
Illicit Traffic, Fighting an Uphill Battle

Manus Brinkman, ICOM

In January 1997 the Swiss police discovered four warehouses in Geneva which contained 10,000 illegally acquired and exported antiquities from sites all over Italy, valued at around 25 million pounds. The warehouses contained showrooms, seats and shelves so that the prospective customers could view the objects. Several objects were also recovered in Britain with the help of Scotland Yard. Switzerland is a well known centre of trade in antiquities, because it is situated in the middle of Europe and because it maintains a system of free trade ports that are considered as foreign customs territory. The objects stored there are not specifically under the control of the Swiss customs administration.

Who bought all the objects? We don't know: private collectors, most probably. Hopefully not museums, because this would be a grave violation of the ICOM Code of Ethics. The Code of Ethics is one of the most important results of ICOM's activities. Professionals from all over the world discussed and drew up an authoritative text that until now guards the professional ethics of the museum world. It has been accepted widely and translated in several languages. Especially the part on acquisitions to museum collections has helped very much in the struggle against illicit traffic of cultural goods. Pivotal is the phrase: "a museum should not acquire, whether by purchase, gift, bequest or exchange, any object unless the governing body and responsible officer are satisfied that the museum can acquire a valid title to the specimen or object in question and that in particular it has not been acquired in, or exported from, its country of origin and/or any intermediate country in which it may have been legally owned

in violation of that country's laws." Thanks to the ICOM Code most museums have strictly adhered to the policy of not acquiring objects of doubtful provenance.

But there has been, and still is, much discussion on the interpretation. Some argue for instance that a museum should buy a piece although it knows it is illegally acquired to prevent the object from being sold to private owners. Apart from the ill founded implication that private ownership is obviously worse than museum ownership the argument does not hold. After all, if it is known that a museum buys objects, for whatever reason, the illicit trade will be stimulated. So the bottom line is: in case of any doubt: never seek to acquire the object. I know it is difficult. I give you the example of Afghanistan. The National Museum of Kabul is empty and nobody knows where the objects are. Some say they are hidden in a secret place; others say they are looted and widely dispersed. The latter is a more logical assumption. Recently objects are offered on the market by Pakistani middlemen. SPACH, an organisation which is dedicated to re-assembling the original collection indicated that they would buy back as many objects as possible. They asked me what I thought of it. I strongly objected because when the word is out that there is an organisation eager to buy the objects, the price will rise and more objects will be looted. One makes oneself hostage to the illegal trade. But, as said, it is a difficult decision because when it is known that it is a risk to buy Afghan objects they might be ignored and neglected. In Switzerland an initiative is taken to collect Afghan objects, store and keep them for the time being and return them to Afghanistan when the conditions there will be better. A new Afghanistan Museum will form part of the Foundation Bibliotheca Afghanistanica

in Liestal. The main aim of this museum will be to collect the remains of Afghan cultural heritage in a safe place, to preserve and show them in a specific surrounding until the civil war situation in Afghanistan has stabilised. The director of the Foundation assured me that he decided never to buy objects for this museum as it would stimulate the illegal trade and raise the prices. Most items will be provided by the Afghans themselves. The director decided to adhere to the ICOM Code of Ethics, however difficult it may be.

Although the Code of Ethics has helped museums in the fight against illicit traffic, this does not mean that the battle has been won. Far from that. It really is an uphill battle. Many sites have already been demolished, many valuable objects have been looted or stolen. And not only in Afghanistan or Cambodia; all over the world. I will mention just a few of the most eye-catching examples of a list of many thousands:

