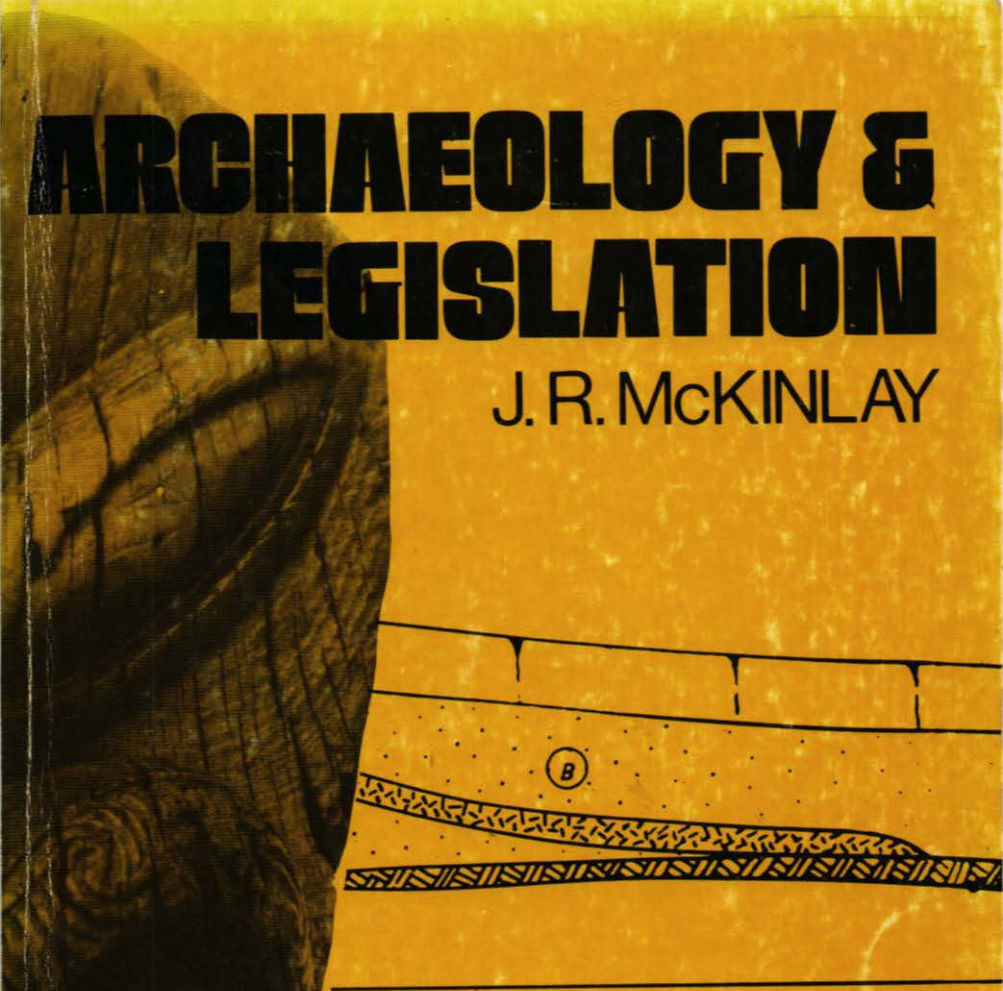
NEW ZEALAND ARCHAEOLOGICAL ASSOCIATION MONOGRAPH 5: J.R McKinlay, *Archaeology and Legislation*

ARCHAEOLOGY & LEGISLATION

J. R. McKINLAY



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ARCHAEOLOGY & LEGISLATION

A Study of the Protection of Archaeological Sites and Material by Legislative Action.

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TABLE OF CONTENTS

PREFACE

"In general, it is not to be desired that ancient barrows belonging to the time of paganism, should either be opened, or removed. It is true they occur, in certain parts of the country in such numbers as to offer serious impediments to agriculture; while they contain beside large masses of stone which in many cases might be used with advantage. Still they deserve to be protected and preserved, in as great a number as possible. They are national memorials, and may be said to cover the ashes of our forefathers; and by this means constitute a national possession which has been handed down for centuries, from race to race. Would we then unconcernedly destroy these veritable remains of ancient times, without any regard to our posterity? Would we disturb the peace of the dead, for the sake of some trifling gain?"
—Jens Jacob Asmussen Worsaae, 1843: *Danmarks Oldtid,* quoted in Glyn Daniel, 1967: *The Origins and Growth of Archaeology* (: 97-98).

These words are as relevant in New Zealand today as they were in Denmark when originally penned by Worsaae almost 130 years ago. Worsaae, having first pointed to the values to be derived from the study of the prehistory of the nation as a means of arriving at an understanding of present national character, was concerned to bring to the attention of the people of Denmark the extent of destruction of the very evidence of this prehistory through unthinking economic development and by the uncritical, unscientific excavation of archaeological sites for selfish short term ends. His words, and certainly his sentiments, are not unlike those spoken by Dr R. C. Green at the 1963 Conference of Regional Committees of the New Zealand Historic Places Trust when he said, speaking about the preservation of archaeological sites in New Zealand: "Only in this way may we escape the rightful accusations of future generations that for short-term economic motives we saw fit to tear whole pages from the books in the prehistoric library, or even saw fit to destroy these books without even cataloguing them. Each site is a leaf or page in the prehistoric record and sites of national importance are like whole books, the only ones which the archaeologist has, from which to read the prehistory of this country." (Green, 1963: 7.)

Associated with the question of the preservation of sites is that of preservation of artifacts, and while it is in some ways a 'chicken and the egg' form of argument, an initial study of the legislative provisions for the protection of archaeological evidence in New Zealand revealed that while there was some official control over the export of 'historic articles' which included most Maori artifacts, there appeared to be no legislation directly concerned with the preservation of archaeological sites as such. New Zealand has a long history of site destruction caused by

digging in order to obtain artifacts, and there is ample evidence that the practice is still with us. Recent events had tended to show that there was a rapidly expanding market for Maori artifacts and that prices were beginning to spiral upwards, probably as speculators began to take advantage of a promising field for financial speculation. Obviously there was a very real link between these two activities.

In addition, archaeologists in New Zealand were becoming increasingly aware of the devastating increase in the destruction of archaeological sites in the name of economic development. There seemed to be no firm legislation to deal with this problem, and while there were examples of Government financed salvage programmes, each of these had been dealt with on its individual merits, each being argued as a separate case.

It was from this situation that the present study emerged. The problem set was first to examine the legislation in New Zealand which could be used, either directly or indirectly, for the protection of archaeological material. This situation was then compared with that pertaining in other countries, and general principles which guided the framing of that legislation needed to be isolated. From this evidence it was hoped that certain recommendations might be put forward which would be of relevance in the revision of the New Zealand legislation, should such a revision be shown to be necessary. It is submitted that from the evidence a clear case can be established first, that there is inadequate provision in the statutes of New Zealand for the protection of this cultural heritage, secondly, that in this field New Zealand now lags behind many other countries, the legislation of which contains many precedents which might assist the framing of new legislation, and thirdly, that the present climate of public thinking with regard to conservation issues in general is such that it is realistic to anticipate that attempts to rewrite the laws of New Zealand to ensure the protection of the cultural heritage would receive sufficient public support to enable legislators to tackle the problem boldly and with vigour. It is hoped that this work presents the evidence on which such decisions might be made, and that New Zealand might in the reasonably near future be able to boast protective legislation as enlightened, forward thinking and effective as that which may already be found in many other countries.

This study was presented in 1971 as a thesis for the requirements of a Master of Arts degree at the University of Auckland. For the successful completion of this course of study the writer would acknowledge his debt to his several teachers of archaeology and prehistory at the University--Mr J. Golson, Dr R. C. Green, Mr F. W. Shawcross, Mr L. M. Groube and particularly Mr P. Bellwood, who supervised the presentation of the Thesis. Appreciation is also due to the New Zealand Historic Places Trust and

the Department of Internal Affairs for permission to consult files and for the granting of special leave for the actual writing of the Thesis. The publication of this work has been generously assisted by financial grants from the Minister of Internal Affairs, the New Zealand Historic Places Trust, the Maori Purposes Fund Board, and the University of Auckland Archaeological Society. For this assistance both the author and the New Zealand Archaeological Association are sincerely grateful.

The present volume is a slightly amended version of the Thesis. In the time which has elapsed between the two works there have been considerable movements, both overseas and in New Zealand, in the whole area of protection of archaeological sites and material. Most archaeological journals have published papers dealing with this problem, but, as the general lines of discussion have already been dealt with in the present volume, it was thought to be not necessary to incorporate them in this work. However, the reader is recommended to refer to the following publications—the first two because of their detailed statements of guiding principles and their applicability to legislative programmes in general, and the others because of their updating of the situation as it has developed in New Zealand over the past eighteen months.

1. ANONYMOUS, 1972: *Guidelines for State Historic Preservation Legislation,* Historic Preservation Workshop National Symposium on State Environmental Legislation, Advisory Council on Historic Preservation, Washington, D.C.
2. MCGIMSEY III, C. R., 1972: *Public Archaeology,* Seminar Press, New York and London.
3. GREEN, R. C., 1973: Notes Towards a Programme of Effective Political Action in the Field of Antiquities. *N.Z. Archaeological Association Newsletter,* Vol. 16, No. 1: 14-18.
4. MCKINLAY, J. R., 1973a: Comments on "Notes on the Protection of Archaeological Sites & Historical Material," *N.Z. Archaeological Association Newsletter,* Vol. 16, No. 1: 18-21.
5. ——— 1973b: The Protection of Archaeological Sites and Material in New Zealand, *N.Z. Archaeological Association Newsletter,* Vol. 16, No. 1, 25-34.
6. PARK, G. S., D. G. SUTTON & G. K. WARD, 1973: Notes on the Protection of Archaeological sites and Historical Materials, *N.Z. Archaeological Association Newsletter,* Vol. 16, No. 1: 5-13.

J. R. McKINLAY,
Wellington, July, 1973.

Chapter 1:

THE THREAT TO ARCHAEOLOGICAL SITES AND CULTURAL MATERIAL

INTRODUCTION:

There are few areas of the land mass of this planet where it is not possible to discover evidence of the existence in former times of human societies other than those presently inhabitating the area. This evidence may vary from the unspectacular accumulations of shell and bone which mark the kitchen middens of the Polynesian agriculturalist of New Zealand or the hunter-gatherer Aborigines of Australia to the spectacular city mounds of Mesopotamia. It may be as insignificant as a partly filled storage pit on a headland of an island in the Hauraki Gulf or as spectacular as the granary of a Harappan citadel. It may be a religious monument as simple as the upright stones of a Polynesian marae or as complex as an Aztec pyramid. It may be a grave as lonely as that of a Polynesian buried in the floor of his former dwelling or as crowded as the Royal Tombs of Ur. It may be the post holes of a defensive device as flimsy and impermanent as a single row of wooden palisades or as permanent and secure as the ditches and banks of a Mt Eden or a Maidencastle. It may be something as artistically simple as an engraved circle pecked into a rock surface in Tasmania or as artistically complex, meaningful and aesthetically pleasing as the painted walls of Lascaux. And within the layers of midden scraps, the city debris, the lonely grave, or the floor of a dark cave may be found the more individual evidence of former lifeways—adzes, combs, fish-hooks, weapons or marble statues—which may be, and often are, executed with such skill, and understanding of the raw material and basic concepts of beauty that they may be regarded as objects of beauty in themselves, and valuable for this alone.

All this is the material evidence of prehistory, to be recovered by the archaeologist, to be sorted into its individual components, and then to be reconstructed into an account of the way of life of people, and of their existence through time and space. Some of the material may have existed for less than a hundred years, while other material may have survived climatic and biological attack for many millenia. It is all vulnerable to the activities and interest of other people, of the past as well as of the present, but never has the threat to such material been as great as that of the present time. Increasing populations, the greater growth of cities and of the need for material with which to build them and for food to feed the citizens, the invention and utilization of a more efficient machine technology, greater leisure and better transport have all contributed to the increasing pace of destruction

of the evidence of former occupation. It is with some aspects of the preservation and the wisest use of this cultural heritage that this work is concerned.

Because people, no matter what their particular position in time, seek essentially the same basic economic, social and religious satisfactions and requirements from their environments, there has long been a tendency for human settlement and activity to be concentrated in similar locations, and cultural deposits have tended to be accumulated in discrete spatial units which are the pages and chapters of the record of human progress. It is with such material that the archaeologist largely works. In this process of accumulation there has always been inherent a process of destruction. Earlier mud-brick houses in Middle East settlements were destroyed and levelled in order to provide platforms of later dwellings. Hill top settlements were extended and modified according to the needs of the changing community for defence or living space. While such processes were in a sense destructive they were also in another sense productive, in that this was the very process by which cultural evidence might be encapsulated and preserved.

The incidental destruction of sites has always been accompanied by more deliberate destruction, often without any accompanying addition to the cultural record. Egyptian tombs and Scythian burials were often robbed of their rich grave furnishings in antiquity. The Sutton Hoo treasure was preserved only because of the fortuitous misfortune of the initial tomb robbers who failed to locate the grave goods and the robber trench indicated to later robbers that there was little point in digging in what seemed to be an already robbed tomb. There are also examples of the reuse of valuable and scarce building materials by later peoples. Old stone walls of Greece and Rome have been demolished in order to provide material for new buildings and mud bricks which were not too badly decayed have been salvaged and reused in ancient Mesopotamian settlements.

But the 18th century was to see the development in England and Europe of a new kind of interest in objects of antiquity. This new interest is to be seen in the development of the antiquarian societies whose members travelled widely in their own land collecting objects from the remote and little understood past, viewing their collecting activity as an end in itself and being little concerned with any consideration of the people who had been responsible for the objects. (See Daniel 1967: 33-56.) But there were also those antiquarians who travelled widely in the Mediterranean and the Middle East gathering antiquities and returning them to collections in Europe. While the second half of the 19th century saw the development of some appreciation of the real meaning of these antiquities as part of the total cultural heritage, there was little improvement overall in the

techniques of recovery, nor were there any great twinges of conscience about taking the treasures of the Middle East and of Greece and Rome to Europe. There was often little respect for the cultural heritage of these areas, as can be seen from this passage from Flinders Petrie (1904) quoted by Daniel (1967: 234): ". . . of late years the notion of digging merely for profitable spoil or to yield a new excitement to the jaded has spread unpleasantly. . . . Gold digging has at least no moral responsibility beyond the ruin of the speculator; but spoiling the past has an acute moral wrong in it."

As it filled the museums of Western Europe with priceless antiquities, the work of these European excavators in the Middle East in the second half of the 19th century brought to the attention of the Western world the importance of this region in the story of the development of society. But it brought little profit or benefit to the contemporary inhabitants of the area. The moral doubts which Petrie voiced were of little concern to these early excavators in the Middle East, who so easily soothed any troubled feelings of unease with such arguments as the following:

> "In reading the foregoing chapters it would be possible to conclude that the entire preoccupation of Western archaeologists in Mesopotamia in the last century consisted in looting valuable antiquities from the country and indigenous peoples to whom they rightfully belonged by methods as damaging to the antiquities themselves as to the ancient monuments constituting the sources from which they were derived. Yet on closer examination this inference appears plainly ridiculous. . . . In the realm of antiquities, derived, after all, from what they (the backward and ignorant peoples of the country) had been taught to consider a heretical age, it would have been absurd to expect them to understand the value, intrinsic or otherwise, of these monuments which chance had located within their territory, let alone the necessity for their preservation. The Westerner, therefore, who considered the stones of Assyria a world heritage can hardly be blamed for preferring to see them installed in a museum within the reach of an epigraphist, rather than rotting in a mound where a chance rainstorm might leave them at the mercy of Arab gypsum burners." (Lloyd, 1947: 197-198.)

If the depredations of these 'Western archaeologists' were not sufficient, they were soon followed by an even worse scourge—the illicit excavator seeking artifacts with which to supply the dealers in antiquities who were quick to take advantage of what was obviously a profitable activity. That this trade owed much to the willingness of museums to pay high prices for antiquities is shown in this further quotation from Lloyd (1947: 182):

"It is not impossible that the whole trouble may be traced to de Garzec's own indiscretion in letting it be known that he had sold his first group of finds to the Louvre for £5,000. . . In any case the early eighteen eighties saw the first recognized dealers

in antiquities established in the Baghdad bazaars." And Lloyd points out that the stock for this trade was supplied by commercial speculators who were soon to appear on the scene, and by local Arabs who fossicked sites for portable antiquities.

An apparent or partial solution to a great deal of this problem was to come following the break-up of Turkish power in the area after 1917. The newly-created states and territories, needing some historic past on which to fasten their newly-emerging nationalism, soon recognized the importance of the prehistory of the area. The creation of the Antiquities Service of Iraq was an example of this movement, and the measures taken resulted in the foundation of such museums as the National Museum of Baghdad, which soon accumulated extensive collections from the requirement that foreign archaeological expeditions hand over half of what they found to the country's government (Woolley, 1947: x). While it would not be suggested that these antiquities laws, and the enthusiasms of nascent nationalism, brought to a halt the despoilation of the ancient monuments of the land or halted the activities of the illicit dealers in antiquities, they are important in that they brought a great deal of order to an otherwise chaotic situation, and as such were generally welcomed by professional archaeologists despite the inconveniences and frustrations which were at times part of them. Foreign expeditions were not permitted to carry out any work unless they were constituted on prescribed lines and included certain specialists among their members. Such parties could receive a permit to excavate single sites of previously determined limits, but the work had to be carried out in a manner 'judged by the Director of Antiquities to be in keeping with the most improved and up to date methods'. All antiquities discovered were in the first place the property of the State, and all portable finds had to be recorded and registered, and at the conclusion of the season a representative collection of artifacts would be given to the excavator, the remainder being added to the National Collection. (Lloyd, 1947: 206.)

But to the problems of unprofessional standards of excavators, the fossicking of sites by amateurs and by others seeking to supply the illicit trade in artifacts, there has been added in recent years the further problem of the destruction of sites in the course of projects for economic development. Even in the context of New Zealand this problem is considerable, but in other countries it is enormous, as will be clear from the programme for the salvage of archaeological sites and materials in the Upper Nile and Nubia following the construction of the new dam at Asswan on the Nile. Such developments have given rise to a new aspect of archaeology—salvage archaeology—with its own techniques, aims and pressures. In order to ensure that as much successful salvage as possible was accomplished in the Nile Valley, the

United Arab Republic was prepared to abandon its policy of prohibiting the export of archaeological materials, and except for unique materials needed to complete the national collections, up to fifty percent of the finds could be exported. (Brew, 1962: 22.) But there has been a need for even wider adjustments and new provisions to cope with the requirements of salvage archaeology in many countries, particularly in the field of legislation covering permits to carry out construction programmes which are known to, or are likely to, pose a threat to archaeological sites, which make provision for the finance to carry out the salvage programmes, and which define clearly the rights of the State and the private individual or institution with regard to the ownership of archaeological materials.

It is with legislative provisions with respect to all of these problems that this work is concerned. As will be shown, there have been many attempts in many countries in recent years to provide for the safety of archaeological sites, and for the control of the sale and trade in artifacts, or objects of antiquity. But this is not a simple or easily solved problem, for its roots lie in the attitudes of the people as a whole towards the preservation of their antiquities. There is no doubt that the principal suppliers of artifacts to the illicit trade are the nationals of the exporting countries themselves (Pearson and Connor, 1967). These persons would have no trade if there were no ready market. But market there is. Not just private collectors seeking artifacts as works of art, but also museums and other educational institutions seeking material for display or educational purposes, are willing, even eager, to pay high prices for individual objects and collections, and in so doing support and foster the trade, with its consequent destruction of sites and the bulk of the scientific information which the sites contain.

The facts of the 18th and 19th century pillaging of art objects and antiquities from Greece and other Mediterranean and Middle East countries have already been commented upon, and there are many books dealing with these sorry episodes (e.g., Grant, 1966), but it was in Greece that the first modern legislation aimed at preventing the despoliation of sites and the export of archaeological material was passed. As Grant points out (1966: 166) the infatuation of the European dilettante with the glories of Classical Greece and the romantic idealism associated with the struggle of the modern Greeks to obtain their freedom from Turkish rule had led to an anticipation of a "rebirth of the republic of Pericles, Aristotle and Socrates". But it was soon discovered that the principal characteristic of the new nation was its fierce nationalism which was associated with a determination to retain what was left to them of the treasures of the past. It came as somewhat of a shock to collectors of Greek antiquities that even before the new nation was officially born the acting Government prevented

a party of Frenchmen from excavating at Olympia, but it was to the same Europeans even more incredible that one of the first acts of the new Kingdom of Greece in 1832 was to forbid the export of ancient remains—any works of artistic or archaeological value—from Greece. It is this same feeling of nationalism, and a seeking for demonstrable roots in the past which has been the catalyst responsible for the antiquities legislation in most countries of the world in recent years. Even countries such as Australia, which have always been conscious of their colonial past at the expense of the much greater antiquity of their indigenous populations, have in recent years passed legislation for the protection of these greater antiquities. One could be cynical, and say that this is largely a result of a new awareness of the commercial possibilities of these antiquities in a world where travel and tourism are assuming a new importance, but it would only be fair to acknowledge a basic awareness of the underlying importance of the deep roots of the indigenous culture to the development of a modern national identity. Such attitudes are of even greater importance in nations like New Zealand where two peoples of different ethnic and cultural origins are intimately involved in the development of an integrated national identity.

While so much of what has been written here and elsewhere is apparently concerned with the preservation of portable antiquities, particularly those with an obvious value as works of art, the basic concern of the archaeologist is the preservation of the archaeological sites from which the portable antiquities are obtained. It is perhaps not necessary here to discuss at any length the loss of scientific data which results when an artifact is removed from its intact cultural context without the keeping of accurate records and the careful extraction of all of the possible data associated with each find individually and collectively. All serious students of archaeology and prehistory are well aware of this, but there are still many examples to be found of the despoliation of sites, either directly or indirectly, by individuals and institutions who might have been expected to play a leading part in the protection of sites and the proper recovery of all possible scientific data.

There is much evidence from many countries of the illicit or surreptitious digging of sites in order to obtain artifacts. This may be at the level of the robbing of Etruscan tombs in Italy, and the perplexing affair of the Dorak Treasure, but is of equal importance at much less spectacular levels. In a recent issue of *'Archaeology'* two writers Owen (1971: 118-129) and Raban (1971: 146-155) discuss their separate underwater excavations of wrecked ships, both of which had been considerably looted before the archaeologists were made aware of the discoveries or were able to commence their work. The report by Owen includes a summary of the discovery and looting of the ship which is

worthy of record here. In 1969 an Italian fisherman in the Straits of Messina discovered the remains of an ancient shipwreck containing many amphorae. Working mainly at night he removed many of the amphorae for later sale on the lucrative antiquities market, and in the course of this work he came across the remains of bronze statues, which were of even greater importance and value on the antiquities market. Further work resulted in the discovery of three large lead anchor stocks and 20 lead ingots both stamped with marks. This lead material was cut into manageable pieces and sold as scrap, thereby destroying the inscriptions and the information they might have yielded. The pillaging of the wreck continued for many months until the looters quarrelled, and their activities came to the notice of the authorities, who searched the homes of the looters to recover material, and imprisoned the leaders. Only then was the wreck, or what remained, investigated by a professional team of underwater archaeologists from the university museum.

But such destruction of sites is also carried out at a less spectacular though no less destructive and annoying level. All professional archaeologists working in New Zealand have come across or been impeded by examples of digging of sites by persons endeavouring to obtain artifacts. Sometimes such activities are responsible for bringing sites to the attention of the archaeologist, but often not before considerable damage has been caused and much evidence lost. Of course, except for Crown lands, in New Zealand a landowner is quite within his legal rights in digging in archaeological sites on his land, or in giving other persons permission to do so. The question of whether or not a landowner should have such a right is an issue of considerable importance, and will be returned to in a later chapter. That the problem at this level of importance is not found only in New Zealand may be seen from a recent American publication (Ritchie, 1969: vi, 88, 125) of the results of an extensive archaeological programme on an isolated island off the coast of New York State:

> "Sufficient evidence was seen to confirm the existence of suitable sites for excavation, and also to disclose the discouraging fact that even on this relatively isolated outpost many sites were in the process of destruction through random digging by resident collectors who keep no record of the finds." (vi.)
> "In the course of our digging at the Cunningham site . . . we learned of prior digging in the nearby village. . . . We were at that time unable to locate the collector but we obtained permission to test pit undug areas. . . . Our examination of Mrs Brehm's site showed the virtual exhaustion of this part of the site. (: 88.)
> "Moreover, attempts to see the material found by the local man responsible for most or all of the relic collecting proved futile since the collection was said to have been sold off the island." (: 125.)

This small incident illustrates most of the undesirable features

of such unprofessional practices—sites destroyed by amateur fossickers, sites damaged and much scientific data lost, recognizable portable artifacts collected at the expense of the less spectacular, less displayable and less saleable material, artifacts sold and removed from possible examination by experts, and the failure to keep even limited records of the work done and the finds made.

A final area of this matter worthy of discussion is the role of the museum in the preservation and protection of archaeological sites and material. It has been claimed in defence of museums (Duff, 1969) that they have acted as the public conscience in protecting (Maori) sites and in discouraging trafficking in Maori artifacts. Although it may readily be appreciated that museums are often placed in an unenviable position, the ambivalence of their attitude is revealed when Duff is quoted in the same news report as claiming for the museum the right to first purchase of important artifacts found fortuitously or during construction work, and that any reward paid should be in terms of the current market value of the item concerned. Surely, if museums are to offer such a ready market for such material then they will encourage the continuance of the seeking out of the material and the selling of it for profit.

But a more serious discussion of the role of the museum has recently been taking place in the editorial columns of *Antiquity* (Vol. XLIV, Nos. 174, 175, 176) and concerns mainly the policies of the Boston Museum of Fine Arts which in 1970 displayed "a group of rather severe gold ornaments found with an Egyptian gold cylinder", stylistically of an Eastern Mediterranean origin, probably from the Aegean coast of Turkey although "It is not known exactly where this group of ornaments comes from—one presumes from a place undiscovered along the Eastern Mediterranean coast where Egyptian ships might pass." (Vermeule, 1970: 23-25.) The group of artifacts had been purchased on the international market by a benefactor of the museum, after it had been offered in Switzerland, Germany, England and New York. Vermeule in defending this purchase against the attack "of a couple of journalists in London (who) tried to create a scandal" writes (1970: 25): "The loss of archaeological context with which the group came equipped was guaranteed by the greed of whoever dug it up and peddled it abroad; and this loss is nothing to that which would have ensued had the collection been dispersed into scattered pieces." The purchase and its defence were subsequently questioned by Daniel (1970a: 88-90), but a serious attack on the whole question of the policies of major museums is made in the same editorial by Bass, and his remarks are of such sharpness and relevance that that are worthy of repetition here:

> ". . . but what stands out in that article (describing a collection of Trojan jewellery) is that none of the evidence for that dating . . . was obtained through archaeological excavation. If we,

as archaeologists, are truly interested (in such artifacts) as evidence of ancient history, rather than as possessions to be selfishly prized because of their rarity it is time to take a firm stand. The clandestine excavator and antiquities smuggler are to be abhorred. Museums and private collectors who encourage their illegal work, however, are held in high esteem by society. Today we may rationalize our purchases by the thought that it is better for museums and serious collectors (to purchase them) than that they disappear into unknown private hands.

But is it not time that all dealings in antiquities in all countries be made illegal except as approved by the Governments in question? . . . For their part, the lands in which the only remnants of our most ancient past are to be found should take a realistic attitude towards sharing duplicate objects, offering frequent loan exhibits and making vast basement stores readily available to scholars of all countries. . . . Antiquities smuggling in many countries has reached such immense and lucrative proportions that it will soon be controlled by organized international crime in much the same way as illegal narcotics traffic. To believe otherwise is to be incredibly naive. It is no longer a case of simple peasants selling their chance finds; elaborate and complex operations utilizing helicopters and speedboats require enormous financial backing. Today the purchase of any valuable antiquity can only encourage further theft, smuggling and murder. It is time that it is stopped." (Bass, 1970.)

One would feel that this leaves little else that might be said.

In April, 1970, the controlling authorities of the University Museum of the University of Pennsylvania announced that it had been decided that henceforth the museum would no longer purchase antiquities that were not accompanied by a pedigree—"that is, information about the different owners of the objects, place of origin, legality of export and other data useful in each individual case." (Daniel, 1970b: 171-172.) This action was taken in the best interests of the preservation of archaeological sites. In the accompanying statement it was pointed out that although most countries have laws controlling the export of such properties, the demands of the international market make it impossible for the laws to operate effectively. The museum directors were of the opinion that import controls in the receiving countries would not be more likely to be effective, and that the only realistic method of obtaining any sort of control over this international traffic would be to regulate the trade in cultural items within each country.

It is obvious that the solution of the problem will not be easy, that the conflict of interests is so great that agreement as to courses of action to be taken will not be easy to obtain. It is also important to note that while the problem discussed immediately above concerns items of far greater value than are ever likely to enter the trade in New Zealand, the difference is only one of magnitude, and every facet of the problem which has been examined is present in the situation in this country. It is also of interest

to record that in the very week that these words were being written there were reports of the theft of several important paintings from churches and other repositories in Italy, and that the Italian police were certain that the thefts were carried out by well-organized international gangs of art thieves. Additionally, in the same week it was reported that the Italian authorities had succeeded in obtaining the repatriation to Italy of a Renaissance painting stolen and smuggled out of Italy two years previously by a senior official of the Boston Museum of Fine Arts!

As an interesting post-script it might be appended that it was reported in *Archaeology* (Anon, 1971) that at its annual conference in 1970 the Archaeological Institute of America carried a long resolution condemning those who foster the illicit trade in antiquities and the illicit excavation of archaeological sites, and giving full approval to the draft UNESCO Convention on this topic. What is more significant is that the same issue of *Archaeology*, the official organ of the Institute, carried six advertisements for the sale of 'genuine antiquities'. The mind boggles at the implications of such double-valued thinking.

SCOPE AND METHOD OF INVESTIGATION:

The initial interest and involvement of the writer in the question of the protection by legislative means of the archaeological evidence of prehistoric occupation in New Zealand was aroused by an almost fortuitous attendance at a sale of Maori artifacts at a Wellington auction house in mid 1969. While all persons involved in archaeology are aware of the fact that there has always been, in New Zealand as well as countries overseas, a trade in artifacts, that this trade has been supplied not only by chance finds of artifacts eroded on sandhills and stream banks, or uncovered during farming operations and other development works but by the fossicking of known archaeological sites, and that there are considerable private collections of artifacts held by some individuals in New Zealand, it was a somewhat disturbing experience to sit in on a sale and witness the keen interest of the participants and the competitiveness of their bidding. Obviously, the trade in Maori artifacts was a lucrative business, and equally obvious was the fact that in the course of a year large numbers of artifacts must pass through the auction rooms, and the inference was plain that there must also be a large number of sites being fossicked each year to supply the trade.

Subsequent visits to several Wellington second-hand dealers served to confirm the extent of the trade, but even more serious was the assertion by the dealer with the most extensive trade that the bulk of his customers were overseas tourists, who were removing the artifacts from New Zealand, sometimes in ignorance of the provisions of the Historic Articles Act, but often in contempt of it. At about the same time a question in Parliament

prompted a meeting between officers of both the Department of Internal Affairs and the Customs Department to discuss ways in which the provisions of the Act might be more effectively implemented. From this meeting it was clear that although the Historic Articles Act was given no less an order of importance by the Customs Department than any other Act, there were serious difficulties in administering it effectively.

From all these discussions and investigations it became clear that:—

(1) There was general agreement, except from the dealers in these articles, on a need to ensure control over the trade and export of them,
(2) there were considerable difficulties in the administration of the Act, particularly with respect to the detection of deliberate evasion of the provisions regarding export,
(3) both of the Departments concerned would be willing to consider any proposals that might lead to better legislation.

Added to this was the opinion of archaeologists, although recognizing the fact that control of the trade in artifacts was a necessary part of the whole question, that the greater need was for the protection of sites.

All this pointed clearly to a profitable area of investigation, and so the present investigation was commenced. Its aims, briefly, were:—

(1) To carry out a survey of the history of legislation in New Zealand for the protection of antiquities and material of archaeological importance, leading up to the Historic Articles Act, 1962.
(2) To examine this Act with regard to its underlying principles, and in relationship to attitudes prevailing when it was passed.
(3) To assess the relevance of other New Zealand legislation to this whole question.
(4) To survey various overseas legislation for the protection on antiquities and cultural material, and assess its relevance in the New Zealand context.
(5) As a result of this survey, to put forward recommendations which might prove of value in the strengthening of the New Zealand legislation.

These proposals received the support of the Department of Internal Affairs, who agreed to make the relevant Departmental files available for study and use.

In order to obtain material from overseas countries letters were sent to over thirty national representatives in Wellington requesting information regarding their countries' antiquities legislation. Not all were able to be of any assistance, but many were able to supply addresses of individuals or institutions who might

be written to for further information—and a further 25 letters were then sent overseas. Many of these failed to produce any results but from those which did sufficient material was obtained for an adequate sample for the purposes of the survey. Unfortunately several replies were received in languages other than English, and it has not been possible to have all of these translated.

In January, 1971, the writer was fortunate enough to be invited to present a paper on this topic to the conference organized by the Australian National Advisory Committee for UNESCO at Canberra (McKinlay, 1971: 161-178), to participate in the Congress of Orientalists being held in Canberra at the same time, and also to be a member of the party of visiting archaeologists who were to make an extensive tour of South-eastern Australia following the conference to visit several major archaeological sites and several institutions concerned with archaeological research. This whole visit was of considerable value for the material which was obtained, contacts made and discussions held.

The chapters which follow are the result of the studies made, and while the recommendations of the final chapter have no official status, it is hoped that they will be of value to the Department of Internal Affairs in any reconsideration of the Historic Articles Act. It may be that this whole work will be a starting point in a complete reassessment of the problem. If this should prove to be so, and should legislation which is more applicable to the situation as a whole and which will be able to be more realistically administered result, then the labour and time which has been involved will have been well spent.

Chapter 2:

THE HISTORY OF PROTECTIVE LEGISLATION IN NEW ZEALAND

INTRODUCTION:

The collection and removal of cultural materials and scientific specimens from New Zealand commenced in 1769 with the collections made during the first voyage of Cook, who had been expressly instructed in the Admiralty sealed additional orders issued at the beginning of the voyage to obverse the 'Genius, Temper, Disposition and Number of the Natives . . . and endeavour by all proper means to cultivate a Friendship and Alliance with them, making them presents of such Trifles as they may value, and inviting them to Traffick.' (Beaglehole, 1955: cclxxxiii.) For 43 of the 118 days spent by this expedition on the coast of New Zealand the journals of Cook and Banks record that such trafficking was engaged in, although this was often associated with or exclusively devoted to the obtaining of food. (Shawcross, 1970a: 344.) Because of the few actual landings, and the limited number of direct contacts with the indigenous population, the collections made on this particular voyage were restricted to the East Coast of the North Island north of Poverty Bay, and from Queen Charlotte Sound, the sole South Island landfall, but, as Shawcross notes (1970a: 306), the items obtained, with their precise temporal and spatial localization 'stand as a document of the highest importance on prehistoric Maori material culture.' Subsequent visits by Europeans—explorers, sealers, whalers, traders, settlers, and eventually visitors—resulted in a veritable flood of such cultural specimens being alienated to form the vast collections of Maori material to be found in the museums and private collections in the United Kingdom, Europe and North America.

INITIAL PROTECTIVE LEGISLATION:

However, it was not until 1898 that the conscience of any Colonial politician was sufficiently stirred for the matter of the protection of cultural and scientific specimens to be raised in the House of Representatives, and when it was, it was provoked not by concern over cultural items but by the discovery of a specimen of **notornis mantelli,** which for some time had been thought to be extinct, and the fear that the specimen might be bought by an overseas buyer and exported. As it happened the specimen was acquired by the Government for the sum of £150 and deposited in the Dunedin museum.

The member for Mataura, Mr R. McNabb, who raised the matter, asked the Government whether they would introduce

legislation 'to prevent the continuous removal from this country of rare and valuable specimens of native art and workmanship, or unique objects of scientific importance peculiar to this colony. . . .' In arguing his case he went on to say 'no sooner was anything discovered in this colony of more than passing interest than it was secured by some wealthy visitor to the colony. The result was that year after year instead of the colony having its discoveries gathered together in a central place—either under the control of the legislature or held by private persons—these rare and valuable specimens were taken away to enrich the collections of private collectors in other parts of the world.' (N.Z. Parliamentary Debates, Vol. 103: 450.)

The Prime Minister, R. J. Seddon, while sympathizing and deploring the loss to the colony asked 'Should they prevent the natives disposing of what belonged to them?' and said that there would be a general outcry should this restriction be applied to Europeans. One member in interjection called for the Government to have the first offer of sale. (ibid.: 450.)

This small exchange, while resulting in no immediate legislative activity, does serve to illustrate the fact that by 1898 at least some people in New Zealand were beginning to appreciate their cultural and scientific heritage and to see that there was a necessity to bring a certain body of artifacts together within New Zealand in order to ensure their preservation in a place accessible to New Zealanders—the first germ of the idea of a Dominion museum. The Prime Minister was not slow to point out the single most important factor in all of the subsequent attempts to legislate for the control of this material—the political implications of any suggestion that there should be any interference with the right of any person to sell his own property. The point raised by the anonymous member is also a factor in the present situation.

