



COMMONWEALTH ASSOCIATION OF MUSEUMS

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COMMONWEALTH ASSOCIATION OF MUSEUMS

**PROJECT ON IMPLEMENTING
INTERNATIONAL LAW ON CULTURAL PROPERTY**

Key Obligations in Conventions on Cultural Property

AN INITIAL REPORT & PROPOSAL

(DISCUSSION DRAFT FOR RESTRICTED CIRCULATION)

MAY 24, 2010

1. Introduction

This Report sets out a brief summary of the findings from a recent Survey of the current status of international law related to the protection of certain types of cultural property, as a foundation for a Proposal for a collaborative new project between the Commonwealth Association of Museums, the Centre for International Sustainable Development Law (CISDL), and the Commonwealth Lawyers Association.

First, the Report highlights the key legal and practical concepts involved in the areas under study, and sets out the key provisions of the relevant binding and non-binding international instruments in this field. The Report then surveys occurrences of cooperation between intergovernmental and non-governmental organizations in the relevant policy areas, important case studies, and subsequent gaps in international treaties relating to cultural property.

Second, a joint Proposal is presented, identifying the goals of the project, specific areas for study, and proposed methodology for conducting research and facilitating dialogues.

In addition, Annexes provide background on the intended partners in the Project and the legal researchers, cultural property experts and others who will be involved.

2. Executive Summary

The protection and preservation of cultural property is not new to international law, and indeed there is an ever-increasing body of treaty law surrounding this topic.¹ In addition to treaty law, institutions and organizations such as the UNESCO and the ICOM exist with the partial or full goal of implementing these treaties and providing outlets for State Parties to these treaties to raise continuing or new problems associated with treaty enforcement. Further, these entities are frequently in the position to assist State Parties and/or other organizations in the funding of measures intended to bolster the effective implementation of treaty obligations related to cultural property.

As has been proven in countless examples, however, the existence of international treaty law does not result in immediate protection from the harms intended to be prevented by these particular treaties. This is certainly true in the context of the law surrounding cultural property, the enforcement of which involves a complex interaction between States, museums and other legitimate collectors of cultural property, interested communities – such as indigenous communities – and diverse private actors.

The following survey and proposal lay out a future agenda for a cooperation Project that will involve legal and cultural research, consultations and dialogue, the development of educational materials and activities, also monitoring and evaluation.

This initial Report is based on a Scoping Survey which gathered key research partners to examine the primary international legal instruments related to cultural property and ascertain several key elements that are often neglected. After analysing the key terms, rights and provisions of each treaty in relation to cultural property, the partners surveyed the main issues regarding implementation and enforcement that have arisen within various existing treaty regimes. As a corollary, the Survey, on which this Report is based, also developed several pilot studies that illustrate the potential benefits of the treaty when applied appropriately and involving all involved actors, while also illustrating the difficulties encountered in the attempt to implement the treaty terms. Following consultations and related activities, the Survey further analyzed the existing laws and policies in key countries to determine whether and where gaps in necessary legal protections and provisions exist. This Report summarizes the initial findings, and provides a summary of the resulting Project Proposal.

¹ Molly Torsen and Jane Anderson, *Intellectual Property and the Safeguarding of Traditional Cultures: Legal Issues and Practical Options for Museums, Libraries and Archives* (WIPO Switzerland, Geneva: WIPO Switzerland, 2010) 122 p. ISBN: 978-92-805-2016-3

3. Key Concepts in International Law on Cultural Property

The international intellectual and cultural property regime defines what types of knowledge may and may not be exchanged on world markets, and the types of rights that may be claimed. Formal property rights to knowledge may be claimed by natural or legal persons in the form of copyrights, patents on industrial designs, and trademarks. Another web of rights exists outside the formal intellectual property regime, for objects that express the culture or heritage of a nation, tribe or people. These collective types of rights are known as rights in cultural property or cultural heritage.²

The legal concept of “cultural property” was first defined in the *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*.³ For the purposes of this convention, cultural property includes “movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history ... works of art; manuscripts, books and other objects of artistic, historical or archaeological interest.”⁴ This convention therefore limits the scope of protection⁵ to objects that are the focus of the convention (i.e. physical property that could be at risk during times of war).⁶

In times of peace, the concept of safeguarding cultural property imparts an obligation for state parties to take appropriate measures to protect the physical property within their territory against the “foreseeable effects of an armed conflict”.⁷ Apart from peace, the application of this convention applies in the event of declared war, armed conflict arising between two or more states, or of partial or total occupation of the territory of a state, notwithstanding armed resistance to this occupation.⁸ In such circumstances, safeguarding and preservation shall be supported, and if the competent national authorities are unable, then state parties as an Occupying Power shall take the most necessary measures to preserve cultural property situated in occupied territory and damaged by military operations.⁹ State parties whose government is considered legitimate by members of a resistance movement shall, if possible, draw their attention to comply with the obligation of respect for cultural property under Article 4.¹⁰ This is the minimum applicability of this convention for conflict occurring within the territory of one state, along with access to the services of the United Nations Educational, Scientific and Cultural Organization (UNESCO).¹¹ Thus, the bulk of this convention is applicable only to conflict as between states parties.

² Chartrand argues that a nation’s “patrimony” consists of three types of cultural property: (1) traditional (i.e. physical artifacts that are distinguished by their aesthetic value, cultural significance, rarity and/or age); (2) contemporary (i.e. cultural artifacts of contemporary creation); and (3) intangible (i.e. tacit personal knowledge, or the knowledge that is expressed in performances, oral traditions, etc.) See Harry Hillman Chartrand, “Preface” in *The Complete Multilateral Cultural Property & Related 1874-2008 Agreements, Charters, Conventions and Treaties* (Compiler Press, 2009) online:

< <http://www.compilerpress.ca/CMCPRR/CMCPR%201874-2008.htm> > at xiv-xviii.

³ 14 May 1954, 249 U.N.T.S. 240 (entered into force 7 August 1956).

⁴ *Ibid.* at Art. 1.

⁵ The term “protection” in the context of cultural protection includes: physical protection; protection *in situ* (or protection against removal from natural or archaeological sites); protection of visibility and accessibility; and retention (or protection against removal from the home culture). See discussion in Craig Forrest, *International Law and the Protection of Cultural Heritage* (New York, NY: Routledge, 2010) at 14-18.

⁶ *Ibid.* at 21.

⁷ Art. 3.

⁸ Art. 18(1)(2).

⁹ Art. 5(1)(2).

¹⁰ Art. 5(3).

¹¹ Art 19(1).

As an overarching duty, “respect for cultural property” obligates state parties to refrain, both within their territory as well as the territory of other state parties, from any “use of the property and its immediate surrounding or of the appliances in use for its protection” which are likely to expose it to destruction or damage in the event of armed conflict.¹² This includes acts of hostility directed towards such property.¹³ Further, state parties have the obligation to prohibit, prevent and stop any form of theft, pillage, misappropriation and vandalism directed against cultural property, including the requisition of movable cultural property situated in the territory of another state as well as acts of reprisal against cultural property.¹⁴ These obligations may be waived only in cases where military necessity is imperatively required.¹⁵ It is not sufficient grounds for state parties to evade these obligations while in the territory of other state parties, by reason that the latter has not complied with safeguarding measures within its territory.¹⁶

The *Convention concerning the Protection of the World Cultural and Natural Heritage*¹⁷ marked a transition toward the term “cultural heritage” in international cultural protection law.¹⁸ Although the definition of “cultural heritage” in the convention is again limited by the scope of the convention,¹⁹ the use of the term “cultural heritage” implies a shift away from the norms of property law²⁰ and toward a broader notion of collective and public interest in cultural objects, as well as the intangible elements of cultural expression, and the relationships of humans to cultural objects.²¹

In summary, the normative regime that has developed for cultural protection thus includes both physical property and intellectual property, and the broader collective notion of cultural heritage. The development of instruments in international cultural protection law reflects this normative evolution, from the physical preservation of objects, to larger sites and cultural landscapes, and finally to a view of cultural heritage that stresses the value of such heritage to society.²²

¹² Art. 4(1).

¹³ *Ibid.*

¹⁴ Art. 4(3)(4).

¹⁵ Art. 4(2).

¹⁶ Art. 5.

¹⁷ 16 November 1972, 1037 U.N.T.S. 151 (entered into force 17 December 1975) [*World Heritage Convention*].

¹⁸ Art. 1. (For the purpose of this Convention, the following shall be considered as “cultural heritage”:

monuments: architectural works, works of monumental sculpture and painting, elements or structures of an archaeological nature, inscriptions, cave dwelling and combinations of features, which are of outstanding universal value from the point of view of history, art or science;

groups of buildings: groups of separate or connected buildings which, because of their architecture, their homogeneity or their place in the landscape, are of outstanding universal value from the point of view of history, art or science;

sites: works of man or the combined works of nature and man, and areas including archaeological sites which are of outstanding universal value from the historical, aesthetic, ethnological or anthropological point of view.)

See also *supra* note 4 at 27.

¹⁹ For the purposes of this convention, cultural heritage includes monuments, groups of buildings, and archaeological sites. (See *World Heritage Convention*, *supra* note 6 at Art. 1.)

²⁰ The common law conception of property stresses individual ownership, and broadly divides property into the categories of real and personal. Further subdivisions include tangible and intangible, public and private, and intellectual property. Some elements of cultural heritage do not fit within these categories of property; for example, certain intangibles (ex. drumbeats, ceremonies, mythology) cannot be “owned” in the common law sense, though they form an important part of cultural heritage. A further distinction in civil law systems causes further confusion; different cultural protection rules may apply according to which entity (the state, another public body, or private citizen) claims ownership of the cultural resource. See discussion in Lyndell Prott & Patrick O’Keefe, “Cultural Heritage’ or ‘Cultural Property?’” (1992) 1 International Journal of Cultural Property at 314-315.

²¹ *Supra* note 4 at 25-26.

²² *Supra* note 4 at 396.

4. Binding Public International Law Instruments on Cultural Heritage

In public international law related to cultural heritage there are binding instruments, which are ratified by member states and become part of the laws of the member states, and non-binding instruments, such as declarations, which to which states lend their support but are not legally bound. This Section of the brief survey discusses the relevant binding public international law instruments. A further Section then discusses the relevant non-binding public international law instruments.

i. *Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*²³

UNESCO was established in 1945, and set about establishing a regulatory framework for the international exchange of cultural property. Article 1 of its constitution states that UNESCO will “recommend such international agreements as may be necessary to promote the free flow of ideas by word and image ... (and) the conservation and protection of the world's inheritance of books, works of art and monuments of history and science.”²⁴ Accordingly, the purpose of the *1954 Hague Convention* was to regulate the flow of cultural property between countries in the Cold War period.²⁵

This convention was the first international convention on the protection of cultural heritage and, as noted in the previous section, provided the first legal definition of “cultural property.” While it is focused on the protection of physical objects conceptualized as property, the convention also protects the values connected to these objects, albeit implicitly.²⁶ The preamble of this convention equates damage to cultural property as damage to the cultural heritage of all mankind where the duty to preserve cultural heritage is of great importance for all peoples of the world.²⁷ As such, museums, monuments, and scientific and cultural institutions are to be protected as belonging to the “common heritage of mankind”; a principle embodied by a duty to preserve, and *a fortiori* (or even more strongly) not to deliberately destroy cultural heritage.²⁸

ii. *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*²⁹

This convention confirms the right of state parties to regulate the export of cultural property from their territories³⁰ and the international norm that prohibits the unauthorized export or import of cultural property.³¹ This convention also calls on state parties to impose penalties or administrative sanctions, as part of their domestic laws, for infringing the import and

²³ *Supra* note 2.

²⁴ *Constitution of the United Nations Education, Scientific and Cultural Organization*, 16 November 1945, 4 U.N.T.S. 275 (entered into force 4 November 1946).

²⁵ *Supra* note 1 at xxiv.

²⁶ *Supra* note 4 at 21.

²⁷ *Supra* note 2.

²⁸ Francesco Francioni and Federico Lenzerini, “The Obligation to Prevent and Avoid Destruction of Cultural Heritage: From Bamiyan to Iraq” in Barbara T. Hoffman ed., *Art and Cultural Heritage: Law, Policy and Practice* (New York: Cambridge University Press 2006) 28 at 35.

²⁹ 14 November 1970, 823 U.N.T.S. 231 (entered into force 24 April 1972)

³⁰ *Ibid.* at Arts. 3, 5-6.

³¹ *Ibid.* at Arts. 6-7.

export prohibition of cultural property, unless accompanied by an appropriate certificate for authorization in compliance with the regulations.³² To facilitate this end, state parties shall engage in co-operative measures and preventive action.³³ For example, subject to penal or administrative sanctions, antique dealers must maintain a register to record the origin of each item of cultural property, contact details, description and price, along with the obligation to inform the purchaser of the export prohibition.³⁴ Another important feature of the convention is in Article 13(d), which recognizes the right of states to “classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported”.³⁵

iii. *Convention Concerning the Protection of the World Cultural and Natural Heritage*³⁶

The 1972 *World Heritage Convention* marked a transition in international cultural protection law in two important ways. First, as noted previously, the convention recognized the interest in cultural heritage as a common and collective interest. Second, the potential threats to the integrity of cultural heritage were expanded beyond armed conflict and illicit trade to include factors such as “urbanization, industrialization, social and economic upheaval, pollution, and climate change.”³⁷

The convention is divided into eight chapters that address, among other things, the structures and mechanisms for protecting cultural heritage. For example: Chapter I defines the cultural heritage to be governed by the convention; Chapter II sets out the obligation of state parties; Chapters III and IV deal with the establishment of the World Heritage Committee and the international fund for the protection of world heritage respectively; and Chapter V concerns mechanisms by which states may obtain assistance from the World Heritage Committee and/or the international community.

