

Treasure seekers

Julie Masal argues for more transparency and better self-regulation to tackle the illicit trade in antiquities.

Many countries rich in archaeological resources have laws vesting ownership of all unexcavated artefacts in the state, and forbidding their unauthorised export. Due to the high demand by collectors for ancient art objects, and the exorbitant profits to be made by those who can supply them, many 'source' countries have suffered extensive looting and consequent loss of their cultural heritage. The annual illegal trade has been valued at between US \$150 million and \$2 billion, and attempts to regulate the market at both the international and domestic level have met with limited success.

The 1970 UNESCO Convention and complementary 1995 Unidroit Convention attempted to create a legal framework for prohibiting the export of stolen cultural property and providing restitution measures. But the provisions apply only to ratifying states, and the nature and extent of any legal remedy depends ultimately on the details of each state's implementing legislation. Where the law falls short, self-regulation by museums, auction houses, and dealers should theoretically fill the gaps. The International Council of Museums' Code of Professional Ethics sets out standards of conduct, including the duty to ascertain the origin and legal status of an object prior to acquisition. Unfortunately, adherence to such codes is voluntary and transparency is still lacking in many transactions.

Those in favour of unregulated trade often point out that source countries are not doing enough within their own borders to prevent smuggling, and, indeed, the UNESCO Convention requires state parties to take steps to protect their resources. For example, China has some of the world's most extensive archaeological resources, and as a result

of recent market reforms, there has been a sharp increase in looting. Government regulation has been criticised as too decentralised, leading to conflicting and unpredictable laws. Furthering the confusion is China's system of determining an object's level of protection based on its subjective value. In light of the huge US market for Chinese antiquities and China's recent efforts to improve its regulatory scheme and prosecute looters, its request to the US for import restrictions under the UNESCO Convention may be granted.

When seeking restitution, the party making the claim often bears the burden of proof to show that an object was stolen, a particularly difficult task when it comes to antiquities. Objects whose existence was previously unknown do not show up in databases of stolen art, and their ownership history can be more easily forged. Notions of fairness and common sense are not always taken into consideration. After decades of disagreement over ownership rights to the Euphronios Krater, the Metropolitan Museum of Art has finally agreed to return the unique 5th century BCE (Before the Common Era) bowl to Italy as part of a loan-exchange programme. Throughout the negotiations, the museum insisted that Italian authorities must provide incontrovertible proof that the Krater had been illegally excavated and exported – although there had been years of widespread suspicion over its origins, even among museum staff themselves. Had Italian authorities not managed to acquire photographs and documentation linking the Krater to a smuggling operation, the outcome may have been different. Regardless, the loan-exchange concept could be a viable solution to disputes over poorly documented objects.

War and occupation, of course, have also led to widespread looting of artefacts destined for the international market. Although there have been attempts to regulate military destruction of cultural property, primarily through the Hague Conventions, civilian looting is another story. When the Iraq National Museum was looted by Iraqi civilians, many blamed the US for failing to provide protection and for its continuing failure to control the widespread pillaging of archaeological sites. Though blame may be justifiable on moral grounds, under generally accepted interpretations of both codified and customary international law, an invading power is only obligated to prevent its own violations against cultural property, and those of state actors, not those of private individuals. Even the more recent 2nd Protocol to the 1954 Hague Convention does not explicitly require prevention of looting by individuals.

Given that most looters are impoverished locals, and the 'middlemen' selling to dealers often receive enormous profits, future efforts to halt the illicit trade in antiquities should focus on the reduction of willing buyers. For example, in the US, museums and their donors often get generous tax breaks. To increase buyer diligence and discourage illegal sales, it has been suggested that full disclosure of purchase transactions be required in order to receive tax benefits. Another solution is to impose criminal liability on anyone who knowingly acquires stolen cultural property, as the UK has done. Perhaps the best suggestion is for museums to impose a moratorium on collecting, focusing instead on establishing loan and exchange programmes, which could contribute to educational and conservation efforts in source countries. Such actions would have the effect of discouraging the most lucrative section of the market, and may afford source countries time to concentrate their efforts on domestic solutions.

The desire to acquire and possess the art and artefacts of other cultures has been around for centuries, and although such treasures have been obtained by many means, the spotlight on the illicit trade in antiquities has never been brighter. Given the extent of the problem, and the ephemeral nature of public attention, the time for change is ripe. ■



Julie Masal

(MA International History 1993) is an attorney in Washington, DC. She specialises in providing contract research and writing services.

For more information, see SAFE at www.savingantiquities.org. For more on regulation generally, see the Centre for Analysis of Risk and Regulation (CARR) at www.lse.ac.uk/CARR



Visitors view the Euphronios Krater at the Metropolitan Museum of Art in New York, prior to its return to Italy along with 20 other looted artifacts