

Review

ASIAN ART PROVENANCE PROJECT

NATIONAL GALLERY OF AUSTRALIA, CANBERRA

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Introduction

The National Gallery of Australia (‘NGA’) has retained me to conduct an independent review of the Asian Art Provenance Project (‘the Project’), an internal audit that commenced in late 2014 and is continuing. The NGA’s Asian Art Collection (‘the Collection’), built up since the NGA’s inception, contains approximately 5000 works of art, a significant number of which qualify as antiquities.¹ The Terms of Reference for the Review require an assessment of whether, on the basis of material provided, certain objects have ‘a satisfactory provenance’ and whether that material establishes when those objects ‘left the country of [their] origin’.²

For the purposes of the Review I have been provided to date with reports on 36 objects in the Collection acquired by the NGA over the period 1968 to 2013 (‘the Reports’). Apart from a gift from the Government of India, all objects were purchased in good faith by the NGA. Of those 36 objects, 14 were purchased between 2002 and 2008 from a commercial gallery in New York, known as Art of the Past, run by a dealer in Asian Art, Subhash Kapoor. One of the 14 — a Chola-period Bronze, *Shiva as Lord of the Dance (Nataraja)* (‘*Shiva (Nataraja)*’) — was returned to India on 5 September 2014 by the Commonwealth of Australia under the *Protection of Movable Cultural Heritage Act 1986* (Cth) (‘PMCH Act’). After the NGA’s acquisition of the *Shiva (Nataraja)* in 2008, evidence emerged in India and in the United States supporting a conclusion that the *Shiva (Nataraja)* had been exported from India in 2006 in contravention of Indian legislation.³ As will emerge, none of the other objects purchased by the NGA from Art of the Past are in exactly the same position as the *Shiva (Nataraja)* but, where some common circumstances exist, concerns over provenance have been heightened and given priority.

¹ Generally, an object more than one hundred years old.

² The full Terms of Reference are in Appendix 1.

³ Section 3 of the *Antiquities and Art Treasures Act 1972* proscribes export of any antiquity or art treasure except by the Central Government or any authority or agency authorised by the Central Government. Section 19 empowers the Central Government to compulsorily acquire antiquities and art treasures on payment of compensation. See also the *Antiquities and Art Treasures Rules 1973* (updated January 2012) and the *Ancient and Archaeological Sites and Remains Act 1958*.

It should also be mentioned that an *Ardhanarishvara* sculpture purchased from Art of the Past by the Art Gallery of New South Wales ('AGNSW') was also returned to India in 2014.

The Project

The Project involves the assessment and publication of the collecting histories of all works of art in the Collection. Currently available information appears on a dedicated website and is published as part of the individual records of each object. During the initial phase of the Project, which has focussed on objects from South and Southeast Asia, some 11 objects (including the returned *Shiva (Nataraja)*), have been assessed by curatorial staff as having a 'highly problematic' provenance. All were purchased from Art of the Past. None has been assessed as lacking authenticity, that is, each object appears to have a satisfactory ancient provenance.⁴ Where provenance has been identified as highly problematic, this is because documentation recording a recent chain of ownership now appears dubious or because there is no certainty about when, and in what circumstances, an object was exported from its country of origin, or both.

I proceed on the basis of a working definition of 'provenance' utilised by the American Association of Museums: 'When associated with a painting or other works of art, provenance means the history of ownership'.⁵ That definition commands a consensus among major museums and has been employed by the NGA.⁶ Where the word 'museums' is used in this document it encompasses galleries, and for that matter libraries and archives. Provenance research in respect of an antiquity, which determines both 'authenticity and legal title',⁷ necessarily embraces not only the history of ownership, but also the 'location history' of an

⁴ Subject to unconfirmed doubts about the precise age of two objects: NGA Accession No 2002.373 (IRN 5426) *Goddess Durga*; and NGA Accession No 2005.229 (IRN 143989) *Worshippers of the Buddha*.

⁵ American Association of Museums, *AAM Guide to Provenance Research*, (2001) at 1.

⁶ National Gallery of Australia, *Due Diligence and Provenance Policy*, (2008).

⁷ Australian Government, *Collecting cultural material: Principles for best practice*, (2014) at 3.

object from creation, or discovery, to the present.⁸ There will usually be ‘stretches of time during which the possession and whereabouts of an antiquity are completely unknown’.⁹

Each of the Reports includes an assessment of provenance which assumes (or summarises) the context. That context covers several matters — Australia’s international obligations, local legislation implementing those obligations, and ethical obligations — all directed to discouraging, even stopping, future theft or looting of movable cultural heritage. More narrowly, the context must include criminal proceedings involving Kapoor and his associates. For this reason, the Review is in two parts. First there is a general section dealing with contextual matters. That is followed by specific consideration of each Report in accordance with the Terms of Reference.

The international context

There is now a vast bibliography, and several registries worldwide, in respect of lost or stolen art, including antiquities. Famous examples of art works housed away from their country of origin include the Parthenon/Elgin marbles and the Rosetta Stone in the British Museum, the Winged Victory of Samothrace in the Louvre, the Bust of Nefertiti in the Berlin Museum and the Great Altar of Pergamon in the Pergamon Museum in Berlin. All were acquired in different times in circumstances that reflected radically different values not always compatible with current values.

It appears that historically the antiquities market functioned without the transmission of provenance information on purchases, and without giving much consideration to that omission.¹⁰ However, that has changed in the last 45 years. Provenance research has been

⁸ ‘Provenience’ rather than provenance is the term of art concerned with the location of an object and its stratified context.

⁹ Fontanella, ‘Foreword’, (2014) 10 *Collections* at 247.

¹⁰ MacKenzie, ‘Dig a Bit Deeper: Law Regulation and the Illicit Antiquities Market’, (2012) 45 *Br Jo of Criminology* at 249–258, extracted in Gerstenblith, *Art, Culture Heritage, and the Law: Cases and Materials*, (3rd ed, 2012) at 632–639.

overhauled as a result of international legal developments since 1970 directed to protecting objects of cultural heritage and also as a result of a revival of interest in the mid-1990s in tracing art displaced during World War II (an interest occasioned, in part, by the opening up of Eastern European archives).¹¹ As a result of these developments there have been many well-publicised returns of stolen art, including antiquities.¹²

Other Returns

The NGA is not the first purchaser in good faith to have been obliged by circumstances to cede ownership of a Shiva (Nataraja) for the purposes of a return to India. For example, in 1984 the Kimbell Art Museum of Texas returned a Śivapuram (Nataraja) purchased in good faith for value in 1979, which turned out to have been stolen from a temple in Tamil Nadu.¹³ Further, in 1986, as a result of a settlement of litigation a decade beforehand, the Norton Simon Museum in Pasadena returned a Śivapuram (Nataraja) that had also been stolen from an identified temple in Southern India.¹⁴

Perhaps best known is the return, in 1991, of a Śivapuram (Nataraja) (‘the Pathar Shiva’) acquired in good faith for value in 1982 by a corporate collector, on provenance documentation that turned out to be false. In complex civil litigation over title, consuming many weeks of court time in England, it was proven that the Pathar Shiva had been illegally removed by a local person from a ruined temple in Tamil Nadu. Evidence showed that such removals were an endemic problem at the time.¹⁵ Orders were made in due course in favour of two of the claimants, the State of Tamil Nadu and the temple from which the Pathar Shiva had been removed. It has been described as ‘a sad irony’ that, on its well-published return to Tamil

¹¹ Nicholas, ‘Introduction’, (2015) 10 *Collections* at 249.

¹² Greenfield, *The Return of Cultural Treasures*, (2nd ed, 1996). See also Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, (2006); Hoffman, *Art and Cultural Heritage: Law, Policy and Practice*, (2006); Ulph and Smith, *The Illicit Trade in Art and Antiquities*, (2012); Tythacott and Arvanitis, *Museums and Restitution, New Practices, New Approaches*, (2014).

¹³ Greenfield, *The Return of Cultural Treasures*, (2nd ed, 1996) at 276.

¹⁴ Greenfield, *The Return of Cultural Treasures*, (2nd ed, 1996) at 274–275.

¹⁵ *Bumper Development Corporation Ltd v Commissioner of Police* [1991] 1 WLR 1362.

Nadu in 1991, the Pathar Shiva finished up in a concrete vault, safe from local art thieves, but virtually unworshipped and inaccessible to the public.¹⁶

That third case illustrates the utility of cultural heritage protection laws asserting state ownership ('patrimonial laws').¹⁷ These are justiciable by foreign states as a matter of private international law in civil suits over title, a scenario confirmed more recently in England.¹⁸ This is particularly useful to a foreign state in common law countries such as Australia and England, in which the doctrine of *nemo dat quod non habet* applies to personal property (such that a thief cannot pass good title to a work of art to a purchaser in good faith).¹⁹ The justiciability of patrimonial laws in private law suits can be contrasted with a long-established principle of public international law that precludes a court from recognising and enforcing the public or penal laws of a foreign state, such as laws prohibiting the export of antiquities.²⁰ It should be noted that in the United States patrimonial laws have also formed the basis of criminal prosecutions in respect of stolen art on the basis that, when a state legislates for state ownership of art objects, a subsequent unapproved 'taking' of that object renders the object 'stolen', for the purpose of relevant criminal laws.²¹

More recently there have been widely publicised returns of cultural property such as the return from the Metropolitan Museum of Art in New York, to Italy, of the Euphronios Krater in February 2006 and the return the following year from the Getty Museum in Los Angeles, to Italy, of around 40 disputed objects acquired from a disgraced dealer, Giacomo Medici. Those returns were based on an amalgam of perceived obligations, legal and ethical, which reach back to relevant international agreements, to which I now turn.

¹⁶ Davies, *Lives of Indian Images*, (1997) at 256–259.

¹⁷ In that case, patrimonial laws of the State of Tamil Nadu.

¹⁸ *Government of the Islamic Republic of Iran v Barakat Galleries Ltd* [2007] EWHC 705.

¹⁹ A number of civil law countries treat purchasers in good faith more favourably: see *Winkworth v Christie Manson & Woods Ltd* [1980] Ch 496.

²⁰ *Attorney-General of New Zealand v Ortiz* [1984] AC 1.

²¹ *US v Schultz*, 333 F 3d 393 (2002). See also *US v Hollinshead*, 495 F 2d 1154 (1974); *US v McClain*, 593 F 2d 658 (1979).

International agreements developed for the protection of movable cultural property in wartime²² are now supplemented by international agreements which provide for the protection of such property in peacetime. Most relevantly, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was adopted by UNESCO on 14 November 1970 and entered into force on 24 April 1972 ('the UNESCO Convention'). In the Preamble, the 'dangers' of 'theft, clandestine evacuation, and illicit export' are identified. Then it is stated that 'to avert those dangers, it is essential for every state to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations' and that 'as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognised moral principles'. 'Cultural property' is defined as 'property which, on religious or secular grounds, is specifically designated by each state as being of importance for archaeology, prehistory, history, literature, art or science' and includes 'antiquities more than one hundred years old'.²³

Relevantly, Art 7 provides:

'The States Parties to this Convention undertake:

- (a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been *illegally exported after entry into force of this Convention*, in the States concerned.
- (b)
 - (i) *to prohibit the import* of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention *after the entry into force of this Convention for the States concerned*, provided that such property is documented as appertaining to the inventory of that institution;
 - (ii) at the request of the State Party of origin, to take appropriate steps *to recover and return* any such cultural property *imported after the entry into force of this Convention in both States concerned*, provided, however, that the requesting state shall pay just compensation to an innocent purchaser ...' (emphasis added)

²² Hague Convention, 14 May 1954.

²³ UNESCO Convention, Art 1(e).

Article 7(a) is designed to overcome, in future years, the longstanding public law principle just mentioned that one state would not enforce a foreign state's public and penal laws, as exemplified by a prohibition on the export of cultural property.

That the UNESCO Convention has no retroactive application is clear from the text, accords with established principles of international law enshrined in the Vienna Convention on the Law of Treaties,²⁴ and is confirmed by the *travaux préparatoires*²⁵ and the personal recollections of representatives of the United States at whose insistence retrospective operation was rejected.²⁶

Article 5(e) of the UNESCO Convention, which deals with ethical obligations, has turned out to be just as influential as Art 7. Article 5(e) contemplates the establishment of Codes of Ethics to guide 'curators, collectors, antique dealers, etc' and is said 'to have ushered in a new era of ethical codes'.²⁷

Before leaving the UNESCO Convention it should be noted that a number of obligations are imposed on countries of origin of cultural property requiring them to establish and maintain 'a national inventory of protected works' (Art 5(b)) and to regulate exports of cultural property (Art 6).

