UNESCO High Level Forum on Museums  
Session 2B  

Illicit trafficking of cultural property: the importance of documentation, inventories, authentication  

We must all stand firm and united for the preservation of heritage against vandalism and its use for unlawful activities. In order to prevent illicit trafficking, related entities and professionals should act to enforce cooperation and strengthen networking among national and international actors. Proper documentation reinforces protective measures and speeds the recovery of cultural property. Raising awareness of the importance of heritage and ethical standards is of crucial to prevent the damage or loss of cultural property.  

Background Note  

Illicit Trafficking of Cultural Property and Prevention  

The illicit trafficking of cultural property is an organized crime which functions like a "cyclical chain". The looters, who represent the "supplier" side, provide the illicitly obtained artefacts to the "middlemen" who in turn transmits the artefacts to the "dealer". In order to create a "provenance document" it is a common practice to transfer the artefacts to successive dealers until it is finally sold.  

In some cases, after obtaining an artefact by theft or clandestine excavations, the illicit item remains in the country of origin. However, in most cases artefacts are transferred to border countries in order to take advantage of the legal gaps borne from different national legislation and enforcement. This is where the most complicated phase of this chain, “laundering”, begins. Few national laws consider "illegally exported" cultural artefacts as "illegally imported". However, this situation is improving. For example, Germany recently changed its relevant legislation and imposed stronger regulations in relation to the import and export issue. According to this new legislation, which has been prepared for the better implementation of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, as well as European Union Directive 2014/60/EU, the burden of proving good faith has been placed on the holder of the artefact, in order to encourage vigilant provenance research during transactions related to artefacts. Canada has been applying this principle since 1997 and continues to return all artefacts identified as illegally exported back to their country of origin.  

According to Article 7 (a) of the UNESCO 1970 Convention, the States Parties undertake to take necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property which has been illegally exported. The most well-founded way of identifying an illegally exported cultural object is through “due diligence”.

The term “due diligence”, which nowadays is considered key to suppress illicit trafficking of cultural property, was introduced to this field by UNIDROIT 1995 Convention on Stolen or Illegally Exported Cultural Objects. The groundbreaking principles of UNIDROIT 1995 Convention was endorsed by the European Union and reflected in 2014/60 Directive.

Checking the provenance information of an object and avoiding the purchase of suspicious artefacts is the main way to practice due diligence. The ICOM Code of Ethics for Museums also highlights the importance of this point in its Article 2.3, which requires every effort to be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained in, or exported from its country of origin or any intermediate country in which it might have been owned legally (including the museum’s own country). Due diligence in this regard should establish the full history of the item since discovery or production. Furthermore, Article 4.5 asks museums to avoid displaying or using material of questionable origin or which lacks provenance, highlighting the fact that such exhibits can be seen as contributing to illicit trafficking of cultural property.

Article 21 of the 2015 UNESCO Recommendation Concerning the Protection and Promotion of Museums and Collections, their Diversity and their Role in Society stipulates that Member States should adhere to the principles of international instruments in the fight against illicit trafficking of cultural property and should coordinate their efforts in this matter.

Although much needs to be done to halt illicit trafficking of cultural objects, good practices from around the world, such as the use of provenance checks and the adoption of an ethical approach when returning artefacts to their countries of origin, bears witness to the increasing vigilance of museum professionals. For example, the Boston Museum of Fine Arts received 308 cultural objects from a private collection in 2013. Following this bequest, the museum initiated research on the provenance of these works. The provenance research revealed that eight of these objects were taken out of Nigeria illicitly and sold on the market with fake provenance and export documents. The “ICOM Red List of African Archaeological Objects” facilitated the research. These eight artifacts include a brass altar figure presumed to have been stolen from the Royal Palace in Benin City in 1970s, a 4-foot-tall wooden ancestral figure, which was in the Oron Museum (Calabar, Nigeria) until at least 1970, and a 2,000-year-old terracotta head. The museum contacted Nigeria’s National Commission of Museums and Monuments, which confirmed the findings and requested that the works be returned. In July 2014, the Boston Museum of Fine Arts returned the eight artifacts to Nigeria.

