

UNESCO's fight against illicit traffic of cultural property, questions relating to restitution and needs of museums in developing countries

Christian Manhart

With globalization, the licit and illicit trade in cultural property has become a major, and growing, international business, affecting museums, public and private collections, religious buildings, cultural institutions and archaeological sites worldwide.

Therefore, the importance of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is also growing continuously. The Convention provides its States Parties with measures preventing the import and trade of stolen artefacts, restitution provisions, inventories, export certificates, monitoring trade, the imposition of penal or administrative sanctions, training, and an international cooperation framework. To date 120 countries have ratified the Convention, and UNESCO is glad to now have on board such important art market countries as the United States, Canada, the Russian Federation, Germany, France, the United Kingdom, Australia and Japan. The newest States Parties are Belgium and the Netherlands, which are also significant art market platforms, and Haiti which became a Party just a month after the major earthquake on 12 January 2010 in order to have a tool to prevent thefts.

However, the 1970 Convention is insufficient by itself. Because it does not include civil law provisions, it was necessary to develop other instruments. UNESCO therefore strongly promotes the UNIDROIT Convention of 1995 on Stolen or Illegally Exported Cultural Objects, which considerably improves the chances of restitution and which is complementary to the 1970 Convention from a private law perspective. Unlike the 1970 Convention, the 1995 UNIDROIT Convention focuses on a uniform treatment for restitution of stolen or return of illegally exported cultural objects. Claims are processed directly through States Parties' national courts (or other competent authorities). In case of theft, claimants may be individuals or States (Parties), while in case of illicit export, claimants are exclusively States (Parties). The UNIDROIT Convention is not limited to inventoried objects as is the 1970 Convention, covering instead all stolen and illicitly exported cultural objects and requiring their return. Cultural objects that have been unlawfully excavated are to be considered stolen and have to be restituted. The 1995 Convention gives a right to indemnity or compensation – not to the thief or to the receiver of a stolen object, but only to a third party that acquired the object in good faith (i.e. without knowledge of its illicit provenance) and conditional compensation to due or reasonable diligence.

There is enormous controversy surrounding the 1995 Convention and strong lobbying against it, particularly in 'receiving' countries. Therefore, to date, only thirty countries have ratified this Convention. UNESCO urges those countries which have not yet done so to ratify it.

In many cases, bilateral negotiations for return are successful. However, because the 1970 Convention is not retroactive before ratification by the concerned states, another body had to be created: the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation. There are twenty-two members of this committee elected every second year during each UNESCO General Conference. In 2008, the Committee celebrated its 30th anniversary. At the invitation of the Republic of Korea, a celebration was held

in Seoul in order both to reflect on the Committee's past and to look to its future. So far, the Committee has not achieved many cases of restitution. Some cases have gone on for many years – the case of the Parthenon Marbles, for example, has been before the Committee for three decades. At the Seoul meeting, discussions were held about strategies to increase international cooperation for restitution, as well as alternative solutions when pure restitution is impossible, such as long-term or permanent loans.

The Committee continues to consider claims for restitution. In 2010, the case of the Makonde mask, claimed by the United Republic of Tanzania from a private Swiss museum has been solved and the mask returned to the National Museum of Tanzania. In addition to the Parthenon marbles, there is still the open case of the Sphinx of Boğazköy, claimed by Turkey from a museum in Berlin. Of course, the purpose of this Intergovernmental Committee is not to empty all Western museums or to bring all cultural objects to their countries of origin. It is intended only for some very significant objects and for those that were stolen or illicitly exported, although the definition of illicit export is often a point of contention in itself. This can be seen in the case of the Parthenon Marbles, where there is no consensus by the two parties involved as to whether or not the marbles were illicitly exported by Lord Elgin in the nineteenth century.

Today's looters are less glamorous than Lord Elgin. In Afghanistan, for example, many extremely poor villagers living in miserable conditions have no source of income other than to dig. From their perspective, there is no difference between digging for antiquities and digging for potatoes in their earth. It is difficult to explain the difference to people in their situation. They are paid very little for the hard and often dangerous digging and are mostly exploited by the warlords holding the power over the territory concerned.