The convention introduces the notion of a “world heritage” which, although not defined in the convention, includes heritage with importance “for all the peoples of the world” and that forms “part of the world heritage of mankind as a whole.”³⁸ This notion of common heritage treats all nations as one entity for the purposes of cultural protection, and it is from this notion that a duty to cooperate in a protective regime rests with the state parties as a whole.³⁹

Another key concept is that of “outstanding universal value”, which is also not defined in the convention, though it is mentioned throughout. The convention vests the World Heritage Committee with the power to set the criteria by which this standard will be applied;⁴⁰ such criteria are specified in the Committee’s Operational Guidelines.⁴¹ As of January 2009, there were 878 sites inscribed on the World Heritage List, located in 145 of the 186 state parties to the convention. 679 of these sites were listed as cultural properties

³² *Ibid.* at Art. 8.

³³ *Ibid.* at Arts. 9-10.

³⁴ *Ibid.* at Art. 10(a).

³⁵ *Ibid.* at Art. 13(d).

³⁶ 23 November 1972, 1037 U.N.T.S. 151, 27 U.S.T. 37, 11 I.L.M. 1358 (entered into force 15 December 1975).

³⁷ *Supra* note 4 at 224.

³⁸ *Supra* note 6 at Preamble (fifth and sixth recital).

³⁹ Art. 6(1), *supra* note 4 at 229.

⁴⁰ Art. 11.

⁴¹ See discussion in Forrest, *supra* note 4 at 232-238.

were natural sites, and 25 were “mixed” sites with both cultural and natural elements.⁴² While physical sites are the objects of protection under the convention, intangible cultural heritage is increasingly taken into account in the nominations of World Heritage listings.⁴³

The duties of state parties include the obligation to protect the cultural heritage within their own territories and to ensure that appropriate measures are undertaken in this regard,⁴⁴ and to cooperate in an international system for cultural protection.⁴⁵ While the convention does not include explicit enforcement mechanisms to ensure appropriate state action, state parties do have a legal duty to act in accordance with the spirit of the convention. In addition, much of the wording in the convention points to the creation of *erga omnes* obligations (or obligations owed to all state parties). In particular, the obligations under Articles 4 and 6 – which respectively recognize the primary role of states in the protection of their cultural heritage and the obligation of other state parties to cooperate in its protection – articulate an *erga omnes* obligation.⁴⁶

iv. *Convention on the Protection of the Underwater Cultural Heritage*⁴⁷

This convention deals with underwater archaeological exploration. The convention is complementary⁴⁸ to the *United Nations Convention on the Law of the Sea* (UNCLOS),⁴⁹ which contains a broad statement on underwater archaeological sites:⁵⁰

All objects of an archaeological and historical nature found in the Area shall be preserved or disposed of for the benefit of mankind as a whole, particular regard being paid to the preferential rights of the State or country of origin, or the State of cultural origin, or the State of historical and archaeological origin.⁵¹

The primary mechanism for action under the convention is by bilateral agreement between states,⁵² but it does contemplate a special protective regime for the Area.⁵³ In both the *Convention on the Protection of Underwater Cultural Heritage* and in the UNCLOS, the “Area” means “the seabed and ocean floor and subsoil thereof, beyond the limits of national jurisdiction.”⁵⁴

The timing of this convention, eighteen years on from the UNCLOS, probably reflects technological changes that have improved access to underwater cultural sites within the

⁴² *Supra* note 4 at 255.

⁴³ *Supra* note 4 at 366.

⁴⁴ Arts. 4-5.

⁴⁵ Arts. 6-7.

⁴⁶ *Supra* note 4 at 277.

⁴⁷ 6 November 2001, 41 I.L.M. 40 (entered into force 2 January 2009).

⁴⁸ Art. 3 of the convention provides that: “This Convention shall be interpreted and applied in the context of and in a manner consistent with international law, including the *United Nations Convention on the Law of the Sea*.” See discussion in Ugo Mifsud Bonnici, *An Introduction to Cultural Heritage Law* (Valletta, Malta: Mindsea Books, 2008) at 210.

⁴⁹ 10 December 1982, 1833 U.N.T.S. 3, 21 I.L.M. 1261 (entered into force 16 November 1994) [UNCLOS].

⁵⁰ *Supra* note 33.

⁵¹ *Supra* note 34 at Art. 149.

⁵² Art. 6.

⁵³ Art. 12.

⁵⁴ UNCLOS at Art. 1(1), *Underwater Cultural Heritage Convention* at Art. 1(5).

Area.⁵⁵ Such changes had brought about “increasing commercial exploitation of underwater cultural heritage, and in particular certain activities aimed at the sale, acquisition or barter of underwater cultural heritage ...”⁵⁶ Accordingly, the convention prohibits the commercial exploitation of underwater cultural heritage, and calls for the long-term preservation of underwater cultural heritage *in situ*, whereby underwater preservation is the first option, or once it has been recovered, that is, retrieved from underwater.⁵⁷

v. *Convention For the Safeguarding of the Intangible Cultural Heritage*⁵⁸

Intangible cultural heritage is nearly impossible to define,⁵⁹ but Article 2(1) provides a definition for the purposes of the convention. This definition includes:

... the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artifacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.⁶⁰

Forrest highlights two important features of this definition. First, it is exceptionally broad, and includes the tangible objects with which the intangible cultural heritage is connected. Forrest argues that this connection between tangible and intangible may make this convention difficult to reconcile with other international conventions on cultural property or national legal regimes. Second, the content of intangible cultural heritage is largely determined by communities, groups and individuals, so long as such practice or expression is in accordance with international human rights law.⁶¹ This appears to afford a wide range of flexibility as to the content of intangible cultural heritage. However, Article 2(2) sets out several “domains” in which intangible cultural heritage may be manifest, including oral traditions, social practices, and traditional craftsmanship. It is unclear how this provision would interact with Article 2(1), which implies that the substance of intangible cultural heritage is open-ended and indeterminate.⁶²

The essential purpose of the convention is to safeguard the intangible cultural heritage.⁶³ “Safeguarding” in this context is defined in part as “measures aimed at ensuring the viability of the intangible cultural heritage.”⁶⁴ Article 2(3) sets out the types of measures required in order for this to be achieved, “including the identification, documentation, research, preservation, protection, promotion, enhancement, transmission, particularly through formal and non-formal education, as well as the revitalization of the various aspects of such heritage.”

⁵⁵ *Supra* note 1 at xxv. Note that the convention also applies to underwater cultural heritage in internal waters, archipelagic waters, territorial sea, contiguous zone, exclusive economic zone and on the continental shelf (See Arts. 7-9). However, a special regime of protection is proposed in the convention specifically for the Area (Art. 12).

⁵⁶ Preamble.

⁵⁷ Art. 2 (5)-(7).

⁵⁸ 17 October 2003 (entered into force 20 April 2006).

⁵⁹ *Supra* note 4 at 362.

⁶⁰ Art. 2(1).

⁶¹ Art. 2(1).

⁶² *Supra* note 4 at 372.

⁶³ Art. 1.

⁶⁴ Art. 2(3).

Much like the *World Heritage Convention*, this convention establishes a structure that places primary responsibility for protection with the state on whose territory the intangible cultural heritage is found, complemented by an international structure for cooperation and assistance among the state parties.⁶⁵ The identification of intangible cultural heritage is also done at the level of the State, “with the participation of communities, groups and relevant non-governmental organizations.”⁶⁶

vi. *General Agreement on Tariffs and Trade (GATT)*⁶⁷

Several provisions in the GATT address the issue of cultural heritage in the context of international trade.⁶⁸ A special regime for fixing quotas for trade of products produced by the film industry is set out in Article IV. In addition, Article III(10) exempts cinema exhibitions from the system of quotas. Two other GATT provisions, however, allow for the imposition of restrictions on international trade to protect public morals (Article XX(a)) and for “the protection of national treasures of artistic, historic or archaeological value” (Article XX(f)). The World Trade Organization (WTO) was established during GATT negotiations of the Uruguay Round (1986-1993). It subsumed GATT to become a permanent forum for member states to address international trade issues: to negotiate and oversee the implementation of WTO agreements, along with strong dispute settlement mechanisms for enforcement.

vii. *World Intellectual Property Organization (WIPO)*

Since the early 1970s, UNESCO and WIPO have collaborated to include folklore in a number of model copyright protection laws.⁶⁹ The overlap between intangible cultural heritage and intellectual property has meant that the two regimes must collaborate to ensure that laws are consistent and that neither regime overlaps in such a way as to undermine the other.⁷⁰ WIPO is under formal agreement with the World Trade Organization (WTO) to administer the instrument known as TRIPS (the *Agreement on Trade-Related Aspects of Intellectual Property Rights*). This agreement, which constitutes a global treaty on the trade in intellectual property rights, does not apply to “non-trade-related” intellectual and cultural property rights (ex. collective intellectual property or intangible cultural property).⁷¹

viii. *Convention concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169)*⁷²

The International Labour Organization Convention No. 169 concerns the protection of the system of indigenous land tenure and management, including culture. While it does not refer explicitly to intellectual or cultural property, the convention does place duties on state parties

⁶⁵ *Supra* note 4 at 373. For example, the convention establishes a List of Intangible Cultural Heritage in Need of Urgent Safeguarding (Art. 17), and an Intangible Cultural Heritage Fund (Ch. VI).

⁶⁶ Arts. 11, 12 and 15.

⁶⁷ 1947, 55 U.N.T.S.194, 61 Stat. pt. 5, T.I.A.S. 1700 (entered into force 1 January 1948).

⁶⁸ See discussion in Chartrand, *supra* note 1 at xiv-xv.

⁶⁹ For example, see the *Model Provision for National Laws on the Protection of Expressions of folklore Against Illicit Exploitation and Other Prejudicial Actions* (1982). See discussion in Marie Battiste & James (Sa’ke’j) Youngblood Henderson, *Protecting Indigenous Knowledge and Heritage: A Global Challenge* (Saskatoon, SK: Purich Publishing, 2000) at 190-192.

⁷⁰ *Supra* note 4 at 364.

⁷¹ *Supra* note 1 at xxv.

⁷² 27 June 1989, 72 ILO Official Bull. 59, 28 I.L.M. 1382 (entered into force 5 September 1991).

that are broad enough to encompass measures for the protection of cultural heritage.⁷³ For example, the convention calls on state parties to provide indigenous peoples with “means for the full development of [their] own institutions and initiatives”, and to allow indigenous peoples “to exercise control, to the extent possible, over their own economic, social and cultural development.”⁷⁴

ix. *International Covenant on Civil and Political Rights (ICCPR)*⁷⁵; *International Covenant on Economic, Social and Cultural Rights (ICESCR)*⁷⁶

These two legal instruments are relevant to minority rights and the rights of indigenous peoples through their common article 1 which recognizes the right of “all peoples to self-determination” and by virtue of that right “to freely determine their political status and freely pursue their economic, social and cultural development”. Article 27 of the ICCPR further obligates States in which ethnic, religious or linguistic minorities exist, not to deny “the right, in community with the other members of their groups, to enjoy their own culture, to profess and practice their own religion, or to use their own language”.

x. *The Charter of the United Nations*⁷⁷

Adopted in 1945, the United Nations aims to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, to maintain international peace and security and promote economic and social advancement of all peoples. Article 1 expressly addresses the need to respect “the principle of equal rights and self-determination of peoples” and the promotion of “human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion”.

Chapter VI promotes the peaceful settlement of any dispute likely to endanger the maintenance of international peace and security⁷⁸ by encouraging the parties to any dispute to seek a solution through negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means.⁷⁹ Should the parties fail to settle their dispute by these means, they shall refer it to the Security Council.⁸⁰ The Security Council may investigate any dispute or any situation, which might lead to international friction or give rise to a dispute likely to endanger the maintenance of international peace and security.⁸¹ At any stage of a dispute, the Security Council may recommend appropriate procedures or methods of adjustment, taking into consideration the procedures of dispute settlement the parties have already adopted and the general rule that legal disputes should be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court.⁸² The Security Council may also recommend such terms of settlement as it may consider appropriate.⁸³ Any Member of the

⁷³ *Supra* note 54 at 194.

⁷⁴ Arts. 6-7.

⁷⁵ 16 December 1966, 999 U.N.T.S. 171 (entered into force 23 March 1976).

⁷⁶ 16 December 1966, 993 U.N.T.S. 3 (entered into force 3 January 1976).

⁷⁷ 26 June 1945, Can. T.S. 1945 No. 7.

⁷⁸ Art. 33 – 38.

⁷⁹ Art. 33(1).

⁸⁰ Art. 37(1).

⁸¹ Art. 34.

⁸² Art. 36(3).

⁸³ Art. 37(2).

UN may bring any dispute or international friction likely to endanger the maintenance of international peace and security to the attention of the Security Council or of the General Assembly.⁸⁴ A state that is not a Member of UN may also bring any dispute to which it is a party, if it accepts in advance to abide by the obligations of pacific settlement provided under this Chapter.⁸⁵

5. Non-Binding Public International ‘Soft Law’ Standards and Guidelines

As discussed in above, in public international law there are binding instruments, which are ratified by member states and become part of the laws of the member states, and non-binding instruments, such as standards, guidelines and declarations, which to which states lend their support but are not legally bound. The instruments discussed in this Section are non-binding instruments.

i. The Vermillion Accord on Human Remains

Adopted in 1989 at the World Archaeological Inter-Congress in South Dakota, U.S., the Accord signifies the first international agreement between indigenous and scientific communities on principles regarding the control and disposition of human remains.⁸⁶ It urges the need to balance scientific research value on human remains with respect for the wishes of the dead as well as respect for the wishes of the local community, relatives or guardians, prior to undertaking research.⁸⁷ The need for mutual respect for the “legitimate concerns of communities for the proper disposition of their ancestors, as well as the legitimate concerns of science and education” during negotiations is also addressed.⁸⁸

ii. United Nations Declaration on the Rights of Indigenous Peoples⁸⁹

The United Nations Declaration on the Rights of Indigenous Peoples was adopted by the United Nations General Assembly on 13 September 2007, with 143 countries voting in favour, 11 abstaining, and 4 voting against. Since then, Colombia and Samoa, each of whom abstained, have since endorsed it. Of the 9 remaining states that originally abstained, Bangladesh, Kenya and Nigeria are Commonwealth countries. As of December 2010, the 4 countries that voted against - Australia, New Zealand, Canada, and the United States - have now all moved to endorse it.