The question was again raised in July, 1901, when Mr T. Mackenzie (Waihemo) asked whether the Government would introduce legislation prohibiting the exportation of Maori carvings and implements except subject to the approval of the Government. The Native Minister, Mr J. (later Sir James) Carroll agreed that such legislation was desirable and expressed a feeling that it would be acceptable to the House. He again raised the issue of a State museum "in which could be collected valuable articles, relics and carvings, etc., characteristic of the country and its nativity". (N.Z. Parl. Debates, Vol. 117: 195.) The State museum issue was revived a month later by the Member for Hawkes Bay, Captain W. R. Russell, and in reply the Prime Minister, Mr R. J. Seddon, stated: "For some considerable time past the Government had recognized that a large number of Maori art carvings and other works of Maori art, which could not possibly be replaced, were being bought up and taken away from the colony, and when residents of New Zealand in the future want to know anything

about the Colony and Maori art and science they would have to go to Germany." (N.Z. Parl. Debates, Vol. 117: 247.) He stated that the Government thought that a law should be passed absolutely prohibiting the sale and transport from New Zealand of the cultural and scientific items in question, and, furthermore, that such material should be 'collated' before it was all lost. "In dealing with this question," he stated: "they (i.e., the Government) must deal with it in a thorough and complete way, and the first thing they really wanted was a legislative power." Parliament he was sure "would give the necessary authority and any means they wanted". (ibid.: 247.)

Thus the stage was set for the introduction of legislation, which appeared in the form of the Maori Relics Bill, 1901. From the above it is clear that the Members and the Government understood and agreed that the purpose of the Bill was to control the export of Maori artifacts and scientific specimens of peculiar importance to New Zealand. Seddon had even gone so far as to suggest a total prohibition on sale and (i.e., for) export. There was general agreement as to the value of and necessity for some form of State right to purchase for a national museum, and for some form of inventory or collation of this material "as a duty to the colony, to future generations that it should be done." (N.Z. Parl. Debates, Vol. 117: 247.)

The debate on the Bill in both Chambers of Parliament, ranged widely, and many of the areas debated—Government purchase and its effect on prices; interference with the right of the individual to dispose of his property according to his own desires; the effect of prohibition of export on the tourist trade; total prohibition as against Government control; gifts of notable artifacts and heirlooms to Governors and important visitors; repatriation of artifacts already alienated overseas; the establishment of a State museum, and its purchasing policy; fossicking in known burial grounds for artifacts; ownership of newly discovered artifacts; the State as the custodian for the Maori owners of tribal and family heirlooms—are relevant to the problem in the present-day context which will be discussed later.

Mr J. Carroll, the Native Minister, in introducing the Second Reading debate, mentioned that the Bill followed the precedent set in the legislation of some other countries, and said: "We propose, Sir, in this country to follow on the same lines and give effect to the general interest, which has now assumed national proportions, by complying with the wishes of the people of this colony." The Bill was intended to restrict, but not prohibit, the exportation of Maori relics from New Zealand, to ensure that the Government should have the right of first purchase of any collection or work of art, but that if this right were declined the owner should be able to alienate his property in any way he should choose. Provided that the Government's right of first sale was

observed there was no intention to interfere with the rights of persons who had built up a business of buying artifacts for resale to tourists. His words to the House were: "The main object of the Government is to place the State in such a position that it will have first right to buy what it may consider necessary or of importance to the State, and what should be stored up in a national museum. The State will be quite prepared to pay a reasonable price . . . but after the State has exercised that right it should no longer interfere with those who carry on the business of collecting these articles and retailing them to tourists." In other words, while one political pressure was forcing the Government to introduce legislation to preserve and protect the national cultural heritage, other political pressures were causing it to introduce into that legislation provisions which would ensure that the objects of the legislation would not be achieved.

The contribution of the member for Christchurch City, Mr Collins, in stressing the scientific aspects of the Bill, is worthy of note: "We shall be providing the scientific and intellectual world with specimens and objects which will have a value for all time to come to those who take an interest in archaeology by marking out the actual position the Maori race occupied in the races of the world, and in the intellectual, artistic and industrial development of Mankind." This use of 'archaeology' seems to be its only use in the debate—and it was probably the first use of the word in the debates of the New Zealand Parliament.

With the incorporation of the following amendments passed during the Committee stages:

(a) improvements in the precision of the definition of the cultural items with which the Bill was concerned,

(b) the striking out of the clause which provided that even if the Government declined to exercise its right of purchase, it could still prevent the export of the item from New Zealand, and

(c) substituting the word 'antiquities' for 'relics' in the title,

the Bill received its second reading at 12.43 a.m. on Sunday, October 4, 1901, and following the formal Third Reading came into force as the Maori Antiquities Act, 1901, on October 25, 1901.

THE MAORI ANTIQUITIES ACT, 1901:

The full title of the Act was 'An Act to Prevent the Removal from the Colony of Maori Antiquities'. In view of some of the provisions of the Act, now to be discussed, and of the understanding which the Minister held of the intention of the legislation as expressed in his remarks quoted above, and in view of the confusion which was later to arise over the administration of the Act, it is important to note the apparent absolute protection which would seem to have been given to Maori Antiquities as defined by the word 'prevent' in the title of the Act. Obviously the Government never intended to invoke this degree of protection, but merely to

control the export of antiquities as circumstances of politics and finance dictated.

In brief, the provisions of the Act were as follows:

Section 2: defined a Maori antiquity as 'Maori relics, articles manufactured with ancient Maori tools and according to Maori methods, and all other articles or things of historical or scientific value or interest and relating to New Zealand, but does not include any private collection not intended for sale, nor botanical or mineral collections or specimens'.

Section 3: empowered the Governor to acquire Maori antiquities on behalf of the Colony, and to provide for their safe custody.

Section 4: made it unlawful to remove from the Colony any Maori antiquity without first offering it for sale to a person authorized by the Governor in Council for the benefit of the Colony.

Section 5: empowered the Police and Customs to detain any Maori antiquities attempted to be exported contrary to the Act.

Section 6: provided for the Colonial Secretary to permit the export or sale of Maori antiquities.

Section 7: empowered the Colonial Secretary to determine whether or not any article in dispute came under the scope of the Act.

Section 8: empowered the Governor to make regulations under the Act, including the prescribing of the duties and powers of Police and Customs Officers in enforcing the Act, and for penalties for any breach.

This piece of legislation was neither clear nor consistent, nor did it attempt to achieve some of the wider aims of its sponsors. It was confined to cultural items and expressely excluded such items of wider scientific importance as botanic and mineral specimens, and provision for a State museum was not expressly made, although it may be that it was implied in the 'safe custody' clause in Section 3. The definition of a 'Maori antiquity', despite its apparent all-embracing precision, was in fact ambiguous, and open to differing interpretations. In particular, it failed to distinguish between articles of some antiquity, and articles of modern origin but manufactured with 'ancient Maori tools and according to Maori methods'. This defect was to cause much confusion in the years ahead. The Act also failed to set any criteria under which a decision could be made either by the Governor to acquire antiquities on behalf of the colony 'as he deems expedient', or by the Colonial Secretary when required to give his consent to the export of any antiquity under Section 6. The 'offer for sale' provision gave no protection against an offer for sale at unrealistic terms. Once an offer had been made, and been declined by the Government, there was nothing to prevent the export of the article. In fact, it would seem that Section 6 allowed the Colonial Secretary to permit the export of a Maori antiquity even if it had not previously been offered for sale—in direct conflict with the inten-

tion of Section 4, which itself could be read to mean that once an offer of sale had been made and refused the owner of the antiquity might then remove it from New Zealand without having to obtain a permit. The Act did not provide for penalties, and as no Regulations were promulgated until 1904 no penalties could have been imposed in the intervening period. Similarly, as no appointments of 'Government Purchase Officers' were made until 1904, there would seem to have been no authorized person to whom offers of sale might have been made. In addition the Act failed to determine the ultimate fate of any antiquity which might be seized or detained under the Act. This procedure is not confiscation and forfeiture, and presumably the artifact would have had to be returned to its owner.

Following a considerable amount of agitation provoked in 1902-04 by the sale to a German buyer of a carved Maori meeting house at Whakarewarewa by its owner, Mr Nelson, and by its subsequent export in defiance of the decision of the Colonial Secretary not to issue an export permit, these weaknesses in the Act were exposed, and in 1904 the Government introduced amending legislation. Under this the definition of a Maori antiquity was amended by omitting the words 'but does not include any private collection not intended for sale'; it provided a monetary penalty for breaches of the Act and declared the article involved to be forfeit; it provided that twenty-four hours notice of intending export be given; the right to export once the offer for sale had been made and the permission of the Colonial Secretary obtained was made clear; and the Colonial Secretary was empowered to copy any article before it could be exported. The amended Act was consolidated in 1908, and together with the regulations promulgated in 1912 was the legislation which controlled the export of Maori antiquities from New Zealand until the present Act was passed in 1962.

During the debate on the amending Bill (N.Z. Parl. Debates, Vol. 130: 548, 701-713) it was pointed out that the principal Act had never operated effectively, and that it was probable that the amendment would not result in any more effective legislation. Several members expressed their view that there was no intention that the Act should cover the 'small antiquities such as **hei tiki**', while the Attorney-General stated that the Act would not be used to prevent tourists from purchasing 'those little . . . charms and Maori antiquities of particular interest . . . and the administration would never be so drastic as to prevent them from acquiring any (such) small articles'. Another member stated that there was a case to be made for establishing a school of Maori art for the purpose of making 'these antiquities' and exporting them. "Let us keep the original ones here," he said, "and make others to send away to different countries and sell at a profit." But the low point of the debate was reached when one Member argued in

support of the Bill on the grounds that: ". . . We must admit the fact that the Maori race as a race is a decaying people. Though the decay has not been so rapid these few years back as it was before, yet they are a decaying people, and we should do all we can to preserve anything which can be a remembrance of the race of people we found here when we came to this country." (N.Z. Parl. Debates, Vol. 130: 701-713.)

ADMINISTRATION OF THE MAORI ANTIQUITIES ACT:

Despite these amendments the administration of the Act soon led to difficulties. The situation was not helped by the Government's tardiness in appointing accredited Purchase Officers, and in fact, it would seem that no really effective appointments were ever made, except at Rotorua, which assumed a special importance as the centre of the tourist industry. The following examples of the difficulties which arose over the administration of the Act are all taken from File I.A. 53/1 of the Department of Internal Affairs.

(1) By 1921 there was some apprehension that even though artifacts had to be submitted to the Colonial Secretary, who had them checked by a qualified person (usually the ethnologist of the Dominion Museum), it would be possible for an unscrupulous person to substitute a more important or more valuable artifact in place of the one for which the permit was given before it was packed, and present it, with permit, for posting overseas. It was agreed that in future all items would be packed by the Post Office so that such substitutions could not be made.

(2) In 1920 the Minister, F. H. D. Bell, decided that the Act was intended to prohibit the export of Maori antiquities and ruled that permits to export should invariably be refused even though adequate numbers of the type of artifact might be held by museums. In 1922 a new Minister, Downie Stewart, ruled that in the case of artifacts which were held in adequate numbers by museums, export permits should be granted, but only where the article was broken or damaged in some way and was not suitable for museum purposes.

(3) The whole question of the effectiveness of the legislation was raised in 1925 when Mr W. J. Phillips, of the Dominion Museum, visited North Auckland and discovered evidence of widespread trafficking in artifacts. His recommendation for action to be taken to bring this trafficking under control is so pertinent in the present-day situation that it is quoted in full:—

Recommendation of Mr W. J. Phillipps:

"In regard to Maori material in private hands, there are very few old private families who have not in their possession several greenstone or other like valuable articles. In practically every case I found that these had been picked up accidentally

or rarely secured in payment of a debt sustained by natives. In every instance a very great intrinsic value was placed on these curios by their owners. In many cases the monetary value requested seemed absurd; yet tourists are paying these prices to get genuine articles of Maori manufacture. Most private persons know of the law prohibiting the export of Maori material, yet the majority act as though no law existed in this respect. Many men in the North have made huge sums buying and selling Maori articles.

"The Customs Department cannot be expected to examine the luggage of every tourist who leaves New Zealand; but something should be done and done quickly to stop the trade in Maori articles. Many of the best articles have undoubtedly gone, yet enough remain in private hands to make some system of registration of ancient Maori artifacts compulsory. Various countries have instituted the registration of National treasures in private hands with great success. The art treasures of Italy are a striking example. It is here suggested that the Dominion Museum be the Central Bureau of Registration of Maori artifacts and that a certain portion of the most valuable articles be registered and their sale prohibited except under Government supervision." (I.A. 53/1, Pt. 1, 10/3/1925.)

These recommendations raised some difficult problems, not the least of which was that of deciding which were the rarer and more valuable articles and registering these, to the exclusion of the more common and less valuable items. The matter was referred to the Maori Ethnological Research Board, which, while noting that the suggestions would entail the introduction of legislation of such sweeping and confiscatory a nature as to be politically unacceptable, did pass the following resolution:

"That the Government be recommended to amend the Maori Antiquities Act so as to provide that any Maori relics of ethnological interest discovered in the future should become the property of the Crown and be deposited in some museum and that registration be taken to prevent, if possible, any relic of ethnological interest being exported from New Zealand."

The political and administrative difficulties raised by these proposals seemed to be so great that it was decided that the matter should be held over until the following year. It seems never to have been resurrected.

(4) By 1925 much difficulty was being caused particularly in tourist shops in Rotorua over articles of Maori design but of modern manufacture, which at that point in time were having to be referred to Wellington, even though it was apparent that the Act had never been intended to interfere with trade in such items. Eventually it was decided that such items need not be referred to the Colonial Secretary.

(5) For a long period after this the Act seems to have operated with little difficulty or protest, or perhaps with little vigilance, but by the late 1940's and then more so during the 1950's there was an increasing agitation for the inclusion of two other classes of material under the provisions of the Act.

First, there were scientific specimens which had been expressly excluded in 1901, and of particular concern were type specimens of plants, animals and fossils. Secondly, there was a growing body of concern relating to the prevention of the export of papers, books and other documents of importance in the study of the history of New Zealand.

By 1961 it had become clear that the Maori Antiquities Act was no longer serving its original function, and that the advance of years had brought forward a number of problems and situations which had not been envisaged in 1908. A decision was made by the Department of Internal Affairs to review the legislation, and if necessary, to introduce a new Act. To this end the Advisory and Research Branch of the Department was requested to carry out an investigation into the legislation, and a number of the points made in the report (Crompton, 1961) will now be reviewed and discussed.

Maori Antiquities Act, 1908: A Departmental Report:

The Departmental study in 1961, a summary of which follows, found that the most serious defects in this Act seemed to lie in the definition of a Maori antiquity. In Section 2 of the Act a Maori antiquity was defined as:

> "Maori relics, articles manufactured with ancient Maori tools and according to Maori methods, and all other articles and things of historical or scientific value or interest and relating to New Zealand, but does not include any private collection not intended for sale, nor any botanical or mineral collections or specimens."

This definition was thought to contain several words which required precise definition if ambiguity were to be avoided. 'Maori' was not specifically defined, and although there were several other acts from which an adequate definition might have been taken (e.g., Maori Land Act, Maori Purposes Act, Electoral Act) there were still peculiar circumstances arising from the Maori Antiquities Act which would not have been covered by any of these definitions. There was, for example, the position of the Cook and the Tokelau Islands which at that time were under the administrative control of the New Zealand Government. The people of the first of these territories referred to themselves as Maoris, and their antiquities were of equal importance to those originating in New Zealand. Indeed, it might well have been argued that certain artifacts found in New Zealand might have originated in the Cook Islands, so giving them an importance of great significance. 'Relics' was another word which should have been precisely defined. According to the Concise Oxford Dictionary a relic may variously be taken to mean (a) a part of a holy person's body or belonging kept after his death as a remembrance, (b) a memento or souvenir, (c) the dead body or

remains of a person, (d) surviving trace or memorial of a custom, belief, period, people, etc., (e) an object interesting for age, or associations. The report concluded that the definition of 'relic' was so wide that when taken in conjunction with the undefined 'Maori' it was legislatively meaningless.

A second major weakness in the definition was seen in the clause article 'manufactured with ancient Maori tools and according to Maori methods', which clause could not be taken to be an interpretation of the preceding 'Maori relic', but would refer to a separate class of antiquity. But the word 'ancient' is entirely a relative concept, and when taken together with 'according to Maori methods', introduces further imprecision into the definition. For example, how would a **mere** manufactured in the 1850's have been classified? Would it qualify as being ancient, and would the use of a European hand-drill to make the hole at the proximal end disqualify it from being regarded as a Maori antiquity? Such a hole was the traditional method for attaching the thong, and it was traditionally made by the use of a drill, albeit not a European metal-pointed drill. And if 1850 were accepted as 'ancient' then a tool being used at that time must be considered likewise as being ancient. Clearly in this respect the definition was unsatisfactory.

The next clause in the definition, 'and all other articles and things of historical or scientific value and relating to New Zealand' was considered to be of extraordinary breadth of meaning, and it was the opinion of the Crown Solicitor (cited in the report), that it was not merely an expansion of the preceding classes of antiquity, and would have been taken by the Courts to have meant what the ordinary sense of the words implied. The legal opinion was also that this would have included papers, books and printed matter of scientific and historical value, and in view of the difficulties which later arose, and the subsequent agitation to have these items specifically included in the legislation, this opinion is of some importance. However, it is clear from the records of the Parliamentary debates that the inclusion of such material was never contemplated by the legislators in 1901.

The exclusion contained in the final clause of the definition the report found difficult to understand in that it removed from the scope of the legislation all botanical and mineral collections and specimens, but presumably (otherwise they too would have been mentioned), left zoological collections and specimens still protected by the legislation. The confusion was compounded when it is realized that at the time the report was compiled the Wildlife Act prohibited the export from New Zealand, without permit, of almost all classes of native fauna, or any parts of them.

A final defect in the definition was seen to lie in the absence of any qualification of the term '. . . of . . . value'. The fact that an object was one of a class of which large numbers, or

even adequate numbers for instruction and display, were held by museums, did not deprive it of all scientific or historic value, and presumably such items should still have come within the scope of the Bill. If it had been intended to offer protection only to certain classes of very special artifacts, then it should have been stated. It could be noted here that the determination of the precise scientific value of an object is a much more subjective process than is often assumed. No ethnologist or archaeologist can ever be sure that all of the attributes of importance of any artifact have ever been recorded. As Neustupny has recently noted (1971: 36) it is by the discovery of new and significant attributes in an object that archaeology develops. He says: "It is this peculiarity that makes archaeological finds worth storing in museums; no archaeologist can ever describe his records in such a way that his successors do not need to return to them." If this be a legitimate view of the scientific value of artifacts, then perhaps there is a sound case for the retention within the country of origin of all artifacts.

The report concludes that the serious weakness in the definition of Maori antiquities made the Act so nebulous as to pose serious difficulties both for the officials whose task it was to administer the Act, and to the public, who on the one hand were unnecessarily annoyed, and on the other, were led into the more or less unwitting commission of offences.

Other unsatisfactory aspects of the Act were thought to include:

(a) the definition of the power of the State to acquire antiquities,
(b) the clarity of the provisions concerning the necessity to offer all antiquities to the State before an export permit could be applied for,
(c) the problems of evasions of the Act, and the fate of any items intercepted, and
(d) problems associated with the right to copy any items for which export permits were issued.

The report finally concluded that the Act was "an unsatisfactory piece of legislation—imprecise, in places contradictory, out of tune with modern requirements and almost completely incapable of satisfactory administration". It is not surprising therefore that the Department decided to undertake a revision of the legislation, and following a period of intensive consultation with interested parties, and a prolonged series of drafts and revisions, a new Bill, the Historic Articles Bill, was introduced into Parliament in 1961.

Chapter 3:

THE HISTORIC ARTICLES ACT, 1962

INTRODUCTION OF LEGISLATION:

This Bill, the full title of which is 'An Act for the Protection of Historic Articles and to control their removal from New Zealand', was introduced into the legislature, September 4, 1962. The Minister in Charge, the Hon. L. Gotz, in his introductory remarks to the first reading of the Bill, said: "The Bill provides for a reasonable degree of protection against the removal from New Zealand of articles of historic and scientific interest. . . ." (N.Z. Parl. Debates, 1962: 1853), which aim must be contrasted with that of the Maori Antiquities Act which had attempted to prevent, rather than merely control, the removal of antiquities from New Zealand. The key to the Government's attitude to this legislation is found in the Minister's words, ". . . is a Bill designed to protect the history of New Zealand. Maori artifacts of course cannot be exported without a permit, but permission is not unreasonably withheld. We would obviously do our utmost to retain in New Zealand something of fantastically historic value. Maori artifacts can be exported so long as they are not of such types and specimens as we require to preserve". (ibid.: 1836.) Commenting on recent expressions of concern at the loss of papers and manuscripts of historic value, the Minister said that the Bill sought to prevent further losses, ". . . but in a fair and reasonable manner and without arbitrary interference with the rights of the individual". (ibid.: 1836.) Obviously the Government had in mind a clear distinction which no doubt had its genesis in the appreciation of the real difficulties associated with the administration of the Maori Antiquities Act, and felt that it was taking the realistic rather than the idealistic point of view, but equally clearly it was not at that time prepared to grasp the nettle of any legislative interference with the right of the individual to dispose of in his own way what he considered to be his own property.

In the Second Reading debate the Minister referred to the growing interest in New Zealand papers and historical manuscripts and artifacts, and stated that the National (now New Zealand) Historic Places Trust, National Archives, and the State and local museums were the repositories and guardians of a great deal of this type of material, but also that he saw no harm in the private ownership of such material, although he said, ". . . the fact remains that important historical material so held is in constant danger of being lost to New Zealand to overseas buyers. . . . Some records could easily be lost to us without our ever knowing of their existence." (ibid.: 2511.) He pointed out that Clause 2

of the Bill, the definition of an Historic Article, was the key to the Bill, and stated that as far as scientific specimens were concerned only 'type specimens' needed protection. With regard to written material he thought that actual prohibition of export would be extremely rare as such material could easily be copied. The provision for appeal by an applicant for a permit against the Minister's decision was an attempt to achieve ". . . a satisfactory balance between conflicting interests".

Mr Eruera Tirikatene, Member for Southern Maori, brought up the question of gifts of artifacts made to visitors and famous people, and reminded the House that such gifts traditionally were made in the belief that ". . . at the demise of the recipient it is customary for the gift to be returned to the original donor or to his relatives or descendents". (ibid.: 2513.) But he went on to say that unfortunately because of a lack of understanding of the cultural background of this situation the gifts were often passed on by the recipient to others, or were even sold at auction rooms, and so were never returned to the original owners. This is an important factor in the consideration of the question of the preservation of cultural material as a whole. Gifts made to an individual, or collections made by him in his lifetime, are very often at his death not considered by his beneficiaries and descendents in the same light as he himself viewed them. Thus collections become broken up, and artifacts become a ready source of wealth to be capitalized on at a sale. The Member also raised the question of the danger of making legislation so restrictive that cultural material could not be sent overseas for educational purposes, for the benefit and use of students of Maori material culture who were unable to travel to New Zealand.

Mr D. Riddiford came close to the heart of the legislation when he said: "The success of the Bill will depend essentially in the way permission is given or withheld to remove documents and other material from New Zealand. . . . The classification of historic objects and literary material could be extended. However, that depends entirely on the spirit in which the legislation is administered." Only three other Members contributed formally to the debate (although there was one little piece of by-play in the form of interjectory questions to Mr Tirikatene, which revealed that even among the legislators there still remained a hard core of belief that New Zealand had once been populated by a group of 'Morioris' who were in some definable way distinct from the later Maori inhabitants), but their contributions were minimal, being comprised principally of questions about the exclusion of some documentary material and paintings from the definition, and about certain tax remissions when historic material is given to public institutions.

The debate on this Bill was neither as lively nor as informed

as that which had accompanied the passing of the Maori Antiquities Act in 1901. This new legislation, while widening and making more clear the definition of the articles concerned, and while making a clear shift from the concept of prevention of export to one of control, also contained the understanding that the legislation was never intended to be too wide in scope, nor to be so rigorously applied that it should impose any unacceptable restriction on the right of persons to dispose of what they considered to be their own property in whatever manner they might desire. There was clearly no challenge in the Bill to the concept of individual ownership of these cultural and historic materials, nor was there any attempt to extend any protection under this legislation to historic and prehistoric sites in which these cultural properties might be found.

PROVISIONS OF THE ACT:

The Act, as finally passed on December 5, 1962, is the basic legislation presently controlling the export from New Zealand of cultural properties of historic and scientific importance and because of this its provisions will now be set out in some detail, and are as follows:—

1962, No. 37:

An Act to provide for the protection of historic articles and to control their removal from New Zealand.

1. **Short Title and Commencement:**
   (1) May be cited as the Historic Articles Act, 1962.
   (2) Act shall come into force 1 April, 1963.

2. **Interpretation:**
   "Historic Article" means:—
   (a) Any chattel, artifact, carving, object or thing which relates to the history, art, culture, or economy of the Maori or other Polynesian inhabitants of New Zealand and which was or appears to have been manufactured in New Zealand by any such inhabitant, or brought to New Zealand by an ancestor of any such inhabitant, more than
   (b) Any book, diary, letter, document, paper, record, or other sixty years before the commencement of this Act; and written matter (whether in manuscript or printed form)—
      (i) which relates to New Zealand and is of historical, scientific, or national value or importance; and
      (ii) which is more than ninety years old; and
      (iii) of which, in the case of a book first printed and published in New Zealand, no copy is in the custody of the General Assembly Library or of any library maintained by any Government Department, local authority, university or school or of a library of any other prescribed class; and
   (c) Any type specimen of any animal, plant or mineral existing

or formerly existing in New Zealand.

"Minister" means the Minister of Internal Affairs.

"Type specimen" means the specimen on which is based an original published description of the animal, plant or mineral of which the specimen serves as an example.

3. **Act to bind the Crown:**
The Act binds the Crown.

4. **Minister may acquire Historic Articles:**
(1) The Minister may purchase or otherwise acquire, or may accept by way of gift or bequest, or otherwise, any historic article.
(2) Any historic article acquired under this section shall be kept in safe custody as directed by the Minister.

5. **Restrictions on export of historic articles:**
(1) It shall not be lawful for any person to remove or attempt to remove any historic article from New Zealand, knowing it to be an historic article, otherwise than with a permit issued by the Minister.
(2) Conviction under this section carries a fine not exceeding two hundred pounds.
(3) This section shall not apply to any historic article lawfully taken and normally kept outside New Zealand, but temporarily within New Zealand.

6. **Application for permission:**
(1) Every application for permission to remove an historic article from New Zealand shall be forwarded to the Secretary (of Internal Affairs).
(2) The Minister in considering any application shall have regard to:
(a) Its historical, scientific, cultural or national importance;
(b) Its rarity;
(c) The extent to which similar articles are held in public ownership in New Zealand;
(d) The probable effect of its removal on historical or scientific study or research in New Zealand;
(e) Any other matters which appear to him to be relevant, or may be prescribed by regulation.
(3) After having regard to the matter referred to in subsection (2) of this section, and after making such enquiries and seeking such expert opinion as he thinks fit, the Minister may—
(a) Refuse his permission if he is satisfied that the removal of the historic article would be to the serious detriment of historical or scientific research or study in New Zealand or would be contrary to the public interest; or
(b) Grant his permission either unconditionally or subject

to terms and conditions as may be imposed by him.

(4) Where it is the intention of the applicant to remove the historic article from New Zealand for the purpose of sale, the Minister, if undecided as under subsection (3) of this section, shall publish in the Gazette a notice setting out the particulars of the historic article, and invite offers for its purchase.

(5) Where no offer of purchase is accepted by the owner in the period set by the Minister, the Minister shall grant his permission to the removal of the article from New Zealand.

7. **Certificate of permission:**
Where permission is granted a certificate shall be issued to the applicant.

8. **Conditions imposed by the Minister:**
Without prejudice to the generality of the authority under this Act to impose terms and conditions, the Minister, when granting permission, may impose conditions—
(a) requiring the owner to permit the historic article to be copied by photography, cast or otherwise in such manner and in such numbers, and by such persons as the Minister may direct;
(b) that the owner of the historic article shall deliver it to such person as the Minister may direct, for the purpose of being packed and despatched from New Zealand, at the cost and risk of the owner, to the address specified by the owner;
(c) every such copy shall be the property of the Crown and be kept in safe custody as directed by the Minister.

9. **Appeals from Minister:**
(1) Where the Minister has refused his permission, the applicant may appeal against the decision.
(2) For the purposes of hearing such an appeal the Governor-General in Council may appoint a Committee of Inquiry.

10. **Hearing and determination of Appeals:**

11. **Fees and travelling allowances:**

12. **Application of Customs Act, 1913:**
(1) The provisions of the Customs Act, 1913, shall apply to historic articles the removal of which from New Zealand is prohibited.
(2) An historic article knowingly exported or attempted to be exported in breach of this Act is forfeit to the Crown.
(3) Any forfeited article shall be delivered to the Minister and retained in safe custody according to his directions.

13. **Exemption from Gift Duties:**
No gift duty shall be payable in respect of any gift of an historic article to the Minister on behalf of the Crown, or

to any library, museum or other public institution for the benefit of the public.

14. **Expenses of administration:**
To be paid from money appropriated by Parliament for that purpose.

15. **Saving of other enactments:**
This provision of the Act shall be in addition to and not in substitution of any other enactment.

16. **Regulations:**
The Governor-General may from time to time by Order in Council make regulations for:—
(a) Prescribing rules relating to the safe custody of historic articles acquired by the Minister;
(b) Prescribing forms required for the purposes of this Act;
(c) Prescribing fees payable under the Act;
(d) Providing for matters for giving full effect to the provisions of the Act.

17. **Repeal:**
The Maori Antiquities Act is repealed.

THE HISTORIC ARTICLES REGULATIONS, 1965:

These regulations, which were made in accordance with the provisions of the Act, prescribe procedures and forms of application for permission to remove an historic article from New Zealand, of certificates of permission, of appeals against the decision of the Minister, and of fees payable in respect of appeals.

When applying for permission to export an historic article the applicant must make the article to which the application relates available for examination by a person with expert knowledge, nominated by the Minister, at a place required by the Minister. Similarly, if appealing against the Minister's decision, the appellant must make the historic article available for the inspection of the Committee of Appeal, ". . . at his own expense . . . at a time and place specified by the Secretary (of Internal Affairs) or by the Committee". (Historic Articles Regulations, 1965: 2.)

It is worthy of note that neither the Regulations nor the schedules (dealing with application for permission to remove an Historic Article from New Zealand, the certificate of Permission, and the Notice of Appeal against the Minister's Decision), actually states the power of the Minister to require that a condition of permission might include the copying of the article, the copy to become the property of the Crown, or that the Minister may require the owner to deliver the article to a person nominated by the Minister for the purpose of packaging and despatch to an addressee nominated by the owner and at the owner's risk and expense. Doubtless such conditions could be included in the conditions imposed by the Minister in granting a permit, but as

most other pertinent details are given on the form, the omission of these two would appear to be, at best, a regrettable oversight.

DISCUSSION OF THE ACT AND REGULATIONS:

The Historic Articles Act is undoubtedly a serious and honest attempt to replace outdated, limited, badly worded and unenforceable legislation, the Maori Antiquities Act, 1908, with an Act more in keeping with the public attitudes of the 1960s, and more capable of being observed and enforced than was the earlier Act. That, by the early 1970s, it is not achieving this purpose in full need not be seen as an indictment of the framers of the legislation for although they were to some extent limited and restricted by political considerations and by a lack of real appreciation of the basic causes of the problems for which they were seeking solutions, the Act, like all legislation, is a reflection of the prevailing political and public attitudes. In the decade following the writing of the Historic Articles Act there has been a spectacular shift, not only in New Zealand but in most countries, in public attitudes towards conservation problems in general, and the conservation of cultural material is a major facet of this change in attitude. It may be pointed out that while concern with the preservation and conservation of artifacts and antiquities, particularly the major antiquities of the earlier civilizations, or those of accepted aesthetic and artistic appeal, has always been the more obvious aspect of this movement, as might be exemplified by the UNESCO programme for the preservation of the cultural properties of Nubia threatened by the waters of Asswan dam, there is no doubt that the last decade has seen the development of an increasing public appreciation of the archaeological and scientific importance of the site rather than the artifact. It is this concept which is missing from the Historic Articles Act, and this would appear to be its major defect. As this question will be dealt with more fully below, the present analysis of the Act will be restricted to an examination of, and a commenting upon its effectiveness as an Act to "provide for the protection of historic articles and to control their removal from New Zealand".

Section 2: INTERPRETATION:

The definition of an Historic Article lists three categories of objects. First, cultural objects having been made by 'the Maori or other Polynesian inhabitants of New Zealand'. This wide definition is made even more all-embracing by the fact that artifacts manufactured outside New Zealand proper are allowed for, and by the inclusion of all such artifacts made before 1903. This is a wider definition than archaeologists might have demanded, for it has extended well into the historic period, but it has the advantage of including artifacts which may have been produced by the demands or opportunities of the culture contact situation, such as many examples of **hei-tiki,** and allows this without involv-

ing any dispute over the 'ancient Maori tools and according to Maori methods' argument which was a major defect of the earlier legislation.

Secondly, there is the definition of literary and documentary material of relevance to the early European settlement of New Zealand. This definition would seem to be less satisfactory. Other categories of articles than those listed, such as paintings, etchings, drawings, and also furnishings, household utensils and tools of trade of the early European settlers are of value and importance as part of the social and cultural history of New Zealand and might well have been included. Indeed, the Minister was questioned during the passage of the Bill concerning the omission of paintings, and his reply was that these were "too hard to define". (N.Z. Parl. Debates: Vol. 332; 2517.) There have been later representations on this point, e.g., Mr Hamish Keith's approaches to the Minister as reported in AGMANZ (1965: 4 and 1966), but the Minister has not changed his attitude, while AGMANZ is currently attempting to have this section of the definition widened in scope.

The third section of the definition, that dealing with scientific specimens, would also seem to be satisfactory, as there would seem to be little need to retain in New Zealand specimens other than the type specimens of indigenous animals, plants and minerals, and these are adequately defined in this section. However, it is apparent that problems might arise in cases where the first discovered specimen of a new fossil, animal or plant is for some reason defective or incomplete, yet becomes the 'type specimen' by virtue of the fact that it was the specimen on which the original published description was based. Should a more complete or better preserved specimen subsequently be discovered, the second specimen may assume a greater scientific importance than the first, yet the second specimen cannot, by definition, be called the 'type specimen', and therefore it cannot receive the protection of the Act.

Section 3: ACT TO BIND THE CROWN:

In view of earlier occasions on which visiting dignitaries have been given gifts of Maori artifacts, both by Government and by representatives of the Maori people, this is an important provision.

Section 4: MINISTER MAY ACQUIRE HISTORIC ARTICLES:

While the purchase provision of this section is of significance only if the necessary funds are made available, the empowerment of the Minister is of considerable importance provided that it would be availed of should the occasion arise that an artifact of some considerable importance was liable to be exported.

Of greater potential merit is the provision for the Minister to accept historic articles by gift or bequest. This would be of even greater importance if significant artifacts were accepted 'in trust'

and kept in the safe custody of an appropriate public institution. If an effort were made to encourage this form of safe keeping of tribal and family heirlooms a large number of important artifacts would be removed from the situation of insecure custody from which it is all too easy for them to be sold.

Section 5: RESTRICTION ON EXPORT OF HISTORIC ARTICLES:

Clause 1 of this section is the main prohibitive clause in the Act, and the one which allows for the intervention of the Minister in cases where export of Historic Articles is proposed. The expression 'knowing it to be an historic article' would seem to provide a legal loophole for offenders, although presumably the article in question would be covered by Section 12.

Clause 3 of this section no doubt arises from the statements of Mr K. A. Webster when he visited New Zealand in 1959 concerning the need not to make legislation so restrictive that the return of articles for temporary cultural display or exchange might be prevented. (Webster, 1959.)

Section 6: APPLICATION FOR PERMISSION:

In this section are set out the criteria which the Minister must use in making his decision regarding an application for the export of an historic article, together with the alternative decisions he might make, and the course of action he must follow if the applicant intends to sell the historic article overseas.

These criteria—importance, rarity, holdings in public ownership, and the effect of its removal on study and research in New Zealand—considered by the Minister, with expert opinion should the Minister seek to choose it, seem to have acted in the direction of agreement to, rather than refusal of, applications to export historic articles, for in the first seven years of the operation of the Act only one application for permission to export cultural material falling under the first part of the definition was refused, while 37 applications were approved. These approvals consisted of a total of 181 itemized artifacts and two non-itemized collections, with the artifact types comprising a comprehensive selection of Maori cultural material. A breakdown of this material can be seen in Table 1.

