

# Foreword

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It is a pleasure for me, as President of the UNESCO General Conference, to share my thoughts on one of the most important cultural issues to be recently re-examined by UNESCO<sup>1</sup>. At the 34th session of the General Conference, UNESCO's member states unequivocally reaffirmed their support for the 1970 International Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property<sup>2</sup>. They also stressed the greater role played by UNESCO in combatting illegal trafficking and the Intergovernmental Committee in promoting the return of cultural property to its countries of origin. To the uninitiated this seemed on the face of it an unremarkable state of affairs: once again the member states of an intergovernmental organization were reaffirming their adherence to one of their own normative texts. What could be the added value of this statement?

I would like to differ from this over-simplistic interpretation of events. I presided over the 34th session of the General Conference when this resolution and UNESCO's medium-term strategy for 2008–2013 were adopted, and personally saw it as, and to the contrary, a remarkable feat, despite its apparent banality. Indeed, if we look at the event from a historical perspective, we can appreciate the tremendous progress that has been made. Let us not forget that in the early 1970s the Convention was seen by many leading curators and collectors (in both the public and private domains) as an unwarranted restriction on the effective controls of the free market. For these professionals devoted to collecting the world's finest 'masterpieces' the 1970 Convention was perceived – at the time – as no more than an obstacle in the way of their unregulated acquisition plans.

Thirty-six years after the 1970 Convention came into force<sup>3</sup> we can take pride in the fact that this old former to art collections and museums no longer holds sway, despite the fact that some of the more determined traditionalists, with the help of new information and communication technologies, are setting themselves up as proponents of digital repatriation – a convenient but pale excuse for old collections to stay where they are, offering cultures that have been plundered the meagre compensation of access to cultures without a soul. It was thus no accident at all that the 34th session of

UNESCO's General Conference should assert in 2007 that virtual access to cultural property cannot supplant the enjoyment of such property in its original and authentic setting.

As of today, 115 countries have ratified the Convention, including those countries that historically have been least in favour of it, such as Japan, Switzerland, the United Kingdom, Sweden, Denmark, Norway and Germany, to name just a few.<sup>4</sup> Furthermore, inspired by the 1970 Convention, the majority of museums have adopted the ICOM Code of Professional Ethics, which lays down a set of principles governing museums and the museum profession in general, and acquisitions and transfers of ownership of collections in particular. UNESCO also launched the International Code of Ethics for Dealers in Cultural Property.<sup>5</sup> Adopted by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its 10th session, in January 1999, the Code was endorsed by the 30th General Conference of UNESCO in November of the same year.

Lastly, as further testimony to the international community's unwavering determination to uphold the values of the Convention, today the world can count at least sixty-five countries with cultural heritage laws, all of which are inventoried in the UNESCO Cultural Heritage Laws Database,<sup>6</sup> launched in February 2005 at the 13th session of the Intergovernmental Committee.<sup>7</sup> This resource offers governments, customs officials, art dealers, organizations, lawyers, buyers and others a complete and easily accessible source of information on laws and procedures applicable to cultural heritage as a whole, whether movable, immovable, intangible, underwater or natural. Both public authorities and art markets have much to gain from this database. It provides free access to national laws, allowing buyers easily to verify the legal antecedents of cultural property, and making it more difficult for traffickers to claim ignorance of the law and thus of the illegal nature of their dealings.

Despite these undeniable signs of progress, our current economic and political environment is reframing discussions in terms that bring to light new trends and challenges that must be addressed without delay. Among these we are seeing an increasing number of requests from countries for the return of objects preserved outside their borders, as well as for assistance in reconstituting their cultural memory and traditional knowledge. We have to bear in mind that Africa has lost around 95 per cent of its cultural property.<sup>8</sup> We are also witnessing an unprecedented increase in trafficking via the internet<sup>9</sup> and the wilful damaging and illicit trafficking of cultural property during conflict. The case of Iraq is, after Afghanistan, the most striking.

Many hypotheses could be brought forward to explain these phenomena; two in particular strike me as most relevant to our discussions in order to understand the environment in which we are working. These tendencies can be partly explained by the fact that, more generally, the culture sector is an increasingly lucrative business, generating a strong and diversified demand for and supply of cultural goods and services. Cultural consumption occupies a growing proportion of individual budgets and national economies, as can be seen from the fact that museums around the world are flourishing and that the number of visitors is growing.<sup>10</sup> Globally, it is estimated that the trade in cultural goods has grown from US\$ 39.3 billion in 1993 to nearly US\$ 60 billion, an increase of 50 per cent, in merely ten years.<sup>11</sup> Allied to this commodification of culture is the growing recognition, since the Pérez de Cuéllar Commission, of the essential role that culture and cultural industries play in economic growth and human development. With this comes the acknowledgment that cultural policies are ‘one of the key components of endogenous and sustainable development’.<sup>12</sup> It is therefore not surprising that the Convention on the Protection and Promotion of the Diversity of Cultural Expressions includes a focus on the need to take a ‘holistic view of the development process, bringing the cultural dimensions of development together with economic and environmental objectives within a sustainability framework’ (Article 13).<sup>13</sup>

In parallel to this economic ‘boom’ in the culture sector we are also witnessing a general movement away from purely economic analyses of power and towards culture as a marker of identity, thereby rejecting classic economic and military understandings of wealth and prestige. Societies are asserting their sovereign rights by claiming their cultural specificities and demanding, as their corollary, the right to reclaim and re-describe previously stigmatized or even unspoken parts of their history, in the name of the promotion of cultural diversity and identity.

