



Mediterranean Programme
9th Mediterranean Research Meeting



Florence & Montecatini Terme 12-15 March 2008

Workshop 5

Illicit Traffic of Cultural Objects in the Mediterranean Region

directed by

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Workshop abstract

This workshop focuses on evolving multilateral efforts and national responses in the Mediterranean region to control the illicit trade in cultural heritage, particularly underwater heritage. It will identify areas of policy and law reform, and facilitate strategies to encourage the uptake and implementation of existing multilateral instruments and the creation of regional initiatives to curb the illicit traffic of cultural objects.

Ongoing high profile litigation in Europe and the United States against museum officials and art dealers reveals that this illicit trade in cultural heritage is flourishing rather than abating. Ironically, the disparity between the failure of States to sign onto and implement certain multilateral agreements, and escalating cultural loss is particularly significant in our region, because of the cultural wealth located in the Mediterranean Sea and the countries which surround it.

By drawing together established and emerging scholars working across various disciplines, this workshop would enhance the existing state-of-the-art by pursuing the following principal lines of enquiry:

- The scale of loss and the trends in the trade from the region of cultural objects excavated on land and from underwater;
- The impact of human rights and trade liberalisation discourses on the international protection of cultural heritage;

- The current regional and national initiatives to control the illicit traffic of cultural objects and interconnectedness of international, national and local interests;
- The interplay between bilateral agreements to control illicit trade and the EU regulatory and harmonization approach;
- The interface between the 1993 EC Directive on Return of Cultural Goods and the UNIDROIT Convention; and
- The effectiveness of existing, and possible, enforcement regimes.

It is intended that the workshop and the publication of its proceedings will serve as an impetus to focus debate about the current impact of illicit trafficking of cultural objects from the Mediterranean region.

Workshop description

This workshop focuses on evolving multilateral efforts and national responses in the Mediterranean region to control the illicit trade in cultural heritage, particularly underwater heritage. It will seek to identify areas of policy and law reform, and facilitate strategies to encourage the uptake and implementation of existing multilateral instruments and the creation of regional initiatives to curb the illicit traffic of cultural objects.

Ongoing high profile litigation in the Europe and North America against leading museums, their officials and art dealers reveals that the illicit excavation and trade in cultural heritage is escalating rather than abating.

Yet, regional policy initiatives like the Euromed Heritage's 'Strategy for the development of Euro-Mediterranean Cultural Heritage: Priorities from Mediterranean countries (2007-2013)'; and the European Union's proposed 'Towards a future Maritime Policy for the Union: A European Vision for the Oceans and Seas' (COM(2006)0275) are largely silent on illicit traffic and underwater heritage.

Almost four decades have passed since the signing of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property covering public international law aspects of the illicit traffic in cultural objects. It is over a decade since the signing in Rome of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects addressing its private international law implications. The Convention on the Protection of the Underwater Cultural Heritage signed in 2001 is still not in force, although there has been an appreciable increase in ratifications since 2007.

An active campaign to raise public awareness of this trade, and its wider context, in countries where the main markets are located, has been successful. Similarly, most Mediterranean countries are State parties to the 1970 UNESCO Convention and the First Optional Protocol of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict. Significantly, however, in the Mediterranean region this trend is not replicated in respect of the 1995 UNIDROIT and 2001 Underwater Heritage Conventions.

There is a marked incongruity between the failure of States to sign onto and implement these multilateral agreements and escalating cultural loss being experienced in the Mediterranean region. Several countries in this region experienced depredations during successive periods of colonial

occupation. However, such losses climbed sharply following decolonisation with expanding international markets for 'art' and antiquities from the region. In recent decades, this trend has increased due to armed conflict, civil unrest, economic crises and the introduction of new technologies, like the internet and those used to explore the seabed.

Specialist international organisations, like UNESCO and the International Council of Museums (ICOM) have recognised this problem and made concerted efforts to encourage national and institutional responses and promote adherence to establish international regimes through conferences, workshops and publications. These efforts target law reform, the role of customs and law enforcement authorities, museum practices, and public education. Likewise, several countries in the region have fostered similar initiatives.

