

Statement from the National Research Ethics Committee for Social Sciences and the Humanities (NESH) regarding research on material of uncertain or unknown origin

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Summary of the recommendations

In this statement, NESH comments on questions of principle linked to research and technical assistance in connection with material of uncertain or unknown origin. The following is a summary of the most important recommendations.

NESH recommends that

- research on material of uncertain or unknown origin be assessed by balancing concerns related to research freedom, new knowledge, conservation, disseminating results and restitution;
- researchers and institutions ensure due diligence. This implies an obligation to make investigations and to consult other experts in the field in question. As a minimum requirement, this means that an institution or a researcher should ask owners to make their collections available for research on provenance;
- researchers be subject to a disclosure obligation, meaning that if they suspect that material is stolen or acquired in an ethically questionable manner or if there is uncertainty linked to origin and provenance, they should initially report their suspicions to the research institution;
- an initiative be taken to create a national body to follow up the disclosure and reporting obligations incumbent upon researchers and institutions;
- research institutions develop reporting routines that make it possible to identify material of uncertain or unknown origin at an early point in time;
- technical assistance provided for identification, classification and conservation be completely transparent. A disclosure obligation should also apply where there is a suspicion that material is stolen or acquired in an ethically questionable manner or where there is uncertainty in respect of origin and provenance;
- existing guidelines in the relevant subject areas be expanded with a view to covering research on material of unknown or uncertain origin.

1 Background. Query from the University of Oslo

On 27 October 2004, NESH received a query from the University of Oslo (UiO), represented by Rector Arild Underdal.¹ Although the query was general, it was based on UiO's collaboration regarding documentation and research with the collector Martin Schøyen on Buddhist texts that constitute part of what is known as 'the Schøyen Collection'. The Rector articulated the questions to NESH as follows:

¹ Letter from the University of Oslo, dated 25 October 2004, UiO ref 04/10838, NESH ref 04.3.302

- (1) Which standards should (a) an individual researcher and (b) the institution for which the researcher works strive to follow with a view to initiating and conducting research on material that there is either good reason to believe is not in the hands of its rightful owner or being used by others with the consent of that owner, or where there is no documentation that gives satisfactory grounds for rejecting the suspicion that the material may have been subject to illegal export or ethically questionable transactions?
- (2) Which standards should (a) an individual researcher and (b) the institution for which the researcher works apply to different types of technical advice or assistance related, for example, to identification, classification, conservation, etc., in respect of the person who actually possesses such material?

The first question is linked to initiating research on material of uncertain or unknown origin. The question is answered below in sections 3, 4, 5 and 6. The question is worded using the concept "rightful owner". It is often neither legally nor ethically possible to give a precise definition of this term. In this context, the question is, however, not about identifying the rightful owner, but about how a researcher and institution should deal with suspicions or uncertainty regarding provenance and acquisition. Consequently, NESH considers the last part of the question as the key issue, more specifically, whether there are suspicions that material may have been subject to illegal or ethically questionable transactions, or uncertainty, if that is the case.

The second question involves situations in which individual researchers or institutions provide technical advice or assistance in connection with material of uncertain or unknown origin. This question is discussed in particular in section 7, with reference to sections 5 and 6. The question of conservation is also discussed in section 2C (conservation).

The questions from Rector Underdal are posed in general terms. However, in this statement, "material of uncertain origin" primarily refers to cultural artefacts suspected of being excavated illegally or by amateurs, illegally imported, exported or traded, or by other means acquired unethically.

