

CULTURE & DEVELOPMENT



STOP THE ILLICIT TRAFFIC OF CULTURAL PROPERTY



United Nations
Educational, Scientific and
Cultural Organization

Regional Office for Culture
in Latin America and the Caribbean

UNESCO Havana



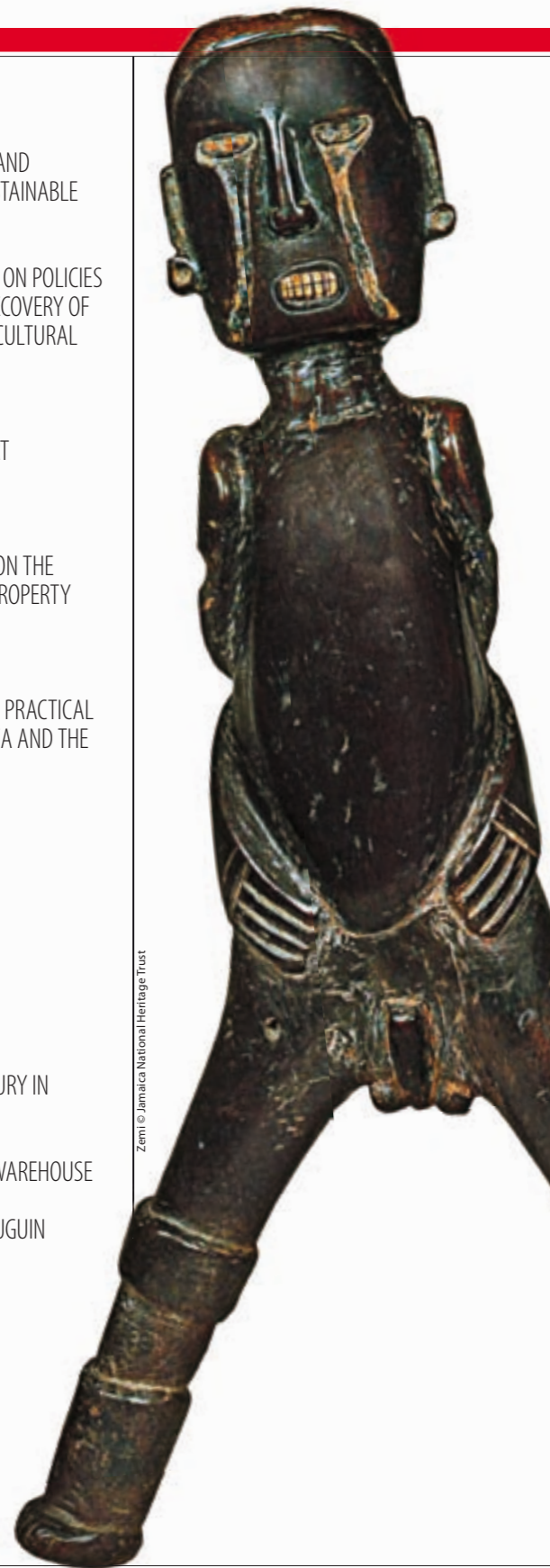
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« (...) the theft, pillage and illicit trade in artefacts are the outright negation of peoples. They reduce history to the level of merchandise. They are seriously detrimental, and often irreversibly so, to the collective memory, social cohesion and mutual enrichment.» (...)

*Address by Irina Bokova, Director-General of UNESCO,
on the occasion of the 40th anniversary of the 1970 Convention,
15 March 2011.*



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Herman van Hooff
Director of the UNESCO
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for Cuba, the Dominican
Republic and Aruba

The media recently echoed the return to Peru of several archaeological pieces from the Chancay culture, which had been seized by the Egyptian authorities in their territory. This is certainly a good example of international cooperation in the fight against illicit trafficking in cultural property between two countries that have unfortunately suffered from this scourge for many years. The new issue of *Culture and Development* focuses on this issue in the region.

Not long ago, representatives of Latin American and Caribbean countries shared their concern with Irina Bokova, Director General of UNESCO, about their concern over the looting, theft and illicit trafficking in cultural property in the region. The answer to this demand was to immediately boost training in connection with the implementation of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Specialized workshops, which were attended by experts and professionals from different disciplines, institutions and countries, were organized by the UNESCO offices in Havana, Montevideo and Lima, and were financed by the Regular Programme Budget of the Organisation and the Emergency Fund, with financial support from the Netherlands and Spain.

The value of cultural property, the importance of its protection, the prevention of its illegal trade, the role of the UNESCO Conventions, including the 1970 instrument in the development of individuals and societies, and the outcomes of the above-mentioned regional workshops are part of the contents of this issue, which includes contributions from experts of the UNESCO Cultural Heritage Protection Treaties Section and UNIDROIT.

Multiple experiences in various countries of the region enrich this conceptual framework. Interpol's work in Argentina, the measures taken by the Andean Community to combat illicit trafficking in cultural property, and the latest Dominican Red List of Cultural Property at Risk are just some of the topics covered in this issue. Colombia and Guatemala present their policies to prevent these crimes; Cuba describes its customs detection and control system; and St. Martin advances an interesting cooperation modality between France and the Netherlands on this Caribbean island. Other examples illustrate the following pages, such as the state of affairs in Haiti, illicit traffic of underwater cultural heritage, and, as previously mentioned, the return of cuchimilcos found in Egypt to Peru.

The previous issue, which was dedicated to the inclusion of culture in the post-2015 development agenda, closed with the Hangzhou Declaration available at <http://en.unesco.org>. This issue ends with the Trinidad and Tobago Declaration, a document that states the value of culture as a driver for sustainable development and delves into the areas of intervention necessary to create a culture of peace in the region through improved legal frameworks, increased investment and strengthened film industries.

I thank the colleagues of the Organization, and the experts of the region for their support and contributions to this issue of *Culture and Development*, which gives visibility, from a different perspective, to the value of culture to achieve the development we all want.



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THE UNESCO CONVENTIONS AND THEIR CONTRIBUTION TO SUSTAINABLE DEVELOPMENT

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The year 2015 is approaching. The international community, through the United Nations system, adopted the famous Millennium Development Goals and set the targets for achievement by 2015. Today, we know that it will not be possible to meet all these goals because, to a large extent, the development programmes, strategies and policies that were adopted were insufficient or were not appropriately defined.

The planned review of these goals, which will be named Sustainable Development Goals as of 2015, will need to include what was not initially foreseen. Surprisingly, culture was not incorporated into the Millennium Development Goals or their indicators, alleging numerous difficulties to measure its impact on development.

Probably, one of the reasons why the goals set in 2000 will not be met is precisely the failure to explicitly recognise the role of culture in economic growth, resource management, conflict resolution, the approach to social inequities, or the reaffirmation of identities.

Nor was it understood at the time that culture provides an extremely effective vehicle for the transmission of knowledge and the basis for innovation and creation, including scientific breakthroughs. It was ignored, perhaps, that there is no one single development recipe, as cultures

need to determine their development models, and not the other way around.

In short, it was forgotten that recognising, appreciating and sharing culture, the cultures of each of us and of our diverse groups, is an essential step to reduce social inequality and achieve full integration in society.

We must remember that the value of culture lies in the production and consumption of cultural goods, services and activities, and in the knowledge that we pass on to each other through symbols that we first understand and internalize, and later transform and innovate. These shared symbols give a sense of collective belonging and identity, and help to strengthen the social cohesion that is necessary to establish relations, whether commercial, professional or personal.

In addition, understanding the symbols used by other groups through cultural exchange makes it possible to hold relationships far beyond our own group and thus acquire new knowledge. It also makes it possible to resolve conflicts and engage in dialogue to broaden horizons.

Therefore, culture should be recognised as an essential pillar for development, which complements those of an economic, social and environmental nature. Culture is thus viewed as an

economic sector, as a means of transmission of knowledge and identities, and as the basis for enhanced quality of life, social cohesion, conflict resolution and inequality reduction.

Cultural diversity is as necessary for sustainable development as biodiversity. If cultural diversity is reduced or the capacity for cultural exchange between societies is restricted, cultural resources would be destroyed. These resources, unlike those occurring in nature, are unlimited if they are protected and promoted; they arise from people themselves and from the exchange between them.

That is right in theory. However, in practice, there is a systematic under-utilization of cultural resources, whether patrimonial or contemporary, terrestrial or marine, movable or immovable, and tangible or intangible, due to the lack of or, what is even worse, the failure to implement standards, measures and policies for their protection, management and promotion.

The destruction of, damage to, or illicit trafficking in cultural heritage does not only lead to economic loss but also violates the collective right to gain access to knowledge, hurts feelings of identity, undermines our collective development capacity, and impairs our quality of life.

There are protection, safeguarding and promotion measures under implementation. The General Conference of UNESCO at its 37th session will adopt in November 2013 the short- and medium-term programme of the Organization, which will incorporate two strategic priorities in the field of culture: the protection, promotion and transmission of heritage, and the promotion of creativity and of the diversity of cultural expressions.

In the 2014-2017 period, UNESCO will implement its programme in the cultural sector through two lines of action that reflect the medium-term objectives. Priority will be given to the effective implementation of its conventions in the field of culture for the purpose of:

- identifying, protecting, monitoring and managing tangible heritage, especially through the effective implementation of the 1972 Convention (world heritage);
- promoting political dialogue to prevent the illicit import, export and transfer of ownership of cultural property, through improved and more effective international cooperation, including the implementation of the 1970 Convention (prevention of illicit trafficking) and the upgrading of museum capacities;
- developing and implementing global, strategic and forward-looking policies through the effective implementation of the 1954 Convention and the two Protocols thereto (protection of cultural property in the event of armed conflict), and maximizing their multiplier effect;
- developing and implementing global, strategic and forward-looking directives through the effective implementation of the 2001 Convention (underwater cultural heritage), and maximizing their multiplier effect;

- strengthening national capacities for safeguarding the intangible heritage through the effective implementation of the 2003 Convention (intangible cultural heritage); and
- enhancing national capacities to develop and implement policies and measures seeking to promote the diversity of cultural expressions through the effective implementation of the 2005 Convention (cultural goods, services and activities).

The UNESCO conventions are not just international treaties. They are tools for the development and implementation of effective heritage conservation, safeguarding and promotion policies and creative industries, complementary to economic, social or environmental measures. The governing bodies under these conventions, supported by UNESCO's Secretariat, are continuously developing the conventions by updating the operational guidelines for their implementation.

THE CONVENTIONS AND THEIR DIRECTIVES PROVIDE A STANDARD-SETTING AND PROGRAMMATIC FRAMEWORK WITH A WIDE RANGE OF POSSIBILITIES FOR THE DEVELOPMENT AND IMPLEMENTATION OF NATIONAL POLICIES AIMED AT IMPROVING THE QUALITY OF LIFE, MANAGING THE CULTURAL AND NATURAL HERITAGE IN A SUSTAINABLE MANNER AND FOR THE BENEFIT OF ALL, GENERATING INCOME, RESOLVING CONFLICTS, STRENGTHENING SOCIAL COHESION, PROMOTING CULTURAL DIVERSITY AND, THEREFORE, INTERCULTURAL DIALOGUE, MUTUAL RESPECT AND A CULTURE OF PEACE. 



1ST INTERNATIONAL SEMINAR ON POLICIES AND STRATEGIES FOR THE RECOVERY OF GOODS OF PUBLIC USE AND CULTURAL HERITAGE

Cartagena de Indias
28 – 30 October, 2013

The seminar aimed at analysing the most adequate strategies for the recovery and conservation of goods of public use and of cultural interest. Experts from the host country, Argentina, Brazil, Chile, Costa Rica, Cuba, the Netherlands, Panama and Spain shared their experiences on strengthening public policies and strategies in this field.

The seminar aimed to foster respect for goods of public use and archaeological, historical and cultural heritage, among national and local authorities as well as the social organisations and the community in general, in the hope of making a significant contribution to the ongoing debates in the region on the important role of culture in the achievement of sustainable development.

The event was organised by the Attorney General's Office of the Republic of Colombia, with the support of a group of national institutions and the Organisation of Ibero-American States for Education, Science and Culture (OEI).

The UNESCO Regional Office for Culture in Latin America and



the Caribbean was invited to make a special presentation on the section International Experiences: Policies and strategies for the recovery of goods of public use and the protection of cultural heritage, which was offered by Fernando Brugman, Culture Programme Coordinator at the Office. A summary of his statement is the article on the UNESCO Convention and its contribution to sustainable development published in the previous pages. [C&D](#)



THE VALUE OF WORKS OF ART

■ Luis Manuel Almeida Luis

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The Science of Valuation often deals with the term value. Both the Spanish and American bibliographies consider it the result of valuation, a highly controversial concept by definition and interpretation.

Karl Marx indicated that the value of a good can be expressed through different amounts and that it is the phenomenological form of a content that is distinguishable from it.

Following the updating of the Cuban economic model, the category of value of a work of art will adopt new scope and recognition on the island, both economically and socially, and will become a book asset, requiring strict control by accounting departments.

Value originates from real social systems where there is a wide range of production, exchange and consumption flows. However, it is on the market, the largest institution connected with man as economic agent, where value is determined.

It is necessary to clarify the definitions of valuation and appraisal. Valuation is expressed in money and involves measuring the value of a cultural property. A valuation calls for a priori knowledge about the property under review. This is called prognosis, one of the basic tenets of valuation. From an ethical point of view, it is impossible to value what is not known.

Appraisal is a category more complex and general than valuation. Individuals attribute to the asset that is received a value that is greater than that attributed to the asset that is assigned. In general, museum and art gallery specialists are more knowledgeable about providing elements on the authenticity of an asset than on its valuation. The procedure for determining value involves only the competence and authority of the appraiser. It should be based on a scientific methodology and should indicate the purpose for which the appraisal will be used.

Value has also been defined as shadow price, that is, the estimated price of a good on a given market.

After many years of work, Prof. Dr. Alex Rosenberg, Former President of the American Appraisers Association (AAA) and Visiting Professor at the Higher Institute of Art in Havana, managed to formulate a definition that reveals its content in a broad and exact manner:

Value is the amount of dollars that a person will pay for an object that he/she is authorized to sell. It includes considerations such as previous owners, authenticity, heritage, material, subject, and use. It entails great significance for those who value any of these

Fragment of a work of the Haitian painter Enel Dectr, 1993



considerations and no value for those who do not appreciate these particular qualities. Such considerations are not often automatically transferable and are usually lost when the object is resold to a person who does not have the same interests as the original owner.

This definition emphasizes the source of the object, taking into account increased illicit trafficking in stolen goods after the Second World War.

Approaches to determining value

The Science of Valuation, with a clear American influence, identifies three approaches that make it possible to conduct a comprehensive analysis when assigning value to a work of art:

- Cost approach. It is applied to determine the value of an object, based on the cost of production and reproduction. In this case, handicraft can be included, but visual arts cannot, because the value of the materials used is not taken into account.
- Income approach. It is used to assign value to an object that will generate revenue in the future, for example, leased or rented property.
- Comparative data market approach. It is a multipronged approach to identify and analyse the market on which the object is often sold, looking for similarities on object and sale.

Fair market value

The fair market value is the price at which the property would be sold on the open market, which is agreed upon by a willing buyer and a willing seller, when neither is obligated to sell, and both have reasonable knowledge of relevant facts, if the use of the property donated is restricted.

Imagine a hypothetical transaction on a specified date and the price that would be obtained if independent parties were involved, including both advantages and disadvantages of the work of art as well as the valuation date.

In American bibliography, this concept is used for donations in order to deduct taxes and consider the circumstances related to the property, that is, its appeal, use and availability.

Appraisers cannot predict the future, because the market value on a particular date does not have to remain valid some time later. Market value fluctuates in line with the market situation and with supply and demand. Under these circumstances, appraisers should pay attention to the market and to the offers from potential buyers, since most comparable evidence, being historical, may not reflect the actual situation at the time of valuation.

To provide appropriate advising on market value, it is necessary to know the local market and price levels. When a work of art is bought, the buyer essentially acts as an appraiser, comparing differences in price, quality and location. Depending on the market analysis made, the buyer decides whether the price is acceptable or not.

Value types

- Complementary value. It applies when a piece is missing to complete a collection.
- Replacement value. It is estimated on the basis of the prices that other substitute works of art could reach.
- Market value. It is used to estimate the value of a work of art, comparing it with similar pieces and knowing the market price.


Main factors influencing the value of a work of art

- Visibility and historical period of the author;
- Celebrity and/or antiquity of the work of art;
- Materials and techniques used in its development;
- Format and dimensions;
- Conservation status; and
- Artistic production situation on the art market.

In analyzing, appraising and valuating a work of art, consideration should be given to a number of key elements that are identified below.

- Scarcity. An outstanding creator of a particular artistic movement may die prematurely, leaving just a limited number of pieces. The works of a certain artistic movement may also be scarce. Perhaps an artist devoted himself/herself to painting and drawing, producing only a few engravings. In the case of goldsmithing, filigree is a technique that is not used routinely.
 - Transferability. The work of art potentially possesses a monetary value that makes it possible to obtain cash immediately.
 - Usefulness. The work can be used for aesthetic enjoyment or as an investment. Today, it has become, together with gold, a reserve of significant value. However, the value of jewels has not reached that of works of art yet.
 - Demand. There are works of art that are not demanded at one point in time and begin to generate interest all of a sudden, both nationally and internationally, and their prices soar quickly. This is what has happened with Cuban artists in the United States, who are involved in one of the most favoured markets, or with the geometric abstract art that is "re-valuated" by critics.
- It is necessary to note that production, however extensive it may seem, is limited and runs out; moreover, the production cycle of deceased artists is closed. Additionally, excessive demand stimulates counterfeit works once the originals are sold out. Demand may serve interests in a certain technique, a style, a format, or a theme.
- Rarity. This aspect is related to the discovery of a talented creator or of a missing work. A technique that has not been traditionally used may also become rare.

VALUE ORIGINATES FROM REAL SOCIAL SYSTEMS WHERE THERE IS A WIDE RANGE OF PRODUCTION, EXCHANGE AND CONSUMPTION FLOWS. HOWEVER, IT IS ON THE MARKET, THE LARGEST INSTITUTION CONNECTED WITH MAN AS ECONOMIC AGENT, WHERE VALUE IS DETERMINED

- Antiquity. Not everything that is old is valuable; this feature does not automatically give value to a work of art. This peculiarity is common in archaeology. Art deco works, however, have a high value without being really old.
- Durability. In the case of plastic arts, materials are ephemeral and undermine the durability of the work of art, although the traditional use of oil on canvas, wood and metal has survived until now. In decorative arts, precious metals and stones are very strong and long-lasting, while the fragility of glass and pests in wood make these materials less durable. 



IDENTITY IN KUNA SOCIETY

Dad Neba* Nelson De León Kantule
Director and Editor of the Virtual Newsletter
CICI-K issued by the Naguana Association

* *Dad Neba* means «Grandfather of the Plain»
in the indigenous Kuna language.

The Kuna people, like other indigenous populations in the world, have preserved their history, medicine, beliefs, spirituality and cultural identity.

Kuna therapeutic songs are one of their age-old practices that are still being seen.

We get better and recover through these songs. There are songs for specific diseases and treatments. Today, there is still a wide range of *Igargan* or healing treatises that are called therapeutic songs, including *Absoged Igar*, *Gammu Igar*, *Muu Igar*, *Sabdur Igar*, *Gurgin Igar*, *Akualer Igar*, *Agduk Igar*, *Niga Onakued Igar*, *Sia Igar*, *Ablis Wiloed Igar*, *Sigu Igar*, *Sergan Igar*, *Gabur Igar*, *Masar Igar*, *Burwa Igar*, *Nia Igar*, *Nibar Igar* and *Biseb Igar*, among others.

Patients are healed through these songs or treatises. The singer goes in search of the spirit that has been abducted. These songs are sung for four hours under the hammock of the patient; *Masar Igar*, for example, is sung for 18 hours. The Kuna people think that every living being in the universe has a spirit, something difficult to believe in the Western (non-indigenous) society. This work aims to facilitate the understanding of and respect for the identity of the Kuna people.

We human beings have spirits within us; all the parts of our body have spirits, including the spirit of the nail, the liver, the stomach, the heart and so on. And if another spirit steals of the spirit of a part of a person, it will negatively affect his/her health and get sick. The *Neles*, who are very important spiritual leaders—clairvoyant

men and women born with a gift so strong that sometimes their mothers die during delivery—, consider the spirit as "the essence" of a phenomenon, which makes an animal be an animal, a person be a person, or a thing be a thing.


The spirit may also be considered conscience. Creatures, trees, rocks and things have a conscience of their own, similar to our human conscience.

These treatises are a religious practice or pragmatic religion. The sense of unity they provide does not negate the identity of different phenomena.

The Kuna hold that the universe is composed of eight layers, which make up the so-called underworld in other cultures.

Neles activity is based on ideas about space; although the everyday world is imbued with spirits, there are other worlds to which *Neles* have to travel.

After years of training, the *Neles* learn songs to cure diseases and act as mediators in nature-man conflicts. *Neles* guess when a sacred place has been violated by man, know what remedial action the community should take, and also diagnose diseases in patients.

We Kuna know that there are all kinds of spirits in a different world and we are aware that they can affect our health and livelihoods. We believe that, when these things are troubling someone, that someone can well be a *Nele*. The knowledge of therapeutic songs should travel to the world of spirits to convince them to act in a different, benevolent way. 

THE UNESCO CONVENTIONS ON THE PROTECTION OF CULTURAL PROPERTY

Private collection, Chiapas, México © UNESCO/F. Brugman



Jan Hladik
Chief of the UNESCO Cultural Heritage
Protection Treaties Section

The destruction, looting, and illegal trade of cultural property have a devastating effect not only on the physical integrity of cultural items, but also on the cultural heritage of nations. Cultural objects are often closely linked with the history and culture of the nation that produced them, and the loss of such items can be detrimental to the cultural identity of the nation of origin. Armed conflicts, the illicit trade of cultural property, and the lack of protection for underwater cultural heritage not only have a physical effect on the objects and sites themselves, but can also impact the culture and country of origin.

The 1954 UNESCO Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two (1954 and 1999) Protocols, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, and the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage protect the cultural heritage of States Parties to the Conventions and help preserve the cultural history of the affected nations.

The 1954 UNESCO Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols (1954 and 1999)

Armed conflicts pose a great threat to the integrity of cultural property. During such times of armed conflict, cultural property, both movable and immovable, often succumbs to destruction and pillaging. The 1954 UNESCO Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols (1954 and 1999) was conceived to protect these items from such foreseeable threats.