The UNESCO Convention represented a compromise between the conflicting interests of countries of origin and countries to which antiquities and other objects were exported as illustrated by the rejection of retrospective operation. The generality of the language used in

²⁴ UNESCO Convention, Arts 28 and 31.

²⁵ Vrdoljak, *International Law, Museums and the Return of Cultural Objects*, (2006) at 206 (especially footnotes 50 and 51).

²⁶ Feldman and Bettauer, *Report of the United States Delegation to the Special Committee of Governmental Experts to Examine the Draft Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, (1970). See also Bator, 'An Essay on the International Trade in Art', (1982) 34 *Stanford Law Review* at 275. However, cf O'Keefe, *Commentary on the UNESCO Convention*, (2nd ed, 2007) at 41–44, cited in Gerstenblith, *Art, Cultural Heritage and the Law: Cases and Materials*, (3rd ed, 2012) at 649.

²⁷ Ulph and Smith, *The Illicit Trade in Art and Antiquities*, (2012) at 190.

the UNESCO Convention allowed Contracting States significant liberty in implementation and any recovery and return of cultural property could only be effected on a government to government basis. Dispossessed owners had no direct rights of action against a person in current possession of an object constituting cultural property. The UNESCO Convention is not self-executing and Contracting States, which include Australia, have passed quite disparate domestic legislation to implement the legal obligations they have undertaken pursuant to it.²⁸

The UNIDROIT Convention 1995

In response to some dissatisfaction with the capacity of the UNESCO Convention to halt international trade in stolen art, a Convention on Stolen or Illegally Exported Cultural Objects was drawn up by the International Institute for the Unification of Private Law (“UNIDROIT”). The Convention (“the UNIDROIT Convention”) opened for signature and entered into force in 1995. The UNIDROIT Convention calls for the return of stolen (or illegally exported) cultural objects, effected through civil claims in the courts of signatory states.²⁹ The return of stolen objects is mandated even if they are in states with laws protecting purchasers in good faith, although there are specific time limits within which a claim must be made. Further, a purchaser in good faith is entitled to ‘fair and reasonable compensation’ if it is proved the purchaser ‘exercised due diligence when acquiring the object’. Article 4(4) of the UNIDROIT Convention provides that in determining whether a purchaser in good faith exercised due diligence:

‘regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in all the circumstances.’

²⁸ Usually by reference to UNESCO Convention, Art 7 (supplemented by Art 3, and/or Arts 9 and 13).

²⁹ UNIDROIT Convention, Art 3.

Although the UNIDROIT Convention has not commanded the support garnered by the UNESCO Convention (Australia is not a signatory to the UNIDROIT Convention), Art 4(4) is not inconsistent with Art 5(e) of the UNESCO Convention. The upshot is that there are now many Codes of Ethics sometimes styled ‘Statements of Best Practice Principles’ or ‘Guidelines’ (collectively, ‘Codes’) governing museums, which are informed by the UNESCO Convention (and Art 4(4) of the UNIDROIT Convention). These Codes deal with obligations characterised as ‘ethical’ rather than ‘legal’ and focus upon provenance and due diligence issues especially in respect of objects leaving a country of origin after 17 November 1970, the date of the UNESCO Convention.

The tenor and detail of these Codes cannot be understood fully unless it is appreciated they are partly defending the position of museums. The Codes illustrate and encompass the reaction of museums worldwide to an assertive international movement in favour of the recovery and return of stolen art, including antiquities, to their countries of origin, which involves a concomitant degree of hostility to museums.³⁰ That hostility is complicated by the circumstance that a country of origin may not have the financial ability or necessary infrastructure to safeguard objects of its cultural heritage from theft and unlawful export, even (or perhaps most particularly) works of great excellence and beauty.

Debates

Debates have occurred (and are continuing) worldwide among scholars — archaeologists, anthropologists, art historians, museum professionals and others, including members of the fourth estate — as to whether objects constituting ‘movable cultural heritage’ are best left *in situ* or at least in a museum in a ‘country of origin’, or in a safe repository outside a country of origin such as a major museum or gallery with responsibilities to preserve, interpret and promote objects in its collection. Antinomies have been constructed between the ‘internationalist’ principles adhered to by the major collecting institutions of the world and the

³⁰ Milosch, ‘Provenance: Not the Problem (The Solution)?’, (2014) 10 *Collections* at 256.

‘nationalist’ claims of states (including former colonies) to objects of cultural heritage, or patrimony, located elsewhere, and between ‘market’ countries in which antiquities are traded and ‘source’ countries from which they have come.³¹ The importance of the debates for present purposes is twofold. First, they facilitate an understanding of contested views about the interpretation of relevant Australian legislation, which has a considerable impact on the Collection and on the Project. Secondly, and more simply, they help to explain major developments in due diligence procedures, about which I will say more.

It might have been expected that the destruction of the great Buddhas at Bamiyan in 2001, the looting of museums in Baghdad and Kabul, the destruction of monuments and manuscripts in Timbuktu in 2012 and the recent desecration of ancient ruins in Palmyra, Syria, would yield some positive appreciation of the endeavours of museums to preserve.³² In fact, in December 2002, not long after events in Kabul, directors of some 18 major European and American museums (including the Metropolitan Museum of Art in New York; the National Gallery in Washington, the Louvre, the Prado and the Hermitage (joined subsequently by the British Museum)) were signatories to a ‘Declaration on the Importance and Value of Universal Museums’, which asserted the importance of public collections and stated:³³

‘The international museum community shares the conviction that illegal traffic in archaeological, artistic, and ethnic objects must be firmly discouraged. We should, however, recognize that objects acquired in earlier times must be viewed in the light of different sensitivities and values, reflective of the earlier era ... Today we are especially sensitive to the subject of a work’s original context, but we should not lose sight of the fact that museums too provide a valid and valuable context for objects that were long ago displaced from their original source.’

³¹ Merryman, ‘Thinking about the Elgin Marbles’, (1985) 83 *Michigan Law Review* 1881. See also Podesta, ‘Saving culture, but passing the buck: How the UNESCO Convention undermines its goals by unduly targeting market nations’ (2008) 16 *Cardozo Journal of International and Comparative Law* 457 at 462.

³² See Cuno, ‘Beyond Bamiyan: Will the World Be Ready Next Time?’, in Hoffman (ed), *Art and Cultural Heritage Policy and Practice*, (2006) at 41.

³³ Appendix II contains the full text of the Declaration.

If that argument, harking back to the Enlightenment,³⁴ seems mild and axiomatic, it is a measure of the heat in the abovementioned debates that in some quarters the Declaration has been treated with ridicule and contempt.³⁵

In any event, incidents of destruction of objects of cultural heritage *in situ*, or in local museums, and indeed the publicised return to India in 1991 of the Pathar Shiva to relative obscurity, all illustrate, in very different ways, that there is no simple formula, no binary proposition, no ‘one size fits all’ resolution of every question which might arise when a museum has acquired in good faith an antiquity of unclear provenance. Numerous ways of dealing with that issue can be seen in the texts in the selected bibliography³⁶ but such considerations lie outside the Terms of Reference.

Codes of Ethics

Turning next to Codes, in 1976, in the wake of the UNESCO Convention, the International Council of Museums (‘ICOM’) first published its Ethics of Acquisitions, followed by a full Code of Professional Ethics in 1986. ICOM has some hundreds of members worldwide, including the NGA. The Code as currently revised and retitled is at Appendix III. The Code states that museums are expected to exercise due diligence in checking the provenance of an object before acquiring it³⁷ but it also provides that in exceptional circumstances an object of sufficient importance can be acquired notwithstanding concerns about the object’s provenance.³⁸ ICOM also produces and publishes a Red List of countries where cultural heritage is deemed to be at risk of destruction and looting due to extended periods of conflict.

³⁴ Particularly, the mid-eighteenth century ideals of a ‘universal’ or ‘encyclopaedic’ museum.

³⁵ See, for example, Besterman, ‘Crossing the Line: Restitution and Cultural Equity’, in Tythacott and Avannitis (eds), *Museums and Restitution New Practices New Approaches*, (2014) at 25 (especially footnotes 5 and 26).

³⁶ Appendix VII.

³⁷ Paragraph 2.3.

³⁸ Paragraphs 3.4 and 2.9.

In 2004, the American Association of Art Museum Directors ('AAMD') also responded to the new dispensation ushered in by the UNESCO Convention with a Report (now styled Guidelines) on the Acquisition of Archaeological Material and Ancient Art (since revised). The full text can be found in Appendix IV. That states:

'The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import and Export and Transfer of Ownership of Cultural Property began a new dialogue about the best way to protect and preserve archaeological materials and ancient art, although regrettably the looting of sites, destruction of monuments and theft of objects continue to this day. The AAMD, along with others in the international community, including source countries, recognizes the date of this Convention, November 17, 1970, as providing the most pertinent threshold for the application of more rigorous standards to the acquisition of archaeological materials and ancient art as well as for the development of a unified set of expectations for museums, sellers and donors.'

Relevantly, guideline E provides:

'Member museums normally should not acquire a Work unless provenance research substantiates that the Work was outside its country of probable modern discovery before 1970 or was legally exported from its probable country of modern discovery after 1970.'

Treating 17 November 1970 as a watershed in respect of provenance research for antiquities is widely accepted and can also be seen in Guidelines of 2005 enacted by the Department of Culture and Sport in the United Kingdom entitled 'Combatting Illicit Trade: Due Diligence Guidelines for museums, libraries and archives on collecting and borrowing material', the full text of which is set out in Appendix V. That states:

'The 1970 threshold is a clear, pragmatic and practicable watershed that is already widely understood and supported. However, museums also need to be fully aware of the implications of any legislation, in the UK or the country of origin or an intermediate country, that might apply to the period before 1970.'

Such Codes are supplemented by numerous Art Loss Registers.

Even the most cursory review of the select bibliography³⁹ reveals that, since the entry into force of the UNESCO Convention, major museums (and auction houses) have been galvanised into monitoring holdings, to considering more deeply than before issues of provenance, and to proposing a variety of solutions, some voluntary, in respect of the return of works of art to a country of origin, if the object has been proven to be stolen and illegally exported.

The Australian context

The Australian Legislation

Australia's ratification and accession to the UNESCO Convention took place on 30 January 1990. Australian legislation to implement the Convention, the *Protection of Movable Cultural Heritage Act* 1986 (Cth) came into effect on 1 July 1987. Relevantly, s 14(1) provides:

- (1) Where:
- (a) a protected object of a foreign country has been exported from that country;
 - (b) the export was prohibited by a law of that country relating to cultural property; and
 - (c) the object is imported;
- the object is liable to forfeiture.'

Section 14(2) provides that an importer of a protected object may be guilty of an indictable offence, which attracts significant penalties. The statutory scheme for forfeiture and return of a protected object unlawfully imported into Australia operates essentially at a country to country level. The only legal process which brings a statutory forfeiture before the courts is one initiated by an owner in possession, not a government of a foreign country (see ss 36(5), 37, 38 and 41). Section 14(3) provides that certain objects imported for loan purposes are immune from statutory forfeiture.

³⁹ Appendix VII.

In the Second Reading Speech,⁴⁰ the responsible Minister stated that the PMCH Act would enable Australia to accede to the UNESCO Convention and explained its purposes in respect of imported objects of important cultural property:

‘The import controls will apply only to important cultural material which has been imported into Australia without the requisite export authorisation from the country of origin. There will be no search of incoming luggage or freight. The import controls exist solely to enable Australia to respond if an official complaint is received from a foreign government that an illegally exported object has been brought to Australia. If a foreign government does not consider an object sufficiently important to lodge such a complaint, we do not consider ourselves as having an obligation to protect that country’s cultural property on its behalf. Although these controls relate essentially to Australia’s treaty obligations under the 1970 Convention, they will also make it possible for the Government to provide this form of protection to countries which may not yet be party to the Convention...

Finally, let me stress *the Convention is not concerned with restitution of cultural property taken from this country in the past or brought here in past years from other countries without proper authority*. The restitution of cultural property is the subject of other United Nations Educational, Scientific and Cultural Organisation efforts, but it is not the subject of the 1970 Convention or the purpose of this legislation. Rather, *the concern is to draw a line across history to ensure that in future years transfers of important and valuable cultural objects from one country to another take place in a legal and orderly fashion and that sanctions imposed will discourage illicit trafficking in cultural material.*’
(emphasis added)

It will be noted that s 14(1) does not expressly incorporate the language of Art 7(b)(i) and (ii) of the UNESCO Convention. Rather, the section is expressed in general words and contains no reference to limiting dates in respect of either unlawful import or illegal export of protected property, no reference to cultural property which has been ‘stolen’ or illegally removed from institutions in respect of which there is an inventory, and no reference to compensation payable to any purchaser in good faith of such property.