The University of Oslo (UiO) wanted to enlist help to assess important questions related to research ethics, both in general and with specific reference to UiO's work with the Schøyen Collection. The media and other researchers have contended that some of the Buddhist texts may have been subject to unlawful and/or ethically questionable transactions to bring them from their country of origin and into Martin Schøyen's collection.²

The Schøyen Collection is the largest private collection of manuscripts collected in the 20th century.³ The Buddhist parts of the material are classified in three different categories: China, Pre-Gutenberg printing and Buddhism. The last part of the material in particular has been the subject of serious discussions in Norwegian and foreign professional fora and the media. This material has been described as "The Dead Sea Scrolls of Buddhism".⁴ The material is now divided between the British Library which has 60 fragments and the Schøyen Collection which has 5000 larger fragments and 8000 micro-fragments in its possession.⁵ This material is discussed in Braarvig (2000 and 2002) and parts of it are available on the National Library's

² NRK Brennpunkt 2004 and Omland, Atle and Christopher Prescott (ed). *Buddhist manuscripts from Afghanistan in The Schøyen Collection*, <http://folk.uio.no/atleom/manuscripts.htm>

³ The Schøyen Collection 1. Introduction <http://www.nb.no/bases/schoyen/intro.html>, (10 May 2005)

⁴ The Schøyen Collection 22. Buddhism, <http://www.nb.no/baser/schoyen/5/5.19/index.html> (10 May 2005)

⁵ The Schøyen Collection 1. Introduction <http://www.nb.no/baser/schoyen/intro.html>, (10 May 2005)

website at www.nb.no/baser/schoyen.⁶ Written on palm leaves, birch bark, copper plates and vellum, it originates during the period between the 2nd and 7th centuries. It was written at Buddhist monasteries in the now dead languages Gandhari and Sanskrit.

A professor in the history of religion at the University of Oslo, Jens E. Braarvig, has headed the research on the Buddhist text material since 1997.⁷ Professor Braarvig took the initiative for this research along with an international group of Buddhism researchers. The collection gradually grew from 108 text fragments acquired by Schøyen in 1996 to the current 5000 larger fragments and 8000 micro-fragments. In addition to the University of Oslo storing the collection on its premises and researchers at the university researching the material, Norway's National Library has digitised some of the material.

The research on parts of the Buddhist text material was suspended on 9 September 2004.⁸ On 8 November 2004, the University of Oslo sent a notice of termination to Martin Schøyen regarding his lease with the university. The lease expired as from 10 May 2005. The National Library has insisted that the issue of provenance and origin be clarified. In an open letter dated March 2005 (Braarvig 2005), Professor Braarvig announced that he was suspending his research on the Buddhist part of the Schøyen Collection. At a seminar on 17 March 2005 (see below), Braarvig recounted his meetings with Afghani authorities with a view to clarifying opportunities for restitution.

NESH discussed the query from the University of Oslo at its meeting on 2 November 2004. The case was new and difficult, and the topic was challenging and involved principles of the utmost importance. A working plan was adopted at that meeting, and it was decided to organise an open seminar. It was also decided to hire a post-graduate in the history of religion (Erik Thorstensen) to compile background material on the case.

On 17 March 2005, NESH organised a seminar entitled "Research on material of unknown origin", and leading institutions and researchers participated.⁹ The complex set of problems relating to research on artefacts of unknown and uncertain origin was illuminated from many perspectives and discussed thoroughly. NESH subsequently dealt with the case at three meetings: 10 February, 24 May and 15 June 2005. This statement has also been submitted to a committee of experts selected on the basis of the 17 March seminar.¹⁰

NESH has neither the opportunity nor the mandate to examine origin, provenance or the more detailed administrative procedures at the University of Oslo. NESH has therefore limited this statement to responding to the questions of principle posed by the rector of the University of Oslo.

⁶ This currently refers to MS 2179/44 India, 2nd-3rd c, MS 2376/1 India, 4th c. Cave in Hindu Kush, Bamiyan, MS 2378/1 India, 5th c. Cave in Hindu Kush, Bamiyan, MS 2385 Bamiyan, Afghanistan, 6th c. Cave in Hindu Kush, Bamiyan, MS 2382/269 India, 6th c. Cave in Hindu Kush, MS 2373/1 India, 2nd c. Cave in Hindu Kush, Bamiyan, MS 2375/08 India, late 3rd - early 4th c. Cave in Hindu Kush, Bamiyan, MS 2379/44 India, 6th c. Cave in Hindu Kush, Bamiyan., The Schøyen Collection 22. *Buddhism*