In this context museums have become much more than sites of mere aesthetic contemplation and judgement. How can I not underline at this point that this relatively recent development of museums brings them back to the original sense of the Greek term *mousseion*, which means the ‘lodging of the Muses’ (all nine of them): places devoted to the learning of all the arts and harmony with the world. Today’s museums, whatever they may be, are rediscovering their holistic vision: they have become open spaces of cultural expression, exchange and dialogue, and invaluable vehicles for the preservation of cultural diversity as a common heritage of humanity. In the same buildings that house permanent collections and retrace periods of our common history museums are also now hosting live performances, conferences, workshops and film festivals that establish the connection between cultural objects and the values, cosmogonies, communities and talents that produced them.

This vision of culture, as a series of concentric circles with at the centre the community of origin, challenges traditional conceptions of ‘universalism’. It emphasizes the organic bond that links the work of art or artefact and the location where it was created. But what exactly do we mean by ‘universal’? And how does this principle relate to the idea of ownership? How can we promote universal access to cultural objects while honouring legitimate requests for the return and restitution of cultural property? Are we truly eroding the authority and ideal of ‘universal museums’ by encouraging the greater mobility and return of cultural objects? Or are we merely encouraging more innovative arrangements and conceptions of museography or even ‘museology’?

When Victor Hugo proclaimed that ‘monuments belong to their owner, their beauty to everyone’, he was unwittingly capturing a singular truth about cultural objects that, I believe, still holds true today. Monuments contribute to the creation of a cultural consciousness in a given geographic area. They are firmly rooted in the earth and pavements that they stand on and in the collective memories and minds of the people that observe them. It is for this reason that the UNESCO General Conference underlined the fact that the notion of universal access to cultural property exhibited in some museums of universal character cannot take precedence over the moral and legal notion of ownership of cultural property.

The increasing mobility of people has enabled easy access to elements of countries’ heritage long unknown to the wider public. Some would argue that people have a far greater opportunity today to visit ‘universal’ museums in order to rediscover traces of their own culture. This has unfortunately led numerous objects to acquire a status not of ‘universality’ but of ‘familiarity’, which progressively erodes the singularity and inherent symbolic value of cultural objects.<sup>14</sup> Does this ‘familiarity’ suffice to guarantee the universal character of the work of art? I believe not. The reverse situation would be far more rewarding. Indeed, would we not be expanding the universality of cultural objects by, on the contrary, promoting the maintenance of cultural objects in their places of origin, or their restitution to them, since this would bring the visitors closer to the objects and their settings, instead of bringing the objects to the visitors? I am convinced that if we do not anchor these objects in their original environment and history, we run the risk of depriving them of their universal quality and beauty by making them ‘familiar’ objects of consumption.

Neither the existence of universal museums nor the multiplication of museums in different sites can resolve the problem of the relation between the cultural object and the society of yesterday, today and tomorrow that produced it. The situation asks for a

‘cultural or pedagogic accompaniment’, a narrative, an explanation of the context, in addition to the common political will and ability to protect and preserve our common heritage. This is particularly true in this area, where the shared knowledge on works of art and collections is one of the fundamental factors allowing us to get closer to a universal ideal.

I believe that both the economic expansion of the culture sector and the increased valorization of cultural diversity are driving changes in the policy environment in which we operate. Against this background we, as an international community of stakeholders, must explore every path that can lead us to the most appropriate solutions for all, in accordance with internationally agreed norms. The case studies presented here reveal some effective strategies in this direction. These are so-called success stories that have been resolved both within and beyond the realm of the Intergovernmental Committee, and hence offer invaluable insights into the resolution of diplomatic, legal and ethical dilemmas associated with the return of cultural property. In these cases, as well as in others not presented here, we can see a modification of modalities pertaining to the circulation of works of art. This is expressed notably in the rise of contractual agreements and privatization mechanisms taking the form of long-term cultural cooperation agreements. Such texts envisage various arrangements, such as reciprocal loans, negotiated in the spirit of ‘loyal collaboration’, to quote the 2007 agreement between the Ministry for Cultural Heritage and Activities of the Italian Republic and the Metropolitan Museum of Art, New York. This particular agreement could be considered historic, since it represents the first time that an important world museum has acknowledged the true ownership of cultural objects acquired through illegal trafficking.

These breakthroughs and innovations have only begun to alter the sense of universalism that governed the creation of museums. The future of our collections and their ‘universal character’ is in the making and in many ways rests on our goodwill and ability to come to similar agreements. Because there are many cases pending, it is my personal hope that, as foreseen in the mandate of the Intergovernmental Committee, the exchanges which took place during the Conference enriched our common understanding of our mutual interests and benefits. At the close of the Conference we parted with a renewed determination to find sustainable solutions to our respective aspirations as well as with a panoply of strategies for action.