⁴⁰ Australia, *Parliamentary Debates*, House of Representatives, 18 February 1986 (Barry Cohen, Minister for Arts, Heritage and Environment) at 754.

Principles of interpretation

The principles to be applied when interpreting statutory language of the generality of s 14(1) have been stated by a plurality of the High Court in *CIC Insurance Ltd v Bankstown Football Club Limited*:⁴¹

‘[T]he modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses “context” in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those must mentioned, one may discern the statute was intended to remedy. Instances of general words in a statute being so constrained by their context are numerous. In particular, as McHugh JA pointed out in *Isherwood v Butler Pollnow Pty Ltd*, if the apparently plain words of a provision are read in the light of the mischief which the statute was designed to overcome and of the objects of the legislation, they may wear a very different appearance. Further, inconvenience or improbability of result may assist the court in preferring to the literal meaning an alternative construction which, by the steps identified above, is reasonably open and more closely conforms to the legislative intent.’ (footnotes omitted)

Judicial findings about ‘legislative intent’ are an expression of the constitutional relationship between the arms of government with respect to the making, interpretation and application of law.⁴² ‘Context in its widest sense’ in respect of the PMCH Act includes the UNESCO Convention and relevant extrinsic material, including that extracted above. And as Gleeson CJ has remarked, where legislation has been enacted in contemplation of the assumption of legal obligations under a convention ‘in case of ambiguities a court should favour a construction which accords with Australia’s legal obligations.’⁴³ Finally, as a matter of general principle, penal provisions such as those contained in s 14(2) do not operate retrospectively.

On 24 February 1989, Dr Gavan Griffith QC, then Solicitor-General for the Commonwealth, advised Dr Brand, then curator of Asian Art at the NGA, that the provisions of Art 7(b)(ii) of the UNESCO Convention, which concern the recovery and return of objects

⁴¹ (1997) 187 CLR 384 at 408. See also *Project Blue Sky v Australian Broadcasting Authority* (1998) 194 CLR 355, *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at 4 [47] and *Zheng v Cai* (2009) 239 CLR 446 at 455–456 [28].

⁴² *Zheng v Cai* (2009) 239 CLR 446 at 455–456 [28].

⁴³ *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 at 492 [29]. See also *Minister for Immigration and Multicultural and Indigenous Affairs v QAAH* of 2004 (2006) 231 CLR 1 at 14 [34].

of cultural property, did not apply to a sculpture shipped out of Bangladesh in 1969, that is, before the date of the UNESCO Convention. The federal Minister of the day approved the NGA's acquisition of the sculpture, notwithstanding the absence of any authorisation for its export.

In 2009, the Australian Government published 'Collecting cultural materials: Principles for best practice' ('the 2009 Principles') for the guidance of Australia's collecting institutions. In the 2009 Principles, the PMCH Act is described as follows:

'[T]he [PMCH] Act includes provisions that allows Australia to respond to an official request by a foreign government to return movable cultural heritage objects that have been illegally exported from their country of origin. Requests can only be made for material which was removed after both Australia and the requesting nation implemented the Convention through domestic law.'

That statement of the effect of the PMCH Act, echoing Art 7(b)(ii) of the UNESCO Convention, accords with understandings worldwide that the UNESCO Convention had no retrospective operation.⁴⁴

In an updated version of the 2009 Principles released in October 2014 ('the 2014 Principles'), the effect of the PMCH Act is described differently:

'Under the PMCH Act, an object may be liable for return if it:

- is considered to be a protected object of a foreign country; and
- was exported in contravention of that country's cultural property law; and
- was imported into Australia after 1987 (when the PMCH Act came into force).

Importantly, the terms of the PMCH Act are understood to mean that provided a request from a foreign government meets the above requirements, the date of export of the object from the country of origin can precede the 1970 date of the 1970 UNESCO Convention if the laws protecting the export of cultural heritage were in force in that country at the time the object was exported.'

⁴⁴ See also Australian Government, *Review of the Protection and Movable Cultural Heritage Act 1986 and Protection of Movable Cultural Heritage Regulations 1987: Report of Public Consultation*, (2009) at 1, 2 and 116, which emphasises the link between the PMCH Act and the UNESCO Convention.

It is not clear how, or by whom, the PMCH Act has been ‘understood to mean’ that Australia will be liable to return an object illegally exported from a country of origin before the 1970 date of the UNESCO Convention if patrimonial laws of that country of origin were in force at the time of export.⁴⁵ As will be evident, that policy setting (said to be anchored in the PMCH Act) puts Australia out of step with other nations, at the very least in respect of their implementation of the UNESCO Convention through various Codes. It is, of course, always possible for a legislature to intend to go further in domestic legislation than is required by an international convention to which a state is a party. It is said that Australia’s position in relation to illegal exports ‘has been the subject of debate since the introduction of the [PMCH] Act, and views on it remain divided’.⁴⁶ That likely reflects the debates referred to above. However that may be, under Australia’s constitutional arrangements, the interpretation of legislation is for the judicial arm of government.

Contextual considerations

The purpose of the PMCH Act (as explained by the Minister) is to address ‘in future years’ the mischief — ‘illicit trafficking in cultural material’ — through ‘import controls’ and ‘export authorisation’.⁴⁷ It therefore seems an improbable result that s 14(1)(b) operates retrospectively. If it does, objects that were exported from their country of origin in violation of the principles of the UNESCO Convention, but before the date of its adoption, or entry into force, would be liable to statutory forfeiture and return, without compensation to a purchaser in good faith, and notwithstanding any due diligence exercised by that purchaser. That result is improbable, not least because, prior to the UNESCO Convention, local complicity in theft or removal of movable cultural heritage, and corruption, in countries of origin, may have

⁴⁵ In *Ley, Report on the Ministerial Review of the Protection of Movable Cultural Heritage Act 1986 and Regulations*, (1991) (‘the Ley Report’) at 125, it is noted: ‘[s 14(1)] has been interpreted by the Attorney-General’s Department as meaning that the Act applies to objects imported after 1 July 1987, but which were previously exported from another country at any time when there was a cultural heritage protection law in force, contrary to the provisions of that law.’

⁴⁶ Simpson, *Review of the Protection of Movable Cultural Heritage Act 1986*, (2015) at 75 (see especially footnote 27).

⁴⁷ Australia, *Parliamentary Debates*, House of Representatives, 18 February 1986 (Barry Cohen, Minister for Arts, Heritage and Environment) at 754.

occasioned, or facilitated, the mischief — ‘illicit trafficking in cultural material’. Articles 5(b) and 6 of the UNESCO Convention impose new obligations on countries of origin to address such issues in the future, thereby balancing the obligation on market countries to introduce relevant import controls. For those reasons, an Australian court applying the principles of statutory interpretation established by the High Court, explained above, is unlikely to interpret s 14(1) of the PMCH Act as suggested in the 2014 Principles.

Section 14(1) of the PMCH Act clearly applies to protected objects exported from a country of origin in violation of the principles of the UNESCO Convention after 1 July 1987 and, on a more generous interpretation (anchored in the UNESCO Convention), to objects exported illegally after 17 November 1970. For the purposes of this Review, I have followed the approach to statutory interpretation set by the High Court and have adopted the more generous interpretation (which accords with Dr Griffith’s advice) because it more closely conforms to the legislative intent. However, where application of the interpretation of s 14(1) contained in the 2014 Principles would yield an assessment of provenance which is different from mine, that has been noted.

The PMCH Act is currently under review. All Australian collecting institutions, including the NGA, might well seek clarification of Australia’s obligations under the UNESCO Convention not least because those obligations affect collections and will continue to affect policies in respect of both acquisition and due diligence.⁴⁸

Other considerations

Irrespective of the PMCH Act, patrimonial laws of foreign states may apply to removed or stolen objects illegally exported to Australia *before* 1970, if such laws were in place at the

⁴⁸ The Ley Report, set out a possible addition to s 14: ‘- notwithstanding the provisions of subsections (1) and (2) of the section, an object would not be liable to forfeiture and a person would not be guilty of an offence if the importer of the protected object establishes on the balance of probabilities that the imported object was exported from the country of origin prior to 14 November 1970.’

relevant time.⁴⁹ While private civil suits by foreign states — seeking relief, for example, for conversion and detinue — are justiciable, they are subject to local statutes of limitations and defences based on equitable doctrines. Evidence led would need to establish relevant facts, including foreign patrimonial law, on the civil standard of proof.

A third possibility should also be mentioned. The Australian Government can decide to voluntarily return a stolen object of cultural heritage not covered by the PMCH Act (and the UNESCO Convention). This occurred with the Australian Government's return, in 1989, of a Paracas mantle to the Republic of Peru.⁵⁰

The absence of clarity in respect of the operation of the PMCH Act is of more than passing or theoretical significance because the curatorial staff of the NGA are struggling to assess the provenance of items, which were *outside* the probable country of origin before 1970. A dearth of information, the absence of temporal boundaries in respect of their enquiries, and the need to master the complexities of foreign law render it difficult, if not impossible, to check whether an object has been illegally exported from a country of origin before the adoption or entry into force of the UNESCO Convention. Insurance coverage may be relevant to these endeavours.

Australian Codes of Ethics

The Code of Ethics of Museums Australia can be found at Appendix VI. Support for the principles established by the UNESCO Convention is expressed in paragraphs 3.2, 3.3 and 3.4, and paragraph 3.9 covers the return of objects which have been exported in violation of the principles of the UNESCO Convention. Also, reference has already been made to the 2009 Principles and the 2014 Principles published by the Australian Government.

⁴⁹ *Bumper Development Corporation Ltd v Commissioner of Police* [1991] 1 WLR 1362; *Government of the Islamic Republic of Iran v Barakat Galleries Ltd* [2007] EWHC 705.

⁵⁰ As to which, see the Ley Report at Appendix 1.1.

The NGA acknowledges adherence to the ICOM Code and the Code of Museums Australia in its current Due Diligence and Provenance Policy.

Litigation in respect of Kapoor

Subhash Kapoor, born in India in 1949, and currently a citizen of the United States, was the principal of a prominent commercial gallery at 1242 Madison Avenue, New York, for over three decades. Like the Roman Verres, Kapoor appeared to some to be a connoisseur. He sold (and donated) Asian art objects, including antiquities, to numerous major museums including the Metropolitan Museum of Art, New York (81 objects), the Toledo Museum of Art, Ohio ("Toledo Museum") (64 objects, 8 by purchase, 56 by gifts), Los Angeles County Museum of Art, California (61 objects, 28 by purchase, 33 by gifts), the Asian Art Museum of San Francisco, California (4 objects, 3 by purchase, 1 by gift), Asian Civilizations Museum, Singapore (30 objects), the NGA (22 objects) and the AGNSW (6 objects, one of which has been returned).

There are circumstances of the litigation concerning Kapoor that have an impact for the Project because they throw doubt on the chain of ownership relied on by the NGA when purchasing the *Shiva (Nataraja)* and, by analogy, this doubt affects the chain of ownership of other objects.

Kapoor was arrested in Frankfurt on 30 October 2011 and extradited to India the following July. He is imprisoned and awaiting trial in Chennai, India. Instructions are that he is also likely to face criminal charges in New York in the future. According to local police reports,⁵¹ Kapoor faces charges of criminal conspiracy to commit theft⁵² of antiquities from two

⁵¹ Prepared by the Idol Wing of the Tamil Nadu Police. It can be noted that police documents record that the thefts from Sripuranthan were registered by local police on 22 August 2008 and then transferred to the Idol Wing of the Tamil Nadu Police.

⁵² See the Indian Penal Code, ss 380(2) and 457(2).

temples in the Ariyalur district, Tamil Nadu — eight idols from a temple in the village of Sripuranthan and a further 20 from a temple in the village of Suthamalli.

Photographs of the eight idols said to be stolen from Sripuranthan have been provided by the Idol Wing of the Tamil Nadu police. The French Institute of Pondicherry photographed the eight objects *in situ* in 1994, and archived those photographs. The photographs show four objects that were purchased from Art of the Past: one, the *Shiva (Nataraja)* returned by Australia to India; another, a bronze *Ganesha* purchased by the Toledo Museum; a third, a bronze *Parvati* purchased by the Asian Civilizations Museums in Singapore; and a fourth, a bronze *Mannikavasagar* purchased by a private collector, which I am instructed has been returned to India. Two other objects, a bronze *Thani Amman* and a bronze *Shivagami* are now in the custody of the United States Immigration and Customs Enforcement in New York (having been seized along with business records from premises in New York associated with Kapoor). Two have not been located.