<http://www.nb.no/baser/schoyen/5/5.19/index.html>, (10 May, 2005)

⁷ Braarvig, 2000, <http://folk.uio.no/braarvig/msc/assets/F9EA7A00.PDF>

⁸ *Uniforum net no.*, 9 September 2004 "Discontinuing research on the Schøyen Collection", <http://wo.uio.no/as/WebObjects/avis.woa/wa/visArtikkel?id=17741&del=uniforum> (read 16 June 2005)

⁹ See appendix 1 for the programme, or see www.etikkom.no for a report from the seminar

¹⁰ Head of Section Per Bjørn Rekdal, Museum of Cultural History, University of Oslo; Director General Jon Birger Østby, Norwegian Archive, Library and Museum Authority; Assistant Professor Atle Omland, Department of Archeology, Conservation and Historical Studies, University of Oslo; Notetaker Elisabeth Eide, National Library; Curator Leif Pareli, Norwegian Museum of Cultural History

2. *Balancing different considerations*

Like everyone else, researchers and research institutions have an ethical and legal obligation not to get involved with material they may have reason to believe has been stolen or acquired in a questionable manner. One possible response to Rector Underdal's question would be to say that researchers and research institutions should never get involved with material if they are not entirely certain that it is not stolen or by other means acquired in a questionable manner. In cases in which the party in possession does not wish to or cannot specify the origin of an artefact, that artefact should be considered to be stolen or illegally exported. Let us call this position *zero tolerance*.

Key conventions and guidelines in this field may point in the direction of zero tolerance.¹¹ Nevertheless, the ICOM (International Council of Museums) rules allow for a broader interpretation. The ICOM Code of Ethics underlines, in section 3.4, that: "In very exceptional cases an item without provenance may have such an inherently outstanding contribution to knowledge that it would be in the public interest to preserve. (...)". In such cases, ICOM recommends that there be an expert evaluation to determine whether the artefact is so important that it should nonetheless be included in a collection.

The most extreme consequence of zero tolerance is that uncertainty about or a lack of documentation concerning provenance can be sufficient to preclude research on the material in question. Meanwhile, establishing absolute limits as to what can be allowed will also mean missing opportunities to gain important new knowledge. Practising such a 'zero tolerance' policy could also have an adverse effect on important research traditions, where the restoration, preservation and documentation of artefacts are key elements in the research process. The quotation from ICOM indicates that we need not necessarily accept zero tolerance completely. Some situations require that other considerations be taken into account.

Five considerations are of the utmost importance for assessing such situations:

- A. Academic freedom and independence
- B. Producing new knowledge
- C. Preservation
- D. Dissemination of findings
- E. Restitution

A. Research institutions and research policy agencies have an obligation to pave the way for free and independent research. This is underlined in NESH's proposal for a revision of its Code of Ethics (A3), where it is also pointed out that researchers' independence within institutions must be safeguarded. Institutional administrators should have very weighty grounds for deciding to discontinue research projects.¹²

B. Researchers have a scientific duty to use their expertise to obtain new knowledge. In NESH's Code of Ethics, this obligation is expressed in Section 1 on the value of research, where it states that research is the quest for new and improved insight and that knowledge is a goal in itself.¹³ The obligation to seek new knowledge is not absolute, and it must often be weighed against other concerns. As regards the relevant writings and fragments in the

¹¹ See, for example, EAA 1997 Code of Practice, 1.6 and 1.7

¹² The National Research Ethics Committee for Social Sciences and the Humanities: *Draft revised Code of Ethics*, <http://www.etikkom.no/retningslinjer/NESHretningslinjer/neshretn/2005NESH>, p. 10

¹³ The NESH *Code of Ethics for Research for Social Sciences, Law and the Humanities*

Schøyen Collection, they are of very substantial research-related value.¹⁴ The opportunities to bring forth this knowledge should also be part of the evaluation. In a situation in which a researcher knows there are very few who are able to work with and understand the material, and where he or she has reason to believe that there is little probability that other researchers with sufficient relevant expertise will be allowed access to perform research on the material at a later date, there are weighty grounds for conducting research on the material.