The Declaration originated in 1982, when the United Nations Economic and Social Council (ECOSOC) set up its Working Group on Indigenous Populations (WGIP) to develop human rights standards for the protection of indigenous peoples around the world. It recognizes indigenous peoples as free and equal to all other peoples, so as to help combat discrimination and marginalization, in particular that based on their indigenous origin and

⁸⁴ Art. 35(1).

⁸⁵ Art. 35(2).

⁸⁶ World Archaeological Congress, *The Vermillion Accord on Human Remains* (South Dakota, U.S.: WAC, 1989), online: World Archaeological Congress <http://www.worldarchaeologicalcongress.org/site/about_ethi.php#code2>.

⁸⁷ Arts. 2-4.

⁸⁸ Art. 5.

⁸⁹ UN GAOR, 61st Sess., 107th Plen. Mtg., UN Doc. A/Res/61/295 (2007).

identity.⁹⁰

The instrument establishes a framework of minimum standards to recognize and promote the human rights and fundamental freedoms of indigenous peoples as recognized in the “Charter of the United Nations, the Universal Declaration of Human Rights and international human rights law”.⁹¹ It sets out individual and collective rights, including indigenous rights to culture, identity, language, employment, health and education and other issues. The Declaration expressly states the right of indigenous peoples to self-determination, to “determine their political status” and to “freely pursue their economic, social and cultural development”.⁹² A non-binding text, the Declaration embodies both the moral and political force of international legal norms and reflects the commitment of the UN member states to respect the rights of indigenous peoples.

The most significant provisions that deal with cultural heritage are located under articles 11 and 12. Indigenous peoples have the right to maintain, protect and develop the past, present and future manifestations of their cultures.⁹³ States shall provide effective mechanisms for redress, including restitution, for “cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs”.⁹⁴ This is further refined as the right of indigenous peoples to:

[m]anifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.⁹⁵

Access and/or repatriation of these ceremonial objects and human remains calls for “fair, transparent and effective mechanisms” developed by States in conjunction with indigenous peoples concerned.⁹⁶ The Declaration contributes to the development of international standards to protect the rights of indigenous peoples over their cultural and religious traditions, including the right to repatriation of ancestral remains.

*iii. Universal Declaration of Human Rights*⁹⁷

Adopted in 1948, this foundational instrument declares that all human beings are born free and equal in dignity and rights⁹⁸ and all are entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”⁹⁹ as well as equal protection of the law without discrimination¹⁰⁰. Article 27 outlines the universal

⁹⁰ Art. 2.

⁹¹ Art 1.

⁹² Art. 3.

⁹³ Art. 11(1).

⁹⁴ Art. 11(2).

⁹⁵ Art. 12(1).

⁹⁶ Art. 12(2).

⁹⁷ GA Res 217A(III), UN GAOR, 3d Sess., Supp. No. 13, UN Doc. A/819 (1948) 71.

⁹⁸ Art. 1.

⁹⁹ Art. 2.

¹⁰⁰ Art. 7.

right to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits as well as the right to protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author. Article 30 bars any State, group or person to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth in this Declaration.

*iv. Vienna Declaration and Programme of Action*¹⁰¹

The World Conference on Human Rights met at Vienna in June 1993, a high level conference convened by the United Nations General Assembly to assess the progress that has been made in the field of human rights since the adoption in 1948 of the Universal Declaration of Human Rights. The Conference adopted the Vienna Declaration and Programme of Action (VDPA), which reaffirms the solemn commitment of all States to fulfill their obligation to promote, observe and protect all human rights and fundamental freedoms as the birthright of all human beings and their protection and promotion as the primary responsibility of Governments.¹⁰² This expressly includes the right of all peoples to self-determination, to freely determine their political status and to freely pursue their economic, social and cultural development.¹⁰³ It takes into account “the particular situation of peoples under colonial or other forms of alien domination or foreign occupation” and expressly “recognizes the right of peoples to take any legitimate action, in accordance with the Charter of the United Nations, to realize their inalienable right of self-determination”.¹⁰⁴ Denial of the right of self-determination is considered a violation of human rights, giving effect to the important realization of this right.¹⁰⁵ This shall not be construed as authorizing action to impair, in whole or in part, the territorial integrity or political unity of sovereign States in compliance with the principle of equal rights and self-determination of peoples and therefore possessed of a Government representing the whole people belonging to the territory without distinction of any kind.¹⁰⁶

This right to development should be fulfilled so as to meet the equitable developmental and environmental needs of present and future generations.¹⁰⁷ Illicit dumping of toxic and dangerous products and waste potentially constitutes a serious threat to the human rights to life and health and it urges States to adopt and vigorously implement existing conventions regarding illicit dumping.¹⁰⁸ Further, it notes that certain advances such as biomedical and life sciences, as well as in information technology, may entail potential adverse consequences to the “integrity, dignity and human rights of individuals” thereby calling for international cooperation to ensure respect in this area.¹⁰⁹ Overall, it expresses concern over violations and situations that constitute serious obstacles to the full enjoyment of all human rights including inhuman and degrading treatment or punishment, racial discrimination and other denials of

¹⁰¹ 14-25 June 1993, UN Doc. A/CONF. 157/24 (Part I), Chap. III.

¹⁰² Art. 1.

¹⁰³ Art. 2 (para 1).

¹⁰⁴ Art. 2 (para 2).

¹⁰⁵ Ibid.

¹⁰⁶ Art. 2 (para 3). See the UN Declaration of Principles of International Law concerning Friendly Relations and Cooperation Among States.

¹⁰⁷ Art. 11 (para 1). See the UN Declaration on the Right to Development.

¹⁰⁸ Art. 11 (para 1, 2).

¹⁰⁹ Art. 11 (para 3).

economic, social and cultural rights, religious intolerance, terrorism, discrimination against women and lack of the rule of law.¹¹⁰

The VDPA addresses the human rights of women and girls are inalienable, integral and indivisible part of universal human rights and the priority objectives of the international community to eradicate sex discrimination as well as the full and equal participation of women in political, civil, economic, social and cultural life.¹¹¹ It urges Governments, institutions, intergovernmental and non-governmental organization to intensify their efforts to protect and promote the human rights of women and girls.¹¹² This is reinforced by urging universal ratification of the Convention on the Rights of the Child, calling for its effective implementation, alongside the recognition of the human rights of children in the World Declaration on the Survival, Protection and Development of Children and Plan of Action adopted by the World Summit for Children.¹¹³ Non-discrimination and the best interest of the child should be primary considerations and the views of children given due weight, while national and international mechanisms should be strengthened to promote the defence and protection of children.¹¹⁴ Grave concern over human rights violations during armed conflict and the impact on women, children, the elderly and the disabled is expressly addressed; it urges abhorrent practices to be immediately stopped, calling on the strict observation of international humanitarian law and the right of safe and timely access for assistance for victims.¹¹⁵

It reaffirms minority rights without any discrimination and in full equality before the law, along with the right to enjoy their own culture, religion and language in private and in public, freely and without any interference or discrimination.¹¹⁶ Further, it recognizes the inherent dignity and the unique contribution of indigenous people to the development and plurality of society by strongly reaffirming the international community's commitment to their economic, social and cultural well-being and their enjoyment of the fruits of sustainable development.¹¹⁷ States should, in accordance with international law, take "concerted positive steps" to ensure respect, equality and non-discrimination of all rights and freedoms of indigenous people, while recognizing "the value and diversity of their distinct identities, cultures and social organizations".¹¹⁸ Part II, Article 32 gives express consideration to the establishment of a permanent forum for indigenous people in the United Nations System.¹¹⁹

In terms of redress for human rights grievances or violations, every State should provide an effective framework of remedies in which institutions that administer justice should be properly funded, and an increased level of technical and financial assistance be provided by

¹¹⁰ Art. 30.

¹¹¹ Art 18 (para 1).

¹¹² Art 18 (para 3).

¹¹³ Art. 21.

¹¹⁴ *Ibid.*

¹¹⁵ Art. 28,29.

¹¹⁶ Art 19. See the UN Declaration on the Rights of Person Belonging to National or Ethnic, Religious and Linguistic Minorities.

¹¹⁷ Art. 20.

¹¹⁸ *Ibid.*

¹¹⁹ The United Nations Permanent Forum on Indigenous Issues (UNPFII) is an advisory body to the Economic and Social Council with a mandate to discuss indigenous issues related to economic and social development, culture, the environment, education, health and human rights. It was established within the framework of the first United Nations International Decade of the World's Indigenous Peoples (1995-2004) and held its first meeting in May 2002. Two other bodies mandated to deal with indigenous issues are the Expert Mechanism on the Rights of Indigenous Peoples and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous Peoples.

the international community.¹²⁰ Part II, Article 9 reiterates the need to increase substantially the resources for the human rights programme and to take urgent steps to seek increased extra-budgetary resources.

*v. United Nations Declaration on the Right to Development*¹²¹

Adopted in 1986, this declaration provides that the right to development is an inalienable human right whereby all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development.¹²² This human right implies the full realization of the right of peoples to self-determination including the full sovereignty over all their natural wealth and resources.¹²³ It states that the human person is the central subject of development.¹²⁴ This requires the full respect for the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the UN.¹²⁵ States shall take resolute steps to eliminate massive and flagrant violations of human rights including racial discrimination, colonialism, foreign domination and occupation, aggression, foreign interference, threats of war and refusal to recognize the fundamental right of peoples to self-determination.¹²⁶ The Declaration calls for equal attention and urgent consideration to be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights¹²⁷ whereby States should take measures to eliminate obstacles to development resulting from failure to observe civil and political rights, as well as economic, social and cultural rights¹²⁸.

*vi. United Nations Declaration of Principles of International Law concerning Friendly Relations and Co-operation Among States*¹²⁹

Adopted in 1970, this Declaration enunciates various principles of international law. *The duty of States to co-operate with one another in accordance with the Charter* specifies that “States should co-operate in the economic, social and cultural fields as well as in the field of science and technology and for the promotion of international cultural and educational progress”.¹³⁰ *The principle of equal rights and self-determination of peoples* states that “all peoples have the right freely to pursue their economic, social and cultural development, and that every State has the duty to respect this right”.¹³¹ It calls for a “speedy end to colonialism” and that the “subjection of peoples to alien subjugation, domination and exploitation constitutes a violation of the principle, as well as a denial of fundamental human rights, and is contrary to the Charter”.¹³² *The principle that States shall fulfill in good faith the obligations assumed by them in accordance with the Charter* enunciates not only Charter obligations but also the duty of States to fulfill in good faith the obligations under the generally recognized principles and rules of international law

¹²⁰ Art. 27.

¹²¹ GA Res. 41/128, UN GAOR, 41st Sess., UN Doc. A/RES/41/128 (1986) 186.

¹²² Art. 1.

¹²³ Art. 2.

¹²⁴ Art. 2(1).

¹²⁵ Art. 3(2).

¹²⁶ Art. 5.

¹²⁷ Art. 6(2).

¹²⁸ Art. 6(3).

¹²⁹ GA Res. 2625 (XXV), UN GAOR, 25th Sess., UN Doc. A/8082 (1970).

¹³⁰ Art. 1.

¹³¹ Ibid.

¹³² Ibid.

as well as international agreements valid under the generally recognized principles and rules of international law. Article 3 declares further that:

The principles of the Charter which are embodied in this Declaration constitute basic principles of international law, and consequently appeals to all States to be guided by these principles in their international conduct and to develop their mutual relations on the basis of the strict observance of these principles.¹³³

*vii. United Nations Declaration on the Rights of Person Belonging to National or Ethnic, Religious and Linguistic Minorities.*¹³⁴

Adopted in 1992, this declaration calls upon States to protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities and encourage conditions to promote their identity.¹³⁵ Minorities have the right to enjoy their own culture, practice their religion, and use their own language without interference or any form of discrimination.¹³⁶ States shall take measures to create favourable conditions for minorities to express and develop their culture, language, religion, traditions and customs.¹³⁷ This includes measures by States in the field of education to encourage knowledge of history, traditions, language and culture of the minorities existing within their territory, while providing adequate opportunities to gain knowledge of the society as a whole.¹³⁸

The effective promotion of this Declaration was the subject of United Nations General Assembly resolution 49/192.¹³⁹ It urges States and the international community give effect to the principles of minority rights as outlined in the Declaration; for States to take necessary constitutional, legislative, administrative and other measures to promote and give effect to these principles¹⁴⁰ and appeals to States to make bilateral and multilateral efforts, as appropriate¹⁴¹. It calls upon the Commission on Human Rights to provide ways and means to achieve effective minority rights.¹⁴² It calls upon the UN Secretary-General to provide, through the Centre for Human Rights of the Secretariat, and at the request of States, qualified experts on minority issues and human rights, as well as on the prevention and resolution of disputes, and assistance in existing or potential situations involving minorities.¹⁴³ This is furthered by the request for the UN Secretary-General to provide human and financial resources for the advisory and technical assistance of the Centre for Human Rights.¹⁴⁴ UN High Commissioner for Human Rights is urged to promote the implementation of these principles and to continue to engage in dialogue with States towards this purpose.¹⁴⁵

¹³³ Art. 1.

¹³⁴ GA Res. 47/135, UN GAOR, 47th Sess., UN Doc. A/RES/47/135 (1992).

¹³⁵ Art. 1.