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5 ICOM Code of Ethics for Museum accepts the following as the definition of provenance: The full history and ownership of an item from the time of its discovery or creation to the present day, through which authenticity and ownership are determined.
7 http://unesdoc.unesco.org/images/0024/002451/245176M.pdf
(please see the Annex)
As mentioned above, there are a number of effective legal and/or practical tools available in the fight against illicit trafficking. The steps that must be followed to avoid illegally exporting a cultural artefact are clear. Recently, the destruction of cultural heritage in Iraq and Syria, as well as the use of illicit trafficking of cultural heritage to finance terrorist organizations, has become a matter of concern for the UN Security Council Al-Qaida Sanctions Committee. Resolution 2199 (2015) imposes a world-wide moratorium on the trade in illegally exported artefacts from Iraq (since 6 August 1990) and Syria (since 15 March 2011). This Resolution also mandates that UNESCO, INTERPOL and other relevant international organizations facilitate the safe return of illegally exported artefacts to Syria and Iraq

UN Security Council Resolution 2199 was followed by Resolution 2253, which builds on the former resolution and obliges UN Member States to report any suspicious financial activity in relation to the financing of terrorism via trade in cultural property. Both of these resolutions were adopted under Chapter VII of the UN Charter, and are thus binding and must be executed and/or implemented at the national level. However, the lack of figures required to reach an estimation of the amount of profit generated via illicit trafficking of cultural objects remains as an unsolved problem. In the legal market, cultural objects, depending on their condition, uniqueness and other criterion may have an average price, but this is not exactly the case for illegally traded objects. As this is a black market, the price of the same object may not be the same from one day to the next. In order to seek a remedy to this issue, Germany launched a research project in 2015 called ILLICID. A transdisciplinary research project with a specific focus on illicit trafficking in cultural property from Iraq and Syria, ILLICID represents an example of a good practice as far as international tools dedicated to preventing illicit trafficking and the implementation of UN Security Council Resolutions 2199 and 2253 are concerned.

Inventories and Documentation

In the last 30 years, the number of museums and the size of collections have been growing rapidly, while resources are spread more and more thinly. In developing countries, the situation is overwhelming for many museums, which often have no access to the network of resources and expertise which exists in other countries in the field of museum and collections management.

Inventorying and documenting are essential to fight against illicit trafficking, a point which was noted by The Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (1964). Fighting against illicit trafficking is a process which starts even before an artefact is stolen or illegally exported, as today's preventive measures will be tomorrow's evidences to support a claim. The main components to ensure the foundation of a claim for recovery were set in the Object-ID which is a practical tool to guide the museum professionals to ensure proper records of the artefacts in their collections, even though the professional inventory requires more exhaustive information.

Article 5 (b) of the UNESCO 1970 Convention emphasizes the importance of establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property. Inventories and documentation are also mentioned in Article 7 (b) (i) and (ii) of the UNESCO 1970 Convention. This Article puts the responsibility on the claimant/requesting party to provide documentation on the artefact in question.

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10 UNSC Resolution 2199 is not the first UN Security Council initiative as far as prevention of illicit trafficking is concerned however the first one recognizing the link between illicit trafficking of cultural artefacts and financing of terrorism.

11 [http://archives.icom.museum/object-id/](http://archives.icom.museum/object-id/)
Furthermore, this article considers inventories as an essential requirement to make a claim for the return of an artefact under its auspices.\footnote{The issue of inventory is also tackled in 1972 UNESCO Convention Concerning the Protection of the World Cultural Heritage for immovable cultural artefacts (Article 11) as well as in 2003 UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (Article 12) concerning the elements of intangible cultural heritage.}

Article 2.18 of the ICOM Code of Ethics for Museums highlights the necessity of records and documentation in relation to the continuation of collections and recommends documentation of collections in line with the accepted professional standards in its Article 2.20. The 2015 UNESCO Recommendation (Art 8) reiterates the importance of creating and maintaining a professional inventory and regularly controlling collections, and showcases the link between inventory and prevention of illicit trafficking by considering it as an essential tool for protecting museum collections.