The courses of action available to the Minister are also stated in this section of the Act. The first two, either refusal of permission or approval, subject if necessary to appropriate conditions, are sufficiently straightforward not to require comment, except for the proviso that the Minister's decision be based on sound grounds. The third course of action would appear to be less satisfactory. Initially it depends on the honesty of the applicant to state that it is his intention to sell the article once it is removed from New Zealand. There is also the possibility that changed

Table 1: Permits for export of Historic Articles

	No. of permits issued	T – Temporary loan or export P – Permanent loan or export	Adze	Greenstone Adze	Fishing weight	Fish hook and shank	Patu – stone	Patu – whalebone	Patu – wood	Mere	Taiaha	Fern root beater	Carved wooden item	Ornaments	Tiki	Cloaks	Other stone items	Tattoo chisel	Moa bone	Archaeolog. Assemb.	Non-itemized artifacts	Total for year (excl. arch assem.)
1963		T																				
	6	P	17	1	2						2	2	5									29
1964		T																				
	1	P									1											1
1965	3	T								1	2			6		1					25	35
	4	P	18	1	2			1					1				4					27
1966	3	T	1													1					20	22
	6	P	4				1	1		1	4		3	2	1		1					18
1967	6	T	1	1		1							2				2				22	29
	2	P								1			4		3							8
1968	5	T	1						1				2		1	1		5	1	1		12
	1	P																		1		1
Totals	17	T	3	1		1			1	1	2		4	6	1	3	2	5	1	1	67	98
	20	P	39	2	4		1	2		2	7	2	13	2	4		5			1		83
TOTALS	37		42	3	4	1	1	2	1	3	9	2	17	8	5	3	7	5	1	2	67	

Types and totals of Articles

circumstances may cause the owner to eventually offer his article for sale, even though this might not have been his original intention. Publication in the Gazette takes place only if the Minister has not either refused his permission or given his permission. If Section 6 is read in its entirety it can be seen that the Minister must have satisfied himself that the historic article was not of such importance that he should refuse his permission **before** the notice was published. The inference is that the article, though not of sufficient importance to warrant refusal of permission, is nevertheless of sufficient interest to justify giving the opportunity to members of the public to purchase the article and retain it in New Zealand. Should this purchase not be effected, and the decision is made by the owner on grounds which do not seem to have to be specified, and there is no provision for recourse to any appeal authority, then the Minister must grant his permission for the export of the article. In view of the obvious reluctance of the Minister to refuse applications outright, this clause makes the removal of the article even more certain.

In making his decision under Section 6 the Minister must consider the scientific importance of the article and the effect its removal might have on research and study within New Zealand. As is mentioned above it is not possible for any worker to be sure that he has recorded all of the attributes of any particular artifact, and as the significance of any particular attribute changes from time to time depending on the purposes of the researcher and the techniques available to him, it is consequently necessary for the researcher to return often to his primary material, as his researches advance and new problems emerge. If articles have been allowed to be exported this re-examination is prevented. An additional question that might very well escape the Minister's consideration is that of distribution studies. Should large numbers of say, adzes, eventually be exported, and clear and adequate records not be kept, then future distribution studies might very well be rendered invalid merely because the researcher has been deprived of basic data. Thus the question of scientific importance is a much larger one that can be decided on the basis of any one particular artifact.

Section 7: CERTIFICATE OF PERMISSION:

This certificate, the form of which is set out under the Historic Articles Regulations, 1965, provides for a description of the article(s), presumably in as much detail as the Minister might require, and for the setting out of any conditions which the Minister might care to impose. The effectiveness of this certificate, if, in the absence of any attempt to utilize the condition set out in Section 8 (b), substitution of artifacts is to be prevented, depends to a large degree on the detail contained in the description. Obviously a description which is as general as 'a Maori stone

adze of the common variety' or even if it included '4½ inches long' is not going to prevent the substitution of an adze of the rarer Duff Type 1A (Duff, 1956) in Nelson argillite for the commonly occurring adze of Duff Type 2B in greywacke if the packaging and posting of the article is to be left to the applicant, should he be sufficiently dishonest or unscrupulous.

Section 8: CONDITIONS IMPOSED BY THE MINISTER:

Under this section the Minister may require that the article be copied, the copy to become the property of the Crown, and also that packaging and despatch of the article be carried out at the direction of the Minister. These would seem to be two necessary provisions, but there appears to be no evidence that either provision has ever been invoked.

Section 9: APPEALS FROM MINISTER:

This would seem to be a necessary provision in order to allow the owner to appeal against any decision of the Minister on the grounds that the decision was not reasonably arrived at. It might be argued that as the Minister invariably obtains expert opinion before giving his decision, there was no necessity to provide for appeals by persons other than the owner. But the Minister is not required by the Act to seek expert opinion, the persons from whom he might seek such opinion are not specified, and there is no compulsion on the Minister to accept or act upon any such advice which he might obtain. In these circumstances there appears to be a need for persons other than the owner to have the right to appeal against the Minister's decision.

Section 10: HEARING & DETERMINATION OF APPEALS:

The procedures set out in this section would seem to be adequate.

Section 11: FEES & TRAVELLING ALLOWANCES:

A machinery clause only.

Section 12: APPLICATION OF CUSTOMS ACT, 1913:

The most important clause in this section is that which clarifies the status of any article intercepted while being 'knowingly exported or attempted to be exported in breach of this Act'. It is to be forfeit to the Crown and retained in safe custody according to the Minister's directions. It may, however, at the Minister's discretion, be returned to the owner. As it might well be that a person would be in ignorance of the Act, this is a suitable provision, as it would permit a flagrant abuse of the Act to be punished with the full severity of the Act while a lesser or more or less 'innocent' breach could receive a form of ministerial mercy.

Section 13: EXEMPTION FROM GIFT DUTIES:

This provision is appropriate to the stated aim of the Act ' to provide for the protection of historic articles ', but only if it is interpreted to mean gifts made to public institutions within New Zealand and of benefit to the public of New Zealand. It could equally be read to mean that it applied to gifts made to overseas institutions. In fact, if applied in the sense of benefit to New Zealand this is a valuable provision which could be utilized to bring valuable historic articles into the safe custody of public institutions within New Zealand without their having to be bought and sold, a practice which is particularly objectionable to the custodians and owners of valuable traditional heirlooms. This section was subsequently repealed and replaced by the Estates and Gift Duties Act, 1968.

Section 14: EXPENSES OF ADMINISTRATION:

All expenses are to be met from monies appropriated by Parliament. It is assumed that it is under this section that the Minister would obtain money for the purchase of important articles under Section 4.

Section 15: SAVING OF OTHER ENACTMENTS:

Sets out the relationship of this Act to other legislation.

Section 16: REGULATIONS:

Provides for the making of regulations. It is of interest to note that over two years were to elapse before the necessary regulations were made.

Sction 17: REPEAL:

That the unsatisfactory Maori Antiquities Act was repealed would be widely applauded.

OPERATION OF THE ACT:

In any discussion of the effectiveness of this legislation not only is it necessary to have clarity as to the aims of the Act and what it was hoped to achieve, but it is essential to be clear about what was not in the Act and what the Act was never intended to achieve. On the other hand, it is legitimate to consider changes which have occurred in public attitudes and practice since the passing of the legislation and how these bear on the efficient operation of the Act. The Historic Articles Act was designed to ' provide for the protection of historic articles and to control their removal from New Zealand '. The historic articles defined in the Act fall into three categories—first, articles made before a certain date by the Maori and other Polynesian inhabitants of New Zealand and their ancestors, secondly, certain classes of material of European manufacture, origin or derivation and of importance in the European settlement of New Zealand, and

thirdly, certain scientific specimens. It is principally with the first class of article that this examination is concerned.

The Act was never intended to prevent the removal of these articles from New Zealand, but to exercise a reasonable degree of control over their exoprt. It was not envisaged that the provision in the Act to allow the Minister to acquire such articles by purchase should be used to involve the Minister in any wholesale buying of articles merely to ensure their protection or to prevent their export. There was no intention to prevent the buying and selling of these historic articles within New Zealand, nor to impose any undue restriction on the rights of an individual to dispose of as he saw fit the things of which he was the legitimate owner. And certainly the Act was never intended to extend any form of protection to places where historic articles might be found, to prevent or control the excavation of these places in the seeking of artifacts, nor to place any restriction or obligation on any landowner who quite fortuitously in the farming or development of his land might uncover such a site. That the Act should have included some or all of these provisions is another question, and will be discussed later. That some of these questions have a bearing on the aim of the legislation and should have been considered is a fact, but this, too, will be considered later, although the question of the trade in artifacts within New Zealand is so germane to the problem as a whole that it must be considered a prime part of any investigation.

The first part of this discussion will deal with the extent of the trade in artifacts within New Zealand and attempt to ascertain whether or not it contributes to the problem of the export of artifacts from New Zealand, and to the destruction of archaeological sites within New Zealand. The second part of the discussion will look at the effectiveness and difficulties in the effective administration of the Act.

As will be shown it is not difficult to find evidence that there is in New Zealand a considerable and flourishing trade in Maori artifacts. Auction houses hold regular sales of these artifacts, and advertise them in the daily press (e.g. The Dominion, October 11, 1969, carried two such advertisements). A Wellington antique dealer advertises almost daily for Maori artifacts. Many second-hand dealers in Wellington carry a stock of Maori artifacts. Reports of sales are to be found frequently in newspapers throughout New Zealand. There are reports of thefts of artifacts from their places of keeping (e.g. The Dominion, November 12, 1969 carried a report of claims that artifacts of considerable value had been recently stolen from Parihaka Pa, Taranaki), and even that stolen artifacts are soon offered for sale as collectors' items. (The Dominion, August 25, 1971.)

In order to assemble some data as to the extent of this trade in Wellington, and to see how effective the legislation was in

achieving its aims, three Wellington antique or second-hand dealers were visited, their stocks of artifacts were examined, and the question discussed with the owners. While much of the material in these discussions was hearsay and to some extent unverifiable, the situation disclosed is probably a fair view of the situation as it exists.

The first firm visited was the antique shop which advertises in the daily press for Maori artifacts. There were no artifacts in stock on the day of the visit, but the owner claimed that this was because they could not obtain sufficient artifacts to keep up with the demand, and that the firm had many contacts, mainly in the South Island, from whom artifacts were obtained. The trade was said to concern mainly overseas tourists who were prepared to pay high prices, particularly for artifacts made from greenstone.

The second business visited had a stock of only seven adzes, all of Duff 2B type. The owner said that he did not actively pursue the trade in artifacts, but that he had no difficulty in selling all the artifacts which came into his possession.

The third premises visited, that of a second-hand dealer, seemed to be much more actively engaged in the trading of Maori artifacts than either of the others. A considerable stock of artifacts was carried, and covered a wide selection of artifact types. While prices generally seemed to be higher than those obtained at an auction sale which was later attended (see below), the shop-owner obviously had a keen appreciation of the significance and importance of the various types of artifact. For example, while 2B type adzes up to 5 inches in length were priced from $10-$20, a 4B Hog-back adze about 8 inches long was priced at $45. It was claimed that particularly in the preceding 18 months the trade had flourished mainly with overseas tourists who, it was claimed, actively sought out Maori artifacts during the stop-over periods in Wellington, and that there was some difficulty in supplying this demand. The owner claimed that he had 'contacts' throughout the South Island from whom he obtained the bulk of his supply of artifacts, but he also obtained a great deal of his stock from the selling up of deceased estates. When the shop owner realized that it was not my intention to purchase any of his articles his attitude hardened somewhat, although he did continue to discuss the problem for some time. He claimed knowledge of two recent cases where individuals from England had come to New Zealand with the express intention of collecting artifacts to sell on their return to their own country and so finance their visit. These persons were stated to have each collected over two hundred artifacts and to have experienced no difficulty in taking them, without obtaining a permit, from New Zealand. This businessman has a special permit from the City Council enabling him to open his premises

at the weekend for sales to the tourist traffic and claimed that the most important area of business during this time was that in Maori artifacts. Further, the owner said that he would welcome any legislation to restrict or prohibit sales—as this would drive the trade underground and that prices would inevitably increase, to his advantage. It was obvious that this businessman was involved in the buying and selling of Maori artifacts on a considerable scale, that he was aware that the articles he was selling were being taken from New Zealand in defiance of the Act, and that he would not hesitate to continue his trade even if legislation were tightened.

It is of importance to note that these businesses obtain artifacts from a network of sources and that they actively seek them out. Thus a ready market is available for any artifacts obtained from the illicit excavation of sites, although it would probably be difficult to prove this direct link. Also of significance is the fact that stocks are obtained from the selling up of deceased estates. This situation is a major area of weakness in efforts to ensure the safety and preservation, not only of artifacts but also of sites. While the original collector remains alive these collections are retained intact (although many sites may have been destroyed in the collection of the artifacts), but once the original collector and owner is dead, then the collection represents a considerable source of wealth, a source which may be only too quickly capitalized on by the beneficiaries of the estate. In relation to the question of buying and selling artifacts, it must be remembered that under the present legislation this is a perfectly legal happening, and it really only becomes relevant to the problem when it is linked with the actual export of these items by the purchaser.

Further evidence of the extent of the trade in artifacts was obtained in October, 1969, when a number of Maori artifacts were sold during the course of an auction of militaria and 'curios' in Wellington. More than 100 people attended the sale, some of them apparently coming from places as far afield as Auckland, Wanganui, Palmerston North, Nelson and Christchurch, for they were known to the auctioneer who referred to them frequently as 'my friend from Christchurch', etc. Most of the people at the sale were concerned with the various items of military trappings, but some were obviously interested only in the Maori artifacts, the bidding for some of these items being quite active.

No mention was made of the Historic Articles Act, nor was any sign displayed, although the auctioneer took care to point out that the purchasers of firearms could not take possession of the weapons until they had obtained a police permit. With regard to the Maori artifacts it was obvious that buyers were more interested in the better quality, or more attractive, greenstone artifacts, and were in the main unaware of the relative importance

of some of the other artifacts, as the price obtained for adzes seemed to depend more on their size and degree of polish, rather than on their typological classification or rarity. All articles were sold without any great delay, and the total amount obtained, $1024, would seem to represent a more than reasonable return to the auctioneer for the time he had had to devote to their sale.

That the question of the preservation of the cultural heritage of New Zealand and the control of the export of historic articles is of growing concern to the general public of New Zealand is evident from the number of reports of the export of articles which are published in the newspapers. Indeed, on almost every occasion on which the sale of some particularly important or valuable article is reported there is a flood of letters and comment to the papers asking that effective action be taken to stop this trade. Often these comments are uninformed, or choose to ignore the actual provision of the legislation, and sometimes there is complete ignorance that such legislation even exists. Occasionally the matter is taken up by a journalist and a major feature article appears in the Press. One such article is that by M. W. Cull (N.Z. Herald, May 11, 1968), which was headed "Law fails to stop loss of New Zealand artifacts". This article dealt with the operation of the Historic Articles Act, and as it ranges widely over the problem as a whole as it appears to the non-expert but nevertheless interested New Zealander it is worthy of examination here. The point is made that local dealers had reported a steady demand from overseas buyers of historical material, and that these buyers created a market in which the prices became so inflated that the museums and libraries of New Zealand were unable to compete for the purchase of the material. Cull cites the following case: "Recently Captain Cook's letter . . . was sold at auction in Auckland at a price higher than the Alexander Turnbull Library was prepared to pay. . . . Three or four years ago, two of Cook's logs . . . appeared on the London market. Funds for their purchase were raised in New Zealand but two Americans, bidding against each other, raised the price to £53,000, a price far higher than New Zealand could . . . offer." The writer makes a plea for the strengthening of the measures designed to prevent the export of historic material from New Zealand, and notes that at that time the Minister had never been required to buy any historic article or to call for offers for purchase as provided for in the Historic Articles Act. It is noted that there was no way of knowing how much early Maori material was drifting out of New Zealand surreptitiously and illegally, but that some museum authorities considered that the drain on such items as **mere** and **heitiki** was substantial. As it had been suggested that ignorance of the law was responsible for much of the export of articles, the writer put forward the suggestion that outgoing passengers should be presented with a list detailing those prohibited exports and that

such list should be prominently displayed at all departure points, and even suggested going as far as requiring outgoing passengers to sign an export declaration form to the effect that they had no historic articles in their possession, and that this should be backed up by occasional searches for such items.

The article by Cull brought a response in the House when Mr M. Rata, Member for Northern Maori, asked the Minister of Internal Affairs if he would consider making such an amendment to the legislation. The Minister in reply stated that he had already taken this matter up with members of the Customs Department and the Tourist and Publicity Department and was expecting a report. He continued: "As soon as it is received I shall confer with my colleagues . . . to see what effective action can be taken in relation to declarations by persons leaving New Zealand, or despatching goods from New Zealand, and also in respect to transit passengers on cruise ships who may purchase artifacts while passing through New Zealand." (Hansard, 1968: 256.)

A meeting was subsequently held of officers of the Customs Department, of the Department of Internal Affairs, and the secretary and archaeologist of the New Zealand Historic Places Trust at which the question of the adequate and effective implementation of this Act was discussed. From this discussion it was clear that, first, the Historic Articles Act is treated as seriously by the Customs Department as are all of the Acts with which the Department is concerned, and secondly, that the obvious difficulties of searching the baggage and persons of all persons leaving New Zealand are so great that such a procedure is out of the question. With this latter point there would seem to be little room for quarrel, and the situation is becoming increasingly difficult as larger aircraft are introduced into service and cruise liners abbreviate the length of time spent at any one port of call. However, it was made clear that where there was reason to suspect that any individual was attempting to evade the provisions of the Act, there would be no hesitation about conducting a search. The Customs officers were not in favour of the introduction of declarations as suggested above, as they felt, in the first place, that this would place no real difficulty in the way of any person wishing to deliberately avoid the provisions of the Act, and secondly, that as there are a number of Acts under which the export of a variety of objects and goods are declared to be prohibited exports any declaration made by outgoing passengers would very likely have to be enlarged to allow for all such goods and would soon become so large as to be unmanageable and meaningless.

CONCLUSION:

The Historic Articles Act, 1962, while in no sense being a completely successful piece of legislation, is a considerable improvement on the Maori Antiquities Act which it replaced. The

definition of an historic article, while not being as wide in scope as might be desired by some of the interested parties, is certainly more realistic and less liable to misinterpretation than was the former definition. No administratively difficult machinery has been set up under the Act, although, as has been seen, there are certainly practical difficulties which make the administration of the Act not completely effective. The process of obtaining a permit to export an historic article is not so difficult as to be an onerous imposition on any intending exporter, and yet obviously many people do not even bother to apply for a permit. Because of the difficulty of detecting offences under the Act, it does not operate as a completely effective legislative device for the control of exporting of historic articles. This may be due to public apathy and ignorance, and to a failure to ensure adequate public education in the whole question of the preservation of the cultural heritage of New Zealand, as much as it is due to any fault within the legislation.

While the definition of an Historic Article in respect to Maori artifacts is adequate, and for scientific specimens appears to be generally satisfactory, there is less satisfaction with the scope of the section of the definition dealing with material of relevance to the European settlement and colonization of New Zealand. While manuscripts and certain classes of literary material are covered, the dissatisfaction of AGMANZ over the non-inclusion of paintings, etchings and other graphic representations of life in New Zealand for the greater part of the nineteenth century can be understood. While the difficulties over an adequate definition of these materials is appreciated, and while there must obviously be some greater degree of freedom with regard to the buying and selling of what in one sense are obviously works of art, even though they are equally valuable historical, social and cultural records as well, so too may the disquiet of museums and libraries be understood.

But the basic weakness in the Act is that its aims were too limited and its provisions too restricted. In concentrating on the export of historic articles the Act attacks the symptom and not the basic malady which is the fossicking of archaeological sites. The basic problem is to prevent the destruction of archaeological sites by persons untrained in, and without any appreciation of, archaeological methods and aims. Such persons disturb sites solely to obtain artifacts, sometimes in order to build up a private collection of cultural material and sometimes in order to sell for profit, but almost invariably with little intention of ever publishing an account of the excavation. Such persons are perhaps quite unaware of the full implications of their selfish destruction of sites, and in this respect the solution to the problem is again to some degree one of public education.

Had the law-makers of 1962 been aware of the basic problem,

they might have built into their legislation provision for the protection of sites. This would be no easy task. Political implications of any interference with the right of an individual landowner to deal with his land as he chooses are all too apparent. The difficulties which befell the New Zealand Archaeological Association's site scheduling scheme point to the practical difficulties of determining just what comprises a site in the New Zealand situation, and to the difficulty of selecting from the thousands of sites which are known to exist and the many more which still remain to be discovered a manageable number worthy of the full protection of the State. But the peril in which these sites, which contain the basic data of our prehistory, stand is all too clear. The implications of our land ownership laws notwithstanding, some effort needs to be directed towards the problem of the destruction of these prehistoric sites.

Having decided that the keypoint of the problem was that of the export of artifacts, the Act chose only one point of attack when there should have been an approach on a much broader front. It is a fact that some degree of control over the export of historic articles was necessary, but so too was there a need for some degree of control over the trade in artifacts within New Zealand, for this is all too obviously the major source of the artifacts which are exported. This would not be easy, and there would be a great danger of driving the trade underground, perhaps creating greater problems than those which exist at the present. It would be unrealistic and perhaps even undesirable to attempt to completely prohibit the trade in artifacts, for the development of archaeology within New Zealand will always depend to some extent on the co-operation of the interested amateur, and to alienate these people entirely would be to the detriment of archaeology as a whole. The need is for control over the trade in artifacts and the protection of sites from selfish destruction, and it is obvious that this would need to be associated with a co-ordinated public education programme to ensure that landowners and the public in general understand the basic purposes of the legislation, for it is only if this is achieved that legislation can be made to be effective.

Chapter 4:

OTHER NEW ZEALAND LEGISLATION AFFECTING THE PRESERVATION OF PLACES OF HISTORIC INTEREST

INTRODUCTION:

With the exception of the Historic Places Act, 1954, the Historic Articles Act, 1962 is the sole New Zealand statute specifically affecting the protection and preservation of cultural material of historic or prehistoric significance. It should be noted here that in the phraseology of the New Zealand legislation 'historic' may be used to include 'prehistoric' although in an archaeological sense these words are not synonymous. However, in the discussion of the legislation wherever the word 'historic' is used this duality of meaning will be assumed. As has been seen, the Historic Articles Act specifically excludes any reference to 'sites', to which it extends no protection, even though such sites may be the source of much of the cultural material with which the Act is concerned. In this respect, the statutes of New Zealand differ markedly from those of a number of other countries (to be considered below) where the importance of the site as a primary source of cultural material and scientific data is fully recognized. Nevertheless, there are a number of Acts in New Zealand, which either directly or indirectly, provide the mechanism for the protection of places of historic importance. It is the aim of this chapter to examine the relevant sections of this legislation in order to bring together the corpus of legislation which is, or may be, used to protect historic sites in New Zealand. The fact that these Acts and sections exist may be taken as evidence of the fact that there is some recognition in New Zealand for the need to protect and preserve such places, but often this aspect of the legislation is secondary to, or incidental to, its other purposes and aims.

In discussion of this legislation it will be necessary to be cognizant of the distinction between Crown land and private land. Most of the legislation refers to Crown land, and there has been an understandable hesitancy on the part of the legislature through the years to attempt to interfere in any way with the rights of the private landowner with respect to his own land. There has long been provision under the Public Works Act, 1928, where these individual rights conflict with the rights of the Crown or with the needs of the community at large, for the rights of the Crown to take precedence, but generally, the rights of the individual have been virtually inviolate. As will be seen below, however, changing public attitudes to purposeful forward planning in the interests not only of the present generation of citizens, but also those of

generations to come, has led to the passing of the Town and Country Planning legislation which allows, or even requires, local bodies to provide under their District Schemes for the protection of historic sites.

A further point to be considered is that of the problem of sites being destroyed during the economic development or utilization of privately owned land. Where the landowner is aware of the existence of the site, and shows some responsible interest in the recovery of data from the site before its destruction, there may be the possibility of adequate salvage excavation which in many cases is an acceptable alternative to preservation, but often, the landowner, and indeed the archaeologist is quite unaware of the existence of the site, which is discovered only when its destruction has commenced. Also worthy of consideration is the legality, or even the morality, of the right of the owner to deliberately interfere with known historic sites on his land, or to give others permission to do so. Sites excavated by persons seeking to recover portable artifacts for display or sale are sites destroyed. Sites excavated by persons or groups lacking the necessary training or facilities to carry a project through to some worthwhile conclusion have equally been destroyed. But the law, as will be seen, recognizes the right of the owner to carry out or allow these knowing violations of historic sites. A final facet of this problem which must be considered is the legal ownership of cultural materials found in or on private land. At present they belong to the landowner—but is this morally correct?

THE HISTORIC PLACES ACT, 1954.

This Act, which was intended 'to make provision for the preservation and marking of places and things of national or local historic interest and the keeping of permanent records in relation thereto', and which was the instrument by which the National (since 1963, New Zealand) Historic Places Trust was set up, was the culmination of some years of assiduous endeavour by Mr D. M. Rae, Member of Parliament and former Principal of Auckland Teachers' College. It contains a legislatively unusual preface which declares that every effort should be made to arouse and maintain a healthy public interest in places and things of historic interest within New Zealand, and that to attain this end it was necessary to establish a Trust invested with the necessary powers and functions.

It is declared that the Act should have effect for the purpose of:—

> "preserving and marking and keeping permanent records of such places and objects and things as are of national or local historic interest or of archaeological, scientific, educational, architectural, or other special national or local interest being—
> (a) Lands associated with the early inhabitants of New Zea-

land, the Maoris, early European visitors, or early European settlers;

(b) Places associated with events of national or local importance, including . . . rocks, outcrops, caves, or objects of any kind;

(c) Natural objects of any kind traditionally held to be identified with the history, legends, and mythology of the inhabitants prior to the colonization of New Zealand by Europeans;

(d) Chattels, relics, artifacts, or objects or things, either of a personal or general nature, that are of national or local historic interest or of archaeological, scientific, educational, architectural, literary or other special national or local importance."

It is to be noted that the word 'Historic' in the title is intended to have the additional meaning of 'prehistoric' (McFadgen, 1966: 93) as discussed above, and this is made clear by the inclusion of interest in 'places and things' of importance in pre-European times. It is also significant that the Act concerns places and not just buildings. Obviously it was the intention of the sponsor of the legislation that the Act was to be given the widest possible interpretation. In achieving its stated purposes the Historic Places Trust is empowered to:—

(a) Compile and preserve suitable records;

(b) Erect signs and notices to mark Historic Places, subject to the approval of the landowner;

(c) Take such steps as may be necessary or desirable to manage and preserve historic places owned by or under the control of the Trust;

(d) Enter into agreements with local bodies and other organizations for the management, maintenance, and preservation of historic places;

(e) Acquire such places for the purpose of maintaining and preserving them;

(f) Acquire or accept the gift of or the control of 'any relic, chattel or other thing which it considers to be of historic interest' and arrange for their safekeeping;

(g) 'Promote and supervise excavations and other activities by organizations approved by the Trust intended for the discovery and preservation of relics, chattels and other things of national or local historic interest';

(h) To make grants to approved persons to enable them to make studies or investigations approved by the Trust.

In exercising these powers the Trust must in respect to private land act only with the consent of the owner or the lessee, and in respect to Crown land, only with the written consent of the appropriate Minister of State.

The Act, as amended, 1963, defines various offences against

the Act, and provides for penalties upon conviction. It is an offence to light fires upon, damage in any way, alter or damage signs erected upon land or property owned by the Trust or take or cause to be taken from any land or building vested in the Trust any 'property or thing', or receive any such property or thing knowing it to have been unlawfully obtained. Any person convicted of any such offence may be required to pay, in addition to any other penalty inflicted under the Act, a sum up to the full market value of the property destroyed, damaged or removed.

However, these provisions have not to date been of any great effect in the protection of prehistoric and archaeological sites, for they apply only to properties acquired by the Trust, and these have mainly been in the nature of historic buildings, e.g., Waimate Mission House. Nevertheless the Trust has actively, and with the commitment of considerable amounts of money, sponsored and organized the archaeological investigation of a wide variety of prehistoric sites throughout New Zealand, and even to the Chatham Islands. Much of this work has been motivated by the requirements of salvage situations, e.g., the work of T. J. Hosking associated with the Tongariro Power Development, and the survey of the Kapuni Gas pipeline (McFadgen, 1970a: 113-119; 1970b: 64-75; Gorbey, 1969: 218-223), although grants have been made to individuals and institutions in order to assist them to carry out research programmes not associated with salvage situations (e.g., Simmons, 1964: 51-69). It is clear that the Historic Places Act makes provision not only for the salvage of archaeological data from sites threatened by destruction, but that it equally makes provision for the protection of sites in their own right. As McFadgen has noted (1966:99) the legislation exists but the machinery needs a little oil.

RESERVES AND DOMAINS ACT, 1953:

Part V of this Act deals with Historic Reserves, which are provided for the purpose of 'preserving in perpetuity as historic reserves for the use, benefit or enjoyment of the public such places and objects and things as may be thereon or therein contained as are of historic, archaeological, scientific, educational or other special national interest', being—

(a) Lands associated with the early inhabitants of New Zealand, the Maoris, early European visitors or early European settlers;
(b) Places associated with events of national or local importance, including . . . buildings, trees, sites, earthworks, rocks, outcrops, caves, or objects of any kind;
(c) Natural objects of any kind traditionally held to be identified with the legends and mythology of the inhabitants prior to the colonization of New Zealand by Europeans.

Where the Minister of Lands considers that any private land should be acquired by the Crown for the purpose of a public reserve or for the improvement or extension of an existing public

reserve he may treat and agree for the purchase or lease of the land (Section 15), and even employ the provisions of the Public Works Act to achieve this, except that where Maori land is concerned the consent of the Minister of Maori Affairs is required.

The Minister may declare any public reserve to be an historic reserve, and he may equally declare that a historic reserve, or part thereof, shall cease to be subject to this section of the Act, the land then becoming a public reserve, subject to a different section of the Act.

The owner of any private land may apply to the Minister to have land declared a private historic reserve, which the Minister may do provided that he is satisfied that the land possesses historic, archaeological, educational or other special national interest, although the declaration may be later revoked. The land so declared is protected by the offences provisions in Section VII of the Act ' notwithstanding that the land comprised therein may be sold or otherwise disposed of '. The establishment of any private reserve may be subject to agreement between the owner and the Minister, preserving to the owner the right to do any act or thing forbidden by the Act. The Minister may take steps to ensure the protection of any historic or notable place or building or tree or object by the erection of suitable signs and notices. He may also ' promote, supervise, or authorize excavations and other activities by scientific organizations intended for the discovery and preservation of relics, chattels and other things of historic interest or national importance ', provided that no such activity may be carried out on private land (i.e., a private historic reserve) without the consent of the owner, and that ' nothing in this section shall be deemed to prevent the owner of any land from making any such excavation or carrying on any such activities on his land '. This proviso, which would seem to negate the intention of the original declaration of the reserve, indicates clearly the attitude of the legislators towards any interference with the rights of a private owner over his land. However, the section of the Act has the valuable advantage that, given the co-operation of the owner, an archaeological site can be protected by the offences provisions of the Act, and this indeed was the intention of this section of the Act. In addition, the creation of a private reserve may be the first step towards the ultimate acquisition by the State of the land in question as an historic reserve, the protection of which is much more secure.

Part VII of the Act sets out details of offences against the Act, and those which are of more direct relevance to the question of protection of archaeological sites are that it is unlawful to:—

(1) Light any fire on a public reserve except at a place established for the purpose;
(2) Wilfully break or damage any fence, building, apparatus;
(3) Wilfully break, cut, injure or remove any or any part of any

wood . . . stone, mineral, utensil, tool, or thing of any kind . . .;
(4) Wilfully dig, cut or injure the sod;
(5) In any way interfere with a public reserve or damage the scenic or historic features.

It should be noted that nothing in the Reserves and Domains Act shall in any way restrict the operation of any of the provisions of the Mining Act, 1926, with respect to public reserves as defined under that Act, and also, that the Governor-General may by Order in Council declare to be subject to the Coal Mines Act, 1925, any public reserve consisting of land vested in the Crown or alienated from the Crown as a public reserve which contains coal, provided that every such grant shall be subject to the consent of the Minister who may refuse his consent or grant it unconditionally or on such conditions as he thinks fit to impose. In addition the Public Works Act, 1928 (see below) is of relevance.

TOWN AND COUNTRY PLANNING ACT, 1953:

This Act, which is designed to allow for the planned and orderly use and development of the land, makes provision for the preservation of objects and places of historic or scientific interest, and may be used by archaeologists in the protection and preservation of archaeological sites. The Act provides the legal framework for the preparation of the planning schemes. The Town and Country Planning Regulations, 1960, detail the procedures to be followed in the preparation of the schemes which are the responsibility of the local authority. In the Code of Ordinances there is provision for the registration by each local body of objects and places of historical and scientific interest. Such registered places are protected in that: 'No person shall, without the written consent of the Council, wilfully destroy, remove or damage any object or place registered by the Council as aforesaid.' However, this is followed by the provision that the Council 'may at any time cancel such registration' without any provision for notification of interested parties. In addition the local body could under the Act make provision for the acquisition of an important site as a reserve. As Daniels notes in his discussion of the Act (1970: 51-56): 'The powers necessary to protect sites therefore exist in the legislation. It is up to local authorities to exercise them if they wish, or can be persuaded to do so.' He then discusses in some detail the points within the preparation of the scheme where archaeologists might best act to ensure the protection of sites, but he does make it clear that a considerable responsibility lies with archaeologists to ensure that the local body is made aware of the presence and importance of archaeological sites within their area. The best points at which to make representations come first at the original preparation of the scheme, and then at the periodic revisions. Should representations fail to achieve the required registration of sites there are provisions for objection, and, if necessary, appeal to the Town and Country Planning Appeal Board. This is

a rather extreme undertaking, but it is available for use if the circumstances warrant it.

OTHER RELEVANT LEGISLATION:

There are several other New Zealand statutes under which archaeological sites might receive at least some degree of protection. Section 58 of the **Land Act, 1948,** and Section 29 of the **Counties Amendment Act, 1961,** both make provision for the creation of strip reserves along rivers, lakes and foreshores. While these reserves, which are primarily to allow for public access, are usually one chain wide, they may in special circumstances be as narrow as 10 feet, and when set aside as part of a subdivision under the Counties Amendment Act come within the provisions of the Reserves and Domains Act, or if Crown Land reserved from sale it is subject to the Land Act, 1948. Because of the orientation of prehistoric settlement in New Zealand to natural water features, both as an economic resource and as a means of communication, these important reserves will in all probability enclose or affect a large number of prehistoric occupation sites. However, not only is it difficult for all of these sites to be brought to the attention of the authorities administering the reserves, but it would also be a most difficult matter to adequately police them to ensure that they were not damaged by fossicking or by economic development, particularly the construction of roads in order to provide the public access for which the reserves were primarily created.

Under Section 493 of the **Maori Affairs Act, 1953,** the Governor-General, acting on the recommendation of the Maori Land Court, may set aside as a reserve any Maori land which is, among other things, of scenic or historic interest.

The **Burials and Cremations Act** offers an indirect form of protection to certain classes of archaeological site, for it is an offence under this Act for any person to interfere without an appropriate permit issued by the Health Department with any human remains in any place of burial. In this respect it is relevant to record that for the purposes of his work as a salvage archaeologist associated with the Tongariro Power Development, Mr T. J. Hosking was issued with such a permit, particularly for the recovery and reburial of human remains from the cemetery which was to be disturbed by the work on the Tokaanu tail-race canal, and also for his work on the project in general. (Hosking, pers. com.)

Crown Land is protected from private individuals under Section 176 of the **Land Act, 1928,** which states that:

"Every person commits an offence against this Act who, without right, title, or licence

(a) trespasses on, or uses, or occupies land of the Crown;

(b) takes or removes from lands of the Crown any bark,

flax, mineral, gravel, guano, or other substance whatsoever."

Furthermore, as McFadgen points out (1966: 97), under the Land Act the State has the power to write into Crown leases and licences provisions for the protection of prehistoric remains, so providing a potential means of protecting such sites. A similar provision exists under the **Mines Act** and persons or companies applying for licences to mine may be required to make provision for the protection of prehistoric sites and for the preservation of artifacts (e.g., the application of N.Z. Steel Ltd. for a licence to mine ironsands at Taharoa).

The **National Parks Act** also gives a considerable degree of protection to historic and scientific sites within National Parks, and the Department of Lands and Survey has shown itself to be willing to use these provisions as they were intended. In 1971 a successful prosecution was brought against two people who had illegally removed some moa bones from a cave in the Urewera National Park, and reasonably severe fines were imposed by the Magistrate.

But there are other legislative provisions which would tend to negate or compromise provisions contained in the legislation already discussed. Section 13 of the **Public Works Act, 1928,** which provides for the right of the Crown to take for 'public works', which would include land for such undertakings as roads, motorways, reservoirs and hydro-electric power schemes, states that such powers "shall include the power to take or set apart the whole or any part of any public reserve or public domain or of any land vested in any local authority for any purpose whatsoever", while Section 25 of the same Act provides that where Crown land, public reserve or public domain is required for a public work the Governor-General, with the consent of the Minister of Lands, shall by proclamation set the land aside for the purposes of the public work.

Section 18 of the **Reserves and Domains Act, 1953,** permits the Minister at his discretion to change the purpose for which any reserve is set aside, or to revoke the reservation, although there is provision that the Minister (or the local authority concerned) shall publicly notify the proposed change of revocation so as to enable persons affected by the change to make objections which must then be forwarded to the Commissioner of Crown Lands, for the consideration of the Minister when making his decision as to the proposed changes. The Minister is also empowered to make his own inquiries into the fitness of the proposal. Provision for such public notification of proposed changes may satisfy legal requirements, but there is always the possibility that the change could be notified and gazetted without any person with an interest in the preservation of an archaeological site becoming aware of the impending changes.