In times of war, cultural property, including monuments, museums, libraries, archives and religious sites, is vulnerable to devastation. Bombings, long-distance weapons and lootings all constitute potential threats that not only affect the physical integrity of the items, but also the scientific and cultural knowledge that could be derived from them. The 1954 Convention, the first international multilateral treaty of its kind, focuses on the protection of cultural heritage in the event of armed conflict and covers both movable and immovable cultural items. The First (1954) Protocol to the Convention is specific to the protection of movable cultural property in occupied territory and the issues surrounding the return of such property, while the Second (1999) Protocol strengthens certain aspects of the Convention, such as the safeguarding of and respect for cultural property and conduct during hostilities. Furthermore, the Second Protocol increases effectiveness of the Convention by emphasizing safeguarding measures and by creating



Haiti after the earthquake ©UNESCO/F. Brugman, 2010

a new category of protection ("enhanced protection") for cultural property that is deemed of the greatest importance for humanity, protected by adequate national legislation, and not used for military purposes or to shield military sites.¹ The Second Protocol establishes the twelve-Member Committee for the Protection of Cultural Property in the Event of Armed Conflict,² which is essentially responsible for the monitoring of the implementation of the Second Protocol, the management of enhanced protection and the granting of international or other categories of assistance. Furthermore, the Second Protocol sets up the Fund for the Protection of Cultural Property in the Event of Armed Conflict, the main purpose of which is to grant international or any other categories of assistance.³

The Convention and its Second Protocol lays out general principles that States must adopt in times of peace and in times of armed conflict, as well as in the aftermath of armed conflict. In times of peace, States Parties must prepare for the safeguarding of cultural property located within their territory by preparing inventories, planning emergency protection measures against fire or structural damage, preparing for removal of movable cultural items or in situ protection of immovable property, and designating competent authorities for the safeguarding of cultural items. In times of armed conflict, States Parties are asked to respect cultural property within their own territory and the territory of States party to the Convention by refraining from directing hostile activities towards such property or using it for military purposes. States Parties are also tasked with preventing and prohibiting theft, pillage and vandalism of cultural property, preserving such property in occupied territory, and imposing penal and disciplinary sanctions upon those who breach or order to breach the Convention.

Currently, 126 countries are party to the 1954 Convention; 102 of these are bound by the 1954 First Protocol, while 64 are bound by the 1999 Second Protocol. There is extensive involvement in these standard-setting instruments among Latin American and Caribbean nations: 20 States from the region are party to the 1954 Convention,⁴ 18 of which are States party to the First Protocol⁵ and 17 of which are bound by the Second Protocol.⁶ Furthermore, two current members of the twelve-member Committee for the Protection of Cultural Property in the Event of Armed Conflict hail from the Latin American region: Argentina and El Salvador. It is also noteworthy that in 2011, the first recipient of financial assistance by the Committee was El Salvador for the purpose of awareness-raising activities, documentation, publications, and dissemination materials all aimed at fostering an environment to protect cultural property.

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

The illicit trafficking of cultural property poses great threats to the physical integrity of the items and the sites they came from and also the cultural heritage of the affected nations. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property is the most important pioneering multilateral international agreement concerning the protection of illicitly traded cultural objects.

The illicit trafficking of cultural property generates a lucrative underground market with a great percentage of stolen artifacts never being recovered. As long as a demand for cultural property items exists, the market will continue to flourish. This situation,



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combined with factors such as political instability, Internet transactions, improved transportation methods and inconsistent laws regarding ownership and regulation of cultural property, poses a threat to the physical items, though looting and destruction, and also reduces the wealth of knowledge that could be gained from discovering such items in their archaeological surroundings.

The 1970 Convention aims to protect cultural property against theft and looting while emphasizing the restitution of such items. The Convention stresses three main principles for States to follow. First, States should take preventive measures to impede the illicit import and export of cultural property from their territory. These measures include, among others, the preparation of inventories, export certificates, the monitoring of trade, imposition of penal or administrative sanctions and educational programs. Second, States should provide restitution provisions. Under these provisions, States take appropriate steps to recover and return cultural property illicitly stolen from the territory of another State party to the Convention and imported into their territory after the entry into force of this Convention for both States concerned. Innocent purchasers and persons with a valid claim to such cultural property are entitled to a just compensation, and restitution requests are made through diplomatic means. Lastly, the Convention strives to set up an international cooperation framework to strengthen ties between States party to the Convention. In particular, such cooperation allows for States whose cultural heritage is in jeopardy due to pillaging of archaeological or ethnological materials, to ask other affected States for assistance, through the creation of import and export controls and general measures to prevent the illicit trafficking of cultural property.

CULTURAL OBJECTS ARE OFTEN CLOSELY LINKED WITH THE HISTORY AND CULTURE OF THE NATION THAT PRODUCED THEM, AND THE LOSS OF SUCH ITEMS CAN BE DETRIMENTAL TO THE CULTURAL IDENTITY OF THE NATION OF ORIGIN

Currently, there are 124⁷ States Parties to the 1970 Convention, including twenty-three States from the Caribbean and Latin America.⁸ Additionally, the Subsidiary Committee of the Meeting of States Parties to the 1970 Convention currently counts Ecuador, Mexico, and Peru among its members, with Mr Mauricio Escanero of Mexico serving as the Committee's Chairperson.

Most recently, in an effort to improve implementation of the Convention, several meetings to join the efforts of UNESCO and INTERPOL and other operational partners, such as the World Customs Organization, in fighting the illicit trade in cultural objects were held in Asunción, Paraguay in July 2013, in Castries, Santa Lucia, in December 2012 and in Lima, Peru, in October 2013. During these meetings, representatives of the police, customs, law authorities and the Ministry of Culture were trained in international conventions, methods of police investigation and prevention, tools and methodology developed by UNESCO and Interpol, security in museums and archaeological sites, codes of conduct and ethics, and the role of customs and professionals from the art market. Such advances in training, cooperation, awareness-raising and implementation of the Convention are extremely beneficial and crucial to the protection of cultural heritage.

The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage

Underwater cultural heritage presents a wealth of knowledge, valuable to both scientific research and education, but faces dangers similar to that of cultural property on land. The 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage was adopted to allow States to better protect such underwater cultural heritage.

The 2001 Convention defines “underwater cultural heritage” as “all traces of human existence having a cultural, historical or archaeological character which have been partially or totally under water, periodically or continuously, for at least 100 years.” This definition is inclusive of many sites, including ruins and shipwrecks, the preservation of which could provide valuable archaeological and historical information. However, such sites are often targets of destruction and looting, and do not have sufficient legal protection for their preservation.

In its effort to protect underwater cultural heritage, the 2001 Convention is beneficial for three primary reasons. First, it aims to create comprehensive protection for underwater cultural heritage wherever it is located. Second, the Convention attempts to harmonize the protection of underwater cultural heritage with that of heritage on land. Third, the Convention provides archaeologists with guidelines on how to treat underwater cultural heritage. These ethics and standards are provided in the Annex of the 2001 Convention.

Five basic principles are applied by the 2001 Convention in order to best safeguard underwater cultural property. First is an obligation to preserve underwater cultural heritage. Next, in situ preservation is a preferred option, with the possibility of obtaining authorization for recovery. Further, underwater cultural heritage should not be commercially exploited for trade or speculation, and it should not be irretrievably dispersed. The Convention also calls for training and information sharing in areas such as underwater archaeology, technology transfer and public awareness. Lastly, the Convention does not regulate the ownership of cultural property between the various parties concerned.

In the Caribbean and Latin America, numerous colonial naval battles between the French, British, Dutch and Spanish from the 16th to 18th centuries, sunken cities and submerged pre-Colombian sites provide a rich cultural heritage. The city of Port Royal in Jamaica was submerged into the sea during an earthquake in 1692 and the ruins remain there, while most of the port was rebuilt. Cenotes in Mexico and other areas of Latin America are also sources of potentially rich underwater sites. Such areas may currently be accessible, but increased public access, as well as better protection and research, would allow for an increased benefit from such submerged sites.

The 2001 Convention has been ratified by 45⁹ States to date, including 16 states from the Latin American and Caribbean region,¹⁰ but greater implementation is needed in order to best provide protection to submerged cultural property. From 25 to 27 June 2013, participants of a three-day sub-regional Meeting on “Underwater Cultural Heritage Protection Laws for the Caribbean Small Island States” discussed the practical implementation effects, awareness-raising and research strategies, and the importance of protecting underwater cultural heritage. Emphasis was also placed on the importance of all Organization of Eastern Caribbean States (OECS) and Caribbean Community (CARICOM) States to ratify the 2001 Convention. Such meetings are crucial for the implementation of the Convention and provide great encouragement for the benefits it offers for the protection of underwater cultural heritage.

Conclusion

In conclusion, the protection of cultural property must be addressed in a manner that is effective and beneficial to the international community. These Conventions focus on the protection of cultural heritage, and establish a base that is most effective in preventing the destruction, looting illicit trafficking of cultural property. UNESCO is sparing no effort to ensure that a majority of UNESCO Member States ratify such conventions and implement them properly at the national level. The safeguarding of our cultural property for the benefit of humanity depends on it. **C&D**

Notes

¹ Cultural property under enhanced protection is inscribed in the List of Cultural Property under Enhanced Protection. To date, five properties have been granted enhanced protection: Kernavė Archaeological Site in the Republic of Lithuania; Choirkoitia, Painted Churches in the Troodos Region, and Paphos in the Republic of Cyprus); and Castel del Monte in Italy. All five of these sites are World Heritage Sites.

² Currently, the Committee is composed of representatives from Argentina, Austria, Azerbaijan, Belgium, Croatia, El Salvador, Iran, Italy, Japan, Netherlands, Romania, and Switzerland.

³ At present, the Committee has approved two grants from the Fund: to El Salvador in the amount of USD 23,500 in December 2011 and to Mali in the amount of USD 40,500 in December 2012.

⁴ Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, El Salvador, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela

⁵ Argentina, Barbados, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, El Salvador, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay

⁶ Argentina, Barbados, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, El Salvador, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela

⁷ Most recently, on 5 September 2013, Myanmar deposited with the Director-General its instrument of ratification. In accordance with the terms of Article 21, the Convention will enter into force with respect to Myanmar three months after the deposit of the instrument of ratification, that is to say on 5 December 2013.

⁸ Argentina, Bahamas, Barbados, Belize, Bolivia, Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela

⁹ Most recently, on 5 August 2013, Belgium deposited with the Director-General its instrument of ratification of the Convention. In accordance with the terms of its Article 27, the Convention will enter into force with respect to Belgium three months after the date of the deposit of this instrument, that is to say on 5 November 2013.

¹⁰ Antigua and Barbuda, Argentina, Barbados, Cuba, Ecuador, Grenada, Haiti, Honduras, Jamaica, Mexico, Panama, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago



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CONVENTION

■ Edouard Planche

Specialist, UNESCO Cultural Heritage Protection
Treaties Section

The licit transfer of cultural objects facilitates dialogue between people and plays a key role in international diplomacy. Cultural goods convey a symbolic value that is intrinsically linked to history and the context in which they originate. On the other hand, pillage of and illicit trafficking in these objects do not only have a negative impact on purely economic terms but also affect the cohesion of original peoples, whose cultural capitals see their ability to boost economic development reduced.

Unfortunately, archaeological sites are subject to systematic looting: unique pieces of national cultural heritage are snatched from their places of origin to fall into the hands of international criminal networks, which are often linked to other criminal actions such as money laundering or the financing of terrorist activities. With the art market continuously expanding and online art sales growing, the trafficking in cultural property is extremely profitable, just as that in weapons and

narcotics. Global sales of cultural property, legal or not, reportedly reached 40 billion dollars in 1993. This figure will probably stand at 60 billion within ten years, experiencing a 50-percent increase.

UNESCO, which is the only United Nations agency with a specific mandate on the protection of cultural heritage, has for over 65 years been mobilizing the international community to combat this phenomenon. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) is the first international legal instrument for the protection of movable cultural property in times of peace and provides an indispensable framework in this field. We are now at a point in time when the international community has given new impetus to the Convention, among other reasons, due to the urgent need of people to reaffirm their identities and enhance their heritage as a force antagonistic to a globalized world. Moreover, the public

is becoming increasingly aware of the dangers of international cultural heritage despoliation. This is reflected in a more responsible attitude on the part of museums, galleries and other institutions, whose conduct helps to strengthen the international art market.

Since its adoption on 14 November 1970, this cooperation instrument has been ratified by 124 countries. The number and pace of ratifications have grown remarkably after 2000. Some of the countries that have ratified this legal instrument are known to be major international centres of the art market: the United States acceded to the Convention in 1983; China, in 1989; France, in 1997; Switzerland, in 2003; Germany, in 2007; and Belgium and the Netherlands, in 2009. The vast majority of countries in Latin America have joined the Convention, with the exception of a few nations in the Caribbean. Being an extremely heritage-rich region, consisting of commonly called 'exporting' countries, a name perhaps a bit unhappy but very descriptive (Peru is

estimated to have over 13,000 archaeological sites identified and scattered across its territory), Latin America has for years advocated for the effective implementation of the Convention, as well as for international cooperation in this area to demonstrate the ethical commitment of all parties involved in the cultural market.

The Convention defines the measures to be taken by States Parties to prohibit and prevent the illicit import, export and transfer of ownership of cultural property and encourage the restitution of such assets. They thus undertake to develop legislation in accordance with international commitments as well as the legal and technical means to protect cultural heritage: each new ratification involves adjusting the national legislation on the protection and safeguarding of these assets. This protection requires, for example, the preparation and improvement of inventories, the implementation of a system of export licenses, and

the prohibition of sale or purchase of cultural goods that are not conducted as established in this type of document. In the spirit of the 1970 Convention, States must also train heritage professionals, specialized police officers and customs agents who play a primary role in heritage protection.

This standard-setting instrument, however, is applied within a relatively narrow framework. First, the Convention makes reference to disputes between States, which excludes private law transactions. We should highlight the importance of ratifying the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. Developed at the request of UNESCO and adopted in 1995, this instrument contains a uniform set of rules of private law relating to international trade in works of art, thereby complementing public law provisions in the UNESCO Convention. The UNIDROIT Convention provides for claims to be filed directly before national courts, with claimants including individuals, institutions and/or States.

Furthermore, the 1970 Convention does not apply retroactively, that is, illicit procurement, theft or looting that occurred before 1970 fall outside its scope; this is one of the main issues for countries that have suffered continued looting since time immemorial. It should not be forgotten that the text of the 1970 Convention was the result of a compromise reached after tough negotiations, as the issues of restitution are always politically sensitive. As for the acquisition of an asset in 'good faith,' the UNIDROIT Convention provisions make the possessor of a stolen asset return it and verify that it was legally introduced into the market.

The 1970 Convention, despite its limitations, seeks to curb cultural squandering and black market operations in many countries. Latin America is joining efforts to strike a better balance in the rules of the game for cultural trade and achieve a more effective implementation of the Convention, with particular regard to an update of the criteria used to identify the cultural objects to be protected, mainly archaeological objects from clandestine excavations (the Convention only protects inventoried assets). Countries of the region are also struggling to have the criteria for the 'good faith' of possessors of cultural objects reviewed and to sign bilateral agreements specifying import restrictions on cultural goods at risk of illicit trafficking.

This joint position was reflected in the First Session of the Subsidiary Committee at the Meeting of States Parties to the 1970 Convention, which was held on July 2-3 at UNESCO Headquarters in Paris (right after the Special Meeting of States Parties, which took place on July 1st). This session of the Committee, which was established to provide follow-up to the Convention, adopted its own rules of procedure and discussed the operational guidelines for the implementation of the Convention. We find ourselves at a turning point in the history of this legal instrument. Over 40 years later, the States that have acceded to the Convention are putting together a 'road map' for its implementation.

The effectiveness of the 1970 Convention lies in the number of States that have ratified it and their diligence to implement it properly. UNESCO offers its good offices and expertise at training actions relative to field capacity building, in close collaboration with other organizations such as INTERPOL, UNIDROIT, the International Council of Museums, the World Customs Organization, the United

Nations Office on Drugs and Crime, art market representatives, and specialized police forces. The purpose of these actions is to establish national and international networks involving all stakeholders related to the protection of the cultural heritage and the art market. Such actions are designed for a wide range of participants, including representatives of related ministries, police officers, customs agents, judges and prosecutors specialized in this field, museum staff, and associations related to cultural heritage protection, as well as art market representatives. UNESCO is also developing awareness-raising programmes for the general public regarding the importance of heritage and the need to safeguard it and fight illicit trafficking. Sensitizing local populations provides the most effective tool against pillage of cultural objects.

The Convention has also provided for significant advocacy on the importance of cultural property restitution. This work has had a major influence on international cultural cooperation, even in cases which fall outside the scope of the Convention in a strict sense. This is the result of the adoption and subsequent ratification of the Convention. In applying legal and technical tools for the implementation of this international instrument, States develop further skills to deal with cases that are not within its scope, such as the restitution of assets that were illegally acquired before 1970. There are many restitution cases between States, which are not dealt with under the Convention but in accordance with its principles.

The complexity of some cases has also shown how necessary it is to have a special body for an open, neutral dialogue to address these issues. This is the reason why an 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. The Committee offers its good offices for mediation and conciliation between States in cases of dispute over the return or restitution of cultural property, when they are not covered by the provisions of the 1970 Convention. In this regard, in February 2012, when Argentina returned 46 pieces of pottery and a metal bead necklace to Peru, the leaders of both countries not only highlighted the ongoing collaboration between them, but also recalled their work as members of this Intergovernmental Committee.

UNESCO is aware that sensitizing local people, tourists and the general public provides the most effective tool against pillage of cultural objects. It is also aware that heritage has a value that goes far beyond price—sometimes laughable—and that heritage plays a key role in the social cohesion of communities. Therefore, a public awareness-raising campaign on the importance of heritage and the need to safeguard it has been recently launched. The above-mentioned actions have served as a catalyst for this work and have included the production of documentary films, publications and teaching materials for young people.

UNESCO, with the 1970 Convention and its cultural property illicit trafficking prevention programme, seeks to facilitate the free movement of cultural goods. Its mission is to make it sure that, together with art market representatives and the international community, these exchanges are agreed to by all parties involved so that the heritage of every people—irreplaceable guarantor of their identity—can be appreciated in all its richness and foster cohesion and sustainable development in society. 

STRENGTHENING LEGAL AND PRACTICAL CAPACITIES IN LATIN AMERICA AND THE CARIBBEAN


■ **María Miñana**

Specialist, UNESCO Cultural Heritage Protection Treaties Section

Capacity building and networking at the international, regional and national levels, involving a wide range of agents devoted to the protection of cultural heritage play a critical role in the implementation of a long-term UNESCO strategy seeking to combat illicit trafficking in cultural property. The importance of effective prevention work, including appropriate heritage protection legislation, specialized police forces, and/or public awareness is one of the topics included in the training actions put together by the Organization. These actions have grown over the last two years.¹

They are developed in close collaboration with UNESCO field offices and with the participation of key institutions in the fight against illicit trafficking, including INTERPOL, UNIDROIT, the World Customs Organization, and specialized police forces. They are adapted to the specific needs of each country or region and are designed for government officials, museum staff, archaeologists, lawyers, police officers, customs agents, researchers, art market specialists, university professors, and civil society representatives.

In Latin America, training courses have since 2012 been organized in the Southern Cone with special attention paid to the role of police forces, including one in Saint Lucia for the Caribbean region - an area where several countries have not yet ratified the 1970 Convention - and two workshops in Lima for the Andean region and Central America, which placed special emphasis on the importance of prevention to combat this illegal activity and on the central role of police forces.

Only joint action at the international, regional and national levels and regular monitoring over the implementation of legal and operational mechanisms to combat illicit trafficking can help create the necessary conditions for a gradual decrease in this activity. UNESCO is at the service of its Member States, willing to contribute its technical expertise and irreplaceable work as the only United Nations agency mandated to protect cultural heritage and seek technical support from international partner institutions. 

Notes

¹For further information, please visit: <http://www.unesco.org/new/es/culture/themes/illicit-traffic-of-cultural-property/capacity-building/latin-america-the-caribbean>

THE UNIDROIT CONVENTION

A SHARED VISION AND A JOINT RESPONSIBILITY

■ Marina Schneider

Senior Officer, UNIDROIT

Everybody has in mind examples which bring home to all involved the urgent need for action to stay the escalation of art theft and the illegal export of works of art, and not only in the Latin American and Caribbean countries. While such works are indeed at times returned to source – in a move very much in keeping with the ethical and legal standards defended by UNESCO and its 1970 Convention – it is only too evident the national rules and regulations in force fall short of providing a satisfactory defence.

The UNIDROIT Convention¹ sets out to remedy this state of affairs, yet it continues to be the object of passionate and at times violent debate often sparked off by false rumours and misinformation. One problem is that not many of its detractors are really familiar either with the text or its objectives. Certainly it would seem to be high time especially for art dealers to drop the rhetoric and undertake an in-depth study of the text, whose provisions, it is true, can only be properly understood if measured against the present state of the law in this area.²

This contribution will confine itself to an outline of what has been done so far to ensure the effective implementation of the Convention, with a particular emphasis on Latin America and the Caribbean, to date, look at what has been achieved and explore the outlook for the future.

Efforts to date ...

Since the Convention was adopted, UNIDROIT has been at pains to respond to requests for information and at times to allay what must be called the legitimate anxieties of some.

... at governmental level

The 1995 UNIDROIT Convention seeks to establish an international co-operation mechanism involving both the sources and the destination countries on the premise that, once cultural property has been moved to their respective territories, any system to secure the return of such property will stand or fall by these countries' willingness to take action.

In a national context, the UNIDROIT Secretariat has on occasion been contacted or invited to take part in consultations to investigate the case for or against the UNIDROIT Convention against the backdrop of national law and the national cultural environment. UNIDROIT has prepared an Explanatory Report on the Convention to assist in the understanding of the provisions.³ All the preparatory documents so as the Acts and Proceedings of the diplomatic Conference at the conclusion of which the Convention was adopted are available on the UNIDROIT website.⁴ UNIDROIT has also welcomed lawyers from Governments in Rome with its Scholarship Programme to study the Convention.⁵

Needless to say, the 1995 UNIDROIT Convention is hardly the sole international legal instrument devised for the purpose of combating illicit trade, and one of the tasks falling to the UNIDROIT Secretariat is to explain where the Convention fits in and how it may be used to supplement other such instruments. A case in point is of course the relationship between the 1995 UNIDROIT Convention and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and several articles have been devoted specifically to the question of how the two Conventions can complement each other⁶ but one does not replace the other. Another important relationship to consider is between the UNIDROIT Convention and the 1993 Commonwealth Secretariat's



Venezuela's Dancing Devils of Corpus Christi, element inscribed in 2012 in the Representative List of the Intangible Cultural Heritage of Humanity © Fundación Centro de la Diversidad Cultural, 2006

Scheme for the Protection of the Material Cultural Heritage, which would bind many States from the Caribbean.