¹³⁶ Art. 2.

¹³⁷ Art. 4(2).

¹³⁸ Art. 4(4).

¹³⁹ UN GAOR, (1994), 94th Plen. Mtg., UN Doc. A/RES/49/192.

¹⁴⁰ Art. 3.

¹⁴¹ Art. 4.

¹⁴² Art. 5.

¹⁴³ Art. 6.

¹⁴⁴ Art. 7.

¹⁴⁵ Art. 8.

6. Cooperation with Intergovernmental and Non-Governmental Organizations

Collective cooperation and mutual assistance are pursued with the aim of developing and implementing tools that promote the return and restitution of cultural property around the world. The United Nations Economic and Social Council (ECOSOC) in its resolutions 2004/34¹⁴⁶ and 2008/23¹⁴⁷, entitled “Protection against trafficking in cultural property,” emphasized the need for States to protect and preserve their cultural heritage through relevant international legal instruments. In its resolution 2008/23, the ECOSOC reaffirmed the need for international cooperation in view of efforts to combat theft and traffic, particularly since illicitly trafficked cultural goods are often traded in legal markets. Following a request made in both these resolutions, UNESCO and the United Nations Office on Drugs and Crime (UNDOC) convened an intergovernmental expert group meeting that included the International Council of Museums (ICOM), INTERPOL, UNIDROIT and the World Customs Organization (WCO). In May 2010, the recommendations focused on the need to increase the universality of the 1954, 1970 and 1995 Conventions as well as the reinforcement of cooperation between IGOs, NGOs and States.¹⁴⁸

*i. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation*¹⁴⁹

UNESCO Member States may call on this intergovernmental committee to request the restitution or return of cultural property of fundamental significance, notably in cases where international conventions cannot be applied. It acts in an advisory role to research and promote multilateral cooperation and bilateral negotiations for the restitution or return of cultural property. At its 16th Session in September 2010, the Committee adopted the Rules of procedure on mediation and conciliation.¹⁵⁰

Case Study of Compliance: June 2007 Agreement by Italy to return Items to Pakistan

Italy agreed to return 96 antiques to Pakistan. The vases, coins, and plates etc., dating from 3.300 to 1.800 B.C., had been obtained through illicit trafficking.¹⁵¹

Case Study of Compliance: June 2007 Restitution of Two Statues from the USA to Kenya

Two wooden statues, known as vigango, which were on display at the State of Illinois Museum and at the University of Hampton Museum, were returned to the Kenyan village where they were stolen in 1985.¹⁵² Vigango are sacred memorial statuettes, carved by

¹⁴⁶ UN ESCOR, 2004, 47th Plen. Mtg., UN Doc. E/2004/INF/2/Add.2.

¹⁴⁷ Commission on Crime Prevention and Criminal Justice, *Protection Against Trafficking in Cultural Property: Report of the Secretary-General*, UN ESCOR, 2010, 19th Sess., UN Doc. E/CN.15/2010/4.

¹⁴⁸ Commission on Crime Prevention and Criminal Justice, *Recommendations of the expert group on protection against trafficking in cultural property: Note by the Secretariat*, UN ESCOR, 19th Sess., UN Doc. E/CN.15/2010/5.

¹⁴⁹ *Statutes of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation* (2005), UNESCO Doc. CLT/CH/INS-2005/21 (Adopted by 20 C./Resolution 4/7.6/5 of the 20th session of the General Conference of UNESCO, Paris, 24 October-28 November 1978), online: UNESCO <<http://unesdoc.unesco.org/images/0014/001459/145960e.pdf>>.

¹⁵⁰ UNESCO, *Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation* (Paris: UNESCO, 2010) online: UNESCO <http://portal.unesco.org/culture/en/ev.php-URL_ID=35283&URL_DO=DO_TOPIC&URL_SECTION=201.html>.

¹⁵¹ Recent examples of successful operations of cultural property restitution in the world, *United Nations Educational Scientific and Cultural Organization*, online: UNESCO <<http://www.unesco.org>>.

¹⁵² *Ibid.*

Mijikenda villagers, to serve as reminders of the link between the living and the dead; they have social and religious functions.¹⁵³

ii. International Council of Museums (ICOM) Code of Ethics for Museums

Formed in 1946, ICOM is a non-governmental organization with formal relations with UNESCO and consultative status with ECOSOC.¹⁵⁴ *ICOM Code of Ethics for Museums* was established in 1986 and revised in 2004 to set the minimum standards for professional practice and performance for museums and their staff reflecting general principles accepted by the international museum community.¹⁵⁵ The foundational principle of article 2 outlines the scope of the duty for museums to maintain collections in trust for the benefit of society and its development. This includes safeguarding cultural heritage as well as the notion of stewardship with respect to rightful ownership, accessibility and responsible disposal. Examples of this are the publication of a written collections policy for acquisition and obligations such as due diligence to ensure valid title.¹⁵⁶

The acquisition, research and exhibition of collections of human remains and material of sacred significance should only be acquired, accomplished or displayed “in a manner consistent with professional standards and the interests and beliefs of members of the community, ethnic or religious groups from whom the objects originated, where these are known”.¹⁵⁷ Museums have the responsibility for “making collections and all relevant information available as freely as possible”¹⁵⁸, with data accessible to museum personnel and “other legitimate users”¹⁵⁹. Research should relate to the museum’s “mission and objectives” conforming to established legal, ethical and academic practices.¹⁶⁰ Furthermore, fieldwork should only be undertaken “with respect and consideration for the views of local communities, their environmental resources and cultural practices”¹⁶¹. This spirit of cooperation is further refined under article 6.1 which promotes the “sharing of knowledge, documentation and collections in the countries and communities of origin”.

Museum policy for deaccession should define authorized methods for permanently removing an object from the collection with a “strong presumption” that an item be first offered to another museum.¹⁶² The *ICOM Code of Ethics for Museums* further refines the need for a transparent policy:

Requests for removal from public display of human remains or material of sacred significance from the originating communities must be addressed expeditiously with respect and sensitivity. Requests for the return of such material should be addressed

¹⁵³ Dr. Kwame Opoku, “Africans need their cultural objects more than Europeans & Americans” *Afrikanet* (10 January 2009), online: Afrikanet <www.afrikanet.info>.

¹⁵⁴ *ICOM Statutes* (Paris: ICOM, 1946) at art. 2, online: <http://icom.museum/fileadmin/user_upload/pdf/Statuts/Statutes_eng.pdf>.

¹⁵⁵ *ICOM Code of Ethics for Museums*, online: ICOM <<http://icom.museum/what-we-do/professional-standards/code-of-ethics.html>> (Membership and subscription in ICOM are an affirmation of the ICOM Code of Ethics for Museums).

¹⁵⁶ Arts. 2.2 – 2.5, 2.6, 2.7, 2.9, 2.11.

¹⁵⁷ Arts. 2.5, 3.7, 4.3.

¹⁵⁸ Art 3.2.

¹⁵⁹ Art 2.20.

¹⁶⁰ Art 3.5.

¹⁶¹ Art 3.3.

¹⁶² Arts. 2.12-2.17.

similarly. Museum policies should clearly define the process for responding to such requests.¹⁶³

Museums should be “prepared to initiate dialogues” for the return of cultural property, taken in an “impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation”.¹⁶⁴ In the case of an object or specimen illicitly exported or transferred, and shown to be part of that country’s or people’s cultural or natural heritage, that museum should, “if legally free to do so, take prompt and responsible steps to co-operate in its return”.¹⁶⁵ Museums should also abstain from acquiring cultural objects from an occupied country and “respect all laws and conventions that regulate the import, export and transfer of cultural or natural materials”.¹⁶⁶ That museums should operate in a legal manner is reinforced under article 7.2, which specifically enumerates international treaty obligations, outlined above, that pertain to cultural heritage as a standard for interpreting the *ICOM Code of Ethics for Museums*.

*Case Study of Compliance: May 2010 After 20 years of Negotiations, the Barbier-Mueller Museum in Geneva Agrees to Donate the Makonde Mask to the National Museum of Tanzania.*¹⁶⁷

In 1984, the Makonde Mask was stolen from the National Museum in Tanzania, along with 16 other artifacts, during a break-in at the National Museum of Tanzania in Dar Es Salaam. The theft was reported to all relevant authorities, including the Tanzanian police, INTERPOL, and the International Council of Museums. In 1990, the Barbier-Mueller Museum alerted by Prof. Enrico Castelli of the University of Perugia that this object in their collection might have been stolen, informed ICOM and reported that it had purchased the object in Paris in 1985. Negotiations ensued but by 2006, unable to reach a compromise, the United Republic of Tanzania filed a request for its return with the Secretariat of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or Restitution in case of Illicit Appropriation. In reaction, the Barbier-Mueller Museum filed a formal and official complaint against the United Republic of Tanzania with the Federal Office of Culture of Switzerland.¹⁶⁸ As part of talks held by the UNESCO Intergovernmental Committee, discussions maintained by the Swiss authorities, ICOM and the UNESCO Secretariat with the concerned parties in this case (United Republic of Tanzania and the Barbier-Mueller Museum in Geneva), the parties reached a bilateral agreement.¹⁶⁹ The restitution ceremony took place under the aegis of ICOM and in the presence of UNESCO in Paris on May 10th, 2010.

iii. International Criminal Police Organization (INTERPOL)

Created in 1923, the aim of INTERPOL is to facilitate international police cooperation where action is taken according to existing laws in different countries and guided by spirit of the Universal Declaration of Human Rights. INTERPOL has entered into agreements with

¹⁶³ Art. 4.4.

¹⁶⁴ Art. 6.2.

¹⁶⁵ Art. 6.3.

¹⁶⁶ Art. 6.4.

¹⁶⁷ “Makonde Mask: Signing of an agreement for the donation of the Makonde mask from the Barbier-Mueller Museum of Geneva to the National Museum of Tanzania” Press File, ICOM (10 May 2010), online: ICOM <http://archives.icom.museum/press/MM_PressFile_eng.pdf>.

¹⁶⁸ *Ibid.*

¹⁶⁹ *Addendum to the Report of the Secretariat*, 16th Sess., UNESCO Doc. CLT-2010/COF.203/COM.16/2 Rev Add at 1.

other international organizations, namely ICOM¹⁷⁰, UNESCO¹⁷¹ and the WCO¹⁷², to strengthen international cooperation and mutual assistance for the protection cultural property, and to increase the effectiveness of police authorities to combat theft and trafficking. The scope for each of these agreements outlines commitments for mutual consultation, the exchange of information, reciprocal representation and technical cooperation as agreed upon between the parties.

*Case Study of Compliance: May 2002 The repatriation of Saartjie Baartman's remains from the Musée national d'histoire naturelle in Paris to South Africa for burial.*¹⁷³

Saartjie Baartman (1789-1815) an indentured Khoekhoe domestic worker taken to England in 1810 to be exhibited to the public in a cage and shortly thereafter taken to Paris, where she became known as the Hottentot Venus and sold to a circus animal trainer. French scientist, Baron Georges Leopold Cuvier took an interest in her and upon her death, around 31st December 1815, Cuvier was granted permission to study and dissect her body. Her complete skeleton, her brain and her genitals, were then put on display at the Musée national d'histoire naturelle for 150 years until 1974. Following the fall of apartheid in South Africa, President Nelson Mandela raised the issue over the repatriation of Baartman's remains with President Mitterand during a state visit to South African in 1995. Following a series of requests and attempts at negotiation from local indigenous communities, academics and heads of State, Professor Henry de Lumley as Director of the Musée de l'Homme and of the Musée national d'histoire naturelle remained adamantly opposed to repatriation. Director of the biological anthropology laboratory André Langaney has stated, "[n]ous avions des consignes de nos supérieurs de dire qu'ils n'étaient plus en notre possession pour éviter de répondre à toutes les demandes".¹⁷⁴ Over 600 human skeletons and 16 000 skulls, many from the 19th century, are currently held in storage in the collection of the anthropology laboratory of the Musée de l'Homme.¹⁷⁵ In January 2002, Nicolas About, Senator for the Yvelines in France proposed a case-specific Bill to repatriate Baartman's remains. Following a debate in the French Senate, the Bill was unanimously adopted in March 2002. Baartman's remains, namely her full skeleton, and preserved brain and genitals, were returned to South Africa for burial in May 2002. This case represents an example of legislative initiative taken to authorize museum deaccession and the repatriation of human remains to their country of origin. Baartman's repatriation symbolizes powerful human rights and indigenous rights issues with respect to former colonial states and the extent of human remains currently being held in foreign collections. In the French National Assembly discussion of Bill, Research Minister Roger-Gerard Schwartzberg stated that Parliament should support the repatriation on the basis of "total lack of scientific interest of the remains in question" and in

¹⁷⁰ INTERPOL, *Memorandum of understanding with the International Council of Museums on countering the theft and trafficking in cultural property* (AGN/68/RAP/5; entered into force on 11 April 2000), online: INTERPOL <<http://www.interpol.int/Public/ICPO/LegalMaterials/cooperation/agreements/Icom2000.asp>>.

¹⁷¹ INTERPOL, *Co-operation agreement between the United Nations Educational, Scientific and Cultural Organization and the International Criminal Police Organization-INTERPOL* (Approved by the Executive Committee, 123rd Sess.; entered into force on 5 October 1999) online: INTERPOL <<http://www.interpol.int/Public/ICPO/LegalMaterials/cooperation/agreements/Unesco1999.asp>>.

¹⁷² INTERPOL, *Memorandum of understanding between the World Customs Organization and the International Criminal Police Organization-INTERPOL* (AGN/67/RAP/6; entered into force on 9 November 1998), online: INTERPOL <<http://www.interpol.int/Public/ICPO/LegalMaterials/cooperation/agreements/Wco1998.asp>>.

