessible and limited in size. The implications of this run through the discussion of regulation that follows.

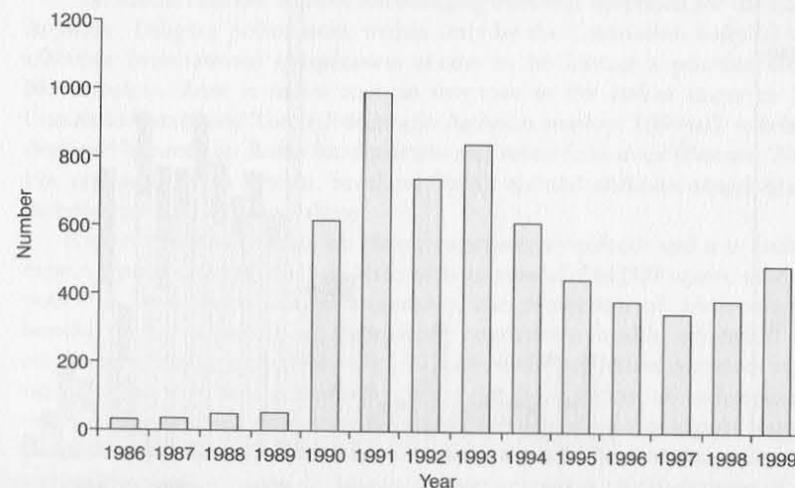
EXPORT CONTROLS

It is possible to distinguish between two types of export control: total embargo (complete prohibition of export) and screening (whereby the most important pieces are retained but anything else is allowed out). From an archaeological perspective, for reasons already described, it is difficult to subscribe to the object-centred rationale of a screening system, and in any case it can be argued that it doesn't work (Brodie, 2002). However, most source countries have passed laws which embargo export, and so the question that generates most

controversy is: Does an export embargo on a broadly-defined category of archaeological material actually prevent its export and thus protect archaeological sites? Unfortunately there is little hard information which can offer a definitive answer to this question.

One revealing set of statistics has been released by the Czech Republic (although the statistics are not strictly archaeological as they pertain to works of art and other objects stolen from religious and cultural institutions). During the 1980s the incidence of theft was at a relatively low level, but then rose dramatically in 1990, followed by a decline which levelled off in the later part of the decade and has perhaps gone into reverse (Figure 18.1). However, pre-1990-levels have not been regained, despite the passage of new, protectionist, laws in 1987 and 1994. The 1990 rise was directly attributable to the opening of borders which followed the fall of the communist regime, although exacerbated by the fact that guardianship of religious and historic buildings had been run down since 1948, and it was only in 1994 that the Czech government was able to establish and fund a new project of protection (Jirásek, 2000).

The Czech statistics show that export regulation is effective, provided it is properly enforced. However, the Czech example is an extreme case, and would probably find few advocates, illustrating as it does the social costs that such enforcement entails. The control was maintained by an authoritarian regime imposing unacceptable restrictions upon personal freedom. Reports from other authoritarian regimes – China and Iraq – that individuals have been executed for illegally excavating archaeological sites sound like 'news from the asylum'.