Moreover, UNIDROIT attended a number of national and regional workshops organised by the local authorities and UNESCO (sometimes jointly with other organisations such as the Instituto Italo Latino Americano (IILA)) on the fight against illicit traffic in cultural objects. These workshops were attended by national civil servants and specialists in the field of cultural heritage. UNIDROIT has been participating in these workshops for many years now⁷ in order to present the 1995 Convention, and in the process has strengthened its links with certain countries in Latin America (among others Ecuador in 1996, Mexico City in 2006, 2009, 2012 and 2013, Buenos Aires in 2009 and 2012, Lima 2012) and the Caribbean (among others Grenada in 1997, Cuba in 2005 and Saint Lucia in 2012).

Finally, the President of UNIDROIT convened the first meeting to review the practical operation of the 1995 UNIDROIT Convention, in accordance with Article 20 of the Convention, which took place at the UNESCO Headquarters in Paris on 19 June 2012.⁸ The meeting provided an opportunity to explain which international claims mechanisms are available for cultural property outside the international instruments so as to better understand the benefits offered by the 1995 Convention mechanisms and to assess the Convention's impact beyond the number of ratifications/ accessions. It also gave States a chance to exchange views on their experiences, to compare practices and to discuss any difficulties encountered in implementing the Convention. International experts made presentations to assist States Parties and not Parties to the Convention in their discussions. If several Latin American countries attended the meeting, UNIDROIT was unable to attract the countries of the Caribbean at this meeting.

... and involving the specialists

The UNIDROIT Secretariat is approaching practitioners in the art world who have both a political and a commercial case to put and the language. Yet their support is vital in persuading Governments to legislate at all, and it is a fact that the Convention's more hostile detractors have tended to be certain categories of market operators, such as dealers and collectors, often misinformed both as to the content and goals of the Convention.

UNIDROIT is given an opportunity to meet these professionals and to set their minds at rest in the framework of meetings organised by other international fora such as UNESCO, INTERPOL, the Council of Europe, INTERPOL, UNODC, ICOM and so on. It is worth noting at this juncture that all those organisations have been extremely supportive of the UNIDROIT Convention and have been instrumental in publicising it among their members worldwide.

Since much of the hostility is expressed in highly emotional terms, it is essential that the case for the Convention be argued by both sides on strictly rational grounds. All parties, Governments and private operators alike, must learn to curb such excesses of language and conduct, the only result of which is to arouse resentment and to buttress old prejudice. Governments, for example, should acknowledge that not all art dealers and art collectors are crooks and rascals. Dealers and collectors for their part should give a wide berth to objects which have manifestly been unlawfully traded although their precise origin is unclear.

The regional workshops also offer a choice forum for meeting museum directors from all over the world and to expound to them the provisions of the Convention, stressing in particular the fact that if the Convention seeks to promote greater diligence on the part of buyers, this is no more than is already required of them by their

respective codes of practice. Much emphasis is also given to the importance of databases on stolen objects and of inventories, and indeed to the problems encountered on archaeological sites, all of which are issues addressed by the UNIDROIT Convention.

What has been achieved?

What, then, has been achieved so far and how, if at all, has the outlook changed in the wake of the various initiatives deployed by the UNIDROIT Secretariat, either on its own or in conjunction with other bodies and organisations?

State of implementation

The Convention was adopted in Rome on 24 June 1995 and entered into force on 1st July 1998. Thirty-three States are Parties to the Convention as of 1st August 2013.⁹ The Convention is open to ratification or accession by States which are not Member States of the Organisation (which is the case for most of the Caribbean States).

Most Latin American countries are already Parties to the 1995 Convention (Argentina, Bolivia, Brazil, Colombia, Ecuador, Paraguay and Peru,) so as some Central American countries (El Salvador, Guatemala, and Panama). Honduras has finalised the internal procedure and is about to deposit its instrument of accession with the Italian Government, Depositary of the Convention. After the regional workshop held in Saint Lucia in December 2012, the Secretariat has sought for action in the Caribbean and hope that steps are being taken. Several other States have taken the decision to accede and are working at it.

Consultations are proceeding apace in some States of destination with no fixed timetable and still less indication as to the likely outcome. The United States are waiting for the European States to take a decision first, having become the wiser since they ratified the 1970 UNESCO Convention only to find the leading European importing States declining to follow suit, much to the detriment of that Convention's impact. To some extent, the United States can afford to wait since their own legislation on the protection of cultural property is quite sophisticated already and relies in part on highly effective bilateral arrangements.

Some source States have complained about the weaknesses of the Conventions in this field and the fact that States of destination have not joined the 1995 UNIDROIT Convention, in particular because of the opposition of the art market. Despite the efforts deployed by the UNIDROIT Secretariat and by its partners in this venture, the fierce debate raging – often unfairly – in the art world and the strong feelings it has aroused have found their way into the printed press (in Switzerland, in the Netherlands and in United Kingdom in particular). But on the other end, the museum world is likewise making itself heard, and ICOM, on various occasions urged all Governments to become a Party to the Convention. This kind of call has since been faithfully

reproduced in the final declarations and recommendations of the General Assembly of the United Nations¹⁰ and regional workshops, none of which has failed to observe that only international co-operation can put a stop to illicit trade and that this means ratifying the legal instruments currently at hand.


Another important element which may lead at more accessions to the 1995 Convention by European States is the decision taken in May 2013 by the European Commission to revise the 93/7/EEC Directive.¹¹ Many European States, although not Parties to the 1995 Convention, borrowed principles, concepts and rules from it when they transposed the Directive into their domestic legislation, and some of its relevant provisions have now been proposed as a modification of the Directive (on time limitations and due diligence for example). The discussions are currently underway and the revised Directive should enter into force in 2015.

The use of the Convention as a benchmark for due diligence evaluation

The principle adopted in the 1995 Convention whereby payment of compensation to the acquirer would be subject to proof that he/she exercised “due diligence” at the time of acquisition (Article 4(1)), together with a large definition of “cultural object”, has been considered as the major step to fight illicit traffic in cultural objects. The “definition” of due diligence given by the Convention (Article 4(4)) has shown the influence of the 1995 Convention in national legislations, case law and in the discussions at European level regarding the revision of the 1993 EU Directive.

Some States, although not Parties to the 1995 Convention, have implemented the 1970 UNESCO Convention, going beyond the requirements of that Convention by drawing inspiration from the 1995 Convention, in particular the concept of due diligence. In fact, the Government of the Netherlands has chosen to implement the 1970 UNESCO Convention “in part on the good elements of the UNIDROIT Convention and in particular Article 4(4) of the 1995 Convention”.¹² The same is true for Switzerland.¹³

Conclusion

While the Convention certainly sets out to secure a higher incidence of restitution or return of stolen or illegally exported cultural property, its main thrust is nevertheless likely to be the reduction of illicit trafficking by fostering a gradual yet profound change in the behaviour of art market operators and by demonstrating that, while the task of protecting the cultural heritage must needs retain its own national flavour, it can and indeed must come to terms or better still, go hand in hand with inter-State solidarity. The only way to bring about such a change is through the medium of compromise, compromise which by its very nature cannot fully accommodate all parties on all points. However, a careful and above all objective scrutiny of the UNIDROIT Convention should satisfy readers that no one party is likely to suffer unduly. 



The traditional knowledge of the shamans Jaguars of Urupari, Colombia 2011 © Sergio Barneiliman, ACAP, Fundación Gaia Amazonas, 2006

Notes

¹For the text of the Convention, see <http://www.UNIDROIT.org/english/conventions/1995culturalproperty/1995culturalproperty-e.pdf>

²This is a point which has been amply stressed and extensively commented long ago by Professor Pierre Lalive (cf. ULR/RDU 1996-1, pp. 40-58).

³Explanatory Report drafted by the UNIDROIT Secretariat at <http://www.UNIDROIT.org/english/conventions/1995culturalproperty/1995culturalproperty-explanatoryreport-e.pdf>. Ms Lyndel Prott has also published a Commentary on the 1995 UNIDROIT Convention with IAL, <http://www.ial.uk.com/UNIDROIT.php>

⁴Preparatory documents at <http://www.UNIDROIT.org/english/conventions/1995culturalproperty/study70-archive-e.htm> and Acts and Proceedings at <http://www.UNIDROIT.org/english/conventions/1995culturalproperty/1995culturalproperty-acts-e.pdf>

⁵Scholarship Programme at <http://www.UNIDROIT.org/english/legalcooperation/scholarships.htm>

⁶See, among others, some articles published by Lyndel Prott (cf. Unif. L. Rev./Rev. dr. unif. 1996-1, pp. 59-71 and Unif. L. Rev./Rev. dr. unif. 2009, pp. 215-237).

⁷For all the training courses attended by UNIDROIT since 2000 to explain the 1995 Convention, see Appendix IV of the information document prepared by the UNIDROIT Secretariat for the first meeting of the special committee to review the operation of the Convention (19 June 2012) at <http://www.UNIDROIT.org/english/conventions/1995culturalproperty/1meet-120619/dc8-cs01-03-e.pdf>

⁸<http://www.UNIDROIT.org/english/conventions/1995culturalproperty/1meet-120619/pres-e.pdf>

⁹For the list of States Parties to the Convention, see at <http://www.UNIDROIT.org/english/implement/i-95.pdf>

¹⁰The latest Resolution dates back 12 December 2012 (A/67/L.34)

¹¹93/7/EEC Directive on the return of cultural objects unlawfully removed from the territory of a Member, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:1993:074:0074:0079:EN:PDF> (and modifications in 1997 and 2001).

¹²Explanatory Memorandum of the Dutch 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act, p.3. Cf. new Article 3:87a of the Netherlands Civil Code.

¹³Swiss Federal Act on the International Transfer of Cultural Property (CPTA) of 2003, in particular Article 16 and 24.

SPECIALIZED MEETINGS IN THE SOUTHERN CONE



■ Frédéric Vacheron

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The organization and professionalization of criminal networks have been seen in recent decades worldwide. The illicit trafficking in cultural property in particular has become one of the most important criminal activities internationally, along with that in weapons and drugs. Entire areas are being systematically looted in an unscrupulous manner. In this context, UNESCO and INTERPOL have decided to unite in order to train public administration officials to confront and combat trafficking in cultural property.

Southern Cone countries have an enormous heritage wealth that is exposed to looting and trafficking. With the exception of Chile, all countries in the region have ratified the 1970 Convention, that is, the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Despite significant progress in legislation and regulation, there is an urgent need to strengthen the capacities of national authorities and specialized bodies to improve international cooperation and promote tools, knowledge and strategies to put an end to this situation.

The **first meeting on the fight against illicit trafficking in cultural property in the Southern Cone** was held in Buenos Aires (Argentina), on 29-31 October 2012. This was the first cooperation initiative between UNESCO Headquarters, the UNESCO Office in Montevideo and INTERPOL in Buenos Aires.

The aim of the event was to enhance capacities in the fight against illicit trafficking in cultural property by INTERPOL police forces at the national level. It is now particularly important to promote the Convention ratification and effective implementation by a large number of countries.

The goals set and met included:

- To provide training on general aspects of UNESCO conventions concerning illicit trafficking, including the UNIDROIT Convention;

- To provide training on the identification of different types of illicit-trafficking-susceptible property;
- To share special techniques and tools for police use, applicable to laws and organizations working to combat trafficking in cultural property; and,
- To present good practices relative to cultural property restitution and return.

Participants from different countries had the opportunity to share experiences in research procedures, presenting success stories, best practices and challenges they have had to face.

The meeting began with the exhibition of the audiovisual material Culture and Development produced by the Culture Sector at the UNESCO Office in Montevideo, showing the Organization's efforts to protect heritage and cultural expressions through its seven conventions. Then, Edouard Planche, programme specialist of the Cultural Heritage Protection Treaties Section, elaborated on the conventions related to illicit trafficking in cultural property from 1954 to 1970 and on the UNIDROIT Convention.

Archaeologists and anthropologists presented general concepts and issues that are specific to these sciences, illustrating their lectures with case studies on heritage objects looted and restituted.

Meeting participants reviewed the various options for developing databases, inventories, communication tools, protocols and procedures relative to stolen goods. The relationship with museums, galleries and authorities in the field of culture was another issue addressed, highlighting the importance of providing them with specialized training.

They also recognized the importance of this type of meeting between experts, and encouraged to go deeper into the methods used to combat trafficking in cultural property, which are well underway in their countries.

Both UNESCO and INTERPOL expressed their desire to move forward in these cooperative efforts and hold a **second meeting on the fight against illicit trafficking in cultural property in the Southern Cone**. This time, the meeting was held at the National Archives of the city of Asuncion (Paraguay), on 23-25 July 2013.

The event brought together over fifty participants working for public administration and cultural management, national customs authorities and police officers of Argentina, Brazil, Chile, Paraguay and Uruguay.

Among the trainers were Captain Javier Morales, expert of the Spanish Heritage Police; Graciela Galeano, Paraguayan INTERPOL expert; Marcelo El Haibe and Fernando Gómez, Argentinean INTERPOL experts; María Luz Endere, UNESCO consultant; and Romina Rodríguez, subinspector of the Chilean Criminal Investigation Department.

Through different modules, meeting participants reviewed international conventions such as the UNESCO Convention


on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) and the UNIDROIT Convention (1995). They discussed research methods on prevention and implementation by police forces, tools and methodologies developed by UNESCO, INTERPOL and Heritage Police, security at museums and archaeological sites, the code of conduct and ethics, and the role of customs and art-market professionals.

There were many reflections made on the need to raise awareness among the youth and the general public. Some working sessions were devoted to the establishment of a network to form a regional knowledge community to implement and strengthen cooperation actions in the future.

Meeting participants referred to the effective implementation of interdisciplinary, institutional and subregional cooperation strategies within the framework of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention.

They expressed their will to further this cooperation initiative and other training actions, concluding that a third meeting should be organized in 2014. They also urged to hold national workshops, taking into account the needs of each country, and to establish an informal network between UNESCO, INTERPOL and meeting participants to continue sharing experiences.

Likewise, UNESCO is developing awareness-raising materials for young people. The idea is to educate and raise awareness among the youth on issues related to illicit trafficking in cultural property. As there is an evident lack of information on this subject, audiovisual materials and comics will be disseminated in the coming months, explaining what the cultural heritage of a nation is, what illicit trafficking in cultural property is, and how to deal with looting.

The outcome of the two meetings sponsored by the Spanish Agency for International Development Cooperation (AECID) has been very positive. Further efforts will be made to gradually increase the knowledge and tools used to combat illicit trafficking in cultural property, as well as the number of good practices to be shared in the future. With support from UNESCO, INTERPOL and national authorities, the way to combat illicit trafficking is becoming increasingly clearer. 

INTERPOL

ARGENTINA

■ Marcelo Daniel El Haibe

Chief Commissioner, Division of Cultural Heritage
INTERPOL - Argentina



The images in the article belong to the Campaign of Fighting against the Illicit Trafficking of Cultural Property of the Secretariat of Culture of the Presidency of the Nation of Argentina

Introduction

Theft, looting and illicit trafficking of cultural assets are no recent phenomenon. Even at the very dawn of human history, these violent and destructive actions were often implemented all over the world. Such practices negatively affected a wide range of societies, which were unable both temporally and spatially to acquire and transmit this kind of "knowledge."

While primitive peoples did not have a refined conceptual development of social sciences such as psychology and sociology, the rationale for their terrible behaviour may well be explained with the help of these sciences. Indeed, the objects of worship in any society have helped foster cohesion and a sense of belonging.

During invasions, many victorious peoples used to take with them strong men and women as slaves, in addition to looting valuable objects and those worshiped by communities, displaying them as war booty on their own lands. If they could not be removed due to their sizes, they had them demolished.

Theft and looting resulted not only from the invasion of one people to another. Within the same culture, there were unscrupulous inhabitants who seized cultural objects for their material or symbolic value. A notorious example of unlawful action in ancient times can be seen in Egyptian culture, whose architects tried to overcome this problem by building passageways, false doors and traps in order to protect the treasures of the Pharaohs.

Unfortunately, there are still looting and destruction under armed conflicts and theft of art objects within the same city or country in peacetime.

Such is the case of the destruction of the biggest Buddha sculpture in the world, carved into the rock of a mountain 1,500 years ago in Bamian province (Afghanistan). On March 2-4, 2001, the Taliban used anti-aircraft missiles, tanks and dynamite to destroy the 175 feet (53 m) high standing statue of Buddha. Also destroyed was the foot of the colossus, a giant carved rock wall in the 5th century, at a time when Afghanistan was one of the centres of Buddhist civilization, before the introduction of Islam in the region two centuries later. Several countries, including some Muslim, condemned the action and expressed concern over the fact that the destruction of pre-Islamic and Buddhist monuments could unleash "ethnic cleansing" in the area.¹

This type of harmful behaviour precisely seeks to break the will of the people by destroying cohesion and stripping them of their traditions and customs, and to subject them both materially (freedom of movement, assembly, etc.) and spiritually (freedom of thought) by doing away with the feeling of social unity, leaving on stage only individuals easy to handle and manipulate

International Criminal Police Organization - INTERPOL

The International Criminal Police Organization - INTERPOL has since 1947 directed its efforts into the fight against

illicit trafficking in cultural property. It is really very difficult to get hard data on the extent of stolen works of art and archaeological objects. As countries fail to provide enough information, it is very unlikely that accurate statistical data will become available at a global level. In many cases, this task is further complicated because the relevant institutions have not inventoried their cultural property.

In 1998, the idea of devising a solution to the problem in conjunction with the Ministry of Culture of Argentina and ICOM (International Council of Museums) came up. Thus, in 2000, a collaboration and information exchange agreement was signed to establish a National Database of stolen goods in our country, because we had never had classified information or statistics on this type of events.

While this information is reserved for law enforcement agencies, it was considered desirable to make it available to all citizens for transparent legal trade in cultural property. The newly developed webpage (www.interpol.gov.ar) can be accessed without any restriction and holds the first interactive database of the world. Citizens can complete and send forms using the same means as the ones employed to request the seizure of a stolen work. The page also has updated information on the current legal regime, anti-theft tips, and steps to follow if an event of this nature occurs.

This publication is in line with the requirements and recommendations set forth in the UNIDROIT (International Institute for the Unification of Private Law) Convention on the international restitution of stolen or illegally exported objects, which was signed in Rome on 24 June 1995 and ratified by Law 25,257 dated 21 July 2000, and the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which was signed in Paris on 14 November 1970 (16th Session of the General Conference of UNESCO) and was ratified by Law 19,943 of 1973, because Article 4.4 in Law 25,257 indicatively mentions the characteristics of a buyer of an art object to be considered "a buyer in good faith", among other things, he/she should have consulted some database on stolen cultural objects to which he/she can reasonably access to check the history of the piece.

Before the UNIDROIT Convention was adopted and the freely available database was established, many people in Argentina used to buy stolen cultural property without knowing it and without having the opportunity to consult a reliable register. The buyer in good faith took a very high risk since he/she could be cheated and buy a stolen art object, being liable to a civil or criminal action by the rightful owner. He/she will need to return the object and lose the money invested. Currently, a simple operation can significantly reduce the risk of losing the money invested on a deal of this kind.

Today we also have a very powerful tool to combat trafficking in and looting of cultural property: rapid and effective transmission of information. The speed of transmission of information is measured taking into account

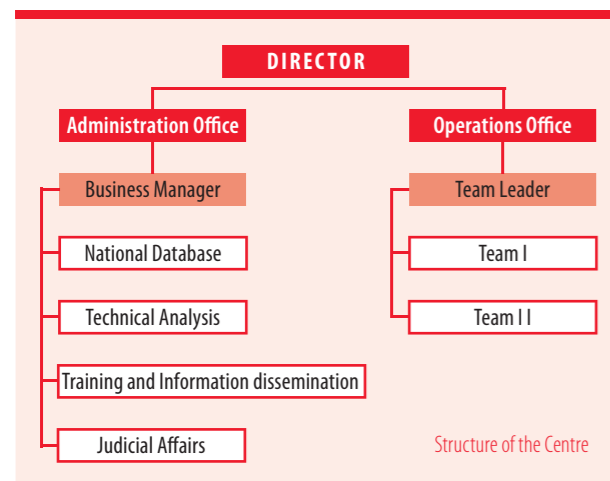
the time elapsed since the occurrence of the crime until the publication of the order to seize the object, both nationally and internationally. For this process to be successfully completed, the period of time between one event and the other should not exceed 72 hours. Effectiveness refers to the quantity and quality of the data transmitted. There should always be photos and pictures, preferably in colour, as well as measurements, weight of the object, and any description that can be used for identification.

National Centre for Cultural Heritage Protection - INTERPOL - Argentina Department²

The National Centre for Cultural Heritage Protection was founded in November 2002, after the establishment of the INTERPOL database, to provide an institutional, well-organized response to illicit trafficking in cultural property.

Its activities consist mainly in:

- Registering all cultural assets stolen in the country;
- Keeping track of museums, halls and other facilities where objects are exhibited under the category of "Cultural Heritage;"
- Developing statistical data on the theft and recovery of cultural assets;
- Submitting orders for seizure of assets reported stolen;
- Signing agreements with public and private agencies;
- Informing the community about the tasks performed and the recommendations made to prevent such crimes;
- Filing the notices issued by ICPO - Interpol on stolen cultural property in member countries;
- Updating the INTERPOL Department website with regard to the protection of cultural heritage; and
- Conducting investigations into crimes related to public and private cultural heritage (control over catalogues and webpages for art galleries, auction sites, etc.).



Cultural property illicit trafficking prevention measures

Study the phenomenon

The problem of illicit trafficking in cultural property can be appropriately addressed only if there is thorough knowledge of the circumstances under which crimes against cultural heritage occur. Against this background, the response should necessarily be multidisciplinary, global and well-coordinated.

It should be multidisciplinary because it covers various activities of human knowledge, including archaeologists, palaeontologists, museologists, archivists, historians, librarians, etc., as these crimes are addressed by these disciplines one way or another

It should be global because crimes against cultural property go far beyond national borders. The theft of cultural objects takes place in a country or region and such objects are quickly transferred abroad for sale and/or market positioning. Criminals thus try to avoid judicial intervention. The works of art stolen in our country often appear for sale on auction houses in Europe or the United States, shortly after the occurrence of the crime.

It should be well-coordinated because success depends on joining forces and acting in an articulated and joint manner, involving all disciplines mentioned above, different structures of the State, the Police (national and provincial), General Customs Administration, Ministries or Departments of Culture, cultural institutions, etc.

Identify stakeholders

The first link in the chain of illicit trafficking in archaeological or paleontological objects involves the huaquero. The term comes from the word huaca, which means temple or sacred place in Quechua language. Huaquear is the verb deriving from the noun huaca, which applies to the action of looting archaeological or paleontological sites.

The huaqueros are usually poor people who have extensive knowledge of the places where the sites are located and deliver the objects taken out in exchange for little money. These practices lead to irreparable site damage, making it impossible to generate critical information for the scientific study of sites and objects that are de-contextualized.

The second link involves the gatherers who live in populated areas near the sites and buy the objects from the huaqueros, keeping them in storage until new buyers or third-link stakeholders (traffickers) show up.