C. Research and documentation make it possible to preserve material for posterity. Completely apart from what one knows about the provenance, it is of the utmost importance that material be preserved as well as possible. Different types of documentation will be an important link in the conservation work. ICOM's *Code of Ethics* states that "Museums have the duty to acquire, preserve and promote their collections as a contribution to safeguarding the natural, cultural and scientific heritage".¹⁵ In the case of the Schøyen Collection, Norway's National Library has taken advantage of the opportunities offered by digitisation to separate the content from the physical object. That way the content can be preserved, made available and researched, regardless of where the physical artefact is located, and without coming into conflict with provenance. In certain cases, there may even be justification for research institutions storing material of uncertain origin to ensure that it is preserved properly.¹⁶

D. The dissemination of findings is a key element in any research process. NESH's Code of Ethics discusses dissemination activities as both an obligation and a right for a researcher.¹⁷ The new draft Act relating to Universities and University Colleges designates dissemination as a core task. One primary task, according to the Act's objects clause is "to convey knowledge from higher education and research, including scientific methods and results, to society-at-large".¹⁸ As regards material that lacks documentation, wide knowledge of the material can also be an important adjunct for discovering provenance and origin and for making restitution possible.

E. Where there is a suspicion that material is not in the possession of its rightful owner, researchers have a duty to report this to the appropriate agency (see the section on disclosure requirements). This agency shall then assess whether a dialogue should be established with the country of origin or the rightful owner with a view to restitution. One can envisage situations in which the disclosure requirement could conflict with the idea of safe restitution if a researcher or an institution has reasonable grounds for believing that the state claiming the material does not have good routines for preserving and protecting the material, or the country's security policy situation is highly unstable. Since restitution is regulated by multi-national agreements and international conventions under which states are parties to a contract, the responsibility for considering restitution will rest on neither the researcher nor the institution, but rather on the national authorities.

¹⁴ Yamada 2002: 102, and Salomon 1997: 357-8: "Though unprecedented, the discovery of a large corpus of Buddhist texts written on birch-bark scrolls in the Gandhari language and Kharosthi script is not entirely unexpected. [...] The new discovery thus confirms what already seemed likely, namely that the Gandharan Buddhists in the early centuries of the Christian era did have a substantial corpus of written scriptures [...]. The new documents should also prove to be highly useful for linguistic and paleographic studies.

¹⁵ ICOM *Code of Ethics for Museums* p. 8

¹⁶ Institutions can act as a port of refuge; cf. ICOM's regulations, 2.11, *Repositories of the Last Resort*.

¹⁷ The National Research Ethics Committee for Social Sciences and the Humanities (NESH) *Code of Ethics for Research in the Social Sciences, Law and the Humanities*, section F. NESH's revised Code of Ethics discusses communications and museums' special responsibility is further amplified, see The National Research Ethics Committee for Social Sciences and the Humanities: *Draft revised Code of Ethics*, <http://www.etikkom.no/retningslinjer/NESHretningslinjer/neshretn/2005NESH>, p. 34-36.

¹⁸ Prop. No. 79 (2003-2004) to the Odelsting

On 23 November 2004, the Storting ratified the UNESCO Convention of 1970 (*on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, hereafter referred to as UNESCO 1970).¹⁹ Another major convention, the Unidroit Convention of 24 June 1995 on Stolen or Illegally Exported Cultural Objects (hereafter referred to as UNIDROIT 1995) was incorporated into the Cultural Heritage Act as from 1 March 2002.²⁰ UNIDROIT is an international voluntary organisation that works for the harmonisation of conditions related to private law. Norway has also ratified an EU Directive that follows up UNIDROIT 1995.²¹ These conventions require that national authorities actively strive to repatriate illegally exported or stolen cultural objects from states that are party to the convention. Pursuant to Norway's Cultural Heritage Act that will be presented for adoption on 10 July 2005, it will be clearly stipulated to which States and on which terms a party bears a legal obligation to return cultural artefacts. Pursuant to the principle that laws should not have retroactive effect, this means that new parties to UNESCO 1970 will not be subject to legal claims to return artefacts exported from their territory prior to the date of ratification.²² Norway is also bound by the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, accompanied by the Second Protocol of 1999.²³