Given the technological advancements and the precarious nature of paper inventories, digitalized inventories are also a worthwhile investment.\footnote{ARTE Documentary: Trafic d’art : Le grand marchandage, first broadcasted on 14.09.2016} However, as demonstrated by the UNESCO/ICCROM partnership project on the Preventive Conservation of Endangered Museum Collections in Developing Countries, attempts to digitalize collections fail when there is no long-term strategy for technical maintenance and adequate human resources.\footnote{http://unesdoc.unesco.org/images/0018/001862/186239E.pdf (accessed on 15 September 2016)} Museums may wish to carefully assess their priorities before proceeding to digital inventories. In such a scenario, ensuring basic inventories of essential information should be considered the primary remedy. To avoid any loss or damage to inventory hard-copies, some copies could be stored in secure locations other than the museum compound.

Considering the relationship between inventorying and the prevention of illicit trafficking, having photographs of the artefact is essential. For professional catalogues or digital inventories, elaborate technical tools have now been developed which give excellent results, but are not necessarily accessible to all museum administrations due to their prices. As an example of a good practice, the Museum Victoria (Australia) published a video on how to take proper photos for inventories with simple tools that are accessible for all budgets.\footnote{https://www.youtube.com/watch?v=oUgG7HEpyyo}

Furthermore, when masked smugglers entered the Castel Vechio Museum in Verona, Italy, on 19 November 2015, the museum authorities shared the inventories and all relevant documentation of 17 stolen paintings with the art squad of the Italian police. The inventory information was immediately shared with INTERPOL and a special poster with the photos of the stolen paintings was distributed to all of INTERPOL’s National Bureaus. In May 2016, just six months after the theft, the paintings were recovered by the Ukrainian police and, according to the statements of both the concerned States, the paintings will be returned to Italy shortly.

These case studies highlight the importance of cooperation between different actors in the fight against illicit trafficking, and stresses the need to insist that Member States implement the 1970 Convention, especially with regards to the establishment and regular updating of inventories (as also stated in the UNESCO 2015 Recommendation\footnote{Art.25.}), information and data-sharing, the swift dissemination of information whenever an artefact is stolen, ensuring media coverage of thefts in museums, and legal collaboration.

A different take on documentation
In the ICOM Code of Ethics for Museums, terms such as “documenting” and “recording” were preferred over the term “inventorying”. As documentation is a broader term than inventorying, there are other components that should be highlighted in relation to the prevention of illicit trafficking and the idea of effective documentation.

- **Documenting and disseminating information on theft:** A theft should be reported immediately to the relevant law enforcement agencies and inventories should also be shared with them. The information should be submitted to INTERPOL Headquarters via the relevant INTERPOL National Bureau, in order to register the artefacts on the INTERPOL Database. If possible, a copy of the theft records should be kept by the special unit dedicated to preventing illicit trafficking and the concerned museum. Keeping in mind the possibility of a “cooling process”\(^\text{17}\), the case might take some time to get resolved. The information on the stolen artefact should be kept up to date and cases should not be left unattended. In 2006, a unique piece called the Hippocampus Brooch, part of the renowned “Lydian Hoard” returned to Turkey from the Metropolitan Museum in 1993, was stolen from Turkey’s Uşak Museum. The inventory and all relevant documents were shared with national and international police officers and this piece was published on INTERPOL’s “Most Wanted Works of Art Poster”. The object was found in 2012, 6 years after the theft, in Germany and returned to Turkey soon after its seizure.

- **Museum constitutions:** The very first article of the ICOM Code of Ethics stipulates that "the governing body should ensure that the museum has a written and published constitution, statute or other public document (...) which clearly sets museums legal statutes (...)". There are some cases of return and restitution claims which are being blocked by inflexible museum constitutions. This situation creates an obstacle for retrospective provenance research initiatives, which can only be concluded with significant cooperation with the requesting and holding parties. Considering the importance of following the ethical codes and not engaging with any criminal organization, even unwittingly, the constitutions should foresee the possibility of returning an artefact to its rightful owner.

