

# The Fight Against Illicit Traffic in Cultural Property: the importance of case studies

Arts >  
Illicit traffic

The internationalisation of the art market and the growth of tourism are fuelling the the illicit traffic of antiquities and cultural heritage around the world. At the same time, there is growing recognition of the importance of cultural property in its place of origin. Governments and professionals need to gather and exchange information on cases, whether successfully prosecuted or not – the study of precedents is crucial to the recovery of treasures and to the tracking and deterring of criminals.

By Lyndel V. Prott

## The poor and the prosperous

Ramamoorthi, a landless and illiterate farm labourer, dug up an idol by accident and was found guilty of theft when he sold it for £16; Meivel, the dealer's runner, impressed the London judge as a rogue; Chandran was on bail for attempted murder and convicted of rioting with a deadly weapon; Hussain was found in possession of another six stolen idols; Nadar also had a history of dealings with stolen idols, while the dealer in London supplied a false provenance which turned out to be from his mother in Pakistan. These were among the details revealed in the English High Court in the claim by the Union of India for the return of the idol from the Bumper Development Corporation.

Such cases often reveal the workings of the illicit trade in cultural property and are of great use to those fighting this pernicious problem. The New Zealand government incurred £300,000 in costs in the Ortiz case and the Indian government £100,000, ultimately recovered, in the Bumper Case. The Bumper Case detailed some of the methods used for identification – analysis of artistic style and technique, the exact composition of the bronze, exact measurements, even the pattern of termite tracks over the surface. A spade-mark on the Maori carved wooden panels in the Ortiz case, photographed before their illicit export from New Zealand, found a precise match on the piece located in London. Both these cases alerted collectors to the criminal activity providing the international market with a seemingly endless supply of works of art and antiquities, and warned dealers that buying Maori antiquities or Hindu idols was a risky business.

Yet, guardians of cultural heritage often remain unaware of case details from neighbouring countries, though knowledge here would allow for better decisions regarding the remedy to pursue,



Detail of one of the carved wooden panels illegally exported and litigated by New Zealand in London without success in the Ortiz case



Bell from the Temple of Heaven, Beijing, taken during a British raid and restored by an officer of the Indian Army

its cost, and the likelihood of success. Case studies need not be restricted to litigation: negotiated settlements between individuals or institutions are as important, as are returns effected through cooperation between police, customs and other relevant authorities, government to government negotiations, and the work of the relevant UNESCO Committee.

## Persuading

Negotiated settlements have included the country of origin agreeing to drop litigation in exchange for return. Possessors' claims to compensation, declarations that no criminal act has occurred, or the 'good faith' (or other exculpatory language) of the holder have been less successful. Nonetheless, rights to exhibit have sometimes been granted to institutions, from periods of two weeks to ten years. In some situations, longer periods are agreed, such as the renewable twenty-five years agreed by Nigeria for the Nok sculptures at the Louvre, to subsequently be housed in the Musée du Quai Branly in Paris (Shyllon 2003).

Occasionally, a 'gift' of an object of comparable cultural value is handed over, sometimes by a third party, in recognition of the return of an illegally trafficked piece. United States tax law grants concessions to those who donate cultural property to charitable organizations – which, after time, return it to the country of origin.

## Policing...

Some cases have been resolved by police or customs officers in the country of location seizing an object and threatening legal proceedings. To avoid costs and bad publicity, the object may be surrendered to the authorities. This has happened in the case of a Khmer stone head from Cambodia found in San Francisco and two Khmer artefacts found in Rotterdam.

Recent cases in several countries show that source countries must be able to provide timely evidence of the object's

origin – photographic evidence, museum inventories, archaeological excavation reports, or evidence of recent illegal excavations. Experts have also played key roles in identifying objects and alerting governments. Lack of expert evidence in court can lead to difficulties: Nigeria was unable to provide evidence in the Heller case, resulting in its discontinuance by Canada. Canada also had to delay its action against the holder of antique textiles from Bolivia due to difficulties in obtaining Bolivian expert evidence (Walden 1995).

