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Anaïs Mattez*

amattez@connect.hku.hk
orcid.org/0000-0002-0484-7327
Faculty of Law
The University of Hong Kong
Pokfulam Road, Hong Kong

Ethnonationalism and Cultural Heritage Law in Myanmar

Abstract: This article highlights the legal and technical challenges of contemporary heritage conservation in the context of a weak democracy, ethnic unrest, and military rule. Burma was a military dictatorship from 1962 to 2010, followed by the operation of the civil government between 2011 and 2021, which was then overthrown by the military in 2021. These ten years of civil government were characterized by a reopening of the borders to the international community, initiatives towards democracy. In terms of cultural heritage, Myanmar appeared to have made progress in modernizing its legislation when the country ratified and implemented international conventions protecting tangible cultural heritage such as the World Heritage Convention, the 1970 UNESCO Convention, and the 1995 UNIDROIT Convention. In 2015, the elected parliament drafted new legislation protecting cultural heritage: the Law Protecting Ancient Objects and the Law on the Preservation and Protection of Ancient Buildings. How has the ratification of international conventions and new laws impacted domestic conservation practices in Myanmar? The democratic turn entailed a visible modernization of laws, policies, and conservation techniques. However, this time was also characterized by peaks of violence between the Burman government, the Rohingya people, and other ethnic minorities. Ultimately, this article reveals that the protection of heritage became closely linked to ethnonationalist ideologies that have survived the numerous changes of political regime. This is particularly true in the Burmese context.

* **Anaïs Mattez** is a PhD candidate and researcher in Cultural Heritage Law, at the University of Hong Kong (HKU). I am grateful to my supervisor Prof. Jedidiah Kroncke and the anonymous reviewers for their helpful comments and reviews of this article.

Foreign technical assistance must be aware of the country’s complexity and learn from lessons of the past.

Keywords: 1970 UNESCO Convention, 1995 UNIDROIT Convention, world heritage, nationalism, democracy, Burma, law and development

Introduction

After decades of military rule and international isolation, Myanmar – previously known as Burma – engaged in a process towards democracy between 2011 and 2020.¹ During this process, the country elected new leaders, constituted a parliament, ratified international conventions, and adopted new laws on many topics including the protection of cultural heritage. The coup of February 2021 revealed that this progress towards liberalism was fragile.² A few clues, in the field of cultural heritage protection, had already suggested that advances were brittle. This article sheds light on the dynamics underlying laws protecting cultural heritage in Myanmar.

Myanmar’s national context is tainted by a complex political history. Even matters of archaeological site management and culture conservation are marked by scars from colonization and ethnic conflicts. In effect, the seemingly innocent concern for the preservation of ancient art and culture in a country so attached to Buddhist history and ancient kingdoms is, at times, used to advance the narrative of the Burmese ethnic majority over others. The phenomenon is amplified in the Burmese context, as cultural identity, in Myanmar, does not revolve around the State.³ Rather, the population of the country is composed of over 135 different “national races” or ethnic groups with their own history, culture, and language.⁴ About two thirds of the population, and the government in power, is Burman. The one third remaining are minority ethnic nationalities living mainly in the hilly areas bordering the country. The seven largest minority nationalities are the Chin, Kachin, Karen, Kayah, Mon, Rakhine, and Shan. Burma is divided into seven states, each named after these seven ethnic nationalities, and seven regions also largely inhabited by the

¹ Myanmar was known internationally as Burma until 1989, when the military government decided that the country should be addressed as Myanmar instead of Burma. Still, in their own country, the land is known as either *Myanma* or *Bama*. In the Burmese language both names refer to the same endonym and the difference is rather colloquial. In the context of this article, both appellations are used interchangeably. See also L. Smith, *You Say Myanmar, They Say Burma*, “The New York Times”, 28 February 2015.

² R. Goldman, *Myanmar’s Coup, Explained*, “The New York Times”, 10 January 2022.

³ “As moves were made to define Burmese citizenship through national race, no mention was made of Rohingya Muslims, a designation widely used only in later decades”. R. David, I. Holliday, *Liberalism and Democracy in Myanmar*, Oxford University Press, Oxford 2018, p. 32.

