

## **From Baghdad to Cairo – combating trafficking in cultural property**

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*“Monuments, pictures, statues and books are accumulators storing the most beautiful, the best and the deepest inspirations of peoples over the ages, and the energy thus stored sparks off a fresh impetus”.*

Hippolyte Taine,  
*The Philosophy of Art*, 1865

Amid the protests that shook Egypt in the early months of 2011, several hundred young Egyptians spontaneously formed human chains around the Cairo Museum and the Library of Alexandria to deter those who would take advantage of the unrest to loot the invaluable collections. The civic sense of a population determined to protect its heritage testifies admirably to the immense value of culture for the identity, dignity and self-image of a people.

Culture is much more than a tradable commodity. Cultural properties are significant not only because of their market value or scientific import; they embody history and identity. The looting and illicit trafficking of cultural property erode the cement that holds communities and societies together. They cause irreversible damage that lastingly affects the ability of societies to develop, take shape, and recover from crises. We saw this in Afghanistan, with the destruction of the Buddha statues of the Bamiyan Valley 10 years ago. We see it in Iraq and Haiti. We now fear it may happen, in the Middle East. Away from the media spotlight, criminals are hard at work at deserted archaeological sites, sometimes exploiting the poverty of populations that are ill-informed or forced to sell off their heritage.

The Baghdad Museum, one of the world's richest museums, was stripped of some 15,000 objects, two thirds of which have yet to be recovered. Before the major campaign to safeguard Angkor got under way in the early 2000s, one statue on average was stolen or vandalized daily in the vicinity of the temples of this Cambodian World Heritage site. Some countries in Africa have been despoiled of a large part of their heritage, scattered to the four winds of the black market.

For more than 65 years, the United Nations Educational, Scientific and Cultural Organization (UNESCO) has been at the forefront of international efforts to safeguard the world's cultural heritage. In the early days of the demonstrations in Egypt, UNESCO, alerted of the risks of looting at the Cairo Museum, asked the national authorities and international art dealers and collectors in neighbouring countries to exercise the utmost vigilance in doing business in Egyptian cultural goods imported, exported or offered for sale.

Heritage preservation in practice involves the implementation of several international conventions, particularly the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (including its Second Protocol of 1999) and the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

## **The principles of the 1970 Convention**

The 1970 UNESCO Convention was the first international legal instrument for the protection of culture in time of peace. It sets out the measures to be taken by States Parties to prohibit and prevent the illicit import, export and transfer of ownership of cultural property. States Parties undertake to develop legislation in line with their international commitments and to build their capacity to protect cultural heritage. Such protection involves the establishment of a system of export certificates and the prohibition of the sale or acquisition of cultural property that is not accompanied by such certification. The effectiveness of the mechanism depends on the number of States Parties and how diligently they inventory their heritage and adapt national legislation to their new commitment.

Since its adoption on 14 November 1970, the international cooperation instrument has been ratified by 120 countries, some of which host the most important art markets. The United States of America ratified the Convention in 1983, France in 1997, Japan and the United Kingdom in 2002, Switzerland in 2003, Germany in 2007, and Belgium and the Netherlands in 2009. More than 30 additional States have become parties to the Convention in the past 10 years alone, reflecting a recent, significant positive development. Forty years after its adoption, the fact of having won recognition as the key reference framework on the subject is no doubt one of the signal achievements of the Convention. But there is still room to improve the implementation of the principles promoted by the Convention.

Recognized since its inception as a major historical advance, the Convention is an innovative legal instrument, which operates within a relatively limited context: The Convention concerns disputes between States, excluding private law transactions. Second, the Convention is not retroactive, implying that illicit acquisition, theft and looting before 1970 do not fall within its scope. Moreover, given the highly sensitive political nature of some cases of heritage restitution and the financial issues it raises, the 1970 Convention was the result of an intensely negotiated compromise. This is reflected even in the language of the Convention and in its interpretation (how can it be determined whether a purchaser is acting “in good faith”? What is “fair compensation”?), which may vary from one country to the next.