¹⁷³ Jatti Bredekamp, "The Politics of Human Remains: The Case of Sarah Bartmann" in Jack Lohman and Katherine Goodnow, eds., *Human Remains & Museum Practice* (London: UNESCO and the Museum of London, 2006) 25.

¹⁷⁴ Sylvie Briet, "Les Tribulations de la Vénus hottentote" *Libération* (21 February 2002), online: Libération <<http://www.liberation.fr/sciences/0101403877-les-tribulations-de-la-venus-hottentote>> (We were told by our superiors to say that (the remains) were no longer in our possession to avoid dealing with all the requests).

¹⁷⁵ *Ibid.*

order to “do justice to Saartjie who was subject during her life and even after, as an African and as a woman, to offences resulting from long-prevailing ills, i.e. colonialism, sexism and racism”.¹⁷⁶

*Case Study of Compliance: July 2009 Voluntary Repatriation of secret/sacred ceremonial artifact from Seattle Art Museum to Australian Aborigines*¹⁷⁷

This case involves a secret/sacred object for religious ceremonies that can only be seen by initiated Australian Aboriginal males. It can also not be photographed. The only thing that can be noted is its location. Although Seattle Art Museum founder, Richard Fuller purchased the object in 1970, the museum says it has never been on public display. Australian Aboriginal elders, pressing for the return of their sacred objects, were unaware of its existence. Curator of the African Art Department, Pamela McClusky, initiated the return of the object even though no specific request was made from the community of origin. In 2008-09, the National Museum of Australia helped the Seattle Art Museum in the repatriation of the secret/sacred ceremonial object to Australia. It will store the object temporarily while the Museum consults with Central Australian elders and their representatives to determine the culturally appropriate management and return of the object. This is the first time an American cultural institution has independently and voluntarily initiated the return of a secret/sacred object to an Australian cultural institution.

*Case Study of Compliance: July 2009 Repatriation of the remains of Badu Bonsu II from the University of Lieden in the Netherlands to the members of the Ahanta kingdom in Ghana.*¹⁷⁸

Badu Bonsu II was beheaded in 1838 in the Gold Coast (now Ghana) to avenge the killing of two Dutch settlers, upon which General Jan Vermeer transported the head preserved in formalin back to the Netherlands. The remains were eventually forgotten in the Dutch University of Lieden’s medical reserves. In 2008, a writer conducting research discovered it and the Ahanta people sought restitution for burial. Dutch Foreign Affairs Minister, Maxime Verhagen, used the ceremony as a platform to apologize on behalf of his country for the slave trade. Nana Darko Kwakwa III, who led the ceremony, asked the former colonizer for additional reparation by constructing schools and hospitals in Ghana.

*Case Study of Compliance: November 2010 Repatriation of illegally exported King Tut artifacts from the Metropolitan Museum of Art to Egypt*¹⁷⁹

Nineteen ‘illegally exported’ artifacts, including a tiny bronze dog and a sphinx bracelet jewel, were discovered in the collection at the Metropolitan Museum of Art and are slated for repatriation to Egypt. Thomas Campbell, director of the museum stated: “[t]hese objects were never meant to have left Egypt, and therefore should rightfully belong to the government of Egypt”. Researchers at the museum concluded the objects, which came into their collection between 1920’s and 1940’s, had originated in King Tutankamun’s tomb, which was discovered by British archaeologist Howard Carter in 1922 and excavated over the next decade. Under the terms of the British-led excavation, Egyptian authorities decided

¹⁷⁶ Supra note 186 at 29.

¹⁷⁷ See “Part Two: Performance Reports”, Annual Report 2008-2009, Corporate documents, *National Museum of Australia*, online: National Museum of Australia <www.nma.gov.au>. See also “Museum to return Aboriginal Stone”, *The Seattle Times*, (30 June 2009), online: Seattle Times <<http://www.seattletimes.nwsource.com>>.

¹⁷⁸ Claire Schaffner, “The Netherlands gives back the head of King Badu Bonsu II to Ghana” *Afriknews* (25 July 2009), online: Afriknews <<http://www.afrik-news.com/article15966.html>>.

¹⁷⁹ “New York museum to return King Tut artefacts to Egypt” *BBC News* (10 November 2010), online: BBC News <<http://www.bbc.co.uk/news/world-us-canada-11728564>>.

that none of the artifacts from the tomb should leave Egyptian control. The museum said the objects came into its collection from Mr. Carter's niece and from his house in Luxor, Egypt, which he bequeathed to the museum.

*Case Study of Compliance: March 2010 Restitution of 25,000 Antiquities from the University of London to Egypt.*¹⁸⁰

After lengthy negotiations between the University of London and Egyptian authorities, a bilateral agreement was reached involving a substantial number of antiquities. Among these pieces is a 200,000 year-old stone axe and pottery from the seventh millennium BC. They will be exhibited at the Ahmed Fakhri Museum, currently under construction in the Dakhla Oasis in Egypt's Western Desert.

*Case Study of Ongoing Dispute: British Museum refusal to repatriate sacred Ethiopian Tabots despite repeated requests from Ethiopia, but agreement to comply with religious requirements*¹⁸¹

In 1867, a British force was sent to Ethiopia to free hostages taken by Emperor Tewodros. After being defeated at the Battle of Magdala the Emperor committed suicide and extensive looting of the imperial treasures ensued. One Tabot was returned to Addis Ababa when it was discovered at the back of an Edinburgh church. The tablets -or tabots- are sacred objects in the Ethiopian Orthodox Church and the most important of the 500 or so priceless Magdala treasures. They are regarded as representing the original Ark of the Covenant, which housed the Ten Commandments and the Orthodox Church has been lobbying for their return for the past 50 years. They were held for many years at a warehouse in east London and after a visit by the Director of the British Museum, Neil MacGregor, to Addis Ababa to hear arguments for repatriation, the museum decided to move them for storage at the British Museum. While this was partially a practical necessity, it was also said to assure the Ethiopians of the respect in which they were held. This move followed the requisite procedure and was handled by a member of the Ethiopian church. For more than two decades, the museum has recognized the sacred nature of the objects and the requirement that only senior clergy of the Ethiopian Orthodox Church may look at or handle them. MacGregor has stated that neither he nor senior museum officials have viewed them out of respect for the religious nature of the object. As such, eleven tablets sit on a shelf in a locked basement room underneath the British Museum. No one is permitted to enter the room. MacGregor contacted a senior clergy of the Ethiopian Church in London to consider a renewable loan but has claimed that these objects must stay in London since there is nowhere in Ethiopia with the required environmental and security standards. The Victoria & Albert Museum (which holds more than 50 items) and the British Library (which holds 350 manuscripts from Magdala) also house large Magdala collections and have been holding informal talks for the last several years to no avail. Other artifacts are held in the Royal Collection, by universities in Edinburgh and Cambridge, as well as private hands.

¹⁸⁰ *Secretariat Report*, 16th Sess., UNESCO Doc. CLT-2010/CONF.203/COM.16/2 Rev at 10.

¹⁸¹ Terry Kirby, "Hidden in a British Museum basement: the lost Ark looted by colonial raiders", *The Independent* (19 October 2004), online: <http://www.independent.co.uk/news/uk/this-britain/hidden-in-a-british-museum-basement-the-lost-ark-looted-by-colonial-raiders-535318.html>.

*Case Study of Ongoing Dispute: British Museum refusal to repatriate the Elgin (Parthenon) Marbles to Greece despite repeated requests*¹⁸²

This 200 year-old dispute is still ongoing. The recently constructed Acropolis Museum has removed the argument that there is no adequate place to house these artifacts and provide proper care. The latest proposal by Britain was an offer to loan the Marbles for three months on the condition that Greece recognizes Britain's ownership. Greece has responded that it would loan any masterpiece to Britain in exchange, as long as Britain relinquish any claim of ownership. The British Museum has stated that after 200 years, these artifacts have become an honoured part of Britain's, as well as the world's, cultural property.

*Case Study of Compliance: 16th Century Benin Mask of the Edo people Withdrawn from Public Auction, after being scheduled for auction in February 2011 by Sotheby's.*¹⁸³

Due to public pressure, the descendents of Lieutenant Colonel Sir Henry Gallway have withdrawn the Beninese antiquity from public auction by Sotheby's. It has been identified as having been acquired during the Punitive Expedition of 1867 by Lieutenant Colonel Sir Henry Galway and was scheduled to be sold by his descendents. There are five known masks in the world and only the replication is in the hands of Nigeria. There have been repeated requests for repatriation by Beninese Royal family and Government of Nigeria. The mask has been on public view in 1947 "Ancient Benin" at Berkeley Gallery in London (on loan) and in 1951 "traditional Sculpture form the Colonies" at the Art Gallery of the Imperial Institute in London. In the lead up to the auction, prior to its withdrawal, its value was estimated at 3.5 to 4.5 million British pounds.

8. Lacuna in International Treaties Relating to Cultural Property

A report from the Commonwealth Association of Museums (CAM) examined international cultural law issues arising at the International Council of Museums and CAM meetings in Shanghai, China in November 2010. International Council of Museums Conference attendees and members of CAM expressed the following key observations.

i. Existing Lacunae in the Protection granted by International Law

1. Protection of museums and cultural property in the face of internal armed conflicts, insurrection and banditry (of particular concern for museums in Africa generally and also in Pakistan).
2. Protection and preservation of intangible cultural property, including copyright of rituals, ceremonies, legends, songs, oral histories and oral testimonies etc. (of particular concern for museums in the Caribbean and South Sea small island states, but also for museums in Canada and Australia).
3. Protection and copyright of craft processes and design traditions (of particular concern for museums in South East Asia, especially India).

¹⁸² Howard Spiegler and Yael Weitz "Ancient Meets Modern: A Primer on Restitution Law" Cultural Heritage & Arts Review (Fall/Winter 2010) 43.

¹⁸³ Martin Bailey "Benin mask expected to break auction record" The Art Newspaper (22 December 2010), online: Art Newspaper <<http://www.theartnewspaper.com/articles/Benin-mask-expected-to-break-auction-record/22150>>.

4. Protection, within human rights codes, of ethnic and cultural traditions for migrant societies, expat communities, and refugees as human migrations intensify, a result of global economic and climate change impacts (of particular concern for museums in the South Pacific and Africa).
5. Reliable and effective protection of traditional knowledge and cultural property related to natural resources, including traditional wildlife populations, certain cultural indigenous plant species, and ecosystems in the face of domestic and international development pressures.

ii. Existing Lacunae in Procedural Reforms

1. Crises points reached particularly throughout Africa, India, and Pakistan in illicit export and trade in cultural artifacts.
2. Fundamental reforms required of former colonizer states and assistance required for repatriation of removed cultural property (of particular concern for museums in Africa and the South Pacific).
3. Importance of imbedding human rights values into all museum exhibitions, programs and collecting practices.

iii. Existing Lacunae in Implementation of Treaties

1. General critical need for practical knowledge, information, and capacity building across the museum profession, government bureaucracies, and the cultural sector.
2. Assistance in the development of international training both “in the field” and collaborating in the development of “implementation manuals” and “course development” by the International Centre for Conservation, Rome.

Annex I: Project Proposal

COMMONWEALTH ASSOCIATION OF MUSEUMS IMPLEMENTING INTERNATIONAL LAW ON CULTURAL PROPERTY

PROJECT PROPOSAL

1. Introduction

The protection of cultural property is crucially important, and under threat, especially in the developing countries of the Commonwealth. However, most organizations working in this field focus narrowly on particular topics such as illegal trafficking, cultural property in times of conflict (blue shield), intellectual property rights, or aboriginal jurisdiction. As such, there is not enough work being done to assess and address current international efforts to protect cultural property. There is a pressing need for new independent research and analysis to examine the whole scope of protection for cultural property. This analysis must cover legislation, policing and customs, but also practical issues such as whether cultural property is being conserved, whether adequate human and financial resources are available, and whether protection covers intangible cultural heritage.

This project, led by the Commonwealth Association Museums (CAM) and its partners in the Commonwealth, will provide a status report on compliance with key commitments in international law regarding the protection of cultural heritage in the Commonwealth, raise awareness of the conditions for cultural property and heritage preservation and protection in the Commonwealth, and encourage new action. The issues which the research is intended to address have been articulated through a series of discussions with the Commonwealth Foundation, together with debates among CAM members at various workshops and conferences over the past five years, and consultations with members of the Commonwealth Lawyers Association. Through the project, the partners will assist museums in the Commonwealth to fully appreciate their responsibilities in helping to protect cultural property, and take action to help other Parties and their governments to participate effectively in doing so.

While focusing in this instance on the situation in member states of the Commonwealth, it is hoped that eventually the project will prove relevant to non-member states, particularly those of the developing world and smaller island states in where cultural patrimony appears to be at particular risk at the moment.

The project hopes to bring forward the principal issues, to identify which countries have ratified various key conventions, to raise education and awareness, to better understand what is being done, etc. The project will not conduct in-depth studies of existing national legislation, as this is being done by others, notably Patrick O'Keefe and Lyndel Prott, and the UNESCO. Instead, it will provide a clear, precise and robust initial legal analysis of the international conventions and treaties, mainly to identify principal rights and obligations, as well as gaps and opportunities for further international cooperation. Foundational references will include, for instance, the recent work of Harry Hillman Chartrand Vol. IV - *The Compleat Multilateral Cultural Property & Related 1874-2008 Agreements, Charters, Conventions and Treaties*

(Feb. 2009, ISBN 978-0-9689523-8-2). Then, through surveys and consultations of CAM members, especially in developing countries of the Commonwealth, the project will produce sufficient data to provide a clear picture of the status of cultural heritage protection. This analysis and data will allow CAM and partners to generate recommendations for possible actions to better protect cultural heritage, as well as promoting sufficient community involvement and awareness to actually improve the situation on the ground – real implementation of international laws and standards. As part of the project, there will be a strategy to reach out to the local communities and monitor how those strategies can work. The report will also be distributed to hundreds of practitioners, members of CAM and their government partners, as well as other organizations like the Commonwealth associations and CHOGM. It will raise awareness in specific countries, and lead to new materials for training courses for museum managers, government authorities and other important clients.