⁴ N. Cheesman, *How in Myanmar “National Races” Came to Surpass Citizenship and Exclude Rohingya*, “Journal of Contemporary Asia” 2017, Vol. 47(3), p. 462.

Burmans. In addition, the Rohingya people are not recognized by the government as an ethnic nationality in Myanmar, and suffer from discrimination and various human rights violations.⁵

The first section reviews how, despite the growth of democracy between 2011 and 2021, the government instrumentalized cultural heritage conservation to advance only the narrative of Burman ethnic nationalism. The law protecting cultural heritage frequently reflects a concern for national unity, thus implying more or less violent suppression of cultural expressions of other ethnic minorities. Political scientists observed a resurgence of undemocratic ideologies such as ethnonationalism in the adopted cultural heritage laws, even while the country celebrated its newly achieved transition towards democracy. This study places Myanmar in the international historical context. Moreover, the first section touches upon the international conventions protecting the tangible cultural heritage and explains why they were ratified by successive governments. Owing to the influence of national and international contexts, efforts toward the rule of law and democracy – and the promotion of Burman unity – have led to the adoption of the Law Protecting Ancient Objects and the Law on the Preservation and Protection of Ancient Buildings in 2015. These two pieces of legislation are reviewed in the second section of this article. The third section provides more details on conflicting interests in the conservation of Bagan and Yangon urban heritage. Finally, this article reveals that domestic legislation adopted in conformity with standards of international law may fail to deliver positive results when used to support ethnonationalist ideologies.

Nationalism, Buddhism, and Heritage in Myanmar

The protection of cultural heritage in Myanmar is closely connected to the interpretation the successive political regimes have made of Buddhism and nationalism. This section explores the historical Burmese context in which Buddhist culture and nationalism became irremediably intertwined.

Scholars have affirmed that the origins of nationalism in Myanmar antedate British colonization, unlike in India, where nationalism found its sources in the independence movement.⁶ The history of the Burmese nation instead follows a narrative close to that of the French and British nations, where national identities emerged in medieval times. At that time, Burmese kings consolidated their rule and military power from the 11th century with Bagan as the first capital.⁷ Buddhism also became a key

⁵ M. Crouch, *States of Legal Denial: How the State in Myanmar Uses Law to Exclude the Rohingya*, "Journal of Contemporary Asia" 2021, Vol. 51(1), p. 100; W. Logan, *Ethnicity, Heritage and Human Rights in the Union of Myanmar*, in: J. Rodenberg, P. Wagenaar (eds.), *Cultural Contestation*, Palgrave Macmillan, Cham 2018.

⁶ G. Houtman, *Remaking Myanmar and Human Origins*, "Anthropology Today" 1999, Vol. 15(4); D.E. Smith, *Religion and Politics in Burma*, Princeton University Press, Princeton 1965, p. 81; M.J. Walton, *Buddhism, Politics and Political Thought in Myanmar*, Cambridge University Press, Cambridge 2016.

⁷ Mi. Aung-Thwin, Ma. Aung-Thwin, *A History of Myanmar Since Ancient Times: Traditions and Transformations*, Reaktion Books, London 2012, p. 77.

component of Burmese national identity.⁸ Different dynasties of Burmese-speaking kings ruled the territory of the Irrawady plains until the Anglo-Burmese wars. In 1885, the British army commenced the colonial occupation of Burma. The British imported “ready-made” governing structures they had developed in India without any accommodation or regards for Burmese tradition or culture. As Thant Myint-U puts it: “The modern state of Burma was born as a military occupation”.⁹

Burma gained its independence from Great Britain on 4 January 1948. From then on, Burma became a fully integrated and active member of the new international world order. The Burmese diplomat U Thant, appointed Secretary-General of the United Nations between 1961 and 1971, was the third person and the first non-European to hold this high-profile post. The 1950s were viewed as a golden age for the Burmese middle classes.¹⁰

In 1956, the acclaimed Japanese anti-war movie *The Burmese Harp* by Kon Ichikawa was nominated for Academy Awards. The film featured scenes in which villages of Burma were ravaged as its countryside was a battlefield between the Japanese army and Allied forces.¹¹ The movie illustrated elements that have remained throughout the country’s landscape: a spiritual scenery where Buddhism is ubiquitous.

