

THE 1970 CONVENTION

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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


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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>