- In February 1998 looters forced open a newly discovered grave of a Maya woman, the wife of the founder of the Copan dynasty in Honduras and scooped up at least 2,000 jade and shell beads and ornamental figures. In a tragic aftermath the site's security chief who had worked at Copan for 35 years committed suicide.
- Clandestine excavations in Mali led to a loss of information about a flourishing urban civilisation which existed over a thousand years ago in the Niger Delta. These excavations continue on an unprecedented scale. In Djenné and Mopti 800 archaeological sites have been listed: 60% of these have been looted. If the pillaging continues on the same scale all the sites in the Niger valley will have been destroyed by the year 2005. The pieces are often sold to dealers in Niger where the market is

free and exported to the richer countries. The centre of the trade is in Lomé /Togo where many art dealers exist: their trading is not illegal because the objects are not from Togo itself. The dealers provide the buyers with all the necessary legal documents. After that the objects can be sold on the international market and the buyers can always prove that they bought the object in good faith. All the papers are there.

- In the Nok region of Nigeria all the statues have already been smuggled out and sold abroad.
- At the site of Angkor Wat in Cambodia, thieves have been cutting reliefs at the pace of one major monument per week. Luckily there is more protection now, but the theft has not been stopped yet. One of the boldest and most destructive temple robberies ever carried out in Cambodia might have gone undiscovered for months or even years if Claude Jacques had not wandered into an antique shop in Thailand in December 1998. He is a French expert on Cambodian antiquities and found himself face to face with a familiar stone inscription from the 12th century temple of Banteay Chmar. Few other people had ever seen the stone or, in recent years, the temple itself. Jacques knew the inscription perfectly well because he worked on it in 1965 and 1991. The four foot high stone, with its inscribed account of ancient battles, was on sale for \$8,000. Jacques called the police who impounded it. But his discoveries were only the beginning. The stone inscription turned out to be just a tiny part of the loot from an extended raid on the temple last November and December that officials say was organised by Cambodian military officers using power tools and heavy equipment. It may be only the beginning: as the Khmer Rouge insurgency has collapsed in the last two years, many hidden sites have suddenly become open to looters.
- In 1995, 6,419 thefts of works of art were committed in the Czech Republic, 3,436 in Russia and 1,828 in Poland.

To fight and prevent illicit traffic there are five main conditions :

- The necessity of a **definition** of cultural property in a country. When there is no definition, it is difficult for a state to recover lost or stolen objects. A definition of cultural property is of course difficult: in general it should cover the artefacts that are an expression of a specific culture and which stand out because there are not many others like them or because they are uniquely characteristic of that culture. Examples include: rare collections of fauna and flora; archaeological excavations, antiquities. A definition based on these will, however, be so wide that it is only useful if national governments establish a **list** of protected cultural property. For African and Pacific States that will often be native crafts and objects used for ritual purposes, for Mediterranean States, antiquities and for Western European States, fine art.
- The establishment of an **inventory system**. I need not to explain to you, members of CIDOC, the necessity of a good inventory. In all the programmes of risk preparedness, registration should always be a high priority. On an international level it is however important that all these descriptions and lists become more or less standardised. Standardisation in our field is a particularly hard struggle, in all aspects. The moment some parties agree to standardise something there are always others who oppose it, telling everybody that this standard is the worst that has ever been chosen and that their own system is by far better and should be the real standard. Sometimes it comes down to a sheer power struggle in which not always the best, but the cheapest or the best "marketed" system becomes the standard. There have been some initiatives with respect to standardisation. CIDOC published the International Guidelines for Museum Object Information in 1995. ICOM published a Handbook of Standards for African Collections