Burma ratified its first-ever universal convention on the protection of cultural heritage in this context.¹² The Convention for the Protection of Cultural Property in the Event of Armed Conflict (“the 1954 Hague Convention”)¹³ was ratified by Burma in 1956. The 1954 Hague Convention applies to the protection of cultural property during armed conflicts. Although the Convention attempts to strike a balance between humanitarian and military requirements,¹⁴ the text provides the most comprehensive set of legal instruments for the protection of cultural property in times of armed conflicts.¹⁵ The first piece of national legislation was adopted in 1957 as The Antiquities Act.¹⁶ The scope of the law was broader than the 1954 Hague Convention, as the legislation was also applicable in times of peace. The domestic law also regulated the excavation, export, and illicit trafficking of cultural properties.

⁸ D.E. Smith, op. cit., p. 82.

⁹ T. Myint-U, *The Hidden History of Burma: Race, Capitalism, and the Crisis of Democracy in the 21st Century*, W.W. Norton & Co., New York 2019, p. 19.

¹⁰ T. Myint-U, *The River of Lost Footsteps: A Personal History of Burma*, Farrar, Straus and Giroux, New York 2008, p. 378.

¹¹ T. Charity, *Ichikawa Kon*, “Sight and Sound” 2007, Vol. 17(6).

¹² R. O’Keefe, *The Protection of Cultural Property in Armed Conflict*, Cambridge University Press, Cambridge 2006, p. 5.

¹³ 14 May 1954, 249 UNTS 240.

¹⁴ R. O’Keefe, *The Protection...*

¹⁵ T. Kono (ed.), *The Impact of Uniform Laws on the Protection of Cultural Heritage and the Preservation of Cultural Heritage in the 21st Century*, Brill-Nijhoff, Leiden 2010.

¹⁶ <http://www.asianlii.org/mm/legis/laws/taa1957184/> [accessed: 25.08.2022].

At the moment of independence, heritage was already shrouded with Buddhist and Burman nationalist tones. When the Ministry of Culture created an institution to safeguard heritage in 1952, its admitted purpose was “to strengthen the national unity of Burma by raising the cultural level of the people”.¹⁷ The post-independence nationalism was reflected in other areas of society as well. Notably, Indian and Chinese residents of Burma who accumulated significant commercial wealth provoked the resentment of Burman nationalists.¹⁸ The Burmese administration expelled all Indian civil officers who came with the British, who then constituted a substantial proportion of the qualified bureaucracy. The civil government showed the first signs of favouring an ethnic Burman supremacy ideology at the expense of ruling the country efficiently. Ethnic unity has been a fundamental goal for all Burmese postcolonial governments ever since.¹⁹

The first military coup in the country took place in 1962. The years between 1962 and 1988, with Ne Win as Prime Minister and later President of Burma ruling the country according to the “Burmese way to socialism”, were marked by withdrawal and little participation in international affairs. The regime was disproportionately suspicious of foreign influences due to the colonial experience.²⁰ The socialist government nationalized all major businesses.²¹ That period isolated Burma completely from the rest of the world in terms of technical assistance as well as intellectually.²² During these years Burma did not ratify any international instrument on heritage protection.

In 1988, the military junta replaced Ne Win’s leadership in a second coup.²³ In 1992, Than Shwe became the army’s new chairman until he retired and announced elections in 2010. The junta started by rejecting socialism and by actively encouraging foreign investment. These investments came predominantly from China.²⁴ The anti-democratic attitude of the junta led to very severe Western economic sanc-

¹⁷ Director of Information Union of Burma, *Burma. The Seventh Anniversary*, Superintendent of Government Printing and Stationery, Rangoon 1955, p. 108. Cited after C. Galloway, *Myanmar, Museums, and Repatriation of Cultural Heritage*, in: L. Tythacott, P. Ardiyansyah (eds.), *Returning Southeast Asia’s Past: Objects, Museums, and Restitution*, NUS Press, Singapore 2021, p. 262.

