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# Editorial

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In this, the sixth issue of the Journal, we venture on new territory. Critics from widely different professional backgrounds examine the issues peculiar to their region and discipline. From Hong Kong, J David Murphy, a legal academic and former practising lawyer, analyses the efforts of the People's Republic of China to staunch the exodus of historic artefacts. As elsewhere,<sup>1</sup> these efforts are plagued by lack of funding and by a misplaced interpretation of western markets. The author describes the People's Republic as a classic source nation and advocates a controversial if not wholly unfamiliar solution: "The developing art-rich nations should treat cultural property as an exploitable national resource, not to be hoarded absolutely, but to be 'mined' as a source of income". Echoes of this view can be detected in the contributions of collectors, museologists and dealers to the 1991 New York symposium on Legal Issues in the Trade of Antiquities, a transcript of which appears elsewhere in this Issue.<sup>2</sup>

It is interesting to contrast David Murphy's proposal with two other arguments which currently vie for acceptance. In some areas, it is contended that certain traditional objects are so sacred to members of the nation which created them as to render the notion of a "licit market" in them repugnant and offensive. By this standard, all markets in the objects are illicit. Proponents of this view may well, therefore, oppose the payment of compensation to good faith buyers from whom cultural objects are recovered, on the ground that to place a market value on a sacred object (even for limited legal purposes) demeans it irreparably. Others offer a more cynical solution: that the best way to subvert the illicit market is to flood it with forgeries, so that buyers will be unable to tell the real from the bogus. One such advocate, as related in our Chronicles section (page 339, below), is Dr Bedaux of the State Folk Museum at Leiden (Netherlands); another is Andrew Selkirk, familiar to English archaeologists for his colourful adherence to an unreformed doctrine of treasure trove. Whether this solution would necessarily lead to the undervaluing and consequent loss of genuine objects remains an open question.

The operation of a more settled system of control is described by Eamonn Kelly, Acting Keeper of Irish Antiquities at the National

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Museum of Ireland, in his article "Protecting Ireland's Archaeological Heritage". Ireland has had legislation requiring reporting of archaeological finds for over half a century. Its antiquities service also has an impressive record of recovery, both at home and overseas; the author recounts many examples. Readers of an earlier issue<sup>3</sup> may recall the creative (perhaps even rhetorical) reasoning of the Supreme Court of Ireland in the *Webb* case<sup>4</sup> to justify national ownership of the celebrated Derrynaflan Hoard (litigation to which Eamonn Kelly also adverts). Again, it is interesting to contrast the fractional reward granted to the finders in that case (well below 10% of the find's value) with the traditional view in England that honest disclosure by finders is guaranteed only by the prospect of an award of full market value. Perhaps the answer to the discrepancy is that different conditions attract different solutions.

In our last issue, Christine Irsheid depicted the impact of German unification on the cultural environment of Berlin. In this issue, M Boguslavskij considers the cultural implications of the reverse phenomenon, political fragmentation, within the former Soviet Union. The need to redistribute State archives and cultural property among emergent States when a compound political entity disintegrates raises fearsome questions. Not the least challenging of them is to trace the creative or historical origin of a particular work and so identify its cultural and political inheritor. From the Chief of the Academic Staff of the Institute of State and Law of the Russian Academy of Sciences, an analysis of modern Conventions in the field is especially timely and welcome.

Elsewhere, Janet Blake describes modern Turkish legislation on the protection of archaeological sites and objects, Joanna Goyder examines the significance of hallmarking in EU law and a new proposed Council Directive on articles of precious metal, Patty Gerstenblith contributes an update on events in the United States, and Kurt Siehr charts the latest revisions to the UNIDROIT draft convention. An introduction to the Mauritius Scheme for the Protection of the Material Cultural Heritage is provided by Patrick O'Keefe, who also contributes an analysis of judicial responses to the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage, 1972, both in the celebrated Pyramids arbitration case and before the High Court of Australia.

## Notes

- 1 See also the essay on page 257 of this issue by Igor Emetz, Yuri Desyatchikov and Boris Peters, entitled *The Looting of a Site in South Russia*.
- 2 Below, page 365.
- 3 (1993) 1 *IJCP* 275 at 294–297.
- 4 *Webb v Ireland and the Attorney General* [1988] IR 353 at 373 et seq.