- NESH is of the opinion that considerations related to research freedom, new knowledge, conservation, communicating research results and restitution must be discussed and weighed against each other before it will be possible to decide whether it is ethically reasonable to research material of unknown or uncertain origin.

3. Research and the market

Trading in cultural artefacts that originate from plundering and illicit exports is a huge and growing problem. As with all illicit trade, it is impossible to quantify the exact financial scope of the trade in cultural artefacts.²⁴ This type of activity contributes to additional corruption and a lack of respect for the law at the local level, quite apart from the tremendous cultural destruction it entails. A common argument against researching material of uncertain or

¹⁹ The UNESCO Convention of 14 November 1970 deals with means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property. The convention places constraints on both the import and export of cultural artefacts, poses requirements for the registration and preservation of artefacts, and identifies institutions that are to be responsible for ensuring compliance with the convention. The convention primarily covers cultural artefacts in museums or otherwise subject to public ownership.

²⁰ In UNIDROIT 1995, the rules that apply to the restitution of stolen and illegally exported cultural artefacts are defined so that the country that claims restitution (the requesting state) must submit a claim within three years of learning where the cultural artefact was located. The time-bar for submitting a claim is 50 years from the time the artefact was stolen/illegally exported and 75 years for artefacts illicitly removed from public collections. Further, the possessor of a cultural object shall "be entitled to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was illegally exported". UNIDROIT applies to cultural artefacts in private as well as public ownership.

²¹ Rdir 93/7/EØF shall help ensure that cultural artefacts that are illicitly removed from the territory of a state are repatriated. On request, the addressed State shall help facilitate the return of cultural objects that have been illegally exported and in a number of ways help secure and return the material within certain deadlines. Cultural objects are those which: "national treasures of importance for archaeology, prehistory, history, literature, art or science". In the same way as with UNIDROIT 1995, a possessor is entitled to a restitution if the possessor was in good faith then the cultural object came into that her or his possession.

²² The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, with the Second Protocol of 1999, are also central conventions in this context since cultural artefacts are highly vulnerable during armed conflicts and armed conflicts are a situation often exploited for plundering.

²³ Norway ratified the convention in 1961, and is in the process of ratifying the protocol (2005).

²⁴ Brodie et al. 2000: 23

unknown origin is that such research could impact the grey-black market for such cultural artefacts. Market intervention can take place directly, through buying and selling, but it can also take place indirectly. As regards buying and selling, one can intervene directly in the market, thus influencing future demand for stolen goods. As regards research, documentation and exhibition, the effects on the same market will only be indirect. Several people have pointed out that exhibiting artefacts enhances their market price and the market price of similar artefacts.²⁵ It is difficult to find studies that corroborate such contentions. In the opinion of NESH, there should be a clear, predictable correlation before this type of indirect effects should be considered intervention.

Meanwhile, researchers and institutions have a responsibility for how their activities fit into a larger social whole. While it is good that private collectors make their collections available for research and documentation, it will cause problems if researchers and established research institutions get involved with material of unknown origin since their involvement could enhance the legitimacy and social recognition of collectors who operate in an ethically questionable manner. Archaeological research offers examples of how such collectors use the more comprehensive academic and institutional apparatus to achieve social status by virtue of their collections and also to learn what they ought to buy when it comes to relevant artefacts.²⁶ Effective countermeasures against this kind of tacit legitimacy may be that researchers and research institutions pose more stringent requirements for openness and transparency. This can be done by:

- accounting for where all material sources originate and how they have come into the institution's possession in all documents from project plans to reports;
- providing information about the link between plundering and collectors in academic presentations, where relevant;
- making all relevant information about discovery site and provenance available to the public, and discussing uncertain or inadequate provenance in articles and academic presentations.