Traffickers buy the objects at low prices and take them to urban areas, either within the same country (provincial capitals, federal capital, etc.) or foreign cities (New York, Paris, Madrid, London, Tokyo, etc.). In these cases, the prices skyrocket. The prices paid to the huaqueros are sometimes increased a hundredfold. A piece obtained in exchange for a pair of low-quality canvas shoes could be sold at the best international auction houses for as much as \$ 8,000 to 10,000 dollars.

Finally, the collectors close the circle because they are the end consumers of cultural assets. They are actually the promoters of illicit trafficking. They are unscrupulous dealers who hide their greed and ambition behind an alleged interest in protecting culture, but what their demand causes is precisely its destruction.



The stakeholders involved in the purchase and market positioning of artworks are different from those involved in the looting and trafficking of archaeological objects.

The first link involves the thief who can be occasional or professional. Occasional thieves are those who enter a home for burglary. Once inside, they try to take as many objects as possible, regardless of their quality and market value, including appliances, jewellery and artwork. They are only worried about the period of time they have to commit the crime and the way to get away. Generally, professional thieves conduct a market research and identify in advance the artworks they will take.

This distinction is important for crime investigation and for the possible location and restitution of works to their owners. In the first case, the artworks are usually put on a flea market or second-rate gallery. As time goes by, they are moved to upscale galleries. On the other hand, professional thieves usually have a buyer identified before committing the crime. Otherwise, they keep the stolen pieces for long, until the news about the theft vanishes and they can put them on the market.

Finally, we have the buyers who can act in good or bad faith. This concept set forth in the Civil Code (Law 25.257) is in line with the UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects. Its Article 4.4 establishes "(...) in determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances."

This distinction is also important because buyers who are considered to have acted in good faith shall be entitled, at the time of restitution, to payment of fair and reasonable compensation (Article 4.1).



Raise awareness and promote discussion, mainly in primary and secondary schools

There is an imperative need for students in primary and secondary schools to further raise awareness about the value of national cultural objects, the common history that identifies us as an independent State, and the pre-Columbian cultures that developed in our country.

On many occasions, we have noted with sadness that there have been acts of vandalism against historical monuments or archaeological sites, including graffiti or inscriptions of any kind. The damage to our cultural heritage is based on the ignorance of the people who commit these acts; they are not aware of the significance of cultural objects and their meaning.

Therefore, it is necessary to tell the younger generations about the true importance of historical objects and generate, on the basis of knowledge, a sense of belonging to society and respect for the culture that identifies us.

Train the police, security forces and other State agencies

All national and provincial police forces should have a unit specializing in illicit trafficking in cultural property. The approach to massively produced goods, such as computers or appliances, should not be the same as to works of art and archaeological or paleontological objects.

The substantial difference between them is that the latter are unique, unrepeatable and irreproducible. They may be copied, but they will never be identical to the original pieces. As a result, this type of crime involves specific behaviours and people who are not interested in large-scale productions.

In this regard, all national police forces and General Customs Administration officials are trained and updated by other state agencies on a regular basis to be able to identify and differentiate between serial and special productions.

For example, the courses organized by the National Institute of Latin American Anthropology and Thinking³ deal with the distinction between archaeological objects and mere handicrafts that are sometimes used by traffickers as their 'modus operandi' to take the former abroad, building upon the similarities between them. Likewise, the Argentinean Bernardino Rivadavia Museum of Natural Sciences⁴ provides training to learn how to differentiate paleontological



objects such as a common mineral fossilized tree trunk and a rock, which seem similar at a glance.

Make inventories and keep cultural property data on optical or magnetic support or paper copies

The lack of cultural property inventories provides criminals and traffickers with an edge. When a theft of cultural property occurs, whether at a home or a museum, a formal complaint should be made as quickly as possible and an order for seizure should be entered into the national and international database.

When the victim does not have any photograph of the object stolen or a detailed description, the completion of the relevant form is rendered extremely difficult and the possibility of eventually recovering the piece is significantly reduced. An employee of the police or customs with various functions within his/her institution does not necessarily have specific knowledge about cultural property, art history, archaeology, palaeontology or any other discipline related to culture. In this regard, the security employee should have a computer with Internet access and be able to check the database to see whether or not there is any legal impediment in connection with the object through the direct recognition of the photograph and/or description published. Such recognition will not be possible if there is no photo. The illegally obtained asset could thus be easily taken out of national borders and be legally auctioned anywhere in the world without any possibility of recovery.

Disseminate information on the theft of cultural property over the Internet or any other media

The dissemination of images of stolen objects by States or the existence of a database accessible to all citizens is essential to reduce illicit trafficking in cultural property. These are the most convenient, easiest ways to eliminate one of the most important links in the trafficking chain: sale and/or market positioning.

The ultimate goal of these crimes is to make profits by introducing illegally obtained objects into legal markets. If this goal is achieved, their market value would increase exponentially and people who were not directly involved in such crimes could lose the money they invested.

When a stolen item appears on a database accessible to all citizens, not only Law 25,257 (Article 4.4 on the need for potential buyers to consult a database to check whether or not there is any legal impediment) is enforced, but also more transparency is provided to the art market, with greater legal security for commercial activities.

In this regard, Argentina developed the first database of stolen artworks in the world back in 2002. The General Secretariat of INTERPOL modified the secrecy of the database in August 2009, when it was given a restricted character. At present, any person or institution in the world can consult the international database of INTERPOL. Those interested in it should send their data over the Internet to be given the password. To consult the database of Argentina, visit the website www.interpol.gov.ar.

Disseminate information on the current legal regime

The Argentinean legislation dates from the early 20th century. On February 26, 1913, the Honourable Congress of the Nation passed Law 9080 to regulate scientific research and protect national sites and objects. Ten years later, on December 29, 1921, the Executive proceeded to amend this law by decree.

Law 17,711 of 1968 introduced a number of amendments into the Civil Code. In connection with archaeological objects, it incorporated some guiding principles. Its new Article 2339 set forth: "Things are public goods of the general State that make up the nation or the individual states that it is composed of, according to the distribution of powers under the National Constitution..." Furthermore, Article 2340 (paragraph 9) included public goods such as "the ruins and archaeological and paleontological sites of scientific interest." This law amended Law 9080 and fundamentally changed public ownership over ruins and archaeological sites. Law 17,711 stipulated that the latter are under national or provincial jurisdiction, according to their location.

Some provinces have ever since issued local archaeological protection laws. It should be noted that some of the provincial constitutions have incorporated provisions on the study and preservation of cultural heritage.

The National State retains jurisdiction over the areas sold or assigned by the provinces and/or declared "utility establishments in the territory of the Republic." Such jurisdiction, in accordance with Article 75, paragraph 30 of the National Constitution, is concurrent with the powers of local governments, whether provincial or municipal, which retain police and imposition powers over these places, as long as they do not interfere with the purpose of these establishments.

Address other forms of recovery

The victim recognizes the stolen cultural object

When the victim of the theft was unable to properly file a report to the police or judicial authorities, either because he/she had no inventory of the work which could provide information for correct identification, such as description, weight, measurements or a picture of the object, it is impossible for police or customs authorities to identify it. It will only be identified by the victim when he/she visits an art gallery or similar facility and comes across with the piece, because only the victim has the object image engraved on his/her memory.

A third party recognizes the stolen cultural object

A person recognizes or suspects that a piece of historical or cultural value is being or has been sold illegally. This is usually the case of cultural assets of the Church, which are not always inventoried. When they are stolen, no reports are filed and they can be recovered only if they are identified by parishioners.

The stolen cultural object is abandoned

This happens when the significance of the news and the indignation of society put so much pressure on the perpetrators that they try to get rid of the object not to be caught. An example of it is "Youth", a marble sculpture by José Belloni. It was stolen from a Palermo square 48 hours after having been installed. It was found at a dump in Villa Luro two days afterwards (in March 1997). Another example is "The Hands," a small-sized sculpture by Rodin, which was stolen from the National Museum of Fine Arts in Buenos Aires and was abandoned at a business establishment near Retiro neighbourhood.

Notes

¹Islamabad, Pakistan, ANSA, AFP and AP, March 2001. <http://www.pagina12.com.ar/2001/01-05/01-05-22/pag22.htm>. <http://www.lanacion.com.ar/55765-confirman-la-destruccion-de-los-budas>.

²The National Center for Cultural Heritage Protection, INTERPOL - Argentina Department, Argentinean Federal Police is located at No. 3350 Cavia Street, 2nd Floor, Autonomous City of Buenos Aires, P.O. Box 1425. Phone (011) 4346-5750 and fax (011) 4346-5752. patrimonio-cultural@interpol.gov.ar. www.interpol.gov.ar

³<http://www.inapl.gov.ar/inicio.htm>

⁴http://www.macn.secyt.gov.ar/cont_Gral/home.php
⁵Once in "Programas," enter link "Patrimonio Cultural" to have access to 13 sections: (1) Legislación, (2) Instrucciones en caso de robo, (3) Formularios, (4) Casos recientes, (5) Prohibición de contratar, (6) Publicaciones de robo, (7) Obras recuperadas, (8) Objetos recuperados sin identificar (9) Casos significativos, (10) Personas buscadas, (11) Libros antiguos y contemporáneos, (12) Secretaría de Cultura de la Nación, and (13) Base Internacional de Obras de Arte Robadas.



FOUR TONS OF FOSSILS

Recovery and return of four tons of fossils illegally taken out of Argentina

Marcelo Daniel El Haibe

Chief Commissioner, Division of Cultural Heritage
INTERPOL - Argentina

On February 10, 2006, the National Centre for Cultural Heritage Protection received an anonymous call from the United States of America. The person on the phone advised that an international fair of palaeontology was being held at a hotel under the Howard Johnson Chain in the city of Tucson, Arizona. At the event, Rhodo Co. was offering for sale a large number of fossils of animal and plant origin which, as was indicated in the stand, were from Argentina.

The INTERPOL National Central Bureau immediately informed the National Federal Criminal and Correctional Court No. 10 with Dr. Julian Ercolini acting as president and Dr. Gustavo Cristofani as secretary. The Bureau let its U.S. counterpart (INTERPOL Washington) know about the event for corroboration. It asked to have the pieces confiscated if the information was correct. This was achieved with support from the U.S. Immigration and Customs Enforcement (ICE) agency.

After a thorough investigation, it was determined that the fossilized pieces had been sent from southern Argentina to the province of Catamarca, where Rhodo Co. is in charge of mining operations. The fossils left the country for the United States under a company license to export different types of mineral ores, especially rhodochrosite. These fossils were concealed in mineral ore shipments to dodge customs authorities.

This case was submitted to the National Economic Criminal Court No. 2 with Dr. Marcelo Aginsky acting as president

and Dr. Hernán Pandiella as secretary, under No. 193/2006 "NN S / INFRACCIÓN A LA LEY 22.515 (CONTRABANDO)." The case is currently being reviewed by the National Economic Criminal Prosecutor's Office No. 2 with Dr. Emilio M. Guerberoff acting as president and Dr. Daniel Schurjin Almenar as secretary.

The fossils were seized by ICE personnel at the request of INTERPOL, following orders from the court auditor. They were analyzed by U.S. experts with advice from leading national experts, concluding that they had indeed come from Argentina and were under Law 25.743 (Protection of archaeological and paleontological heritage).

After the relevant steps were taken, the four tons of fossils were returned to Argentina on April 23, 2008. It is worth stressing that this has been the largest smuggling of fossils in history.

The following pictures were discreetly taken and submitted on February 8, 2006 by ICE Special Agents. They helped scientists at the Argentinean Museum of Natural History, which is in charge of enforcing Law 25.743 (on Palaeontology), confirm that the fossils came from southern Argentina. The Court Auditor thus requested, by means of a letter rogatory, the immediate seizure of the pieces, which took place on February 12, 2006. [C&D](#)



Moment of the arrival at the Metropolitan Airport. In the picture, Dr. José Mun, Secretary of Culture, and Earl Wayne, Ambassador of United States. Three details of the returnees fossils.

THE RECOVERY OF THE CENTURY IN PARAGUAY

A 16th-century painting stolen from the Museum of Fine Arts in Paraguay is recovered

■ Marcelo Daniel El Haibe


Chief Commissioner, Division of Cultural Heritage
INTERPOL - Argentina

The National Centre for Cultural Heritage Protection at the INTERPOL-Argentina Department was informed that a piece that had been stolen from the National Museum of Fine Arts in Paraguay in July 2002, valued at U.S. \$ 200.000.00, was being offered for sale at the local art (black) market.

After a judicial intervention was undertaken, investigations showed that the work "San Gerónimo" by an anonymous author was for sale in the city of Posadas, province of Misiones (Argentina).

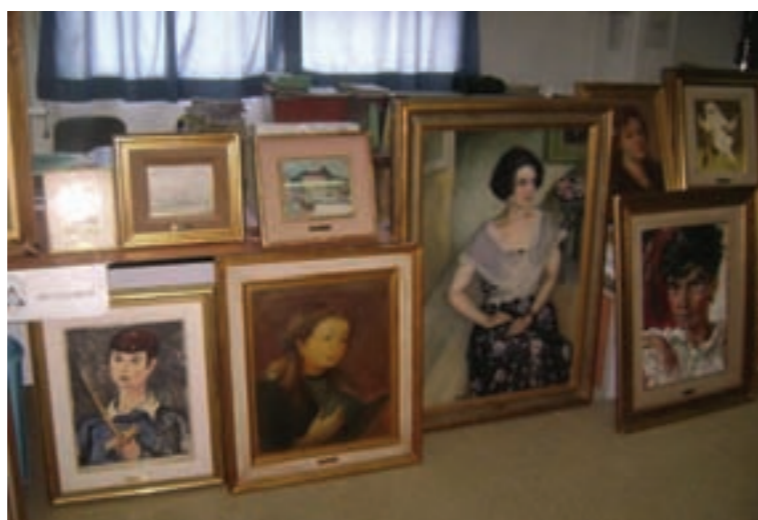
On March 6, 2008, a police fact-finding mission left for Posadas to locate the work. Along with local staff of the Argentinean Federal Police, it carried out an operation to recover the oil painting. It was in perfect condition and dated from 1500 approximately.

The mass media echoed the event, which was considered by the Paraguayan press as "the theft of the century." Reports indicated that the work had been stolen upon the construction of a 100-foot-long tunnel from a shop located opposite the museum, giving direct access to it.

The work was returned to the authorities of Paraguay on July 10, 2008. 

77 PAINTINGS HIDDEN IN A WAREHOUSE

The most important recovery in Argentina in terms of number of objects and artistic and economic value



■ Marcelo Daniel El Haibe

Chief Commissioner, Division of Cultural Heritage
INTERPOL - Argentina

During the night and early morning of November 30 to December 1st, 2009, between four and six people stole more than eighty paintings, Austrian porcelain figurines, and various antiques from the home of a famous art collector of the city of Pilar, Province of Buenos Aires. Out of the eighty-two paintings stolen, thirty-six were by Argentinean painter Antonio Berni, eleven by Raul Soldi, some others by Lino Spilimbergo, and the rest by different artists of national and international renown.

On December 18, 2009, the National Centre for Cultural Heritage Protection was required by the Prosecutor's Office to assist in the investigation of a case that had been taken up by Dr. Marcos Petersen Victorica.

Following a Prosecutor's request, an investigation team was established to conduct a detailed study of the statements and testimonies that had been gathered by the Departmental Investigation Division (DDI) in Pilar, working in close coordination with this unit of the Provincial Police.



As a first step, the stolen assets were incorporated into the INTERPOL database of stolen works of art, which is available to the police in the 190 member countries, and on the website of this Division, including relevant descriptions and photographs, in order to prevent them from being sold on the art market.


Telephone companies were asked to submit lists of phone and radio calls recorded by their antennas in the area of the crime scene, in the time slot before and after the crime. This made it possible to identify the ID and cell phone numbers used by the criminals for communication. These investigations also made it possible to know that the driver of the victim had a direct connection to those involved in the theft.

Several cell phones were tapped and seven houses were identified in different areas of the province of Buenos Aires, which were raided around May 7, 2010. Over these searches, stolen ornamental objects and cell phones were found, and four people

were arrested. At that time, the stolen paintings were not discovered.

The Centre continued wiretapping to identify where the gang was planning to take the paintings to. The place where the stolen paintings could probably be found was identified. It was a depot in Gaona-Arroyo Los Perros (Moreno).

On May 15, 2010, after seeking the relevant warrant from the Auditing Prosecutor, Centre and DDI staff in Pilar carried out a raid there, on jurisdictional and procedural grounds. It was a deserted warehouse where the 77 stolen paintings were finally found. By judicial warrant, they were sent to DDI in Pilar, where they have been kept.

This has been the most important recovery in the history of the Centre because of the number of works involved and their artistic and economic value. 

PAINTINGS BY CEZANNE, GAUGUIN AND RENOIR

Recovery and return of three major works of art stolen from the National Museum of Fine Arts in Buenos Aires

■ Marcelo Daniel El Haibe

Chief Commissioner, Division of Cultural Heritage
INTERPOL - Argentina




The call (Paul Gauguin)

On Christmas in 1980, the theft of the century took place in Argentina. Sixteen works by different world renowned artists were stolen from the National Museum of Fine Arts in the City of Buenos Aires. It was the largest theft of this type that had been seen in the country.

In September 2002, an investigation was undertaken following confidential reports on the whereabouts of three of the sixteen pieces stolen in 1980.

After various investigations and proceedings, it was established that the works were for sale on a popular auction house in Paris (France). The Court Auditor immediately requested the restitution of the pieces by means of a letter derogatory to the French Judiciary through the Argentinean Foreign Ministry. The letter was processed by the Embassy of Argentina in France.

Three of the works that had been confiscated in 1980 were returned to Argentina on November 22, 2005. They were "Bend of the road" by Paul Cézanne, "The cry" by Paul Gauguin, and "Portrait of a lady" by Auguste Renoir. 

ON THE TRAIL OF STOLEN WORKS OF ART

Twenty-nine paintings stolen from a house in the neighbourhood of Villa del Parque in Buenos Aires are recovered



Descanso sentado (Presas)



Casa de La Boca (Vento)



Caballo Criollo (Tesandori)



Barcas (Forte)

■ Marcelo Daniel El Haibe

Chief Commissioner, Division of Cultural Heritage
INTERPOL - Argentina

In January 2012, a number of works by outstanding local and foreign artists were stolen from a home in the neighbourhood of Villa del Parque in Buenos Aires.

The victim identified one of the pieces at an art gallery, filing a complaint with the officiating judge, who ordered the staff of the National Centre for Cultural Heritage Protection to conduct a search and embark on an investigation within the framework of the case. On April 16, 2012, a search was carried out at Arroyo Gallery, and Horacio Buttler's *Desnudo sentado* was recovered.

The investigation revealed that the person who took the stolen pieces to this gallery worked at another gallery on Esmeralda Street. The Centre staff managed to find one of the stolen works: *Grises* by Vaz. After consulting the judge, they recognized and confiscated the painting, and identified those involved for public notification.


The findings revealed that the remaining pieces had been stored at a Zurbaran firm building. Four homes, two galleries and two warehouses linked to this company were identified. After issuing the relevant search warrants, thirteen paintings by different authors and related documentation were confiscated at a warehouse of Zurbaran Gallery on Cerrito Street.

The review of the documentation showed that, in addition to the works confiscated, there were others that had not been reported by the

victim because he had not had them inventoried before the theft. Eight paintings were recovered at a cafe on Esmeralda Street in Buenos Aires.

It was established that a Mr. Ryszelewski had been involved in the sale and distribution of paintings and sculptures that had been stolen. The Court with Dr. Cubas presiding ordered to conduct various operations in the area of downtown Buenos Aires, close to the junction of Cordoba and Esmeralda streets. When the identity of this individual was checked, it was found that there was an arrest warrant issued against him at the request of the Federal Court No. 7, Secretariat No. 13, for theft. The requesting party ordered the immediate arrest of the citizen in question.

On May 11, 2012 two Centre brigades were deployed. One carried out a raid at a Cerrito warehouse and recovered six paintings; the other arrested Ryszelewski on the street. It was found that the detainee had thirteen summons issued against him by several courts for various crimes. This information was made available to the court before his case was reviewed.

As a result of intensive investigations by the Centre staff, out of 37 paintings stolen, 29 were recovered. Efforts are still underway to recover another eight paintings and 10 sculptures. 

LESSONS LEARNED IN THE ANDEAN REGION AND CENTRAL AMERICA



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Fernando Berríos

UNESCO Programme Coordinator in Peru

The Regional Workshop Capacity Building in the Fight against Illicit Trafficking in Cultural Property, sponsored by UNESCO's Emergency Fund, was held at the initiative of Irina Bokova, Director-General of the Organization, to deal with the concern of Latin American and Caribbean countries members of the Executive Board on the measures to be taken in the region to prohibit and prevent the illicit import, export and transfer of ownership of cultural property.

The Ministry of Culture of Peru and UNESCO jointly organized the workshop, setting the following objectives:

- Promote the effective implementation of the 1970 Convention and other relevant instruments on combating illicit trafficking in and restitution of cultural property;
- Provide training on the proper use of legal and operational tools to safeguard and preserve the cultural heritage;
- Build capacity for the protection and conservation of movable cultural property; and
- Raise awareness on the need to combat illicit trafficking in cultural property.

National and international experts in the analysis of mechanisms and strategies to safeguard cultural heritage met in Lima (Peru) to share their knowledge and experience in this field. Specialists from Argentina, Colombia, Ecuador, Guatemala, Honduras and Mexico and of entities such as UNIDROIT, UNODC, FBI and INTERPOL participated in the event, which was opened by Minister Luis Peirano Falconí and Deputy Minister Rafael Varón Gabai.

Lessons Learned

After three days of intense work, the experts reviewed the implementation of the 1970 Convention and other relevant instruments in the fight against illegal trafficking in and the restitution of cultural property in Latin America and the Caribbean.

The establishment of a police and prosecution service specialized in the protection of cultural heritage in the region emerged as one of the first needs identified. "If these services are already in place, authorities are urged not to change their functions for a term of at least five years, keep them in sufficient numbers, and provide them with the technical and logistical means necessary for the exercise of their duties," said Blanca Alva, Director-General of Supervision and Control at the Ministry of Culture of Peru.

In the case of Peru, there has since 1999 been an Investigating Unit for Crimes against Public Administration and Cultural Heritage (DIVIDCAPC) under operation at the Tax Police Division but, as Alva indicated, its staff is insufficient and unsteady. "The Ministry of Culture launched the project to locate DIVIDCAPC at its headquarters two years ago so that the police could be in direct contact with the specialists of this Ministry and receive ongoing training." However, this initial step has not yet been taken because there is a need to have a permanent special prosecutor, a request that has not been met by the Attorney General's Office.

In all, Peru has in the last five years recovered 2,700 cultural assets. "We are world leaders in asset recovery and repatriation, as well as in case settlement. We are solving ten cases a year on average," Alva stressed.