in 1996, which is based on the CIDOC Guidelines. CIDOC and six African museums participated in the production of this Handbook, which can be consulted on the ICOM Internet site. Interpol has developed standardised forms for the documentation of stolen objects to help police officers describe stolen art. The Getty Foundation has introduced its Object Identification (object ID) card system. CIDOC has always supported the Object ID, not as a starting point of documentation but as a tool for helping the fight against illicit traffic. The Object ID should be generated from the museum's own much more developed documentation. Just recently however the Getty withdrew its financial support for the Object ID and its future is far from assured. Lists of stolen objects are nowadays available, but they vary: In some countries there are national databases of stolen objects like in the UK. The International Foundation for Art Research in New York publishes information on reported stolen art; its database is now part of the Art Loss Register. Based in London, this is a private database mainly serving insurance companies and private collectors. The Illicit Antiquities Research Centre of the McDonald Institute for Archaeological Research also gives a lot of information on missing and stolen objects. This Institute has just been commissioned by ICOM UK in cooperation with the UK-Museums Association to produce a research report on illicit traffic of cultural objects in the United Kingdom, an excellent initiative of our national committee here. ICOM produced three volumes of 100 Missing Objects thanks to which several objects have been found and even returned to their countries of origin.

- **Control and protection** of museums, excavations etc. Although nowadays more attention is being paid to security for a number of reasons, in most museums it is still not very high on the agenda. Yes, there are video systems, but the man who watches them is looking at a

soccer match or taking lunch. I have seen in a museum in Brno in the Czech Republic a state-of-the-art video system with every corner checked. The control room consisted of 4 big screens with 4 images each that changed every 10 seconds. I was there for three days, but I seldom saw someone watching the screens and because the control room was dark, extremely small and hot: who is going to sit there for 8 hours or more? Yes, there are alarm systems, but when they go off people wonder what to do. Security is most of the time more a question of risk-prevention management and of awareness in general than technological means. ICOM also has an International Committee for Museum Security that gives advice and recommendations.

- Maybe the most important is the **raising of public awareness** of the importance of cultural heritage and the need for its protection. Education is in the long run maybe as important as security on the site.
- **Legislation.** This differs in many countries. In France for instance every art dealer is required to maintain a register in which a daily record of every transaction is kept, with details of the person who sold each object to the dealer. The dealer also records a description of the goods purchased and the price paid. That is a good start. Covering the national legislation are international conventions of which the most important are: + the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (the Hague Convention). + the 1970 UNESCO Convention on illicit Traffic and the UNIDROIT-Convention of 1998. In the UNESCO-Convention it is recognised that the illicit trade of cultural property is one of the main causes of impoverishment of the cultural heritage of a country and that it therefore should be prevented. It calls for legislation, registers and education, but one of the most important things is that an object that has been illicitly removed from

its place of origin should be given back. The UNESCO Convention was criticised because it did not resolve some important issues such as the protection of the bona fide buyer. UNESCO therefore asked the International Institute for the Unification of Private Law (UNIDROIT) in Rome, an intergovernmental organisation, to prepare a complementary convention, which was presented in 1995: the UNIDROIT Convention. One of the biggest problems with the UNESCO Convention was the question of good faith of a buyer. Somebody who purchased an object in good faith, not knowing that it was stolen could almost never be sued. The person could always say that he or she did not know that the object was stolen. UNIDROIT changes this by placing the burden of proof on the holder of the allegedly stolen object. It states that the possessor of a stolen object must return it regardless of personal involvement or knowledge of the original theft. The UNIDROIT convention further denies any compensation for the return of the object unless "the possessor neither knew nor ought reasonably to have known the object was stolen". This enrages the dealers and auction houses because it brings them extra work: they should investigate before buying. But shouldn't any supermarket control the origin of its foods, or a pharmacist his ingredients, to mention just a few at random. UNIDROIT can also be read from the other side, as some more radical countries of origin have interpreted the clause: "if the possessor bought an object in good faith he should be reasonably compensated". "Why should we pay for something that clearly belongs to us?", they say. UNIDROIT has its enemies to the right and to the left, but isn't that the case with any international treaty; isn't it always some kind of compromise?