Chapter 5:

A REVISION OF THE NEW ZEALAND LEGISLATION

GENERAL DISCUSSION:

While the last half century has seen a gradual change in public attitudes generally towards the preservation of cultural material, the last two decades have seen a spectacular acceleration of the desire of people and of nations to ensure that generations to come will not only have no cause to charge the present generation with neglect or deliberate exploitation, but that there should be reason for them to applaud the efforts that have been made for the preservation of the cultural heritage and for its transmission to the generations to come. While portable artifacts and ancient buildings, or their ruins, may be, and still are valued and admired as works of art, there is a greater appreciation of the rights of the countries of origin to retain such properties as part of their cultural heritage. This attitude seems to have three principal points of origin. First, there is the effect of growing, or newly emergent feelings of nationalism. Secondly, there is the part played by archaeology itself in the general education of the public in the appreciation of the cultural history, not just of individual nations, but of the world as a whole. An important part of this process has been the development of new skills in archaeology and the spectacular application of discoveries in the physical and natural sciences (e.g., radio carbon dating and dendrochronology) which have caught the imagination of the people in a way which had never previously been achieved. The third important aspect of this development has been increasing affluence and a greater amount of leisure time, for these have made it possible for a far greater number of people, and of far more diverse economic and cultural backgrounds, to take an active interest in prehistory and to visit the sites where discoveries are made or the museums where they are stored and displayed.

But there is also a negative side to the present situation. The very interest which has been stimulated among so many people has led to its own form of threat to archaeological sites and cultural material. Many sites have survived for considerable periods of time merely because they were unknown, or inaccessible, and so were seldom visited. But with modern transport, greater interest and greater tourism the very volume of human visitors to sites can in itself lead to their destruction. In this respect we need only recall the deterioration of the palaeolithic art at Lascaux. And we must not imagine that we have reached the stage where the basic desire for the acquisition of antiquities has been subordinated to the interests of scientific investigation

and scholarly availability. In many respects the despoliation of archaeological sites is as bad as it ever has been, and in fact in some respects it is worse. There would appear to be adequate documentation of the association of site despoliation with the trade in artifacts, particularly in the areas of the ancient civilizations. There is also the undoubted increase in the theft of works of art and antiquities from museums, churches and other repositories. Indeed, in the very week that this chapter was being written, the Dominion Museum, Wellington, was robbed of a collection of artifacts from a display case. While one may deprecate the practice of trade in artifacts for it has its origin in the despoliation of sites, there is obviously a need for some form of controlled trading. However, it is obvious that the trade, legal and illegal, is increasing, particularly in order to supply the demands of the international tourist trade, and while individual tourists may take with them only a small number of artifacts, the cumulative effect of all of this trade is the removal of a considerable number of artifacts annually from the country of their origin.

Of greatest significance in recent years has been the increasing rate of destruction of archaeological sites in the course of economic development projects. This problem, too, has its positive and negative aspects. Work carried out in archaeological salvage and rescue projects has resulted in a vast increase of knowledge about prehistoric cultures, and also of historic events, and great, even vast, sums of money which would not otherwise have been available, have been utilized in the cause of archaeological research. Perhaps the most spectacular of these programmes has been the UNESCO sponsored campaign with regard to the antiquities to be inundated by the waters of the Aswan Dam project, but there have been equally significant projects in many other countries. But a greater number of sites are destroyed annually without any record being kept of their ever having existed. The loss to archaeology and to scientific knowledge generally cannot be calculated, for there is no way of ever assessing the destroyed potential of a site once it has been obliterated.

The situation in New Zealand is little different from that in most other nations. While there is continued despoliation of sites by fossicking for artifacts, and while there is unrestricted internal trading in artifacts, there have been serious efforts made to bring the more obvious aspects of the problem under some form of control. But as has been argued above, when the principal legislation for the protection of cultural material was framed, there was a lack of appreciation of the actual heart of the problem, which is the protection of archaeological sites. This legislative attitude can be seen as a reflection of prevailing public attitudes of the time. Of course there were the political implications of any attempt to interfere with the individual rights of

landowners, and no doubt much of this attitude still persists. However, the recent public controversy over the proposals to raise the level of Lake Manapouri have raised issues which will have effect far beyond the field of nature conservation, for the public attitudes to conservation issues in general have been educated and sharpened to such a degree that it is almost inconceivable that any such works will be planned in the future without due arrangements being made for conservation of the natural and cultural heritage. It is unfortunate that in the Manapouri confrontation the interests concerned with the conservation of cultural material never succeeded in making their case as vociferously as did those interested in the conservation of the natural heritage of the area, for there was much to be gained by total involvement in that campaign.

In any consideration of the problem of the preservation and conservation of cultural material in New Zealand a key question will always be that of the rights of the individual landowner. While it may be appreciated that traditional attitudes and practices will always be resistant to radical changes, and the landowner will always be jealous of his rights and title to his land in the widest sense (although there have always been inroads such as the right to certain minerals, to permission for certain mineral prospecting, and, of course, the overriding effect of the Public Works Act when public interests are involved) it would seem that there now may be a sufficient body of public opinion being mustered on the side of the overriding of these traditional individual rights where the interests of the public as a whole are involved. If this is so, it might now be politically acceptable to consider some new approach to the problem of the preservation of sites. It could be argued that while the landowner should have as much freedom as possible in the normal economic utilization and development of the land, this should not cover cultural properties buried in, or even found upon, his land, and of which he might be in complete ignorance. There would seem to be a case for the following of the practice in Queensland and New South Wales, where, with regard to cultural properties the public interest is considered to be of greater importance than that of the rights of the individual landowner.

Archaeological sites in New Zealand take many forms, and their total number would be almost impossible to estimate. There are certainly many tens of thousands of sites, and there may even be more than one hundred thousand. Of these, less than 10,000 are recorded on the files of the New Zealand Archaeological Association. Yet any effective scheme for the preservation of sites depends on the existence of a reasonably complete register of sites. Not only is this of value and importance in the salvage archaeology situation—for it is necessary to know where, or even that, sites exist if effective salvage procedures are to be evolved—but

it is also the very heart of any scheme for site classification and protection. No-one would suggest that all sites in New Zealand should be forever placed under some form of total protection, but what is possible is that a regional coverage of typical or important sites be instituted and that sites best representative of types in each area be placed under some protective category, perhaps as part of the national system of historic reserves, or even as part of the National Parks system. More important sites, e.g., those of known traditional importance or those of special archaeological significance could receive separate or special protection. However, there are obvious difficulties in attempting to create any class of starred or scheduled sites in New Zealand, as the Archaeological Association discovered when it attempted such a classification of sites. But there are individual sites throughout New Zealand which could without any difficulty be classed as sites of national importance; there are many other sites for which it would be impossible to claim any special protection until they had been investigated archaeologically. The present practice in New Zealand of creating private historic reserves under the Reserves and Domains Act, 1953, would seem to be an acceptable interim device for the protection of sites, although the ease with which such sites may be removed from the category, and the fact that the owners of such sites are not prevented from carrying out surface alterations or even conducting private excavations, are undesirable features in that they make the real protection of the site rather illusory. It would seem to be better that should there be any special reserve categories established that they should be permanent, and that even the owner be prevented from despoliation of the site. It is of course not necessary for all such sites to be purchased by the Crown. Many could remain in private ownership, and be farmed in the normal manner (except for roading, quarrying, deep ploughing, etc.). Any economic loss suffered by the landowner because of restrictions placed on land use could be made subject to compensation, but there appears to be no case for the payment of compensation for the loss of use of the cultural properties.

With regard to the compilation of a national register of sites, there would appear to be a valid case for the involvement of the State in the Archaeological Association site recording scheme, or at least, in so far as major sites are concerned. As has been shown in the review of legislation, New Zealand is one of the very few nations where the State is not actively involved in the searching for and recording of archaeological sites, the work of the Historic Places Trust being excepted, for the Trust's involvement in this area is very limited and any greater involvement would divert its already overcommitted present resources into areas of activity which the Trust was never designed nor equipped to undertake.

A final point with regard to achaeological sites is the question of placing the control of such sites under the National Parks umbrella, as has been done in New South Wales. This could reasonably be argued, particularly on the grounds that one of the functions of a National Park is to make such areas of natural and scientific importance available to the public and to tourists. The same principle could legitimately be extended to historic and prehistoric sites. It is true that such a function has already been undertaken by the Historic Places Trust, e.g., at Te Porere, but the New South Wales experience seems to be that such a function is not incompatible with a Parks Service. However, there is a danger of lessened standards and of the destruction of archaeological sites because of the need to provide services such as roads and camps for tourists. Should such a function ever be undertaken by the National Parks Service, it would be essential that adequate provision be made for trained, professional archaeologists on the Parks staff, as has been done in New South Wales.

The second principal area of concern in the protection of cultural material is the question of the portable artifacts which to most people in New Zealand are the important part, even the only part, of the prehistoric record. Previous discussion has stressed the association of the gathering of artifacts and the destruction of sites, the relationship between the internal trade in artifacts and exports, the conflict between private ownership and the general interest of the public, and the difficulties of any control or supervision of the excavation, particularly the purely destructive, of archaeological sites.

Throughout New Zealand there are many well-known and extensive private collections of Maori artifacts. In addition there are very many minor collections, but these in total would also represent a considerable body of material. There is no doubt that as the law presently exists, this material is firmly established in private ownership and there could be no support for any move to alter this. But two points may be made. First, while such material exists unrecorded in private collections, it is unavailable for professional study, in fact, the existence of a great number of the collections is quite unknown to archaeologists and ethnologists, and this may often result in a very unbalanced appreciation of the range of the material culture of particular areas, and it certainly has an effect on any distributional studies of artifact types. Secondly, much of this material eventually enters into the mainstream of the trade in artifacts, probably changing hands with a periodicity of some twenty or thirty years. Each time a transfer occurs the artifact is further removed from its former cultural and historic associations, and inevitably its scientific worth is lessened. But also of significance is the fact that as all these transfers occur no record is kept of the transaction

in any official or scientific catalogue, and eventually, there will be no way of ascertaining the origin, associations, or even the number of these artifacts. It is suggested that there is a need for some form of official registration of private collections of artifacts so that a record may be kept of their existence and their various transfers. In this regard it is not impossible to think of some computer data bank system of recording. There would be many advantages to such a system, and, of course, it is not impossible that the collections of public institutions could also be included.

That such a programme has a real scientific worth and is also applicable to a programme of cultural preservation is demonstrated by the report made to the UNESCO Conference in Canberra in 1971 by Dr Kaeppler of the University of Hawaii in which she detailed the progress of such a scheme for the recording of Hawaiian material culture both in Hawaii and overseas institutions and in private collections. The long-term aims of the programme, she states (1971: 90) is:

> ". . . to make a detailed inventory of all the Hawaiian artifacts all over the world. The information will eventually be coded by Electronic Data Processing which will make possible the retrieval of information such as associations with persons and places. Thus, if one wished to study all the objects associated, for example, with Captain Cook . . . a rapid answer can be obtained by simply running the EDP cards. One would then know the number of objects and where they can be found."

Such a programme, of course, would enable a close and continuous check to be kept on the movement of artifacts, which is another serious weakness in the present scheme. Although the Historic Articles Act allows the Minister to order the copying and recording of any artifact for which a permit for export has been issued, it does not seem to be Departmental policy to have this done. As a result, once artifacts have left New Zealand little information may be obtained concerning them except the barest detail noted in application forms or in the brief report which is obtained from the specialist to whom it might be referred. If, however, there were a coded card system in operation much more information would easily be recorded and the physical loss of the artifact would not be so serious. However, the comments of Neustupny (1971: 34-39) are still important, for no matter how carefully or fully a card system was set up, there would still be the possibility of workers in future years wishing to obtain other unrecorded information about the artifact. But even if such a card system is not possible, it seems to be desirable that a far more detailed record of any artifacts to be exported should be kept than is now the case.

Associated with any provisions for greater control over the export of cultural material, there would seem to be a necessity for a greater control over the trading in artifacts within New Zealand. While it is obviously unreasonable, and impracticable to attempt

to prohibit sales, there does not seem to be any great obstacle to some form of licensing of approved dealers on the requirement that they submit to the Department regular returns of their dealings in artifacts, including such information as the source and supplier of the artifact, the price at which it was sold, and the name and address of the purchaser. Most dealers are also quite capable of providing a brief description of artifacts. But there would seem to be a need for a more exact record than this, and it would not be impossible for this to be associated with the major recording scheme discussed above. While there would no doubt be some hesitation on the part of private owners, and motives might be misunderstood, and while some considerable initial expenditure would be involved, it should be possible to achieve a complete cataloguing of all privately held collections, perhaps by associating it with a legislative provision such as is in force in Queensland, where artifacts not in private ownership at a prescribed date are considered to be the propery of the Crown. It is in fact difficult to see how such a provision would work unless it were associated with an official registration of all private artifacts.

A further point worthy of consideration is the matter of the issuing of official permits for any excavation of archaeological sites, whether on Crown or private land. This of course would cover all excavations deliberately designed to recover cultural data. Not only would such a scheme be contrary to the wishes of many landowners, although no doubt it would be welcomed by many others, it would probably receive a rather mixed reception from archaeologists themselves. However, it would seem to be the only realistic way in which undesirable fossicking of sites could be brought under control. It need not be operated too harshly, but it would at least serve the purpose of ensuring that all excavations were carried out by individuals and groups competent to achieve the aims which they set themselves, and that illicit excavations could be more easily brought to the attention of the authorities. Such a procedure could cater equally well for the requirements of amateur as well as professional archaeologists, and any irritation or inconvenience caused by the scheme would be a small cost if it were successful in bringing undesirable excavation under control.

But how could the scheme be administered, and who would issue permits? It would probably be necessary to consider the establishment of some form of Advisory Board such as has been instituted in Australian States and in other countries whose legislation has been reviewed. Such a body could be based, as in South Australia, on the existing State museum, and all bodies concerned with archaeology or cultural preservation could be represented.

RECOMMENDATIONS CONCERNING POSSIBLE REVISION OF LEGISLATION:

While it was originally intended that an attempt should be made to 'frame' a revised ideal Act for the protection of the Cultural Heritage of New Zealand, it has been realized that such an exercise is a highly specialized undertaking, quite beyond the competence of any person other than a qualified legal draftsman. Hence, in this final section of the work it is intended to set out general and basic concepts, and areas in which it is considered the present legislation might be revised. The data on which such recommendations are based is all contained in the relevant chapters of this work which may be referred to for further detail.

1. **The Basic Problem:**

   This is the protection and preservation of all aspects of the cultural heritage of New Zealand, to ensure its wisest use in the present, so that it may be passed on to the succeeding generation in a manner and condition which will ensure its continued persistence through time. There are two major facets to the problem:
   (a) the protection of archaeological sites,
   (b) the protection of portable archaeological material; and of these the protection of sites is the more important, although certainly the two aspects are intimately inter-related, and success in one area will contribute to success in the other.

2. **The basic principles:**

   The matter of the preservation of the cultural heritage is of world-wide concern, and the success of any programme will depend on the mutual co-operation of all nations. Because culture belongs to 'a people' and not to individuals, in the matter of cultural preservation, the rights of the public should over-ride the rights of the individual.

3. **Legislation of greatest relevance:**
   (a) UNESCO Draft Convention on the means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the European Convention on the Protection of the Cultural Heritage are both of importance as they set out basic principles and procedures on an international scale which may be utilized to guide the framing of legislation at the national level.
   (b) While all of the legislation reviewed in Appendix A is relevant to the preparation of any new legislation in New Zealand, the following Acts would seem to have a more applicable general relevance, or, they set out basic provisions which appear in most other legislation:—
      (1) **South Australia** (Aboriginal and Historic Relics Pre-

servation Act, 1965):—for constitution and functions of the Advisory Board, administration of site protection provisions and use of restricted entry reserves.

(2) **Queensland** (The Aboriginal Relics Preservation Act, 1967):—for ownership of relics and control of excavation.

(3) **New South Wales** (National Parks and Wildlife Amendment Act, 1969):—for association of site protection with National Parks Service.

(4) **Hawaii** (Chapter 6, Historic Objects and Sites): for involvement of State in site survey and recording, and for salvage archaeology.

(5) **Japan** (Law for the Protection of Cultural Properties, 1960):—for classification of cultural properties.

4. **General Provisions:**

The following provisions are suggested as worthy of consideration in the revision of the New Zealand legislation for the protection of archaeological sites and material.

(1) **Advisory Committee:**

As it is recommended that the scope of the legislation be widened to include provision for the protection of sites as well as the portable artifacts which are covered by the present legislation, there would seem to be a need for the formation of a Specialist Committee, along the lines of the South Australian Advisory Board to advise the Minister on all matters related to the Act, including the reservation of special areas, permits for the export of relics, and for permits to carry out excavations.

(2) **Official Record of Cultural Properties:**

(a) If there is to be a worthwhile policy of preservation of archaeological sites, it is essential that that there be a complete, accurate and up-to-date record of the extent, nature and location of these properties. This would be a task of some magnitude and it is recommended that its compilation become the responsibility of the State, or at least, that the State achieve this end by providing assistance for the rapid expansion of the present New Zealand Archaeological Association Site Recording Scheme or by extending the scope of activities of the Historic Places Trust.

(b) serious consideration should also be given to the compilation of a list of cultural properties on a national scale, including private collections, particularly with regard to instituting a computer

data bank system such as has been commenced in Hawaii, not solely as a research tool but to enable an accurate assessment of national holdings to be made so that a realistic policy with regard to exports might be possible.

(3) **Site Preservation and Protection:**

(a) That recognized important sites, on private as well as Crown Land, be declared special reserves, if necessary with restricted rights of access. While such reservations on private land should always be carried out with the co-operation of the landowner, there should be provision for compulsory declaration if necessary. There would be no necessity for such land to be purchased by the State, although in certain instances and circumstances this might be necessary, but where the owners rights to full and free utilization of the land are restricted compensation should be payable. In general, if a site is worthy of such protection, it should not be possible for the reservation to be lightly removed. This should be done only on the advice of a Board of Experts, and should be done only where it can be shown that the original reason for the reservation no longer applies.

(b) As the supervision of important reserves will be a major difficulty, it is recommended that a system of local wardens (such as in South Australia) be instituted. There is also a case for some form of 'Deputy Protector of Relics', perhaps utilizing the experience and knowledge of local museum directors and N.Z. Archaeological Association Regional Filekeepers.

(c) It should be an offence to knowingly disturb an archaeological site in order to recover cultural material, except under an official permit. There would need to be an allowance made for sites discovered in the normal course of farming practice or during construction and development projects, although it should be necessary for such sites to be reported to the appropriate authority within a specified time.

(d) All excavation, professional as well as amateur, should be controlled by official permits, issued by a central authority. This would allow a record to be kept of all research projects, and should be of as much assistance to the archaeologists as it is to site protection in general. Conditions

of such permits should include provision for the eventual placement of materials recovered in an approved educational institution, and for adequate reports and copies of all publications to be provided for a central archive of archaeological literature.

(4) **Portable Cultural Properties:**

(a) Basically, all such properties should belong to the Crown. There would be need to establish some form of base-line as has been done in Queensland in order to clarify the status of artifacts already held in private collections.

(b) There should be a compulsory official registration of all private collections of artifacts. This would be essential if the base-line proposals in the previous recommendation are to be effective.

(c) There is clearly a need for some form of approved trading in artifacts, and it is recommended:—

(1) that only artifacts held in private ownership at the commencement of new legislation, or at a date stated in the new legislation, and registered with the official list of cultural properties, be permitted to be bought and sold,

(2) that all traders in artifacts be licensed, and that it be a condition of their licence that returns of sales, including information as to origin, owner, price and purchaser of artifacts be provided.

(d) There are certain private collections which because of their size, or because of their association with restricted districts or even individual sites are more valuable as collections than any of the individual items might be, and it is recommended that in association with the national record of cultural properties there should be provision for the designation of such collections as 'important collections' which may not be broken up or disposed of without the special permission of the Advisory Board. Such a provision would be analagous with restriction placed on privately-owned sites.

(e) There should be provision for the encouragement of the practice of the lodging in approved museums of important cultural properties owned privately, particularly heirlooms held in private families.

(f) Certain duplicate material recovered in the course

of archaeological excavation in the future, when no longer required by the archaeologist for the purposes of completing official reports, could be made available for sale on the recommendation of the Advisory Committee.

(g) There is still a need, despite the practical difficulties which are fully appreciated, for continued control over the export of cultural material. It is recommended that:—

(1) the practice of issuing export permits be continued, but that greater efforts be made to make owners and purchasers of cultural material aware of their obligations under the Act when they wish to export such material.

(2) all such material be submitted for official scrutiny before permits are issued, and that the packaging and posting of such materials be carried out by the official body, at the expense and risk of the owner.

(3) there should be greater use made of the present power to copy and take records of artifacts for which export permits have been issued. Wherever possible, duplicate copies should be made, and be kept in an appropriate museum, but certainly a full photographic and technical description of such artifacts should be kept.

5. **Provision for salvage archaeology on threatened sites:**
In this respect the provisions of the Hawaiian legislation are particularly relevant, and it should be accepted that all sites, whether on private or Crown land, are covered by the legislation and that the salvage provisions should apply equally to sites on private land.

It is recommended: (a) That where major development projects or constructions are undertaken, and it is known, or might be reasonably expected, that archaeological sites are threatened, that the agency responsible for the work take steps to ascertain the extent of this threat, and inform the Advisory Board, or a local warden of their plans.

(b) That where it is known, or shown, that archaeological sites will be damaged or destroyed by development projects, time be made available for an appropriate archaeological investigation to be carried out, and that in the first instance the agency responsible for the damage assume a responsibility for the financing of such work. However, it is possible that at times, and where important sites are involved, the cost of salvage archaeology would be greater than might reasonably be expected to be included in the

cost of the project, and in this situation some provision should be made for the application of State funds to the salvage project, even where the site is on private land.

6. **State Archaeological Agency:**

But perhaps the most crucial recommendation which must be made is that to establish in New Zealand some formal State Archaeological Agency. Such a body differs from an advisory committee suggested above, in that it would comprise professional archaeologists and technicians able to undertake not only the compilation of registers of archaeological sites and materials, and supervise the administration of the legislation, but also to undertake salvage operations where necessary, and basic research programmes as required. It is unrealistic to think of this agency as a full Department of State, but there are obvious niches within the present governmental establishment where such an agency could function efficiently—perhaps as a division of the Department of Scientific and Industrial Research, or, following the model of the Wildlife Branch, as a Division of the Department of Internal Affairs, or by an extension of the function and powers of the New Zealand Historic Places Trust. Wherever and whenever such an agency is established it would appear to be desirable that it should encompass all of the archaeological staff employed by the State, as this will avoid the fragmentation, duplication and loss of efficiency, which would necessarily result should the limited number of archaeological staff which the State could afford to employ be scattered around, and isolated within the several Departments which might have call upon their services.

APPENDICES

Appendix A

LEGISLATION IN OTHER COUNTRIES

(1) AUSTRALIA:

With a prehistory exhibiting a temporal span of some 30,000 years (McCarthy, 1970a: xiv), Australia is richly endowed with surviving expressions of the cultural activities of the indigenous population throughout this long period of time. McCarthy (ibid.: xiii) records that some 1200 sites of Aboriginal rock engravings alone are known for Australia, with some of the larger sites having as many as 15,000 individual figures. In addition to these engravings there are stone arrangements, carved trees, graves and burial areas, stone implement quarries, camp sites, ochre mines, axe grinding grooves, fish traps and dams, and caches of sacred stones and boards. Also of cultural significance are sacred and religious places in the form of rocks, waterholes, trees, mountains, and other natural features of the landscape which are of importance in the prehistoric record. While many of these sites are under threat from such natural agencies as animal rubbings, water seepage, erosion and frost damage, as well as from the activities of insects, birds, lichens and mosses, a far greater threat is now presented by such human agencies as tourists, campers and vandals as well as from the economic development and commercial exploitation of the land, particularly for housing and roading, and the extraction of the mineral riches of Australia. (See Pratt, 1971: Edwards, 1970.)

McCarthy (ibid.: xi) notes that during the 19th century, all states in Australia, commencing with Tasmania in 1846, had passed various Acts to protect the indigenous fauna, and that similar legislation aimed at the protection of indigenous flora, initiated by New South Wales in 1927, had been passed in all states by 1939. This legislation had been responsible for the preservation of many species of animals and plants from extinction, and in the establishment of various national parks and similar areas in order to preserve natural habitats and breeding areas. It was perhaps even more important that these Acts were responsible for the awakening of the public conscience to the unique nature and value of the natural flora and fauna of Australia, and the need for its preservation. However, McCarthy also points out (ibid.: xii) that "Governments . . . were pathetically slow to provide similar legislation to protect Aboriginal antiquities. The Acts under which the various native affairs departments operate deal with the living Aborigines and not with the antiquities that their long occupation of the continent has produced."

While in most States some sites of outstanding interest had been reserved, often on the initiative of the surveyor who discovered them or from the request for reservation made to the State government by museums, anthropological societies or other similar bodies, little real endeavour had been made to adequately provide for the preservation of such sites. Local bodies had declined to provide protection on the grounds of lack of finance, even though many sites were being used as local tourist attractions. Councils permitted quarrying, road construction, housing and recreation developments to destroy prehistoric sites of all types. However, McCarthy is able to point to the increasing general interest in the preservation of sites, to the increasing co-operation

with museums and other interested organizations to ensure the preservation of sites, and even to the fact that some pastoralists and landowners are taking steps to reduce the damage to sites (and, incidentally, to their own property and stock) by trespassers and vandals.

The first legislation in Australia specifically framed for the protection of aboriginal antiquities was enacted in the Northern Territory in 1955. This has been followed by similar legislation in South Australia (1965), Queensland (1967) and New South Wales (1969). The impetus for this legislative activity, McCarthy notes, has come from various sources—from the representations of interested organizations and scientists, from the rapid development of tourism, and from the greater interest of both State and Federal governments in all matters connected with the Aborigines. Not least among the influences which have stirred the Australian conscience has been the striking results of archaeological research in Australia in the past decade which have ". . . engendered official interest in the historic and scientific value of aboriginal antiquities and the urgent need for their protection." (ibid.: xii.)

As will be seen in the examination which follows of the principal legislation from several states of Australia, although slow to become aware of the necessity for the provision of legislative protection for surviving cultural reminders of the Aboriginal occupation of the land over a remarkable temporal span, several state legislatures have proved to be neither too cautious nor too timid in their ultimate approach to the problem. They have shown an appreciation of the fact that the problem is much wider than the collection and preservation of chipped and polished stones, painted and carved wood and bark, or of decaying skeletal material. They have fully grasped the importance of the archaeological site rather than the individual artifact as the significant element in the problem, and that it is the intact site which is the real storehouse of scientific data on which is based the study of the temporal and spatial distribution of the indigenous population of the continent. In this respect they have shown themselves to be more aware of the basic problems than have been the legislators in New Zealand, although this may be largely due to the fact that they were later into the field of this type of legislation, and therefore had the benefit of the experience of the earlier legislation, and of the considerable changes in public attitudes towards the whole question of the conservation of the natural and cultural heritage which has been such an important feature of the last decade. In order to achieve the preservation of cultural material and sites and to make them available for continuing scientific investigation and study, the States whose legisaltion is to be examined have been prepared, in certain circumstances, to override customary attitudes to land ownership with regard to cultural properties found on and within the land, and have been prepared to establish the prior right of the State as the guardian of the rights and interests of the public in general. Given the will and the means to make the legislation meaningful and effective, they have initiated processes which should make a real contribution to the preservation of cultural material in Australia.

(A) South Australia:

The history of the preservation and conservation of Aboriginal cultures in South Australia has been little happier than in other States in Australia. Land hungry European settlers in the early 19th century soon pushed increasing distances inland destroying cultures and decimating indigenous populations as they did so,

and leaving behind them "a chain of sites which have been largely neglected and left to the mercies of weathering and vandalism". (Edwards, 1970: 159). Early administrators and early missionaries and explorers often made efforts to pay attention to the rights and needs of the indigenous population, and many kept records of Aboriginal language and customs which now comprise invaluable ethnographic material, and which laid the basis for the continuing anthropological studies, usually based on the South Australia museum, which have been a feature of this part of the Commonwealth. Artifacts gathered during this work usually found a more or less satisfactory haven in the museum, but other relics and field sites received no such protection. Eventually, in 1963, formal meetings involving several Departments of State, the museum, and other involved persons were held to discuss this problem, and from their deliberations came a Bill providing for the protection of cultural materials and sites which was passed in the Lower House in August, 1964. However, it was rejected by the Legislative Council as Government members were of the opinion that the clauses affecting the rights of private landowners were unacceptable. The Bill was redrafted, and the revised attempt to legislate for the protection and preservation of cultural remains in South Australia proved acceptable, becoming, in December, 1965, the Aboriginal and Historic Relics Preservation Act, 1965 (ibid.: 106).

The Aboriginal and Historic Relics Preservation Act, 1965:

This Act is concerned with the preservation of two classes of relics: First there are those deriving from the Aboriginal culture of South Australia, comprising "any trace, remains or handiwork of an Aboriginal but does not include any handiwork made by an Aboriginal for the purpose of sale". Specific regard is paid in some sections of the Act to cave paintings, rock engravings, stone structures, arranged stones or carved trees, all of which it is an offence to "knowingly conceal, destroy, deface or damage", and finds of which must be reported to an appropriate authority. Secondly there are those relics which are "any trace or remains of the exploration and early settlement considered of sufficient importance by the Minister to warrant protection under this Act".

The Minister of Education, who administers this Act, is required to appoint an Advisory Board comprising representatives of academic institutions and Departments of State to advise him on matters relevant to the Act. The Protector of Relics is normally the Director of the State museum. Inspectors and wardens may be appointed to assist with the administration and enforcement of the Act, and these officials are empowered to request the names and addresses of any persons who might reasonably be suspected of having committed an offence against the Act, to search for, examine or seize any relic, and to retain it for investigation and legal proceedings and to require any person reasonably suspected as likely to damage a relic to leave an historic reserve. In addition, inspectors are empowered to arrest any person refusing to provide personal details or providing false information.

It is important to note that the Protector of Relics is required, not only to keep a register of all reserves, prohibited areas, and other known occurrences of relics, and to regularly inspect and report annually upon their preservation, but is required also to actively search for, and seek information in relation to any new discovery of relics and to arrange for the preservation of any such new discovery. It is of significance that Edwards (1970: 164) is able to comment on the increasing public interest in relics and

their preservation arising from this work, and express the hope subsequently fulfilled (Edwards, pers. con.), that by 1971 a full-time inspector would be appointed to co-ordinate the programme of discovery and research into new relics throughout the State, and to make regular supervisory visits to all the main areas.

Where significant relics are discovered in situations where their preservation is threatened by the interference of people, or where they are exposed to the elements, the site may be declared a "prohibited area" and steps be taken to either prevent or control the entry of all persons on to the land. Where the relic occurs on private land it is usually necessary for the owner of the property to give his permission for the establishment of the reserve. As Edwards points out (ibid.: 160) while this procedure does have the effect of severely restricting the entry on to these sites of persons who might through carelessness or through deliberate design damage or cause the destruction of important sites, it does make provision for the controlled entry of individuals and special groups who may be shown the site and be informed about it by a responsible guide. A less restrictive form of reservation is employed when provisions for the protection of the relics are not incompatible with other uses of the land. This is the creation of "Historic Reserves". No permits for entry are required by visitors, as the sites are considered to be not endangered merely by the presence of visitors, except in the cases of deliberate and wanton vandalism against which no effective action can in fact be taken. In cases where the Minister is informed by the Advisory Board that there is a unique and irreplaceable relic on, in or under the ground, and which is in danger of loss or damage, he has powers of compulsory acquisition. However, the proclamation of a Historic Reserve may be revoked should the Minister be satisfied by the Advisory Board that no important loss of relics would result from the revocation, and he also has the additional power to revoke either form of reservation at his discretion, without any request. All relics within a Prohibited area or an Historic Reserve are regarded as the property of the Crown, and under the Crown's protection, and the Minister is empowered to direct the excavation or examination of an Historic Reserve, and the removal of relics from it to a place of safe storage. These powers would appear to completely over-ride the rights of the landowner.

Both the Minister and the Protector are empowered for the purposes of preserving a relic to purchase or otherwise acquire it on behalf of the Crown, to purchase land on which immovable relics such as cave paintings, rock engravings, stone structures and arrangements, carved trees, or buildings may be present, and they may also erect screens, shelters and other structures where necessary to preserve relics.

While it is not an offence to pick up or collect any portable relic exposed in or upon the surface of any land, the person so collecting a relic must safeguard it from loss or damage, and no such portable relic may be bought or sold without the permission of the Protector. By definition in the Act, 'sell' means ". . . to sell, barter or exchange, or offer or agree to do so, or to receive, expose, store, have in possession, send, consign, or deliver for or on sale, barter or exchange". It is of interest to note that in its first annual report (Inglis, 1970) the Advisory Board noted that it had in fact intervened in the proposed sale of some portable artifacts with the result that a collection of ancient and well-made artifacts were purchased by the Museum Board and added to the State Collections.

A further provision of the Act is that other provisions of the

Act notwithstanding, Aboriginals shall not be denied free access to and enjoyment of relics of their forebears. They may make such use of any relic of their forebears as is sanctioned by their tribal laws, although, Aboriginals are expressly forbidden to sell any relic for personal gain, unless such sale be to the Protector or made with his written consent.

Administration of the Act:

The procedures followed in the administration of this legislation are discussed by Edwards (1969: 4-5), who points out that the Advisory Board has taken the attitude that as the Act gives a blanket protection to all Aboriginal relics in the State, there is no necessity to recommend the proclamation of reserves unless there is special justification for such reservation.

When an occurrence of a relic is discovered and reported as many details as possible are obtained from the finder, and the description and location are checked against existing records to ensure that the report is in fact one of a new relic and not merely a re-discovery of a previously reported find, for as Edwards notes (1969: 4) ". . . particularly near cities, larger country towns, or popular tourist areas, it is inevitable that the same relic will be reported over and over again, each time with a description sufficiently misleading in itself to suggest that it may be a new find". Once checked, the find is reported to a local Inspector or Warden who carries out a preliminary inspection and reports his findings. If the site is thought to be of sufficient potential significance it is visited by representatives of the Advisory Board, who will discuss the site with the property owner, and if necessary obtain his approval for further action on a form specially prepared for the purpose. The matter is then referred to the State Planning Office and other bodies or persons who might be concerned. The results of this full enquiry are then presented to a full meeting of the Relics Advisory Board at which the decision whether or not to recommend a reservation to the Minister will be made. After checking by the Lands Department the final decision will be made by the State cabinet. If the recommendation is accepted, the declaration is announced in the South Australian Government Gazette. The site is marked on public plans held in the Land Office, the property owner is notified, as are the Royal Automobile Association, so that the site may be included on tourist guides and maps, and the Australian Institute of Aboriginal Studies for the information of research workers. Where necessary, declared sites are fenced and signposted, and the brief descriptions and assessments of the separate sites contribute to the aims of the conservation by widening public awareness of the need for the preservation of such items of cultural heritage.

This last point is only part of the wider programme of public education on which the success of this, and any other, programmes for the conservation of the cultural heritage depend for their success, for 'legislation in itself can achieve little unless there is an enlightened public, anxious to see Aboriginal relics preserved and willing to assist' (Edwards, 1969: 5). Of considerable importance in the success of this legislation are the local wardens, who as Edwards states (1969: 5) constitute not only a reliable and accessible source of local information, but who, in their own areas by their informal contacts with other persons, talks to societies, and articles in local publications, stimulate regional awareness of the importance of relics, and the need for their preservation. Not to be ignored as part of the whole programme of public education are the publications of the Advisory Board (e.g.

Anon., n.d. [a]) which are specifically designed to stress the part each individual citizen may play in the preservation of Aboriginal relics.

As a result of these educational programmes the Board has been able to establish an admirable public relations system, resulting in the almost complete reversal of the general public attitude towards the conservation of cultural material in South Australia, where the Board and the Museum are overwhelmed with requests from people in all walks of life to preserve the relics they find (Edwards 1970: 164).

Edwards (1970: 164) comments favourably on the association of the South Australian Museum with the administration of this legislation. The association to be found in such an institution of staff, facilities, and existing records proved to be an admirable basis for the effective operation of the legislation, and it was a practical decision of considerable and long-lasting value that this storehouse of facilities and expertise should have been expanded and improved in the service of the State and the community, rather than that it should have been duplicated.

(B) Queensland:

The Queensland legislation which aims to provide for the preservation of anthropological, ethnological, archaeological and prehistoric Aboriginal relics in Queensland, and which came into operation in 1968 has been claimed to be the most advanced of its kind in the Commonwealth (Killoran, 1970: 167). This claim was based largely on the fact that in the framing of the Act due regard had been paid to the enactments of other States of the Commonwealth and of other countries throughout the world, and fully acknowledged the fact that it had been possible for the legislators of Queensland to learn from these other attempts something of the administrative and technical problems involved in the framing of this kind of law, and to profit from the experiences of the other countries. Nor were the framers of the Queensland legislation unaware of the rapidly changing public and political attitudes to conservation legislation, so much so that Killoran, who is the Director of the Department of Aboriginal and Island Affairs in Queensland, has been able to write, "We would venture to say that before the 20's or 30's of the century, legislation such as this would not have been born, because the general feeling of Australians, with the exception of a small minority, would have been one of apathy, and the present situation is, at long last, indicative of an interest, a sympathy and a respect for the original Australians both as a people and as the possessors of a unique culture", and again, "A major point to be stressed is the reception this Act received on its way through the Queesland parliament. It was an issue that received the support of all Members of the House and the general climate of opinion, both among legislators and the general public, was one of enthusiasm. This has importance, indicating as it does the radical change in public opinion which has become abundantly manifest during the past two decades" (Killoran, 1970: 167). These two statements indicate the degree to which political acceptability is determined by public attitudes. They also highlight the fact that the New Zealand legislation was prepared at a time when the public attitudes had not sufficiently crystallized to have a similar radical effect on the attitudes of the legislators.