A brief overview of the early stages of the development of the 1970 Convention is required in order to understand its historical role and present potential. Although the first attempts to monitor the circulation of cultural property were made in the late nineteenth and early twentieth centuries<sup>1</sup>, no major advance occurred until the 1950s. It was at UNESCO, founded in the aftermath of World War II, against the background of recently destroyed historic urban centres (Warsaw, London, Dresden), that discussions were held on the restitution of looted cultural property. The international community suddenly became aware that: “Cultural property being one of the basic elements of civilization and the culture of peoples, it is important for States to find means of protecting the cultural heritage on their territories from the dangers arising from the illicit export of such property. As this can be done only if there is close co-operation between States, prohibiting the illicit import of cultural property into a State is the unavoidable corollary of prohibiting its export. However,

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<sup>1</sup> O’Keefe, P.J, Commentary on the 1970 UNESCO Convention, Institute of Art and Law, Second Edition, 2007, p. 3.

the illicit transfer of ownership should also be prohibited, as it helps to impoverish the cultural heritage of peoples by facilitating illicit exports”<sup>2</sup>.

States considerably increased their commitment to regulating the circulation of cultural property during the decolonization period, driven by the desire of newly independent States to take possession of their cultural heritage.

### **Forty years of fighting illicit trafficking**

In 40 years of existence, the 1970 Convention has permitted significant instances of restitution and helped make cultural property central to cultural cooperation and diplomatic relations.

Recent examples are the return by Greece to Italy, in March 2009, through the Italian Carabinieri, of two thirteenth-century mural frescoes that had been removed from the church of Grotta delle Formelle in Caserta (Italy) in 1982 and discovered on the island of Schinoussa (Cyclades) by the Greek authorities in early 2006, during a major police operation against the smuggling of antiquities.

On 10 June 2011, the Canadian authorities officially returned 21,000 Greek, Roman, Byzantine, Bulgarian and Ottoman antiquities that form part of the cultural heritage of the Republic of Bulgaria and had been intercepted by Canadian customs officials.

Above all, the Convention has considerably raised awareness of the scale of trafficking and the challenges raised by the restitution of property. This has greatly influenced international cultural cooperation, even in cases not falling strictly within the scope of the Convention.

This is a consequence of the adoption and ratification, of the Convention: the process of adopting legal and technical instruments and establishing teams of professionals responsible for implementing the 1970 Convention provides States with expertise that may be used even in cases outside its scope of application. This includes dispute resolution and the restitution of property acquired illegally before 1970. In many cases, property is returned directly by States, outside the framework of the Convention, but in keeping with its spirit and in circumstances that would not have arisen otherwise.

The complexity and extreme political sensitivity of some cases demonstrated the importance of creating a new body that provides for open political dialogue in addressing these matters. In that context, the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation was established in 1978, irrespective of the text of the 1970 Convention. The Committee facilitates mediation between States at odds over the return or restitution of cultural property where the provisions of the 1970 Convention do not apply. It acts as an advisory body and enables States to submit requests for the restitution of culturally significant property of which they consider that they have been dispossessed.

The adoption of the 1970 Convention also provided decisive momentum for the transformation of private international law. The International Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects, drafted at UNESCO’s request and adopted in 1995, establishes a uniform body of private law for the international art market which supplements public law provisions. It complements the international legal instruments referred to above, notably European Council Directive 93/7/EEC on the

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<sup>2</sup> Preliminary report, UNESCO document SHC/MD/3.

return of cultural objects unlawfully traded within the 27 Member States of the European Union, and the Commonwealth Scheme on the return of stolen or illegally exported property within the Commonwealth.

