Illicit trafficking of artistic heritage

“The theft, pillage and illicit trade in artefacts are the outright negation of peoples. They reduce history to the level of merchandise. They are seriously detrimental, and often irreversibly so, to the collective memory, social cohesion and mutual enrichment”

Irina Bokova, Director General of UNESCO
40th anniversary of the 1970 Convention

Introduction

“Heritage is our legacy from the past, what we live with today, and what we pass on to future generations”: in July 2013 an Extraordinary Meeting of the States Parties of the 1970 UNESCO Convention took place in Paris, in order to develop some useful guidelines to implement the effectiveness of the UNESCO treaty and to ensure a legitimate trade of cultural goods. States Parties also elected eighteen members for the newly created Subsidiary Committee, whose main task is to create Operational Guidelines for the implementation of this treaty.

UNESCO (United Nations Educational, Scientific and Cultural Organization) aims to encourage the identification, protection and preservation of cultural and natural heritage around the world, which is considered to be of outstanding value to humanity. This general purpose is embodied in an international treaty called Convention concerning the Protection of the World Cultural and Natural Heritage, adopted in 1972.

UNESCO has developed specific instruments of international law in order to protect cultural heritage. The Hague Convention for the Protection of Cultural Properties in the Event of Armed Conflict of 1954 and the World Heritage Convention of 1972 are also worthy to mention.

However, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is by far the most broadly ratified international Convention on the issue of
illicit trafficking in cultural property\(^1\). It is rightly considered as a fundamental step towards international cooperation in combating illicit trafficking of cultural heritage. By adopting this text of international law, States parties undertake to take measures to prevent the illegal trafficking of cultural and artistic goods. Moreover, the UNESCO Convention suggests the creation of inventories and export certificates, calling for a carefully monitored trade and the establishment of fair sanctions to punish illicit trafficking. What is more, in accordance with the Convention, every four years members States shall submit a report to UNESCO to illustrate the laws they have adopted or the actions they have taken following the guidelines of the Convention. Finally, the Convention underlines the importance of educational campaigns and international cooperation between the States\(^2\).

This paper deals with the issue of illicit trafficking of cultural heritage and aims at giving a general overview about this phenomenon that is increasing worldwide. In its first part, the paper illustrates the background of the illicit trafficking of cultural property, while its second part focuses on the instruments that UNESCO has adopted in order to fight against illegal trade of cultural and artistic goods. In the third part of the paper some recent solutions are described.

\(^1\) Cultural property (or cultural heritage): for the purposes of the fight against illicit trafficking, the definition can be found in the 1970 UNESCO Convention and in the 1995 UNIDROIT Convention, which both define it as “all the objects, on religious or secular grounds, that are important for archaeology, prehistory, history, literature, art or science”.

\(^2\) 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html), article 2: “The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom”. Article 7: “The States Parties to this Convention undertake:
(a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;
(b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;
(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party”. 

1. Background information

Trade in cultural and artistic property is a growing international business. In general, the circulation of cultural goods facilitates dialogue among different cultures, playing a fundamental role in the field of international diplomacy. **However, in recent years illicit trade of artistic and cultural objects has increased dramatically worldwide**, being one of the main threats for cultural and artistic property together with armed conflicts. Therefore, UNESCO calls all member States for convergent efforts, both at European and international levels, in order to safeguard works of art, art objects, elements of cultural heritage or any object of historical, artistic or archaeological interest stolen by criminal groups whose only aim is to profit financially.

Even if there is a lack of affordable statistics and realistic data to estimate the real scope of this phenomenon, illicit trafficking of artistic heritage is beyond doubt one of the biggest criminal trades in the world. What is more, it has a considerable impact on economy: loss and destruction of precious cultural objects affect directly the wealth of the States.

The **1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property** represents an important step towards a more effective protection of the artistic and cultural heritage. Besides the very combat of illicit trafficking of cultural heritage, this text of international law priorities prevention as a way to fight against this crime. Hence, besides combating thefts and illicit export and import of cultural goods, States should reflect on the different means of prevention of all forms of illicit trade: for instance, reliable and exact information concerning the provenance and destination of cultural goods, as well as the development of precise procedures of international cooperation, are fundamental in order to control effectively their circulation. Moreover, as suggested by the 1970 Convention, States should raise awareness among the importance of a law abiding conduct in the international market.

2. Instruments of international law

Illicit trafficking of cultural heritage is a crime that affects all countries in the world. As a matter of fact, most of States already have their own laws to protect their cultural heritage. However, since each State is specific in terms of history and national legislation, it is important to combine such legislation with international legal instruments.

As far as world's cultural heritage is concerned, international Conventions are elaborated within the UNESCO General Conference and then they go through the adoption and ratification of the States. **UNESCO international Conventions aim to provide uniform, clear and coherent guidelines and rules for the States.**

At the beginning of 1970s, when thefts and illicit trade of cultural and artistic goods began to increase dramatically all over the world, UNESCO considered urgent to protect the cultural property. For this reason, it decided to recall the importance of international co-operation to fight effectively against this phenomenon, through the adoption of the 1970 UNESCO Convention.