Abdulla and Raj Mehgoub

The chain of ownership evidenced by the documents provided by Kapoor to the NGA in respect of the *Shiva (Nataraja)* indicated:

- a purchase of the *Shiva (Nataraja)* by Abdulla Mehgoub on 14 May 1970 from the Fine Art Museum in New Delhi (copy purchase receipt provided);
- a certification dated 15 January 2003 by Raj Mehgoub that her husband Abdulla purchased the *Shiva (Nataraja)* in Delhi whilst on a diplomatic posting for Sudan in India from 1968 to 1971, and that the *Shiva (Nataraja)* had been out of India since 1971; and
- a sale of the *Shiva (Nataraja)* from Raj Mehgoub on 18 October 2004 to Art of the Past in New York (copy purchase invoice provided).

Art of the Past also provided a detailed explanation of the financial circumstances of the Mehgoubs leading up to the sale of the *Shiva (Nataraja)* to Art of the Past. This included details of the death of Abdulla Mehgoub and Raj Mehgoub's ownership as passed by his will.

Prior to the NGA's acquisition of the *Shiva (Nataraja)*, indirect enquiries were made about the Mehgoubs. Their address and phone number were verified and online references identified Abdulla Mehgoub, who had worked for the United Nations, as a former member of the Sudanese diplomatic service.

The significance of the 1971 date is that the following year India passed the *Antiquities and Art Treasures Act 1972*, which prohibited export of antiquities from India except by the Indian Government or an authorised agent of the Indian Government.⁵³

The chain of ownership provided by Art of the Past in respect of a bronze Parvati sold by it to the Asian Civilizations Museum in Singapore also involved the Mehgoubs and similar particulars in respect of their acquisition and the export of the object by them to New York.

The chain of ownership provided by Art of the Past to the AGNSW in respect of the *Ardhanarishvara* sculpture was that the object was with an Indian antique dealer, Uttam Singh and Sons ('Uttam Singh'), from 1970 or before, and that it was purchased from Uttam Singh by Abdulla and Raj Mehgoub in 1971. It was alleged it was then exported by them from India to New York in 1971 and sold by the Mehgoubs to Art of the Past in 2003. In fact, this object had been photographed *in situ* at the Vriddhachalam temple in Tamil Nadu in 1974 and details of it have been included in work of known experts in Chola-period sculptures, Douglas Barrett and Vidya Dehejia. Those circumstances supported the conclusion that the Mehgoub ownership history of the object (including the details, the purchase from Uttam Singh) was false.

⁵³ See footnote 3.

There are four other objects covered by the Project for which Art of the Past provided a chain of ownership involving the Mehgoubs and substantially identical particulars of acquisition and export of the objects to New York by 1971.

*Selina Mohamed*⁵⁴

Backtracking for a moment to the eight idols stolen from the temple in Sripuranthan, it will be recollected that the Toledo Museum purchased a bronze *Ganesha* from Art of the Past in 2006. The chain of ownership that Art of the Past purported to provide to the Toledo Museum in respect of the *Ganesha* was that it was with an Indian antique dealer from 1971 or before, from whom it was purchased by Rajpati Singh in 1971. It was then said to have been exported by Rajpati Singh from India to New York by 1971, where it was inherited by Selina Mohamed (daughter of Rajpati Singh). Art of the Past was said to have purchased the *Ganesha* from Selina Mohamed on 2 January 2006.

There are four other objects covered by the Project for which Art of the Past provided a chain of ownership to the NGA involving Rajpati Singh and her daughter, Selina Mohamed.

Criminal Proceedings in New York

Some of Kapoor's associates have faced criminal charges in New York. The gallery manager of Art of the Past, Aaron Freedman, was charged in New York with one count of criminal conspiracy and five counts of possession of stolen property. The count of criminal conspiracy concerned the *Shiva (Nataraja)* acquired by the NGA, and the *Parvati* acquired by the Asian Civilizations Museum in Singapore (both said to have been stolen from the temple in Sripuranthan). Particulars included 'laundering the pieces by creating provenance, origin history and letters of authenticity' and the 'manufacturing of false provenances for illicit cultural

⁵⁴ This name is sometimes rendered as 'Salina Mohamed'.

property'. The overt acts of conspiracy included allegations that the *Shiva (Nataraja)* was 'owned by the Central Government of India', 'was stolen from the Sivan Temple in India's Ariyalur District', and 'shipped ... for Australia, from India to the United States.' In December 2013 Aaron Freedman pleaded guilty to all charges after assuring the court he understood what was alleged against him. Instructions are that he is currently still awaiting sentencing but in the meantime has been assisting both federal and state authorities.

Aaron Freedman has also been sued in civil proceedings by the NGA and instructions are that he is willing to co-operate with the NGA.

Selina Mohamed, allegedly a former girlfriend of Kapoor, was also charged in New York with four counts of possession of stolen property and one count of conspiracy. Particulars alleged against her included preparation of false provenance documents for 'a bronze *Ganesb* statute' (inferentially the object purchased by the Toledo Museum) and objects specified as having been acquired by the NGA, *The Divine Couple* and *The Pair of Door Guardians*, which are covered in the Reports.

After being charged in December 2013, Selina Mohamed subsequently reached a plea agreement to plead guilty to a misdemeanour charge of conspiracy in the fifth degree. In March 2015 Selina Mohamed was given a one year conditional release.

Reports

I now turn to the 36 Reports provided to me. All 36 objects were acquired under acquisition policies of the NGA which treated 1970 as a watershed, after which export authorisation for a work was required from a country of origin. An assessment by me that an antiquity has a 'satisfactory' provenance means that on the material provided to me I am currently satisfied:

- (1) that the object has credible chain of ownership; and
- (2) that the object was outside its probable country of origin before 1970, or was legally exported from that country after 1970.

Both considerations have been covered because, in the Reports, export details have been included regularly under the heading 'Provenance Concerns' and have been treated as integral to assessments of provenance. This is because the two considerations, considered together, are the main indicators of a vendor's ability to pass clear title to a purchaser.

1. NGA Accession Number: 2008.1 (IRN 171994) *Shiva (Nataraja)*

A Report was prepared, notwithstanding the return of the object to India. The purpose of the Report was to inform future due diligence policies. Provenance was assessed as 'highly problematic' because the chain of ownership formerly relied on is now dubious. There is evidence (police reports; Aaron Freedman's admissions) that the object was stolen from an identified temple in Tamil Nadu (corroborated by records of the French Institute of Pondicherry), and that it left India in late 2006 and was given a false ownership history by Aaron Freedman (or more generally Art of the Past), attributing ownership to Abdulla and Raj Mehgoub.

Q: Did the *Shiva (Nataraja)* have a satisfactory provenance?

A: No.

Q: Does the material available establish when the *Shiva (Nataraja)* left India, the country of its origin?

A: Yes, late 2006.

Like other major galleries, the NGA was the victim of a well-planned fraud by Art of the Past. These events illustrate the need to rely on sources of information other than a dealer, even if ostensibly reputable at the time of an acquisition.⁵⁵ Future due diligence policies might encompass direct contact with any living consignor, or previous owner, of a work of art, particularly to elicit the date and circumstances of the export of a work from a country of origin.

⁵⁵ It has been observed by a scholar in the field that to the extent it that it facilitates illicit trading in cultural property, a culture of secrecy in the art world in respect of consignors and former owners of antiquities cannot be justified: see O'Keefe, *Trade in Antiquities Reducing Theft and Destruction*, (1997) at 66 and 87–88.

2. NGA Accession Number: 2003.441A–C (IRN 128327) *Arch for a Jain Shrine*

In the Report, the provenance of this object has been assessed as ‘highly problematic’. This is essentially because the chain of ownership supplied by Art of the Past indicated that the object had been purchased by Abdulla Mehgoub between 1968 and 1971, when he was a Sudanese diplomat in Delhi, and that the object was in New York with Abdulla and Raj Mehgoub from 1971 until purchased from them by Art of the Past in 2002.

The Project involved supplementary due diligence checking the following sources of information:

- listings on the Interpol Stolen Art database;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published in the Huntington Archive of Indian Art website;
- images published on the British Library’s India office website;
- major Christies’ Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

The facts established by the extensive research differ from those concerning the *Shiva (Nataraja)* in two respects: first, the object has not been listed in police reports (or elsewhere) as a stolen object; and, second, the archaeological origin of the object remains unknown. It is a possibility, even a strong one, that the Mehgoub ownership history of this object, as supplied by Art of the Past to the NGA is just as false as the Mehgoub ownership history of the *Shiva (Nataraja)* was eventually demonstrated to be.

That demonstration of falsity involved several pieces of circumstantial evidence: police reports of theft from the temple in 2006 (corroborated by the records of the French Institute at Pondicherry); business records evidencing export of the object to America; records of bank transfers of money from Kapoor to an alleged local accomplice in Tamil Nadu; and admissions made by Aaron Freedman that he used the Mehgoub name and details to falsify the provenance of the *Shiva (Nataraja)*.

Circumstantial evidence can be as compelling as direct evidence, especially when several pieces of circumstantial evidence all support a particular conclusion. In this case, even in the absence of any reported theft, the strong possibility that the Mehgoub ownership history is false is of concern — though a strong possibility is not the same as a foregone conclusion.

Further due diligence might involve direct enquiry, and further targeted searching of the records, of the Archaeological Survey of India, the French Institute of Pondicherry and enquiry of the National Museum in Delhi.

Q: Does the *Arch for a Jain Shrine* have a satisfactory provenance?

A: The provenance is problematic, pending further enquiry.

A: Does the material available establish when the *Arch for a Jain Shrine* left India, the country of its origin?

A: No.

3. NGA Accession Number: 2003.478 (IRN 128702) *Seated Jina*

In the Report the provenance of this object has been assessed as ‘problematic’. This is because the chain of ownership supplied by Art of the Past indicated that the object had been purchased by Abdulla Mehgoub when on diplomatic posting in Delhi from 1968 to 1971. That is the same name and circumstances used to falsify the provenance of the *Shiva (Nataraja)*.

The Project involved supplementary due diligence checking the following sources of information:

- listings on the Interpol Stolen Art database;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library’s India Office website; and
- Major Sotheby’s Asian art sales catalogues dating from 1970–2002.

The *Seated Jina* has not been listed in any police reports (or elsewhere) as a stolen object and it is not known to have been associated with a particular temple or site. Recent provenance research suggests that the object was with an unknown private collector in 2000 who consigned it for sale at Christie’s in London who offered it for auction in October 2000. The NGA awaits confirmation from Christie’s of the particulars of the consignor and the purchaser. A reminder should be sent.

This latest information suggests the Mehgoub ownership history provided by Art of the Past is false or, at the very least, incomplete.

Q: Does the *Seated Jina* have a satisfactory provenance?

A: The provenance is problematic, pending answers from Christies to outstanding enquiries.

Q: Does the material available establish when the *Seated Jina* left India, the country of its origin?

A: No.

4. NGA Accession Number: 2005.231 (IRN 143987) *The dancing child-saint Sambandar*

In the Report, the provenance of this object has been assessed as ‘highly problematic’. This is because the chain of ownership supplied to the NGA by Art of the Past indicated that the object had been purchased by Abdulla Mehgoub in India on 22 May 1969 while he was on diplomatic service from Sudan from 1968 to 1971 (copy receipt provided). There is a possibility, even a strong one, that the Mehgoub ownership history is false. This is reasoning by analogy because circumstantial evidence permitted the conclusion of falsity to be drawn in respect of the Mehgoub ownership history of the *Shiva (Nataraja)*.

The Project has involved supplementary due diligence checking the following sources of information:

- publications on Chola dynasty bronze sculpture;
- listings on the Interpol Stolen Art database;
- the Idol Wing of the Tamil Nadu police website;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library’s India Office website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

The Dancing child-saint Sambandar has not been listed in police reports (or elsewhere) as stolen and is not known to be associated with a particular temple or site. Comparison of the object to a high-resolution photograph from the French Institute of Pondicherry

confirms that the object acquired by the NGA is *not* the Sambandar that is now listed as one of eight objects stolen from the temple in Sripuranthan.

Further due diligence might involve direct enquiry and further searching of the records of the Archaeological Survey of India and enquiry of the National Museum in Delhi.

Q: Does *The Dancing child-saint Sambandar* have a satisfactory provenance?

A: No.