To improve the implementation mechanisms for the 1970 Convention in the region, workshop participants also proposed establishing a database on stolen cultural property and sending the relevant information to INTERPOL so as to be shared with all countries, leading to the effective investigation of cases and of those involved.

Experts pointed out that the lack of inventory and registration of cultural property is posing an imminent threat to its protection and custody. It is thus necessary to focus national financial and international cooperation efforts on implementation, updating and standardization.

Similarly, they proposed standardizing sentences and administrative procedures as well as coming up with a common definition of the terms "cultural property" and "cultural heritage," including laws that establish criminal actions, offenses and sanctions.

For their part, UNESCO, UNIDROIT (International Institute for the Unification of Private Law), WCO (World Customs Organization), UNODC (United Nations Office on Drugs and Crime) and ICOM (International Council of Museums) will support Member States of the 1970 Convention on education and training programs for agents specialized in the fight against trafficking in cultural heritage.

Member countries will ask these agencies to adopt an appropriate cultural property registration system under international standards and provide technical and financial cooperation. Efforts will be made to get a binding resolution passed on the prosecution of cultural property traffickers.

Conclusions

Taking into account Article 5 in the 1970 Convention, the experts suggested that the authorities of the member countries should establish a police service specialized in cultural heritage protection and should also prevent the continuous rotation of officials in order to equip them with the knowledge and technical and logistical resources necessary to fulfil their functions.

They urged to set up special prosecutor offices and interdisciplinary committees in all countries to fight trafficking in cultural property, facilitate the exchange of information and formulate a common strategy, which should seek to standardize both legal frameworks and administrative procedures.

Likewise, they recommended using the WCO-UNESCO form to standardize export certificates for cultural property under the law in each country.

Finally, they suggested developing a database on stolen cultural goods and sending the relevant information to INTERPOL to be shared by all member countries and prosecute those involved in these acts. [C&D](#)



WORKING TOGETHER THE ANDEAN COMMUNITY PROTECTS ITS CULTURAL HERITAGE

■ Pablo Guzmán Laugier

Secretary-General of the Andean Community

Cultural heritage is the fundamental component of the identity of peoples. Therefore, theft and destruction deprive them of their historical and cultural legacy and infringe on their right to build a sustainable future on the basis of a common past.

The Andean Community countries, with a wide typology of tangible and intangible assets that link the past with the present and the future, are among the nations most seriously threatened by illicit trafficking in cultural property. In this context, Bolivia, Colombia, Ecuador and Peru have joined forces to protect, prevent and combat such trafficking, aware that this is a task that requires commitment and participation of the entire community at the national level and joint efforts at the regional level, especially in the case of the Andean countries whose origin, history and culture are common.

As the protection and safeguarding of cultural heritage pose serious challenges, these countries have signed international instruments that have led to significant progress in addressing the problem. They include the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995), and the Convention of San Salvador (Convention for the Protection of the Archaeological, Historical and Artistic Heritage of American Nations) (1976).

Joint actions in the Andean sub-region have since 1999 been increased thanks to the adoption of the Andean regulations on the protection and recovery of cultural property (Decision 460), which were later updated in July 2004 under Decision 588, and the holding of meetings of the National Technical Committees for the Control of Illicit Trafficking in Cultural Property in the Andean countries.

The Presidents in this region have attached utmost priority to this issue, including it on the agenda of summits such as the one held in Quirama, which asked national authorities to consolidate the efforts made to fight trafficking in cultural property.

Founded in 2004, the Andean Committee to Combat Illicit Trafficking in Cultural Property has held meetings to further boost the implementation of Decision 588 and urge countries to meet commitments such as the development of heritage property records and educational campaigns, as well as the establishment of harmonized control systems and inter-agency teams for the protection and conservation of cultural heritage at the national level.

There has been evident progress along these lines. The Andean countries have already implemented **cultural property records**. In Bolivia, there are "Cultural Heritage Records," which include around 26,500 assets listed. In Colombia, there is a "National Inventory Programme on Cultural Heritage," along with "Records of Assets of Cultural Interest" and an "Indicative List of assets nominated as having cultural interest." In Ecuador, a total of 76,208 cultural assets have been inventoried, the "Information System for ABACO Cultural Heritage Management has been developed," and a "List of Stolen Assets" has been prepared. In Peru, over 100,000 private collection assets have been properly registered, and a "Red List of Peruvian Antiquities at Risk" has been established.

These countries also have **educational programs under implementation**. They are designed to foster respect for heritage. In Peru, the "MC Educa" Programme has made it possible to distribute materials in 2,200 educational institutions



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across the country. In Colombia, the Ministry of Culture has implemented the National Cooperation Programme to Fight Illicit Trafficking in Cultural Property and established "Vivamos el Patrimonio" Programme in 2008. In Ecuador, a training programme has been implemented for two years.


In the area of control systems, the Andean countries have set up interagency teams, art export protocols and control mechanisms (for example, Ecuador and Peru have modules designed specifically for airports). They have also identified the institutions that grant certifications for cultural assets that are not heritage property and issue export licenses. For dissemination of information, they are using common mechanisms such as INTERPOL newsletters, social networks, e-mails, embassy communications, virtual alerts and blogs. However, they have not managed to standardize a procedure to issue warnings about the disappearance and theft of cultural property.

The return of cultural goods between Andean countries is another area for joint action, as shown by the seven Peruvian cultural assets seized by Ecuadorean authorities and returned to Peru in January 2010, including five textile fragments that allegedly belonged to the Chancay and Chimu cultures along the Peruvian coast and that dated from 600 to 1000 years ago, and two canvases presumably from the southern Andes in the 19th century. Another example involved the restitution of a mummy about 700 years old returned by Bolivia to Peru in November 2012.

Aware that cultural identity and ethical values are based on the historical legacy and cultural heritage of every people, the Andean

countries have provided special impetus to culture with the establishment of the Andean Council of Ministers of Culture and Cultures in August 2011. At the meetings held in March 2012 and 2013 in Bogota and Quito, respectively, the Ministers asked the Andean Committee to Combat Illicit Trafficking in Cultural Property to review and update Decision 588 in order to develop tools to regulate cultural trade and improve heritage assets export and import control systems. They also asked the Committee to come up with a unified position at the Special Meeting of the States Parties to the 1970 UNESCO Convention and put together a Regional Cultural Property Record Book.

It was thus agreed in March 2013 that, on the occasion of such meeting, the joint position of the Andean countries should involve operational directives and guidelines seeking to increase effectiveness in implementing the 1970 Convention. The steps to be taken in this connection include "updating the criteria used to define cultural property under protection, especially archaeological objects that result from clandestine excavations and illicit exports," and "reviewing the criteria to establish that possessors have acted in good faith and identifying the party which bears the so-called burden of proof."

In short, under the Andean regulations to fight illicit trafficking in cultural property, Bolivia, Colombia, Ecuador and Peru have developed laws, networks, inter-agency teams and control systems for airports and border areas, with the aim of strengthening cultural heritage protection in the region. The challenge that lies ahead, however, remains huge. 

THE PRE-INCA MUMMY

The Andean Community countries are making efforts and developing actions to protect their cultural assets and prevent their export, theft, import and international illicit trafficking. These actions are being carried out not only within the framework of Community laws but also under bilateral agreements

■ Pablo Guzmán Laugier

Secretary General, Andean Community

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In October 2010, the Bolivian police seized a funerary bundle that was bound for France. The Unit of Archaeology and Museums of Bolivia made an initial technical assessment to establish whether it was a cultural asset or not. Subsequently, in April 2011, a Bolivian technical committee concluded that it was in fact an archaeological asset that had been intentionally prepared to be illegally transported to Europe.


Evidence showed that the asset could have come from Peru, so a new expert mission was requested, involving the presence of a Peruvian specialist. A new assessment, which included additional X-ray studies and tests of the cloth that wrapped the piece and the filling of the box that was to be used, made it possible to gather enough data to establish that it had come



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from Peru, specifically from the South Coast, and was dated to the Late Intermediate Period (110-1450 AD).

It was also established, considering the overall bone structure, that it was a 3 to 4 year old girl. Due to her young age, the cause of death could not be determined, but the piece may well have been taken out of a funerary complex. Everything seems to indicate that she had her clothes and some parts of her body changed, including her left foot, which was replaced with another one in better condition.

The identification and investigation process, which culminated in 2012 with the return of the mummy to Peru, was conducted under the 1998 Agreement between Bolivia and Peru to Fight Illicit Trafficking in Cultural Property and the 1970 Convention, to which the two countries are parties. 

PERU IN EGYPT



Archaeological recovery

Blanca Alva Guerrero

General Director, Cultural Heritage Protection
Ministry of Culture of Peru

In May 2005, the Republic of Peru and the Arab Republic of Egypt signed an agreement for the protection and restitution of stolen or illicitly transferred assets, shortly after having penned the 1970 and 1972 UNESCO Conventions as well as the 1995 UNIDROIT Convention. Under this agreement, the two countries undertook to prohibit and prevent from entering their territories any cultural, archaeological, artistic and/or historical assets resulting from theft, illegal trafficking or illicit export and transfer.

On March 15, 2013, the agreement was effectively implemented for the first time. A gallery in Colorado (United States of America) sold to an Egyptian citizen, via the Internet, two pieces of pottery of the Chancay culture (which developed

in the Central Coast of Peru between the years 1200 and 1470 AD, and covers the valleys of Fortaleza, Pativilca, Supe, Huaura, Chancay, Chillón, Rimac and Lurin). The ceramics, which were sent to Cairo as parcel post, were seized on the date cited above by officials at the Antiques Unit of Cairo International Airport.

The ceramics are of small size and are, therefore, difficult to detect. Although parcels usually go through scanners, knowledge, experience and even intuition are required to detect "suspicious" pieces of such features. These pieces, which are anthropomorphic representations known in Peru by the name of *cuchimilcos*, are familiar to any Peruvian researcher, but are hardly recognizable to foreigners. Therefore, the fact that Egyptian officials managed to do so is worth highlighting.



The Ministry of Culture of Egypt reported the finding to the diplomatic representatives of Peru, who in turn asked their Ministry of Culture to determine how old and original the figures were. The archaeologist in charge of repatriation cases examined the photographs and, without hesitation, concluded that they were authentic.

The two are ceramic figurines with the arms extended, the legs put together, embossed facial features enhanced with paint, and painted clothes. They are 17 and 15 inches tall, respectively. The smaller one is what archaeologists call a subtype, a variant of relative rarity, which has not two but four arms, two sculpturally open and away from the body, and two pictorially represented as folded across the chest.

The technical report of the Peruvian Ministry of Culture was sent to the Egyptian authorities through diplomatic

channels. In late September of this year, the two *cuchimilcos* were formally handed over to the Ambassador of Peru to Egypt, returning their ownership to Peru. Still pending is the last stage, that is, to have them returned to the country to be kept at the National Museum.

Egypt and Peru are two of the eighteen countries members of the Subsidiary Committee of the 1970 UNESCO Convention. Both nations have suffered and are still suffering the pillage and plunder of their assets, mainly archaeological. This return clearly shows the excellent cooperation between Peru and Egypt, as well as the commitment of the signatories to the 1970 Convention to the prevention of illicit trafficking in cultural property. **C&D**

FROM FIGHTING TO PREVENTING

COLOMBIAN MOVABLE HERITAGE PROTECTION

■ Ayda Cristina Garzón Solarte

Contractor - Movable Cultural Property Group, Heritage Division.
Ministry of Culture of Colombia

The Colombian State has since 1907 been concerned about the illegal export of 'objects that should remain at the National Museum' due to their uniqueness and recognized scientific, historical or artistic value.¹ It banned their export under Legislative Act 21 of that year. The Colombian legislation has ever since sought to protect the movable cultural property, but it was not until 1986, upon the adoption of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), that actions started to be implemented to achieve better results. These actions were strengthened by the General Culture Act 397 of 1997, which was adopted by the Ministry of Culture, and by the introduction of the category of property of cultural interest (BIC), which includes elements that are part of the cultural heritage and are considered important for the memory, identity and shaping of the nation.

Through a procedure under Title III of Act 1185 of 2008, which amended Act 397 of 1997, certain objects can be declared BIC at the national level. However, there is also BIC at the municipal, departmental and district levels, as well as in indigenous territories and Afro-Colombian, black, palenquero and raizal communities. They are declared as such by the relevant authorities, in accordance with their own procedures.² The Ministry of Culture, the Colombian Institute of Anthropology and History (ICANH), and the General Archives of the Nation (AGN) are the institutions in charge of protecting cultural property. They are empowered to grant export licences and undertake inventorying and registration activities to comply with and follow guidelines in the 1970 UNESCO Convention and the subsequent Decision 588 of the Andean Community of Nations, of which Colombia is a member.

The movable cultural property, especially significant for its symbolic and economic value, is vulnerable because it can be easily transported and camouflaged. Archaeological objects are usually the most affected because illegal excavations do not only destroy unique pieces, but also result in loss of valuable information about their sites and, therefore, about the societies that produced them.

Illicit trafficking involves a wide range of crimes, such as theft, damage to property, and use of stolen property.³ To address this issue, the Ministry of Culture, which was

HERITAGE MANAGEMENT HAS BEEN EXPANDED TO COVER PROPERTY EXPORT CONTROL AND GENERAL AWARENESS-RAISING CAMPAIGNS. THE IDEA IS TO ENABLE CITIZENS TO RECOGNIZE AND ACKNOWLEDGE THE VALUE AND SIGNIFICANCE OF THE CULTURAL HERITAGE

established around 1997, began to develop a plan to counter the flight of cultural property through control measures and a procedure authorizing the export of the movable cultural property. The export of national BIC is only authorized to conduct scientific studies on them and/or exhibit them, to promote exchanges between national and international institutions, and, exceptionally, to be sent to diplomatic premises (including BIC owned by diplomatic personnel). Heritage management has been expanded to cover property export control and general awareness-raising campaigns. The idea is to enable citizens to recognize and acknowledge the value and significance of the cultural heritage.

After fifteen years of continuous work, several positive results have been obtained, such as the formulation of a national programme to fight against illicit trafficking in cultural property and the signing of an administrative agreement that involves twelve institutions, both public and private, which make up a technical committee with five working groups:


- Repatriation Policy Group to review current cases, international auctions, and actions to be implemented by the State to have goods returned.
- Training and Dissemination Group to establish priorities on institutional training and information dissemination modalities.
- Trade in Cultural Property Group to collect statistical data about the legal sale of cultural property, develop indicators on confiscated property, and manage an inter-agency database on lost property. This work is still in progress.
- Criminalization Group to establish offences specifically committed against the tangible cultural heritage.
- Cooperation Group to review and evaluate conventions, treaties, memoranda and other legal tools on cooperation, to which Colombia can accede in order to strengthen control over the illegal export of cultural property.

The National Programme against Illicit Trafficking is being supported by the National Inventory Plan, which mainly seeks to identify and inventory the Colombian heritage, and to register BIC. The National Programme of Documentation of Movable Cultural Property is based on this plan.

The Heritage Division at the Ministry of Culture has since early 2013 been working on restructuring the Programme

against Illicit Trafficking, thanks to the formulation of a Policy for the Protection of the Movable Cultural Heritage and its subsequent adoption by the National Heritage Council and by Minister Mariana Garcés Córdoba. It is about to be published. This policy establishes guidelines for the protection of the movable cultural property (PCMU) through strategies and lines of action that seek to strengthen and promote PCMU management, conservation, documentation, research and training actions that are coordinated by the Ministry under national and international cooperation schemes.

Based on the new programme, the Policy aims to address illicit trafficking in cultural property from a broader perspective. It establishes that the best way to proceed is not to exercise strong control over exports, but to prevent offences against property (theft, illegal use and excavation, damage, destruction, etc.). In adopting this position, the Colombian State meets a difficult and complex challenge, that of achieving long-term sustainability of PCMU.

One of the actions in the new programme includes working with communities on heritage recognition and social appropriation processes under administrative agreements in force or under new arrangements with national and international entities. At the same time, articulation and coordination actions with public and private institutions should be developed, and PMCU dissemination and awareness-raising activities should be promoted on a continuous basis. The aim is to turn prevention into the backbone of the programme, without neglecting or ignoring the need to make every effort to control and punish offences against the cultural heritage. 

Notes

¹Entity established in 1828.

²Ministry of Culture of Colombia. Policy for the Protection of the Movable Cultural Heritage. Research and text by Andrea Martínez Moreno. Text in publishing process.

³Illegal action.



GUATEMALA COMBATING TEN YEARS

■ Eduardo Enrique Hernández Herrera

Head of the Department of Prevention and Control of Illicit Trafficking in Cultural Property at the General Division of Cultural and Natural Heritage
Ministry of Culture and Sports, Republic of Guatemala



Guatemala, heart of the Mayan culture known for its significant scientific and astronomical progress, the development of a written language, art, ceramics, architecture and mathematical systems, is rich in cultural and natural heritage. The conquest of Pedro de Alvarado led to the emergence of Spanish cities and towns in indigenous populated areas which, after the Spanish rule, witnessed unionized craft specialties of painters, sculptors, musicians, tailors, blacksmiths, masons, carpenters and joiners, who developed the Guatemalan religious art reflected in sculpture, painting, architecture, and colonial and republican imagery.

This cultural grandeur, which is seen in tangible and intangible cultural assets, through archaeological sites and objects, religious images and paintings and cultural centres, as well as in oral, music, medicinal, culinary, craft and religious traditions, among others, is the heritage of Guatemala today.

The State of Guatemala, aware of its important past, has throughout history been implementing legislative, judicial and administrative actions seeking to protect its cultural heritage and, above all, to counter the threats it has had to face.

An example of this responsibility for the legacy of the country is the inclusion of Tikal National Park and Antigua Guatemala on the UNESCO World Heritage List in 1979 and its Archaeological Park and Ruins of Quirigua in 1981. Likewise, the Rabinal Achí Dance Drama Tradition and the Language, Dance and Music of the Garifuna were included on the Representative List of the Intangible Cultural Heritage in 2008. This last element is shared with Belize, Honduras and Nicaragua.

With the establishment of the National Museum in 1829, the interest in and concern over knowledge, conservation, protection and dissemination of Guatemalan cultural property began to grow.

The political movement of the 1944 revolution marked the beginning of a stage of enhancement and protection of cultural heritage through the establishment of several institutions such as the Institute of Anthropology and History and the National Indian Institute, among others. Important legislative steps were taken at the time, including the passing of Decree No. 425 (Law on the Protection and Conservation of Archaeological, Historical and Traditional Objects and Monuments of 1947).

At present, the Political Constitution of the Republic of Guatemala, as sanctioned by the Constituent Assembly in 1985, includes a specific section on the right to culture, particularly on cultural heritage, which sets forth that the paleontological, archaeological, historical and artistic assets and values of the country form the cultural heritage of the Nation and are under the protection of the State. Their transfer, export or alterations, except in cases determined by the law, are prohibited. It also establishes that the archaeological sites, collections of monuments and the Cultural Centre of Guatemala will receive the special attention of the State with the purpose of preserving their characteristics and defending their historical value and cultural assets.¹

The Ministry of Culture and Sports of Guatemala was established in 1986 to strengthen the Guatemalan identity by encouraging cultural diversity through the protection, promotion and dissemination of the artistic, cultural and social values of the country.

Its functions were regulated by the Executive Organism Act, highlighting the need to formulate, implement and manage, in a decentralized manner, the policy of preservation and conservation of cultural heritage, as well as that of repatriation and restitution of stolen or illegally exported Guatemalan cultural assets to the State.² This function materialized after a lengthy process that included the implementation of National Cultural and Sports Policies under the principle that "the cultural heritage of Guatemala contains the genesis of its plural history, shows its multicultural and intercultural features at their best, expresses signs and symbols for the present and future coexistence of the peoples and communities that make up the Nation, and provides basic elements for the comprehensive development of all its inhabitants. It is also a source of inspiration, creativity and wealth for local communities."

The Ministry of Culture and Sports has been intensifying actions to safeguard cultural property, developing and implementing—together with other public and private institutions—natural disaster, predation and illicit trafficking prevention and cultural and natural heritage safeguarding plans.

The problem of illicit trafficking in cultural property in Guatemala

Illicit trafficking in cultural property in Guatemala began to develop upon the Spanish conquest, as these assets were considered trophies or merchandise. In 1855, the Popol Vuh and the Memorial de Tecpán Atitlán were taken out of the country by Abbot Brasseur de Bourbourg for translation; however, they were never returned.

The 1960s and 1970s saw the greatest predation of archaeological sites, especially in the Department of El Petén, and illicit trafficking in the assets from such sites to markets in the United States and Europe.

The demand for these goods and the lack of awareness of their importance led to considerable damage to many archaeological sites, monuments and structures. Accurate data on this problem are not available due to the lack of formal research and reports in Guatemala.

Pre-Hispanic archaeological assets are facing today the highest risk of destruction, looting and commercialization on the domestic and foreign black markets. Thanks to public and private initiatives, this threat has been diminished.

Among the main stakeholders identified in the illicit trafficking in archaeological assets are collectors, both domestic and foreign, who in their eagerness to own such goods as symbols of wealth or prestige, overlook the history, culture and values of a country. The same applies to religious cultural property of the Catholic Church and private individuals, which get to the market due to the lack of strong preventive measures under implementation.



Temple No. 1, Tikal National Park, El Perú. A site inscribed on the World Heritage List of UNESCO in 1979.

Ten years defending Guatemalan cultural heritage and combating illicit trafficking

In 2003, authorities of the Ministry of Culture and Sports and the General Division of Cultural and Natural Heritage, in compliance with the National Cultural and Sports Policies and the International Conventions approved and ratified by Guatemala, established, under a ministerial agreement, the Department of Prevention and Control of Illicit Trafficking in Cultural Property. The Department also ensures supervision and recovery of cultural property in the country and abroad.

In the course of over ten years of operation, the Department has evolved in terms of technical, administrative and legal aspects, systematizing the main management procedures for the control, prevention and recovery of cultural property that makes up the cultural heritage of Guatemala. The Department is being supported by key national institutions, such as the Public Prosecutor's Office through the Attorney General's Section on Offences against the National Cultural Heritage, the National Civil Police through the Special Criminal Investigation Department, the Superintendence of Tax Administration, specifically through the Customs Administration Bureau, INTERPOL NCB Guatemala, and the Ministry of Foreign Affairs, which have proven to be major allies for international property recovery thanks to the work of diplomatic staff at Embassies of Guatemala.

In the exercise of its duties, the Department has developed various cultural heritage training, awareness-raising and enhancement projects. It has organized training actions for prosecutors and assistant prosecutors in handling heritage-related crime scenes, the National Civil Police, private organizations, judges, public officials and lawyers at the Office of the Attorney-General of the Nation. These actions are implemented by the School of Judicial Studies and Civil Aviation staff in charge of security, surveillance and control of national airports. There is also an interagency cooperation project between the Ministry and the Customs Administration Bureau to train local customs officers.