2. Proposed Workplan

2.1 Problem:

There is a serious and significant lack of knowledge and capacity, especially throughout the smaller developing countries of the Commonwealth, to address pressing concerns related to the protection of tangible and intangible cultural property. Many States are currently failing even to live up to agreed international treaty obligations in this area. Key issues in this regard include illicit traffic in cultural property, protection of cultural property in conflict situations (blue shield), and indigenous rights (especially over intangible property), as well as concerns related to traditional biodiversity knowledge as cultural property, and to protection of cultural property from the impacts of climate change. Furthermore, on a very practical level, conservators are facing significant challenges in terms of knowledge of international and national obligations, access to human and financial resources to adequately meet obligations, and abilities to identify and protect intangible cultural property, among other concerns. The scope of current difficulties has not even been internationally assessed in a serious way, and this is hampering the ability of conservators to jointly address key challenges.

2.2 Draft Strategy:

To address this problem, the partners propose a three-phase project to articulate key obligations and rights, assess the state of implementation of these obligations and respect for these rights in key commonwealth countries, and prepare educational materials and curriculum to help improve implementation and compliance with international law on cultural property protection. Each phase involves different methods, deliverables and costs, beginning with a modest scoping endeavour.

Phase 1) Scoping

Objectives: Analyse international treaty law of relevance in the Commonwealth, to uncover key rights and obligations related to the protection of cultural property:

Method – Brainstorms with experts, surveys of scholarly literature and surveys of existing treaty law.

Deliverable – Legal brief on key rights and obligations in international law on cultural property.

Cost – \$7,000 to \$10,000 CAD over 6-8 months.

Phase 2) Consultations & Report

Objectives: Consult with CAM, CLA and other experts to ‘reality check’ the rights and obligations identified, and to investigate the state of implementation in key commonwealth countries:

Method – Survey of CAM, CLA and others, meetings parallel to international events & consultations with recommended ‘informants’ from museums administration and government.

Deliverable – Report on key rights and obligations, providing case studies of successful mechanisms for protection of cultural property and lessons learned, and identifying gaps in existing international law and challenges and opportunities for further development of the law and practice.

Cost – \$25,000 to \$50,000 CAD over 1 – 1 1/2 years.

Phase 3) Educational Curriculum Development & Delivery

Objectives: Based on the report contents and case studies, prepare educational materials, course curricula and website content, together with recommendations for policy-makers and others in UNESCO, CAM, CLA, etc.

Method – With a team of experienced professionals and guidance from an international advisory roster, prepare educational material that build on the substantive information in the report, the initial case studies, and other documents. Prepare recommendations for further work, also.

Deliverable – A CD-Rom containing powerpoints, roleplays, reading lists and other curriculum materials; evaluations and endorsements based on course pilot testing, and a short legal brief with recommendations for international legal and policy changes in the field.

Cost: \$400,000 to \$500,000 CAD over 3 - 4 years.

2.3 Draft Timelines:

Nov 2009	– abstract & identify main partners
Dec 2009	– applications to Commonwealth Foundations
May 2010	– develop legal brief / concept note
Sept 2010	– finalise legal brief / concept note
Oct 2010	– CAM events in India (consultations on legal brief contents)
Nov 2010	– ICOM events in Shanghai (consultations on legal brief contents)
May 2011	– finalise report & recommendations
Sept 2011	– develop educational materials based on report
Jan 2012	– Triennial (launch recommendations / pilot test course based on report)
Apr 2011	– start educational activities

3. Potential Partners & Resources

Several founding partners have been identified, and are cooperating to initiate the project. This includes the Commonwealth Association of Museums (CAM), the Commonwealth Lawyers Association (CLA), and the Centre for International Sustainable Development Law (CISDL), which is based at the Law Faculty of McGill University. Further potential partners identified include:

- Commonwealth of Learning
- Commonwealth Foundation
- SSHRC CURA or other grants
- Canadian Government (Heritage Canada / CIDA)
- International Development Research Centre
- BC Law Foundation
- UNESCO/ ICOM
- Commonwealth Lawyers Association (Hugh Robertson)
- Commonwealth Law Ministers Meetings (CLMM)
- McDonald Institute of Cambridge
- Ford Foundation, Rockefeller Foundation & Mott Foundation
- World Cultural Heritage Sites

4. Tasks & Roles Moving Forward:

Moving forward, the proponents will undertake the following steps:

Phase 1) Scoping (10K)

- CAM contribute 3.5K
- CAM contact & invite potential partners (& ask C of Learning for 6.5K)
- CISDL prepare first draft proposal
- CAM prepare final draft proposal
- CISDL prepare legal brief for 3.5 – 7K (CISDL contributes 3.5+K in-kind)

Phase 2) Consultations & Report (50K)

- CAM contact museums and arrange meetings to support consultations
- CISDL conduct consultations
- CISDL prepare draft report
- CAM review and finalise draft report
- CLA contact legal experts and arrange meetings to support consultations

Phase 3) Educational Curriculum Development & Delivery (\$500K)

- CISDL prepare case studies & recommendations
- CAM prepare reviews & consultations on recommendations
- CAM support preparation & delivery of curriculum materials
- CISDL support preparation & delivery of curriculum materials
- CLA maintain legal advisors networks and provide access to networks for meetings
- Project Secretariat (to be hired) design, implement & monitor project workplan

Annex II: Background on the Partners and their Interest in the Project

1. Background on the Partners and their Interest in the Project

Partner 1: The **Commonwealth Association of Museums**, the client in this project, is CAM is a non-profit NGO supported by the London-based Commonwealth Foundation. Its annual program of regional meetings, local capacity building projects, and networking activities are supported by our membership and volunteers world-wide. CAM is an NGO working towards the betterment of museums and their societies in the Commonwealth family of nations and globally. It is therefore concerned with the major issues and problems of the contemporary world. CAM wishes to work from the museum perspective, within the Commonwealth framework, and with Commonwealth governments and the people of our member states through their museums and Non-Governmental Organizations, to achieve our common goals. We welcome collaboration with others outside the Commonwealth.

Partner 2: The **Centre for International Sustainable Development Law (CISDL)** is an international law research institute based at the McGill University Faculty of Law, with the mission to promote sustainable societies and the protection of ecosystems by advancing the understanding, development and implementation of international law on sustainable development. The CISDL has agreed, mainly pro bono, to lead the legal component of this project. The CISDL will be consulting with experts, engaging international advisors, analysing the various international conventions in this area to uncover some of the principle legal obligations of countries, and of museum managers, and helping to prepare the legal brief and design a survey for the commonwealth countries. The CISDL may also be able to prepare legal training materials based on the outcomes of the research and analysis.

Partner 3: The London UK based **Commonwealth Lawyers Association** exists to maintain and promote the rule of law throughout the Commonwealth by ensuring that an independent and efficient legal profession serves the people of the Commonwealth. The CLA has been invited to provide assistance identifying 4-5 leading lawyers from commonwealth jurisdictions like India, Ghana, Kenya, Hong Kong, the UK or Canada, with expertise in the field of (tangible and intangible) cultural property management, who might be willing to consider to serve on the International Advisors Roster of the legal element of the project, pro bono. These individuals will commit 20 pro bono hours of their time over the course of two years to provide 'big-picture' guidance on specific issues of interest to them (ie, IPRs) and place project staff in contact with helpful people in their countries. Eventually, the CLA may also provide assistance in circulating a brief questionnaire surveying the state of cultural property regulations and legal expertise in several of the commonwealth smallest countries.

2. Project Working Group

Lois Irvine (Project lead) is Secretary General of the Commonwealth Association of Museums (CAM). Lois joined CAM in 1980 and was elected an Executive Council member in 1986, President in 1989 and Secretary General in 1995. From 1970, she worked for the Glenbow Museum, one of Canada's largest museums, and subsequently became a museum consultant. A 'generalist' with specialization in management, policy and human resources, she has been actively engaged in professional development in her private work and for the Association. She was chair of the Canadian Museums Human Resource Planning Committee and has contributed articles to a number of museum journals. She is Past President of the Alberta Museums Association, a former President of CAM, and member of several professional organizations, ICOM, Canadian Museums Association, American Association of Museums, and is active on the ICOM International Committee for Training of Personnel (ICTOP).

Barbara Winters MA (UVic) is Assistant Secretary General, CAM. Barbara has a graduate degree in History in Art from the University of Victoria, where she taught art history for several years as a sessional lecturer. From 2000 to 2006, she was coordinator of a federally funded (SSHRC-CURA) community-university research program at the University of Victoria, which supported collaborative research projects in museums and with other heritage institutions in communities throughout British Columbia. She has volunteered with several non-profit arts and community organizations in Victoria, serving on the boards of the Commonwealth Games cultural directorate, the Greater Victoria Youth Orchestra, the BC Summer Games, and as the primary fundraiser for the Victoria Conservatory of Music Opera Studio. Since 2004, she has been the managing editor of the *Canadian Art Review* (RACAR), the scholarly journal of the Universities Art Association of Canada. In 2007, she began to assist the Commonwealth Association of Museums, in particular in the organization of the Museums & Diversity conference in Georgetown, Guyana in April 2008.

Prof. Martin Segger, BA (UVic), DipEd(UVic), MPhil(Warburg, London) F.R.S.A., F.C.M.A. Museologist, Professor and former Director University Art Collections and Galleries; now Senior Research Associate, Centre for Global Studies, University of Victoria. Martin is Adjunct Professor for Renaissance Studies and Museum Studies in the Faculty of Fine Arts; and academic advisor to the Cultural Resources Management Programme which he founded in 1978. In 1982 he was elected a fellow of the Royal Society of Arts, and 1999 a Fellow of the Canadian Museums Association. From 1987 and 1990 he was elected to serve three-year terms as Alderman, City of Victoria. Martin started his museum career at the Royal British Columbia Museum where he established the first professional training programme for museum personnel in BC. and also provided field consulting services for museum development in the Province. He has served as President of the Society of Architectural Historian, Pacific North West Chapter and is currently President of the Commonwealth Association of Museums; he was Hon. Secretary, Board of Directors, Victoria College of Art, and also served as president of the International Council of Museum: International Committee for the Training of Personnel. Other professional board service have included ICOM Canada, Canadian Museums Association, Canadian Art Museum Directors Organization, Heritage Canada Foundation, British Columbia Heritage

Trust, the Provincial Capital Commission, the Greater Victoria Harbour Authority, and CFUV (Community) Radio. Martin's Academic contributions have been focused in two main areas: *Architectural History* and *Museum Studies*. In both areas he is a noted author and contributor to both national and international journals, in particular his contributions to the *British Columbia Encyclopedia*, the *Canadian Biographical Dictionary*, studies, such as *Training of Museum Personnel in Canada* (1978) two on-line undergraduate courses: *Introduction to Museum Studies* and *Introduction to Heritage Conservation*. In both fields, he has also written numerous exhibition catalogues, film scripts, articles and book reviews.

Prof Marie-Claire Cordonier Segger, MEM (Yale), BCL & LL.B (McGill) is a leading international lawyer and scholar in the field of sustainable development. She is Director of the Centre for International Sustainable Development Law (CISDL) in Canada, and a Fellow of the Lauterpacht Research Centre for International Law (LRCIL) at Cambridge University Faculty of Law in the United Kingdom, and Senior Director of Sustainable Prosperity, a public-private partnership on the green economy (on executive interchange from the Government of Canada). She provides legal advice on the implementation of international sustainable development treaties to the United Nations and to governments in Africa, Asia and Latin America. She also serves as a Visiting Professor for the University of Chile Faculty of Law, an instructor of international law for the International Development Law Organisation, chairs the International Law on Sustainable Development Partnership under the auspices of the UN Commission on Sustainable Development and lectures in sustainable development internationally. She has authored or edited over fifty publications, including fourteen books. Her most recent books include: *Sustainable Development in World Trade Law* (Kluwer Law International, 2005) with Dr M. Gehring; *Sustainable Development Law: Principles, Practices and Prospects* (Oxford University Press, 2004) with A. Khalfan; and *Sustainable Justice: Reconciling Economic, Social and Environmental Law* (Martinus Nijhoff, 2004) with H. E. Judge C.G. Weeramantry. She is a Councillor of the World Future Council, and serves on several international Boards and Experts Commissions. She was formerly CEO of Elements Intl, a small sustainable development services firm, served as an Associate Fellow at Chatham House (the Royal Institute for International Affairs) in London, UK, and coordinated a portfolio of research for the United Nations Environment Programme and the International Institute for Sustainable Development, and speaks English, Spanish, French, German and Portuguese.

Hugh A. Robertson Q.C. is the past Executive Director of the Legal Education Society of Alberta, having served in that position from 1984 to 2007. As such he was responsible of the bar admission program and the development and delivery of continuing legal education programs in Alberta. He is a past president of both the National and International Legal Education Associations. As a former member and Chair of the International Development Committee of the Canadian Bar Association, Hugh oversaw numerous projects in developing countries and participated directly in CIDA and UNDP missions and educational programs in Asia, South East Asia, East Africa and Southern Africa. He currently sits as a member of the Governing Council of the Commonwealth Lawyers Association.