Q: Does the material available establish when *The Dancing child-saint Sambandar* left India, the country of its origin?

A: No.

5. NGA Accession Number: 2008.928 (IRN 85019) *Processional standard ('Alam)*

In the Report, the provenance of this object has been assessed as 'highly problematic'. This is because the chain of ownership supplied to the NGA by Art of the Past indicated that the object had been purchased by Abdulla Mehgoub while he was on diplomatic service in Delhi from Sudan between 1968 and 1971. Raj Mehgoub certified that the object was in the possession of her and Abdulla in New York from 1971. It was alleged that Art of the Past acquired the object from Raj Mehgoub in 2003 after she was widowed. Given the circumstantial evidence which demonstrated the falsity of the Mehgoub ownership history in respect of the *Shiva (Nataraja)*, it must be a possibility, even a strong one, that the Mehgoub ownership history of this object is also false.

The Project involved supplementary due diligence searching the following sources of information:

- listings on the Interpol Stolen Art database;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library's India Office website;
- Christie's sales catalogues dating from 1970–2002;
- Sotheby's sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

Instructions are that extensive research has not identified the original custodians of this sculpture and that it does not appear to have been reported as stolen. It is proposed to conduct further research in respect of reported thefts of such items. Direct enquiry of museum professionals in the Hyderabad area (from which the object has come) would be appropriate.

Q: Does the *Processional Standard* ('*Alam*') have a satisfactory provenance?

A: No.

Q: Does the material available establish when the *Processional Standard* ('*Alam*') left India, the country of its origin?

A: No.

6. NGA Accession Number: 2002.373 (IRN 55426) *Goddess Durga slaying the buffalo demon*

In the Report, the provenance of this object has been assessed as 'highly problematic'. This is essentially because the chain of ownership supplied by Art of the Past commenced with Uttam Singh, who are said to have sold the object to a known collector in New York, one Peter Stewart (now dead), on 12 October 1967 (copy signed receipt provided). Nothing adverse is known about Peter Stewart, but paperwork from Uttam Singh is associated with the *Ardhanarishvara* purchased by the AGNSW as mentioned above. In that instance, the alleged possession of the *Ardhanarishvara* by Uttam Singh was demonstrated to be false both by Indian archives and publications of experts.

It is possible the Uttam Singh receipt in respect of this object is false, even if the sculpture was once owned by Peter Stewart; equally, it is possible the receipt is genuine and was used as a basis for the creation of false ownership histories for other objects in the inventory of Art of the Past, for example the *Ardhanarishvara*. There is a suggestion in the material provided to me (in respect of the object *Worshippers of the Buddha*) that Uttam Singh still operates in Delhi. If that is correct, direct enquiry should be made in respect of the receipt. Also in the materials there is an image claimed to be a digital image of the object sent to Kapoor by local Indian smugglers in 2006. In the context of the return of 40 objects by the Getty Museum to Italy, Dr Brand, who supervised the return, stated that such photos were the most convincing pieces of circumstantial evidence of theft.⁵⁶

The Project involved supplementary due diligence searching the following sources of information:

- listings on the Interpol Stolen Art database;

⁵⁶ Waxman, *Loot*, (2008) at 361.

- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library's India Office website;
- Christie's Asian art sales catalogues dating from 1970–2002;
- Sotheby's Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

Extensive research has not uncovered the archaeological origin of the object and it does not appear to have been reported as stolen. Further due diligence might involve direct enquiry and further searching of the records of the Archaeological Survey of India and enquiry of the National Museum in Delhi. Further, given the digital image referred to, enquires should be made of the investigating authorities in India and the United States.

Q: Does the *Goddess Durga slaying the buffalo demon* have a satisfactory provenance?

A: The provenance is problematic, pending further research.

Q: Does the material available establish when the *Goddess Durga slaying the buffalo demon* left India, the country of its origin?

A: No.

7. NGA Accession Number: 2005.229 (IRN 143989) *Worshippers of the Buddha*

In the Report, the provenance of this object has been assessed as 'highly problematic'. This is essentially because the chain of ownership provided to the NGA by Art of the Past indicated that the object was purchased from Uttam Singh on 16 October 1969 by Etsuo Oktsuka of Tokyo (copy invoice provided). On 12 October 1999, Paramaspry Punasany, of Dalhousie Enterprises, certified that 'we' purchased the object from Etsuo Oktsuka and sold it to Art of the Past in 1999. Uttam Singh has already been mentioned in the Report concerning the *Goddess Durga slaying the buffalo demon* and in relation to the *Ardhanarishvara* purchased by the AGNSW. If Uttam Singh still operates, direct enquiry about the alleged purchase should be made.

Instructions are that Paramaspry Punasany was, for 10 years, an associate and girlfriend of Subhash Kapoor and was involved in a legal dispute with him in 2010.

The Project involved supplementary due diligence searching the following sources of information:

- listings on the Interpol Stolen Art database;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library's India Office website;
- major Christie's Asian art sales catalogues dating from 1970–2002;
- major Sotheby's Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

Extensive research has not uncovered the archaeological origin for this sculpture, and it does not appear to have been reported as stolen. Further due diligence might involve enquires of museum professionals in India and investigative authorities in India and the United States.

Q: Does the *Worshippers of the Buddha* have a satisfactory provenance?

A: The provenance is problematic, pending further research.

Q: Does the material available establish when the *Worshippers of the Buddha* left India, the country of its origin?

A: No.

8. NGA Accession Number: 2005.323 (IRN 143990) *Goddess Pratyangira*

In the Report, the provenance of this object has been assessed as ‘highly problematic’. This is because the chain of ownership provided to the NGA by Art of the Past indicated that Rajpati Singh and Insan Mohamed (parents of Selina Mohamed) purchased the object on 12 August 1971 from art dealer Kangra Art Palace Delhi (owned by Kapoor’s father). It was asserted that Selina Mohamed’s parents gave it to her in 1990 and that Art of the Past purchased it from her in 2003. Substantially the same chain of ownership from Selina Mohamed’s parents to her was provided in respect of two other objects purchased by the NGA from Art of the Past, *Pair of Door Guardians* and *The Divine Couple*. Selina Mohamed has reached a plea agreement in respect of charges laid against her in New York, which included particulars of preparing false provenance letters for those objects for the purpose of sale to the NGA. Accordingly, there is a strong reason to doubt the credibility of the chain of ownership involving her, her parents and this object.

The Project involved supplementary due diligence searching the following sources of information:

- Chola sculpture publications;
- listings on the Interpol Stolen Art database;
- the Idol Wing of the Tamil Nadu police;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library’s India Office website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

Extensive research has not uncovered the archaeological origin for this sculpture, and the object does not appear to have been reported as stolen. Further due diligence might include further enquiry, and targeted searching of the records of the Archaeological Survey of India and enquiry of the National Museum in Delhi. The investigating authorities in the United States may also be able to assist.

Q: Does the *Goddess Pratyangira* have a satisfactory provenance?

A: No.

Q: Does the material available establish when the *Goddess Pratyangira* left India, the country of its origin?

A: No.

9. and 10. NGA Accession Number: 2005.356.1–2 (IRNs 148806, 148808) *Pair of door guardians [dvarapala]*

In the Report, the provenance of these objects has been assessed as ‘highly problematic’. This is because the chain of ownership provided to the NGA by Art of the Past indicated that these were purchased on 21 November 1971 from the Krishnakoli Gallery in the Ritz Continental Hotel, Calcutta, by Rajpati Singh Mohamed of New York, the mother of Selina Mohamed. It is alleged that Selina Mohamed inherited them and sold them to Art of the Past in New York in 2005. As part of Selina Mohamed’s plea bargain in relation to charges in New York, she pleaded guilty to conspiracy and possession of stolen property. Particulars of conspiracy included an allegation that she prepared a false provenance for the *Pair of door guardians*. In the material provided, there are images of these two objects (and *The Serpent King*) which are alleged to be digital images sent to Kapoor by local Indian smugglers in recent years.

The Project involved supplementary due diligence searching the following sources of information:

- listings on the Interpol Stolen Art database;
- the Idol Wing of the Tamil Nadu police;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library’s India Office website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

Extensive research has not uncovered the archaeological origin of these objects. They do not appear to have been reported as stolen in any police reports (or elsewhere) and they are not known to have been associated with a particular site or temple. The objects have been removed from display in the NGA in accordance with ICOM Guidelines.⁵⁷ Investigators in India or America may be able to assist with further enquiries. Direct inquiry might also be made of the Archaeological Survey of India or such other museum professionals in India as seem appropriate.

Q: Do the *Pair of door guardians [dvarapala]* have a satisfactory provenance?

A: No.

Q: Does the material available establish when the *Pair of door guardians [dvarapala]* left India, the country of their origin?

A: No.

⁵⁷ Paragraph 4.5.

11. NGA Accession Number: 2006.298 (IRN 152676) *The divine couple Lakshmi and Vishnu*

In the Report, the provenance of this object has been assessed as ‘highly problematic’. This is because the chain of ownership provided to the NGA by Art of the Past indicated that the object was bought in India by Insan Mohamed for his wife, Rajpati Singh, in the 1960s and transferred by gift to Rajpati Singh’s daughter, Selina Mohamed, which appears to have led to it being offered for sale by Art of the Past. As part of Selina Mohamed’s plea bargain, she pleaded guilty to falsifying the provenance of this object for the purposes of sale to the NGA in 2006. Given that circumstance, it is unlikely that Selina Mohamed ever owned the object.

A publicly available inventory of the Rubin-Ladd Foundation includes the object as an object purchased from Art of the Past in 2002. Further, the San Antonio Museum of Art published a loan number for the object in *Orientations*, April 2005. Enquires have been made of the Rubin-Ladd Foundation and the San Antonio Museum of Art, but no response has yet been received.

The Project involved supplementary due diligence searching the following sources of information:

- listings on the Interpol Stolen Art database;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library’s India Office website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

This extensive research has not uncovered the archaeological origin for this sculpture. It does not appear to have been reported as stolen or to have been associated with a particular temple or site. Investigative authorities in India or the United States may be able to assist. Direct inquiry, and further search of the records of the Archaeological Survey of India, might also be undertaken.

Q: Does *The divine couple Lakshmi and Vishnu* have a satisfactory provenance?

A: No.

Q: Does the material available establish when *The divine couple Lakshmi and Vishnu* left India, the country of its origin?

A: No.

12. NGA Accession Number: 2006.299 (IRN 152673) *The serpent king*

In the Report, the provenance of this object has been assessed as ‘highly problematic’, in essence because Art of the Past sold it to the NGA in 2006. The chain of ownership supplied to the NGA by Art of the Past indicated that the object was purchased by the husband of Ranjit Oka in 1969 and that it had been in the couple’s possession in Japan since 1969. The authenticity of the object was confirmed by two expert reports prior to acquisition. No information has come to hand throwing doubt on the Oka ownership history, however the accuracy of the information has not been positively established. No biographical information has been found for Ranjit Oka or her husband.

In the material provided there are images said to be the images of *The serpent king* and *The Pair of Door Guardians* in outdoor locations. These images are alleged to be digital images sent to Kapoor by local Indian smugglers in or around 2005.

The Project involved further due diligence checking the following sources of information:

- listings on the Interpol Stolen Art database;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library’s India Office website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

This extensive research has not uncovered the archaeological origin of this sculpture. It has not been identified as coming from a known site, temple or collection and it does

not appear to have been reported as stolen. Investigative authorities in India or the United States may be able to assist. Direct inquiry might also be made of the Archaeological Survey of India or such other museum professionals in India as seem appropriate.

Q: Does *The serpent king* have a satisfactory provenance?

A: The provenance is problematic, pending further research.

Q: Does the material available establish when *The serpent king* left India, the country of its origin?

A: No.

13. NGA Accession Number: 2007.1 (IRN 162777) *Christ crucified*

In the Report it is stated that the NGA is unable to assess the provenance of this object. The chain of ownership provided by Art of the Past to the NGA for this object is that it was purchased by Edrie van Vredenburg of London from an unknown art dealer in Italy before 2002 or 2003. It was sold to Kapoor of Art of the Past in June 2006 at a Sotheby's auction styled 'The eclectic world of Edrie van Vredenburg'. The country of origin cannot be confidently identified but, according to an expert consulted by the NGA in June 2015, the object is probably Portuguese. There is no evidence to suggest that the object was ever in India.

Correspondence between the NGA and Mr van Vredenburg (a known collector) revealed that he did not receive, or press for, any provenance particulars at the time when he purchased this object because, as he said, he came 'from a generation where the object is more important than the provenance'.