At the legislative level, Guatemala has enacted a National Cultural Heritage Protection Act, which contains the principles enshrined in the Political Constitution of the Republic of Guatemala and the penalty system established in the Criminal Code, which punishes illicit trafficking in cultural property with imprisonment from six to fifteen years and fines of 5,000 to 10,000 quetzals. Cultural predation sanctions, on the other hand, involve imprisonment of six to nine years and fines equal to twice the economic appraisal of the assets concerned, as determined by Ministry experts.

Guatemala has also ratified a number of policy instruments such as the 1970 UNESCO Convention and the 1995 Central American Convention on the Restitution and Return of Archaeological, Historical and Artistic Objects, which regulates that the burden of proof as to the possession of cultural property rests with the illegal possessor rather than the State owner of the assets concerned.

Among the main tools for the dissemination of information about cultural assets that may have been illegally exported from the country is the Red List of Threatened Cultural Assets in Central America and Mexico, published by ICOM in 2010. The list shows that 30 percent of the cultural goods identified are Guatemalan. Likewise, a List of Threatened Cultural Assets in Guatemala was published in 2009 with funding from UNESCO. A Procedure Manual against Illicit Trafficking was developed for museums in conjunction with the Red Centroamericana de Museos / Central American Network of Museums (REDCAMUS). A compendium of laws on the protection of cultural heritage containing national and international legal regulations was published and distributed.

The Department is working in coordination with a Latin American network to combat illicit trafficking in cultural property, sharing technical and legal information with Peru, Mexico, Ecuador, Argentina, Honduras and Costa Rica, among others. Thanks to this cooperation, overseas auctions have been identified, regional seminars have been organized, good practices have been exchanged, and unified views by Latin American culture specialists dealing with illicit trafficking have been advanced at UNESCO.

Challenges

The achievements that have been made by the Department of Prevention and Control of Illicit Trafficking in Cultural Property of Guatemala in the last 10 years are remarkable but insufficient. Day by day, we see our hopes dashed when we implement processes based on existing legal provisions and get answers inconsistent with applicable law. At the international level, many States protect collectors, calling them "possessors in good faith," a term that should not exist because no individual can prove "ownership" of cultural assets which, by law, are owned by States.

Guatemala, like many other Latin American countries, is affected by illegal worldwide sales of archaeological cultural heritage. Under this situation, we do not think that affected States should provide evidence that a cultural asset is abroad due to some illegal action, being very difficult to prove theft or looting, as these criminal practices take place clandestinely. The burden of proof should correspond to illegal possessors who would need to prove, justify and document asset possession, something extremely difficult to accomplish.

Under the asset export and disposition ban relative to the archaeological cultural heritage regulated by the Constitution of the Republic of Guatemala, as is the case of laws in most countries of Latin America, any archaeological object that is outside the borders of the country of origin is associated with an illegal act, except in cases of duly authorized scientific research and/or exhibition.

The State of Guatemala will always favour the idea of highlighting the illegality of auctions abroad, unlawful possession and illicit enrichment as a result of the purchase and sale of cultural property of Guatemala and Latin America. It will continue to indicate that these commercial actions denigrate our pre-Hispanic cultures and history, considering archaeological cultural property simply as goods or works of art, rather than as testimonies of our own culture and national identity. We will always be committed to ensuring the recognition of our history and cultural heritage. [C&D](#)

Notes

¹ Political Constitution of the Republic of Guatemala: articles 57 to 65.

² Executive Organism Act, Decree No. 114-97 of the Congress of the Republic of Guatemala, Article 31 (b) and (f).

CULTURAL HERITAGE PREVAILS IN TIME THANKS TO THE EXISTING EVIDENCE, REFLECTED IN OBJECTS AND SITES THAT TELL AMAZING STORIES OF WHAT WAS ONCE OUR REALITY IN GUATEMALA. IT IS OUR DUTY TO PROTECT THAT EVIDENCE

GUATEMALAN ARCHAEOLOGICAL OBJECTS IN ITALY

An exemplary recovery abroad with the cooperation of the Carabinieri Command of the Cultural Heritage of Italy

■ Eduardo Enrique Hernández Herrera

The case submitted to the Italian Republic in 2009 turned out to be one of the most outstanding achievements of Guatemalan cultural property recovery abroad. In the course of an investigation in October, Carabinieri Command personnel in charge of cultural heritage in Turin found many foreign archaeological objects without any documentation certifying legal exports from the countries of origin.

In examining the objects, the police were able to establish that five of them could probably belong to the cultural heritage of Guatemala. They contacted the Embassy of Guatemala to request information about their origin and dating, after having provided it with a document in writing and the relevant photographs. They asked whether the objects were under the legal protection of the current legislation and whether the Ministry of Culture and Sports had issued export authorizations for any natural or legal person.

Experts of the General Division of Cultural and Natural Heritage at the Ministry of Culture and Sports of Guatemala analyzed the photographs of such objects and prepared a report containing their origin and dating, applying the so-called archaeological comparison technique. A legal report was also developed, specifying the national and international legal standards in for-

ce for the protection of the pieces found. Legal certifications were prepared, attesting that the State of Guatemala, at no time, had extended authorization for temporary export. The file, including the formal request for restitution and scientific and legal evidence, was sent through diplomatic channels via the Ministry of Foreign Affairs and the Embassy of Guatemala in Italy.

The evidence produced by the State of Guatemala was submitted to a lawful judge who, by judgment, ruled that it was legitimate to have the objects returned to Guatemala. The actual return was formalized on 15 June 2011 by the Carabinieri Command at the Embassy of Guatemala in Italy.

This achievement is extremely important. It is worth highlighting the work done by the Italian State in determining that, if there is no way to justify possession of cultural property seized in its territory, such property should be returned and that there is no need for inquiries or requirements that cannot be met under the reality of the problem of looting in Guatemala. Scientific and legal evidence should be more than enough to prove ownership of cultural heritage. This has to do with the will of the State, with the respect for and enhancement of the cultural heritage of the world. [C&D](#)

RECOMMENDATIONS FOR THE CARIBBEAN

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On the occasion of the 42nd anniversary of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the Regional Office for Culture for Latin America and the Caribbean of UNESCO in Havana and the Saint Lucia National Commission for UNESCO, agreed to organize a regional workshop entitled "Sub-regional Capacity Building and Awareness Raising Programme to enable Caribbean Member States to effectively fight illicit trafficking in Cultural Property". This activity was part of a UNESCO Capacity Building Program worldwide financed by the Director General Emergency Fund and also received additional funds from the UNESCO Havana Regular Program and from the Ministry of Culture and Education of the Netherlands.

Caribbean states are confronted with illicit trafficking of pre-Columbian, religious and colonial cultural heritage, as well with the illicit commercialization of the underwater cultural heritage recovered from shipwrecks and other submerged structures.

Participants from Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, St Maarten, Saint Vincent and the Grenadines, Suriname and Saint Lucia responded to the invitation by sending one representative. Saint Lucia, the host country, had a representation of fourteen participants coming from the various target groups.

The main objectives of the workshop were:

- To promote the effective implementation of UNESCO's standard-setting instruments in the field of culture, particularly the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and the 2001 Convention for the Protection of the Underwater Cultural Heritage, as well as the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.
- To provide training on the effective use of existing legal and operational tools to safeguard and to preserve cultural heritage.
- To encourage international cooperation with specialized institutions and amongst the member states
- To raise awareness on the need to fight illicit trafficking of cultural objects.

Opening remarks were made by the Honorable Senator Dr. Kentry Jn. Pierre, Parliamentary Secretary of the Ministry of Tourism, Heritage and Creative Industries in Saint Lucia, Mr. Eustace Monroe, Permanent Secretary, Ministry of Education, Human Resources Development and Labor in Saint Lucia, and Ms. Marcia Symphorien, Secretary-General of the Saint Lucia National Commission for UNESCO.

The first working session was devoted to UNESCO's standard setting instruments in the field of culture, particularly the 1954, 1970 and 2001 Conventions. Emphasis was made in the interrelation of these legal instruments and the need to consider them as a united

force to best protect cultural heritage in the Caribbean, particularly victim of plundering and looting of underwater archaeological sites and of the introduction of stolen artifacts from these sites into the illicit market of antiquities.

This was followed by a presentation on the UNIDROIT Convention, the analysis of the term "cultural objects", the UNESCO database on National Cultural Heritage, and a presentation on the model provisions on State ownership of undiscovered cultural objects. Indeed one of the main problems that the region is confronted with is the illicit traffic of cultural objects extracted from archaeological sites.

For the following two days the agenda was organized around four thematic debates: the status of national registries and inventories, the use of export certificates, national data basis, recovery statistics in and out; the mechanisms of control; the mechanisms for setting standards and risk assessment and the raising awareness.

During the debates the participants expressed several needs and requirements such as develop regional awareness raising campaigns, especially for tourists and young people, and a general request by participants was to organize trainings of trainers and to develop efficient regional strategies to improve networking among the different police forces and custom bodies to share information and cooperate regionally and internationally in this field.

Conclusions and recommendations

The participants of the Sub-regional Capacity Building Program to enable Caribbean Member States to effectively fight illicit trafficking in Cultural Property that took place in Gros Islet, Saint Lucia, from 3 to 5 December, 2012.

Thank the Director-General of UNESCO, Ms Irina Bokova, for providing the necessary funding for the workshop, out of the emergency funds of UNESCO.

Express their deep gratitude to the government of Saint Lucia for hosting the workshop.

Further thank the Government of the Netherlands as well as the UNESCO Regional Office for Culture for Latin America and the Caribbean for their financial support to the organization of the workshop.

Recognizing the current vulnerable situation of the underwater and land cultural heritage of the Caribbean, invite all participants in the seminar (Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, St Maarten, Saint Vincent and the Grenadines, Surinam and Saint Lucia) to strengthen their cooperation with national, regional and international institutions in the development of a joint strategy for the preservation of cultural heritage in the Caribbean to fight against illicit trafficking of cultural objects.



El Navegador, Cuba © Cabinet of archaeology of OHCH

Referring to the discussions and suggestions during the workshop, the participants propose to the States and governmental and non-governmental organizations as a priority action plan the following recommendations:

A. Short term actions

1. Establish or complete inventories of cultural properties, both in public and private ownership, and archaeological sites, with a priority emphasis on cultural objects that are particularly vulnerable to destruction, theft and illicit exportation, as well as on archaeological sites vulnerable to illicit excavations.
2. Encourage the inclusion of an item dealing with the illicit traffic of cultural property on the agenda of the 19th Forum of Ministers of Culture and officials in charge of Cultural Policies of Latin America and the Caribbean and the first meeting of Ministers of Culture of the CELAC (Community of Latin American and Caribbean States) to take place in Surinam in the first trimester of 2013.
3. Create or identify specialized law enforcement services responsible for the prevention of and the fight against illicit traffic of cultural property; and develop the coordination between those services and relevant regional and international organizations.
4. Develop the training of police, customs and all civil and military personnel involved at the front line of the fight against this trafficking (collection and dissemination

of information, communication, customs control, supervision of sites, control on Internet, etc.) at a national level and sub-regional involving the international organizations and specialized police forces.


5. Strengthen the cooperation between police, customs and cultural heritage services, together with the relevant regional and international organizations (e.g. UNESCO, UNIDROIT, INTERPOL, WCO, ICOM) and share the relevant information in order to fight against illicit traffic in cultural objects.
6. Contribute to update the UNESCO database of national cultural heritage laws.
7. Create national databases of stolen cultural objects and enhance diffusion, consultation and transmission of data to the INTERPOL stolen works of art database.
8. Encourage professionals of museums and the art market to diffuse and apply the UNESCO and ICOM codes of ethics.
9. Closely involve media in the spread of information concerning the heritage threatened or in danger in view of the media's ability to mobilize together with the heritage stakeholders.
10. To encourage the Caribbean State Parties to the 1970 Convention to lobby to have representatives in the newly established subsidiary committee to this Convention (18 members) in order to ensure that the voice of the Caribbean be heard.
11. Sensitize politicians to the need to fight illicit trade of cultural property.

B. Medium-term actions

1. Consider becoming Party to the relevant conventions especially the UNESCO 1954 (The Hague), 1970 and 2001 Conventions, as well as the 1995 UNIDROIT Convention.
2. Adopt or update legislation concerning protection, management and promotion of the cultural heritage with an emphasis on:
 - the definition of cultural objects,
 - ownership and transfer of ownership of cultural objects,
 - the creation of inventories,
 - regulation of archaeological excavations,
 - the prevention and the fight against the theft of cultural objects,
 - the control of trade, including via Internet,
 - export certificates and customs controls,
 - restitution procedures,
 - the creation of services specialized in the protection of cultural heritage,
 - administrative and criminal sanctions in order to impose severe penalties.
3. Develop campaigns of information, awareness raising and education in order to mobilize all members of society in preventing and fighting against the illicit trafficking of cultural properties with emphasis on young population;
4. Identify partner countries in order to negotiate and conclude bilateral agreements on the reciprocal

protection and restitution of stolen or illegally exported cultural properties, while ensuring the implementation of the existing international conventions in this field.

C. Long-term actions

1. Enhance the legal and regulatory tools for the prevention and the fight against illicit trafficking of cultural properties while applying relevant international conventions.
2. Guarantee on-going training of the personnel of the services mentioned above.
3. To meet again within two years in a regional workshop on the same theme with the objective to evaluate both experiences and results obtained, and to draft a new action plan.
4. Encourage the inclusion of matters dealing with the fight against illicit traffic of cultural property on the CARICOM agenda. 




Tatiana Villegas

Assistant Programme Specialist
UNESCO Regional Office for Culture in Latin America and the Caribbean

Like rivers and lakes, seas have since ancient times been used by mankind for transportation and livelihood. These activities have left material traces in the bed of oceans, rivers and lakes that had remained undisturbed for centuries. Increasing access to the underwater world, thanks to technological breakthroughs in autonomous scuba diving and the detection of underwater materials, has evidenced that submerged archaeological remains are no longer safe from pillage and theft. The current situation of the underwater cultural heritage in most countries shows not only legal gaps in protection actions but also a lack of specialists in underwater archaeology and related sciences, such as the conservation of materials that have always been under humidity conditions. Evidently, there is an urgent need for international collaboration to fight against growing destruction.

UNESCO took note of the concern voiced by its member countries. In 2001, it adopted the Convention on the Protection of the Underwater Cultural Heritage, which entered into force in January 2009 and today has 46 States Parties, 16 of which are from Latin America and the Caribbean.¹ This international legal instrument complements the set of UNESCO conventions seeking to protect the cultural heritage in all its diversity (natural, movable, intangible), as well as contemporary creativity. This new convention establishes the basic principles for the protection of the underwater cultural heritage, provides a specific system for cooperation among States and a reporting and coordination mechanism that facilitates the management of this protection by the States Parties, and formulates practical rules for worldwide recognition, intended for archaeologists and cultural managers in the identification, protection and preservation of submerged remains. For the purposes of this Convention, underwater cultural heritage means 'all traces of human existence having a cultural, historical or archaeological character, which have been partially or totally under water, periodically or continuously, for at least 100 years, such as sites, structures, buildings, artefacts and human remains, together with their archaeological and natural context; vessels, aircraft, other vehicles or any part thereof, their cargo or other contents, together with their archaeological and natural context; and objects of prehistoric character.'

The rule No. 2 annexed to the Convention, which establishes the rules to be followed in any activity directed at the underwater cultural heritage, provides that commercial exploitation of the underwater cultural heritage for trade or speculation or its irretrievable dispersal is fundamentally incompatible with the protection and proper management of the underwater cultural heritage. This heritage will not be traded, sold, bought or bartered as commercial goods. This legacy, like

PREVENTION OF ILLICIT TRAFFICKING OF THE UNDERWATER HERITAGE



El Navegador, Cuba © Cabinet of archaeology of OHCH

the terrestrial cultural heritage, cannot be conceived of as a source of economic resources. Its recovery should be carried out in order to preserve the scientific and cultural significance that gives it an outstanding value for humanity.

Many submerged sites have been discovered and studied archaeologically for the benefit of knowledge. Museum programmes have been developed, and sightseeing tours have been organized on these sites or at cultural centres in neighbouring coastal communities.

However, most of the underwater archaeological remains of Latin America and the Caribbean have not had the same fate and have seen pillage and destruction by profit-seeking commercial groups. Legal gaps and ignorance of the importance and potential of this cultural heritage favour the growth of this activity. The romantic notion of the search for a lost treasure, as it appears in adventure novels and movies where valuable objects are sought after in exotic places, takes on a different dimension when we think that the commercial exploitation of the underwater cultural heritage has become the most serious and devastating threat hanging over the protection of these vestiges bequeathed to humanity. Those who are engaged in recovery for commercial purposes (treasure hunters) draw objects with a certain market value such as jewellery, coins, navigation instruments, fragile porcelain and other antiques, regardless of the archaeological, historical and cultural significance of the site itself, which they ignore as an entity. Information that is crucial to understand the techniques of shipbuilding, navigation, naval combat, trade, feeding practices, clothing, and the health

condition of seamen, officers and migrants at various times in history has thus been lost.

The objects that are involved in underwater pillage often end up on the illicit art market and are only known after they appear there or in antique exhibitions or showrooms, making it difficult to determine their exact origin. This is another reason to insist on the importance of making inventories and gathering as much information as possible about each shipwreck. The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Private Law Aspects Related to Improper Trading are both an excellent complement to the 2001 Convention, which provides regulations on the control over the import of heritage objects from illicit trafficking, their marketing and possession, and the prohibition of activities that are not in accordance with the Convention in the area of national jurisdiction of States Parties, including sanctions where appropriate.

The actions related to illicit trafficking in the underwater cultural heritage can be implemented using the channels available under the 1970 and UNIDROIT conventions, with support from police and customs officers and international cooperation agencies involved in fighting against illicit trade in works of art.

The 2001 Convention envisages the establishment of relevant authorities or the strengthening of the entities that can make and update inventories of the underwater cultural heritage, and guarantees its effective protection. It also sets forth in Article 17 that each State Party shall

impose sanctions against violations of the measures adopted to implement the Convention.

Since its establishment in 1947, INTERPOL, the largest police organization in the world, has been fighting against illicit trafficking in cultural property and goods from the aquatic environment. The incidence of the underwater cultural heritage on the illicit market for these goods has been addressed on several occasions at the meetings organized by its secretary-general. This international institution, which consists of 186 States Parties, has a system of national central offices that provide mutual assistance to the criminal police authorities of each country so as to help prevent and suppress ordinary law crimes. Countries should be aware of the importance of working together with this organization to implement sanctions and do prevention work under its different mechanisms, such as the global police communications system known as I-24/7. Effective communication between police forces of States is a fundamental requirement for a truly international cooperation in the fight against illicit trafficking in the underwater cultural heritage. Similarly, States may make use of international databases and resort to registration documents like the international identification document and export certificates on the underwater cultural heritage. They provide international standards that describe cultural objects and have been developed in collaboration with the museum community, police forces, customs agencies, art trade representatives, insurance companies, and art and antique appraisers.

Two excellent examples of cooperation with police forces in the field of the underwater cultural heritage in Argentina and Cuba are described below.


In July 2012, the Underwater Archaeology Programme (PROAS)² of the National Institute of Anthropology and Latin American Thought of Argentina (INAPL) learned that an Internet auction site was offering an anchor rescued «from **an old wooden hull buried in Rio de la Plata.**» After appropriate verification, the information was sent to the relevant prosecutor's office (Tax Crime and Smuggling Investigation Unit). The office opened a preliminary investigation to determine whether or not Law 25,743 (on archaeological heritage protection) had been violated, and requested a technical report on the age and origin



Anchor recovered by INTERPOL © PROAS Argentina

of the piece, based on the photos and data published by the auction house. The idea was to find out if it was covered by this law or not. The office later asked to involve the INTERPOL-Argentina-run National Centre for Cultural Heritage Protection, which conducted an operation that led to the identification of the offender, the recovery of the piece, and its subsequent deposit at INAPL.

In Cuba, **the wreck of El Navegador** (The Navigator), a merchant frigate built in New York in 1805, is located off the coasts of Santa Cruz del Norte (Mayabeque province). The frigate naval architecture has not been sufficiently studied and it was transporting a peculiar cargo of English porcelain. This wreck is part of the Cuban underwater archaeological inventory carried out in accordance with the 2001 UNESCO Convention, to which Cuba has been a signatory since 2008. However, these highly important archaeological remains have been looted by unscrupulous divers who make profit from the sale of porcelain. Thanks to a joint action by the National Cultural Heritage Registration Office, the local authorities, archaeologists and police forces, over 30 pieces from the shipwreck have been seized from private homes and restaurants in the area. To raise public awareness about the information that can be provided by a scientific archaeological research into these remains and the site from which they come, an exhibition has been organized, describing the discovery and the condition of the shipwreck. The exhibits include artillery pieces, artefacts used by sailors on a daily basis, and some of the cargo, which illustrate a specific event in history and provide crucial information about an industry and a market in full expansion in Cuba in the 19th century (that of English porcelain).

The cultural heritage can be effectively protected through cooperation at the national and international levels. To prevent the looting of the underwater heritage and its subsequent introduction into the illicit trafficking in cultural property, joint actions are being implemented by institutions related to the marine environment, such as the police, the navy, port authorities, customs, marine research institutes specialized in climate and biology, archaeological conservation institutes, museums, and recreational divers. We should speak the same language and protect the cultural heritage that belongs to all and that should be preserved for future generations. 

Notas

¹Panama, Mexico, Paraguay, Ecuador, Saint Lucia, Cuba, Barbados, Grenada, Haiti, Saint Kitts & Nevis, Argentina, Honduras, Trinidad & Tobago, Saint Vincent & the Grenadines, Jamaica, and Antigua & Barbuda.

²Established in 1995, PROAS seeks to conduct scientific research, do preservation work, and raise awareness about the underwater cultural heritage in Argentina.



TRAFFIC AFTER DISASTERS

Haïti © UNESCO/ F. Brugman, 2010

■ Michèle Frisch

General Director of Musée du Panthéon National Haïtien (MUPANAH)

Cultural property is a unique testimony to the culture and identity of a people. It reflects the life of a community, its history and identity. It is an invaluable asset for the future of a community, establishing a link between its past and its present. The cultural heritage of all humanity is made up of the contribution of cultural goods by different peoples. Loss of or damage to such property impoverishes humanity. It is thus important to take measures to ensure their protection.

The emergence of collections and museums as well as the development of research on the history of art and civilizations fostered the growth of the market for goods. The pillage of tombs and caves and clandestine archaeological excavations are becoming commonplace. This is precisely the origin of illicit trafficking in cultural property, which causes serious damage to the tangible heritage of countries in various regions of the world. Awareness-raising activities about this scourge began to be developed with the establishment of Nation States and the concept of national heritage. At the international level, legal provisions were taken to regulate the movement of cultural goods and transactions involving works of art. These standards in connection with the movement of goods cover four aspects: the acquisition and assignment of property and collections, the origin of such goods, professional conduct, and penalties for violations of standards.