The 1970 Convention thus gave rise to a broad regulatory movement and significantly raised awareness of the need to protect the heritage, leading to the adoption of new international instruments concerning increasingly specialized areas such as the protection of the underwater cultural heritage (2001) and the safeguarding of the intangible cultural heritage (2003). Publications by specialized authors have grown in number in recent years, testifying to heightened awareness of the subject, which calls for collective reflection and response.

The gradual extension of the fight against the illicit trafficking in cultural objects illustrates the magnitude and complexity of this phenomenon. It involves the mobilization of a growing number of specialized partners and stakeholders, whether intergovernmental (the International Criminal Police Organization – INTERPOL, the United Nations Office on Drugs and Crime (UNODC), the European Union and the World Customs Organization, non-governmental (the International Council of Museums) or national (specialized police units<sup>3</sup>).

Such cooperation is essential for coping with the various forms of trafficking, which are rising under the combined influence of the Internet, globalization and the booming art market and its ever high record prices. It is against this background that we need to consider not only the undeniable symbolic value of the 1970 Convention but, above all, practical ways of putting the instrument to practical use, correcting its shortcomings and adapting it to new challenges.

### **Trafficking in cultural property – the dark side of globalization**

Trafficking in cultural property is growing rapidly today, sometimes with complete impunity, and has reached levels unknown 40 years ago. Criminal networks have become organized and professional. With an estimated annual turnover of US\$10 to \$15 billion, illicit trafficking in cultural property has become one of the main transnational criminal activities, alongside arms and drug trafficking.. According to Italian Deputy Attorney-General Maurizio Fiorilli, who chaired the ministerial commission for the restitution of illegally exported property, 80% of Etruscan and Roman antiquities now on the market come from an illegal source. Some trafficking networks are well documented, linking archaeological excavations in Iraq and Afghanistan to a number of European marketplaces through unscrupulous intermediaries who use works of art to launder “dirty” money and finance terrorism. The recent boom in the art market<sup>4</sup> is raising speculation and increasing pressure on the most vulnerable heritage. Global sales of cultural property, both legal and illegal, allegedly amounted to some \$40 million in 1993. This figure has reportedly risen to some \$60 million today, namely a 50% increase, fuelled by a growing supply through the Internet. Unscrupulous users are availing themselves of the power of the Internet to speed up trafficking, taking advantage of the anonymity of some online auction sites and the speed of transactions. An item stolen overnight may be sold

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<sup>3</sup> UNESCO cooperates in particular very closely with the Italian Carabinieri and the French Central Office for Fighting Illicit Traffic in Cultural Property (OCBC).

<sup>4</sup> According to the recent 2010 activity report of the *Conseil des ventes volontaires de meubles aux enchères publiques* [French Auction Market Authority] on public sales in France, the market has grown by 66% in recent years, with China and the European Union each possessing a market share of some 35%.

immediately and found far from its country of origin the very next day. This requires those responsible for auction websites, the police, and customs, as well as each and every one of us – whether victim or trafficker, even unknowingly – to look into their responsibility in the purchase of cultural property.

Soaring prices have drawn those who prey on the extreme poverty of peoples forced to sell off their heritage. Between the illegal excavation and the final sale, the value of some items increases several thousand-fold to millions of Euros, amounts that dwarf the modest sums available to fight this scourge<sup>5</sup>. The main challenge under the 1970 Convention lies in closing the gap between ambitions and earmarked funds, which clearly requires a significant increase in human and financial resources made available to international organizations such as UNESCO or to the relevant authorities within States Parties.