4. *Disclosure requirement*

In situations in which a researcher suspects material has been subject to illegal or ethically questionable transactions, or where a researcher is uncertain about whether this is the case, NESH is of the opinion that there should be a *disclosure obligation*. The disclosure obligation is not fulfilled until the researcher, through his or her institution, has notified the appropriate national authorities. It is not enough to disclose such information at scientific conferences or in the media.

- Researchers have an obligation, through their research institutions, to notify the national authorities when they discover stolen or illegally exported artefacts in a collection or among their sources. Through formalised collaboration with national, responsible authorities, it should be possible to build up a practice for restitution. Queries to the presumed owner institution in the country of origin should therefore first be undertaken in consultation with the researcher's own national authorities.

One of the problems inherent in today's system has nonetheless been that no particular body has been charged with responsibility for receiving such information. The responsibility for

²⁵ Brodie et al. 2000: 13-15

²⁶ Lundén 2004

managing imported cultural artefacts is currently divided between three sectoral ministries, i.e. the Ministry of Cultural Affairs, the Ministry of Foreign Affairs and the Ministry of the Environment. As mentioned above, Norway will hereafter be bound by UNESCO 1970. One especially relevant article in this context is Article 5e. It obligates Norway to "establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this convention; and taking steps to ensure the observance of those rules".

- NESH recommends that the government designates a body to bear the ultimate responsibility for following up the obligation of researchers and institutions to report material of unknown or uncertain origin.

5. *Due diligence*

As regards material of uncertain origin, researchers should exercise *due diligence* in dealing with such material. First of all, this implies an *obligation to make investigations* and secondly, a duty to *consult* others in this field. This is related to the extent to which one as the acquirer of a cultural artefact can be said to have acted in good faith. Good faith is a key concept in the *Act relating to good faith acquisitions of movable property*.²⁷ This is of importance *inter alia* for whether a buyer will have a claim for compensation in connection with restitution. Due diligence is defined as follows in UNIDROIT 1995:

In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.²⁸

ICOM's Code of Ethics for Museums defines due diligence in conjunction with uncertain origin as follows: "The requirement that every endeavour is made to establish the facts of a case before deciding a course of action, particularly in identifying the source and history of an item offered for acquisition or use before accepting it." A very stringent interpretation of the concept would be that all research should focus on clarifying the origin of material. That would pose unrealistic demands as regards the use of time and resources. A more moderate interpretation would be that the following conditions be considered carefully before receiving an object or other material intended for inclusion in a public collection.

The requirement for 'due diligence' implies that the party in possession of a cultural artefact must be able to prove that he or she has already made reasonable efforts to ascertain that the artefact was neither stolen, illegally exported nor illegally imported into the country. The party registered as owner must obviously exercise due diligence. The due diligence requirement should also apply to researchers and institutions. As a minimum requirement, this means that an institution or a researcher should ask the owner if a collection can be made available for research on provenance. A more comprehensive requirement would be that researchers themselves be duty-bound to make such investigations, within reason, and based on the competence of the researcher. The degree of the obligation to examine will vary depending on the cooperation partners and the kind of material in question. In philosophy, the expression "culpable ignorance" is used.²⁹ In the legal world, this principle is relevant in

²⁷ Act relating to good faith acquisitions of movable property. § 1. Subsection 2.

²⁸ UNIDROIT 1995, Art. 4, section 4

²⁹ See, for example, Hacking 1986

respect of liability for damages and certain penalty clauses. If a person knew or should have known or understood something, his or her ignorance is not sufficient to be absolved of responsibility or excused from punishment. A person must make every effort, within reason, to acquire knowledge and to check facts, etc. This follows from UNESCO's requirement that the authenticity of materials be assessed before being accepted for inclusion into an institution's collection.³⁰ Investigations and consultations with experts will be very important during such a phase.