- **Documentation of Illicit Excavations:** In some countries, museums are not only responsible for the management of their collections but also take responsibility for the archaeological or historical sites in their region. In these cases, such sites are inspected by museum professionals to ensure that the situation is kept under control. In this system, museum professionals are also informed by the excavation teams about illicit excavations/removal marks or incidents. In addition to reporting these incidents to the law enforcement agencies, the illicit excavation area should also be photographed and archived. This documentation may become very useful when identifying an illicitly exported artefact via a “style-critic” method. After narrowing down the geographical region by said method, the marks of illicit excavation/removal may be of great help to locate their exact place. The example of the Khmer Statues from Prasat Chen, Koh Ker, Cambodia represents an excellent example of this. Nine statues looted from the temple were identified in several museums and auction houses. In addition to the criminological proofs, one of the strongest pieces of evidence was the ankles and feet of the statutes remaining in the ground of the temple. The Metropolitan Museum of Fine Arts was one of the first museums to return two of the statues back to Cambodia after sufficient evidence was provided to them, and in view of Cambodia’s ownership rights over the statues.

\(^\text{17}\)In some cases, illegally exported artefacts are not being immediately put on the market. There are two reasons for this. Firstly, there might be public concern on the pillage going on in a country, for example the interest on Iraq and Syria. Secondly, if the “dealer” receives a lot of artefact of the same kind he prefers to store some of them in order not to decrease the value as rarity is important while pricing the artefacts.
Authentication

In May 2015, United States military forces raided the compound of a Daesh militant, Abu Sayyaf. The documents found in his compound revealed a direct link between Daesh and illicit trafficking, and several artefacts were also seized during this operation. The artefacts were returned to Iraq by the United States authorities in July 2015. Authorities of the concerned States also declared that some of the artefacts were actually fakes.

The same situation was reported by the Director General of Antiquities and Museums (DGAM) in Syria, who noted that the amount of fake artefacts among looted artefacts seized in Syria has increased from 30% to 70% since 2013. Furthermore, in most of the massive seizures of artefacts, it is possible to find fakes together with authentic artefacts.

In order to cope with such challenging situations, maximum caution should be paid, as acquiring fake artefacts is not only an issue of monetary loss, but also, unwittingly, falsifying scientific, historical or artistic data. The main steps that should be taken in order to avoid this situation can be summarized as follows:

- a review of the provenance of the object,
- a stylistic analysis of the work to assess if the details of the artwork or the object are consistent with authentic pieces, and
- a scientific/chemical analysis of the object.

As far as authentication is concerned, the authentication of the provenance document is particularly important considering that provenance research is the core element needed to avoid engaging in illegally traded artefacts, as well as fakes. In this regard, an inquiry should be made about the previous owners of the artefact.

In 2006, an art dealer based in New York, USA, arranged a theft and illegal exportation of a 900-year-old bronze statue of the Dancing Shiva from a small temple in Southern India. In 2008, this artefact, accompanied by forged provenance documentation, was sold to the National Gallery of Australia for 5.6 million AUD. Upon the request of Indian Government, the gallery returned the artefact to India through the hands of the Australian Prime Minister. This incident triggered many other investigations in relation to other objects that were sold to several museums around the world by the same dealer, and several forged provenance documents were thereafter revealed.

Hence, the examination of the concerned countries’ national legislation in order to see if the legislation allows exportation of cultural artefacts can be considered as one of the steps for practicing due diligence.

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Mexico: https://archaeologynewsnetwork.blogspot.fr/2010/04/mexico-fakes-dominate-seized-artifact.html#2QdiPBEOC0llWS8s.97
Pakistan: http://www.pakistanpressfoundation.org/2012/08/almost-90-percent-of-seized-gandhara-era-artefacts-fake/
According to Article 5.1 of the ICOM Code of Ethics, “the identification and authentication of objects that are believed or suspected to have been illegally or illicitly acquired, transferred, imported or exported,” should be reported to concerned authorities. This principle highlights the importance of establishing strong cooperation between museum professionals, law-enforcement authorities, specialized units on the prevention of illicit trafficking and all other relevant stakeholders.