The Aboriginal Relics Preservation Act of 1967:

The purpose of this legislation is to preserve as part of the birthright of Queenslanders and as part of the State's patrimony all

material things that have relationship to Aboriginal culture, and which are defined in the Act as being "any Aboriginal remains and any trace, remains or handiwork within the State of Aboriginal culture" but does not include any modern handiwork made for the purpose of sale for money. It is also made clear that no provision of the Act shall prejudice the rights of ownership of any Aboriginal or tribe in relics used or held for tribal purposes, neither does the Act prejudice the rights of any person normally subject to Aboriginal law and custom to free access and enjoyment of relics in a manner sanctioned by tribal custom, although these provisions cannot be construed as giving any person the right to sell a relic for personal gain, unless it be in accordance with the relevant provisions of the Act.

The Act is normally to be administered by the Minister of Education through a Director and other officers who hold their positions under the Aborigines and Torres Strait Islanders Affairs Act of 1965. Inspectors, wardens, and other officers may be appointed by the Governor in Council, and each is provided with an identity card which must be carried for identification in the event of the officer wishing to exercise his powers under the Act. These powers permit an inspector to take the name and address of any person whom he finds or reasonably suspects of committing or having committed an offence against the Act, and even to arrest a person who fails to correctly give this information. He may also inspect and examine any relic, seize and retain any relic for the purpose of investigation or legal proceedings, and may require a person whom he regards as liable to damage a relic to leave an Aboriginal site. A warden has similar powers, but without the right of arrest, and where he is appointed in respect of an Aboriginal site or a limited area, has powers only within that site or area.

The Act provides for the appointment of an Advisory Committee which is required to advise the Minister on the anthropological value and significance of a relic or of an area which is such that it might be declared an Aboriginal site, on the desirability of declaring an area an Aboriginal site or of resuming or otherwise acquiring an area for reservation or of acquiring a particular relic, on the extent of any area which should be declared, resumed or acquired for preservation as an Aboriginal site, and on any other matters pertinent to the Act.

Where it is expedient to reserve an area for the preservation or protection of a relic, and that for these purposes it is necessary to prevent or control the entry of persons on to the area, where satisfactory arrangements have been made for the maintenance and control of the area, and when the required consents have been obtained, the Governor may in Council declare such an area to be an Aboriginal site. For Crown lands the permission of the appropriate Minister must be obtained, and for private land, that of the occupier and where he is not the owner, of the owner as well. Should circumstances no longer require the reservation, the Government by Order may declare that the area has ceased to be an Aboriginal site, and the land reverts to the original owner. Where the Governer is satisfied that it may become expedient to reserve a particular area of land for the preservation or protection of a relic, and that for the meantime it is necessary to control the entry of people, he may declare the area to be a temporary Aboriginal site. On any declared Aboriginal site, the Director may have the boundary delineated by suitable notices or boundary marks, and may erect structures necessary for the protection of any relic therein.

The provisions in this Act for the ownership of relics are far more sweeping and all-embracing than those in any of the other legislation already examined. Subject to provision for the rights of Aboriginals over tribal relics, and notwithstanding that the relic is situated on land which either before or after the commencement of the Act has become private land, a relic is and is deemed to be the property of the Crown, save where it is shown that:—

(a) in respect of a relic found within the State it was, at the date of commencement of the Act, in the possession of some person and has not become abandoned within the State since that date; or
(b) in respect of a relic found outside the State it has not since become abandoned within the State; or
(c) it was delivered to a person under the provisions of the Act and has not since become abandoned within the State.

Further, for the purposes of the Act a relic shall not be deemed to be in the possession of a person by reason only of the fact that it is in, on, or under land or premises owned or occupied by him. Following from this, it is an offence for any person to take, damage, deface, uncover, expose, excavate, or interfere with or be in possession of a relic "the property of the Crown, or upon an Aboriginal site, do any act likely to endanger any relic thereon or thereunder", unless authorized under the Act, or unaware that a relic is involved.

The Minister may cause and permit the excavation and examination of an Aboriginal site and of any relics thereon, and may have relics removed to a place of safe storage. Any person wishing to carry out an excavation or examination on an Aboriginal site or in respect to any relic for anthropological purposes must apply to the Minister for permission, and in considering the application the Minister must have regard to:—

(a) the qualifications of the applicant to properly attain the purposes to which the application relates;
(b) the desirability of carrying out the excavation or investigation upon the Aboriginal site or in respect of the relic in question;
(c) the financial resources of, or available to, the applicant to attain the purpose to which the application relates.

Should the committee recommend to the Minister that an authority be granted, it will be specific to the person named and shall be of no force or effect on any part of an Aboriginal site situated on private land unless the owner of the land has given his consent in writing. The permit shall remain in force for 12 months and may be renewed on reapplication, although a permit may also be revoked at 28 days notice by the Minister. Finally, a person who performs excavation, examination or research under authority granted by the Ministry and who later publishes in writing in respect of the work, must furnish to the Minister, a copy of such writing. It is important to note that the worker is not required to supply a report to the Minister as a condition of his permission, but merely to supply a copy of any report which might be published. Any relics removed from an Aboriginal site under the authority to carry out an investigation or excavation must be surrendered to the Director for classification by the committee, which may decide either that the relic be retained by the Crown or that it is not required by the Crown and may be returned to the finder should he wish. However, notwithstanding that it be determined that any particular relic is to be retained by the Crown, the committee may recommend to the Minister that he permit a person to take possession of any relic and remove it

from the State for such time and for such purposes as the Minister approves. This provision, of course, is to enable the investigator to carry out a full processing of any material he might recover.

The Act also requires that any person having knowledge of the existence of any Aboriginal relic such as an Aboriginal burial ground, cave paintings, rock engravings, stone structures, arranged stones or carved trees which he knows or suspects to be a relic must report its existence to an inspector, although this need not be done if the person reasonably believes that the relic in question was already known to an inspector.

The Minister has powers under the Act to purchase or otherwise acquire relics other than land for the purpose of their preservation, and may cause structures to be erected or steps taken as necessary to protect or preserve a relic. He may also declare any private land which had been part of an Aboriginal reserve to no longer be a reserve if he is satisfied that such action would cause no substantial loss to anthropology, and in doing so may order relics on or under such land to be removed to safe storage.

Discussion:

It is important to note that Queensland, like South Australia, has under this legislation, set up a committee to advise the Minister on matters relating to the Act. In addition the administration of the legislation is entrusted largely to an existing Department of State, thus ensuring that there is a development of an already functioning administration, and there is no necessity to attempt to set up a new structure. There is also provision to appoint wardens and inspectors, and as in South Australia, these can be appointed with limited jurisdiction over specific sites. This has the obvious advantage of involving local persons, either because of their interest in Aboriginal relics and anthropology or because of their position as a land owner.

The concept of the State ownership of all relics is momentous and vital. Care has been taken not to be unreasonable, and artifacts existing in private ownership before the introduction of the Act remain so. This is important, for no doubt this body of material will comprise the artifacts available to satisfy the needs of the trade in artifacts, for this trade will doubtless continue to exist in Queensland as it has in all other countries. It is also significant that the State may release other artifacts to private ownership, although except for the restriction on the export of relics from the State there would appear to be no restriction on the buying and selling of relics as there is under the South Australian legislation.

By assuming ownership of all relics not in private ownership at the coming into effect of this Act, and by specifically denying the right of the private landholder to ownership of relics on or in his land merely by right of his ownership of the land, the State has provided itself with an effective mechanism for controlling all investigations of prehistoric sites. The provision for the issuing of permits for all investigations of Aboriginal sites, and of sites on any land where any disturbance or interference with relics is involved is far more radical and far-reaching than has been included in any other legislation in Australia or New Zealand. Under this provision the committee is required to enquire into the credentials and facilities of any worker to ensure that the work will properly be carried out. As is pointed out by Killoran (1970: 168) this system will have advantages also for the archaeologists who will be able to ascertain whether or not the area they have chosen is already the subject of investigation. Sites of importance

will be available for investigation only to competent and fully backed archaeologists and will not be able to be interfered with by ill-equipped amateurs. The institutions backing the archaeologists will be made aware of the need for providing a sufficiency of funds before work will be allowed. The establishment of a State library of archaeological reports is an admirable development, and will be of great value to all fieldworkers, although it is surprising that the Act does not lay down that the granting of permission to carry out an investigation will be conditional upon the provision of a report on the work. At present, it would seem that the only requirement is to provide the State with a copy of any report which might be published, and should a report not actually be published, then there would be no record of the work at all in the State library.

Another significant provision of the Act is that which prohibits the removal of relics from the State (this provision is implicit in that any excavated relics must be surrendered to the Director, who, with the committee, will determine whether or not the relic should become the property of the Crown or be returned to the excavator, and also recommend to the Minister whether or not the relic should be allowed to leave the State). The provision ensures the safe custody of the relic, but also makes it possible for the excavator to fully carry out his investigations.

It is of course an important feature of this Act that it is concerned with sites as well as with individual portable relics.

This Act, with its many admirable features already commented upon, would seem to justify the claims made that it is probably the most advanced legislation of its kind in the Commonwealth, but the effectiveness of any legislation can only be judged by its operation in practice, and on this point the present investigation has no information.

(C) New South Wales:

The range of Aboriginal antiquities to be found in the State of New South Wales is at least as wide as that to be found in any of the other States of the Commonwealth, and in total number the State ranks very high. The principal classes of antiquities in New South Wales include cave paintings, rock engravings, carved trees and canoe trees, burial grounds and graves, axe grinding grooves, stone arrangements, shell middens and other prehistoric occupation debris, Bora initiation grounds, stone fish traps, and quarries for stone. (McCarthy, 1970b: 15-25.) McCarthy (ibid.: 22) has recorded that first efforts to have legislation enacted for the protection of this extensive range of antiquities were made in 1939 when he submitted a draft Act through the Australian Museum. The legislation was not enacted, and a similar fate met a resubmission of the proposals by the Anthropological Society of New South Wales in 1945. In 1966 the New South Wales Government set up a committee to further this matter, and this resulted in 1969 in amendments to the National Parks and Wildlife Act, 1967, which is the effective legislation in the State under which provision is now made for the protection and preservation of Aboriginal antiquities, although previously a large number of individual sites had been reserved by the Lands Department at the request of various organizations and institutions.

The association of this legislation with National Parks and Wildlife Service makes the New South Wales approach to the problems of the preservation of cultural material quite different from that of the other Australian States, and has resulted in the establishment of quite different priorities, principles and emphases.

It is as yet rather early to adequately assess the success of this different approach to the problem, although those who have been privileged to visit the reserve at Mootwingee in Western New South Wales, and the Royal National Park south of Sydney would probably agree that the problem is being approached with enthusiasm, vigour, and a due regard for the antiquities themselves, and that the marriage of the concepts of cultural preservation and the public use of National parks and reserves is by no means incongruous.

The National Parks and Wildlife (Amendment) Act, 1969:

The original Act, the National Parks and Wildlife Act, 1967, was, in part enacted to enable the reservation of certain national parks, State parks and historic sites, to provide for further such parks, and to make provision for the development, use and preservation of these areas. The 1969 amendment proposed, among other things, to make provision for the preservation of certain anthropological, archaeological and aboriginal relics. Under this Act a relic is defined as "any deposit, object or material evidence (not being a handicraft made for sale) relating to the indigenous and non-European habitation of the area that comprises the State of New South Wales, being habitation both prior to and concurrent with the occupation of that area by persons of European extraction".

As with the other Australian legislation already examined, this Act set up a committee, the Aboriginal Relics Advisory Committee, to advise the Minister and the Director (who is the Director of National Parks and Wildlife) on any matter relating to the preservation, control of excavation, removal and custody of relics.

The Governor may, on the recommendation of the Director and with the concurrence of the Minister declare any specified unoccupied Crown Lands as Aboriginal Reserves for the purpose of preserving, protecting and preventing damage to relics therein, and the control and management of such areas is vested in the Director. Where a relic which it is desired to protect is not situated on unoccupied Crown land the Minister may declare it to be a protected archaeological area, subject to the approval of the Minister and holder and occupier should the land be Crown land and of the owner and occupier if it be private land, although, should any of these persons whose agreement is necessary for the establishment of the reserve later request it, the Minister must declare the area no longer to be a protected archaeological area. The Director may give directions as to entry on to and use of these areas, and he may appoint honorary wardens to manage and control the land. Unlike the Acts of South Australia and Queensland, this Act does not define the powers and functions of these wardens.

The ownership of relics is defined much as in Queensland. A relic, not the property of the Crown, which was, at the commencement of the Act, not in the possession of any person and any relic that was abandoned after that date by any person other than the Crown, is considered to be the property of the Crown, and it is stated that for the purpose of defining ownership, a person shall not be deemed to have had possession of a relic that was not originally real property only by reason of the fact that it was in or on land occupied or owned by him. The Act does not define 'real property', although in some notes prepared by the National Parks and Wildlife Service it is stated the 'real property' means those relics which are actually part of the land, such as cave paintings and rock engravings.

There is an obligation under the Act for all persons to report to the Director the location of relics of which they might be aware. Relics may not knowingly be destroyed, defaced or damaged without the consent of the Director having been first obtained, but where the preservation of the relic would have unreasonably restricted the otherwise lawful use of the land, the land owner is bound only to inform the Director of the proposed destruction, damage or defacement in the course of normal land use. The Act does not detail any set period of notification and it would seem that in these circumstances a relic could be destroyed before any adequate salvage programme could be mounted.

While it is an offence under the Act for any person to disturb or excavate any land, or cause such disturbance or excavation, for the purpose of discovering a relic, or to take possession of a relic within a National Park, State Park or other area restricted under the Act, or to remove a relic from such an area, the Director may, upon such terms and conditions as he thinks fit, issue permits for any of these things to be done. In other words, the Director may authorize the excavation and investigation of relics, even in National Parks and restricted areas.

From all of the monies paid into the National Parks and Wildlife Fund, and this includes, besides monies appropriated by Parliament, any fees for permits and licences, penalties recovered under the Act, or fines imposed for offences, there may be paid the costs of acquiring lands for parks and reserved areas, and also, the costs of erecting and maintaining buildings or structures for the safe custory, storage or exhibition of any relic.

Discussion:

The most important distinction between this Act and the legislation of both South Australia and Queensland is the placing of the administration and responsibility for the Act under the National Parks and Wildlife administration. This has allowed the Act to be used to enable prehistoric sites to be developed for public presentation, and as there is money available for this purpose from the National Parks and Wildlife Fund, this aspect of the preservation of the cultural heritage of the State has received a greater emphasis than in other parts of Australia. That this policy has much to commend it is obvious, as has been mentioned above, to persons who have visited areas which have been developed by the Parks and Wildlife Service. Both at Mootwingee, an area of rock engravings and painted caves in Western New South Wales, and at the Royal National Park south of Sydney, attractive and functional buildings have been constructed to display and explain the aboriginal antiquities of the areas to the visiting public, and these facilities are staffed by members of the Service.

There is, however, inherent in this approach to the preservation of antiquities the danger that too great an emphasis may come to be placed on the public use of such areas, and that this might be at the expense of scientific investigation and accuracy. This situation carries a warning for New Zealand where field monuments are more extensive than in Australia and where there is already a growing tendency to press for the reconstruction of prehistoric sites for public presentation. Such work, if it is to be acceptable on grounds of accuracy must be properly researched and faithfully executed. Of course, the great advantage of the New South Wales situation is the ability of the Parks Service to staff

its reserves and parks with trained and enthusiastic public servants, and to appoint trained archaeologists to the Service in an advisory and research capacity.

The Act says little about the ultimate fate of relics discovered during archaeological investigations, although as all relics still in the ground are the property of the State, and cannot be disturbed or otherwise interfered with without a permit from the Director, it would no doubt be made a condition of any permit that a suitable repository for relics recovered during excavation be agreed upon, and the Act does state that to be in the possession of the State a relic must be housed in the Australian Museum, or in a building in a National or State park or reserve. The Act has nothing to say specifically about the export of relics from the State, even for purposes of scientific study, nor does it attempt to regulate or control the buying and selling of artifacts.

Apart from these points, this Act is similar in content and scope to the other Australian legislation already discussed, although one must comment on the significant omission of any reference to the rights of the Aboriginal population of the State in respect to tribal relics.

(D) Northern Territory:

In the Northern Territory of Australia are to be found the most advanced types of rock paintings and the greatest variety of styles to be seen in Australia. It is an important feature of Aboriginal sites throughout this area that many of them are still meaningful in the life of the Aboriginal people, making it possible for their significance and function to be recorded and studied. This situation contrasts markedly with much of the remainder of Eastern Australia where a functioning traditional Aboriginal culture has ceased to exist. (McCarthy, 1970c: 52-53.) Earlier contact with the Macassans from the Celebes, with the early European settlers and with the Chinese labourers imported in the 19th century to work the goldfields had little effect on the indigenous culture of the Northern Territory. The impact of the spread of the cattle stations into the area after the 1880's as the pastoralists took away from the Aborigines their traditional lands, instigated a considerable relocation of tribes and remnants on stations, missions, or government settlements. Despite this molestation, McCarthy records (ibid.: 51) that many tribes have retained their rituals and mythologies based on sacred places. Because of the relative sparseness of the settlement and the former real difficulties of communications and transport, vandalism and damage to these sites had been restricted to a minimum, but in recent years the growth of tourism and the availability of vehicles able to cope with the difficulties of outback travel, have caused this situation to be rapidly altered. McCarthy (ibid.: 52) makes a plea that sites which still function in the social and ritual life of the people should not be opened to tourists, as sites are then considered by the Aborigines to have been defiled and are abandoned, as has been Ayers Rock in Central Australia which has become a centre of a considerable tourist activity.

Despite the historic value and scientific importance of this body of Aboriginal culture it was not until 1955 that any endeavour was made by the Northern Territory Legislative Council to enact protective legislation. In that year the Native and Historical Objects and Areas Preservation Ordinance came into effect — the first such legislation in Australia.

The Native and Historical Objects and Areas Preservation Ordinance, 1955:

This Ordinance was enacted to provide for the preservation of certain objects of ethnological, anthropological, archaeological and historic interest and value. Certain classes of objects are declared to be 'prescribed objects', and the Administrator (of the Territory) may, for the purpose of preserving a prescribed object, purchase it on behalf of the Commonwealth. He may also make regulations forbidding the acquisition of any prescribed object except by the Administrator or an authorized officer, while in addition, under the regulations to the Ordinance, no person other than the Administrator shall acquire any prescribed object being a representation made of wood of a human figure, a painted human skull, a churinga, whether of wood or stone, or any pearl shell object, whether polished or carved, found more than 300 miles from the coast.

No prescribed object may be removed from the Territory without a permit being obtained from an authorized officer, and it shall be a condition of such permits that the object must first have been offered for sale to an authorized officer at a reasonable price, and must also have been made available to the authorities in order that it be copied by photography or other means, or by cast, on behalf of the Commonwealth, to which the copy or cast will belong.

Persons having knowledge of the location of a prescribed object may be required to inform an authorized officer of that location. It is an offence to knowingly conceal, destroy, deface or otherwise damage a prescribed object.

It is stated in the Regulations that the Ordinance does not apply to a specific list of portable artifacts—didgeridoos, nullanullas, coolamons, woomeras, singing sticks all made of wood, spears made of wood or of wood and metal, boomerangs, throwing sticks of wood, and uncarved wooden shields—but it is not stated on what grounds this decision or classification is made. There is no mention of such items made in recent times for purposes of trade and this does not seem to be the basis of the exemption.

Discussion:

In view of the care which was taken in both South Australia and Queensland to reserve to the Aboriginal his right of access to tribal relics, and in view of the tribal nature of much of the present day Aboriginal community of Northern Territory, it is curious that a similar safeguard was not built into this legislation.

There is no precise definition of the actual ownership of relics in general, and the implication of the right of the administrator to purchase relics could be that they in fact belong to persons other than the State. However, the provision for the copying of all artifacts which are permitted to leave the State is important, and seems to have not been followed by the other States.

(E) Other States:

Other States of the Commonwealth have been making progress in recent years to forms of protective legislation to ensure the preservation of aboriginal relics and other cultural properties. Indeed, Western Australia has already passed legislation similar to that of the States discussed, but it has not been possible to obtain a copy of this Act or any comment upon its scope and effectiveness at the time of writing.

(F) The Commonwealth of Australia:

The export of cultural properties from the Commonwealth would seem to be controlled by Customs Regulations rather than

a formal Act. The Principal of the Australian Institute of Aboriginal Studies, Mr F. D. McCarthy, has provided (pers. com., 1969) some information as to the operation of these regulations.

The Commonwealth Department of Customs and Excise has included in its general instruction to its officers details of the restrictions which apply to cultural materials in Australia, and instructions as to procedures to be followed when application is made for the export of such material. The Customs (Prohibited Exports) Regulations prohibit the exportation of aboriginal artifacts and other articles of scientific interest associated with the Aborigines of Australia. Customs permits for the export of this material are not to be issued unless the intending exporter presents an approval issued by a museum or other authority accepted by the Department and by the Australian Institute of Aboriginal Studies, and persons applying for permission to export but not in possession of the relevant approval are to be referred to an approving authority. In cases where the authority refuses to approve the export there is right of appeal to the Comptroller-General. As a guide to its officers the Department lists the following classes of material, the export of which would not be recommended:—

(a) skeletal material, unless it is being sent to a recognized scientific institution;
(b) engraved and other sacred boards and stones;
(c) ritual objects (used in ceremonies or of sacred significance);
(d) unique or rare types of stone, bone, shell and wooden objects;
(e) material culture of New South Wales, Victoria, Murray-Darling Basin, South-west Australia and Tasmania (material culture includes all artifacts made by Aborigines); and
(f) important collections of stone implements.

Modern artifacts of the type manufactured on missions and reserves and sold by approved organizations on behalf of the Aborigines do not come within the scope of the regulations.

Mr McCarthy concluded his letter with the following:—"The Customs Regulations combined with State legislation work quite effectively. The greatest weakness in procedure is that specimens can be removed from one State to another and sold locally but their export is still controlled. Some objects such as the inscribed sacred stones and boards should not be removed from certain States under their legislation but it does happen.

"We now have a well defined set of criteria for deciding the types of specimens which may or may not be exported and this has simplifed the decisions to be made by museum officers handling export permits."

(2) NEW GUINEA:

New Guinea is an area of peculiar significance and importance with respect to cultural property in that its 'discovery' is a very recent event, and has coincided with the contemporary explosive development of the world-wide demand for primitive art material and cultural property. New Guinea is one of the world's last reservoirs of property of this nature which can be obtained from a 'living' situation, and because of this it has, over the last few years, been subjected to the voracious demands of the trade in cultural property, both for private collectors and for museums, particularly in the USA. But of equal concern to the Administration and to the trustees of the Papua-New Guinea museum has been the export of prehistoric material from the archaeologically virgin territory. Doubtless much of this material has been taken

from the territory by Administration staff and missionaries when returning from their tours of duty as mementos of their stay in the territory, and such people would take these items in ignorance of the effect this continuing traffic might have on the total body of archaeological evidence in the areas. It has been stated (Bulmer, S., pers. com., 1971) that in terms of the total number of artifacts involved, this form of export is not inconsiderable, and that the greatest concern of the Museum authorities is that this material is removed not only from its primary cultural and archaeological context but also from the territory without any record being obtained of its locality or indeed of the physical attributes of the artifacts themselves. But of even more concern is the deliberate surface collecting of artifacts from archaeological sites, and indeed the digging of sites, without any proper record or report being made of the finds or of the findspot. Susan Bulmer (1969) notes the existence at the University of Papua-New Guinea of a file of field work records and site information to be used to assist the proper organization of archaeological field work in the territory, but she also notes its relevance to the salvage excavation of sites being disturbed or destroyed by public works and other elements. This aspect of the situation in New Guinea is also, of course, of extreme importance, as much of the area is suffering for the first time the effects of large scale Western land use technology as areas are drained and cultivated for plantation agriculture, or exploited for their timber and mineral resources.

In order to attempt to bring some form of control to this situation, the Legislature of the Territory of Papua and New Guinea in 1965 passed an Ordinance dealing with the protection of cultural property, although as will be seen from this discussion of the legislation it has, mainly for administrative reasons, not been entirely satisfactory in achieving the aims of its promoters.

The National Cultural Property (Preservation) Ordinance, 1965:

This Ordinance, with its Regulations (Statutory Instrument No. 46 of 1965) and amendment (No. 65 of 1967) are relevant to ethnographic and scientific collecting and archaeological research in the Territory. The administration of the legislation is the responsibility of the Trustees of the Papua and New Guinea Museum and Art Gallery and of the Department of District Administration. By definition, national cultural property is any property, movable or immovable, of particular importance to the cultural heritage of the Territory, and in particular includes:—

" (a) any object, natural or artificial, used for, or made or adapted for use for, any purpose connected with the traditional cultural life of the peoples of the Territory, past or present;
(b) any mineral specimen or fossil or mammal remains of scientific or historic interest to the Territory;
(c) any other collection, object, or thing, or any collection, object or thing of a class, declared to be national cultural property under . . . this ordinance."

The legislation provides for the protection of national cultural properties and prohibits the destruction of such property. It is the intention of the legislation that a representative record of the national heritage and rapidly changing traditional cultures be retained within the Territory. Persons wishing to export any cultural property relevant to the Ordinance must obtain a permit from the Museum. The Ordinance does not apply to newly made objects of art which are created specifically for sale to dealers, collectors or tourists, but refers to used items of material culture. The Trustees are given the power to copy by photograph, sketch,

model, or facsimile any kind of national cultural property. Persons having knowledge of the whereabouts of national cultural property must notify the Trustees of the nature, situation and condition of the property, must notify any change in the situation or condition of the property, and in the case of proclaimed cultural property, must give the Trustees at least one month's notice in writing before breaking up the collection or disposing of any part of it.

In addition, any person who discovers a cave or other place in which ancient remains, human or otherwise, are to be found, or any cave or painted rock or cave, or a deposit of ancient pottery or historical remains, or a place used in former times as a ceremonial or burying ground, must immediately give the Trustees particulars of the discovery, and no person may wilfully or negligently deface, damage, uncover, expose, excavate or otherwise interfere with any such place without the consent of the Trustees.

The Ordinance contains one clause which recognizes the full international implications if such protective legislation is to be effective, and in so doing anticipates the UNESCO Convention to be discussed below. This clause covers prohibited imports. Where the Administrator of the Territory is satisfied that some other country has, or will make, arrangements in law that property which is a prohibited export from Papua-New Guinea is a prohibited import into that country, he may declare any property which is a prohibited export from that country for reasons essentially similar to those contained in the New Guinea Ordinance, to be a prohibited import into the Territory. Should any such property be brought into the Territory without the proper permits being obtained from the country of origin, the property may be seized without compensation and be returned to the Authorities in the place from which it was exported.

Discussion:

Except for the lack of any provision for the establishment of special reserves, the basic form and intent of this legislation is similar to that already discussed, and comments already made apply equally to the legislation of the Territory of Papua-New Guinea. However, the promise of reciprocal action with other countries in the control of the export of cultural properties is most important, for it is only in this way that any effective legislation can be applied. For a variety of reasons it is not always, perhaps ever, possible to intercept items which unscrupulous collectors or dealers are determined to export in defiance of whatever prohibitions or regulations might be in force. But it is much easier to intercept these items at their point of arrival into another country, or when they become known to the authorities. It is at this point that they could be seized. If such reciprocal arrangements could be made, and carried out, then it is possible that the illicit international trade in cultural properties could be brought under control.

But it is obvious that all is not well with the administration and effectiveness of this legislation in the Territory of Papua-New Guinea. An editorial in **Man in New Guinea** (Bulmer, R., 1969) points to these deficiencies, outlines steps taken by the Museum authorities, and makes wide ranging suggestions for the improvement of the legislation. Because of the applicability of this article to the question of the preservation of cultural heritage, not just

in New Guinea but in almost all countries of the world, it is worthy of closer examination.

Bulmer commences by stating that few anthropologists would have been surprised to find that the question of trading and export of works of art and antiquities had become a public issue in the Territory in 1969. It had been claimed that artifact manufacturers in the Sepik were being exploited by traders and missionaries who offered them disproportionately low prices for their work in comparison with its overseas value. While this situation was not covered by the antiquities legislation, it was also alleged that artifacts covered by the legislation from the Sepik, the Highlands Districts and from the Trobriand Islands were being smuggled out of the country, and that some Administration employees and their families were involved. At the same time as these allegations were being made the Trustees of the Museum, acting on independently supplied information, were discussing the same problem. As a result, the Trustees, who by the Act had been responsible for the issuing of all permits for the export of national cultural properties, made the surprise move of withdrawing from District Commissioners and from individual Trustees themselves the authority to issue export permits, and announced that all previously issued permits for works of art and antiquities awaiting export were cancelled. Permits henceforth were to be issued only by the Museum Preparator-in-charge.

This action provoked a considerable storm, not all of protest. While some District Commissioners took the attitude that the action of the Museum Trustees was an imputation on their honour, other officials welcomed the move, holding that it had not been reasonable to expect District Officers to effectively administer the legislation given all of the other calls on their time. The reaction of traders and dealers was equally divided. Some misinterpreted the tightening up as an embargo on the free trading in this material, while others expressed their full sympathy with what they regarded as a timely move. But this action was no solution to the problem which was as deep as it was wide-ranging. The extent of the problem can be seen from the following section from Bulmer, which could, were the name of the Territory changed, prove to be equally applicable in many other countries, New Zealand not excepted:

> ". . . The Division of Customs and Excise is apparently unable or unwilling to accept any direct and effective responsibility with regard to the Ordinance. No attempt is made to check personal luggage of travellers leaving New Guinea. or even to ask outgoing travellers to declare that they are not removing traditional art and antiquities, or to check parcels sent out through the posts. In contrast, for consignment of goods sent out by ordinary sea or air freight, Customs officials continue to demand export permits for artifacts of every category, including the great bulk of material which has been manufactured for commercial sale and for which no permits are necessary under the Ordinance. No means has yet been found for controlling the activities of dealers who do their own collecting of art and antiquities, and especially of those who employ indigenous New Guineans to collect materials for them, thus ensuring in most cases that the minimum possible price is paid to the original owners, and the minimum prospect for adequate documentation of collections." (Bulmer, R., 1969.)

Bulmer then makes the caution that it is in the interest of anthropologists to consider these problems and to make such constructive suggestions as they can, and to lobby for rational and

effective policies, for, in view of the existing political climate, there could very well be a complete embargo placed on all further export of traditional art and antiquities, which would be to the detriment of scholarly research into New Guinea's cultural history. He called as Editor of **Man in New Guinea** for interested persons to use the pages of the publication to put forward proposals and opinions, and to initiate the process he put forward several suggestions of his own. Again, because of their relevance to an area much wider than New Guinea alone they are treated here in some detail.

1. Regardless of the ultimate destination of New Guinean antiquities and other important cultural items, it is vital that all such pieces should be adequately documented, with records held by the Museum or other national archive.
2. It must be ensured that all antiquities and other important cultural items are ultimately held by responsible institutions which are equipped to conserve them adequately.
3. It must be ensured that a rich and fully representative collection should ultimately be held in New Guinea, as part of the National Collection in the Papua-New Guinea museum.
4. In so far as some trade in traditional art and antiquities is inevitable, the rightful original owners of these objects should get a fair share of the proceeds of sale.
5. Procedures for marketing and export of contemporary art and craft objects should be rationalized.

All of these objectives, except perhaps the final one, are as principles applicable to the situation in New Zealand, and will be returned to later.

(3) BRITISH COLUMBIA:

The human occupation of British Columbia extends through at least 10,000 years, and may be as great as 30,000 years. As in other countries whose prehistoric population consisted largely of wandering bands of fishing and gathering peoples, although in addition, British Columbia also witnessed the development of large seasonal villages with clan federation in some coastal areas where rich resources, particularly seasonal salomn runs, provided a sufficient economic base, the evidence of this occupation is to be found in an unequal scattering of occupation sites, burial grounds, middens and non-portable art. Such sites have always been vulnerable to destruction by artifact gatherers and amateur 'archaeologists', but increasingly economic and industrial development in the Province, as in most other countries, poses an even greater threat. In recent years there has been a growing awareness that the record of past occupation has been disappearing and this has led to an increasing concern, both public and official, that there was a real need for measures to ensure the preservation of the sites and material on which any scientific study of past cultures is based.

Consequently, in 1960 the Provincial legislature passed legislation for the protection and preservation of archaeological and historic sites and objects in British Columbia. But it was recognized that the success of any attempt to ensure the safety of the prehistory of the area depended not on legislation but on public attitudes, and so explanatory literature was distributed in an attempt to make the legislation meaningful to the populace as a whole, and it is from one of these publications that the following extract is taken:

> "Legislatures may pass laws to protect archaeological sites and civil servants may administer them, thus carrying out the general wishes of the people. But that is only one face of the coin. What is just

as important is the education of the people themselves to the satisfaction they may derive from contemplating and cherishing the records left behind by the other people who lived in their localities through all the past centuries." (Anon, 1961: 1.)

The Archaeological and Historic Sites Protection Act, 1960:

The basic principle underlying this Act is that it is in the public interest to ensure the preservation of the archaeological and historic heritage of British Columbia, and that in order to achieve this the public interest is more important than that of any individual. The State, through the Provincial Secretary, is made the guardian of this public interest. It may designate a wide variety of prehistoric occupation sites—Indian kitchen middens, Indian shell heaps, Indian pit houses, Indian caves, other Indian habitations, cairns, mounds, fortifications, structures, paintings, or carvings on rock, graves or other burial places, or any other prehistoric or historic remains—to be archaeological sites, and such sites may not knowingly be destroyed, desecrated, moved, excavated, or altered in any way, nor may archaeological or historic objects be removed from them unless by a permit issued under the Act. No site of archaeological significance situated on Crown Land may be disturbed without a proper permit. In addition, a special group of sites—paintings or carvings on rock, and any burial place, situated anywhere in the Province, are also protected by the Act. The Minister may, however, issue permits to approved persons and institutions to conduct proper excavations on any of these sites. The Minister may direct the archaeological materials recovered in the course of such work to be deposited in a public institution and any such material taken illegally from these sites may be seized by the State and placed in a public institution.

Where the Minister is of the opinion that any prehistoric or historic remain, whether a designated archaeological site or not, is threatened with destruction by reason of commercial, industrial or other activity he may require the persons undertaking the activity to provide for adequate investigation, recording, and salvage of the threatened objects.

There is provision under the Act for the appointment of Advisory Boards to advise and make recommendations to the Minister on all matters arising from the Act. An Archaeological Sites Advisory Board was appointed without delay, and its members include not only civil servants but representatives of museums and universities.

Administration of the Act:

Most of the comment in this section derives from personal communication with the Provincial Archivist, 1969. By 1969, not a great number of sites had been designated under the Act, partially because of the difficulties of policing and patrolling them. To the same date 63 permits to carry out investigations in restricted sites had been issued, 23 for the 1969-70 year. Most of the work sponsored by the Board has been in the nature of site survey, but where there has been some threat posed by hydro-electric dam construction, more detailed salvage work has been carried out. This depends on the state of the Board's finances, which are provided from grants from the Department of the Provincial Secretary. These grants have been:

1961/62-1967/68	$8,000 per annum
1968/69	$10,000 per annum
1969/70	$15,000 per annum

(Figures supplied by Provincial Archivist. pers. com., 1969.)

With regard to the provision in the Act for the Minister to require that adequate salvage of sites threatened by industrial and other activities be carried out, the Provincial Archivist states that the topic was to be discussed at a coming conference on Federal Provincial historical resources, but he felt unable to comment on what decisions might be taken, or whether or not the Government would accept them by amendment. The relevant article has never been tested in the Courts, and a section from the correspondence with the Provincial Archivist reads:

"Prior to the passing of our statute when the Aluminium Company of Canada was involved in a power-dam, they voluntarily provided funds for site surveys and some salvage archaeology. However, more recently the greater threat was offered by the power development projects of the British Columbia Hydro and Power Authority (a Crown corporation) and we met with only moderate success both as to the amount of money provided and continuing support. Apart from this the section has never been involved."

Nor has the Board been any more successful with regard to the section of the Act providing for the Minister to acquire by gift, purchase or otherwise any archaeological site or object. Indeed, in one specific instance the Government rejected the recommendation of the Board.

In view of these points, one can understand the Provincial Archivist's comment that, "While in some respects the British Columbia legislation is as good as any in Canada, its operation leaves much to be desired." He would no doubt find his sentiments echoed in many other parts of the world where archaeologists have similar doubts concerning the effectiveness of the legislation operating in their country.

(4) ONTARIO:

The sole legislation of this Province which it has been possible to obtain is, unfortunately, only the Bill concerning the protection of archaeological and historic sites which was introduced to the Legislature in 1953. Although no information is available as to the final form of the legislation, nor even that it was passed, the Bill does at least provide some appreciation of the thinking of the legislators of Ontario at that point of time.

The Archaeological and Historic Sites Protection Bill, 1953:

The definitions in this Bill are so brief that they are almost meaningless. An archaeological site means land of archaeological significance that is designated as such, and an archaeological object is an object of archaeological significance found at an archaeological site. Similar definitions cover historic sites and historic objects. The Minister may designate any land to be an archaeological site or an historic site, and no such site may be excavated or altered or any historic or archaeological object be removed from it unless a permit is obtained from the Minister, although the owner of the land must also give his approval. Each permit holder is required to provide the Minister with a satisfactory report, within a reasonable time, of each season's work.