Aims: Line of enquiry

- The workshop enhances the existing state-of-the-art by encouraging participants to pursue several principal lines of enquiry. These include analysis of:
 - The problem by outlining the scale of loss and the trends in the trade from the region of cultural objects excavated on land and from underwater;
 - The twin policy concerns which cover this field, that is, the impact of human rights and trade liberalisation discourses on the international protection of cultural heritage;
 - The current initiatives covering the Mediterranean region and its countries in place to control the illicit traffic of cultural objects and interconnectedness of international, national and local interests;
 - The interplay between bilateral agreements to control illicit trade and the EU regulatory and harmonization approach;
 - The interface between the 1993 EC Directive on Return of Cultural Goods and the UNIDROIT Convention; and
 - The effectiveness of existing, and possible, enforcement regimes.

The Problem: Scale of loss and trends in trade

In 2000, Interpol valued the illegal traffic of cultural objects at \$US4.5 billion annually. There is increasing awareness of the link between this trade and the drug and arms trade, corruption and money laundering. Recent civil and criminal litigation brought in US and European courts against officials of leading museums and art dealers has revealed that the scale of the illicit trade from the Mediterranean region is far more significant than previously thought.

This ongoing litigation also highlights the dire need for a reassessment, implementation and coordination of initiatives at the national and supranational levels to control this illegal traffic. Such effects can only be effective when there is a realistic appreciation of the current methods, scale and routes of the illegal trade in cultural objects, especially those removed from the seabed. By undertaking this analysis, the workshop participants would facilitate in the protection of the Mediterranean region's cultural heritage especially its underwater heritage; encourage the respective States to address this issue through policies and legislation as a matter of urgency; and aid in the preservation of 'non-renewable' resources of particular communities, the region and the world.

Competing interests: Human rights and international markets

Despite its recent prominence in international human rights law and international economic law, the debate over the costs and benefits of globalisation and trade liberalisation to human rights has defined the protection of cultural rights and cultural heritage since the inception of modern international law. From the late nineteenth century, Western European States and the United States insisted on the inclusion of provisions in treaties with non-European States for unfettered access to cultural 'resources'. Although the rights of peoples to preserve and develop their cultural heritage were gradually acknowledged, these rights were usually subordinated to the rights of the international community as defined by the free trade agenda. Today, a succession of international and regional human rights instruments, trade agreements, and policies have, in theory, reversed this emphasis. However, the practical reality remains largely the same. Indeed, greater understanding of the effects of trade liberalisation in the cultural sphere on human rights is more pressing than ever.

Until recently, most contemporary discussion covering the control of the illicit trafficking of cultural objects was dominated by the often-uncritical absorption of a model and terminology defined in response to U.S. ratification and implementation of the 1970 UNESCO Convention. This model centres on a dichotomy between 'cultural internationalism' and 'cultural nationalism'; however, its invocation of 'market' States and 'source' States exposes its free trade underpinnings. Proponents argue that 'art-rich', developing countries, with the support of archaeologists, through sympathetic international bodies like the United Nations and UNESCO have successfully enforced their national export controls and impeded the free flow of cultural objects. They maintain that the interests of the broader international community are best served by the unrestricted circulation of cultural objects guaranteeing their ownership by persons or institutions best able to preserve, safeguard and display them. The definition of cultural heritage as 'property' within international and national legislation points to the historical dominance of this mindset.

After 1945, this dominance was challenged with the engagement of the human rights discourse which redefined the issues and interests arising from the trade of cultural objects. Newly independent States argued that an effective international framework to facilitate their efforts to curb ongoing cultural losses is an essential element in their right to self-determination and cultural development. In recent decades, this stance has been adopted and elaborated upon at the international level by non-state groups within and across States.

Current Solutions: International/national/local

During the course of the last century, international instruments increasingly reflected the interconnectedness of efforts by the international community, States, peoples and other non-State actors to protect and preserve cultural heritage. Yet, this period also highlighted the devastation caused when the interests or acts of their various actors do not align.