3. Commonwealth Association of Museums International Expert Advisory Board

Dr. George MacDonald BA(Tor) MA(Tor).PhD(Yale) is Director Emeritus, Bill Reid Foundation, Canada George MacDonald was appointed President of the Bill Reid Foundation in Vancouver in February 2005. As well, in a new partnership between the Foundation and Simon Fraser University, he was also appointed to establish the Bill Reid Centre of Northwest Coast Art Studies at the University. Dr. MacDonald was born and brought up in Southern Ontario. He began work with the National Museum of Canada while still a student, as an archaeologist for the Atlantic provinces, then for the West Coast in 1966. He became Head of the Western Canada section of the National Museum of Man, then Chief of the Archeology Division in 1969. He continued rising through the ranks at the National Museum in the 1970s and early 1980s, and was appointed the founding Director of the successor institution, the Canadian Museum of Civilization (CMC) in 1983. Dr. MacDonald became President, CEO and Executive Director of the CMC Corporation in 1995. Dr. MacDonald was appointed CEO of the five museums of the Australian state of Victoria and Director of the Melbourne Museum in 1999, overseeing its building and exhibition design. Similarly at the University of Washington in Seattle, he supervised the production of a four-phase facility expansion plan as Director of the Burke Museum of Natural History and Culture from 2001 to 2004. Through the years of running museums, Dr. MacDonald has held concurrent academic positions, at the universities of Washington, Melbourne, Toronto, Carleton, Ottawa, and Trent. In 1977-78, he was a research fellow at the Museum of Volkerkunde in Basel, Switzerland and in 1981-82, he was a visiting scholar at the University of British Columbia's Museum of Anthropology and a Professor in the Department of Archaeology at SFU. A renowned expert on Northwest Coast art, Dr. MacDonald's seminal work on the subject is *Haida Monumental Art*, published by UBC Press. Some others are: *Haida Art*, *Chiefs of the Sea and the Sky*, and *Ninstints: A World Heritage Site*. He is a Fellow of the Royal Society of Canada and holds an LL.D. from the University of Calgary. Dr. MacDonald was appointed a Member of the Order of Canada in July 2006. He is married to Joanne (Rice) and they have two adult children, Christine and Grant.

Professor Patrick Boylan BSc, PGCE, PhD, FGS, FMA, FCMI is Professor Emeritus of Heritage Policy and Management, City University, London. Patrick was the director of arts, museums, heritage and archive services in Exeter, Leicester and Leicestershire before joining City University in 1990. Honoured with the title of Professor Emeritus on his retirement in 2004, he remains closely associated with the Department as a research degree supervisor, researcher and guest lecturer. Internationally he has served as an external examiner for undergraduate, postgraduate and research degrees at eleven universities in Australia, Canada, England, France, India, Ireland and Scotland. From 2005 to 2008 he was Editor-in-Chief of the *International Journal of Intangible Heritage*. Professionally he served three terms on the Council of The Museums Association and was its Centenary President for 1988-90, while internationally he has held a wide range of offices in the UNESCO-based International Council of Museums (ICOM), including two terms as Chairperson of the International Committee for the Training of Personnel (1986 – 1992 and 1997 – 2003), Chairperson of the Ethics Committee (1984 – 1990), Vice-President (1992 – 1998), and most recently Chairperson of the Legal Affairs Committee (2004 -2008). Recognised as a leading international authority on both cultural policy and professional training, and on the

protection of the heritage in times of armed conflict (for which the Republic of Croatia awarded him the country's "Danica" High Order of Merit), he has undertaken a wide range of consultancies, assignments, and management training missions in these and other areas for UNESCO, the British Council, the Council of Europe, the World Bank, the Arts Council, the Museums and Galleries Commission, the International Committee of the Red Cross. Some recent publications include: The Mediation Policy of the International Council of Museums (ICOM) and Restitution Claims. pp. 66 - 72 in M. Borák (editor), *Restitution of Confiscated Works of Art - Wish or Reality?* Prague: Tilia Publishers, 2008. The future role of Non-Governmental Organisations and Cultural Professionals in the Protection of Cultural Property in the Event of Armed Conflict following the adoption of the Second Protocol of the Hague Convention. pp. 125 - 131 in *Seminario Regional: La Protección de los Bienes Culturales en Caso de Conflicto Armado: Un Desafío y un Oportunidad para América Latina y el Caribe (Buenos Aires, Marzo 2005)* (Buenos Aires: Ministerio de Relaciones Exteriores), 2006. The Intangible Heritage: a Challenge and an Opportunity for Museums and Museum Professional Training. *International Journal of Intangible Heritage* vol. 1, pp. 53 – 65, 2006. The Significance of the 1954 Hague Convention and its 1999 Second Protocol in relation to the Protection of Cultural Property in the Event of Armed Conflict. Opening Keynote Address to Ceremony in the Royal Castle in Warsaw on the 50th Anniversary of the Convention of 14th May 1954 on the Protection of Cultural Property in the Event of Armed Conflict. *Cultural Policy, Criticism & Management, [City University]*, Issue 1: <http://www.city.ac.uk/cpmejournal/dps/Patrick.pdf>, 200. Art Crime pp. 214 - 227 in Iain Robertson (editor). *Understanding International Art Markets and Management* (London: Routledge, 280 pp.), 2005. *Running a Museum: A Practical Handbook* (editor, coordinator & author of "Introduction", "Managing People" and "Terms & Definitions" chapters) (Paris: International Council of Museums (ICOM) and UNESCO), (230 pp.), 2005. (Arabic edition: 2005, French edition 2006, Spanish edition 2008)

Nath Mayo Adediran B.Sc.(Ibadan), , MSc (Lagos), is Director of Museums and Monuments Commission, Nigeria. He received further training by attachment to the National Museum of Wales, Cardiff, Manchester Museum, Manchester and Horniman Museum, London. He has held number curatorial positions including Curator, National Museum, Lagos - 1978-80, Curator, National Museum, Lagos - 1983-86, Curator, National Museum, Osogbo - 1987- 90, Curator National Museum, Kano - 1990-91, Curator, National Museum, Lagos - 1991-93 (Feb), Curator, National Museum, Calabar -1993. Mayo has published a number of articles, essays and produced a number of exhibition catalogues for Nigeria Museums. International speaking engagements include the NATHIST Committee meeting in Vienna, Austria. May 1979. ICOM 13th Triennial Conference, Mexico City, Mexico. Oct-Nov. 1980. ICOM 14th Triennial Conference, London, August 1983. Developing Curatorial Vision, Jos, Nigeria. August 1990. Museums and the Environment, Lyon, France. Nov. - Dec 1990. Interpretation Conference, Washington DC. USA Nov. 1993. Museum 2000: Affirmation or Challenge, Stockholm, Sweden. June 2001. ICOM 19th Triennial Conference, Barcelona, Spain. July 2001SAMP General Conference, August 2002. Africom General Assembly, October 2003.

Catherine Antomarchi (Maîtrise de Sciences et Techniques pour la conservation et la restauration des biens culturels).Director, Collections Unit, ICCROM, Rome. For over 20 years, Catherine has developed, planned, and ensured delivery of numerous courses and

educational tools from ICCROM, the intergovernmental agency renowned for such work. During the 1990's she was instrumental in the delivery of PREMA, Preventive Conservation for Museums in Africa, a comprehensive program of year long courses, in collaboration with English and French universities, designed in response to extensive on-site needs assessment, and consultation, followed by a plan of genuine capacity transfer. The result was the emergence of EPA and PMDA, self-sufficient agencies serving French-speaking and English-speaking countries of Africa South of the Sahara. As a result of this work, she was awarded Honorary Member of the Cowrie Circle by the Commonwealth Associations of Museums. She has studied extensively the methods of effective education and training for professionals in museums, and has authored or co-authored 20 papers related to this subject. She also collaborated on a number of projects organized by ICCROM in the field of preventive conservation and participated in the European projects which produced the Document of Pavia (1997) and of Vienna (1999) towards the recognition of the profession of conservator-restorer. Beside contributing to the development and management of the various programs and activities of the Collections Unit, in particular, the Sharing Conservation Decisions program, the Sounds and Image conservation program, the First Aid to Cultural Heritage in Times of Conflict, and the regional program Collasia 2010, she has taken responsibility for the Preventive conservation programme and for the risk assessment training activities as well as the affiliated development of support tools, all within a long term strategy to help museums around the world make better decisions about collection conservation. From 1999 until this year, Catherine also represented the Director-General of ICCROM, ex-ufficio member of the Directory Board of ICOM-Conservation Committee.

Dr. Amareswar Galla, MA (Jawaharlal Nehru U), PhD (ANU) is a museologist and professor, Dept of Museum Studies, University of Queensland, Brisbane, Australia. He is also editor *International Journal of Intangible Heritage*. Educated in both south and north India including Jawaharlal Nehru University in New Delhi, Amar is the first Professor of Museum Studies in Australia at the University of Queensland. He provides strategic cultural leadership in Australia and the Asia Pacific Region as the founding Director of the UNESCO Pacific Asia Observatory for Cultural Diversity in Human Development. He has been Vice President of the International Council of Museums, Paris (ICOM) since 2004, and is the founding Chairperson of the ICOM Cross Cultural Task Force. Amar is one of the leading experts in the world on museums, sustainable heritage development and poverty alleviation through culture, and has worked extensively in Vietnam, South Africa, Iraq, the Pacific, Europe, Asia and Australia. He has been a key advisor for the UNESCO World Commission for Culture and Development, and was UNESCO Technical Advisor and Guest Curator of International Projects in Vietnam responsible for the development of World Heritage sites in Hoi An and Ha Long Bay working on the development of the world's first floating museum, the Cua Van Cultural Centre in Ha Long Bay. A keen spokesperson and champion of cultural diversity, Amar has been a Director on the Board of SBS Radio and TV, and worked on inclusive policy development both in Australia and the Netherlands as a specialist adviser on cultural diversity promotion. He is currently a member of the Australia Council Multicultural Advisory Committee (ACMAC) and the first Australian to be elected as the President of the Asia Pacific Executive Board (1998-2004). Amar is a well-known international public speaker and has most recently given keynote

addresses at the Pacific Edge Arts for Regional Australia Conference, INTERCOM Taipei, and the Maurice Kelly Public Lecture at the University of New England, Australia. Amar is well published in international cultural, heritage and museological journals, is a contributor to major volumes of collected essays on these topics, with editorial roles with: *International Journal of Intangible Heritage*. Editorial Board (2005-) *Museum International*. Editorial Board (1998-) *International Journal of Leisure Management*. Advisory Editorial Committee and Referee (1995-2001) *Bulletin of the Commonwealth Association of Museums*, Calgary. Editor (1995-7) *Museums in Post-Colonial Societies*. Calgary & London. Editorial Board and Referee. (1992-8)

Alissandra Cummins MA (Leicester) is Director, Barbados Museum & Historical Society. She was elected President of the International Council of Museums (ICOM) on October 8th, 2004, in Seoul (Korea). It is the first time that ICOM, created in 1946, has elected a woman as President. Alissandra began her career as Research Assistant at the Museum of Mankind, (United Kingdom). She became Deputy Director of the Barbados Museum and Historical Society, St. Michael (Barbados), before taking over as Director in 1985. Alissandra Cummins is Director of the Barbados Museum and Historical Society. She holds a Bachelor of Arts Degree with Honours in the History of Art from the University of East Anglia, Norwich, and a Masters of Arts in Museum Studies from Leicester University, UK. A recognized authority on Caribbean heritage, museum development and art, she was elected a Fellow of the Museums Association (U.K), a first for the Caribbean. She is a lecturer in Heritage Studies with the University of the West Indies. She currently serves on the editorial committee of the International Journal of Museum Management and Curatorship. Ms. Cummins was instrumental in the establishment of the Museums Association of the Caribbean (MAC), becoming its Founding President in 1989, and was equally active as first Board member and then as President of the International Association for Caribbean Archaeology (IACA). Miss Cummins served between 1998-2004 as Chairperson of the Advisory Committee of ICOM (International Council of Museums), following which she was elected as its President in 2004 and 2007. She is still serving in this capacity having been re-elected In August 2007. She has also served as Chairperson of UNESCO's Intergovernmental Committee for Promoting the Return of Cultural Property to its Country of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP) from 2003-2005, and more recently (2007) was appointed as President of the International Advisory Committee of UNESCO's Memory of the World Programme. Ms. Cummins was recently selected to head Barbados' delegation to the World Heritage Committee. In 1999 Ms. Cummins was appointed Special Envoy for Cultural Heritage by the Government of Barbados. In 2005, Alissandra Cummins was awarded Barbados' Gold Crown of Merit in recognition of her services to heritage and museum development. In 2006, she was recognized by UNESCO as one of "sixty eminent women who, in different parts of the world, in different positions and in different moments across the history of the Organization have made, and in many ways are still making, significant contributions to the ideals and action of the Organization".

Nath Mayo ADEDIRAN, B.Sc Ibadan Nigeria, M.Sc Lagos, Nigeria. Director of Museums, National Commission for Museums and Monuments, P. M. B. 171, Garki, Abuja. Nigeria. Mr. Adediran has had extensive experience as a curator at the National Museum, Lagos, National Museum Jos, National Museum Osogbo, National Museum Calabar. He has been president of the Museums Association of Nigeria, is currently Vice-President, International Council of African Museums.

Rooksana Omar, L.D.L.S., B.A., M.B.A. graduated with a Diploma in Library Science, a Bachelor of Arts Degree and an Honours Degree in history from the then University of Durban-Westville and later proceeded to complete a Masters in Business Administration. She is noted in South Africa for her work in the post-apartheid re-structuring of the heritage sector providing strategic direction in transformation to a sector that had in the past denigrated and downplayed the importance of the majority's history and culture. Her specific personal focus has been on good governance and social justice. Before joining the Iziko Museums as Ms. Omar have served in various capacities that have advanced the heritage sector in general, and museums in particular. She has served as Director of the Luthuli Museum in period 2006-2010, and before that was the Acting Director of the eThekweni Heritage, at the Ethekewini Municipality (2001-2005). She has also been president of the South African Museums Association, and is currently the President of the International Council of Museums, South Africa, and newly elected President of the Commonwealth Museums Association. She served on the Arts and Culture Trust of the President, sponsored by Nedbank from 1998-2003. Prior to these appointments she served the public as a librarian, education officer and researcher of the Local History Museums in Durban (now eThekweni) and was its first black women Director of a Museum appointed in 1996.

