Conservation and the Antiquities Trade: London, 2–3 December 1993

Ben Ward*

The conference was organised by the archaeology section of the United Kingdom Institute for Conservation of Historic and Artistic Works. There were four sessions, two on each day of the meeting.

1 Legal Issues

After an introduction from Lord Renfrew, Etienne Clément (UNESCO) presented an overview of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.[1] Clément mentioned two of the problems that the Convention and also Unidroit in the field of private international law are faced with; namely restitution of illegally exported cultural property and the compensation of the bona fide purchaser. The US 1983 Cultural Property Implementation Act confirmed American status as a State Party to the 1970 Convention and a ban on the import of certain cultural objects from El Salvador, Bolivia, Guatemala, Peru and Mali underlines American commitment to combatting the trade in illegally exported cultural property. Clément noted the impact of the Convention on later agreements including the ICOMOS Code of Ethics and the Code of Practice of Antiquities Dealers in the UK. There has also been an attempt to standardise agreements between individual nations regarding cultural property and its restitution in the form of the 1990 Draft Model Treaty between States regarding cultural property.

The war in Cambodia has presented special problems for those who would preserve its national patrimony. Entire parts of the cultural heritage have gone: destroyed by weapons or stolen by thieves who work day and night. The only legal framework that existed to protect the Khmer culture was the 1970 Convention. Prince Sihanouk has recently been offered by UNESCO a series of practical proposals aimed at helping the country in its struggle to preserve what is left of its cultural heritage. The measures include on the spot training for protection teams, expert advice regarding the religious significance that is inherent in much of Khmer art and security for

* Managing Editor, IJCP.

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sites and museums. A law designed to protect cultural property drafted in February 1993 by a few of the Cambodian lawyers left in the country after the massacres is soon to be implemented. It is not sure if it will help prevent attacks on those who guard cultural property which occur regularly. In addition to new laws, the government, with the aid of UNESCO, has mounted a public awareness campaign especially aimed at tourists to educate them with regard to Khmer culture and to appraise of them of the situation in respect of stolen cultural property. There have also been attempts to stop the smuggling of Khmer objects into Thailand. Clément ended his presentation with the example of the National Museum recently looted in Kabul. The Afghani authorities immediately faxed UNESCO: upon receiving an inventory from the Museum UNESCO will set about alerting the world.

Lyndel Prott (UNESCO) discussed national and international laws on the protection of cultural heritage paying particular attention to their effect on the work of professional conservators. She posed the question: "If the provenance of an object is unclear, does it come from an illegal excavation? If that is the case, restoration will add to its value." Indeed, if illegally excavated, damage to the archaeological site will already have occurred and the objects will be useless as a provider of contextual information. Prott gave as examples of stolen/illegally exported objects that have been placed before conservators statutes from Tamil Nadu and other items from Cambodia, Ecuador and Sipan in Peru. Objects needed to be in pristine condition to attract buyers at sales: therefore it was natural for "owners" of objects to seek out conservators.

In 1956 UNESCO formulated international principles in regard to archaeological excavations. It was decided inter alia that unlicensed excavations should be prohibited: the State should claim ownership of all finds from the subsoil; there was a legal duty to report finds; unlicensed metal-detecting should be prohibited. Conservators should be aware of these guidelines when presented with objects that require cleaning and/or restoration. Prot admitted that the guidelines were difficult to enforce particularly as a result of the large profits that could be made in the illegal art export trade. She cited the case of the Nataraja which was sold by the finder for 200 rupees (£2) and fetched £250,000 in London.[2]

There is a moral dilemma facing conservators in that their work on illegally exported objects increases the value of the object and thus encourages pillage and theft from sites. The ICOM Code of Ethics 1986 suggests that no authorised identification of an object should occur if there are doubts regarding its provenance. Prott cited the example of a Canadian Indian headdress valued at $CDN 45,000 that after restoration work instigated by a dealer not only increased the value of the object to $CDN 75,000 but also decreased its value to a museum as an ethnographic record. A permit for its export was accordingly issued.