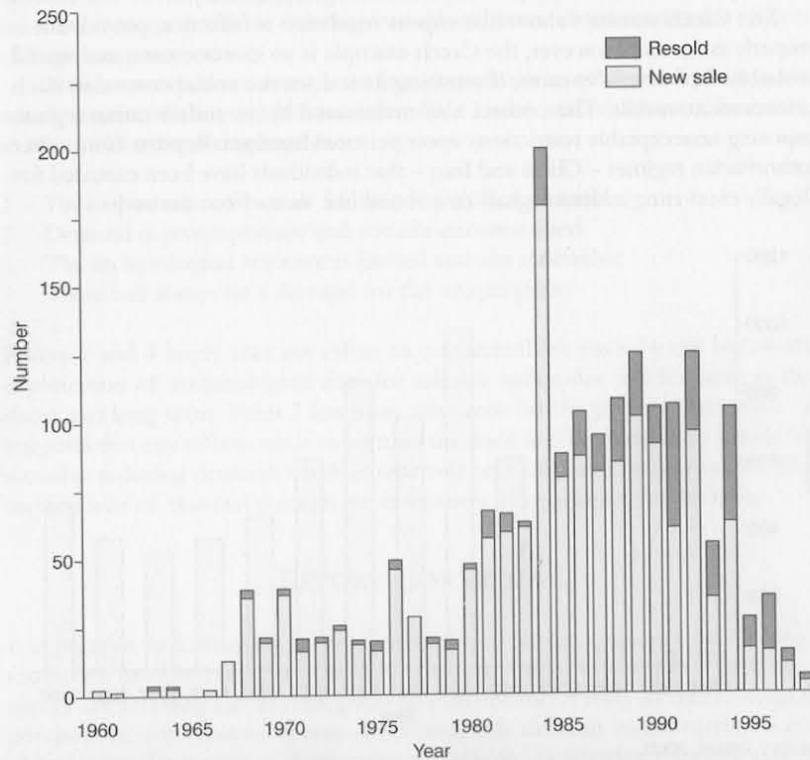


Source: Jirásek, 2000

Figure 18.1 Registered Thefts from Cultural Institutions and Churches in the Czech Republic (1986–1999)

An appreciation of the effectiveness of export control in a more liberal country can be pieced together from what is known about Apulian vases. These vases were of Greek inspiration and made during the 4th century BC in what is today the south Italian district of Puglia. They are to be found in all major collections of ancient Greek art and at auction regularly command prices in the region of US\$10,000–30,000 each. They comprise an unusual corpus of material in that they have been extensively catalogued (so that any previously unknown piece which arrives on the market must be of questionable origin) and their looting and trade have been investigated by academic research and journalistic exposé.

During the 1980s and early-1990s, large numbers of Apulian vases were offered for sale at Sotheby's auction house in London (Elia, 2001; Figure 18.2). A major part was consigned for sale by a Geneva-based dealer (B), who was shown to be acting as a front for an Italian dealer (M), who bought the vases directly from tomb-robbers in Puglia (Watson, 1997). The tombs (often dug out



Source: Elia, 2001

Figure 18.2 *Apulian Red-figure Vases Sold at Sotheby's (1960–1998)*

with the aid of mechanical diggers) contained many objects of interest, but only the more valuable pieces were passed on to the international market, and many assemblages were irrevocably broken up (Graepler and Mazzei, 1993). The vases were probably smuggled out of Italy in refrigerated trucks (customs officers are reluctant to search these trucks thoroughly for fear that their legitimate cargoes might perish), in consignments of modern reproduction ceramics, or in personal luggage (after first having been broken) (Pastore, 2001).

Italy has had laws which protect the archaeological heritage since 1939 and which can be traced back as far as the 15th century in some areas. At the present time all archaeological remains are the property of the state, and therefore their illegal excavation and exportation is a criminal offence. Clearly, though, during the 1980s, in the case of the Apulian vases this law was no deterrent.

Between 1994 and 1999, 99,970 archaeological objects were seized in Italy by the art police (Comando Carabinieri Tutela Patrimonio Artistico) and some major smuggling rings were broken up (Pastore, 2001). In 1997, dealer (M) was arrested in Italy and Swiss police seized the contents of his four warehouses in Geneva Freeport. They were found to contain 3000 antiquities from all parts of Italy, worth in total something like 20 million Swiss francs. Also in 1997 the role played by Sotheby's in marketing the vases was exposed in a book and on television (Watson, 1997), and its London branch stopped antiquities auctions soon after. Since 1994 there had already been a decline in the numbers of Apulian vases sold at Sotheby's, perhaps because Italian law enforcement had already begun to bite.

The Italian example is more encouraging than that described for the Czech Republic. Diligent police work within Italy by the Carabinieri coupled with effective international cooperation seems to be having a positive effect. Nevertheless, there is still a cost, in this case to the Italian taxpayer. The Comando Carabinieri Tutela Patrimonio Artistico employs 150 staff which are deployed between its Rome headquarters and seven field units (Pastore, 2001). For comparison, in Britain, Scotland Yard's art and antiques squad has an investigative staff of about three.

Export controls or bans are clearly expensive to enforce and it is futile to expect a poor country, such as Mali, with an area of 744,000 square miles, to police its own borders. Understandably, the protection of archaeological heritage is not a priority in developing countries – health, education and employment rank higher. Even the UK, one of the wealthiest countries in the world, makes very little attempt to control the illegal export of archaeological material. This is one reason why it is sometimes suggested that export controls should be abandoned, as they are expensive to enforce, do not protect the archaeology and, in reality, do little more than encourage criminalization of the trade. Against this it has been pointed out that while export controls do not offer complete protection, it has yet to be demonstrated that they offer no protection whatsoever.