In Kharwar, formerly a large Buddhist city in Afghanistan, the Minister of Culture, Makhdoum Raheen, requested UNESCO's assistance. He was very concerned about the ongoing looting of the site and asked UNESCO to conduct preventative excavations on the site. The hope was that presence of an international team could bring an end to looting. This would also have provided employment to the villagers and the possibility to create awareness for the protection of the remains of their past. Unfortunately, UNESCO efforts were unsuccessful. An Italian team sent first was threatened by the warlord and forced to end its excavations immediately. A Japanese team was sent next, extremely keen to excavate this Buddhist site. However, after three weeks, the situation proved too dangerous for them as well, and they had to return. This is very unfortunate, as this site has never been researched and no archaeologist has yet had the opportunity to see, study or document it. Now its structures are systematically being destroyed just for the objects being removed from them. These objects lose their historical context and value. For example, artefacts from the Graeco-Buddhist culture that emerged following the third century BC can originate from what are now several countries in Central Asia: from northern Pakistan and Afghanistan, to southern Uzbekistan and Tajikistan. When items from sites such as Kharwar appear on the art market, it is almost impossible to determine their exact provenance and they become useless for historical research.

Another example of illicit excavations is the area of the Minaret of Jam, also in Afghanistan, the second tallest minaret in the world. In the eleventh and twelfth centuries, this was the site of an important Muslim city which is not yet sufficiently researched. Dug into the slopes next to the minaret are countless holes, created by the illicit excavation of local villagers. Here, UNESCO's preventative excavations

employed these villagers to work alongside Italian and British archaeological teams in order to safeguard and research these structures. Another goal of this project was to create awareness among the villagers for their cultural heritage, which is their cultural identity as well.

An important numismatic treasure consisting mostly of silver coins was discovered in 1947 by the French archaeological mission in Afghanistan at Mir Zakah, a small village in southern Afghanistan near the Pakistani border. Half of the coins were sent to the National Museum in Kabul while the other half came under legal contract to the Musée Guimet in Paris. While the portion that went to France still exists, most of the coins in the Kabul Museum were looted in the early 1990s.

A spectacular and much larger second treasure was found by villagers in the same place in 1992, during the hottest phase of the Mujahideen war in Afghanistan. It contained three tons of silver coins which went to several important hubs of the art market. UNESCO was first offered the treasure in 1993 through an Afghan art dealer in Peshawar (Pakistan), for the amount of US\$600,000. As custodian of the 1970 Convention, UNESCO is unable to make such purchases, as they may be seen to validate looting and illicit trade. Also, it lacks the necessary funding and has neither storage nor conservation facilities to care such items properly. So, while UNESCO was unable to purchase the collection itself, it tried to identify a museum that would be willing to take the coins and safeguard them. However, no museum approached was ready to do this, even secretly. The coins disappeared, re-emerging on the market some years later in Switzerland. Again they were offered to UNESCO, this time for US\$1 million, and again UNESCO could not make the purchase and the silver coins disappeared.

Recent reports place a large number of them still in Switzerland. A smaller percentage was sent to the United States, where several hundred kilograms were melted down in order to produce fake jewellery. Jewellery made from old silver, dating in this case from the second century BC to the second century AD, is desirable for forgers, as it confuses dating techniques that would normally identify pieces as fakes. This is a tremendous loss for historical knowledge of the Central Asian Region. Professor Osmund Bopearachchi, a specialist in Central Asian numismatics teaching at the École Normale Supérieure in Paris, discovered on these coins the heads of heretofore unknown kings from kingdoms installed in Central Asia by Alexander the Great. These coins would have enormously expanded our knowledge of the history of Central Asia and Greece.

The looting of Bamiyan's mural paintings is also a cause for concern. In addition to the famous Buddhist statues, blown up in March 2001 by the Taliban, Bamiyan has 700 caves carved in the rock cliffs by Buddhist monks between the second and ninth centuries AD. Of these caves, twenty-six still contain mural paintings. These are frequently targeted by looters, whose efforts to cut them out often results in large pieces falling down or breaking into pieces. When the UNESCO team entered the caves, a layer of broken plaster with paintings often covered the ground. In the 1970s, Japanese specialists made an extensive inventory of these paintings. Frustratingly, the assessment by professors Miaji and Maeda revealed that 80 per cent of them had disappeared within the last thirty-five years, through neglect, theft, and also through deliberate destruction – first by the Russian army, then the Mujahideen and finally by the Taliban.