Illicit trafficking in cultural property and legal standards

The Hague Convention, which was adopted on 14 May 1954 and applies only to armed conflict situations, is considered the first major multilateral instrument proposing common rules for the protection of cultural property.

Given the massive export of original cultural assets from certain countries and the resulting loss of their heritage, UNESCO developed a convention to regulate the import, export and international transfer of cultural goods between States.

This convention, which was adopted by the General Conference of UNESCO at its 16th session on 14 November 1970 in Paris, formulates the basic principles necessary for the protection of cultural property internationally and contains minimum provisions on the legislative, administrative and international law measures that States Parties should take to prevent illegal trafficking in cultural property. Its purpose is to encourage States to better protect their cultural heritage and collaborate globally for the enhanced protection of this heritage. It urges them, among other things, to establish cultural heritage protection services and set rules in accordance with the ethical principles in this instrument. In this regard, it is up to countries to provide their institutional frameworks with appropriate structures to ensure the safeguarding and promotion of their cultural property. These structures can range from simple prevention through repressive measures to international cooperation in police, customs and business coordination.

The UNIDROIT Convention, which was adopted on 24 June 1995 in Rome, establishes minimum uniform rules on the restitution of stolen cultural goods and the return of illegally exported cultural objects. It also fights the illicit export of cultural property. Thus, a State Party may request another State Party to order the return of a cultural object that has been illegally exported from its territory.

Haiti and illicit trafficking in cultural property

Haiti's cultural heritage includes remains of pre-Columbian, colonial and national periods as well as contemporary art, cultural objects, and handicrafts. As such, it plays a central role in the country's national identity.

Although protected by a national and international legislative body, the Haitian cultural heritage is being seriously affected by the illicit trafficking driven by international demand and by a precarious economic situation in the country.

The earthquake that struck Haiti in 2010 significantly increased the risk of illicit trafficking in cultural property. Whether it is museums, public buildings, private collections or objects belonging to individuals or families, this heritage was faced, more than ever, with a situation of vulnerability and defencelessness vis-à-vis plundering, theft and destruction.

The Emergency Red List of Haitian Cultural Property at Risk was the first response of the International Council of Museums (ICOM) to increased trafficking in goods that make up the Haitian cultural heritage. It was necessary to prevent these goods from being scattered at all costs.

The Red List is designed to help police and customs officials and heritage professionals to identify the categories of cultural objects that are most vulnerable to illicit trafficking. These categories are protected by a piece of legislation that prohibits their trade and export. It is worth mentioning that contemporary art and crafts are also included on the list.

A total of 42 Haitian cultural artefacts are on the list. They fall under different categories: Pre-Columbian art, cultural and spiritual objects, historical documents, coins, equipment, architecture and town planning, ancient crafts, folk traditions, and fine arts.

The list was launched at the Haitian National Pantheon Museum on October 13, 2010 by the International Council of Museum (ICOM) in collaboration with the National Committee of ICOM (ICOM-Haiti), under the sponsorship of the Ministry of Culture and Communications.


As the Emergency Red List of Haitian Cultural Objects at Risk is by no means exhaustive, any object from Haiti should be given the most serious consideration.

On May 15, 2012, on the occasion of the International Day for Museums, ICOM-Haiti and the Haitian National Pantheon Museum (MUPANAH) organized a meeting on the development of rules for the implementation of the Red List or any other mechanism that could be used by cultural institutions to fight illicit trafficking in cultural property, protect the cultural heritage and implement the UNESCO Convention against illicit trafficking.



Haiti © UNESCO/ F. Brugman, 2010

In my capacity as the General Director of MUPANAH and Executive Secretary of ICOM- Haiti, I proposed, as a first important step, inventorying all public collections (museums, monuments, squares, statues) for cataloguing purposes. Private collections should also be inventoried to be protected. To meet this challenge, it is necessary to overcome many obstacles, including the scarcity of human, material and financial resources.

In short, illegal trade in cultural property is a global phenomenon. All continents are being affected. The fight against illicit trafficking is crucial and requires priority attention, as it is strongly associated with the preservation of the history and identity of a people. 



Haiti © UNESCO/ F. Brugman, 2010



Haiti © UNESCO/ F. Brugman, 2010

Haiti's cultural heritage is protected by:

- Constitution of the Republic of Haiti (10 March 1987)

National Legislation

- Act of 23 April 1940 on the historical, artistic, archaeological and natural heritage
- Act of 1st July 1983 on the establishment of the Haitian National Institute of Culture and Arts
- Act of January 1995 on the establishment of the Ministry of Culture and Communications
- Decree-Law of 31 October 1941 on the establishment of the Bureau of Ethnology
- Decree of 4 August 1950

on the National Museum

- Decree of October 1989

on the establishment of the National Heritage Commission

- **Order** on the designation of the building of and objects at the Printing Museum (project) as national heritage

International Conventions

- UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris, 14 November 1970)
- UNESCO Convention concerning the Protection of World Cultural and Natural Heritage (Paris, 16 November 1972)
- OAS Convention

- for the Protection of the Archaeological, Historical and Artistic Heritage of American Nations, known as the San Salvador Convention (Santiago, 16 June 1978)
- United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982) and Agreement of 30 July 1994 on the Implementation of Part XI thereof
- UNESCO Convention on the Protection of the Underwater Cultural Heritage (Paris, 2 November 2001)
- UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (Paris, 17 October 2003)
- UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions (Paris, 20 October 2005)

THE DOMINICAN RED LIST

ILLICIT TRAFFICKING IN CULTURAL PROPERTY IS A SIXTY-BILLION-DOLLAR BUSINESS THAT RANKS THIRD AFTER DRUG AND ARMS TRAFFICKING



■ Luisa De Peña Díaz

Coordinator of the Dominican Red List and Member of ICOM Executive Council
Dominican Republic

Over a decade ago, the International Council of Museums (ICOM) embarked on the Red List Programme for Endangered Cultural Property. In 2000, through a letter of understanding signed with INTERPOL, ICOM officially established its implementation.

Red lists are not lists of stolen items but rather of object types vulnerable to illicit trafficking in cultural property. To date, thousands of objects have been returned to their countries of origin thanks, among other things, to this extraordinary tool.

Between 2000 and 2006, four Red Lists were published, while from 2007 to 2012 there were eight lists published. It is worth recognizing that ICOM management has been significantly improved since 2007, when a global, inclusive policy was developed.

The latest Red List published by ICOM has been the Red List of Dominican Cultural Objects at Risk. In July 2013, after three long years of work and research, it came to light to protect the Dominican heritage and complete the security mechanism of the Hispaniola Island.

The process of developing a Red List starts when an application is submitted to ICOM. Next, the motivation is presented, the need is justified, the proposal is accepted, funds are raised and, finally, specialists are appointed. That is when the actual work begins.

In the Dominican case, the application was made in 2007 but it was declined. In 2010, following the devastating earthquake in Haiti, international agencies and Interpol required a tool to contribute to the prevention of looting of Haitian cultural property. It was in this juncture that the Dominican list was included to complete the protection mechanism on the Island.

Once accepted, the search for and appointment of specialists who would work on it got underway. Among them were architect César Iván Feris Iglesias, architect Esteban Prieto Vicioso, architect Risoris Silvestre, and museologist Luisa De Peña Díaz as coordinator. They were all honorary volunteers. The Dominican Red List was prepared under the auspices of the Federal Office for Culture of the Swiss Confederation.

After the team was established, the existing protection mechanisms, international laws and agreements, and UNESCO conventions to which the country is signatory were identified. All these instruments provided the legal basis for the processes of seizure, retention and return of cultural property.

The experts then addressed the content and the historical periods to be selected as the basis for preparing the list, and identified available inventories. In the Dominican case, the decision was made to focus on three periods: pre-Hispanic, colonial and republican. The materials to be included were classified, sub-classified by category and carefully selected.

Admittedly, the first selection was incredibly broad; the process of elimination was difficult and painful but necessary to achieve a manageable document designed for experts in areas other than heritage, that is, customs agents worldwide, local police and Interpol personnel.

The Dominican Red List was launched at a ceremony held at the Museo Memorial de la Resistencia Dominicana in the city of Santo Domingo and, on the next day, a training workshop on the use of Red Lists by national agents was held.

Dominican cultural property has been looted for decades. In 2005, I witnessed the return of 186 pre-Columbian objects from the United States (Miami airport). Since then, first as Director General of Museums of the Dominican Republic and then as chairperson of the National Committee of ICOM, I looked for tools and mechanisms for the protection of our heritage beyond national borders.




Silver gilt chalice decorated with religious motifs, early 19th century. Church of Santo Domingo. © Red List of Dominican Cultural Objects at Risk, 2013

Dominican heritage protection at the international level is a matter of national dignity. A tool was needed to include the country as a party concerned. After becoming aware of the resource of ICOM Red List and its successful results worldwide, we strived to have a Dominican List. Pure chance and tragedy merged with our determination. We can say today that Haiti and the Dominican Republic are part of this global protection device, which will further discourage those who steal our past and, with it, the opportunity to know each other better and build a brighter future on the basis of knowledge and the inalienable right of human beings to the truth.

This commitment to our heritage was shared with other personalities and institutions, namely César Iván Feris Iglesias, Esteban Prieto Vicioso, Risoris

Silvestre, Frances Desmarais and Renata Kaminker, as well as with the García Arévalo Foundation, the Museum of Alcázar de Colón, the Central Bank Numismatic Museum, the Museo Bellapart, the Naval Museum of the Atarazanas (in the former naval yards), the Museo de la Catedral, the Church of Santo Domingo, and the Cultural Property Inventory Centre and Museo Memorial de la Resistencia Dominicana. They are all responsible for this Red List.

The Dominican Red List adds to other lists on the American continent, probably the most seriously looted in the world in the last 500 years. The fight against illicit trafficking in cultural property is a war of all to preserve our past and learn from it, and to defend our cultural heritage, which is actually our most precious treasure. It defines us as a people. 

CONTROL IN CUBAN CUSTOMS



■ Luis Manuel Almeida Luis

Head of the Department of Registration and Inventory at the National Register of Cultural Property of the Republic of Cuba and Assistant Professor of *Appraisal and Valuation of Works of Art* at the Higher Institute of Art (ISA), Havana, Cuba

■ Maricela de las N. Ramos Díaz

Lead Specialist of the National Register of Cultural Property of the Republic of Cuba

The implementation of a detection and control system to combat illicit trafficking in cultural property first requires the willingness and sensitivity of national political, cultural and control authorities in order to deal with this scourge in Cuba.

The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Export, Import and Transfer of Ownership of Cultural Property provides Cuba, one of its signatories, with a major tool to protect its cultural heritage. With its recognition, these assets form part of the Cuban heritage, including cultural expressions, for the future generations.

The definition of Cultural Heritage includes a wide range of manifestations like works of art, flora and fauna species (marine and terrestrial), archaeological and ethnological artefacts, decorative arts, applied arts, manuscripts, incunabula, sound, photographic and film archives, among others.

A fundamental basis for the fight against illicit trafficking is provided by appropriate documentary control, which needs to be characterized by objective, accurate and technical inventorying, with each asset being properly identified, documented and photographed. When it comes to cultural objects of museological or heritage value (kept at museums in the country), inventories should be conducted with maximum rigour.

Individuals and state, religious and other institutions that possess such goods are sometimes reluctant to make the relevant declarations in respect of owners, possessors or holders, rendering it difficult to keep better control over and include these goods in the National Register of Cultural Property.

Such an attitude is motivated by the ignorance of possessors on both cultural and monetary (appraisal) value and by the mistaken belief that the inscription implies a loss or expropriation of these assets. It is quite the opposite; it is a way of recognizing their authenticity and cultural value, and provides security because, in case of theft, damage or loss, speedy recovery is greatly facilitated and the illegal action in question can be considered an aggravating circumstance for those involved.

In cases of theft, damage or loss of unregistered assets, the work of entities in charge of identifying their whereabouts is rendered all the more difficult as they need to be based on hypotheses and will not be very likely to succeed in trial. Hence the importance of possessors becoming fully aware of the need to include assets in the National Register of Cultural Property, in addition to the legal obligation to do so.

The ideas outlined above are essential to fight this ever-growing trafficking by three closely interrelated stakeholders: police, customs and heritage authorities. They will succeed only if they pay due regard to all their duties and interests.

There is a Commission for the Protection of the Cultural Heritage of the Nation, led by the Ministry of Culture of the Republic of Cuba, the Ministry of the Interior (its Criminal Investigation Police (ITP) and its Section on Tourism and Heritage), and the Cultural Heritage Department at the General Customs House of the Republic. It has managed to work in a coordinated, effective manner.

CURRENT CRIMINAL ACTIONS IN CUBA INCLUDE COUNTERFEITING WORKS OF ARTS, ESPECIALLY PAINTINGS, AND CERTIFICATES OF AUTHENTICITY ISSUED BY THE ARTISTS THEMSELVES.

Thanks to the political will of the Cuban Government in this area, experts of the National Register of Cultural Property have since 2008 been working at international airports to supervise all goods to be exported and formulate recommendations for action.

This initiative has undoubtedly been an asset in the fight against illicit trafficking in cultural property, particularly for Customs authorities to be able to identify smuggling and/or illicit removal in a correct, scientifically documented manner.

Likewise, officials at the National Register of Cultural Property are involved in granting authorization for and sealing works of art (paintings, decoration elements, etc.) to be marketed. The idea is to prevent such exports from being detrimental to the country's heritage and to have all these works Customs-cleared, thereby avoiding the export of heritage and illegally obtained goods.

Cuba issues Export-Import Certificates under strict control, including watermarking, sheet, etc., and Customs authorities are given authenticated specimens of signatures of all staff involved in this field, including those who sell (galleries) and those who protect (register officials). The country, however, is not free from illicit trafficking.

In accordance with Articles 5 and 6 of the 1970 UNESCO Convention, the National Register of Cultural Property has developed rules and regulations for both registration and inventorying and import and export operations. An important complement to this international instrument is the UNIDROIT Convention on the restitution of cultural property. Cuba has in fact benefited from the restitution of several tzantzas (shrunken heads) by the French authorities. The pieces had been stolen from the Montané Museum at the University of Havana.

THE DEFINITION OF CULTURAL HERITAGE INCLUDES A WIDE RANGE OF MANIFESTATIONS LIKE WORKS OF ART, FLORA AND FAUNA SPECIES (MARINE AND TERRESTRIAL), ARCHAEOLOGICAL AND ETHNOLOGICAL ARTEFACTS, DECORATIVE ARTS, APPLIED ARTS, MANUSCRIPTS, INCUNABULA, SOUND, PHOTOGRAPHIC AND FILM ARCHIVES, AMONG OTHERS.



A piece seized by Customs at the José Martí International Airport. Currently exhibited at the National Museum of Decorative Arts, Havana ©UNESCO/Rustan, 2013.

The international conventions to which Cuba is signatory have also been complemented with national legislation, including laws, regulations and resolutions.

Aware of the importance of fighting illicit trafficking, Cuba has actively participated in meetings held in Colombia, Ecuador and Argentina, hosted a conference in 2005, and took part in a regional course in Antigua, Guatemala, in 2008, which was given by specialists of Interpol and UNIDROIT and expert of the Caribbean region.

Work has been done since 2005 on archive collections that involve universal and national history documents, with police, customs and heritage officials playing an important role in preventing the removal of such documents, especially those which are related to the Cuban Revolution and are deposited in Bohemia Magazine Archives, Matanzas Provincial Archives, Elvira Cape Library in Santiago de Cuba, the National Archives and other institutions.

Offenders are mainly interested in:

- photos and documents from the early days of the Revolution;
- chapter records;
- historical documents from the wars of independence; and
- deeds of land, buildings and pantheons.

Offenders go mainly to the United States, Mexico and Spain.

The National System on Stolen and/or Lost Cultural Property that has been implemented by the National Register has made it possible to recover major assets that have been at risk of loss and/or damage. It provides one of the most important tools for this work, with the General Customs House of the Republic playing a key part. The System is marked by:

- national character;
- quick, expeditious action;



Work by Demetrius Chiparus. Art Deco bronze, ivory and marble piece seized by Customs at the José Martí International Airport. Now exhibited at the National Museum of Decorative Arts, Havana ©UNESCO/Rustan, 2013.

- accessibility and use of common language;
- involvement of provincial heritage centres, registers, museums, and police and customs authorities;
- use of photographs whenever available; and
- telephone and email communication 24 hours a day.

Requests for cooperation in the search for and restitution of assets stolen from other countries through theft reports have come from the Old City of Guatemala, the churches of Cuzco and Huarí (Peru) and, more recently, Customs authorities of Ecuador (via email). There are slim chances, however, for these goods to reach Cuba.

Current criminal actions in Cuba include counterfeiting works of arts, especially paintings, and certificates of authenticity issued by the artists themselves. These behaviours should be further

reviewed. Effective coping strategies call for the use of complex, sophisticated equipment to establish beyond any doubt the authenticity of cultural assets.

Underwater heritage artefacts along the Cuban coast are also at risk. The flotsam of El Navegador was unscrupulously plundered recently, off the northern coast of the province of Mayabeque. A rapid, timely report by specialists of the Office of the Historian of the City of Havana and effective action by the Criminal Investigation Police and the National Register of Cultural Property made it possible to speedily recover valuable assets that had lied on the Cuban seabed. They are now being exhibited at the Museum of the Castillo de la Real Fuerza (Castle of the Royal Force), which has been visited by representatives of UNESCO in the country. [C&D](#)

FRANCE AND THE ST.

NETHERLANDS IN MARTIN

IN ORDER TO ANSWER THE QUESTION OF THE COOPERATION MECHANISMS BETWEEN FRANCE AND THE NETHERLANDS IN THE FIGHT AGAINST THE ILLICIT TRAFFICKING OF CULTURAL PROPERTY IN ST. MAARTEN/ST. MARTIN BOTH PARTS OF THE ISLAND'S POLITICAL ADMINISTRATIONS SHOULD BE BRIEFLY ELUCIDATED ON, FROM A HISTORICAL PERSPECTIVE, OF THE ISLAND'S CONTINUOUS SOCIO - CULTURAL DEVELOPMENT.

■ **Neville C. York**

Head of Culture Department Government of St. Maarten, Dutch Caribbean

Historical perspective

March 23, 2013 marked the 365th anniversary of the signing of the Treaty of Concordia. The principal term of the agreement was for the island to be divided between the French Kingdom and the Dutch Republic and that the peoples of Saint- Martin/St. Maarten shall coexist in a cooperative manner.

Relevance

What relevance does this treaty have for a small land space of 37 square miles such as that of the dual nation of St. Maarten – St. Martin? The treaty is testament of a culture that has evolved and reinvented itself over three and a half centuries with the corner stone of its development being that of peace and bilateral understanding of two nations far away from the European main land. The off springs of the inhabitants who were brought to the island some by force and others of their own free will have seen the treaty repeatedly violated between 1672 and 1801 during many period of instability. Daniella Geoffrey a local cultural historian and researcher describes and reemphasizes that the “people are the permanent binding factor that has made St. Martin what it is today: two nations but one people, one culture, one language, one history”.

New Constitutional status

After 365 years St. Martin on October 10, 2010 became an autonomous country within the Kingdom of the Netherlands. St. Maarten has its own government and is no longer a dependency of the Netherlands. The Netherlands will, however, continue to assist St. Martin during the transitional period as it set up its new national organisations. Plans drawn up for its government institutions, which were not yet fully operational on 10 October 2010. The plans will remain in effect for a maximum period of two years. In 2011, St. Martin's overriding concern was to implement these plans with limited financial and human resources.

Role of the Netherlands

Within framework of the expansion of the Kingdom, the Netherlands has an obligation to promote the wellbeing of its former colonies, as laid down by the United Nations. That means that the Netherlands is responsible for the wellbeing of all subjects of the Kingdom. Greater wellbeing is the result of good



Courthouse in Philipsburg, St. Martin © German Ramos

governance, a healthy economy, and properly functioning law enforcement and education systems.

The Netherlands is also responsible for the courts and for combatting crime and drugs trafficking within the Kingdom, for example by maintaining a well-trained and organised police force and an efficient and effective public prosecutions service. Although St. Martin is now an independent country, these responsibilities go beyond the capacity of the island. St. Maarten lacks an adequate number of properly trained employees and suitable material and equipment to undertake such tasks on its own.

The Netherlands' role in the new constitutional order

By supporting the new constitutional order, the Netherlands will:

- support St. Martin in its wish to become autonomous countries within the Kingdom;
- ensure good governance that is free of corruption;
- will supervise, on a provisional basis, the budgetary policy and public finances of St. Martin;
- continue to cooperate with local administrators to fight crime and drugs trafficking between Aruba, Curaçao, St. Martin, and Bonaire, St Eustatius and Saba.

After 359 years the French Parliament passed a bill granting COM status to both jurisdictions of St. Martin and St. Barthélemy which both populations have voted for in 2003 to secede from Guadeloupe to become separate overseas collectivities. February 22, 2007 was the date when the law was published in the official journal. St. Martin and St. Barthélemy under the Treaty of Lisbon remain part of the European Union.

The reason for taking a peep into the past is to illustrate how both halves of the island have developed over the years. One side having more flexibility than the other therefore it has taken on the role of a big brother to solve problems that are of bi-national interest.

Considering that the Southern half of the island (St. Maarten) has an international airport and a mega cruise facility it lends itself automatically to more commercial activity and is prone to the vulnerability of the Illicit Trafficking of Cultural Property more so than the Northern half of the island.

There were two cases recently that illustrated how the Dutch Kingdom and its Caribbean counterparts (countries) can work

together in combatting crime that infringe on Cultural Heritage in the form of movable property. The same is true for the Republic of France that shares the one International Princess Juliana Airport.

In conclusion I invite you to read the following examples as small and insignificant that they may appear are excellent in that they illustrate the informal bilateral cooperation of countries in Europe with their partner countries in the Caribbean where rapid and efficient cooperation between the local/insular and European heritage, environment experts, law enforcement authorities, property owners and commercial service sector staff members proved to be detrimental in combatting the illicit trafficking of Cultural Property. Even more so it is a wakeup call to implement formal treaties of bilateral cooperation among friendly and neighboring countries that have been working together for centuries under good faith. The ultimate goal is to protect, preserve the country's fragile and precious heritage simultaneously prosecuting anyone who tries to violate the treaty of Illicit Trafficking of Cultural Property which in essence preserves and thereby strengthens the identity of a people. [\[3\]](#)



Fort Amsterdam
Canon-Ball

Heritage conservationists and judicial authorities managed to foil an attempt by a tourist to ship off an historical eighteenth century cannonball on Thursday.