¹⁸ E. Ho, L. Chua, *Law and “Race” in the Citizenship Spaces of Myanmar: Spatial Strategies and the Political Subjectivity of the Burmese Chinese*, “Ethnic and Racial Studies” 2016, Vol. 39(5), p. 897.

¹⁹ V. Cho, *Ethnicity and Identity*, in: A. Simpson, N. Farrelly, I. Holliday (eds.), *Routledge Handbook of Contemporary Myanmar*, Routledge, London 2018, p. 46.

²⁰ A. Booth, *The Burma Development Disaster in Comparative Historical Perspective*, “South East Asia Research” 2003, Vol. 11(2), p. 152.

²¹ T. Myint-U, *The Hidden History...*, p. 27.

²² K.Y. Hlaing, *Reconsidering the Failure of the Burma Socialist Programme Party Government to Eradicate Internal Economic Impediments*, “South East Asia Research” 2003, Vol. 11(1).

²³ The official name of the military junta government was State Law and Order Restoration Council (SLORC) and was later changed by Than Shwe to The State Peace and Development Council (SPDC).

²⁴ A.H.-C. Hung, *How Has the Legal Consciousness of Chinese Enterprise Managers Transformed since 1949? A Study of Chinese Enterprises under Socialism*, “Asian Journal of Law and Society” 2022, Vol. 9(2), p. 305.

tions.²⁵ This regime is infamously known for being the one rejecting election results in 1990 and subsequently keeping Aung San Suu Kyi under house arrest until her release on 13 November 2010. The economic developments in these decades led to a high level of inequality in the political and economic landscape.²⁶ Without the presence of international businesses – because of the sanctions – the military, the militias, and their chosen business partners had a monopoly on virtually all resources. The exploitation of timber, mining, and gas made army generals billionaires.²⁷

In terms of cultural heritage law, Than Shwe's military government joined the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage ("the World Heritage Convention").²⁸ The World Heritage Convention is UNESCO's most "successful" convention, in the sense of being the most widely ratified.²⁹ The military saw in it an opportunity to promote national pride. The State Peace and Development Council (SPDC) routinely instrumentalized Buddhist narratives to enhance its legitimacy. This theme is developed in detail in the section below.

In 2010, ageing General Than Shwe, instead of passing the power to another military dictator, who could be a danger to his quiet retirement, opted for a new constitution³⁰ and convened strictly controlled elections for a civil government under the pro-army Union Solidarity and Development Party (USPD). In parallel, as head of the military, he appointed General Min Aung Hlaing, the perpetrator of the 2021 coup. The new commander-in-chief's mission was to safeguard the preeminence of the army.³¹ After the elections, retired General Thein Sein presided over the country as a civilian between 2011 and 2016. However, Thein Sein went further than expected in the process of liberalization.³² As summarized by Ben Rhodes, "stifling martial law gave way to a partial opening: political prisoners were released, relatively free elections were held, and the government began to plug Myanmar into the internet and the global economy".³³ The new president released Aung San Suu Kyi. This era marked the end of economic sanctions and Western businesses arrived in Myanmar.³⁴

²⁵ J.T. Chow, L.-E. Easley, *Persuading Pariahs: Myanmar's Strategic Decision to Pursue Reform and Opening*, "Pacific Affairs" 2016, Vol. 89(3), p. 542.

²⁶ See World Inequality Database: <https://wid.world/country/myanmar/>.

²⁷ L. Jones, *The Political Economy of Myanmar's Transition*, "Journal of Contemporary Asia" 2014, Vol. 44(1), p. 156.

²⁸ 16 November 1972, 1037 UNTS 151; it was ratified by Myanmar on 29 April 1994.

²⁹ 194 Member States to the Convention as of 23 October 2020.

³⁰ P. Clapp, *The 2008 Constitution: The Evolution of Leadership*, in: A. Harding, K.K. Oo (eds.), *Constitutionalism and Legal Change in Myanmar*, Hart Publishing, Oxford 2017, p. 95.

³¹ T. Myint-U, *Myanmar's Coming Revolution*, "Foreign Affairs", July/August 2021.