The Project involved checking the following sources of information:

- listings on the Interpol Stolen Art database;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library's India Office website;
- major Christie's Asian art sales catalogues dating from 1970–2002;
- major Sotheby's Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

The object has not been reported as stolen. It has also not been identified with any known church or site. From the material it appears that the chain of ownership of the

object from 2002 or 2003 is credible. However, as the country of origin is unknown it is impossible to assess the circumstances or date of export.

Q: Does *Christ Crucified* have a satisfactory provenance?

A: The NGA has been unable to assess the provenance.

Q: Does the material available establish when *Christ Crucified* left the country of its origin?

A: No.

14. NGA Accession Number: 2006.855 (IRN 162468) *Head of a bodhisattva*

In the Report, the provenance of this object has been assessed as ‘highly problematic’. The provenance documentation provided to the NGA by Art of the Past indicated that the object had been purchased by Monika Krebs of New York from Achim Bedrich, a Munich dealer, in Germany in 1970, and had been in her possession from 1970 to 1988. No allegations of theft have been made against Kapoor or Art of the Past in relation to antiquities of any state other than India. The object was sold to the NGA by Art of the Past in September 2006, Art of the Past having presumably acquired the object from Monika Krebs possibly in 1988. No information has come to hand to show that the ownership history is false and it remains possible that it is genuine.

The Project involved supplementary due diligence checking the following records:

- listings on the Interpol Stolen Art database;
- Gandharan art publications;
- images published on the Huntington Archive of Indian art website;
- Gandharan archive images published on the British Library’s website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

The probable modern countries of origin have been determined to be Afghanistan and Pakistan. Afghanistan is on the ICOM Red List. Apparently a great deal of Gandharan material (the style of this object is Gandharan) is known to have been stolen from museums and archaeological sites. While extensive research has not uncovered the archaeological origin of the sculpture, and while it does not appear to have been reported as stolen, in all the circumstances it may have been stolen at some stage. Further due diligence in respect of the asserted chain of ownership is contemplated. An

effort will be made to obtain a statement from Monika Krebs. Investigative authorities in the United States may be able to assist. Scholars in the field of Gandharan art and antiquities in Afghanistan and Pakistan will also be asked to assist in efforts to clarify the chain of ownership.

Q: Does the *Head of a bodhisattva* have a satisfactory provenance?

A: The provenance is problematic, pending further research and answers to enquiries of Monika Krebs.

Q: Does the material available establish when the *Head of a bodhisattva* left the possible country of origin?

A: No.

15. NGA Accession Number: 2007.217 (IRN 159976) *Seated Buddha*

A Report was prepared notwithstanding a voluntary return to India negotiated with the vendor, the Nancy Wiener Gallery. As with the Report on the returned *Shiva (Nataraja)*, the purpose of the Report was to inform future due diligence policies. The provenance supplied to the NGA by the vendor stated that the object had been purchased in Hong Kong between 1964 and 1966. In 2014 media reports contained allegations that Nancy Wiener had purchased the object from an antiquities dealer in India in 2000, and that it was exported illegally and given a false ownership history. [REDACTED], [REDACTED] [REDACTED]

A refund was negotiated and the voluntary return of the object to India was arranged on the grounds that, in the absence of export documentation, the object was likely to have been exported in breach of relevant Indian legislation.

Q: Did the *Seated Buddha* have a satisfactory provenance?

A: No.

Q: Does the material available establish when the *Seated Buddha* left India, the country of its origin?

A: No.

The lessons to be learnt are the same as those which were derived from the experience with the *Shiva (Nataraja)*. Future due diligence policies might encompass direct contact with any living consignor, or previous owner, particularly to elicit the date and circumstances of the export of a work from a country of origin. The absence of such details increases the risk that the NGA will not obtain good title from a vendor.

16. NGA Accession Number: 93.1933 (IRN 176660) *Ganesha*

In the Report, the provenance of this object has been assessed as ‘unlikely to be problematic’. The object was purchased by the NGA in 1993 from Richard Danzinger through New York art dealer Doris Wiener. The vendor supplied a letter from a key former owner, Robert Hatfield Ellsworth, giving particulars of the object’s ownership history from the late 1950s when it was in the collection of Dr Josef Remigius Belmont of Basel, Switzerland. Names and dates of transfer were included and the individuals named in the ownership history are recorded as known collectors and supporters of Asian art. As the object was listed in Dr Belmont’s private collection in Switzerland in the late 1950s, it appears to have been exported from its country of origin, India, by that time. There is nothing to suggest that the provenance described is problematic. There are a large number of works formerly in the collection of Dr Belmont in the Museum für Indische Kunst, Berlin and various Swiss museums. There are sculptures with similar provenance histories in the Harvard Art Museum, the Tropenmuseum in Lieden, and the Metropolitan Museum of Art in New York.

The Project involved attempting to establish ownership before the object was in Dr Belmont’s collection. The following sources of information have been searched:

- publications on Indian bronzes, especially those from before 1960;
- listings on the Interpol database of stolen art;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications, especially those related to bronzes;
- images published on the Huntington Archive of Indian art website; and
- images published on the British Library’s website.

The research has not uncovered details of ownership before that of Dr Belmont. The object does not appear to have been reported as stolen or associated with a particular temple.

Q: Does the *Ganesha* have a satisfactory provenance?

A: Yes.

Q: Does the material available establish when the *Ganesha* left India, the country of its origin?

A: Yes, the late 1950s.

Note: If the interpretation of s 14(1) of the PMCH Act in the 2014 Principles is applicable, the provenance of this object may be assessed differently.

17. NGA Accession Number: 2006.300 (IRN 152870) *Trident with Auspicious Kali*
[*Bhadrakali*]

In the Report, the provenance of this object has been assessed as ‘problematic’. This is because the chain of ownership provided to the NGA by the art dealer Carlton Rochell, New York (through whom it was purchased) indicated the object was ‘part of the Willard Clark Collection’ and was acquired by Mr Clark (a well-known collector) in June 1993 from Mrs Maharukh Desai of London. The NGA has tried unsuccessfully to contact Mrs Desai. The object was exhibited in a major exhibition, *Devi: the great goddess*, in 1999 and illustrated in an accompanying catalogue with no concerns raised about provenance. Works of art in the Minneapolis Institute of Arts and the Brooklyn Museum of Art are acknowledged to have been from Willard Clark’s collection (by gift) or acquired through his donations. There is no evidence to suggest that the provenance back to 1993 is not trustworthy.

The Project involved supplementary due diligence checking the following sources of information:

- publications featuring Chola-period bronze sculpture (aside from *Devi: the great goddess*);
- listings on the Interpol Stolen Art database;
- the Idol Wing of the Tamil Nadu police website;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library’s India Office website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

Extensive research has not uncovered the archaeological origin of this object or the dates of acquisition in, or export from, India. However, it has been noted the object was almost certainly used for worship and religious purposes within a temple. The object does not appear to have been reported stolen. Further enquires of archaeological records are contemplated.

The object does not have provenance back to 17 November 1970 but there is no evidence that it has been stolen or looted.

Q: Does the *Trident with Auspicious Kali [Bhadrakali]* have a satisfactory provenance?

A: The chain of ownership back to 1993 appears satisfactory but it cannot be established whether the object was outside its country of origin before 1970, or was legally exported from that country after 1970.

Q: Does the material available establish when the *Trident with Auspicious Kali [Bhadrakali]* left India, the country of its origin?

A: No.

18. NGA Accession Number: 2006.856 (IRN 122877) *Ganesha*

In the Report, the provenance of this object has been assessed as ‘potentially problematic’. This is essentially because there is a risk that the object was illegally obtained by a previous owner or was illegally exported from its country of origin by reason of patrimonial laws in place at the time of export. The dealer, Carlton Rochell Incorporated of New York, said that the object was on consignment from a private European collector who purchased it from Spink & Son in the early 1970s. In September 2006, the NGA received a copy of a statement from Leonidas Goulandris (a known art collector) in Switzerland addressed to Carlton Rochell confirming that: ‘[T]he stone Ganesha bought in the early 1970s from Spink, London and has remained in my collection since then’. Mr Goulandris also sent a fax to Carlton Rochell (a copy of which was provided to the NGA) stating that he did not have the original receipt but ‘to the best of my recollection I bought it in 1970 or 1971.’ There are works of art in the Metropolitan Museum of Art in New York and the Brooklyn Museum of Art which are identified as being from the collection of Mr Goulandris. Further, Spink & Son (established in 1772, purchased by Christie’s in 1990s) operated successful Asian Art galleries in England and Zurich and were particularly active in the 1970s. There have been a number of high profile returns of objects that came from that source.

However, the chain of ownership to the early 1970s is not disputed and no information has emerged to suggest that the object was exported from the country of origin, India, after 1972. The relevance of that date is that the *Antiquities and Art Treasures Act 1972* of India contains provisions controlling export.⁵⁸ Further, no evidence has been found that would permit the NGA to conclude that the object was a ‘protected antiquity’, or from a ‘protected site’, as provided in other Indian legislation: the *Ancient Monuments Preservation Act 1904* and the *Ancient Monuments and Archaeological Sites and Remains Act 1958*.

⁵⁸ See footnote 3.

Research into provenance of the object is continuing because the ownership history before its acquisition by Mr Goulandis is not known and because the precise date of export is not known. In particular archaeological records will be further checked. In the absence of any evidence to suggest the chain of ownership involving Mr Goulandis is false, the object appears to me to have a clear provenance back to the early 1970s.

Q: Does the *Ganesha* have a satisfactory provenance?

A: Yes.

Q: Does the material available establish when the *Ganesha* left India, the country of its origin?

A: Yes, by 1970 or 1971.

Note: If the interpretation of s 14(1) of the PMCH Act in the 2014 Principles is applicable, the provenance of this object may be assessed differently.

19. NGA Accession Number: 2009.56 (IRN 189295) *The sacred bull Nandi, vehicle of Shiva*

In the Report, the provenance of this object has been assessed as ‘problematic’, essentially because additional documents obtained through the Project have revealed inconsistencies in the chain of ownership provided at the time of purchase by Carlton Rochell Asian Art. The chain of ownership represented to the NGA was that a Mexican diplomat acquired the object and had it in Mexico since the 1960s. Further enquiries conducted as part of the Project and documents received in late 2014 amplify this information.

There is now on file a copy letter of 21 October 2008 of [REDACTED] confirming that he received this object by inheritance from an uncle, [REDACTED]. In that statement [REDACTED] also states that the object has been in his family’s possession since 1969 and that he imported it into New York from Mexico in July 2008 for the purposes of consignment for sale. Carlton Rochell acquired the object from [REDACTED] on 21 October 2008 (copy invoice provided). In a letter dated December 2013, [REDACTED] further explained that his uncle, the late [REDACTED], was a Mexican diplomat stationed in France in the 1950s and 1960s. During that period [REDACTED] made regular trips to India and eventually built a residence in Goa at which he collected Indian art, namely stone and bronze from the Chola dynasty. [REDACTED] returned to Mexico from France in 1964, gave his residence in Goa to Indian friends and shipped his Indian art collection to Mexico in the late 1960s. The object was in Guadalajara, Mexico, from the mid-1960s. In 1974, [REDACTED] died and his nephew, [REDACTED] inherited his art collection.

[REDACTED]
[REDACTED]

Accordingly, the NGA does not regard the chain of ownership as convincingly corroborated. No other sculptures from collections of [REDACTED] or [REDACTED] have

been identified. Extensive research has not uncovered the archaeological origin of the object and it does not appear to have been reported as stolen. Further research is contemplated [REDACTED]

Q: Does *The sacred bull Nandi, vehicle of Shiva* have a satisfactory provenance?

A: The provenance is problematic pending further enquiries.

Q: Does the material available establish when *The sacred bull Nandi, vehicle of Shiva* left India, the country of its origin?

A: No.

20. NGA Accession Number: 2011.938 (IRN 206602) *Sarsvati, Goddess of Arts and Learning*

The Report has assessed the provenance of this object as ‘problematic’ because the NGA has not been able to substantiate the chain of ownership provided by the vendor, namely that the object came from a collection of a private French collector, Jacques Kerchache, and had been ‘acquired in the early 1970s’. What has been confirmed is that the object was acquired by Jacques Kerchache before his death in 2001. While it is possible that the object formed part of his collection between the late 1950s and the 1980s, it has not been possible to confirm this. His widow has said she has no recollection of when, or from where, the object was obtained.