## ... and diplomacy

Government-to-government negotiations often require some means of persuasion. Economic issues may be important. When the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 was being negotiated, some states with major art markets where illegally exported or stolen cultural property were likely to end up dragged their heels, as their art dealers argued a convention would restrict the market and interfere with licit trade.

Where bilateral negotiations have failed, the UNESCO Intergovernmental Committee for the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation has jurisdiction to deal with requests for return of cultural property between UNESCO member states. The Committee has been underused; it operates only to mediate, and cannot decide cases. Fortunately, the media are interested in its work, and continued obduracy can have consequences for foreign relations. Of the six cases which have been brought to the Committee since its inception in 1978, two have been settled, one has been resolved by litigation, one remains in litigation in a national court and two are outstanding: the Parthenon marbles (Greece v. the United Kingdom) and the Boguskoy Sphinx (Turkey v. Germany).

The number of returns in the Asian region has increased in recent years, including returns from Hong Kong to China; Japan to China; Taiwan to China; and Thailand to Cambodia. The need for cooperation is particularly evident for underwater cultural heritage. Chinese trading junks are found throughout the area – in Vietnam, Korea, off the coast of Brunei, and in Indonesia. Many of them have been 'salvaged' by treasure hunters without regard for the interests of the coastal state, the state where the ship was built (which may be identifiable only through proper archaeological excavation), and the states whose culture is represented in the cargo, the fittings or the structure of the ship.

## Crooks and culture

Moral embarrassment caused by the revelation of criminal transactions also has

Marble panel, part of a mural stolen from the tenth century tomb of Wang Chuzhi, located in Xiyanchuan, Qiyang County, Hebei Province, People's Republic of China and returned to China by the US Customs Service after litigation had been commenced and negotiations with the possessor had failed.



an impact. Connections with the drug trade were revealed when stolen Greek antiquities were found by Australian customs officers packed in cocaine, showing involvement of international criminal gangs. Prosecutions highlighting the link between criminality and smuggling were crucial to the establishment of first a parliamentary, and then a governmental, committee in the United Kingdom, convincing both the government and the wider public that the reputation of the London market was endangered. A seemingly respectable conservator, Tokeley-Parry, in London, and dealer, Schultz, in New York, were convicted of criminal offences. A television exposé also showed one of the major London auction houses subverting Italian law (Watson 1997).

Some developing states have previously been unwilling to risk criticism of their heritage management by revealing the extent of looting and theft. These ideas should be dismissed. No country in the world, however wealthy and however well-organized their museum and archaeological services, has been able to completely prevent these crimes. France, Ireland, the Netherlands, the United Kingdom, and the United States, all with state-of-the-art security measures, have suffered major losses in the last two decades. Circulating as much information as possible by way of sharing case studies will enable better international cooperation in preventing them.

## Where now?

At the seminar *Illicit Traffic in Cultural Property in Southeast Asia*, held in Bangkok in March 2004, I was able to provide about twenty detailed case studies, but have long been concerned about how few incidents in the Southeast Asian region have been published in sufficient detail to provide truly helpful information. I had nothing at all for

Laos, Malaysia, Myanmar, the Philippines, Singapore or Vietnam, while the only Indonesian cases concerned shipwrecks, despite recent concern for land sites (Napack 2003). The study of precedents can be crucial in helping states learn how to best protect their treasures, detect crime, trace criminals and understand how they operate. Enlisting the help of foreign governments and achieving returns will deter other traffickers. It was therefore gratifying that case studies were shared by Asian participants at this meeting and that we were able to work together preparing others for mutual benefit. <

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Lyndel V. Prott, former Director of the Cultural Heritage Division of UNESCO, is now an Adjunct Professor at the Australian National University, Canberra. She continues to research and lecture on cultural heritage law.  
lvprott@bigpond.com

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