Discussion:

This legislation is rather difficult to evaluate. It is a much briefer document than any other examined in this work, but the brevity may be misleading, as the Bill in fact contains most of the provisions which it would seem are necessary for the protection of sites. Sites, apparently on any land, Crown or private, may be designated and receive the whole protection of the legislation.

There appears to be no provision for consultation with the landowner nor is he assured of any compensation. Archaeological investigation of a designated site is controlled by permit, but there is no protection for other sites, nor are they defined in any way with regard to their archaeological or historic importance. Nothing is said about artifacts from such sites, nor are there any provisions for control over the trading in artifacts or of their export. On the whole this legislation would seem to be inadequate and unsatisfactory, yet, as has been stated above, it does contain the essential features necessary in protective legislation. Given the right attitude on the part of legislators and administrators it could possibly be as effective as some of the much more elaborate Acts which have been studied. However, it has been noted that the most important feature of the protection of cultural material in any country is attitude rather than the actual wording of the legislation, but the brevity and generality of this legislation does not give rise to any confident feeling that it would be used to properly protect the cultural heritage of the Province of Ontario.

(5) SOUTH AFRICA:

The record of European settlement of the southern part of the continent of Africa begins with the exploration of the coastline by Dias and other Portuguese mariners in the 15th century. But when Dias first landed, the country was already populated by the Bushman and the Hottentos and the Portuguese explorers were soon to be followed by the Bantu-speaking peoples and the early European settlers. The Bushman appears to have had no domestic animals, and no knowledge of either agriculture or metallurgy, relying for his sustenance partly on the fruits of the chase but probably more importantly on the gathering of the vegetable and small animal resources of his environment. (Lee, 1968: 30-43). On the other hand, the Hottentots were nomadic pastoralists, and the Bantu peoples were cattle herders with a basic agriculture. While the Bushmen appear to have occupied the area for an immensely long temporal span, the Hottentots would seem to have not moved into the area until medieval times, and the Bantu not until historic times (van Riet Lowe and Malan, 1949: 1-2). The cultural remains of all of these peoples form part of the background of all South Africans, but this record will only survive if the rich and varied cultural remains which record the activities of the people are saved from destruction.

The Union of South Africa contains a great wealth of this prehistoric material, including not only thousands of prehistoric art galleries with rock paintings and engravings depicting the life and interests of the prehistoric occupants of the land, but also settlement ruins and mines of later prehistoric periods and also of the early European settlements. Of equal, and increasing scientific importance are the deposits of fossil remains and pre-human or sub-human life forms which in recent years have thrown so much light on the earliest stages of the evolution of the human family, and the importance of which cannot be ignored. But of equal importance to the palaeontologist are the fossil beds of the Karroo which have produced evidence of the evolution of mammalian species. As the previously quoted authors have indicated, "All these occurrences, whether they include fossils of remote geological ages or of early human times, obviously need to be preserved for systematic exploration by experts so that the full story of our land may be more completely and accurately told". (van Riet Lowe and Malan, 1949: 3.)

But the storehouse of scientific evidence was soon ravaged by

persons whose training should have led them to insist on preservation. The rock paintings and engravings which were to be found in their thousands scattered throughout the land, soon attracted overseas attention, and expeditions were sent to South Africa to remove and collect them. Engravings were cut from rocks, and as van Riet Lowe and Malan state (1949: 3-4): "Among the hundreds of examples of these primitive works of art that found their way into the museums of Europe were some of the best the country had yielded, and for each one removed probably at least one was destroyed."

By the early years of the 20th century the public conscience was stirred and in 1911 the Bushman Relics Preservation Act was passed. A Bushman relic was described as any drawing or painting on stone or engraving of the kind commonly known or believed to have been made by Bushmen or other aboriginals. It included the contents of the caves, rock shelters, graves, middens and shell mounds which had accumulated on prehistoric living sites. It was illegal to remove any relic without a permit having been obtained, nor could they be destroyed or defaced. While this legislation was to a large degree successful in bringing under control a large part of the abuse of sites, destruction was not entirely stopped, particularly that caused by the thoughtless vandalism of sites, and in 1923 there was passed the Natural and Historic Monuments Act under which the first Historical Monuments Commission was established. The Commission undertook the compilation of a register of sites and objects of historic interest, yet it was unable to make any significant achievement in the field of conservation. The Commission had not the power to proclaim as a protected area any object, structure or site, and was forced to depend on the goodwill of owners. Despite such difficulties the Commission was able to promote a general public interest in the preservation of the cultural and scientific heritage of the country. Eventually, in 1934, a new Act was passed, under which a new Commission, with wider powers was constituted. Now important sites could be proclaimed, and their alteration or destruction prevented. The Commission was given powers to control scientific excavation of archaeological and palaeontological sites, and to control the removal and export of material. While the Commission endeavoured to control field work in these sciences, it was determined to bring to an end the unsystematic excavation and exploitation of sites which had characterized previous work. Later Acts (1937 and 1967) and Ordinances (1948, 1950, 1960 and 1962) were designed to further improve the situation, but by 1969 it was necessary to pass a further Act, and it is this legislation which now provides the basis for the control and preservation of archaeological and scientific sites in the Union of South Africa.

National Monuments Act, 1969:

The Act, which also has effect in the Territory of South-West Africa, makes provision for the preservation of certain properties as national monuments, and to establish the National Monuments Council. The Council, which is responsible for the making of recommendations to the Minister on matters concerning the Act, may also by Notice declare any property it is investigating as a possible monument to be a provisional national monument in order to secure its safety for the period of the investigation. It may preserve, repair or restore any declared or provisional national monument, and erect notices giving information about the monument. In order to declare any property to be a national monument the Council must have the consent of the Minister and of the

owner of the property. The Council is also charged with the keeping of a register of all monuments and particulars of them. The Council may also, as approved by the Minister, appoint the staff necessary for the proper performance of its functions and duties.

Whenever the Minister considers it to be in the national interest that any movable or immovable property of aesthetic, historical, archaeological, palaeontological or scientific value or interest to be preserved, protected and maintained he may, subject to certain provisions, declare it to be a national monument. It is not necessary for the Council or the State to be the owner of any monument, but it is not permitted under the Act for any person to sell, exchange, alienate or let any monument without informing the Council of the person to whom it is to be alienated.

While specific protections of the Act apply to the declared monuments which may not be destroyed, damaged, excavated, altered, removed or exported, the same section extends these provisions also to:

> ". . . any meteorite or fossil or any drawing or painting on stone or petroglyph known or commonly believed to have been executed before the advent of the Europeans by Bushmen or other aborigines of any portion of the Republic or by any people who inhabited or visited any part of the Republic, or any implement or ornament known or commonly believed to have been used by them, or any anthropological or archaeological contents of the graves, caves, rock shelters, middens, shell mounds or other sites used by them or any other archaeological or palaeontological material or object."

However the protection offered under this section of the Act does not apply to the removal of anything other than deposits in any cave or midden, in the normal course of mining, engineering or agricultural activities. Such a proviso of course considerably lessens the effectiveness of the legislation, particularly as no provision is made for salvage archaeology on affected sites.

Discussion:

It might seem from the Act that South Africa has succeeded in establishing a solid legal backing for the preservation of its antiquities, with an adequate administration and staff, and that there is a body of informed public opinion to ensure that the intent of the law is put into practice. But from personal correspondence with practising arachaeologists in the Union it would seem that this is not really the case. Each of the three correspondents expresses doubts not only as to the effectiveness of the legislation as a legal instrument, but also regarding the actual ability of the administrators to implement the provisions of the Act effectively. They all comment that while despoliation of sites continues there have been no prosecutions yet brought under the Act.

The museum archaeologists from whom correspondence has been received were both critical of the way in which permits to carry out investigations are issued to archaeologists who then fail to observe the conditions of the permits. This they feel is largely due to lack of adequate official supervision. They also touched on the problem of the restrictions placed on the activities of amateur gatherers of archaeological material. It would seem that the relevant provisions of the Act have been somewhat misunderstood, and that many amateur workers, who have in the past made valuable contributions, particularly in regard to the location of sites, have been alienated.

It would appear from the comments received that South Africa provides another case of good-intentioned, well-meaning

legislation and a core of hard-working informed people attempting to cope with a task, which because of inadequate staff and finance is too great for them to achieve the degree of preservation and control which they seek.

(6) JAPAN:

In 1868, when the isolation of Japan under the Emperor Meiji was ended and an 'open doors' policy made official, Western culture was adopted with great enthusiasm and at the expense of all things indigenous. In the ensuing period of cultural turmoil many valuable cultural properties were thoughtlessly destroyed, or were sold at low prices to foreign collectors (Hongo, 1970: 18-28). In 1878, Fellanosa came to Japan from the U.S.A. to study Japanese culture, and by this work, such as the establishment of Art Schools, from 1889 initiated a revival of interest in indigenous culture. The Japanese Government, realizing the importance of the preservation of the cultural legacy of old Japan, began to take legislative measures for the protection of this heritage, and in 1897 the first of a series of laws was passed—the Law for the Preservation of Ancient Shrines and Temples. In 1919 the Law for the Preservation of Historic Sites, Places of Scenic Beauty and National Monuments was enacted, extending protection to historical and scenic places and also to animals and plants. In 1929 this law was replaced by the National Treasures Preservation Law which extended the protection to properties of historical and artistic value. The control of exportation of important objects of art and important cultural properties was ensured by the passing of further Laws, making it essential for export permits for such properties to be obtained from the Ministry of Education. (Anon., 1962: 3.)

During World War II, despite the fact that special measures were taken to protect important cultural properties, many important properties were destroyed or damaged, and because of financial difficulties and social unrest following the end of hostilities further losses were suffered. But in 1950 all previous legislation was replaced by the comprehensive Law for the Protection of Cultural Properties, which extended protection to such items as folk culture, buried cultural properties, and intangible cultural properties such as the arts and skills employed in drama, music and the applied arts. It also established the National Commission for the Protection of Cultural Properties as an independent external organ of the Ministry of Education to administer the new laws. The enactment of this law may be regarded as the culmination of the administrative approach of the Japanese towards the protection and preservation of their irreplaceable cultural heritage. (Anon., 1962: 3.)

Law for the Protection of Cultural Properties, 1950:

The definition of 'cultural properties' under this law includes:

(1) **Tangible Cultural Properties:**
Buildings, pictures, sculptures, classical books, ancient documents, and also archaeological specimens.

(2) **Intangible Cultural Properties:**
Art and skill employed in drama, music and the applied arts.

(3) **Folk Culture:**
Manners and customs relating to food, clothing and occupations, religious faiths, festivals, etc.

(4) **Monuments:**
Shell mounds, ancient tombs, sites of palaces with town de-

veloped round them, sites of castles, old dwelling houses, etc., which have high historic and scientific value; gardens, bridges, gorges, mountains, etc. possessing a high value for art or visual appreciation; animals, plants, geological features and minerals of high scientific value.

The administrative organization for the protection of these properties is the National Commission for the Protection of Cultural Properties. To ensure the protection of properties the Commission designates a limited number of really important items under the categories defined above, and for the purpose of such designation only the value of the object concerned is taken into account, and no attention is paid to the circumstances of the owner. The designation of properties operates at three levels. First, selected properties are called 'important cultural properties'. Important tangible cultural properties, historic sites, places of scenic beauty or monuments which are really valauble from the viewpoint of world culture and constitute matchless treasures of the nation are further constituted as 'national treasures', while particularly important places may be designated as 'special historic sites, places of scenic beauty, or special Natural Monuments'.

The administration of this law by the Commission may often restrict the property rights of private persons, and in order to adjust this abnormality, a system of public hearings has been established. A reasonable loss sustained from the operation of the law is indemnified by the Government.

In the Law, the term 'buried cultural property' refers to cultural properties which are buried underground, or are lying submerged under water, and the administration of the law with regard to these properties is closely connected with the protection and preservation of archaeological sites and relics. (Anon., 1962: 335.) Throughout Japan there are innumerable archaeological remains, such as shell mounds, sites of dwelling houses, ancient tombs and the sites of kilns, and systematic archaeological investigations are being carried out by specialists from universities and research institutions. Such investigations must be reported to the Commission at least 30 days before the day set for the commencement of work, and the Commission, in the interests of the preservation of buried cultural properties may suspend or even prohibit the planned work. In the case of the threatened involvement of a known site in any public work the Commission must be given 30 day's notice of intention to commence work, and the Commission may require certain precautions or steps to be taken (e.g. the preparation of complete documentation of the site with the aid of specialists) before the site may be destroyed. When any new archaeological site is discovered the owner or occupant of the land must report the discovery to the Commission within 10 days without altering its existing state, and should the site be found to be one of some importance, the Commission may require the owner, or the Board of Education responsible for the area to take steps for its preservation.

When a buried property is discovered, whether through archaeological excavation or by accident, the finder is obliged to report the fact to the police. If the property is a 'cultural property', and there is no claim to ownership, it reverts to the National Treasury. If it is decided that any property should be retained by the State, the Commission gives compensation to the finder and to the owner of the land on which it was found. The rest of the associated finds are returned to the finder and the landowner so

that they might be preserved as a collection in some suitable building.

Should the Commission feel it necessary to investigate any buried cultural property, it may undertake the excavation itself. Such a procedure is adopted only for important archaeological sites, and is usually restricted to sites which have already been classified as historic sites. On completion of the work results are published by the Commission in a series of Archaeological reports. The Commission and the Law recognize the increasing threat to archaeological sites from public works, and the necessity of conducting a proper scientific investigation of such sites so as to record and preserve detailed descriptions before the remains themselves are destroyed. While it believes that such work should be the responsibility of the public agency concerned, the Commission recognizes that it cannot be assumed that the work will necessarily be carried out. It may therefore require local public authorities to have the work carried out, and to that end the Government provides some financial assistance. As in other countries, if such a programme is to be successful it is necessary for the existence of sites to be known to the authorities, and in Japan the Government has granted subsidies to prefectual boards of education to enable them to prepare registers of archaeological sites within their province.

Excavation for research purposes carried out by universities and other research institutions throughout Japan may number as many as 300 in any one year.

Discussion:

It has not been possible to obtain any information from practising archaeologists in Japan as to the effectiveness of this law. From the sources quoted there would seem to be general satisfaction, indeed pride, concerning the legislation, but as will have been noted above, such official praise is not always echoed by the practising archaeologist. However, there is no apparent reason to doubt the success of this attempt to provide for the preservation of cultural property. In fact, there is reason to believe that the programme of protection and preservation is continuing and real, for Hongo notes (1970) that the National Commission for the Protection of Cultural Properties and the Cultural Affairs Bureau of the Ministry of Education were merged into the Agency for Cultural Affairs in 1968, and that the Cultural Properties Protection Division of the Agency is now responsible for the protection of the Cultural Heritage. This reorganization would appear to indicate at least that there is some continuing revaluation of the effectiveness of the administration of the legislation, and that continuing efforts are made to make it more effective and Hongo gives no indication that there might be any cause for dissatisfaction with the Law.

(7) KOREA

Control of cultural property in Korea is maintained by the Revised Cultural Property Preservation Law (Kim, B. K., 1971: 108-109), which provides that cultural assets discovered or unearthed intentionally or unintentionally within Korea are the property of the Government, and are to be handed over to the National Museum. (Kim, W. Y., 1971: 68.) The export of such properties is forbidden. The Korean Bureau of Cultural Property Preservation has recently announced (Kim, B. K., 1971: 108-109) that individuals who own or keep important cultural assets which are equal in value to national treasures should register their collec-

tions with the Bureau. This registration is aimed at the better preserving of the nation's cultural heritage, and at preventing the export of such properties. Even foreigners, including diplomats and military personnel, will be subject to the law. Such persons were formerly free from customs inspections, and Kim notes "we cannot calculate how many cultural items have so far been carried (by such persons) out of our country". The cultural property which must be registered includes a wide range of books, scrolls, prints, seals, paintings, images and handicrafts, and "all kinds of archaeological specimens dating back at least to the Unified Silla dynasty (about 600 A.D.)".

These reports indicate the concern in such countries as Korea over the preservation of the cultural heritage, which is no doubt associated with the emerging national identity and the need to provide it with some cultural base. This is no new phenomenon, for it will be remembered that the newly created Greek State in the 19th century enacted a similar law as one of its first duties. The Korean case also emphasises the willingness of such States to place the national interest above that of the individual, and to declare the preemptive right of the State to all newly discovered cultural properties. It is also of interest to note the willingness to state that the provisions of this law apply equally to foreign diplomats and military servicemen, and this surely indicates that such persons have in the past been responsible for the removal of many cultural properties from their host nations.

(8) THE PHILIPPINES:

This island Republic, situated as it is on the periphery of the Asian land mass and facing both the Indonesian-New Guinea-Melanesian area to its south and south-east, and the wider Pacific to its east, occupies an important place in the movements of peoples in this wide area over a considerable period of time. This importance has been long recognized, and although the literature records diverting flirtations with a variety of theories concerning the movement of Pacific peoples, the place of the Philippines in its true cultural and temporal setting has been more firmly established by archaeological investigations in the last two decades. While recognizing the significant antiquity of human settlement and movement in the area, it must not be forgotten that the Philippines have occupied an important place in more recent centuries with regard to the movement of Chinese trade and settlement in the Asian borderlands, and that many of its more spectacular antiquities relate to this period of time. The generally unequally spread and less dense population, and the relatively slow rate of economic development in the area, has meant that the destruction of archaeological sites has not been so severe in this area as it has been in some of the States already considered. As a result, the recent investigations of the prehistory of the area have often produced spectacular results and have brought the area to the attention of those whose interest in prehistory is more commercial than scientific. Peralta (1970: 7-12) states that the problem of the preservation of cultural properties, and the control over the export of antiquities has been compounded by a growing consciousness of the innate monetary value of these properties which has generated such a demand that all resources in the prehistoric field are exploited by private individuals for financial gain.

The resulting market for cultural objects since the 1950's has contributed to the swift destruction of sites and the loss of valuable cultural properties. The National Museum initiated movements

towards the protection of sites and properties from the activities of amateur looters, and to their conservation by controls on the export of cultural properties. As the interest of the general public was increased due to sensational discoveries made during archaeological work, so the problem increased. The existing legislation proved to be inadequate to cope with the problem, and in 1966 the older Acts were replaced by new legislation.

The Cultural Properties Preservation and Protection Act, 1966:

The Act was a statement of national policy, and made it a function of the State to preserve and protect the cultural properties of the nation and to safeguard their intrinsic value. (Peralta, 1970: 11.) The definition of cultural properties was made more comprehensive than it had been formerly, and includes "old buildings, monuments, shrines, documents, and objects which may be classified as antiques, relics, or artifacts, landmarks, anthropological and historical sites, and specimens of natural history which are of cultural, historical, anthropological or scientific value and significance to the nation . . ." The Act also embraces the concept of the 'type specimen' with regard to scientific specimens, these being defined as "the individual specimen which was used as the basis of description establishing the species, in accordance with the rules of nomenclature", which is similar to the definition in the New Zealand Historic Articles Act, but the Filipino Act goes further and includes artifacts as "a specimen selected as the best to represent a kind or class of objects consisting of many but almost identical individuals or pieces".

The implementation of this legislation is the responsibility of the National Museum, the Director of which is required to undertake a census of the cultural properties of the Philippines, to keep a record of their ownership, location and condition, and to maintain an up-to-date register of the cultural properties. Private collectors and owners of cultural properties are required to register their collections with the museum, and to report any new acquisitions, sales or transfers. Certain cultural properties may be designated as 'national treasures', but of any one class of objects only the type and five best duplicates may be so designated. Such national treasures are marked, and detailed records of them held by the museum. Although the owner retains possession of the article, they may not change ownership, except by inheritance, without prior notification to the Museum. Such treasures may not be taken out of the country except for purposes of cultural exchange programmes or for scientific scrutiny, and must be returned immediately after such exhibition or study. Other cultural properties may be exported on permits issued by the Museum.

The provisions of this law became more important when the extent of Philippines prehistory became better appreciated. The discovery of Chinese trade pottery sparked a 'gold rush' which resulted in the destruction of many archaeological sites in the search for this ancient porcelain and stoneware to satisfy the demand of the market. But, as Peralta records (1970: 11), drawn into this rush were all the other antiquities which marked the various periods of the cultural development of the Philippines. The wanton destruction and the impending losses of all of the cultural heritage of the Filipino people became of such alarming magnitude that provisions had to be included in the Law to control the excavation of archaeological sites. It is now unlawful to explore, excavate, or make diggings on archaeological or historical sites for the purpose of obtaining materials of cultural or historical value without the prior written authority of the Director of the Museum.

Any such excavations must be supervised by an archaeologist of whose competency the Director is satisfied, and who, on the completion of the project must deposit with the museum a detailed report of the operations, "describing the methods and techniques employed, his findings, and also furnishing it with a catalogue of all the material found thereon, in accordance with accepted archaeological practices". In order to encourage private individuals and institutions to assist with the financing of such excavation, any financial support given receives taxation concessions. Permission may be given under the Act for cultural properties obtained from these excavations to be sold, but the State must be given first option to buy when the properties are placed on sale.

The Act does make financial provision for the administration of the law. An annual provision of $50,000 is made out of funds in the National Treasury 'not otherwise appropriated' (slightly less than $NZ7,000), and small charges may be made for the issuing of certificates, inspections etc., although larger amounts could be involved in respect of permits issued for the export of cultural property, where the fee is 5% of the appraised value of the property.

Discussion:

This discussion owes much to personal communication (1971) with J. T. Peralta, Officer-in-charge of the Anthropology Division of the National Museum.

The ownership of a newly-found article is regarded as belonging to the landowner or the finder, but in actual practice the course of action followed by the Museum depends largely on the special circumstances of the individual case. The provision in the law for the registration of privately held cultural properties initially caused much apprehension among owners, but there is now greater understanding of the purpose of the law.

Although the Act makes provision for the funding necessary for its administration, the money has never been made available by the Government. As a result the Museum is actually implementing the law without proper funding, using already committed personnel. Similarly, the Museum has undertaken salvage programmes through its own funding, although with occasional assistance from private foundations, as the State has no funds for such undertakings. (Peralta, pers. com., 1971.)

The Museum authorities appear to be satisfied with the effectiveness of the Act in restricting the exportation of cultural properties. The restrictions are not enforced too harshly with regard to items of which there are duplicates of museum holdings or in private collections. National Treasures are never exported, except in accordance with the provisions of the Act. However, as has been found in other countries, no declaration of any kind is made by outgoing travellers concerning cultural properties in their possession, and as far as the Museum is aware, the luggage of outgoing passengers is not searched for cultural properties.

The provision in the law for official control of all archaeological excavations, for the issuing of permits for such excavations, and the requirement that adequate records are lodged with the museum are important, and as can be seen from the copies of the necessary forms which have been received, are being administered effectively.

(9) PAKISTAN:

The prehistory of Pakistan is both ancient and modern. It is as ancient as the as yet unexcavated foundations of Mohenjo-

daro, protected by the water levels which have slowly risen as the site has been buried by annual layers of fertile alluvium deposited by the spring floods as they have for 40 centuries flooded the surrounding plain (Wheeler, 1958: 200-201). It is as modern as the State of Pakistan itself, created in 1948 amidst the chaos that accompanied the political partition of the Indian sub-continent. But it was from this chaos that the more recent study of the prehistory of Pakistan emerged, guided by the discerning mind and ordered approach of Mortimer Wheeler, who in the unhappy years following partition was perhaps the one person who could have provided the newly established Department of Archaeology with the overall plan and foresight on which its future growth might be based. It is not difficult to understand that a newly-born State, created for little more than political expediency out of little less than religious incompatibility, would soon seek to establish a basis of history and continuing existence to form the backbone of a national identity and sense of purpose. Like the modern Greek State a little over 100 years previously, this identity and purpose could be crystallized around the prehistory of the area, and if the modern Pakistani had little in common with, or derived from, the Harappan civilization of some 4,000 years before, at least the physical remains of that civilization could be made to serve the purpose of distracting attention from the somewhat vulgar newness of the infant State and replace it with the respectability which is so often associated with longevity. Accordingly, the Government asked Wheeler to return to Pakistan as part-time archaeological advisor. Wheeler was able to make arrangements, which allowed him to accept this offer, and in 1949 and 1950 he spent the first few months of the year in Pakistan, training, travelling, writing and excavating and finally instituting the National Museum of Pakistan at Karachi. Even in this land of political, economic and social uncertainty, Wheeler did not falter in his belief that in order to make any progress, the study of prehistory by archaeologists must be accompanied by an informed and sympathetic public opinion, and writes (1958: 198): "While attempting to train the technicians of the Pakistan Archaeological Department in some part of their task, my constant aim was to create the hitherto non-existent public opinion which, in a self-governing State, was essential to their mission." In 1951, somewhat disheartened by the difficulties presented to any real development of the Department by intrigue and the fragility of the cultural veneer with which he was required to work, Wheeler refused to accept the Minister's invitation to return for a further season of work, one would sense with some sadness at his disenchantment, for he writes, ". . . as I write these words in 1954 the Pakistan Department of Archaeology is numbered among the unburied dead. One can but hope." (1958: 204.)

But there is reason to feel that Wheeler's misgivings were premature, or perhaps resulted from the exhaustion of his several years of not always pleasant labours on the Indian sub-continent, for the Department which he helped to establish still functions, and by 1968 at least had produced a pleasing list of reports and publications on Pakistani archaeology and prehistory. In the same year the Government passed antiquities legislation, to be administered by the Department, which, if it is effective would indicate that Wheeler's labours were not in vain.

Antiquities Act, 1968:

This Act, which was a consolidation of the laws relating to the

protection and preservation of antiquities, defines an antiquity as being:—

"(i) any ancient product of human activity, movable or immovable, illustrative of art, architecture, custom, craft, literature, morals, politics, religion, warfare, science or of any aspect of civilization or culture;

(ii) any ancient object or site of historical, ethnographical, anthropological, military or scientific interest, and;

(iii) any other object or class of such objects declared by the Central Government to be an antiquity for the purposes of this Act."

An immovable antiquity meant any antiquity such as:

"(a) any archaeological deposits on land or under water;

(b) any archaeological mounds, tumulus, burial place or place of interment, or any ancient garden, structure, building, erection or other work of historical, archaeological, military or scientific interest, and;

(c) any rock, cave, or other natural object of historical, archaeological, artistic or scientific interest or containing sculpture, engraving, inscription or painting of such interest."

Ancient means belonging to or relating to any period before May, 1857.

The Act sets up an advisory committee consisting of the Director of Archaeology of the Government, two members of the National Assembly, and three other persons having special knowledge of antiquities, which advises and takes action on behalf of the Central Government. Where the Director receives any information or otherwise has knowledge of the existence or discovery of an antiquity of which there is no owner, he may take steps necessary for the custody, preservation and protection of any antiquity, and to do so may enter and inspect any premises, place or area, and may have the antiquity copied, photographed, or reproduced, although no such copy may be sold without the consent of the owner.

When any antiquity, or any immovable property containing an antiquity is to be sold, the Director may exercise a right of preemption on behalf of the State, and may by notice of intention prevent the owner of any antiquity from selling it for a period of three months.

The government may declare any antiquity to be a protected antiquity. Although the owner may object to such classification, he may also make agreement for the State to become the guardian of the antiquity, although he will still retain his property interest in the antiquity. Any such agreement may provide for:

(a) the maintenance of the antiquity;

(b) the custody of the antiquity and the duties of the person employed to watch it;

(c) the restrictions upon the right of the owner to alienate, destroy, remove, alter or deface the antiquity, or to build on or near it;

(d) the facilities of access to be allowed the public;

(e) expenses in connection with the preservation of the antiquity, and;

(f) any compensation to be paid to the owner.

If the Central Government is of the opinion that a protected immovable antiquity is in danger of being destroyed, damaged, or being allowed to fall into decay, it may acquire all or part of such property as for a public purpose. All antiquities for which the Government has entered into an agreement, or acquired are pro-

tected from any destruction, damage, alteration, defacement or mutilation.

It is an offence to counterfeit or forge any antiquity with intent to commit fraud or knowing it to be likely that a fraud might thereby be committed. No person may deal in antiquities except in accordance with a licence granted by the Director, and every such dealer must keep a register in such manner or form required by the Director, who may search and inspect such documents, and may also enter and search any premises where he suspects there is a breach of the conditions of the licence. No person may export an antiquity except under licence granted by the Director

(a) for the temporary export of antiquities for the purpose of exhibition, examination or treatment for preservation;
(b) in accordance with agreement with foreign licencees for archaeological excavation and exploration, or;
(c) for the export of antiquities which are not of a unique nature in exchange for antiquities of any foreign country.

In order that the provision of the Act might be implemented, two sets of Rules have been formulated. The first of these covers the export of antiquities (the Export of Antiquities Rules, 1969) and requires an intending exporter, when applying to the Director for a permit to provide a full description of the antiquity, and the Director may require a photograph of the antiquity and any other information which he may specify, and also, that the item be produced for inspection.

The second set of rules is the Archaeological Excavations Rules, 1969. The rules provide that any application for permission to excavate on an archaeological site shall be addressed to the Director at least one year before it is proposed that the work should commence, and must state the qualifications of the individual. The Director need not grant a licence unless he is satisfied as to the competence of the society, institution or individual concerned. The licence normally remains in force for five years, although it may be extended if the Director is satisfied that more time is required, but may be cancelled if the Director is of the opinion that the results of the excavation are not satisfactory or the conditions of the licence have not been complied with.

The conditions which may be applied by the Director are extensive, and include:—

(1) The Director, and persons authorized by him, shall have the right to inspect and supervise all archaeological excavations.
(2) No buildings found on the land shall be dismantled, removed or disturbed without permission of the Director.
(3) The excavations, and all objects discovered in the course of the work ,shall be open at all times to inspection by the Director or an authorized person, 'and it shall be open to them to make any notes or drawings or impressions in paper or plaster, or to take any photographs of the land under excavation, or of any antiquities recovered therefrom'.
(4) The licensee shall be responsible for the care of all property found in the course of the excavation, and shall, if required by the Director, maintain a guard over the excavations.
(5) The licensee shall work in a skilful and workmanlike manner and in accordance with the approved scientific principles, and shall respect the archaeological remains which are either earlier or later than the ones in which the licensee is mainly interested.
(6) Full descriptive, graphic and photographic records shall be taken by the licensee of all archaeological remains or layers

which are to be removed, and in no case shall significant archaeological remains be destroyed without the permission of the Director.

(7) The licensee shall not abandon the land for more than one season of work before the expiry of the licence.

(8) The licensee shall take all necessary measures for the conservation of excavated sites and antiquities at his own expense.

(9) The licensee shall, at the end of each week, furnish a complete list of all finds in the land to the Director.

(10) Within two months after the end of each season of work the licensee shall send to the Director a report on the work done, complete with sketches, plans, photographs, inventory of the finds, and labour employed, and shall deposit with the Director copies of all plans, drawings and significant photographs made in the course of or after the excavations.

The Director has the right, if the excavator has not published a report of the work within three years of the expiration of the licence, or within that period publishes a report which the Director feels to be inadequate, to publish a report on the operations undertaken by the licensee.

Antiquities found during the course of the work are to be disposed of by the Director in the following manner:—

(a) Human relics of historical and religious importance and any finds, which in the opinion of the Director are of national importance, shall remain the property of the Government, and shall be retained in Pakistan.

(b) Subject to the above, the licensee shall be presented with some of the finds consisting of objects or groups of objects which the Director may spare because of their similarity to other finds discovered in the same land, and the share of the licensee shall be, as far as possible, representative of the lands concerned.

Discussion:

This Act, given the will of the Administration to ensure its effectiveness, would seem to be adequate for the protection of the antiquities of Pakistan. Unfortunately it was not possible to obtain comments from practising archaeologists in Pakistan concerning the operation of the Act.

Although the protections of the Act refer more specifically to particular antiquities and sites, there is also a general protection for all antiquities, and if necessary the State may acquire sites, even against the wishes of the owner. The provisions for the sale of antiquities are realistic, and recognise that as prohibition is impossible the need is for control. It is important to note that dealers are required to keep a register of their transactions in a manner acceptable to the authorities, and that the premises of dealers may be searched if there is reason to suspect that these conditions are not being complied with. It is also important that the Director is given the power to photograph and take whatever records he wishes of antiquities which are to be exported, although it would not be unreasonable that the right to take casts and imprints be stated. Perhaps this would be included under the rights to obtain 'any other information which he might specify'. Pakistan has attempted to retain a further control over the export of antiquities by allowing for export only in cases of examination, exhibition or treatment for preservation, in accordance with permits issued to licencees for excavation, and for exchange for

antiquities of other countries. There is no general permission for export solely for ordinary trade.

The conditions governing the granting of licences for archaeological excavation are wide ranging and severe. If firmly applied they would ensure not only the reasonable preservation of the antiquities of Pakistan, but would also provide for the professional excavation of sites in the best possible scientific manner, and for the reasonably prompt publication of acceptable reports of excavations. While some of the provisions might appear to be potentially irksome, if properly administered with a proper spirit of co-operation they should not prove to be too restrictive or operate to the detriment of the excavation. Indeed, they would seem to be an admirable framework for all excavation, and a model which could be followed in other places. Particularly does this apply to the provisions concerning publication. It would seem from the brochure of the Department of Archaeology and Museums (1968) that the Department itself has attempted to follow its own precepts, for the list of publications is wide ranging, and, apparently, reasonably up-to-date.

(10) SWEDEN:

Sweden probably has the oldest legislation in the world for the protection of ancient monuments, for as early as 1666 such monuments were placed under the protection of the law. (Selling, 1964: 1.) Though in more recent years the law formally protected ruins and various prehistoric antiquities, because of the large areas involved, the incomplete nature of lists of monuments which had, from time to time, been compiled, and the lack of adequate professional staff, it had proved impossible to prevent the destruction of monuments, particularly during the period of railway construction in the 19th century. The present law for the protection of ancient monuments in Sweden, the Antiquities Act, 1942, is based upon the concept which has prevailed since the 17th century that the landowner has no right to use ancient monuments. (Janson, 1962: 1.) The law is administered by the Central Office of National Antiquities which has two departments, one being responsible for ancient monuments and the other for historic buildings and ruins dating from the Middle Ages and later.

Although the cataloguing of ancient immovable monuments was commenced in Sweden in the 17th century, no official list of such monuments was ever completed. The present cataloguing of ancient monuments, which is undertaken by the Central Office of National Antiquities was commenced in 1938 when it became law that all such monuments be marked on the new Swedish Economic Maps. Altogether approximately 500,000 ancient monuments have been listed to date. While this work has been of considerable value in the routine work of protecting ancient monuments, it has been of prime importance in the successful programmes of salvage archaeology which have contributed so much to Swedish archaeology in recent years. Janson writes (1962: 3): "The Industrial society of today is sweeping over Swedish ancient monuments like a gigantic vacuum cleaner. Accordingly, we have, during the last 15 years, carried out excavations to an extent never undertaken before, in connection with all kinds of industrial planning and building. Without this modern inventory it would have been absolutely impossible to administer the Antiquities Act in an effective manner."

The Antiquities Act, No. 350, 1942:

This Act provides for the protection of "ancient monuments which preserve the memory of the earlier inhabitants of the

realm, and, except by permission in accordance with the Act, no person may excavate, disturb, cover or otherwise by planting or building or in any other way change or damage an ancient monument". Such monuments are clearly and widely defined, and consist of:—

(a) mounds of earth and stone built by man during ancient times;
(b) burial structures, graves and burial grounds from ancient times;
(c) stone circles, ship settings and other stone arangements from ancient times;
(d) Stones and rock surfaces with inscriptions, pictures, carvings or paintings . . . votive springs and wells and other cult places as well as places for assembly from ancient times;
(e) stone crosses and other monuments;
(f) remains of habitation sites or work sites abandoned in ancient times;
(g) abandoned fortresses, castles, churches . . . erected during ancient times. or ruins thereof;
(h) natural objects which are associated with ancient usages, legends, or noteworthy historical events.

Around each ancient monument there shall be regarded as appertaining such area of land as is required in order to preserve the monument and to provide the necessary space around it. The county administrative board may issue special instructions in order to preserve intact an ancient monument. The Director-General of National Antiquities is empowered to investigate, restore and enclose any ancient monument and may also effect clearing or take any other measure on land belonging to an ancient monument as is considered necessary for its protection and care, and he may permit another person to carry out such an investigation. He may also cause an ancient monument or part of one to be removed for erection and preservation in another place. These provisions shall not be employed until the owner of the land has been informed, and he may be paid reasonable compensation for any expense or damage caused. Where an ancient monument is found to constitute an obstacle or an inconvenience which is not in reasonable proportion to its importance, permission may be granted for the monument to be displaced, changed or removed. Should such an application be made by a person other than the landowner, the landowner shall be consulted, and should he contest the application it shall not be granted unless there are special reasons for doing so. Should permission to shift or alter a monument "which has hitherto been entirely unknown and is without visible sign above the ground" be refused, the applicant is entitled to receive compensation for any substantial hindrance or inconvenience, provided that application is lodged within a set time of the finding of the ancient monument as a result of excavation or other work.

The Act makes special provision for the protection of ancient monuments which may be affected by, or be found in the course of public or other works. Because of the applicability of these sections to the situation in New Zealand, they are here quoted in full.