The Project has involved supplementary due diligence searching the following sources of information:

- publications featuring Chola-period bronze sculpture (aside from *Devi: the great goddess*);
- listings on the Interpol Stolen Art database;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library’s India Office website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

Extensive research has not uncovered the archaeological origin of the object or a date of acquisition by Jacques Kerchache. The object does not appear to have been reported as stolen. Further research is contemplated directed to establishing the ownership history before Jacques Kerchache and the date and circumstances of export.

Q: Does the *Sarsvati, Goddess of Arts and Learning* have a satisfactory provenance?

A: The provenance is problematic pending further enquiries.

Q: Does the material available establish when the *Sarsvati, Goddess of Arts and Learning* left India, the country of its origin?

A: No.

21. NGA Accession Number: 2006.295 (IRN 153044) *Standing bodhisattva*

The Report has assessed the provenance of this object as ‘problematic’ essentially because provenance is only clear back to 1975 and the chain of ownership provided by the vendor to the NGA has some gaps.

The chain of ownership provided indicated that the object had been in the ‘Armand Trampitsch Collection in Paris 1970s–1980s’ and in a ‘Private European Collection 1989–2005’. Armand Trampitsch died in 1975 and the object was sold by Christie’s (as an item from his collection) in London in October 1989. Nothing is known of the owner(s) immediately after Armand Trampitsch. However, the ownership of the object in London between 1989 and 2006 has been documented. Further, the object was exhibited prior to sale in 1989 and details of its ownership between 1989 and 2006 were published in 2003. Although there are gaps, no evidence has been uncovered that would suggest the chain of ownership back to the 1970s is not genuine.

The Project has involved supplementary due diligence checking the following sources of information:

- publications surveying Gandharan sculptures of this type;
- listings on the Interpol Stolen Art database;
- email alerts issued by www.plunderedpast.in;
- images published on the Huntington Archive website;
- Gandharan archive images published on the British Library’s website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

Afghanistan and Pakistan are the modern nations that cover the region from which this object probably originated. Afghanistan is on the ICOM Red List of places where cultural heritage is deemed to be of risk of destruction or looting due to extended periods of conflict. It is known that a great deal of Gandharan material (of which the object is an example) has been stolen from museums and archaeological sites over a period of several decades. Research has not uncovered the archaeological origin of the object and it does not appear to have been reported as stolen. The publication history of the object goes back to 1989 and no concerns have been known to have been raised by the governments of Afghanistan or Pakistan. Further research will target French auction records and scholars of Gandharan art will be consulted. Authorities in both Afghanistan and Pakistan will be asked to assist.

It can be noted that the Embassy of Afghanistan in Australia is assisting the NGA.

Q: Does the *Standing bodhisattva* have a satisfactory provenance?

A: The chain of ownership appears satisfactory back to 1975, but it is not possible to establish whether the object was outside its country of origin before 1970, or legally exported from that country after 1970.

Q: Does the material available establish when the *Standing bodhisattva* left Afghanistan or Pakistan, the probable countries of origin?

A: No.

22. NGA Accession Number: 2013.3956 (IRN 239895) *Sambhava, the third Jina*

In the Report, the provenance of this object has been assessed as ‘unlikely to be problematic’. The provenance documentation supplied by the vendor to the NGA at the time of purchase included evidence that the object was published in the catalogue of a London auction at which it was sold in 1967. The known exhibition history of the object began in 1967 when offered for sale by Sotheby’s in London.

Inferentially, the object was exported from its country of origin before 17 November 1970. As to details, Robert Hatfield Ellsworth of New York (a known collector) purchased the object from Dr Josef Remigius Belmont of Basel, Switzerland, between 1962 and 1964. When offered for sale by Sotheby’s London in February 1967 it was purchased by Claude de Marteau of Brussels, from whom it was bought by the NGA via a London dealership.

There are large numbers of works of art from the Belmont Collection in the Museum für Indische Kunst, Berlin and various Swiss museums. Further, works of art from the collections of Dr Belmont and Mr Ellsworth often appear at major art auctions.

There is no evidence that the object was improperly acquired by Dr Belmont and the object does not appear to have been reported as stolen.

The Project has involved supplementary due diligence checking the following sources of information:

- publications on Indian bronzes and Jain art, especially those from before 1967;
- listings on the Interpol database of stolen art;
- email alerts issued by www.plunderedpast.in;

- available Archaeological Survey of India publications, especially those related to bronzes;
- images published on the Huntington Archive of Indian art website; and
- images published on the British Library's India Office website.

Extensive research has not uncovered the ownership of the object before it became part of Dr Belmont's collection. The provenance of the object is not doubted but there is no information about the precise date or circumstances of export from its country of origin.

Q: Does the *Sambhava, the third Jina* have a satisfactory provenance?

A: Yes.

Q: Does the material available establish when the *Sambhava, the third Jina* left India, the country of its origin?

A: Yes, before 17 November 1970.

Note: An assessment of the provenance of this object based on the interpretation of s 14(1) of the PMCH Act in the 2014 Principles may well be different.

23. NGA Accession Number: 89.1365 (IRN 102840) *Vishnu with attendants*

In the Report, the provenance of this object has been assessed as ‘potentially problematic’. This is because although the owner, Dr David Nalin, provided a detailed written statement that the object was purchased in East Pakistan in 1967 (with the sale recorded at the local police station) he had no evidence of authorisation of export at that time.

Dr Nalin was a well-known collector of Asian art and the object was in the United States in Philadelphia by 1969. The object had been recorded in Shialdi, the village from which Dr Nalin acquired it (from a Hindu landowner), in a 1928 publication: *Iconography of Buddhist and Brahmanical Sculptures in the Dacca Museum*.

Prior to purchase by the NGA, legal advice was sought and obtained from Dr Griffith and Ministerial approval for the purchase was also obtained. The ownership history of the object, which is from a known site, is not contested.

Further research conducted as part of the Project confirmed the chain of ownership provided by Dr Nalin. Numerous further sources of information checked were:

- listings on the Interpol database of stolen art;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library’s India Office website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

The object has not been reported as stolen.

Q: Does the *Vishnu with attendants* have a satisfactory provenance?

A: Yes.

Q: Does the material available establish when the *Vishnu with attendants* left Bangladesh (East Pakistan from 1955 to 1971 and part of British India before partition in 1947), the country of its origin??

A: The material indicates that the object was moved from East Pakistan to India to West Pakistan (modern Pakistan) and was exported from there in 1969 to the United States.

Note: If provenance is assessed by reference to the interpretation of s 14(1) of the PMCH Act in the 2014 Principles, the result may well be different.

24. NGA Accession Number: 90.531 (IRN 146283) *Prajnaparamita, goddess of wisdom*

In the Report, the provenance of this object has been assessed as ‘potentially problematic’. The chain of ownership is well documented and uncontested. The object was discovered in the ruins of a fort at a known site in India in 1925. It was recorded for the Archaeological Survey of India in 1928, then purchased on site by Mrs Frieda Hauswirth in 1930. It was subsequently on loan (when offered for purchase) to the Philadelphia Museum of Art in 1931. It appears to have been purchased at auction in West Germany on behalf of Mr Earl Morse before 1960 and was with Mr Morse in New York from 1960. The object became part of his estate in 1988, from which the NGA acquired it in 1990 through a respected art dealer, Peter Marcus Gallery, in New York. An object, likely this object, was recorded as being in the Earl Morse Collection in 1960 when it was on loan to the Metropolitan Museum of Art.

The researches undertaken pursuant to the Project uncovered the ownership history between 1930 until before 1960. That evidence showed the object was legally obtained. This is an unusual example of an object from a known archaeological site having an almost complete ownership history from 1930. At the time of acquisition by the NGA in 1990, government approval was sought and obtained because of conflicting advice as to whether the UNESCO Convention involved a watershed (17 November 1970) in respect of the requirement that export of such an object be authorised by the country of origin.

Q: Does the *Prajnaparamita, goddess of wisdom* have a satisfactory provenance?

A: Yes.

Q: Does the material available establish when the *Prajnaparamita, goddess of wisdom* left India, the country of its origin?

A: Yes, in or about 1931.

Note: If provenance is assessed by reference to the interpretation of s 14(1) of the PMCH Act in the 2014 Principles, that assessment may be different.

25. NGA Accession Number: 91.1 (IRN 1552020) *Sita*

In the Report, the provenance of this object has been assessed as ‘unlikely to be problematic’. The chain of ownership supplied to the NGA by the vendor, Peter Marks, established that the object was in the possession of a well-known Asian art dealer, Chin-Tsai Loo (commonly, ‘C T Loo’) in Paris in 1935. It has been published several times and publicly exhibited in France. The chain of ownership from 1935 until it was offered for sale to the NGA has been corroborated by NGA staff up to 1948.

Numerous sculptures from South India have been identified as having been in the possession of C T Loo in the 1930 and 1940s. It is contemplated that further research could be undertaken to confirm the probable acquisition of the object in India by Gabriel Jouveau-Dubreuil. Jouveau-Dubreuil was a science teacher in Pondicherry who became an influential Indian art historian, scholar, author and archaeologist. In late 1922 or early 1923, he met C T Loo and undertook to act as his main supplier of Indian art, an arrangement which lasted for about six years. The known publication history of the object begins in 1935. Whilst confirmation of the details of owners of the object after 1948 are being followed up, there are no concerns about the provenance of this object.

The object has not been listed as stolen but NGA staff cannot determine a date of export or whether export authorisation (if any) was given.

Q: Does the *Sita* have a satisfactory provenance?

A: Yes.

Q: Does the material available establish when the *Sita* left India, the country of its origin?

A: Yes, in or before 1935.

Note: If provenance is assessed by reference to the interpretation of s 14(1) of the PMCH Act in the 2014 Principles, that assessment may be different.

26. NGA Accession Number: 2006.672 (IRN 37947) *The six-beaded Skanda [Karttikeya]*

In the Report, the provenance of this object has been assessed as ‘unlikely to be problematic’. The chain of ownership of this object supplied by the vendor, Jacques Barrere (Arts d’Extrême Orient, Paris, by signed certificates of two former owners), showed that the object had been in the collection of C T Loo (described earlier) in Paris before his death (15 August 1957). The two former owners were respectively his daughter and grandson. Thus the object had been exported from India before 1957. There is no evidence to suggest that the provenance of this object is unclear, although former owners have variously stated that C T Loo’s death was in August 1956 or 1958. Numerous sculptures from South India now in museum collections have been identified as having been in the possession of C T Loo from 1935 or before. Staff at the NGA have attempted to establish ownership details or relevant documentation before the object was in Paris in the collection of C T Loo.

The Project has involved supplementary due diligence searching the following sources of information:

- publications on Indian sculpture, especially those from before 1960;
- listings on the Interpol database of stolen art;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications, especially those related to bronzes;
- images published on the Huntington Archive of Indian art website; and
- images published on the British Library’s India Office website.

No details of ownership before the object was in the possession of C T Loo have been ascertained. The sculpture does not appear to have been reported as stolen or associated with a particular temple or site.

Q: Does the *The six-headed Skanda [Karttikeya]* have a satisfactory provenance?

A: Yes.

Q: Does the material available establish when the *The six-headed Skanda [Karttikeya]* left India, the country of its origin?

A: Yes, before 1957.

Note: If provenance is assessed by reference to the interpretation of s 14(1) of the PMCH Act in the 2014 Principles, that assessment may be different.

27. NGA Accession Number: 2011.1324 (IRN 213334) *Celestial maiden [surasundari]*

In the Report, the provenance of this object has been assessed as ‘potentially problematic’. This is essentially because, although the chain of ownership provided to the NGA by the vendor, Frank Russek of Panasia Gallery, Zurich, demonstrated that the object was out of India before 2 February 1971, the method of acquisition in India and the date or circumstances of export cannot be determined. The chain of ownership is not disputed. Most relevantly it was acquired in 1970 or 1971 by Hans-Peter Streuli of Mutschellen, Switzerland for his collection and catalogued as being part of such on 2 February 1971.

The Project has involved supplementary due diligence searching the following sources of information:

- publications featuring stone architecture and sculpture of this type;
- listings on the Interpol database of stolen art;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library’s India Office website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

These researches have not uncovered the archaeological origin of this sculpture, which does not appear to have been reported as stolen. Research is continuing to attempt to establish the date of export from India and ownership history before 1970. Museum professionals at the National Museum in Delhi or the Archaeological Survey of India may be able to assist.

Q: Does the *Celestial maiden [surasundari]* have a satisfactory provenance?

A: Yes, the chain of ownership is satisfactory, at least back to 2 February 1971.

Q: Does the material available establish when the *Celestial maiden [surasundari]* left India, the country of its origin?

A: Yes, before 2 February 1971.