According to the 1970 UNESCO Convention, States are strongly encouraged to:

- Join or ratify them;
• Strengthen or revise their own legislation, so as to meet the requirements set by the Conventions;
• Respect the moral obligations described in the preliminary remarks of the Convention;
• Take into consideration the concrete measures to implement the protection of world’s cultural heritage from illicit trade, also described in the Convention;

It could be argued that the 1970 UNESCO Convention did not always succeed in returning stolen or illegally exported property to the State of origin: in fact, the Convention sometimes lacks in effectiveness, since it is specifically designed to be used in the field of diplomacy and it does not always have to power to guarantee the success of a request for return.

In order to meet the above structural difficulties, in 1995 UNESCO decided to collaborate with UNIDROIT (the International Institute for the Unification of Private Law) to create a new independent international instrument. As a result, the Convention on Stolen or Illegally Exported Cultural Objects was introduced in 1995 as a complementary instrument of the UNESCO Convention. Known as the UNIDROIT Convention, this text of international law establishes “common, minimal legal rules for the restitution and return of cultural objects between Contracting States, with the objective of improving the preservation and protection of the cultural heritage in the interest of all”.

Moreover, UNESCO General Conference launched in 1978 the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation, in order to help States that call for the restitution of important cultural objects which were stolen or got lost before the entry into force of the Conventions mentioned above. This committee meets every two years and it aims to facilitate bilateral negotiations. It also organises campaigns of public information on illicit trafficking.

Finally, by adhering to the UNESCO International Code of Ethics for Dealers in Cultural Property, States are given the possibility to take a clear position against illicit trafficking. The UNESCO Code of Ethics is not a legal text: this means that is only morally binding for States and that no sanctions can be imposed in case of non-compliance. Nevertheless, UNESCO encourages its Member States to promote it.

It should be mentioned that UNESCO works in close partnership with the international community, in order to fight against illegal trafficking of cultural property. Moreover, it regularly collaborates with ICOM (International Council of Museums) for all matters relating to museums, including the development of inventories, the establishment of ethical guidelines (for example The Code of Ethics for Museums) and the publication of the famous Red Lists. INTERPOL is also working to raise awareness of the problem among international organizations and the general public, aiming to facilitate the global exchange of information between national police forces on crimes involving works of art. It also provides analysis to identify emerging trends in art thefts such as the proliferation of fake works and the use of the Internet for selling works of dubious and unreliable provenance.

3 ICOM has also promoted the International Observatory on Illicit Traffic in Cultural Goods.
3. Possible solutions

Despite well-established international agreements, actions to combat trafficking in cultural property seem not to have matched the extent of this crime around the world. Not only this illicit trade fuels transnational organized crime, but it also destroys the historical heritage of the States and the possibility for future generations to gather knowledge about their cultural identities.

However, in 2003, UNESCO created a Database of National Cultural Heritage Laws, which represents an easily accessible source of information for Governments, organizations, lawyers, buyers and sellers, since it illustrates the origin of an object, as well as relevant national laws.

What is more, both the 1970 UNESCO Convention and the 1995 UNIDROIT Convention refer to the use of export certificates for cultural objects. So, in 2005, UNESCO and the World Customs Organization (WCO) developed a useful measure to fight against illicit trafficking in cultural and artistic property: this system is called the “Model Export Certificate” and it helps to identify and trace all cultural and artistic objects. If adopted worldwide, it could operate as an international standard and facilitate the difficult work of control of police and authorities. For this reason, UNESCO strongly recommends adopting it.

Here are some further ideas for your resolutions:

- Create or keep up to date inventories of categories of national cultural heritage and decide exactly which categories of cultural objects can be trade (if yes, you should wonder if a preliminary authorization by national authorities, such as the Ministry of Culture, is required, or whether such import or export is permanent or just temporary);

- Focus on the monitoring of sales of cultural and artistic objects on the Internet;

- Provide specialized training to national police and authorities, trying to establish a working cooperation with police at international level (ex. Interpol);

- Promote the knowledge of the UNESCO Cultural Heritage Laws Database, as well as of the Stolen Cultural Property Databases;

- Promote the Model Export Certificate;

- Undertake regular educational campaigns to stimulate and develop the respect for cultural heritage, trying to raise awareness of laws and issues relating to illicit trafficking.
Conclusion

All considered, the main goals of the UNESCO committee can be sum up as follows: delegates should focus on the very combat of illicit trafficking of cultural property. However, particular attention should be paid to the question of “prevention” of illicit trade. For this reason, delegates should consider and discuss all the existing problems (for example, the difficult access to reliable data concerning the traceability of cultural goods). All suitable solutions to overcome the highlighted problems will be discussed and “put into effect” in a final written resolution. Different ideas can be shared and merged to create more powerful resolutions. Delegates are strongly recommended to show their motivation by making their knowledge available during all committee sessions.

Useful websites

http://en.unesco.org/

http://en.unesco.org/themes/heritage-risk

Strengths and Weaknesses of the 1970 Convention: An Evaluation 40 years after its adoption

States Parties of the 1970 UNESCO Convention, listed in chronological order:

The Red Lists classify the endangered categories of archaeological objects or works of art in the most vulnerable areas of the world, in order to prevent them being sold or illegally exported:
http://icom.museum/programmes/fighting-illicit-traffic/red-list/

Basic Actions concerning Cultural Objects being offered for sale over the Internet:

Emergency actions (for instance, UNESCO has alerted the international community in an effort to protect cultural heritage in Syria and Iraq throughout the conflict):
