

The Fight Against the Illicit Traffic of Cultural Property: The 1970 Convention: Past and Future, 15-16 March 2011

UNESCO, Paris

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On 15 and 16 March 2011 UNESCO held a meeting on The Fight Against the Illicit Trafficking of Cultural Objects: The 1970 Convention: Past and Future at its Paris headquarters. The meeting served two purposes: an evaluation of the 1970 Convention, 40 years after its adoption, and a meeting of delegations to UNESCO who wanted to express their views on the problem of illicit traffic and how UNESCO should proceed to improve the present situation.

UNESCO Director-General Irina Bokova opened the meeting, and there followed a lively discussion between Bernd Rossbach, Director of Specialized Crimes and Analysis at INTERPOL; Alfonso de Maria y Campos, General Director of the National Institute of Anthropology and History of Mexico; Stéphane Martin, Director of Musée du Quai Branly; and Jane Levine, now Worldwide Compliance Director and Senior Vice President of Sotheby's. Zahi Hawass, then Minister of State for Antiquities of Egypt, was unable to attend because of the volatile situation in Egypt at the time. The public debate covered the issues that might be expected, including the significance of illicit traffic in current attitudes, the importance of police action, the vulnerability of certain countries with very large areas of protected heritage and very strong tourism, the damage done to cultural heritage over several hundred years in some countries, the importance of ongoing collection in countries with long museum traditions, and the possibility of changing attitudes through increased supervision and provenance searching.

The press conference that immediately followed further expanded these issues, and questions were asked about the effectiveness of UNESCO action. Answers were given by the Director General, the Assistant Director General for Culture, and this reviewer. I emphasized the disparity of resources devoted to

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the 1972 World Heritage Convention, managed by more than 100 full-time professionals; the 2003 Intangible Cultural Heritage Convention (about 15); and the 1970 Illicit Traffic Convention; which has only one full-time professional (as do the Hague Convention of 1954 and the Underwater Heritage Convention of 2001).

The following sessions were more closely focused on the workings of the convention, and a number of well-known experts were present. The second day was also open to contributions by Delegations, many of whom expressed the view that UNESCO should do more, and, in particular, should direct more resources into the prevention of illicit trafficking. They were also vocal on the issue of returns of material taken before 1970. This remains a serious irritation between the states of the European and North American region and most states in the rest of the world. Some delegations (especially Italy and Ecuador) favored the drafting of a Protocol to the United Nations Convention against Transnational Organized Crime 2000 (the Palermo Convention) to deal specifically with illicit traffic in cultural objects. This convention is a general framework on organized crime and has specialized protocols that target specific areas and manifestations of organized crime: trafficking in persons (especially women and children), people-smuggling, and manufacturing and trafficking of arms and ammunition. At the time this convention was drafted, a protocol on illicit traffic in cultural objects was also foreseen. However, some experts are concerned that an emphasis on criminal aspects of the trade will detract attention from the civil law aspects of the trade that are particularly concerned with UNESCO.

The first roundtable, *The Legal Instruments Employed for the Fight Against the Illicit Trafficking of Cultural Property*, chaired by the Assistant Director General for Culture, raised a number of points that are of importance for further discussion: These included the significance of the UNIDROIT Convention on Stolen or Illicitly Exported Cultural Objects 1995 (Faria, Prott) as well as criminal proceedings (Ferri), the importance of international cooperation (Valdés), and the experience in the implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna 1973 (CITES), a convention with some of similarities to the 1970 Convention of UNESCO on illicit traffic (and which is administered by a Secretariat of 10).

The second roundtable dealt more specifically with the trafficking of archaeological objects. The experience of Greece and Mali, both source countries, and of the United States, a destination country, was discussed (Andreadaki-Vlazaki, Sidibe, and Gerstenblith/Papageorge Kouroupas, respectively) as well as that experience of the International Council of Museums (ICOM) and of the World Customs Organization (WCO). The current international legal provisions available for protection was also discussed (Fraoua).

The second day of the meeting was devoted to discussions between member states on the future of the 1970 Convention and raised a number of important issues. Some member states thought that it was important to criminalize acts of

illegal export and to intensify provisions concerning criminal organizations. In pursuance of that latter aim, the suggestion was made to add a new protocol to the United Nations Convention against Transnational Organized Crime 2000 (the Palermo Convention) to specify illicit traffic in cultural objects by organized criminal groups as subject to the international regime of that convention. One speaker objected to the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation having recommended that this two-day meeting be organized by the UNESCO Secretariat, because he took the view that this body had no organic connection with the 1970 Convention. However, it was pointed out that the committee's mandate was to promote the return of cultural property and that one of the ways that returns took place was under the 1970 Convention: The Secretariat had, therefore, the responsibility to report to the committee on returns under that convention. In addition, the creation of another separate intergovernmental committee, solely for the purpose of supervising the 1970 Convention, would be a further and undesirable absorption of scarce resources.