Note: If provenance is assessed by reference to the interpretation of s 14(1) of the PMCH Act in the 2014 Principles, that assessment may be different.

28. NGA Accession Number: 89.347 (IRN 96657) *The child-saint Sambandar*

In the Report, the provenance of this object has been assessed as ‘problematic’. This is essentially because it is not possible to confidently corroborate the date of export from India. The ownership details provided to the NGA in 1989 by the vendor, William Wolff, a New York art dealer, indicated that the object was in his possession from 12 October 1970 (citing a Customs Entry No 8048). The known published and exhibition history of the object goes back to 1981, commencing with a catalogue from the Philadelphia Museum of Art.

Whilst it seems reasonable to assume that the object was exported from India no later than October 1970 when it was imported into New York, this has not been corroborated by any Customs documentation. Essentially the word of the dealer has been relied upon. At the time of acquisition William Wolff was well-known and respected with numerous high profile collectors and museums as his clients. Since then there have been newspaper reports that he conducted his own buying tours directly in countries of origin and did not always observe export restrictions. Without more, such material does not refute Mr Wolff’s claim that this particular object was imported into the United States in October 1970.

Because the evidence of export before the entry into force of the UNESCO Convention is not definitive, further research is contemplated, especially of relevant archives and possibly seeking information in relation to the Customs Entry Number provided by Mr Wolff.

There is insufficient information to conclude whether or not the object was acquired in breach of India’s patrimonial laws or prohibitions on export. In the absence of any concrete evidence that the claim of ownership provided by the vendor is untrustworthy, the provenance seems satisfactory.

Q: Does *The child-saint Sambandar* have a satisfactory provenance?

A: Yes.

Q: Does the material available establish when *The child-saint Sambandar* left India, the country of its origin?

A: Yes, no later than October 1970.

Note: If provenance is assessed by reference to the interpretation of s 14(1) of the PMCH Act in the 2014 Principles, that assessment may be different.

29. NGA Accession Number: 98.77 (IRN 2773) *Column for a Jain temple*

In the Report, the provenance of this object has been assessed as ‘problematic’. The object was purchased by the NGA in 1998 from a public auction at Sotheby’s in New York. Sotheby’s conveyed no information about the circumstances of the object’s acquisition or export from India.

No information is known about the ownership history of the object before Sotheby’s purported to pass legal title to the NGA. The purchase price was relatively inexpensive, which might indicate that the object was not a national treasure of India or an important item of cultural heritage.

The Project has involved searching the following sources of information:

- publications surveying Jain architecture and sculpture of this type;
- listings on the Interpol database of stolen art;
- email alerts issued by www.plunderedpast.in;
- available Archaeological Survey of India publications;
- images published on the Huntington Archive of Indian art website;
- images published on the British Library’s India Office website;
- major Christie’s Asian art sales catalogues dating from 1970–2002;
- major Sotheby’s Asian art sales catalogues dating from 1970–2002; and
- online auction listings such as Artkhade and Invaluable.

Research has not uncovered the archaeological origin for this object. The object does not appear to have been reported as stolen and has not been identified as associated with a particular site or temple. Provenance research is continuing. Museum professionals at the National Museum in Delhi and at the Archaeological Survey of India may be able to assist.

Q: Does the *Column for a Jain temple* have a satisfactory provenance?

A: The provenance is problematic pending further enquiries.

Q: Does the material available establish when the *Column for a Jain temple* left India, the country of its origin?

A: No.

30. NGA Accession Number: 68.9 (IRN 42424) *Buddha calling the Earth to witness*

In the Report, the provenance of this object has been assessed as ‘highly unlikely to be problematic’. The object was given to the NGA in 1969 by the Indian Government. Although not accompanied by any authorisation for export, it can be assumed to comply with any relevant legislation. The object was apparently selected by the then Prime Minister, Indira Ghandi, and was presented by the High Commissioner for India in Australia to the Interim Council of the NGA. One of the functions of the NGA adverted to in that context was ‘to collect works of art representing the high cultural achievement of Australia’s neighbours in Asia’.⁵⁹

Q: Does the *Buddha calling the Earth to witness* have a satisfactory provenance?

A: Yes.

Q: Does the material available establish when the *Buddha calling the Earth to witness* left India, the country of its origin?

A: Yes, in or before 1969.

⁵⁹ Letter of 1 February 1968 from W.R. Cumming, Secretary, Art Advisory Board, to the Secretary, Department of External Affairs. The quotation derived from a recommendation in the National Gallery Inquiry Report (‘the 1966 Lindsay Report’).

31. NGA Accession Number: 69.26 (IRN 41454) *Goddess Lakshmi or Gangaur*

In the Report, the provenance of this object has been assessed as ‘unlikely to be problematic’. The object was purchased in India in 1968 by an agent for Australia’s Commonwealth Arts Advisory Board, the body responsible for national collection acquisitions before the NGA was formally established. Apparently the object was exported with the knowledge of the Indian authorities including the curator of the Madras Museum. The object may have been exported with documents of authorisation which no longer survive. Further research is unlikely to uncover further information as wooden objects of this kind have not been highly valued by collectors and scholars.

Q: Does the *Goddess Lakshmi or Gangaur* have a satisfactory provenance?

A: Yes.

Q: Does the material available establish when the *Goddess Lakshmi or Gangaur* left India, the country of its origin?

A: Yes, in 1969.

Note: If the interpretation of s 14(1) of the PMCH Act in the 2014 Principles is applied, there is a possibility a different assessment would be made.

32. NGA Accession Number: 2013.4283 (IRN 231018) *Standing Buddha*

In the Report, the provenance of this object has been assessed as 'slightly problematic'. This is because retrospective permission to export the object from Sri Lanka was obtained from the Director-General of Archaeology in Colombo. The object had been exported by its owner (from whom the NGA purchased the object) as part of his personal effects when he migrated to Australia. The owner states that the object was given to him by the abbot of Rama Vitgara Temple in Kandy, a former royal capital of Sri Lanka. The owner, [REDACTED], is the former curator of the [REDACTED] [REDACTED] in Sri Lanka. He is a respected expert on Sri Lankan art and author of numerous articles about it. When he migrated to Australia he brought with him an impressive collection of Sri Lankan art.

Research has not uncovered an alternative chain of ownership but further research is continuing with a view to corroborating the owner's account. The object does not appear to have been reported as stolen and has not been identified as associated with a particular site or temple.

Q: Does the *Standing Buddha* have a satisfactory provenance?

A: Yes.

Q: Does the material available establish when the *Standing Buddha* left Sri Lanka, the country of its origin?

A: Yes, in 2010.

33. NGA Accession Number: 2006.412 (IRN 153055) *The Bronze Weaver*

In the Report, the provenance of this object has been assessed as ‘potentially problematic’. The object was purchased by the NGA in June 2006 from a private art collector and known connoisseur, George Ortiz of Geneva, Switzerland (through Robert Bleakley, former head of Sotheby’s in Australia).

The chain of ownership that the NGA has been able to establish is that, in the 1970s, the object was in the possession of a family, or clan, named Temu, in the Lobe Tobi area, south of Larantuka in Flores, eastern Indonesia. The object was with Anthony Plowright, a reputable art dealer (in London, then France) when it was first offered for sale to the NGA in 1983. He had it tested by the Research Laboratories for Archaeology at Oxford University in 1984 and sold it shortly thereafter to George Ortiz.

Although the object was collected in Flores, Indonesia (exactly how is unknown) scientific tests show it could not have been made there. The country of origin remains obscure. Borneo (Indonesia/Malaysia) is the possible country of origin but both Vietnam and south China have been suggested as candidates. Indonesia is not a signatory to the UNESCO Convention.

Some have asserted the object was kept as a family heirloom. However, recent enquiries of a Netherlands-based Australian reveal that as at 1969 (when he saw the object in Larantuka) it was described to him as recently discovered, rather than as an heirloom.

The object was first described in print in an article written by an American textile historian, Marie Jeanne (Moni) Adams in 1977 (from a paper dated 1972), published in 1979.

The Project has involved additional research which has elicited anecdotal (and sometimes conflicting) accounts of the object's discovery and sale by the Temu family, or clan, from whose private possession it apparently came.

Research has not uncovered the origin of the object or any definitive particulars of its removal from Flores or export from Indonesia to Anthony Plowright. It has not been reported as stolen.

The object has been on display in the NGA since October 2006 and has been accessible to many visitors to the NGA including dignitaries from Indonesia. The NGA maintains contact with the Indonesian Embassy in Canberra particularly since two articles appeared in the media in 2014 suggesting concerns, from descendants of the original owners, over the NGA's acquisition of this object. It is contemplated that further discussions will be held with the Indonesian Embassy in Australia and that further efforts will be made in Indonesia, by NGA staff, to clarify the status of the object.

Q: Does *The Bronze Weaver* have a satisfactory provenance?

A: The chain of ownership back to 1983–1984 is satisfactory but it is not possible to establish whether the object was outside its country of origin before 1970.

Q: Does the material available establish when *The Bronze Weaver* left Indonesia, the possible country of its origin?

A: There is material which shows that the object was exported from Indonesia by 1983–1984. However, there is no certainty that Indonesia is the country of origin and no information about how the object may have been transferred from some other country of origin to Indonesia.

34. , 35. and 36. NGA Accession Number: 2011.946.1–3 (IRN 206616) *Bodhisattva Avalokiteshvara Padmapani with attendants*

In the Report, the provenance of this group of three bronzes is assessed as ‘potentially problematic’. This is essentially because it is not possible for the NGA to confidently determine the circumstances of acquisition or the circumstances and date of export from the country of origin, Vietnam. The chain of ownership provided to the NGA by the vendor, [REDACTED], indicated the objects were acquired by him in the 1970s from [REDACTED]. [REDACTED] has been a prominent collector associated with [REDACTED] since the 1950s. Whilst the identity and life history of [REDACTED] is not in question, his ownership of the objects has not been confirmed. Official export documents indicate that the objects were exported from England to Australia in 2010 and previously [REDACTED]. The objects have not been reported as stolen or as associated with a particular temple or location. Whilst the NGA has been unable to determine the circumstances of acquisition or to ascertain the date of export, independent evidence suggests the objects were out of Vietnam from the mid-1990s. Further research is contemplated in an attempt to independently verify the chain of ownership. Enquiries will be made of the Ecole-française d’Extrême – Orient in Vietnam and France and of scholars of Vietnamese art.

Q: Does the *Bodhisattva Avalokiteshvara Padmapani with attendants* have a satisfactory provenance?

A: The provenance is problematic pending further enquiries.

Q: Does the material available establish when the *Bodhisattva Avalokiteshvara Padmapani with attendants* left Vietnam, the country of their origin?

A: No.

Some concluding remarks

Reflecting the history of the collection of antiquities, many museums hold objects with an incomplete provenance designated as problematic, but for which there is no evidence that the objects have been stolen or looted. Likewise many objects in established collections may not be accompanied by documents evidencing export from a country of origin (even if they once were).

Because there may be conflicting but legitimate interests in an object of cultural heritage in a museum's collection, particularly an object of problematic provenance, listing such objects on a dedicated website achieves several desirable aims:

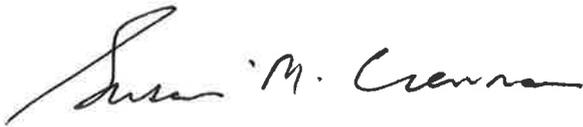
- it constitutes notice to the whole world (including any true owner) of a museum's custody and possession of an object;
- it encourages exchange of provenance information between museums, especially those with objects of shared provenance; and
- it invites holders of a relevant interest, or relevant information, to come forward with that information.

Acquisition policies of museums directed to discouraging the theft and looting of cultural heritage could require revelation of the identity of any consignor, or previous owners of a work of art (which can be conveyed confidentially). They might also require direct contact with any consignor, or previous owner, so as to be satisfied of the date and circumstances of any export of an object from a country of origin.

Due Diligence and Provenance policies of museums that permit the acquisition of objects of incomplete provenance might require (a) contact with the country of origin before acquisition; and/or (b) immediate listing of the object and its details (excluding price) on a website, once acquired.

Finally, and more specifically, there are several avenues available to the NGA for resolving doubt over the provenance of four objects in the Collection involving Abdulla and Raj Mehgoub and four objects involving Selina Mohamed.

For this Review, I have had the opportunity to view the objects. I have also had the benefit of consultations with curatorial staff of the NGA, Dr Michael Brand, Director of the AGNSW, and Mr Shane Simpson, solicitor of Simpsons Solicitors. I record my indebtedness to all of them and thank you for your instructions.



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Date: 23 : 11 : 2015 .