Dr. Lynne Teather, Ph.D (Leicester) is Associate Professor, Museum Studies Program, University of Toronto, (1980 to present) and Chair of the International Council of Training of Personnel of ICOM, She balances work as a professional consultant (locally, nationally and internationally) with research on the history/philosophy of museums and contemporary issues, notably cross-cultural museology and concepts of museums as intermediaries in building civil society. She is also the first recipient of the Leicester University's Doctorate in Museum Studies (1984) and continues to lead in the development of museums and heritage studies as a field of study. Amongst her concerns are the issues of museums and heritage in developing countries and deliberations as to the appropriate roles for stakeholders in the work of protecting cultural property .

4. Interested CISDL Lawyers and Legal Scholars

Dr Carolyn Deere, DPhil (Oxon), M.A. (Johns Hopkins SAIS), B.Econ. (Hons) (Sydney) is Senior Research Fellow with the CISDL. She is also a Researcher at the Global Economic Governance Programme at Oxford University. She was previously Assistant Director in the Global Inclusion theme of the Rockefeller Foundation, a Founder of the Funders' Network on Trade and Globalization and serves on its Steering Committee, and a member of the Steering Committee of Grantmakers Without Borders. She is Founder and Chair of the Board of Directors of Intellectual Property Watch (IP Watch). Ms. Deere has also worked with the World Conservation Union (IUCN); the International Center for Trade and Sustainable Development (ICTSD) (Geneva); and the Congressional Staff Forum for International Development at the Overseas Development Council in Washington, D.C. She has published widely on intellectual property rights and natural and cultural heritage

conservation, and has consulted for UNCTAD, UNDP and the Soros Foundation, among others. Her most recent book is *The Implementation Game: The TRIPS Agreement and the Global Politics of Intellectual Property Reform in Developing Countries* (Oxford University Press, 2009).

Ms. Alexandra Harrington, D.C.L. candidate (McGill University), J.D. (Albany Law School of Union University), B.A. (New York University) is Senior Manager of the Centre for International Sustainable Development Law (CISDL), and was admitted to the New York State Bar in 2006. During her studies at Albany Law School, she served as Editor-in-Chief of the *Albany Law Journal of Science & Technology*. In 2007 she graduated summa cum laude from Albany Law School with a LL.M. in International Law. She is currently a DCL student at McGill University's Faculty of Law and is affiliated with the International and Comparative Law Institute. Ms. Harrington was awarded a Provost's Graduate Fellowship and a MacDonald Graduate Scholarship from McGill University. Ms. Harrington's doctoral thesis, conducted under the supervision of Professor Frederic Megret, will examine the transformation of territory in international law. She has published over fifteen law review articles on a variety of topics including international law on heritage conservation and cultural traditions.

Ms. Emma-Leigh Irving, BA (University of Cambridge). Currently undertaking Bachelor of Arts in Law at the University of Cambridge, due to graduate in June 2011. Ms Irving has just returned from an ERASMUS year at the University of Utrecht in the Netherlands, during which time she completed an internship at the International Criminal Court working for the defence. During her time at university, Ms Irving participated in extracurricular activities involving transnational legal issues with the student branch of Lawyers Without Borders. As President of the Fairtrade association at her college, Ms Irving undertook work involving sustainable development in food production and trade. Personal interests include creative writing as well as travel.

Dr. Tanira Kingi PhD (Australia National University), MAppSc (Massey), BBS (Massey) is Senior Lecturer in Agricultural Systems and Management at the Institute of Natural Resources, College of Science, Massey University. His main areas of research include: Property rights, land tenure systems and agricultural development; communal resource management; institutional analysis and indigenous development; Maori land institutions and economic development; organisational (firm) structures in agrarian communities; and economic efficiency analysis. He has published widely on Maori agricultural development particularly in relation to multiple land ownership and organisational structures. More recently his research interests have extended to the Pacific Islands and North America where he is undertaking research with the indigenous landowners in Fiji and Canada. Dr. Kingi is affiliated to Ngati Whakaeu, Ngati Rangitahi, Ngati Makino and Ngati Awa. He speaks English and te reo Maori.

Prof Konstantia Koutouki, LL.D (Montréal), LL.M (Ottawa), LL.B (Queen's) is Lead Counsel for Natural Resources with the CISDL and a professor of law at the Université de Montréal, Faculty of Law. She teaches in the LL.M in Common Law program as well as the Business in a Global Context program. She has previously taught at various Canadian

universities including Queen's, Carleton and Concordia. She has also conducted fieldwork research with the Institut national de la recherche scientifique-Urbanisation, Culture et Société (INRS-Université du Québec). She has extensive experience working on issues concerning international sustainable development law especially as it relates to the social, economic and cultural development of Indigenous and traditional communities, the protection of cultural heritage and cultural property, and the preservation of natural spaces. She has first-hand experience with Indigenous and traditional communities around the world, where she has spent much time as a guest and researcher. Dr. Koutouki speaks fluent Greek, English, French and Spanish and has working knowledge German.

Mr. Vicheka Lay, LL.M Non-Thesis candidate (General Law) (McGill University). Before coming for his LL.M at McGill, Vicheka already holds LL.B in general law and LL.M in public international law from Cambodia. Prior to joining Legal Research Group of CISDL, Mr. Vicheka Lay worked as a legal consultant for a major Cambodian law firm where he consulted on all aspects of corporate law, large-scale investment, contract and intellectual property. Concurrently with his legal consultation profession, he also worked as a freelance business/immigration consultant, and project manager of a translation company. Vicheka is currently a heritage law project manager for an international NGO: Heritage Watch International, editor to Law Journal of the Cambodian Bar Association, Cambodian Management Journal, Journal of Law and Conflict Resolution (Nairobi, Africa), member of international advisory board of the International Encyclopaedia of Law (Belgium), contributor to Invest in Cambodia Magazine (UK), National Correspondent for Yijun Institute of International Law (South Korea), and a contributing author to Oil, Gas and Energy Law Intelligence (the Netherlands). Vicheka has a wide range of publications, including the second edition of the International Encyclopedia of the Social Science, Law Report on Anti-money laundering for the International Bar Association, World Bank's doing business in Cambodia survey, and anti-corruption regulation for Law and Business Limited (London). Vicheka is a member of the International Law Association - Canadian Branch, Asian Society of International Law, Swiss Arbitration Association, Legal Writing Institute, the United Nations Studies Working Group, Cambodian American Professional Association, the Cambodian Society of Comparative Law, and the Society of Asian Lawyers. Vicheka's legal research interests include global sustainable human rights, sustainable trade, international sustainable development law, cross-cutting sustainable development law issues, sustainable development law on natural resources, and global trade/natural resource negotiation.

Salim A. Nakhjavani, LL.M (Cantab.), BCL & LLB (McGill), is Lead Counsel for Crosscutting Issues at the Centre for International Sustainable Development Law (CISDL). He is Lecturer in Public Law at the University of Cape Town, where he conducts undergraduate and postgraduate teaching and research in general public international law and international criminal law. He previously served as Associate Human Rights Officer at the UN Office of the High Commissioner for Human Rights (2005) and Assistant Legal Adviser in the Office of the Prosecutor of the International Criminal Court (2003-2004). He was elected to the Whewell Scholarship in International Law in the University of Cambridge in 2002. He has lectured on international human rights law, protection of cultural traditions, and other specialist topics in international criminal law in Germany, Italy, Norway and Australia. His current research work focuses on international criminal law and procedure,

including illicit traffic in cultural property. Mr. Nakhjavani currently resides in Cape Town, South Africa with his spouse. He is fluent in French and English, with notions of isiXhosa.

Prof. Vincent Negri, Centre de recherche sur le droit du patrimoine / CNRS Lyon, France. Vincent is lawyer, researcher with the French National Center for Scientific Research (CNRS), especially in legislations and policies on cultural heritage (national and international laws). In this capacity, he serves as expert and consultant for numerous international organizations including UNESCO, Council of Europe, ICOM and ICCROM. He was expert on legal aspects for ICCROM's Africa 2009 program. He is also professor in cultural heritage law; he teaches at the Institute National du Patrimoine (France), the University of Paris 1 and Paris 11, the University of Lyon 3, the University of Belgrade. He is associate professor at the L.S. Senghor University in Alexandria, Egypt. He is a fellow of the International Council of Museums (ICOM), the International Group of Research in Cultural Heritage and Art Law, and the French Society on Environmental Law.

Ms. Marjan Radjavi, B.A. (McGill), M.A. (Laval), is a research fellow with the CISDL, a cultural anthropologist, a journalist, and a specialist in economic, social and cultural rights. A full professor at Dawson College (Humanities and North-South Studies) specializing in sustainable development, international relations, and gender, and partaking in curricular reform, she is also a research director and associate at McGill University Centre for Research and Teaching on Women. Recently Ms. Radjavi has also taught research methods at the Department of Social Planning and Sociology at Shiraz University, in collaboration with the United Nations Population Fund (UNFPA) International Graduate Program in Population and Development and at Mexico City's CIDE Law Faculty. She has consulted with the Royal Institute for International Affairs (Chatham House, London) and the Canadian government, amongst others. Ms. Radjavi has served as the Women's Environment and Development Organization (WEDO) Int'l Civil Society/Women's Major Group Representative to WSSD negotiations, as civil society representative to WSSD-EEC negotiations, and as Women's Council NGO Advisor (Shiraz, Iran). She is an active member of the Association for Women's Rights in Development, the Canadian Association of Sociology and Anthropology, the American Ethnological Association, and a past member of the Sisterhood is Global Institute network. She has spoken and published in the areas of capacity building, culture and identity issues. Her films include the independent production 'Butterfly' (in progress, Documentary Studio), 'After the Hurricane' (IDRC), 'Networks' and 'The Other Side of the Street' (WETV, the Global Access Television Network and UNESCO).

Ms. Raquel De Souza, LL.M Thesis candidate (Environmental Option) (McGill University), M.Phil (University of Cambridge), Postgraduate Diploma (University of Brasília), LL.B (University of Brasília). Prior to joining CISDL, Ms. De Souza was a law clerk at the Supreme Court of Justice in Brazil. She has also worked as a lawyer at a major Brazilian law firm practicing in the areas of environmental, private and administrative law. In 2001, she was awarded a Chevening Scholarship in order to pursue a Masters degree in Land Economy at the University of Cambridge. In addition, Ms. De Souza has carried out research in the field civil liability, taught, as a part-time lecturer, in local Brazilian universities/institutions besides having been engaged in a research fellowship programme at the Permanent Court of Arbitration in the Hague, Netherlands. She is currently concluding

her LL.M Thesis at McGill University's Faculty of Law where she was awarded a Provost's Graduate Fellowship. Her research interests include environmental liability, democratic governance, sustainable trade and biodiversity.

Dr Katerina-Zoi Varfis, Ph.D (Thessaloniki), LL.M (Geneva), B.A. (Thessaloniki), is a legal research fellow with the CISDL, works for the Environment Directorate of the Council of the European Union in Brussels, and serves as a Research Associate of the Hellenic Institute of International and Foreign Law in Athens. She also participating in the teaching of seminars for the Jean Monnet Programme on International Environmental Governance and Sustainable Development at the Panteion University of Athens. She has served with the Court of Justice of the European Communities in Luxembourg, the Law Faculty of the University of Geneva and the International Labour Organisation in Geneva, and as a Visiting Scholar with the Lauterpacht Research Centre for International Law at the University of Cambridge. She has also taught International and European Economic Law and Public International Law for the Thessaloniki branches of the Universities of Sorbonne and Strasbourg, and has collaborated with the Hellenic Open University in creating a pluri-disciplinary manual on Urban Planning. While in Geneva, she collaborated regularly with the International Academy of the Environment and was a member of the Environment Focal Point of the University of Geneva. Her fields of expertise include: international and European environmental law, international law on cultural and natural heritage conservation, negotiation of international environmental regimes, law of the Sea with emphasis on Mediterranean issues and marine pollution, and the international regulation of biotechnology. She has lectured widely and has published a number of related articles. Dr Varfis is a member of the International Law Association (British Branch), and the ESIL, and a founding member of the Greek Association for International Law. She speaks Greek, English and French fluently, tolerable Spanish and has notions of Danish, German, Russian and Turkish.

Ms. Mara Verna, B.C.L./LL.B Candidate (McGill), B.F.A. Hons. Art Education (Concordia) is a member of the CISDL Legal Research Group. Verna's research interests lie in the ethical, legal and social dimensions of intellectual property, biotechnology and cultural heritage. Recipient of numerous research, production and travel grants, her work as a contemporary artist has been characterized by in-depth research, site-specific fieldwork and international public dissemination. Notable work includes invited Keynote Speaker for *Fieldworks: Dialogues Between Art and Anthropology* at Tate Modern, London. UK (2003) and www.hottentotvenus.com, a collection of audio recordings that give voice to the legacy of Saartjie Baartman (1789-1815) whose remains were repatriated to South Africa for burial in 2002. She remains committed to supporting the Montreal artistic community as advisory board member of articule gallery and as consultant to ParabolaFilms. She speaks English and French.

Dr. Joseph Wilson is a CISDL Research Fellow and Assistant Professor of Law at the Department of Law & Policy of the Lahore University of Management Sciences (LUMS) in Pakistan. He has earned his LL.M from the University of Georgia, and a second LL.M. and Doctor of Civil Law Degree from McGill University. He is a member of the New York, and Lahore High Court bars. Dr. Wilson's areas of specialization include International Competition and Trade Law, Telecommunications Regulation, and Intellectual Property

Rights. He has presented at various international conferences, and published in international law journals. He authored *Globalization and the Limits of National Merger Control Laws*. Dr. Wilson was a post-doctoral research fellow and had taught at the McGill Faculty of Law before joining LUMS in May 2004.