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Conservators' groups have formulated their own ethical codes in response to this type of sharp practice: the code of the Australian conservators expressly sets out the responsibility of the individual conservator to meet the cultural needs of society. Prott finished her discussion with the observation that the art trade – both legal and illicit – is dependent on the expertise of restorers and conservators and thus their work was crucial to the operation of that trade.

Patrick O'Keefe (Paris) tackled the problem of the conservator/archaeologist/expert in court: cases including *Bumper, Johnson* and the recent Seuso treasure case were among the examples cited by O'Keefe. The motive behind the Greek government's attempt to prosecute Michael Ward in the Mycenean treasures case was simple: to get the goods back and to create a precedent (as achieved by the New Zealand government in *Ortiz*). It was absolutely essential to the success of a government's case in this type of situation that it could be proved that the object(s) were stolen/illegally exported from that country. In *Peru v Johnson*, the Peruvian government failed to establish by way of an archaeological expert that the objects in question had ever been in that country. O'Keefe stressed the importance of expert evidence in cases like *Bumper* where stylistic analysis was combined with soil analysis to prove that the sculpture had been unearthed in Tamil Nadu. Expert analysis of the Seuso treasure concentrated on wood and organic samples in an attempt to establish its provenance. Unscrupulous dealers will seek to remove this evidence or even attach it to an object.

In agreeing to work on an object a conservator accepts a duty of care in contract or in tort. Evidence regarding the initial state of an object can be compelled at court therefore records should be kept in respect of the object although these records are the property of the owner of the object. In Canada it is possible for the conservator to retain samples taken from the object before and during the conservation process but only with the agreement of the owner. Conservators themselves may be familiar with rules regarding excavation, license and import and may be rightly wary of working on an object whose owner appears suspicious.

O'Keefe went on to discuss examples of those states that had declared blanket state ownership of cultural property and the problems associated with type of governmental attitude including the application of the *lex situs* rules and other conflict of laws considerations.

Maria Koroupas (USIA) ended the first session with a paper providing background information about the US adoption of the 1970 UNESCO Convention. She outlined the impetus for US action in this area prompted by the trade in illegal cultural objects originating from central and south America. The US has taken unilateral action to forbid the importation of cultural property from countries such as El Salvador (certain pre-Columbian artefacts), Guatemala (Mayan artefacts from the Peten region), Peru (Moché artefacts from Sipan)

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and Bolivia (antique Andean textiles). Mali recently became the first country to apply for emergency import restrictions – which were granted – thus offering some measure of protection (it is hoped) for archaeological material from the Niger River Valley. Mali's request was submitted under Article 9 of the 1970 UNESCO Convention (unauthorised movement of cultural property across international borders). There has also been an agreement with Canada to protect archaeological and ethnographic material from that country, the first "western/industrialised" nation to seek such an agreement from the US.

Koroupas informed the audience that unprovenanced material in American museums required a policy in keeping with that for illegally exported/stolen objects. Neither the University of Pennsylvania nor the Smithsonian Institute will authenticate unprovenanced material. Laws, Koroupas concluded, are not the ultimate answers to these problems but should be integrated with policies and infrastructures adopted by museums and other institutions.

2 Case Histories

Patty Gerstenblith (De Paul University) opened the afternoon session with a discussion of recent legal developments in the US concerning the restitution of stolen and illegally exported cultural property. She briefly explained US law in relation to the Statute of Limitations and that "a plaintiff cannot sit on his rights waiting to get his case ready". Gerstenblith then related these principles to the Kanakaria Mosaics case: here the principles regarding accrual of causes of action in "art" cases as interpreted by the US courts in *Menzel v List* were applicable. Accordingly, under the discovery rule, time does not start to run against a plaintiff for limitation purposes until the plaintiff knows (or reasonably should have known) the whereabouts of the art in question. Due diligence in pursuing his claim must be displayed by the plaintiff or the defendant may successfully argue the defence of laches. The government of Cyprus had diligently pursued their claim for the mosaics by publicising the theft and checking reports.[3]