UNESCO worked to safeguard the caves with a Japanese team, financed by the Government of Japan, in the hope to be able one day to restore these paintings. In 2002, UNESCO took the very simple step of installing locking doors on the caves with paintings. This has proved effective and no thefts have since taken place from the Bamiyan caves.

UNESCO has also concluded contracts with several institutions to locate and safeguard looted Afghan cultural property, with the aim of returning them to their country of origin as soon as the security situation permits. The Japanese Cultural Heritage Foundation was very efficient in finding important and particularly fine pieces, mostly stolen from the Kabul Museum. A contract has also been signed with the Bibliotheca Afghanica of Bubendorf (Switzerland), whose director, Paul Bucherer-Dietschi, actually returned in 2007 all cultural objects he had found in Switzerland. However, UNESCO is currently not in favour of such returns, as the situation is deteriorating in Afghanistan, and this is not thought to be the right moment for restitutions.

UNESCO also works frequently with INTERPOL, New Scotland Yard and other police forces, in order to identify looted cultural objects. This is done by contributing information about stolen objects to their respective databases, provision of specialists who can identify seized objects and establishing contacts with the relevant antiquities authorities of the country of origin.

UNESCO's Museums programme

UNESCO's Museums programme is complementary to the struggle against illicit traffic. In this effort, UNESCO received important funding from the United States, which has provided more than US\$6 million since 2005, when the Museums Section was created. Museums are not only repositories of cultural objects, but have a role in education in conveying a message to their visitors. Museum activities should also be designed to attract new publics, in particular those which generally think museums are not for them, such as young people and local communities. In the course of this programme, the main needs of museums in developing countries have been identified. They are in particular infrastructure and capacity-building, enhancing inventories, building of adequate storage rooms as well as basic and preventive conservation.

The infrastructure building and staff training was particularly important at the Kabul Museum in 2002 and 2003, just after the war. The building was a ruin with the entire first storey destroyed by rockets. With the help and funding of many nations, UNESCO restored the building, reconstructed the missing parts, installed windows and heating, and provided electricity, water and basic equipment. Staff were trained, exhibition and storage spaces reorganized, and partnerships established with major museums in a variety of countries to link the museum staff to the outside world. UNESCO is also involved in the rehabilitation of the National Museum of Iraq in Baghdad, as well as in approximately twenty-five smaller projects in Africa and Asia.

Another major ongoing project is the creation of the National Museum of Egyptian Civilizations in Cairo, which will be the largest museum in Egypt. While UNESCO is not involved in the construction, it is working cooperatively in developing the inventory database, advising on security, designing storage and conservation facilities, training staff and museography. A new project is the rehabilitation of the Islamic Museum in Jerusalem, substantially funded by Saudi Arabia. This museum, which is situated on the Haram adjacent to the Aqsa Mosque, was closed in 1999 for political

reasons and is since deteriorating with only two staff remaining. Here, the roof and electricity have to be repaired, objects conserved, the inventory updated and staff employed and trained. This project is complementary to another one dedicated to the restoration of the historic Islamic manuscripts of the Aqsa Mosque, where UNESCO has installed a conservation laboratory inside a tomb within the complex and initiated a major programme to train staff on the spot but also in Italy and Cyprus. For both projects on the Haram in Jerusalem, it was vital to establish good cooperation with the religious Waqf, as well as the competent authorities of Palestine, Israel and Jordan in this part of Jerusalem.

Additionally, UNESCO has produced a series of publications to train Museum specialists, which are translated not only into its six working languages (English, French, Russian, Chinese, Arabic and Spanish) but also into more than twenty local languages, to ensure their wide dispersal. It also maintains a database of national cultural heritage legislation. This resource is on the UNESCO website, accessible to everyone, and includes more than 2,000 acts or pieces of legislation from some 180 countries.