Looting is a particularly serious problem with artefacts from illegal archaeological excavations. The romantic notion of keen “treasure hunters” selling their finds to amateurs is far from the reality. Entire regions are today routinely raided by unscrupulous traffickers who take advantage of States’ lack of resources, conflicts or crises to help themselves to the cultural heritage of humanity. Cultural crime is compounded in this instance by scientific heresy: as archaeologists know full well, the value of an artefact is derived from the context in which it is found and which makes it possible to explain its history and the customs of a bygone age, whose trace it betokens. When an archaeological find is removed from its context, which itself is damaged or mutilated, much of that object’s value is lost. Illicitly removed from their country of origin, these items have, by definition, never been inventoried. A State wishing to claim ownership faces insuperable difficulty as their origin cannot be ascertained. This matter, which already featured prominently in preparations of the 1970 Convention, is now of particular concern and must be dealt with urgently in vulnerable societies, beset by crises or conflicts, and devoid of means of protecting the heritage that they nonetheless need for their reconstruction. Iraq and Afghanistan are cases in point.

### **The rise of cultural diplomacy**

It may seem odd to be complaining of crimes against culture at a time when men and women in several parts of the world are risking their lives in defence of their freedom and when democratic change in several Arab countries is raising enormous economic, social and political challenges.

The point is that cultural issues are at the heart of globalization and international relations. It is apparent, on the one hand, that culture is a powerful factor of societal resilience and development. Cultural issues are often important to the clinching of economic agreements. It is also apparent that, as globalization blurs cultural divides between societies, people endeavour to reclaim their heritage and cherish their particularities. Cultural issues are becoming key factors on the political agenda, nationally and internationally. Recent debates about multiculturalism in Europe and the worldwide recognition of minority rights show that culture and heritage intermingle with other communal issues and can even constitute an eminently suitable interpretative framework.

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<sup>5</sup> For example, the Fund of the Intergovernmental Committee for Promoting the Return of Cultural Property or its Restitution is credited, to date, with some \$100,000.

Now that we must work together to solve world problems such as global warming, hazard prevention, water management and energy resources, governance of cultural diversity is one of the key issues of globalization. Yet nothing reflects the nature of relations between two peoples better than how they deal with their respective cultural heritage. Our conception of peace and the effectiveness of development policies are largely determined by how we relate to another people's culture and our collective ability to accommodate it. Good cultural heritage management is one of our signal assets when it comes to creating conditions for mutual understanding among peoples and the rapprochement of cultures.

But the question remains, are the tools at our disposal adequate? In this regard, the 1970 Convention and the closely related 1995 Convention are still far from keeping their promises.

### **Effective combating of trafficking in cultural property**

The Convention has the merit of having proclaimed several strong principles. The problem lies in applying them. Must a more binding monitoring mechanism, such as those provided for in the 1972 Convention on the Protection of the World Cultural and Natural Heritage or the 2003 Convention for the Safeguarding of Intangible Cultural Heritage, be adopted, which would entail again drafting a standard-setting text on a subject on which it was difficult to reach a consensus in the past? It is noteworthy that, more than 40 years on, the Convention has been ratified by only 120 States, while there are already 134 States Parties to the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, and 188 States Parties to the 1972 Convention. These figures are indicative of the sheer political sensitivity and the scale of the economic, legal and constitutional issues entailed in combating trafficking in cultural property. They also show that the ethics of cultural property management and handling are still in their infancy.

Whatever the technical difficulties, no law and no instrument will ever suffice unless individuals, be they peasant looters or international dealers, are made to feel accountable and unless sufficient resources are allocated. The 1970 Convention makes indispensable for States to increase their capacities, particularly in training customs officers, museum officials and art market professionals. This has to be the number one priority in implementing the 1970 Convention and its private-law corollary, the 1995 Convention. Italy stands as an example in its resolve to allocate the resources needed to fulfil its ambitions in this regard. The Italian authorities have assigned some 300 *carabinieri* to combating trafficking in cultural property. They are the best-trained and the best-equipped team in the world. The 2008 agreement between the Metropolitan Museum of Art in New York and Italy on the Euphronios krater, a 2,500-year-old Greek vase considered to be one of the world's finest, is not only a triumph of cultural diplomacy, but also the outcome of a determined strategy in this specific field. Italy is an exception. Many countries, including some boasting inestimable archaeological treasures, have proved unable to put into practice the technical and legal measures – including the training of professionals – necessary to combat trafficking. It is partly the responsibility of the international community to convince and support those countries to work on this.