A very interesting case is that of the New York art dealer Robert Haber, who in 1991 bought a gold phial on behalf of the collector Michael Steinhardt. In November 1997 it was

confiscated by the police because the entry documents named Switzerland rather than Italy as the country of origin and because the export from Italy was in contravention of Italy's laws. In this case the claim of "good faith" was set aside in favour of the original owner, the Italian government. Steinhardt lodged an appeal against the decision and is supported by the American Association of Museums and the Association of Art Museum Directors, who argue that the confiscation could unsettle presently established museum collections and could constitute a threat to future acquisitions. I was at the meeting of the AAM when the decision was taken and I remember it provoked much controversy, especially among the board of AAM-ICOM. But this is what UNIDROIT will be: the burden of proof that the object was bought in good faith is on the holder. In this case the US acts as if UNIDROIT was already functioning. However, we must keep one thing in mind - that all the rules and regulations of UNIDROIT come into force the moment a state has signed and ratified it. Not before. All the arguments used with respect to unsettling existing collections are misleading. Under UNIDROIT it is not possible to claim an object that was in the collection previous to the ratification of UNIDROIT. When UNIDROIT is ratified however, the state accepts that from then on, stolen objects can be claimed even 75 years after they have been stolen. So if the UK ratifies UNIDROIT in 1999, and an object is stolen in that year, it can be claimed until 2067. But an object that was stolen in 1929 can not be claimed.

The US has now claimed an object that was illegally exported some seven years ago, hence the excitement. To make matters more complicated, the US does not intend to ratify UNIDROIT, because it thinks its own laws are stricter and better. If one looks at the ICOM Code of Ethics, it is clearly indicated that a stolen object should always be given back to the owner. But the Code is about ethics and not about

legal matters. Besides, it rules only on a voluntary basis. The UNESCO Convention is widely accepted and ratified by 89 countries among which the USA, France, Australia and Canada. The UNIDROIT convention has only been ratified by Lithuania, Paraguay, Peru, Hungary and Romania and will soon be followed by Finland. Finland is important as it is an EU-country and by ratifying UNIDROIT may set the pace. There are not many EU countries which back UNESCO and UNIDROIT conventions.

- Sufficient manpower and resources to enforce the legislation, including adequate sanctions and penalties. One can wonder if there is enough manpower and resources to enforce the legislation. As far as I understand, in some police departments there are sufficient resources while in others there are not. The police are much more interested in detecting drugs traffickers and illegal immigrants and in serious crime. One can argue about how serious theft of art is in fact; in my opinion it is very serious. Maybe not so much when one specific painting is stolen from one specific museum, but, seen from a global perspective where whole societies are robbed of their national historic identity the trade is rather serious. Every cultural object is connected with a historical and social context. Especially in cultures that do not possess a rich written history the removal of an object, for instance from an archaeological site that has not yet been studied, obstructs the understanding of that culture's history. But in most cases the thieves can get away with it rather easily. ICOM has organised some training workshops for police and customs officers in Africa for instance, so that they will be able to obtain some kind of basic knowledge about protected objects and the seriousness of illicit traffic. ICOM also works closely with Interpol, but up till now Interpol has only had very limited resources for the retrieval of cultural goods. It is no wonder that it reports that only

12% of stolen art is ever recovered, which means that 88% is not. The situation looks gloomy. I have already given you some examples and I can continue to do so. Some more:

- Churches are subject to many thefts because they are not always well protected. Also in Western Europe many objects have been stolen from churches. Sometimes thieves replace the originals with replicas, so that a theft is not noticed until much later.
- Sometimes sculptures or triptychs are neatly cut in two or more parts, because the sum of the parts brings in more money than the whole piece.
- In Tunisia last year a former minister was arrested who had his villa decorated with hundreds of archaeological finds. On the bottom of his pool he had a Roman mosaic installed, stolen from a famous archaeological site in Tunisia.
- Turkey just published a list of objects stolen in 1996 and 1997. In 1996, 257 objects were stolen, in 1997, 796, of which 301 from museums and only 7 from archaeological sites, which means in my opinion that the sites are well protected, while the museums are not. More disturbing is the fact that only one item was discovered in one solved case.
- During war times museums have been looted in Kuwait, Afghanistan, Congo and the former Yugoslavia.
- In France the Japanese company NSKK bought eight castles between 1984 and 1995 among which Sully and Louvenciennes. The buyer was a real estate company Nippon Sangyoo Kabushiki Kaisha (NSKK), owned by a Japanese development company of which the president had been jailed in Japan for tax-fraud. The director of NSKK happened to be his son-in-law. NSKK exported and sold many of the objects from the castles, like furniture and tapestries (for a total of 2.5 million Pounds and refurbished the castles to become luxury hotels. Charges were brought against NSKK and it took four years before the whole structure, including art dealers and