A tip was given from a courier mail service to an environmental activist that a historical cannonball was poised for export to the United States. The environmental activist contacted St. Martin Archaeological Center, who took immediate action to stop the export. The Director of the archeologist center contacted the, Head of the Interpol Office, who called the Prosecutor's Office. Both persons then went to the mail service office, where they met two custom officers from the police substation who ensured that the artefact was held by the mail service. The 18th century historical cannonball was confiscated. Interviews were conducted to find the person who attempted to export the artefact via the mail service office. Apparently a guest vacationing at a well-known resort from the United States told the mail service clerk that he/she had found the cannonball at an historical site and was shipping it home.

With the confiscated cannonball in their possession, the director of the archeological center and the custom officer went to the Resort, where the managers were co-operative to provide the necessary information about the guest in question. The guest was not in at the time, so follow-up was to be carried out by the police.

Based on the international Valetta Treaty, ratified by the St. Maarten Government, the export of historical and archaeological artefacts without authorized permission is strictly forbidden, with a punishment, related directly to prior St. Martin statutes, of up to one year imprisonment and up to a Naf. 5,000 equivalent to US \$ 2,777.78 fine.

The Director of the archeological center and the Resort representative strongly advise the public that removal of artefacts from any heritage site is strictly forbidden. The public was further advised to take notice that the export of historical artefacts without proper authorization is also strictly forbidden and can be prosecuted.

The Department of Culture was contacted by a permit officer of the CITES department of the Netherlands regarding the application of the CITES MA and SA of St. Martin regarding the application of a passenger that entered the Netherlands with questionable artefacts. The passenger in question recently migrated from St. Martin to the Netherlands. In his personal belongings he had 19 pieces of ivory carvings with him. These carvings according to him have been in his family since at least 1946. His parents bought these pieces in another Dutch Caribbean Island somewhere between 1937-1955. The pictures below are proof of such.

Barring that the passenger was unaware of the CITES regulation and obligation for permits when he moved his belongings, he did not apply for any permits and the customs in the Netherlands stopped the import.

According to the legislation, the passenger could request a retrospective import permit, because the pieces are antiques and of personal belongings. The passenger had no intention for any commercial use, but to make sure, the custom officer restricted the permit with a sanction that no commercial activity was allowed within the next 6 months.

But, before they could issue a retrospective import permit, they needed a retrospective export permit from St. Martin. The island consequently was asked if it was possible to issue a retrospective export permit for the antique pieces. And if so, how the passenger could apply for such a permit.

OPPORTUNITIES AND CHALLENGES IN THE CARIBBEAN

■ Laleta Davis Mattis

University Counsel and Head of the Legal Unit University of the West Indies

Introduction

Cultural heritage is at the core of any people. Efforts at development must recognize and incorporate cultural practices and norms. Tangible cultural heritage presents a basis for connection, a defined link with the past and a bridge to the future. In the words of Marcus Mosiah Garvey¹ 'A people without the knowledge of their past history, origin and culture is like a tree without roots'² A country's cultural property forms part of that root system, and the retention of cultural property in the country of origin is one element of national and self definition. The Caribbean is rich in cultural heritage and enjoys similarity in cultures, through the various manifestations of ethnic retentions reflected in both tangible and intangible cultural heritage. So endemic is the role of culture in national and regional sustainable development that paragraph 1 of the Preamble to the Barbados Programme of Action in recognizing the role of culture in sustainable development affirms that the survival of small- Island developing States is firmly rooted in their human resources and cultural heritage, which are their most significant assets. The affirmation further states that these assets are under severe stress and all efforts must be taken to ensure the central position of people in the process of sustainable development.³

A Memorandum of Understanding between the Caribbean Community (CARICOM) and The United Nations Educational, Scientific And Cultural Organisation (UNESCO), 5 May 2003, Georgetown, Guyana in addressing CARICOM's commitment to the preservation and protection of Caribbean culture affirms that in the field of Culture, CARICOM and UNESCO will cooperate in safeguarding the tangible and intangible cultural heritage of the Caribbean through ratification and implementation of Conventions on World Heritage and Underwater Cultural Heritage, in support of intercultural heritage and cultural diversity...⁴ To say that the Caribbean as a community has recognized the protection of cultural heritage is an understatement.

Protecting cultural heritage within national and global spheres is facilitated through the work of the United Nations Educational Scientific and Cultural Organization (UNESCO) through a number of complementary international agreements.

This paper will focus on The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970). Property by its very definition denotes ownership and the convention focuses on the ownership of cultural property and their protection, by stemming the illicit

trade in them. The Preamble to the Convention notes that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting.⁵ Article 1 of the convention defines cultural property very broadly and provides the opportunity for states parties to the convention to seek international cooperation in the protection of cultural property.

The Convention articulates very clearly, basic tenets for compliance including:

1. The establishment within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:
2. Contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;
3. 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 whose export would constitute an appreciable impoverishment of the national cultural heritage (emphasis supplied)
4. The introduction of an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized.

The Status of the Implementation of the Convention in the Caribbean: Challenges and Opportunities

Status of Ratification

Of the one hundred twenty four (124) states parties to the convention only six (6) Caribbean countries have ratified. These are: The Bahamas, Barbados, Cuba, Dominican Republic, Grenada and Haiti. This is perhaps the first challenge. The lack of ratification of the convention limits significantly the degree to which Caribbean states can come together to protect cultural property. The need for co-operation is necessary given the similarities in culture and therefore similarities in cultural property. The CARICOM Single Market and Economy provides an opportunity for regional cooperation in the fight against the illicit traffic in cultural property and the opportunity to develop harmonized legislative regimes for their protection.

Interpretation

Caribbean countries may also collaborate in the interpretation and application of certain articles of the Convention. The convention for example addresses Historical connections to metropolitan countries. Article 22 provides that States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territories but also to all territories for the international relations of which they are responsible. Metropolitan countries therefore, undertake to consult, if necessary, the governments or other competent authorities of these territories on or

before ratification, acceptance or accession with a view to securing the application of the Convention to those territories. Caribbean countries boast independence from the countries that colonized them and this Article could present a challenge in the application of the Convention and pose a challenge to the sovereign rights of Caribbean states over their cultural property. Cuba for example has declared that it considers that the implementation of the provisions contained in Articles 22 and 23 of the Convention is contrary to the Declaration on Granting Independence to Colonial Countries and Peoples (Resolution 1514) adopted by the United Nations General Assembly on 14 December 1960, which proclaims the necessity of bringing to a speedy and unconditional end to colonialization in all its forms and manifestations.⁶ It is the view of the writer that there needs to be greater collaboration among Caribbean states regarding the application of the convention in its entirety.

Private Collections

There is a large number of cultural properties in private collections. The Convention requires an inventory of cultural property both in private and public collections. The creation of these inventories requires a system that protects the interests of both collections at the same time recognizing that their export would constitute an appreciable impoverishment of the national cultural heritage (Article 5 (b)). The convention therefore limits the exportation of cultural property. This provision also poses some degree of challenge in the creation of the inventory and the listing of private property for purposes of management and protection. There are advantages of course to creating inventories to private collections, since those private collections would now be protected under national laws and would be subject to international corporation should they end up in the illicit trade. Public Education therefore must accompany any effort at implementing the Convention.

Ratifying Complementary Conventions

The effective implementation of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) is enhanced by other conventions: the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995) along with the Convention on the Protection of the Underwater Cultural Heritage (2001) together present a global stage upon which countries can cooperate internationally towards the protection of cultural property.

The Convention on the Protection of Underwater Cultural Heritage⁶ recognizes that underwater cultural heritage is threatened by unauthorized activities directed at it, and of the need for stronger measures to prevent such activities. The convention has as one of its most important tenets the prohibition of the commercial exploitation of underwater cultural heritage. (Art. 2)

Under the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995)⁷, if a cultural object has been stolen, it must be returned. Restitution is an absolute duty unless the limitation period has expired. The only question that arises is whether compensation must be paid.

The Convention in Article 7 stipulates that at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

At the UNESCO Regional Seminar on the Fight against Illicit Trafficking in Cultural Property for the Caribbean held in Castries, Santa Lucia, 3-5 December 2012, Caribbean states parties discussed strengthening the fight against illicit trafficking in Cultural Property in the Caribbean. The meeting was attended by representatives from Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, Saint Kitts and Nevis, St Maarten, Saint Vincent and the Grenadines, Surinam and Saint Lucia.

At the conclusion of the meeting, there was a renewed commitment to take concrete actions in enhancing the legal and operational levels to improve their capacity to fight illicit trafficking in cultural property and to strengthen international cooperation. One specific action agreed to by the participants was the request for the inclusion of an item in relation to the illicit traffic in cultural property on the agenda of the 19th Forum of Ministers of Culture and Officials in Charge of Cultural Policies of Latin America and the Caribbean. Recommendations also included the creation or identification of specialized law enforcement services responsible for the prevention of and fight against illicit traffic of cultural property, as well as the development of training of police, customs officials and all civil and military personnel involved at the front line of the fight against this trafficking.

Costs to Implementation

It is obvious that there are costs associated with the implementation of the convention(s). Countries are expected to implement sustainable legal and policy frameworks, establish mechanisms for enforcement including training of customs personnel, police personnel and sensitizing the Judiciary on the application and interpretation of the convention and attendant legislation. The financial and administrative costs however pale in comparison to the benefits to be derived from a system of international cooperation that protects cultural property.

The Regional Agenda

If the Caribbean territories are to take measures to stem the prohibition and prevention of the Illicit Import, export and transfer of ownership of cultural property, then the subject must be placed on the regional agenda. Caribbean governments must therefore take the lead in addressing the issue which must be translated to the various national agendas. A harmonized approach to combating the illicit traffic in cultural property is desirable. Memoranda of Understanding could be considered as one way of enlisting the cooperation of Caribbean states parties.

Conclusion

The illicit traffic in cultural property is an epidemic and must be eliminated. This can only be achieved through international co-operation in implementing the convention. The Caribbean though challenged by the basic requirements for implementation, must recognize the regional power of collaboration in the fight against illicit traffic. There must be emphasis on a regional rather than a national approach to complying with the tenets of the convention. There is a need for harmonized policy and legislative framework and the establishment of standard operating procedures for addressing illicit traffic in cultural property.

Ratifying and implementing the Convention on presents challenges, but embraces unqualified opportunities for securing Caribbean cultural property for present and future generations. [✉](#)

Notes

¹ Marcus Mosiah Garvey: National Hero of Jamaica

²Top Seventeen Quotes and Sayings by Marcus Mosiah Garvey: <http://consciouspen.blogspot.com/2011/08/top-ten-sayings-and-quotes-by-marcus.html#Umns-YHBJPmk>

³Barbados Programme of Action Global Conference on the Sustainable Development of Small Island Developing States Report Of The Global Conference On The Sustainable Development of Small Island Developing States Bridgetown, Barbados, 25 April-6 May 1994 http://www.un.org/esa/dsd/dsd_aofw_sids/sids_pdfs/BPOA.pdf

⁴Memorandum of Understanding between the Caribbean Community (CARICOM) and The United Nations Educational, Scientific And Cultural Organisation (UNESCO), 5

May 2003, Georgetown, Guyana http://www.caricom.org/jsp/secretariat/legal_instruments/mou_caricom_unesco_03.jsp?menu=secretariat

⁵Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970: http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁶Convention on the Protection of the Underwater Cultural Heritage 2001: http://portal.unesco.org/en/ev.php-URL_ID=13520&URL_DO=DO_TOPIC&URL_SECTION=201.html

⁷<http://www.unidroit.org/english/conventions/1995culturalproperty>

MEXICO

heritage and identity

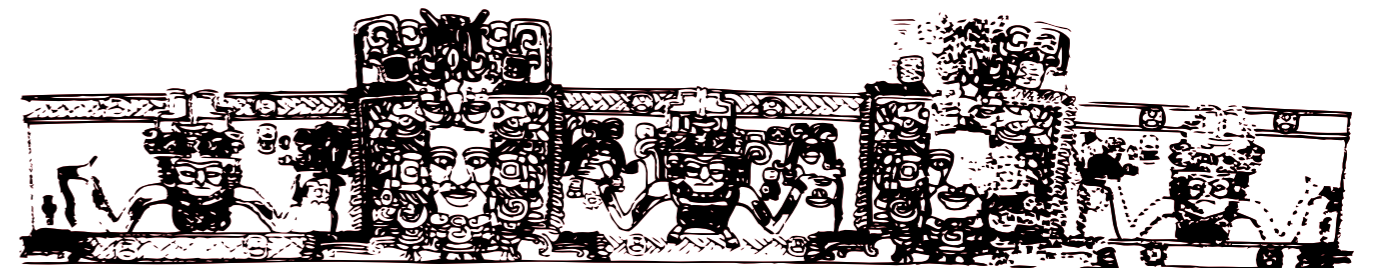
The following images belong to the collection of the National Museum of Anthropology (Mexico). The descriptions of the photographs are the same the Museum shows to the visitors within its facilities.



This frieze is an example of the acts of vandalism that destroy and seriously damage our cultural heritage, as it was removed from the facade of a temple by looters. The fragment shows a young ruler flanked by older deities. It is thought that the faces of another character and another

divinity are missing on the frieze. This decoration may be witness to the change of power between two rulers, alternating them with three elder gods, each placed on the three hits that temples usually have. Period: Early Classic (250 - 600 A.D.)

Origin: Placeres, Campeche, Mexico
Mexico's National Museum of Anthropology,
National Institute of Anthropology and
History.





Looters cut what is known as initial series of the date of this stela 51 of Calakmul, Campeche. There remains a calendar wheel marking the end of a period. The ruler, carrying a warrior spear and bag, is standing on a captive. Stelae occasionally have the signatures of ah tsib (scribe), yu tzil (sculptor) or, as

in this case, yu xul (polisher-burnisher). This stela indicates that the ruler and the sculptor held a ritual to invoke the snake that appears on the mountain. The text refers to the pyramid where the stela was found, representing the mountain, which was the place to meet with ancestors.

Period: Late Classic (600 - 800 A.D.)
Mayan Date: (9.14.19.17.0), 10 ajaw, 13 ch'en (July 29, 731 A.D.)

Mexico's National Museum of Anthropology. National Institute of Anthropology and History



For the Maya, the afterlife used to elapse in a parallel world where the conditions of earthly existence were re-produced, so they attached the same importance to it. The soul was neither invisible nor intangible, taking a specific shape for rituals, dances and sacrifices. The difficult journey of the deceased to the underworld required that the deceased could meet their basic needs, so the graves

were always supplied with food such as chocolate, tamales and meat. As the material needs were the same as those of earthly life, they began the journey accompanied by their riches (if any) and their belongings.

Mexico's National Museum of Anthropology.
National Institute of Anthropology and History.



FOR A CULTURE OF PEACE

Melaza Cuban Film © Producciones de la 5ta Avenida, 2013

TRINIDAD AND TOBAGO DECLARATION ON DEVELOPING THE CARIBBEAN FILM INDUSTRY

Adopted in Port of Spain, Trinidad,
on 27 September 2013

This issue of Culture and Development ends with the Trinidad and Tobago Declaration, a document that states the value of culture as a driver for sustainable development and delves into the areas of intervention necessary to create a culture of peace in the region through improved legal frameworks, increased investment and strengthened film industries.

trinidad
+tobago
film/13
festival

We, the participants gathered in Trinidad on the occasion of the Caribbean Conference Cameras of Diversity for a Culture of Peace: Thematic Debates on Developing the Caribbean Film Industry (25 - 27 September 2013), wish to express our gratitude to, and acknowledge the hospitality, technical and intellectual support of the Trinidad and Tobago Film Festival, and the leadership of UNESCO for providing a forum to place the importance of the Caribbean film industry and the Caribbean culture in the sustainable development agenda of our region;

We recognize the importance of acknowledging the link between cultural diversity, dialogue, development, security and peace to address the problems of our world today and propose new approaches for ensuring sustainable development and addressing issues such as population growth, urbanization, environmental degradation, natural disasters, climate change and increasing inequalities and persisting poverty;

We also recognize that a culture of peace, non-violence and dialogue is an essential condition of sustained prosperity;

We underscore that the creative industries and, in particular, the film industry, are main sources for sustainable development. They are becoming increasingly relevant components of modern post-industrial economies which contribute to growth and job creation and play, at the same time, an important role as vectors of cultural identity;

We recall in this regard some of the most recent policy documents on the contribution of culture to sustainable development, such as the Declaration of Surinam adopted at the 2013 Meeting of Ministers of Culture of Latin America and the Caribbean (March 2013), the UN Resolutions 65/1, 65/166 and 66/208 on 'Culture and Development', the Hangzhou Declaration on Placing Culture at the Heart of Sustainable Development Policies, the June 2013 High Level Thematic Debate of the UN General Assembly and the 2013 ECOSOC meeting;

We consider that, despite the growing body of analysis, statistics and mapping exercises on the relationship between culture, creative industries and economic development, the potentialities of culture in development are not yet fully understood;

We recognize that most Caribbean States are strongly committed to defending the inclusion of culture in the international development agenda, and acknowledge the importance of strengthening creative industries, as shown by the ratification rates of the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions in our region;

We also recognize the progress made in developing cultural policies and creating public/private entities to support the creative sector, in particular the film industry, and stress the need to further develop an appropriate programmatic and financial framework;

We reaffirm the potential of the Caribbean in developing its own creative industry as a means for economic growth and for the promotion of the Caribbean cultural diversity;

We also acknowledge that the effective implementation of the 2005 Convention and related UNESCO programmes and activities, such as the regional Cameras of Diversity project, support Caribbean initiatives to develop sustainable film industries;

We therefore call on policy-makers and non-governmental entities, including the private sector, to actively support the Caribbean film sector by including the film industry in their development policies and investment plans, taking into consideration the following:

Cultural industries contribute to a culture of peace, non violence and dialogue

Cultural goods and services have a double value as vectors of identity and as sources of economic growth. The cultural sector thus addresses psychosocial and economic needs of societies and contributes to reducing poverty and social inequalities. Creative industries are job and income generating sources that may support development among marginal groups such as women, minorities, and disempowered boys and girls. Their promotion may thus support the reduction of social inequalities, reduce poverty and enhance social cohesion. Enhanced knowledge of the Caribbean cultural diversity, in particular among the youth, thanks to the strengthening of the film industry, may support intercultural dialogue and peace which are the basis for regional cooperation and development. The Caribbean cultural richness and creativity can be used as an economic resource in emerging service economies.

The promotion of creative industries, in particular the film industry, must be included in national development policies and programmes

In recent years, the international community has debated the need to develop and support actions, measures and policies to promote the free exchange and circulation of ideas, and of cultural activities, goods and services. The main instrument resulting from that debate is the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted by the General Conference of UNESCO in 2005. The convention underscores the double nature of cultural goods and services by recognizing that they are not mere commodities but also vectors of cultural identities. Therefore, it aims at promoting the diversity of cultural expressions by supporting the development and implementation of policies designed to increase the creation, production, distribution/dissemination, access and enjoyment of cultural expressions, by all, and in particular, by developing countries. This international treaty, ratified by most of the Caribbean States, creates the appropriate framework to strengthen regional cooperation and develop and implement national policies to the benefit of the creative sector, including the film industry. Member states

are encouraged to implement legislation to give effect to their domestic treaty obligations.

Support must be given to the creation and administration of Caribbean film commissions and their networking.

Intra-regional educational programmes, academic cooperation and scholarships exchanges should be strengthened

A sustainable and dynamic film industry can only be developed if educational programmes are adopted and implemented to train experts to create, produce, disseminate and manage the film sector. The Caribbean States have already established strong cooperation mechanisms in many fields, including trade. Also, our shared roots and our rich cultural diversity provide an excellent platform to strengthen further our cooperation through intra-regional educational programmes, and thus help develop a dynamic Caribbean film industry. Main attention is to be given to the youth with a view to job creation and income generation.

Caribbean audiovisual heritage must be valued, safeguarded and transmitted to future generations

Preservation of the Caribbean memory through the protection and safeguarding of our audio-visual heritage is essential to ensure peaceful and conflict-free Caribbean societies. Top priority attention should therefore be given to the sustainable preservation of our film collections, archives and documents. The development, funding and application of preservation measures will require the establishment of effective institutional coordination mechanisms at local, national and regional level, and the creation of synergies among public institutions, civil society and the private sector. The study of preservation of audio-visual heritage should be offered in educational curricula, and awareness of the importance of preserving that heritage should be raised in all possible film-related public activities to ensure a socially cohesive Caribbean community, shaping our part of the world to be an effective contributor to the culture of global peace.

The film sector must promote inclusive social development

More inclusiveness is possible when gender-balanced, equality and culture-sensitive approaches are used in preparing and implementing sustainable development policies. Because cultural goods, services and activities have a double nature as commodities and as vectors of identities and mutual understanding, those approaches should also be part of any action taken to develop the film industry. When doing so, an expanded film industry helps further reduce economic and social inequalities.

Distribution and exhibition means must be strengthened to reduce geographical imbalances

There is a great and yet unexplored potential to sustainably

develop the film industry by way of public-private partnerships as a funding mechanism for promotion such development which should include new digital technologies and applications. Public policies should be adapted to enable these new possibilities, and to provide answers to new challenges, both at national and regional levels. New policies should enhance cooperation facilities among local authorities, non-profit organisations, public and private institutions, artists and other cultural professionals.

Enhanced globalisation opens up a wide range of opportunities to develop original and effective approaches to distribute and exhibit Caribbean productions at national, regional and international levels. New networking distribution means and platforms should be used to maximize revenue.

The geographical, linguistic, historical and demographic links provide the opportunity to optimise social media, crowd funding and exhibition networks and circuits, to promote the Caribbean film industry as a regional one, and support the production, distribution and access to local Caribbean contents in national, regional and international markets.


Support must be given to the creation and administration of national and regional film festivals and their networking.

Specialized journalism should support strengthening the Caribbean film sector

Film criticism or specialised journalism is part of a wider discussion of the relevance and importance of films to Caribbean people. Through the media, especially the Internet, film criticism may complement the discussion, however it takes place. Public policy should therefore aim at encouraging the media to inform about the economic potential of the film industry as a job and income-generating sector, and to financially support and broadcast Caribbean productions.

We, the participants, believe that the promotion and support of the creative industries, especially, the film industry, must be integrated in the national development agendas of the Caribbean States.

We also believe that the promotion of the film industry will decisively contribute to economic growth, a culture of peace, non-violence and intercultural dialogue.

We, therefore, commit ourselves to continue supporting the development and application of policies and action to support the film industry, and to encourage individuals, communities, public and private institutions, artists and other professionals to join us in our efforts. 

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WORKING TOGETHER THE ANDEAN COMMUNITY PROTECTS ITS CULTURAL HERITAGE

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Illustration: UNESCO / A. Espinosa



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INTERPOL ARGENTINA FOUR TONS OF FOSSILS THE RECOVERY OF THE CENTURY IN PARAGUAY 77 PAINTINGS HIDDEN IN A WAREHOUSE

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1970 UNESCO Convention on the
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