### **Complexity of combating trafficking in cultural items**

The effectiveness of the Convention also depends on our collective ability to understand a multiform and extraordinarily complex situation. Cultural items differ in nature. The legal qualification, symbolic weight or treatment of items varies considerably, depending on whether they are sacred statues, historical archives – such as in the 2010 agreement between France and the Republic of Korea on the revolving loan of 300 manuscripts conserved by the National Library of France which describe Royal ceremonies of the Joseon Dynasty (1392-1863), considered by many Koreans as the most precious testimony of the spirit of their ancestors – or human remains such as skin and bones of the 16 Maori heads exhibited at the Natural History Museum in Rouen and the Quai Branly Museum in Paris and returned by France to New Zealand in 2010. Underwater heritage moreover shows that cultural questions can raise issues concerning the Law of the Sea, defence secrets and national sovereignty. Each dispute is unique because cultural property passes between several public and private collections and several generations, which making each case both unique and complex.

It is all the more important to foster active cooperation among all partners involved in this combat, for none will ever have universal competence on the subject. Such cooperation must be open, in particular, to the private sector, auction houses and the art market. Some have introduced effective regulatory and monitoring instruments that States would be wrong to overlook. UNESCO's goal is to promote dialogue, encourage contact among experts, harmonize legislation and ensure its effectiveness.

### **Distinctive features of action to combat trafficking in cultural items**

Lastly, for the Convention to be effective, all parties must respect the distinctive character of cultural property. A painting is neither a weapon nor a pellet of cocaine. It is a non-renewable medium bearing a history and an identity. The search for such stolen property requires experience in that particular field, as do practical arrangements for its restitution, especially in the case of sacred or emblematic items. Action to combat trafficking in cultural property cannot be premised on a purely repressive line of reasoning; nor can police or criminal procedures suffice on their own. Such action calls for a cultural approach to be taken by specialists in this area capable of assessing the symbolic value of the good concerned and of gauging the collective issues that they raise. It necessarily demands respect for and ethical sensitivity to the value of different cultures at all stages of the search for and restitution of items. Criminals use cultural goods as a currency, but those who combat trafficking are duty-bound to resist the temptation to treat these objects as simple commodities.

It is not at all UNESCO's goal under the 1970 Convention to impede the flow of cultural goods, quite the contrary. Cultural exchanges are a factor of mutual understanding and cooperation among peoples. UNESCO encourages them wholeheartedly in many ways. It is vital, however, that such exchanges be consensual and that such flows benefit all concerned. The world's heritage is not a free for all and looting cannot serve the cause of culture.

To keep the spirit of the 1970 Convention alive, States must, above all, protect and inventory their cultural property, exert control over its movement, recruit and train heritage professionals, police and customs officials. The most effective weapon against looting lies in making local people, tourists and amateurs accountable and

aware that heritage has a greater value – in every sense of the term – than the often paltry sums it can fetch on the black or grey markets.

The international community should present a common front and support States in this struggle. UNESCO contributes to the strengthening of resources for that purpose by suggesting new practical tools such as measures designed to assist States in combating trafficking in cultural property on the Internet, the model export certificate for cultural property, the settlement of disputes through mediation, and legal tools that protect property as yet undiscovered and thus enable States to guarantee unequivocally their rights to their heritage.

The revolutionary movement in the Arab world calls to mind the need to strengthen action in this field even more. In times of upheaval and crisis, cultural heritage is one of the guarantors of a people's identity and a means for those people to project themselves into a history shared with their neighbours. UNESCO is therefore working to inventory heritage, support teams on the ground, and strengthen security in museums and on major archaeological sites. Our ability to manage diversity among and within States more effectively depends largely on the respect that we show for cultural property – the source of the humanistic ethics without which we cannot hope to achieve lasting peace and development founded on solidarity.