IMPORT CONTROLS

It is now an established precedent in both US and UK courts that the illegal removal or handling of archaeological material from a country which claims ownership can constitute an offence under their respective stolen property laws. There have been a few successful prosecutions, but not as many as might be expected. This is for three reasons. First, there is a severe standard of proof. It must be established beyond doubt when and from where an object was first obtained, a difficult task when it has been excavated secretly and has not previously been seen or published. Second, state ownership must be more than a legal fiction, it must be actively pursued. But again, there are costs attached to domestic enforcement, and many states turn a blind eye to private collections within their own borders. In these circumstances it is doubtful whether a US or UK court will recognize a claim of ownership as valid, and may regard it instead as an export control, which falls outside the purview of US or UK criminal law. Finally, the problems attached to the interpretation and effects of limitation periods are formidable.

What is needed is a cheaper, easier and more reliable method of intercepting material that has been moved illegally out of its country of origin. In theory, the developed countries of Europe and North America have the resources necessary to establish systems of import control but, by and large, until recently, this has not happened. It seems that this is largely because states are reluctant to commit resources to the enforcement of foreign export laws, particularly when, as in the case of antiquities, their contravention causes no obvious harm to the importing society.

However, in recent years, the US has been experimenting with import restrictions placed on certain categories of archaeological material under the auspices of the 1970 United Nations Organization for Education, Science and Culture (UNESCO) Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property. This convention was drafted in the late-1960s to combat the illicit trade in cultural material, and to date it has been ratified by 91 countries. It is a diplomatic instrument and offers the means to effect the return of stolen cultural objects and also to control their trade. The US implemented the convention in 1983 as the Convention on Cultural Property Implementation Act (CPIA). This act enables the US to enter into bilateral agreements with other state parties of the UNESCO Convention, when asked to do so, and place import restrictions on specific categories of threatened archaeological or ethnographic material. The agreements are not retroactive. Restricted objects may only enter the US if accompanied by a valid export licence of the country of origin, or if it can be shown to have left the country of origin before the date of the relevant agreement. This marks an important shift in the burden of proof. Outside CPIA it has to be demonstrated that material is stolen, while within CPIA it is assumed

that material is illicit unless proven otherwise. However, the CPIA is not simply an instrument of regulation. It also makes provision for the professional and technical help to promote the long-term protection of heritage in situ by means of educational and economic initiatives.

The US currently has agreements with nine countries, but in the general absence of any reliable data, for reasons outlined above, it is difficult to quantify their effects. One treaty is with Mali, which was signed in 1997. Illegal excavation around the town of Djenné was rampant in the late-1980s, but, in the wake of the agreement, has now virtually stopped. However, this was not due to US import control alone. In Mali there has been a great effort on the ground to win over public support by means of local information campaigns and the enhancement of museums (McIntosh, 2002). Perhaps the potential impact of a bilateral agreement can best be judged from the vociferous opposition on the part of dealers and auction houses in the US to the signing of a wide-ranging agreement with Italy in January 2001. As the agreement is not retroactive, it can only be presumed that it was seen as a credible threat to the ongoing and profitable trade in material that is being smuggled out of Italy.

In general terms, countries whose archaeological heritage is under threat from looting are those with strong laws regarding its ownership or export. Those are also the countries that suffer the adverse cultural, economic and criminal consequences of the trade, and those which can least afford to enforce their own legislation. This injustice could be remedied by shifting the cost of enforcement off the already overloaded shoulders of poor governments and on to Western taxpayers (who benefit culturally and economically from the enlarged museums sector that the trade permits). This is the clear message of the CPIA – the US taxpayer foots the bill.

CONCLUSION: BEYOND REGULATION

The fundamental cause of archaeological looting in many countries – and one that is shared by other illegal trades – is rural poverty. The problem is further exacerbated when public order breaks down, most obviously in cases of civil war. The archaeological sites and museums of Cambodia, Afghanistan and Somalia, for example, have suffered particularly badly at the hands of warring factions; and despite the high-profile destruction of the 'idolatrous' Bamiyan Buddhas by the Taliban in 2001, most material is usually stolen for profit, not destroyed for religious or political purposes. Even in less destructive conflicts, when government rule is weak its laws can easily be ignored. In the northern Guatemalan province of Petén in 1997 the Mayan site of Naranjo was occupied by a drugs gang and systematically stripped.