shadow-companies on the Antilles, was unravelled. One of the elements in the whole undertaking was the laundering of drugs-money.

A subject that is maybe not exactly the same as the examples I have just given you, but which is very much related, is the World War II Jewish Art. When a whole people is forced to hand over its property and to undergo all sorts of cruelty, it is not just illicit traffic. It is much more than that.

There has been a flowering of litigation concerning those works of art which were stolen or confiscated by the Nazi's, or by other nations during the Second World War. You may remember the dispute over two paintings of Egon Schiele, lent to the Museum of Modern Art in New York. These two paintings were claimed to have been stolen by Nazi's from Jews in pre-war Austria and were ordered to stay in the US: It was argued that museums should check the legitimate provenance of their objects, either on loan or when acquired for the permanent collection. To me this seems perfectly in line with the ICOM Code of Ethics. ICOM has issued the following statement: "in all activities, museum employees must act with integrity and in accordance with the most stringent ethical principles as well as the highest standards of objectivity". Concerning the confiscation of Jewish works of art, ICOM recommends museums to actively investigate and identify all acquisitions of a museum, especially those acquired during or just after the Second World War, and to make such information accessible.

In June 1998 the Association of Art Museum Directors (AAMD), an association of which the biggest art museums of the US are members, recommended that museums review Nazi-era provenance for collections and future acquisitions.

In March 1999 Neil MacGregor, the director of the National Gallery in London revealed the identity of those of its paintings over which there are doubts as to provenance. It was a list

of 120 works of art including Monet and Pissarro, of which it was said that they had been in Europe in unknown collections during the 1930s. It is to be hoped that other museums follow this example. In the US and in the Netherlands, as in some other countries, museums are investigating the provenance of their collections. Museums are also more vigilant with respect to loans. Remember the uproar caused by the discovery of *Water Lilies* by Monet, put on show by the Boston Museum of fine Arts and loaned by the Musées Nationaux de France, which appeared to be the property of French Jewish Art dealer Paul Rosenberg who abandoned Paris and his painting collection in 1940.

World War II has many more implications than Jewish Art. It is also art from German possession that attracts attention and causes problems. There is for instance the case of Nadevan Aleskerova from Azerbeidjan who has been charged and convicted in the US court with plotting to sell a dozen drawings from the collection of the Bremen Kunstverein, which were part of a group of more than a thousand sheets plundered by Russian troops in the Second World War. The defendant was thus accused of dealing in war loot. The drawings surfaced in an exhibition in the National Museum in Baku in 1993, were stolen from the same museum and re-appeared in 1997 in Japan, where they were offered for sale by a Japanese wrestler with Russian connections. He was arrested and the drawings seized after a frame-up in New York. The wrestler agreed to cooperate in drawing Aleskerova to New York too where she was arrested. This case reminds us to the fact that many Second World War cases are still unsolved and that the situation in Russian museums is still far from transparent.

The consequences of World War II are still haunting us. Patrick Boylan will read you a paper on the protection of cultural heritage in situations of war, of which the recent conflict in Kosovo is yet another example.

I have tried to convince you that illicit trade in cultural goods is growing, I have told you a rather depressing story. No matter what we do we have not won many battles, let alone the fight. So we have to continue, keep on fighting.