"**Section 8:** In planning of road construction or other work it should be ascertained in good time whether an ancient monument may be affected by the work, and where this is found to be the case consultations should take place as soon as possible

with the Director General of the National Antiquities or a representative appointed by him for the purpose.
If in the course of excavation or other works there is found an ancient monument which was previously unknown, work shall be immediately suspended in so far as it affects the ancient monument, and the person in charge of the work shall without delay report the circumstances to the Director General or a representative appointed by him.
An application for permission to displace, change or remove an ancient monument affected by the work shall be considered speedily in accordance with the provisions of Section 6.

Section 9: If it is a requisite, owing to a public or a large private works project which affects an ancient monument, that a special investigation of the ancient monument be undertaken or special measures taken in order to preserve it, the cost thereof shall be borne by those responsible for the project unless this is found to be unreasonable in view of special circumstances.
Any investigation or measure as referred to in the first paragraph shall be undertaken as speedily as possible."

All of the above provisions apply similarly to any shipwrecks which might be discovered if at least 100 years can be assumed to have elapsed since the shipwreck.

The Act also provides for the ownership of portable artifacts. If found in an ancient monument and connected therewith such artifacts accrue to the Crown. If the discovery took place during scholarly excavations for which the Director General had given permission, the person who carried out the work may be given reasonable compensation. If the object is found otherwise than during such investigation a reasonable reward may be paid to the finder. If an object for which no owner exists and which may be assumed to be more than 100 years old is found, not in association with an ancient monument nor with a shipwreck the object shall accrue to the finder, subject to the obligation to first offer it to the Crown where the object is made wholly or partly of gold, silver or copper, or has been found in association with such objects. Should the object be purchased by the Crown there is a special formula by which the compensation to be paid is calculated. Although this has no applicability to the New Zealand situation it is of sufficient interest to be quoted here:—

". . . the compensation shall with regard to objects which are wholly or partly of gold or silver consist of an amount corresponding to the value of the metal by weight together with an addition of one eighth and, with regard to other objects, shall be in accordance with what is considered reasonable having regard to the nature of the object. The Director General may direct that a special reward shall be paid in addition to the said compensation if reason therefore exists."

The right of the Crown in respect of such finds may be transferred to a museum which is capable of taking adequate care of the object in the future. In regard to a find of major importance, however, such transference may not take place without the King-in-Council. The Director General may investigate, or have investigated, the site of an ancient find even though it is not to be regarded as an ancient monument.

Discussion:

The cardinal principle underlying this legislation is not so much preservation of the cultural heritage of Sweden, although

this is important, but that the landowner has no claim to the right of ownership and use of an ancient monument. When ancient monuments are identified they belong to the State as the custodian of the interests of the people. While the owner is safeguarded from economic loss, he cannot make any profit out of a monument, nor may he damage or destroy a monument. Historic buildings in Sweden are protected by a similar law.

Sweden provides another example of a country where the excavation of archaeological sites is controlled by a State authority, which issues permits to research workers, but which also has a professional staff of its own with which to carry out archaeological surveys, inspections and investigations. It is obvious that if the work of Central Office of National Antiquities, or any similar body in other countries, is to be effective, it must have adequate staff with access to sufficient funds to enable them to carry out their work properly. Sweden seems to do very well in this respect. But the Central Office also works with interested laymen as its representatives (about 350 persons in 1964) while the Regional Inspectors of Ancient Monuments in each of the 24 counties are each experts in archaeology or art history, and are often the Directors of regional museums. The Director General works in close collaboration with all these antiquarians and officials. At his request they carry out investigations, supervise restorations, and give their opinions on town plans, road schemes, etc. which affect ancient monuments. (Selling, 1964: 2.)

But of greater interest than in any of the legislation already studied are the provisions for salvage archaeology which are built into this Act. Little need be added to the provisions of the Act which have already been quoted in full, but it will be noted that the onus for ensuring that no ancient monuments are adversely affected, by either public or private works, rests with the agency carrying out the work, and the agency may also be required to accept responsibility for the financing of any investigation or preservation of the site. The State for its part undertakes to carry out any investigation of a previously unknown site discovered in the course of the work as expeditiously as possible, and also undertakes to pay reasonable compensation for any inconvenience or economic loss resulting from any order for the preservation of the site. But the prime responsibility lies with the agency carrying out the work. The requirement of salvage archaeology in the face of the economic development of any country will always involve the question of which monuments are dispensible and which must be preserved, and how. Where the importance of the site is undoubted there seems to be little hesitation in Sweden to order its preservation—and not just of the immediate area of the site, but also of any necessary area around it to ensure its proper protection, and such areas may be incorporated into 'green areas' in town plans, as for example, the Royal Gravemounds near Uppsala, where the protected area is 2,600 metres long and 1,600 metres. (Selling, 1964: 6.)

It is appreciated in Sweden that ancient monuments are a part of the country's cultivated landscape, and that the preservation of ancient monuments and the care and protection of the cultivated landscape are therefore closely related, with the ancient monument being preserved in its correct environment. As a result some very large areas of land around sites, or encompassing a large number of sites have been acquired by the State. While the State has made substantial financial contributions to such purchases, the scale of these operations has been made possible by large amounts of money donated from other sources. Sites which have been pre-

served because of these policies are visited by an increasing number of people during the summer, so providing some backing to Selling's statement (1964: 7) that "Perhaps this interest in these sites on the part of ordinary people is the best testimony we can have to the value of our work in salvage archaeology". In this regard Sweden would appear to have much to offer New Zealand.

(11) THE SOVIET UNION:

It has not been possible to obtain any data dealing with the preservation of archaeological material and sites in the Soviet Union except for a brief discussion of the topic by Mongait (1961) on which material the following section is based.

Mongait records (1961: 65) that the earliest records dealing with the purposeful and deliberate seeking out from the earth of the cultural remains of earlier peoples can be traced to the 16th century when claims to land could be established by showing evidence of earlier occupation, although such investigations as were made are hardly relevant to any discussion of archaeology. But it was during this same period that the development of definite archaeological interests began to take place in Russia, with the establishment of the Moscow Chamber of Weapons. Peter the Great also established a museum, and issued a decree stating that any finds of ancient cultural properties in the ground, should be returned to him. In the mid 18th century plans were evolved for the purposeful study of Russian prehistory, and by 1763 the first large-scale excavations of Scythian barrows were undertaken. During the 19th century a large number of local museums developed and associated with them were local learned historical societies. Ancient monuments became the subject of scientific description and excavation, while care was taken in conservation and restoration.

In 1859 the Archaeological Commission was established as a government body controlling archaeology, but its concern was more with the acquisition of impressive artistic objects for Royal collections and museums. Although it did publish extensively on its finds, much of the work carried out was of a low scientific standard. During this period the ownership of material found in the ground lay with the landowner, and all investigations of archaeological sites were dependent on the landowner's permission. Mongait comments (1961: 70) "The treasure seeking of the more powerful landlords and lords of the manor, the rapacious looting of antiquities and trading in them, all this was a continuous obstacle to the advancement of science".

Today, all discoveries furnishing scientific information are protected by the State in the USSR, and all excavations are controlled by special permits from the Institute of the History of Material Culture or the equivalent body in constituent republics. Government regulations for the improvement of the protection of cultural monuments, and the 'Position regarding the Protection of Cultural Monuments' are important pieces of legislation securing the protection of cultural, including archaeological, monuments, and lay down basic principles for their investigation.

The Position Regarding the Protection of Cultural Monuments:

Under this legislation it is laid down that "all cultural monuments on the territory of the Soviet Union that have scientific, historical or artistic significance constitute inviolable communal property and are placed under State protection". Archaeological monuments are defined as "ancient barrows, camps, pile dwellings, remains of ancient sites and settlements, of ancient towns, ram-

parts, ditches, traces of irrigation canals, and roads, ancient cemeteries, tombs, graves, ancient burial constructions, dolmens, menhirs, cromlechs, stone figures, and such like, ancient drawings and inscriptions carved on rocks or cliffs, sites where bones of fossil animals are found, and also ancient objects that are found".

In order to cause any "change, alteration, transference, or destruction or building on reserved areas or cultural monuments" it is necessary to obtain a permit. Where "in those exceptional circumstances where permission is given for the destruction or alteration of a monument, the department concerned with protection according to the circumstances of the case must organize works for the completion of scientific investigation and treatment of the said monument (excavation, photography, measurement, survey, transference of finds to a museum, etc.) . . . The expenses incurred in this are to be met by the body that received permission to destroy or alter the monument".

Extensive and systematic excavations and archaeological programmes, which require substantial financial resources are financed by the State through the appropriate learned societies, and such investigations are included in State plans along with other measures dealing with the economy of the country. In 1945 in an all-Union archaeological conference, a five-year plan was drawn up for research and fieldwork on all-Union scale, and in subsequent plans archaeological work has been organized in the academies of science of the republic centrally co-ordinated through the Academy of Sciences of the USSR. (Mongrait, 1961: 48, 71.)

(12) BULGARIA:

The information on which this section is based is contained in a personal communication from Dr P. Berbenliev, Director of the Institute for Cultural Monuments, Sofia, 1970.

Law for Monuments of Culture and Museums, 1969:

This law is designed to protect all monuments of culture, which includes monuments of historical (and prehistoric), architectural and artistic importance from damage by indiscriminate excavation or from works of a private or public nature. All investigations of monuments of culture in Bulgaria are conducted by the Archaeological Institute of the Academy of Sciences, while restoration and preservation of monuments is carried out for them by the National Institutes for Monuments of Culture. Any survey work and excavations for the discovery of monuments may be carried out, whether on public, co-operative or private land, without the expropriation of the property, but compensation is paid for any damage caused. All cultural properties found belong to the State. The Archaeological Institute may allow excavations to be carried out by the National Institute for Monuments of Culture, the State museums, and by the archaeology departments of the Higher Education Establishments.

Lands on which there are sites of archaeological and prehistoric importance may be declared and registered as a reservation, thus being included in the nation's cultural fund. Construction works in such reservations are controlled by the State authorities responsible for the preservation of monuments of culture.

When finds bearing the signs of monuments of culture are discovered in the course of construction work, public works or agricultural works, such work must be temporarily discontinued, provision made for the protection of the monument, and the find reported to the nearest museum. The find must then be studied and within one month the authority responsible must inform the

owner of the land and the person or body responsible for the work whether or not the find is to be classified as a cultural monument, and give instructions for any measures which should be taken for its investigation and preservation. Dr Berbenliev does not state explicitly the extent of the responsibility of the owner or the contractor for the finances for such investigations, but he does state that where the finances of the work are insufficient for the scientific investigation the Ministry of Finance will ensure sufficient credits.

Persons announcing the discovery of valuable finds and preventing the damage of valuable monuments receive an appropriate remuneration, even though all monuments discovered in an archaeological context belong to the State. Conversely, the law makes provision for restitution in cases where cultural monuments are damaged or destroyed. Any damage caused as a result of offences against the law must be made good at the expense of the offenders.

As would be expected in a situation where all cultural properties found in the ground are the property of the State, only the official organization responsible for the protection of cultural monuments are permitted to sell such properties within the State. In general, the export of cultural properties is not permitted, although exchanges of properties between social organizations, cooperatives and museums may be arranged with the permission of the Committee for Art and Culture. Citizens may receive permission to transfer or exchange certain cultural properties, and where the items are transferred to official public repositories or museums no payment of State or local taxes is necessary.

Discussion:

Bulgaria is another nation where there is no equivocation concerning the ownership of cultural properties discovered in an archaeological context. They simply belong to the State, which also has control over the excavation of sites. The provisions for compensation for damage done to land, or for restitution for properties found but reported to the proper authority are realistic and fair, as are the penalties which may be imposed in cases of unlawful damage to and destruction of sites. No doubt any landowner or contractor would take great care to report any suspected cultural property and ensure its protection while the case is investigated.

The State also recognizes the desire of people to own cultural properties for their artistic or historic value and provides a controlled outlet for such properties.

(13) DENMARK:

The formal setting for the protection of the antiquities of Denmark can be traced back to 1807 when the Danish Government set up a Royal Committee for the Preservation and Collection of National Antiquities (Daniel, 1967: 91). This committee was charged with the task of forming the national museum of Danish antiquities, seeing to the preservation of the ancient and historic monuments of Denmark, and also of making known to the general public the importance and value of antiquities. The first secretary of the committee was Rasmus Nyerup, who had himself urged the formation of a museum as a means of compiling a comprehensive collection on which a careful study of the prehistoric past could be based. His successor in the post was Christian Thomsen, who was also curator of the museum, from which post he developed his model of the three stage development of culture. These two giants of the origins of archaeology were followed by Jens Worsaae,

who with his contemporary, King Frederick VII of Denmark, firmly established in the Danish consciousness the importance of the ancient monuments which were to be found in such great numbers in their country, and so laid the basis of subsequent legislative action, culminating with the Act of 1969 on which the present conservation of the ancient monuments of Denmark is based.

Conservation of Nature Act, 1969:

The purpose of this legislation is to ". . . preserve and care for areas . . . whose preservation is of essential interest for scientific, educational or historical reasons", and in this regard of special interest are what are referred to as 'Fixed Ancient Monuments'. Any barrows, stone cists, castle mounds, defensive structures, ruins or bridges which are either visible on the countryside, or have been registered with respect to the land concerned, may not be damaged or altered, nor may the land on which they are situated be further subdivided without the consent of the State Antiquarian and the Conservation Board. The same protection is afforded to other ancient monuments such as mill-races and dams, stone banks and stone rows and canals, provided they have been registered under the Act. Any menhir, petroglyphic stones and other stones of worship, runic stones, crosses and milestones are also protected from movement or alteration without the consent of the above authorities, as are ancient monuments in the territorial waters, which class of monuments when discovered must be reported to the State Antiquarian.

Where during excavation work tombs, burial places, villages, ruins or other fixed ancient monuments are found, work which affects the monument shall be suspended, the find reported to the State Antiquarian and any objects recovered handed over to him. The Antiquarian may hold an inquiry which must be completed within 12 months of the find being reported. Any loss suffered by a private landowner through the delay may be compensated. Should it be recommended that the monument be preserved on the spot for posterity, the site may be purchased by the State. Where a fixed ancient monument is damaged, altered or moved the landowner or the occupant may be required to restore it to its previous condition at his own expense, or the State may have the work carried out at the expense of the owner or the occupier. The Conservation Board has powers to restrict the erection of buildings, or the planting or altering of the ground 'that may materially disfigure the ancient monument'.

Discussion:

This legislation again places little restriction on the right of the State to control the excavation of a wide range of ancient monuments, and it also provides what would appear to be effective machinery for the protection of ancient sites from damage from construction projects. While the rights of landowners and users are protected in so far as their use of the land surface is concerned, it is implicit in this legislation that the individual has no title over ancient monuments per. se. He may be compensated for any economic losses resulting from the implementation of the provisions of this legislation, but his claims to actual possession of any site may be overridden by the State.

Unfortunately no copy of the laws of Denmark relating to portable artifacts, their ownership, sale or export was obtained, nor was it possible to obtain any comments from practising archaeologists as to the effectiveness of the legislation.

(14) FRANCE:

Information regarding the protection of antiquities and ancient monuments in France was obtained through the French Embassy, and consisted of an anonymous publication setting out in general form the provisions of the law and the State organization for implementing it. (Anon., n.d.[b].)

The task of protecting historic monuments and archaeological sites in France is carried out by a number of official services, particularly the Ministry of Cultural Affairs, as well as by unofficial bodies and private individuals. In recent years efforts have been directed towards the two goals of adjusting legislation on the preservation of historic monuments and archaeological sites to present-day conditions, and to carrying out restoration programmes on the most important monuments. The Ministry of Cultural Affairs has two Departments whose work is relevant to these programmes —the Department of Architecture which is concerned not only with the preservation and restoration of buildings and monuments of historic, artistic or architectural importance, but also gives guidance in the preparation of regional and local town planning schemes, and the Excavations and Antiquities Service, which deals with all administrative, financial and technical problems concerned with the implementation of legislation on archaeological excavations and discoveries, in particular, the acquisition of sites needed for excavation, the organization of excavations and the classification of finds. and the temporary consolidation or maintenance works on sites that are uncovered. It is assisted by two advisory bodies. First, the Higher Archaeological Research Council which among other matters advises on research programmes, applications for permission to excavate, and procedures for the classification or listing of archaeological remains, and secondly, the Scientific Advisory Commission for Marine Archaeological Research which fulfils a similar role for research on the sea-bed.

Since legislation of 1941 no excavation may be undertaken without the permission of the Ministry of Cultural Affairs, even by an owner on his land. Excavations must be carried out in accordance with any conditions imposed by the Ministry, and work is supervised by an accredited Ministry Representative, to whom all finds must be immediately declared. The State may carry out archaeological investigations on land not belonging to it, with the owner's permission, or, if necessary, by making a declaration of public purpose, although a site may not be occupied for more than five years.

In the event of any fortuitous discoveries of monuments, ruins, mosaics, dwellings, burial places, or any other articles of interest to prehistory, history, art, archaeology, or numismatics, the finder or the owner of the land must declare it immediately to the mayor of the commune. Preservation measures may be taken, and if necessary, the work being carried out may be suspended. The growing popularity of underwater exploration, particularly by amateurs, has resulted in the destruction of many archaeological sites, and the need to salvage art or historical treasures from the sea bed has caused the State to intervene in this field. Any underwater archaeological research requires the permission of the Regional Director of Excavations and Antiquities. It is obligatory to declare finds, although the State may allow the finder to keep in kind part of any treasure recovered from the sea. If the find is of archaeological interest it is deposited in a public collection.

There are procedures under the French system for the preservation of monuments either by 'classification' or by 'listing in

the supplementary register'. Over 25,000 monuments have been thus preserved, but for an even greater number of monuments and several thousand archaeological sites it has not been possible to take official protective measures. (Anon., n.d.[b]: 1.) Unfortunately, the literature obtained did not contain details of what constitutes these protective categories, nor precisely what kinds of sites are included. It was not possible to obtain any information concerning the protection of portable artifacts, nor of restrictions on trade and export of these artifacts.

(15) UNITED KINGDOM:

The laws of the United Kingdom concerning the preservation of ancient monuments have been adequately summarized elsewhere by Bellwood (1970: 92-96), who points out that they have developed in a piecemeal fashion from 1882, when Lord Avebury introduced legislation to protect archaeological sites, through a series of statutes (1900, 1910, 1913, 1931) to the 1953 legislation which is the current legislation for the protection of Ancient Monuments in the United Kingdom. Until 1913 the laws were largely ineffective, as the Commissioners of Works were unable to take any action which was in conflict with the wishes of the owners of the land, although, with that consent the Commissioners could become guardians of ancient monuments, and even purchase them, and in 1910 this power of guardianship was extended to any monument not an occupied dwelling house. The Act of 1913 gave the Commissioners the power to issue preservation orders over monuments which were threatened by decay. The Act also allowed the Commissioners in the interests of the protection of the monument, to make themselves its guardian and become responsible for the upkeep of the monument, even though title to it remained with the original owner. These powers remain the core of the power of the Ministry of Works in respect to the preservation of ancient monuments today (Bellwood, 1970: 93). The 1913 Act also made the Ministry responsible for the preparation of a list of 'scheduled monuments'—those monuments whose preservation is deemed to be in the national interest—and monuments on these lists are protected from arbitrary alteration or damage by the owner. The definition of an ancient monument under the 1913 Act is very wide, and gives wide powers of discretion to the Commissioners of Works, who are empowered to declare as an ancient monument any 'monument . . . the preservation of which is in the public interest by reason of the historic, architectural, traditional, artistic, or archaeological interest attaching thereto . . .' as well as those monuments specified under the 1882 Act. The 1913 Act also set up the Ancient Monuments Boards of England, Wales and Scotland, which have a responsibility of investigating monuments and recommending action to the Minister. They cover a wide range of categories of monuments, and in 1969 the Board for England recommended the scheduling of 281 monuments, comprising 92 prehistoric burial mounds or groups of mounds, 50 camps, settlements and other prehistoric sites, 14 Roman sites, 17 linear earthworks, 8 ecclesiastical sites, 81 castles and other secular buildings, bridges, standing stones and crosses, 13 industrial monuments and 6 deserted villages. (Anon., 1970a: 14.)

In its 1969 report the Ancient Monuments Board for England (Anon., 1970a) commented on its discussion of the report of the Field Monuments Committee, and made some comments as to the further improvement of the legislation. Because of its relevance as perhaps the most recent discussion of the problems of the protec-

tion of ancient monuments in England, it is worthy of consideration here.

The discussion is prefaced by a statement of belief in the necessity for fresh legislation over the whole field of ancient monuments, particularly as many of the recommendations of the Field Monuments Committee were equally applicable to ancient monuments generally. There was one major recommendation of the Committee with which the Board was quite unable to agree. This was the proposal to create a 'starred' class of scheduled field monuments considered to be of the most significance. The Board's objection to this proposal was based on the following considerations:

(1) The public grading of scheduled monuments might debase the currency of those not chosen for starring.
(2) The effect of starring would be no substitute for guardianship as an effective procedure for the preservation of monuments and field sites.
(3) That it would be undesirable to foster any thought that the full energies and resources of the Ministery would be used for the preservation of only a chosen set of the scheduled monuments, to the detriment of others.
(4) That it would be difficult to carry out any policy of starring until scheduling had proceeded much further than at present. In this connection Bellwood (1970: 94-95) records that approximately 11,000 sites are scheduled in England, Scotland and Wales together at present, but that it has been estimated that England alone has some 15,000 monuments worthy of scheduling, and that the process might take until the year 2000 to complete.
(5) That it would be better for the Ministry and the Board to exercise discrimination in the use of the Ministry's resources and the concentration of effort on sites decided in consultation, rather than by any system of starred designation.

The Board's opinion was that it was far better to continue to take notable examples of ancient monuments into guardianship and to concentrate on an extension of the scheduling programme.

The Board was in strong agreement with the Committee's report in the following respects:—

(1) that a class of Wardens be recruited to undertake regular inspections of monuments, as this was considered to be an important aspect of the programme of protection of monuments.
(2) that the Ministry should publish an annual report, dealing with all branches of ancient monuments work,
(3) that the work of the Inspectorate of Ancient Monuments should continue to be centralized, and expressed satisfaction with the way the Ministry's inspectors operated.
(4) that the protection of field monuments be strengthened by a system of acknowledgement payments and by the issuing of pamphlets of advice to occupiers on the maintenance of monuments.

The Board had considered the Report of the Field Monuments Committee knowing that the Minister was considering possible amendments to the Ancient Monuments Act, and as a result of their discussions had reached the following conclusions which they considered might help the Minister in any revision of the legislation:

(1) They believed that the basic structure of the Act, with its three pillars of scheduling, compulsory prevention of damage, and State guardianship had stood the test of time, and that there was no need for a drastic recasting of the whole scheme. It

was felt that the current definition of an Ancient Monument could well be simplified, care being taken to ensure that any new definition did not exclude remains under the ground which were properly associated with the site. It was also thought that ecclesiastical buildings, other than places of worship, should be included in the Act, particularly fine churches which were becoming redundant. The Board appreciated the occasional necessity for the Ministry, in an emergency, to act without consulting the Board, but it was felt that as far as preservation orders and compulsory guardianship orders were concerned that it would be desirable for the Board to be formally consulted and that the requirement for this should be written into the Act. The Board also made a number of suggestions concerning details in the Act, including,

(a) making more explicit the power of the Ministry to remove an ancient monument in order to ensure its preservation;
(b) that scheduling should be viewed as a protective device, and that preservation was a subsequent action;
(c) that the owner of an ancient monument should be obliged to bring to the notice of a tenant the presence of the monument on the land;
(d) that where the Ministry decided not to use its powers of compulsory protection, there should be power to ensure that, subject to compensation, an adequate period be allowed for excavation;
(e) that an ancient monument should be protected from work on adjoining land;
(f) that where a landowner has given permission for the excavation of an ancient monument, such permission should be binding on subsequent owners.

No doubt all of these suggestions arise from incidents and difficulties associated with the administration of the present legislation. The Board finally pointed out that with any new legislation there then would be four main Acts concerned with the preservation of ancient monuments, or parts of them, in force, together with the schedule to the 1882 Act, and it was felt that a general consolidation of all this legislation should be undertaken.

Laws relating to portable artifacts:

Control over the export of works of art from the United Kingdom is exercised through the Board of Trade and the Reviewing Committee on the Export of Works of Art. The regulations are applied more generally to works of art rather than archaeological material, and are based in the main on the recommendations contained in the report of the special committee (generally called the Waverly Committee) which in 1952 reported on the whole question of the export of works of art from the United Kingdom. The procedure now followed is best studied from the Notice to Exporters, which is to be found as an appendix to 1969-70 Report of the Reviewing Committee (Anon., 1970: 23-26). Under these regulations no object is to be subject to special scrutiny on grounds of national importance if they are less than 100 years old, or imported within the previous 50 years, and except for manuscripts, documents, and archives, nor if they are worth less than £1,000. However, in 1969 it had been recommended that export control should apply to all archaeological material whatever its value, and this had been accepted. In its consideration of applications for the export of these materials and objects the committee have to consider:—

(a) Is the object so closely connected with the history and national life of the United Kingdom that its departure would be a misfortune?
(b) Is it of outstanding aesthetic importance?
(c) Is it of outstanding significance for the study of some particular branch of art, learning or history?

The decision whether or not to refuse an export licence on grounds of national importance depends on how high the object stands in one or more of these categories and on whether a reasonable offer of purchase can be made to ensure its retention in the country.

With regard to the export of archaeological materials the Committee noted in its 1970 report that very few applications for the export of this material had been received, and it expressed the view that perhaps exporters were unaware of the new regulations (that all such items, irrespective of value, required a permit) and that any publicity would be welcome. This comment could be taken to mean that the committee was aware that archaeological material was being removed from the country without permits being obtained. In any event, only 7 licences for the export of archaeological material were issued in the 1969-70 year, and the total value of the objects involved was £50.

An area of English common law relevant to the problem of the conservation of archaeological materials is that of Treasure Trove. Discussions of the law of treasure trove are to be found in Parmiter (1968) and Bruce-Mitford (1956: 297-301). This law applies only to objects of gold and silver in the form of coin, plate or bullion found hidden in the earth or in any other secret place, the owner being unknown. The essential element in the deciding whether or not any particular find is treasure trove is that the original owner should not have relinquished his interest in or title to the objects, but intended to recover them from their hiding place. The specific intention of the owner at the time of hiding is the fact by which the coroner or jury decide the question of law involved. If the objects are found to be treasure trove they belong to the Crown unless another person can show a better title. Where they are found not to be treasure trove the objects are returned to the finder in the absence of the better title of the true owner.

Bruce-Mitford discusses the case of the Sutton Hoo finds (1956: 300-301) and points out the objects of gold and silver found in a grave could not be treasure trove, as with a burial in a tumulus or a mound large number of people would be involved and there could have been no question of the secret hiding of the boat or its contents. In addition there was the evidence of Beowulf of the burial practices of the Anglo-Saxons, where it is stated "they let the earth keep the treasure of earls, the gold in the ground, where it yet lie, as useless to man as it was before". Thus there was no possible 'intention to recover' but clearly a deliberate relinquishment in keeping with known funerary practices. Accordingly, it was found that the Sutton Hoo treasure was not treasure trove, and it was returned to the finder.

The question of treasure trove is also discussed at length by Shawcross (1970: 97-102), with particular reference to the possible application of the law, or its Common Law principles, to the New Zealand situation. Of course, it is most unlikely that any objects of gold or silver of any great antiquity will ever be discovered in an archaeological context, or accidentally, in New Zealand. However, it was the principle with which Shawcross was concerned. Bruce-Mitford points out in his note on the topic (1956: 297) the distinction between objects of gold and silver and objects of base metals or of organic or mineral materials, and that the careful

disregard in the law for consideration of scientific importance is meaningless and objectionable on archaeological grounds. Discoveries of buried treasure are valued as historic evidence, but the artifactual content of any site must be considered as a whole. The evidence of the artifacts of non-precious metals in a find may be of considerably greater importance than that of the items made of gold and silver, for the value of archaeological discoveries lies in considerations other than those of the material of which they are made. Shawcross (1970: 99) points out that the treasure trove laws were never designed as antiquities laws, but that they have, over the years, come to serve this new function. It is this principle that Shawcross felt made the laws relevant to the situation in New Zealand. Shawcross claimed that new concepts are more easily accepted by those they affect if they are incorporated into more familiar law, and if the underlying intentions of the treasure trove law could be applied to the New Zealand situation they would be more likely to receive greater acceptance than any new law overtly aimed at restrictions on the ownership of antiquities found within the soil of New Zealand. However, the truly basic concept in the treasure trove law is that of its applicability to gold and silver, and because of this it would seem that the law could never be applied to New Zealand. Those items and materials with which the archaeologist in New Zealand is concerned are specifically excluded, and any bending of the concept would be regarded in much the same light as would an entirely new law. Hence, as the treasure trove law is in any case inadequate for the archaeological situation as a whole, there would seem to be little to gain from attempting to persevere with what is in fact an unsatisfactory legal device.

Site location and recording:

It has been noted in many legislative provisions already examined that any successful preservation of the archaeological sites and field monuments of a country depends to a large extent on the availability of an up-to-date and reliable file of these sites. Many countries have specifically included in their antiquities legislation an obligation on the service or the department responsible for the administration of the law to have an active programme of seeking out and keeping records on the archaeological sites of the country. In the United Kingdom a great deal of this work is carried out by the Ordinance Survey (Phillips, 1959: 195-204), even though there appears to be no specific legislation charging the Survey to do this. It seems to have grown up in the course of the Survey's almost two hundred year life that such sites should be marked on the Survey's publications, and this process has probably been due to the individual interests of the several Directors and archaeological officers, none of whom would be of more importance than O. G. S. Crawford.

During and for a few years following World War II archaeological work in the Survey had been in abeyance, but when it was resumed in 1947 it was of even greater importance than it had been formerly, for, "new developments in the use of land were cutting a swathe through surviving monuments in a way hardly contemplated before 1940. The employment of more powerful agricultural machinery, the ploughing of marginal lands, the extension of the Forestry Commission plantations, and the growth of suburbs were taking their annual toll". (Phillips, 1959: 201.) The situation was not unique to England, but it did here lead to a recognition of the archaeological division of the Survey, and an

expansion of its work. Of great importance in this was the extensive employment of the newly perfected technique of aerial photography. Perhaps with such a service available British archaeologists have not felt it necessary to press for more formal provision for the type of work to be included in the legislation, but it is a point which should not be forgotten in any discussion of the preservation of archaeological sites. The location and recording of sites is a task of such magnitude that in most countries it can only be carried through by the resources of an official organization.

(16) HAWAII

The need for the protection of prehistoric sites in Hawaii had been recognized by the legislature from as early as the last decade of last century, laws having been passed in 1898, 1905, 1915, 1925, 1935 and 1945, with a final revision being carried out in 1970. From 1898 the State was empowered to "acquire and preserve for and on behalf of the Territory of Hawaii ancient heiaus and puuhonuas or the sites or remains thereof", but in 1949 with the establishment of the Parks system new legislation empowered the Government to acquire sites of "legendary, historical or scientific interest" and to manage them as parks. (Soehren, 1964: 1.) A Historical Sites Commission was established in 1951 specifically charged with responsibility to 'locate, identify and preserve in suitable records information regarding heiaus, ancient burial places and sites of historical interest'. The commission was reorganized in 1959 and its duties were transferred to the Department of Land and Natural Resources. (Soehren, 1964: 1.) The legislature at the same time recognized the rapidity with which knowledge of traditional Hawaiian culture was being lost, and a substantial appropriation was made available to the University of Hawaii for the preservation and study of Hawaiian language and crafts. From 1959 there was a specific legislation to control the examination and excavation of archaeological sites and the gathering of objects of antiquity.

Soehren, in his evaluation of this legislation (1964: 2-5), while commending the intent of the legislation, expresses his belief that "the results achieved to date generally have not been commensurate with the recognized need". The responsibility for this lack of success he places first on the inadequate appropriations of State funds for the work which had to be done, and also on the fact that there was a lack of sound planning of the use of the funds, which he claims were expended almost entirely on the clearing and maintenance of a limited number of sites within the State Park system. Only two research programmes had been financed, and no sites had been acquired from private owners. The Parks service itself, he claims, was severely restricted in its activities because of inadequate staff and a lack of funds.

But Soehren (1964: 5) is most critical of the abolition in 1959 of the 1951 Historical Sites Commission, and the transference of its research duties to the same department of State which was responsible for the administration and management of historic sites. Because the Department of Land and Natural Resources was itself engaged in construction activities on historic sites it was 'in the untenable position of having to grant itself permission to undertake such activities'. Soehren was of the opinion that such an arrangement was in conflict with the best interests of the conservation of historic sites. His point has considerable validity, and highlights the conflicts that exist between the attitudes of the different groups concerned with the preservation of historic sites, particularly the conflict over research and historic and scientific accuracy and also

aesthetic considerations as against the most convenient public use of the site.

Recently (1968-70) the statutes of Hawaii concerning the preservation of historic and archaeological sites have been revised, and it is this revised law which now operates in the State.

Historical Objects and Sites: Memorials (Revised Law, Chapter 6):

This legislation authorizes the Department of Land and Natural Resources in co-operation with the Department of Planning and Economic Development to establish a 'comprehensive programme for historic preservation and presentation'. The plan may include, but is not restricted to, such activities as:—

(a) Plans to acquire, restore and preserve historic areas, buildings and sites significant to Hawaii's past;
(b) Establish and maintain a register of such areas;
(c) Establish regulations for the use of such areas;
(d) Develop a State-wide survey of historic areas, buildings and sites with a phased preservation, restoration and development plan, and accompanying budget;
(e) Provide for matching grants-in-aid to political subdivisions and private agencies for projects which will fulfil the purposes of the chapter;
(f) Seek assistance for the State historic preservation and restoration programme by applying for technical assistance and funds for the federal government and private agencies and foundations for the purposes of this chapter;
(g) Employ sufficient professional and technical staff for the purposes of this chapter;
(h) Advise and co-operate with other public and private agencies engaged in similar work.

The law makes provision for the availability of sufficient funds for salvage programmes where public works are carried out by any government agency or land owner by the State or by any County, where sites of historic or prehistoric interest and value, or locations of prehistoric or historic remains are involved, by stating that "one percent of the appropriations for such public construction or improvement, or so much thereof as may be necessary, shall be expended by the Department of Land and Natural Resources for the archaeological investigation, recording and salvage of such sites or remains when it is deemed necessary by the department". The department is also charged with locating, identifying and preserving in suitable records information regarding historic and prehistoric sites, and the location of all such sites are to be recorded on the tax maps of the State. Before any public work is carried out by the State, county, or city of Honolulu the head of the agency concerned is responsible to ensure that the tax maps are examined to ascertain whether or not any such sites are affected by the work. If sites are involved, the proposed work shall not be commenced, or continued, until the head of the agency concerned has informed the department and obtained the concurrence of the department for the work to be carried out, although there is right of appeal against the department to the Governor. Where a private individual proposes to cause any construction, alteration or improvement of a designated site on privately-owned land, he must give the department three months notice of his intention to carry out the work, and at the end of this period the department must commence proceedings for the purchase of the land or permit the owner to continue with his plans, or it may carry out the salvage archaeology which it deems to be necessary.

The Governor may declare historic landmarks, historic or

prehistoric structures and other objects of historic and scientific interest situated on State land to be State monuments, and if they lie on private land, they may be taken by the State.

The Department may only excavate sites on private land with the permission of the landowner, who may be compensated should the value of the historic site be diminished by the excavation. Permits for the examination or investigation of sites, or the gathering of objects from sites on State land may be granted by the Department to persons and institutions which are deemed to be qualified to carry out the work, provided that the examinations are carried out for the benefit of public museums, universities or colleges or other recognized public educational or scientific institution, and may direct that any finds may be housed in a public museum. It is an offence for any person to "take, appropriate, excavate, injure or destroy any prehistoric or historic ruin or monument, or object of antiquity on land owned or controlled by the State" without the permission of the Department, and there are considerable penalties, both fine and imprisonment, provided for any violation of the section.

It is also an offence to reproduce or forge a prehistoric or historic object with intent to represent it as an original. However, there is no provision in the laws of Hawaii for the control of the sale and export of artifacts, and it is the opinion of the Director of State Parks that the control of export is a Federal rather than a State matter. (J. M. Souza, pers. com., 1970.)

Discussion:

These revised laws of Hawaii would seem to be a realistic and serious attempt to exert a reasonable degree of control over the preservation, investigation and restoration of ancient monuments in the State, although one must keep in mind that previous attempts to implement such control did not always receive the administrative backing which was necessary for success. (Soehren, 1964: 2-5.)

Of prime significance in this legislation is the scope of the activities which may be undertaken by the Department of Land and Natural Resources, although it is necessary here to repeat the caution concerning the wisdom of placing the control of archaeological sites under a department which may be primarily concerned with the presentation of such sites to the public under some State Parks programme. It will be remembered that a similar organization exists in New South Wales, and the writer has commented on the apparent success of the undertakings there. However, there is still need for vigilance to ensure that scientific endeavour and accuracy are not compromised in the interests of the tourist trade, or that scarce funds are not devoted to the ostentatious presentation of sites when they might better be spent on enlarged and more detailed scientific programmes.