- NESH maintains that researchers and institutions should exercise due diligence. At the very least, this means that an institution or a researcher should ask the owner if a collection can be made available for research on provenance;
- NESH maintains that when a researcher suspects there are illegal or ethically questionable issues linked to provenance, the researcher has an obligation to investigate and consult. This obligation encompasses communication with his or her own institution, colleagues and those who have contributed to bringing the artefact into the researcher's possession;
- NESH maintains that for a researcher to initiate research on material of uncertain or unknown origin, the researcher's institution should be made aware of the facts relating to the artefact's inadequately documented provenance.

6. Professional advice and assistance

The second question in the query from the University of Oslo involves what researchers and research institutions should do in the event there is a question about technical advice or assistance related, for example, to identification, classification and conservation. Here, a distinction should be made between assistance and advice to other institutions or researchers on the one hand and private individuals on the other. If a query comes from an institution that bears responsibility for cultural artefacts under national legislation, or from an institution that administrates this responsibility, a researcher is free to give the advice and assistance he or she finds reasonable.

It is worth noting that the requirement regarding due diligence (see Section 5) implies that the possessor of the material has an obligation to perform investigations and consult with experts in the field. This requirement is difficult to reconcile with zero tolerance. In many situations it would be impossible for owners of material to exercise due diligence if all researchers were precluded from examining and identifying material of unknown origin.

Similarly, like with other commissioned research, overly close cooperation between researchers and principals can be unfortunate and constitute a threat to independent research. A research institution or researcher must avoid dependence relative to principals that could undermine their credibility.³¹ Complete transparency in respect of such collaboration is therefore essential. Also when it comes to technical advice and assistance, researchers and research institutions have an obligation to notify the appropriate authorities if they have suspicions or uncertainty linked to the provenance of material.

³⁰UNESCO 2002: 21

³¹ See the proposed revision of NESH's Code of Ethics, section E39,
<http://www.etikkom.no/retningslinjer/NESHretningslinjer/neshretn/2005NESH>

- Technical assistance for identification, classification and conservation should be completely transparent. A disclosure obligation also applies where there is a suspicion that material has been stolen or acquired in an ethically questionable manner.

7. The need to revise the existing Code of Ethics

Ethically speaking, it is important to distinguish between what can be called "the ethics of acquisition" and research ethics. One of the shortcomings of the existing guidelines is that they do not distinguish clearly between acquisition and purchasing on the one hand and research/documentation on the other. None of the pre-dominant codes in the field, e.g. the International Council of Museums' (ICOM) Code of Ethics for Museums or the European Association of Archeologists' (EAA) *Code of Practice*, contains points that deal with research directly.

- NESH recommends that existing codes within the relevant subject areas be expanded with a view to covering research on material of uncertain or unknown origin.

8. Final comment

The University of Oslo asked NESH to consider important questions on research ethics, with reference to UiO's dealings with the Schøyen Collection as the background for the inquiry. NESH has, as mentioned above, neither the opportunity nor the mandate to conduct an investigation to determine origin or provenance, or to give a detailed description and assessment of the course of events and administrative procedures at the University of Oslo. The Committee has therefore limited its statement to responding to the questions of principle posed by the rector. In the light of the opinions and recommendations presented here, NESH nevertheless questions whether it was advisable to suspend research on the Schøyen Collection. The Committee recognises that there was a need to take a break in order to clarify how the institution should deal with this and similar cases. Meanwhile, it seems like an encroachment on research freedom for a research project to be suspended in the aftermath of a media debate. A more appropriate reaction would probably have been not for the University to temporarily suspend the research, but to initiate an investigation on the material in question, and to establish or use an appropriate internal forum where relevant research groups could engage in an open discussion with each other, and to notify national authorities about the uncertainty prevailing with a view to provenance and origin.

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