Poverty and public order are problems which fall outside the professional remit of archaeologists, and this can be used as a pretext for inaction. But it should not be. In countries whose archaeology is badly threatened,

archaeologists can engage in international partnerships aimed at public and professional education. They can also take care to ensure that the tourist, and thus economic potential of projects is maximized. In this way local communities are included in the archaeological process and are more likely to take sites under their protection.

What else can be said about regulation and enforcement? As noted previously, one of the defining features of the antiquities trade is that demand is restricted to what, in global terms, is a relatively small number of collectors. Antiquities in the developed world are cultural capital: they are objects of scholarship and indicators of taste and style. In this context, even what is at source an unenforceable control places a moral restraint upon their collection, as decent and law-abiding citizens will think twice before they stake their reputations on the product of a seedy and illegal enterprise. This is a compelling reason for the retention of export controls – if they are relaxed or abandoned, the moral restraint is removed.

In the US the CPIA is important as it establishes a new principle of demand-side enforcement of supply-side regulation. Two of the other major market countries, the UK and Switzerland, have long dragged their feet over the 1970 UNESCO Convention, although this has now changed. The UK signed up in July 2002, at which time Switzerland was in the process of drafting implementing legislation. This raises the possibility of opening up US bilateral agreements to multilateral participation and further extending enforcement, an eventuality hoped for when the CPIA was first adopted.

One of the antiquities trade's more distressing inequities is that the actual looters (usually poor farmers) may be punished quite severely if caught, and yet stand to gain only a very small proportion of the true value of anything they find. The real profits are made higher up the trading chain by individuals who often remain out of reach of the law – they might be government officials or foreign diplomats in source countries, or dealers in Europe or North America. Penalties are disproportionate too. Jail sentences and even death penalties are handed out at source, presumably in the hope of 'setting an example', but it is not clear that they have any real effect. On the demand side, archaeology-related crimes are not considered serious, and punishments are correspondingly light. However, this too now looks set to change. In November 2001 the US sentencing commission proposed that harsher penalties, more severe than for general property crimes, be introduced for crimes against archaeological heritage, including contraventions of import restrictions put in place under CPIA.

Increasing enforcement of foreign legislation in Europe and North America may serve to drive the trade there underground too, but this would probably be a good thing. Collecting antiquities is not addictive, at least not in the way that drugs are, and collectors will not want to be associated with a criminal enterprise. They will collect only antiquities which can be shown to have a legal provenance or else find other outlets for their cultural urge – and archaeology will be the safer for it.

REFERENCES

- Ali, I and Coningham, R (1998) Recording and preserving Gandhara's cultural heritage, *Culture Without Context*, 3, pp10–16
- Bedaux, R M A and Rowlands, M (2001) The future of Mali's past, *Antiquity*, 75, pp872–876
- Brodie, N J (2002) Britannia waives the rules? The licensing of archaeological material for export from the UK in Brodie, N and Tubb, K W (eds) *Illicit Antiquities: The theft of culture and the extinction of archaeology*, Routledge, London
- Elia, R J (2001) Analysis of the looting, selling, and collecting of Apulian red-figure vases: a quantitative approach in Brodie, N, Doole, J and Renfrew, C (eds) *Trade in Illicit Antiquities: the Destruction of the World's Archaeological Heritage*, McDonald Institute for Archaeological Research, Cambridge
- Graepler, D and Mazzei, M (1993) *Fundort: Unbekannt. Raubgrabungen zerstören das archäologische Erbe*, Walter Biering, Munich
- Gutchen, M (1983) The destruction of archaeological resources in Belize, Central America, *Journal of Field Archaeology*, 10, pp217–227
- Jirásek, P (2000) *One Hundred Missing Objects: Looting in Europe*, International Council of Museums, Paris
- McIntosh, S K (2002) Reducing incentives for illicit trade in antiquities: the US implementation of the 1970 UNESCO Convention, in Brodie, N and Tubb, K W (eds) *Illicit Antiquities: the Theft of Culture and the Extinction of Archaeology*, Routledge, London
- Ortiz, G (1996) *In Pursuit of the Absolute: Art of the Ancient World*, Benteli, Berne, Switzerland
- Pastore, G (2001) The looting of archaeological sites in Italy in Brodie, N, Doole, J and Renfrew, R (eds) *Trade in Illicit Antiquities: the Destruction of the World's Archaeological Heritage*, McDonald Institute for Archaeological Research, Cambridge
- Polk, K (2000) The antiquities market viewed as a criminal market, *Hong Kong Lawyer*, September, pp82–91
- Watson, P (1997) *Sotheby's: Inside Story*, Bloomsbury, London