



Temple No. 1, Tikal National Park, El Petén. 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

<sup>1</sup> Political Constitution of the Republic of Guatemala: articles 57 to 65.

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

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# 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](#)