While a number of speakers had said that it was difficult to achieve return of archaeological objects through the use of the 1970 Convention, both Canada and the United States pointed out that they had been responsible for the return of many hundreds of archaeological objects in accordance with the provisions of the convention. It was highly regrettable that a representative of Australia did not take the floor since it has returned three container loads of rare fossils to China over the last few years. One expert stated that the enhanced provisions of the 1995 UNIDROIT Convention greatly increased the possibility of achieving the return of archaeological objects according to its provision [Article 3(2)] that an archaeological object which has been unlawfully excavated or unlawfully retained is to be considered stolen.¹

So what is the practical result of this evaluation? Currently lacking the resources of the World Heritage Convention, it seems obvious that UNESCO needs to rebalance use of resources so that it can

- Mount a more effective campaign for state participation in the 1970 Convention and the 1995 UNIDROIT Convention, by all means, including the of holding more regional workshops.
- Continue to publish helpful materials for member states which have difficulties in implementing the convention.
- Intensify its efforts to raise international awareness in
 - in the citizens of states where the movable cultural heritage is in peril
 - in transit States (Hong Kong autonomous region, Singapore and Thailand immediately come to mind), and
 - especially in states where dealers and collectors accumulate substantial amounts of imported cultural material and where there is a need to continually address public attitudes.

To do this the Secretariat must be given adequate resources, both highly qualified personnel and adequate budget, which are currently quite inadequate for the degree of activity which Member States clearly desire.

However, there is much that the member states of UNESCO can do:

- Hold national workshops to carry on the work of UNESCO's regional workshops to train administrators, museum curators, archaeologists, anthropologists, and other cultural professionals in the principles of the convention and in solving problems by consulting on specific national issues relating to the illegal traffic in cultural objects.
- Ensure close cooperation between cultural administrators, police, and customs officials within the state and between regional administrations within the State.
- Use regional bodies to emphasize the importance of the convention and invite neighbor states, particularly transit states, that are not yet party to the 1970 and 1995 Conventions, to ratify them.
- Evaluate the effectiveness of their own national legislation on illicit traffic and, where desirable, update it.
- Deposit their relevant legislation with the UNESCO database of cultural legislation, thus providing information widely on the unlawfulness of trafficking in the jurisdiction and preventing claims that their national rules are not clear.
- Share information on implementation by submitting periodic reports on their practice or on the difficulties they have in ratifying or implementing the convention.
- Participate in the work of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Country of Origin or its Restitution in Case of Illicit Appropriation, a body which actively supervises the problems of illicit traffic both past and present.
- Consider the outposting of specialists in this field to the UNESCO Secretariat.
- Ensure a close relationship with Interpol, so that losses are rapidly reported to that body.

Individuals have been quite influential in promoting the 1970 Convention in the following ways:

- Concerned museum curators can act to
 - make better acquisition policies to ensure that their museums do not acquire, or retain, cultural objects which have been stolen or otherwise wrongfully trafficked, and
 - promote and update ethical codes for museum staff.
- Archaeologists should push for better ethical standards and their application and should create or maintain an effective lobby group to ensure that their

country becomes party to the convention and carries out its obligations under the convention.

- Tourists who have come into contact with such activists, or have themselves noted the depletion of museums and sites, in developing countries in particular, should become active in promoting the proper handling of cultural objects and in dissuading other tourists from illegally removing objects from the areas they visit.
- Others can support nongovernmental organizations, ICOM and its regional and national groups in particular, in promoting informative materials (such as ICOM's Red Lists and "100 Missing Objects" series).

In my view proposals to revise the 1970 Convention or to draft a protocol to it would be an undesirable diversion of resources from the aforementioned important activities. There is at present no indication that "art market states" are prepared to accept any such new instrument, which would take considerable time and resources to prepare. The 1995 UNIDROIT Convention has the effect of a protocol in that it deals with the gaps felt to be in the 1970 Convention (detailed provisions on "good faith" acquisition; the status of archaeological objects, time limitations on action, ability of nonstate owners to sue). After some 7 years of expert and interstate negotiations, the 1995 UNIDROIT Convention reached a compromise that received the signature of states of opposed interests and is slowly acquiring ratifications.

The proposal to add a protocol on illicit traffic to the United Nations Convention against Transnational Organized Crime 2000 (the Palermo Convention) may not substantially assist in stopping illicit traffic in cultural objects, because many states already have internal legislation that can be used for the pursuit and penalization of criminal gangs (as was the case in the prosecution, for conspiracy, in New York of the dealer Schultz and in England of his co-conspirator Tokeley-Parry, both of whom received prison sentences) and because some other states who have such legislation are still not prepared to use it in the context of illicit traffic. A new protocol to the Palermo Convention will therefore have little effect unless "art market" and transit states are prepared to ratify and implement it. Careful consultation with such states seems essential to establish whether such a protocol would be effective.

Thanks to this meeting a long overdue evaluation of the effect and defects of the 1970 Convention and its implementation occurred. Now having 120 state parties, the convention is and has been a major force in changing attitudes to illicit traffic. Would any of the significant returns made by U.S. museums in recent years, or the growing sensitivity in acquisition policies all around the world, have occurred without the convention? It has been a slow process, but this meeting at least has pointed out that the states themselves should not restrict themselves to criticizing UNESCO's efforts to ensure wider ratification and implementation of the convention, but they should take action themselves in many ways within their

national jurisdictions. Additionally, they should insist on a better distribution of staff and budget within the Culture Sector of UNESCO.

ENDNOTE

1. Further information on the meeting is available at <http://www.unesco.org/new/en/culture/themes/movable-heritage-and-museums/illicit-traffic-of-cultural-property/40th-anniversary-of-the-1970-convention/>.