All archaeological investigations, whether undertaken for considerations or primary research or for salvage, are expensive, and it is most significant that the Hawaiian legislation includes the provision for 'one percent of the appropriation for such public construction' to be made available where sites on public land are affected by public works. It is difficult to assess just how much finance this provision might make available for the salvage programme. For example, applying this law to a New Zealand situation, a programme such as the Tongariro Power Development, with an estimated total cost probably to exceed $50,000,000 might theoretically make available as much as $500,000, which is an

incredibly greater sum than that already expended for archaeological work on the Tongariro Power Development.

Conversely, some programmes of construction might be responsible for the destruction of archaeological evidence on a scale which was much greater than the actual work involved. For example, the proposals of the Mt. Wellington Borough Council to upgrade the public access facilities on the Mt. Wellington Domain posed a threat to a far greater body of archaeological evidence than could be investigated by the expenditure of one percent of the total estimated budget for the undertaking. Another aspect of this question is the decision as to what part of the expenditure for a major project should be considered when the one percent is being assessed. To take another example from New Zealand, the Ministry of Works, acting as construction agents for the National Roads Board have plans to build a motorway from Tauranga to Mt. Maunganui, and present designs provide for this work to cause considerable damage to a large and important pa at Oruamatua. If the contribution at the rate of one percent were to be calculated on the basis of the cost of the total motorway, a considerable sum, far in excess of the requirements of a reasonable investigation of the pa, would become available, but if the calculation were to be based only on the cost of the length of roading which affected the pa, then the sum made available would probably be inadequate for the investigation which would be necessary.

Of considerable significance in the Hawaiian legislation is the requirement that the head of the agency involved is responsible for ascertaining whether or not archaeological sites are affected by any construction programme. Carried to its logical conclusion, this would seem to mean that the head of a Government Department, or the mayor of a city could be imprisoned or heavily fined if their departments offended under the Act. Of course the success of such a provision depends on the cover of the recording programme of the State being up-to-date and extensive. This is far too great a responsibility for any museum, university or amateur organization, and makes it essential for the State to provide the staff, finance and facilities for site locating and recording programmes.

The Hawaiian Department of Land and Natural Resources which administers this antiquities legislation has issued a set of uniform rules and regulations covering permits to carry out archaeological investigations on State lands in Hawaii, and because of their comprehensive nature these rules and regulations would seem to be worthy of inclusion in some detail here, as a model of the criteria on which such permits should be based. They could equally well serve as the basis for any conditions imposed on any individual or institution receiving assistance from public funds, for example, the Lottery Profits Board of Control, for the execution of any archaeological programme.

The numeration used in this summary of the rules is the same as is used in the original, so as to avoid possible confusion from any cross-referencing, but as some of the items have no relevance, being purely legal description or administration, they are left out, so leaving apparent gaps in the numeration.

Uniform Rules and Regulations (for permits for archaeological investigation):

2. The rules have jurisdiction over ruins, archaeological sites, historic and prehistoric monuments, and structures, objects of antiquity, historic landmarks, and other objects of historic or scientific interest which occur on lands owned by the State.
3. No permit will be granted for the removal of any ancient

monument or structure which can be preserved under the control of the State **in situ.**

4. Permits for the examination of ruins, the excavation of archaeological sites, and the gathering of objects of antiquity will be granted to reputable museums, universities and colleges, etc., annual blanket permits may be granted for State-wide survey reconnaissance and salvage excavation to all professional archaeologists involved in Hawaiian archaeology, provided that no excavation which normally would require a permit would be carried out. The State is to issue a plastic Identity Card bearing photo, identification and limit of the permit, and which will be good for one year. Permit holders are to make themselves known to the District Headquarters of the Department of any area in which they carry out work. A report in memo is to be sent to the Department within two weeks of the completion of the survey. Occasional test pits are permitted under the permit, but all areas dug must be noted, and must be filled in and the land left in the condition in which it was found.
5. No exclusive permit will be issued for an area which is larger than the applicant can reasonably be expected to explore fully and systematically within the time limit of the permit.
6. Applications for a permit must be accompanied by a definite outline of the proposed work.
7. Artifacts found on State land are the property of the State.
8. Permits will not be granted for longer than one year, except that they may be extended provided that the work has been prosecuted diligently under the permit.
9. Work must be commenced within six months of the issue of a permit.
12. A representative of the Department may at any time examine the permit of persons authorized to carry out work, and he may fully examine all field work done under the permit.
15. All field vehicles and camp sites shall be marked by signs issued by the Department.
16. All land shall, at the completion of the programme, be returned to a condition approved by the Department's field officer.
18. Except for holders of annual permits for exploration and examination, a permitee shall file quarterly reports of a memo nature with the Department on the progress of the work. Within six weeks of the completion of field work the permittee shall submit to the Department, in duplicate, a preliminary report containing the archaeological site survey record, a brief description of the work done and its significance. representative photographs, maps and plans, and a list of new and significant material found.
19. Within two years of the date of expiry of the permit, the permitee shall file with the Department, in duplicate, a final report meeting professional standards, containing a description of the work done, materials collected, suitable maps and photographs, and a statement of the scientific significance of the work together with two certified copies of the permitee's catalogue of artifacts collected under the terms of the permit.
20. Field officers in charge of State lands, shall, from time to time, inquire and report as to the existence, on or near such land, of ruins and archaeological sites, historic and prehistoric ruins or monuments, objects of antiquity . . . Any artifact, ancient burial, object of antiquity of scientific or historical value or interest which may be found by any employee on State lands shall be preserved 'in situ' is possible, or if not,

it shall be delivered to the field officer in charge who shall forward it to the Department explaining all the circumstances of the object and its discovery.

23. Every collection, together with original field notes, records and photographs pertaining thereto made under the authority of the permit shall be preserved in the museum or institution designated in the permit and shall be accessible to the public after the completion of analysis.

These rules, by their detail, would seem to leave very little scope for dispute or equivocation, yet, neither do they appear to be any real imposition on the archaeologist. Indeed, they would seem to be rather advantageous in that by imposing a time limit on the completion of the report would assist in overcoming the bugbear of most field work—the preparation of a report. That the insistance on publication of results is a workable part of any programme of archaeological investigation is shown by the early publication of such reports as that of Pearson (1968) of the work carried out under the auspices of the Department of Lands and Natural Resources at Lapakahi, Hawaii Is. It is also of relevance to note that the lead being given by State agencies in salvage archaeology is being followed in the private field, as has been demonstrated by the considerable private sponsoring of an archaeological programme at Makaha.

(17) UNITED STATES OF AMERICA:

The United States Federal statutes relevant to this study date from 1906, together with the Rules and Regulations which accompany them. It is on these Federal statutes that the laws of most of the States are based, and in fact, the Hawaiian Rules are virtually identical in wording.

Act for the Preservation of American Antiquities, 1906:

This law makes provision for the protection of sites and antiquities to be found on Government-owned land, the first section reading: '. . . the person who shall appropriate, excavate, injure or destroy any historic or prehistoric ruin or monument or any object of antiquity, situated on lands owned or controlled by the Government of the United States, without the permission of the Secretary of the Department of the Government having jurisdiction over the lands on which the said antiquities are situated, shall upon conviction. . . .'

The President is authorized to declare historic and prehistoric sites, landmarks and objects to be national monuments, and may reserve around them such land as is necessary for their proper management, and in addition, the Government may relinquish to the State any such land held in private ownership. Permissions for the examination of these sites on land owned by the State may be given by the Department concerned to ' institutions which they may deem to be properly qualified to conduct such examination . . . **provided** that such examinations, excavations and gatherings are undertaken for the benefit of reputable museums, universities . . . with a view to increasing the knowledge of such objects and that the gatherings shall be made for permanent preservation in a public place '.

Historic Sites Act, 1935:

It is this Act, which provides ' for the preservation of historic American sites, buildings, objects and antiquities of national importance . . .' which places the responsibility for the administration of these sites within the ambit of the National Parks Service. For

the purposes of the Act the Secretary of the Interior is authorized, through the National Parks Service, to:—

(a) secure, collate and preserve drawings, plans, photographs and other data of historic and archaeological sites, etc.
(b) To conduct a survey of historic and archaeological sites to determine those which have value in commemorating or illustrating the history of the United States.
(c) To make necessary research into individual sites and buildings.
(d) To acquire property by gift, purchase or otherwise.
(e) To contract and make co-operative agreements with States, municipal subdivisions, corporations, associations or individuals . . . to protect, preserve, maintain or operate any historic or archaeological site . . . for public use.
(f) To restore, reconstruct, rehabilitate and maintain historic or prehistoric sites, buildings and objects.
(g) To mark sites and events of historic and prehistoric import.
(h) To operate and manage historic and archaeological sites and buidings, etc., for the benefit of the public.
(i) To develop an educational programme and service for the purpose of making available to the public facts and information pertaining to American historic and archaeological sites, etc., of national importance.

In order to further the policy set forth in the above Act the legislature of the United States in 1960 passed a further Act 'to provide for the preservation of historic American sites, buildings, objects and antiquities of national significance', which might 'otherwise be irreparably lost or destroyed as the result of flooding, the building of access roads, etc., caused by the construction of a dam by any agency in the United States. This Act sets out the various steps which must be taken for the notification of such projects and the investigations which may be carried out, and is the basis of salvage programmes in many States. Further details are set out in Wendorf (1966: 91-92).

Of all the States in the United States only Alabama is known to have established any claim to ownership by the State of archaeological sites and material other than those found on State land (Soehren, 1964: 9), most States claiming only those sites and objects found on State land. Virtually all States require the issue of a permit for any excavation of sites on public lands.

Historic Preservation Act, 1966:

This is the latest major legislation of the United States to provide for the preservation of historic properties. Its provisions are based on the following four principles:

(1) that the spirit and direction of the Nation are founded on and reflected in its historic past;
(2) that the historical and cultural foundations of the nation should be preserved. . . .;
(3) that, in the face of ever-increasing extension of urban centres, highways, residential, commercial and industrial developments, the present . . . programmes and activities are inadequate to ensure future generations a genuine opportunity to appreciate and enjoy the rich heritage of our nation; and
(4) . . . it is nevertheless necessary and appropriate for the Federal Government to accelerate its historic preservation activities . . . and to assist State and local government and the National Trust for Historic Preservation in the United States to expand and accelerate their historic preservation programmes and activities.

The Act authorizes the Secretary of the Interior to expand and

maintain a National Register of districts, sites . . . and objects significant in American history . . . archaeology and culture and to grant funds to States for the purpose of preparing comprehensive State-wide historic surveys and plans. It provides for Federal matching grants-in-aid for projects aimed at the preservation of such properties. The Act authorized the appropriation for these purposes of $2,000,000 for 1967 and $10,000,000 for each of the three succeeding years. It set up an Advisory Council on Historic Preservation to "advise the President and Congress on matters relating to historic preservation, and to recommend measures to co-ordinate Federal, State and local agencies and private institutions and individuals relating to historic preservation. . . ."

For more detailed discussion of this legislation, the reader is referred to McGimsey (1972: 241-247).

Conclusion:

The preceding examination of the antiquities legislation of twenty countries serves to highlight a number of facets of the problem of the preservation of archaeological material. Although the legislation covered was obtained somewhat haphazardly—depending on the usable replies received from the original 55 letters which were sent to the representatives of, or official organizations in, various countries seeking information regarding the protection of antiquities—the resulting coverage has proved to be satisfactory for present purposes. Of the major areas of the world only South America and Central and Northern Africa are unrepresented, while the countries represented in the survey include many different types of government and society, so that a wide range of differing points of view and approaches to the problem is covered. The comments received from practising archaeologists have tended towards the point of view that while Governments have attempted to frame realistic and workable legislation, in operation it often falls short of the anticipated effectiveness, frequently because the resources of the State are insufficient to deal with the problem, or because the people and politicians have not fully realized the importance of effective protection of their cultural heritage. For example, Green (1971: 229-230) reports that although Western Samoa has some basic antiquities laws which are at present adequate for the control of the export of antiquities and certain cultural materials, these laws are seldom implemented. Indeed, it was only on Green's insistence that the laws were applied to the archaeological material recovered during his own programme in the country in 1964-67.

A summary of the major points covered in the legislation is given in Table 3. Only those features of the legislation which are positively stated in the Acts are recorded, and this results in the exclusion of certain features which are either implicit, or, in some cases, known to be part of administrative practice even though not explicitly stated in the legislation. The following brief discussion of several points emerging from the study should be of importance in any consideration of antiquities legislation in New Zealand.

Sites versus artifacts:

All of the legislation studied deals primarily with the protection of archaeological sites, and portable materials are considered only as part of this general problem. It is only in New Zealand that the situation is reversed. This differing emphasis may arise from the fact that generally the legislation studied is later than that of New Zealand, and so benefited from changed public attitudes and a deeper understanding of the nature of archaeological material.

	United Kingdom	U.S.A.—Federal	Hawaii	Denmark	Bulgaria	U.S.S.R.	Sweden	Pakistan	Ontario	Philippines	Korea	Japan	South Africa	British Columbia	New Guinea	Northern territory	New South Wales	Queensland	South Australia
Date of Current Legislation	1953	1966	1970	1969	1969		1942	1968	1953	1966	1970	1950	1969	1960	1965	1955	1965	1967	1965
ADMINISTRATION: Advisory Committee or Board	×				×	×	×	×				×	×	×			×	×	×
Museum/University involved	×		×		×	×	×	×		×	×	×	×	×	×		×	×	×
Separate Official Staff	×		×		×	×	×	×				×	×				×	×	×
Local warden/inspectors																	×	×	×
Rights of indigenous peoples																		×	×
RECORDING, RESEARCH, etc. Official State Register of Sites	×		×	×			×			×		×	×						×
State respons. for research	×	×	×			×	×	×				×	×						×
All finds to be reported				×	×	×				×	×	×			×	×	×	×	×
SITE PROTECTION: All sites State property																	×	×	
Special sites may be declared	×	×	×		×		×	×		×		×	×	×			×	×	×
Compensation to landowner	×		×	×								×							
Compulsory State acquisition	×	×	×	×			×	×	×			×	×				×		×
ARTIFACTS: Basic private Ownership	×	×	×						×	×				×	×				×
Basic State ownership				×	×	×	×	×			×	×				×	×	×	
Trading restricted						×	×	×		×			×			×			×
Trading prohibited																			
Export restricted	×												×		×	×			
Export prohibited except exchange					×	×					×	×						×	
SALVAGE OF THREATENED SITES: Threatened sites to be reported							×								×		×		
State/public agencies respons. for: (a) examination for sites		×	×	×	×	×	×				×	×							
(b) provide time for salvage		×	×	×	×	×	×			×	×	×							
(c) meet cost of salvage		×	×		×	×	×				×	×							
Private agencies respons. for: (a) examination for sites		×	×	×	×						×	×							
(b) provide time for salvage			×	×	×		×				×	×							
(c) meet cost of salvage					×		×				×	×							
EXCAVATION: All excavation by State permit only					×	×	×	×		×		×	×				×	×	
Permit only for State land		×	×						×					×					×

Table 2: Analysis of Principal Features of Legislation

Attitudes towards preservation:

It is obvious that the last decade has witnessed a major shift in public and official attitudes towards the preservation of cultural materials. In the newly emergent nations this is often associated with a desire to establish a national identity, although in some cases it is a reaction against the rapacity of collectors from the museums and other institutions of Western Europe and America, while in other countries it seems to be part of the movement towards protection of the environment and the cultural heritage generally. Where there are sufficiently strong public attitudes it becomes possible for Governments to pass legislation restricting the right of the individual to an extent which would have been unthinkable even a decade ago. The legislation of the Australian States is a case in point. Part of this change in attitude can be attributed to the contributions made by archaeologists in recent years in educating the public to appreciate the nature and importance of their cultural heritage.

State versus private ownership:

While some nations have for many years regarded the property rights of the individual as being subservient to those of the State, even nations which have held firmly to individual ownership of the land and whatever it contains are beginning to appreciate that the cultural heritage of the nation belongs to all, and that the individual should have no real property rights over prehistoric sites found on his land. While there would need to be some elasticity in attitudes, particularly where legitimate economic development would be curtailed if there were a complete embargo on the destruction of sites, it would seem to be reasonable to hold that sites should not knowingly be destroyed, and that where destruction is unavoidable there should be adequate and reasonable time and finance made available for the salvage of archaeological data from the site.

Salvage archaeology:

There no longer seems to be any doubts among professional archaeologists concerning the worthwhileness of salvage programmes, nor of the necessity to provide for salvage of sites affected by economic development programmes, particularly on public land. But the case is equally strong with regard to private programmes on private land, and it will have been noted that many countries provide for salvage work in this situation. The questions of notification and the provision of finance are important, but the general attitude is to apply the principle that the agency, whether private or public, which is responsible for the destruction of the site should also be responsible for the provision of finance and time for salvage. An associated question is that of compensation to the landowner, and it would appear to be reasonable for compensation to be paid for actual loss of use of land, but not for the value of the archaeological and cultural material itself.

Official lists of sites:

It will have been noted that in many countries there is a State responsibility to seek out archaeological sites and to maintain an official register of sites. Such a provision would seem to be of prime importance if any real attempt is to be made to provide for the protection of archaeological sites. In New Zealand this task is undertaken by the New Zealand Archaeological Association through its site recording scheme, but if there is to be any completeness achieved it would appear to be necessary that the State either assist or assume full responsibility for this work. This of course would require staff and financial provisions, but as has been noted, the

English Ordinance Survey has a large staff employed on this type of work.

Selling and export of archaeological material:

There would seem to be no doubt of the association of fossicking and destruction of sites with the trade in artifacts. The problem is an old one, and it is increasing. It would be unreasonable, impossible and, in the end, self-defeating, to attempt to prevent all trading and export. The need is for reasonable and enforceable control. This would need to be associated with an effective public education campaign, for it will only be when the public as a whole understands the need for such control that any success will be achieved.

Tourism:

There can be no doubt of the importance of the increasing development of tourism in the question of the preservation of cultural material. This operates at two levels. First, there is the involvement of tourists in the international trade in artifacts. While it might be argued that even if tourists do purchase small antiquities (and there can be little doubt of this) they do little harm to the cultural heritage or archaeological data generally, this cannot be accepted. Individual tourists might take only a limited number of artifacts, but the total tourist traffic is so great that his represents a considerable outflow of material, much of which has come from fossicked sites. Secondly, there is the question of access to the sites themselves for tourists. There is no doubt that there is an increasing interest the world over in prehistory, and that tourists will visit sites of known importance. But by their very numbers these visitors pose a threat to the sites they come to see. Particularly is this so when roads and other facilities have to be provided for them. In addition, by pointing out places of interest, often in isolated or difficult to supervise localities, there is a danger of increasing the extent of fossicking of the sites.

Permits for excavation:

This is a question which must cause archaeologists in New Zealand much soul-searching. If it is held to be desirable that sites should be protected from fossicking by amateurs, should not there be some control over all excavations, both amateur and professional? Perhaps it will only be by the professional accepting the sometimes irksome necessity for some form of official permit to excavate that any control will be able to be exercised over unofficial or less desirable excavation. And, to be effective, such a control would have to operate over private as well as public land. It will have been noted already that most countries have some form of licensing, even for private land, and yet in New Zealand it is quite legal for any person, with the permission of the landowner, to excavate—perhaps destroy—any archaeological site.

Appendix B

INTERNATIONAL MOVES FOR THE PROTECTION OF ARCHAEOLOGICAL MATERIAL

In recent years there has been growing concern, not only within individual nations but also among nations generally, that while there was a necessity for individual laws for the protection of cultural property and archaeological sites, the real solution to the problem lies in the area of international co-operation. This stems from

the understanding that it is the international trade in cultural properties which provides the finance which makes the despoliation of sites a profitable activity. Arising from this understanding there have been two recent attempts, the European Convention on the Protection of the Archaeological Heritage (Anon., 1971b) and the UNESCO Draft Convention concerning Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Anon., 1970c), to achieve international co-operation in this area. While neither attempt has received complete acceptance by the nations concerned, and ratifications have been limited in number, these two Conventions indicate clearly the direction in which developments are moving, and even if separate nations, for individual reasons, feel unable to fully accept the provisions, at least the Conventions provide a basis on which revisions of the conservation legislation of the separate nations might be modelled.

(1) European Convention on the Protection of the Archaeological Heritage:

This Convention (Anon., 1971 b) was signed in London in May, 1969, by the representatives of the twelve member States of the Council of Europe, but to the beginning of 1971 it had been ratified only by Belgium, Cyprus, Denmark and Switzerland.

The following points underlay the considerations of the work undertaken within the Council of Europe which led to the conclusion of the Convention:—

(a) Illicit excavations of archaeological sites carried out without scientific methods, solely for the purpose of obtaining objects for sale, immediately destroy the irreplaceable historic documentation constituted by the ancient remains in the soil. This activity is directly encouraged by the illicit trade, which is itself encouraged by the inadequacy of the present laws. The guidelines for any action for the protection of the archaeological heritage must recognize the primacy of scientific knowledge.

(b) Any action taken should in the first place be concerned with the protection of archaeological excavation and sites. To be considered in this respect is the question of the preservation of sites, or at least parts of sites, for investigation in the future when archaeological techniques will be superior to those available today.

(c) By a concerted supervision of archaeological excavation and of transactions depending on public authorities it should be possible to safeguard the scientific value of archaeological objects, and contribute to the improvement in the state of the market in these objects and to the campaign for the suppression of fakes. Any protective action taken should not be designed to stifle the international movement of such properties, but "a regulated control system, based on profound and sure scientific information, concerning the discoveries . . . and, on the freedom and lawfulness of trade in them and export of them, could encourage an even greater international circulation of archaeological objects. . . ." (Anon., 1971 b: 9-10.)

The Preamble to the Convention affirms the belief of the participating States that, first, while the moral responsibility for the protection of the archaeological heritage rests in the first instance with the State directly concerned, it is also the concern of States generally; secondly, that the first step towards protecting this heritage should be to apply the most stringent scientific methods to archaeological research; and thirdly, that it is necessary to forbid

clandestine excavations, and to set up a scientific control of archaeological objects as well as to seek through education to give archaeological excavations their full scientific significance.

In brief, the more important sections of the Convention are as follows:—

Article 1:

The definition of archaeological objects is "all remains and objects, or any other traces of human existence, which bear witness to epochs and civilizations for which excavations or discoveries are the main source or one of the main sources of scientific information". It is clear that this definition applies not only to moveable objects but also to any material evidence of former cultures.

Article 2:

In order to ensure the protection of deposits and sites where archaeological objects lie hidden, the States undertake to, first, delimit and protect sites of (present) archaeological interest; and secondly, to create reserve zones for the preservation of material evidence to be excavated by later generations of archaeologists. The implication of this section is that nations will be aware of the location of archaeological sites in their territory and this highlights the importance of each nation having a complete and up-to-date register of sites. It will be remembered from the previous chapter that such a register has been provided for in most of the legislation surveyed, and that its preparation and maintenance is the responsibility of the State.

Article 3:

To give full scientific significance to archaeological excavation the States undertake, as far as possible, to prohibit and restrain illicit excavation, to take the necessary measures to ensure that excavations are, by special authorization, entrusted only to qualified persons, and to ensure the control and conservation of the results obtained. These measures are intended to apply to sites and areas defined and reserved under Article 2, but equally, they point to the importance of the control of excavation of all sites.

Article 4:

Acknowledges the importance of the prompt distribution of information on archaeological finds, and provides for steps to ensure the most rapid and complete dissemination of such information in scientific publications. It also provides for member States to establish a national inventory of publicly-owned and if possible privately-owned, archaeological objects.

Article 5:

This provides for archaeological objects to be circulated for scientific, cultural and educational purposes, and encourages the exchange of information on archaeological objects and excavations (both authorized and illicit) between scientific institutions, museums and competent national authorities, particularly with regard to objects which are exported after being obtained through illicit excavations. It also requires States to "endeavour by educational means to create and develop in public opinion a realization of the value of archaeological finds for the knowledge of the history of civilization, and the threat caused to this heritage by uncontrolled excavation".

This article recognizes two basic principles. First, that the archaeological heritage and knowledge of prehistory are wider than any national boundaries, and there should be no impediment to a free flow of information between nations. Secondly, it recognizes the importance of public education in any programme of cultural preservation, and particularly with regard to the prevention of illicit excavation of archaeological sites.

Article 6:

This sets forth the reciprocal obligations of member States in the matter of suppression of illegal dealings in archaeological objects. It calls on States to ensure that museums and other institutions whose purchasing policy is under State control take the necessary measures to avoid their acquiring archaeological objects suspected of having originated from clandestine excavations or coming unlawfully from official excavations, and that private institutions in member States have these provisions brought to their attention.

As the Convention would have no retroactive effect its provisions can only apply to objects discovered subsequent to its ratification. It is the intention of Article 6 that only articles for which there is reason to suspect might have originated from illicit excavation will be covered, for if it were to be made to cover all objects whose origins could not be ascertained, then there would be insurmountable difficulties of administration. This means, in effect, that lawful origin is to be presumed, to be rebutted only where there is a specific reason. In the drafting of the Convention it was proposed to make provision for the restitution to the State of origin of objects coming from illicit excavations. However, this proposal was not followed as it was considered impossible for such measures to be realized at the present time.

Article 7:

International co-operation is necessary to restrict the illicit circulation of archaeological objects, and this is provided for in this article which obliges each member State to give its assistance to any other member State which initiates action for the identification and authentification of archaeological objects of illicit origin which have passed out of its territory.

Article 8:

Affirms that the Convention cannot restrict lawful trade in or ownership of archaeological objects, nor affect the legal rules governing the transfer of such objects.

The remaining articles of the Convention concern matters of machinery and administration.

(2) UNESCO Draft Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property:

The preparation of this draft Convention has its origins in a resolution passed at the Twelfth session of the General Conference of UNESCO in 1963. The draft has been subjected to considerable comment from member nations and extensive revision, and has now reached a final form which has been considered and adopted by the 1970 meeting of UNESCO. No information is available as to how many member nations have as yet ratified the Convention.

The preamble to the Convention sets out the principles on which it was based. They are, in brief, as follows:—

(a) Cultural property constitutes one of the basic elements of civilization and national culture, and its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting.
(b) It is encumbent upon every State to protect its cultural property from illicit export, import and transfer of ownership.
(c) Every State has a moral obligation to protect its own cultural heritage and that of all nations.
(d) Cultural institutions should ensure that their collections are built up in accordance with universally recognized moral principles.

(e) Such protection will be effective only if organized both nationally and internationally.

The definition of 'cultural property' for the purposes of the Convention is very wide, and, in some respects, vague, and several member States were critical of it on those grounds. While it covers much property other than that of concern to archaeologists, it is quoted in full here in order to give some appreciation of the scope of the thinking of UNESCO, but thereafter each article will be considered only in relation to its relevance to archaeological material.

Article 1:

Defines cultural property as follows:—

(a) Rare specimens of flora, fauna and minerals; palaeontological specimens;
(b) property which is important for history, including the history of technology;
(c) the product of archaeological excavations or discovery;
(d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
(e) objects of ethnological interest;
(f) property of artistic interest which is more than fifty years old and works of contemporary art acquired by a State;
(g) rare manuscripts and incunabula, old books and publications of special interest (historical, scientific, etc.), rare art books, philatelic collections and stamps of great value;
(h) scientific collections and important collections of books and archives, including photographic, sound and cinematographic archives.

Some nations (e.g., France, Japan and the United States) objected that this definition was so wide as to be almost meaningless or at least unenforceable, but other nations felt that its very breadth was a strength.

Article 2:

states that property exported, imported or transferred contrary to provisions already adopted by member States should be illicit properties.

Article 3:

holds that as the illicit import, export and transfer of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such properties, and as international co-operation is the only means of ensuring the safety of such property, member States should undertake to oppose such practices with all means at their disposal.

Article 4:

defines the bodies corporate and the individuals in whom the vested ownership of cultural properties would be recognized.

Article 5:

Member States, in order to ensure the protection of cultural property, are to set up within their territories national services to undertake this task.

Article 6:

the national services set up, or to be set up, by each country, are to carry out the following functions:

(a) to recognize the cultural properties existing within their territories;
(b) to establish and maintain a national inventory of such property;
(c) to draw up a detailed programme for acquisition and research based on the state of the national cultural heritage and the need to add to it;
(d) to organize and control the exploration of archaeological sites,

building up and protecting archaeological reserves for research in the future, and to protect and preserve cultural property 'in situ' in order to discourage clandestine excavation which gives rise to the illicit export of cultural property;

(e) to staff the national protective services with an adequate number of competent scientific personnel.

The basic usefulness of such an inventory of cultural property as proposed in this article is not as a means of supervising the administration of legislation to control movements of cultural property, but as a scientific instrument to encourage the study and classifying of cultural properties that make up the cultural heritage of the nations and to determine those objects which should be preserved and subjected to export prohibitions, and those for which legal transfer could be authorized. It is only when a nation knows what comprises its natural heritage that it can make any real assessment of what safeguards are required. In this lies the importance of national inventories.

Article 7:
the principal clause of this article provides for the introduction of an appropriate certificate, in an established form, to authorize the export of any cultural property which should not be allowed to leave the country unless accompanied by the correct form. Furthermore, countries are required to agree not to accept the import of any cultural property from another State unless it be accompanied by the appropriate form. It is also included that States intercepting illegally imported properties should sequestrate such property and take steps to allow the property to be restored to its State of origin. An important provision is included in section (g) of this article:

(g) to control trade in cultural property and to oblige antique-dealers . . . to keep a register recording the origin of each item of cultural property, the names and addresses of supplier and purchaser, the description and price of each item sold, and to inform purchasers of cultural property of the export prohibition to which such property may be subject.

Several problems arise from this article. If it is difficult, even virtually impossible for the authorities of the exporting nation to intercept illegal exports of cultural properties, it would probably be no less easy for the importing country, which would have the additional problem of its customs officers, if even being aware of the laws of other nations with regard to antiquities, almost certainly being so unfamiliar with the items themselves that effective policing would be impossible. The whole question of the sequestration of illicit imports and their eventual return to the country of origin is so difficult that it will no doubt be quite unacceptable to many nations. And finally, the provisions of section (g) are quite likely to be viewed as an unwarranted interference in the internal administration of member nations. Even so, the provisions of this article are of such significance, that they are worthy of the most serious consideration.

Article 8:
concerns the export of cultural properties arising from the occupation of a country by a foreign power.

Article 9:
calls for all nations to take all appropriate measures to ensure the protection of the cultural properties of any territories for which they are responsible.

Article 10:
This article deals with the prohibition or prevention of transfers of cultural property which is likely to promote the illegal import or export of such property. It also provides for the restitution of properties not transferred in accordance with the provisions of the Convention, for the recovery of such properties by the true owner and for compensation to be paid, by the owner State to any genuine purchaser from whom the property might subsequently be recovered. This article again, while worthy in itself, presents considerable difficulties in administration, and no doubt would not be accepted by many nations.

The remaining articles make provision for certain procedures for the administration of the Convention.

Conclusion:

Such international Conventions as the two which have been considered may best serve as guidelines within which member nations may frame their own legislation, and administer it. It is in this respect that they are of greatest importance to the present discussion. There are many sections of both Conventions which are of great value to the consideration of revision of the legislation in New Zealand. But of equal importance, is their demonstration of the widely held appreciation of the extent of the problem of the preservation of the cultural heritage of nations, and of the belief that the solution lies in the field of international co-operation, for the problem is an international one itself.

Appendix C

LEGISLATION IN THE NETHERLANDS

Note: This material was not included in Chapter 5 as the literature obtained had not been translated at that time. I am indebted for the translation of an explanatory article on the Monuments Act by Dr R. H. J. Klok to Mrs T. Overdale, of the Department of Internal Affairs, Wellington.

Monuments Act, 1961:

This Act concerns a wide variety of monuments of architectural and ecclesiastical importance, as well as those of archaeological significance which are the responsibility of the Department for Archaeological Examination of the Soil (R.O.B.), which restricts its investigations to groundworks and structural elements which are directly coherent with and form part of an archaeological monument. The range of sites involved is wide and includes dolmens, grave mounds, prehistoric field complexes, mounds and walls, and prehistoric and later settlements, etc. Due to the extensive agriculture of The Netherlands many of these structures have been extensively altered and modified over time, and are now not readily visible.

The Act establishes a Monuments Council whose task it is to provide the Minister with information regarding monuments. It consists of 5 sections or State Commissions, viz.:—

(1) for the archaeological examination of the soil,
(2) for the preservation of monuments,
(3) for museums,

(4) for the description of monuments, and
(5) for the protection of monuments against disasters and wars.

Each Municipality is responsible for the drawing up of a list of monuments in its own area, to serve as a basis for the protection monuments of special importance, and with regard to archaeological monuments includes a representative selection of such monuments in the Municipality chosen on grounds of scientific, cultural and/or historical importance. Once listed these monuments are protected sites, although the owner has certain rights of objection to the classification. A National Register of such sites is maintained by the Monuments Council. The protections extended under this provision include:—

(a) a prohibition on causing damage to, or destroying such a monument,
(b) a prohibition on the right, without the necessary permit, to demolish, move, or change in any way, to repair, or to have used in any way liable to deface or endanger any protected monument. This section is, however, based on the axiom that the normal use of the land (i.e., that practised at the time the notification was first received) is to continue, even if it is not the ideal use to preserve the monument. The most important feature of this provision is to ensure that the landowner is made aware of the presence of the monument in executing his work.

Persons applying for permits to carry out building or construction work are informed by the local authority of the possible requirements of the Monuments Act. In order to ensure that the requirements of preservation or scientific investigation are provided for, any permit may include the following conditions:—

(a) that opportunity is given for the carrying out of archaeological research prior to the commencement of the work,
(b) that the R.O.B. is notified of the proposed work in sufficient time to allow an archaeological investigation to be carried out,
(c) that the R.O.B. is consulted with regard to the proposed work and agreement reached as to on which part of the site excavations will be carried out, and to make arrangements to coordinate the construction work plan with the archaeological investigation so as to satisfy the needs of both.

Movable monuments (i.e., artifacts) found at an authorized excavation belong to the person or body who carried out, or had carried out, the excavation, although the landowner may be indemnified to an amount equal to half of the value of the artifact. Should archaeological materials be found during construction and other work the local burgomaster must be informed, and he in turn must notify the State authority (the R.O.B.) and the Minister may require a stay of work in order to allow for adequate scientific investigations to be made. Compensation may be paid for any delay or losses caused by this procedure.

The ownership of single finds of artifacts and other archaeological material made accidentally or picked up from the surface of fields, etc., is not covered by the Act, but under Civil Law such finds which have a monetary value may be regarded as treasure finds which make the landowner and the finder equal part owners of the find, although in principle the finder is regarded as the owner of articles which have little or no monetary value.

Appendix D

OWNERSHIP OF ARTIFACTS IN NEW ZEALAND

From Historic Places Trust File: 8/3/7: Crown Law Office to Ministry of Works.

With reference to your minute . . . the position is that treasure trove, i.e., gold or silver in plate, coin or in bullion found hidden in the earth or in any other secret place, belongs to the Crown by prerogative right unless the person who hid it is known or afterwards discovered when it belongs to the latter person. So far as relates to chattels other than treasure trove found on private property, it may be taken as established law that the possession of land carries with it possession of everything which is attached to or under that land and in the absence of a better title elsewhere the right to possess it also. Consequently, if a chattel is found on land by some person other than the owner of the land, the latter, though previously unaware of its existence and not the finder is entitled to it, except as against the true owner. Difficulties arise where the chattel is lying unattached on the surface of the land, but it appears we are not concerned with this case.

In the English case of Ewes v. Brigg Gas Co., 1886, it was held that where a prehistoric boat was found embedded in the soil 6 feet below the surface, by a lessee in the course of excavating for the foundations of a gasworks, such boat was the property of the owner of the land though he was ignorant of its existence at the time of granting the lease. In the N.Z. case of Johnston v. Waikiwi River Board the Board, without taking the fee simple of the land affected, but acting under powers conferred by Section 76 of the River Boards Act, found it necessary to widen a stream and to clear the banks of timber. The Board contracted with the plaintiff to carry out the work. The plaintiff contractor claimed that all timber removed by it in pursuance of the contract became its property. The Court held that the Board did not by occupying the land with its works without taking the fee simple acquire any rights to the timber growing or found on the land. The timber remained the property of the landowner.

Clause 26 of the contract with Codelfa (Contractor on the Tongariro Power Development) provides that all fossils, coins, articles of value or Maori and other antiquities and structures and other remains or things of geological or archaeological interest discovered on the site shall **as between** the Minister and the contractor be deemed to be the absolute property of the Minister.

To summarise, artifacts found in the soil of land that is owned by the Crown belongs to the Crown. Artifacts found by the Crown or its agents in soil owned other than by the Crown belong to the owner of the soil, but possession can be retained by the Crown in the absence of a claim by the true owner of the soil.

Section 4 of the Historic Articles Act, 1962, which binds the Crown, provides that the Minister of Internal Affairs may purchase or otherwise acquire or may accept by way of gift, bequest or otherwise any historic article, and that any article so acquired shall be left in safe custody in accordance with the directions of the Minister of Internal Affairs.

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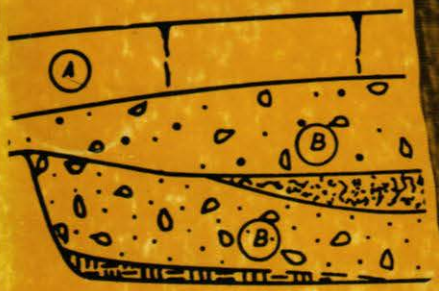

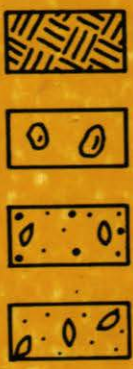

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