

THE UNESCO CONVENTIONS ON THE PROTECTION OF CULTURAL PROPERTY



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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



Hail 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.

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

³At 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.

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

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

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

⁷Most 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.

⁸Argentina, 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

⁹Most 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.

¹⁰Antigua 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



Shallow portions of the Metropolis is sunk in 1878 in the Grand Traverse Bay, USA. © C. Doyal