The earliest international law measures to protect cultural heritage were directed at shielding pre-eminent examples of human creativity against the excesses of war for the benefit of universal knowledge in the arts and sciences. The same justification was employed by the imperial powers to encourage unfettered international transfer and exchange of cultural 'resources'. With the growing influence of newly independent States in international organisations from the 1920s onwards, the emphasis shifted to a grudging recognition of national interests in cultural heritage. States with significant archaeological sites, maintained that national measures to protect their cultural patrimony, like export controls, were largely ineffectual without the cooperation of States where the centres of

the international art trade were located. Their campaign for an international regime to aid the enforcement of national laws governing the transfer and export of cultural property was realised in a limited fashion with the 1970 UNESCO Convention.

Increasing involvement of sub-State groups in various international and regional fora has led to greater recognition that the interests of these groups and States do not necessarily correspond. They are usually reliant on States to enforce obligations under existing treaty regimes. The inherent difficulties of such reliance are starkly revealed when States deny the very existence of these groups within their borders. These limitations are being gradually recognised and addressed at the international level. For example, the preamble of the 1995 UNIDROIT Convention refers to ‘the irreparable damage’ to the ‘cultural heritage of national, tribal, indigenous or other communities’ by illicit trade in cultural objects.

Enforcement Regimes

The objectives of current international efforts to curb the illicit traffic of cultural heritage have been pursued through three discernible modes: education, information and enforcement. UNESCO, regional groupings, professional organisations and national governments strove to education the general public and specialists (like anthropologists, archaeologists, museum practitioners, dealers, and collectors) about the impact of the trade, and the need to adhere to international and domestic laws. Its aim is prevention. They have also sought to provide information about current obligations under relevant laws and codes of ethics, details of missing objects and inventories of museum and institutional collections.

However, any framework for the control of the illicit trade in cultural objects is manifestly dependent on effective and efficient enforceability of export and import controls, and restitution. This goal has proved the most elusive to date. Existing avenues for the return of illicitly removed cultural objects include diplomatic negotiations; litigation in foreign courts; mediation via the UNESCO Intergovernmental Committee on Restitution or Return or ICOM; bilateral agreements for enforcement of export controls; and arbitration. Although the UNESCO Committee was initially established to resolve claims for cultural objects removed before the 1970 UNESCO Convention, it now actively assists in the recovery of objects removed after 1970. The recovery of cultural objects through litigation in foreign courts is prohibitive for most developing countries with limited resources. The hurdles for sub-State groups are even greater, particularly because they can usually only access these fora through their respective States.

Potential Participants

This workshop starts from the premise that the control of the illicit trade in cultural objects is a multifaceted concern which intersects several areas of international and national law and relations, including human rights, trade, customs, the environment and development; and layers of government from international, regional, national, to local. Accordingly, experienced and emerging scholars across several disciplines will be encouraged to participate in the workshop. These contributions can be quantitative, case-studies, comparative and/or qualitative.

Given that these issues impact upon all countries on the Mediterranean sea, the workshop will seek to encourage participants from the entire region, particularly those from the southern Mediterranean region and those working on underwater heritage.

Directors' joint paper abstract

Legal Instruments Concerning Illicit Traffic of Cultural Objects in the Mediterranean Region

The joint paper serves as a backgrounder for the workshop by analysing the development of international law concerning the trade of cultural objects illicitly excavated from the earth or seabed. It will re-examine the key international legislation, the 1970 UNESCO Convention in the light of a raft of recent related international and regional instruments. These include the 1972 World Heritage Convention (and Operational Guidelines), 1992 European Convention on the Protection of Archaeological Heritage, 1993 EC Directive on Return of Cultural Goods, 1995 UNIDROIT Convention, Convention on Biological Diversity, 2001 Underwater Heritage Convention, 2002 UNESCO Universal Declaration on Cultural Diversity, and 2003 UNESCO International Convention on the Protection of Intangible Heritage. The 1970 UNESCO Convention is a reflection of and limited by the politicking of the decolonisation period. The instruments which followed it have encompassed a broader appreciation of the causes and effects of cultural loss on the international community, States, non-State communities and individuals.

Also, the paper taps into a recent surge in interest by Mediterranean countries in the protection and preservation of their cultural heritage through passage of new legislation regimes, tighter customs controls and enforcement through foreign litigation. While some developed and rapidly developing countries have ratified or acceded to relevant instruments it is clear only a concerted regional response will encourage remaining States to address this issue. By analysing the positives and negatives of existing international and regional schemes, the paper outlines lessons for the Mediterranean region.