Catherine Sease and Danäe Thimme then continued the Kanankaria theme: both had worked on conserving the mosaics which had been damaged during their travels and Thimme stressed the problem of working with unprovenanced material. She pointed out that a conservator's first duty was to the object in question and that it was perhaps better to accept work on such material rather than allow it to go to a "back street" restorer. Christopher Chippindale (Fitzwilliam Museum) gave a stimulating talk on Cycladic art[4] and Geraldine Norman (*The Independent*) spoke on the theme of "Bad Laws are made to be Broken". Norman attempted to play devil's advocate by commenting that tomb robbing and treasure hunting were natural

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human activities and that any legal restraints placed on this type of conduct was doomed to failure. John Browning (Icklingham) gave a personal account of his experiences with the law in relation to the notorious case of the Icklingham Bronzes. Having confirmed that the bronzes will eventually go to the British Museum, Browning bemoaned the lack of a coherent policy in respect of art theft at governmental level. He also welcomed the implementation of the Unidroit proposals that should go some way to harmonise private international law. The afternoon ended with an informative presentation by Lawrence Kaye (Herrick, Feinstein) of the Lydian Treasures case.

The second day of the conference concentrated on problems in the UK in the cultural property arena including treasure trove provisions and "night-hawking". These issues are particularly acute as metal detecting grows in popularity (Peter Addyman, CBA). In the afternoon, two art dealers bravely ventured in the "lions' den"; James Ede hoped to persuade the lions to become vegetarians! Ede, chairman of the International Dealers in Ancient Art, coherently explained the art dealer's perspective of the trade: reputation was of paramount importance to dealers; dealers believe they are considered guilty until they can prove their innocence; the inherent beauty of objects such as the Lydian treasures cannot be equated to sherds of coarseware so beloved by archaeologists. Ede also pointed out that the Kanakaria mosaics were damaged by restorers not by dealers. He argued that dealers should be free to trade in objects legitimately excavated once they had been properly recorded. The present situation in a country such as Egypt is that a farmer is more likely to throw an ancient object into the Nile rather than report its find and have his land confiscated. If he is caught selling the object he will be put in jail. Blanket laws granting ownership of all cultural property to national government will, in Ede's opinion, increase the rate of smuggling in stolen/illegally exported art.

John Butler of the Arts and Antiques Squad outlined police efforts on an international scale to combat the illegal trade in stolen art. This included the use of state of the art technology. Butler also said that the police have to enforce laws but are rarely consulted in the law-making process. He illustrated the absurdities of detective work in stolen art with the example of smugglers of cultural objects from Pakistan: despite clear evidence gathered in London of their activities and a full report submitted to the Pakistani authorities, the smugglers are at liberty probably as a result of bribery of officials.

After a contribution from Eamonn Kelly[5], the conference ended with a warning from Ricardo Elia (Boston University) that conservators must sever their financial connections with the art trade and refuse to work on unprovenanced objects. By adhering to these principles conservators would help to stem the international demand for stolen antiquities.

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Notes

1 Etienne Clément, "Some Recent Practical Experience in the Implementation of the 1954 Hague Convention" (1994) 1 IJCP 11.
2 Sandy Ghandhi and Jennifer James, "The God that Won" (1992) 2 IJCP 369.
3 Patty Gerstenblith, "Guggenheim v Lubell" 1 (1992) 2 IJCP 359; Quentin Byrne-Sutton, "The Goldberg Case: A Confirmation of the Difficulty in Acquiring Good Title to Valuable Stolen Cultural Objects" (1992) 1 IJCP 151.
4 See p. 352 *supra* and p. 399 *infra*.
5 See p. 213 *supra*.

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