³² R. David, I. Holliday, op. cit., p. 78.

³³ B. Rhodes, *What Happened to Aung San Suu Kyi?*, "The Atlantic", September 2019, <https://www.theatlantic.com/magazine/archive/2019/09/what-happened-to-aung-san-suu-kyi/594781/> [accessed: 25.08.2022].

³⁴ M. Crouch, *Understanding the Business of Transition in Myanmar*, in: M. Crouch (ed.), *The Business of Transition: Law Reform, Development and Economics in Myanmar*, Cambridge University Press, Cambridge 2019, p. 10.

In 2015, Thein Sein's government held the first free elections and agreed to follow the results. Nobel Peace Prize Laureate Aung San Suu Kyi and her party, the National League for Democracy (NLD), were able to form a government.³⁵ Aung San Suu Kyi gave new hope for modernization and democracy for Burmese and international supporters alike. From 1988, she had been put in detention, on and off, for long periods of time by the military junta, defiant of her growing influence for her non-violent stance on democracy and human rights.³⁶ She was finally released from house arrest in November 2010 and was elected to the Myanmar Parliament in 2011 with her party winning almost unanimously. When I met Aung San Suu Kyi in 2013, during her European tour, it was an optimistic time and people felt like justice had won one of its biggest victories. Aung San spoke about patience, her dedication to democracy, and a brighter future for the people of Burma. It seemed that the country was on a bright road towards democracy, development, and rule of law.³⁷

The democratic decade from 2011 to 2021 was indeed characterized by legal change.³⁸ The country opened to legal assistance and took part in international conventions.³⁹ In this context, the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ("the 1970 UNESCO Convention")⁴⁰ was ratified in September 2013. The 1970 UNESCO Convention integrates Myanmar into a network of other member countries promoting the integrity of heritage sites and laying out a diplomatic process to recover stolen or looted artifacts found in foreign countries. Moreover, in response to the concern for looted and illegally trafficked artifacts, Myanmar also ratified the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects ("the 1995 UNIDROIT Convention")⁴¹ in June 2018. The UNIDROIT framework provides a certain level of uniform private law, directly applicable to individuals for solving international disputes over the property of cultural objects.⁴²

³⁵ T. Fuller, W. Moe, *Victory by Aung San Suu Kyi's Party Catches One Group Off Guard: The Government*, "The New York Times", 13 November 2015.

³⁶ *The Nobel Peace Prize 1991*, <https://www.nobelprize.org/prizes/peace/1991/press-release/> [accessed: 25.08.2022].

³⁷ T. Ginsburg, *Does Law Matter for Economic Development? Evidence From East Asia*, "Law & Society Review" 2000, Vol. 34(3), p. 831.

³⁸ M. Crouch, T. Lindsey, *Introduction: Myanmar, Law Reform and Asian Legal Studies*, in: M. Crouch, T. Lindsey (eds.), *Law, Society and Transition in Myanmar*, Hart Publishing, Oxford 2014, p. 3.

³⁹ The second section below provides details on the implementation of the World Heritage Convention, the 1970 UNESCO Convention, and the 1995 UNIDROIT Convention.

⁴⁰ 14 November 1970, 823 UNTS 231.

⁴¹ 24 June 1995, 2421 UNTS 457.

⁴² L.V. Prott, *UNESCO and UNIDROIT: A Partnership against Trafficking in Cultural Objects*, "Uniform Law Review" 1996, Vol. 1(1), p. 59; G. Giardini, A. Mattez, *UNIDROIT at 25: A Matter of Equilibrium*, "The Journal of Art Crime" 2020, Vol. 24, p. 85.

Unfortunately, only a few years after the free election with Aung San Suu Kyi as the State Councillor and leader of Myanmar, news about the Rohingya genocide fed growing pessimism. The crisis had started in the remote province of Arakan,⁴³ at the border of Myanmar and Bangladesh.⁴⁴ The genesis and the steps which led to aggravation of the conflict are explained in detail by the scholar and historian Thant Myint-U in his 2019 book, *The Hidden History of Burma: Race, Capitalism, and the Crisis of Democracy in the 21st Century*. The book explores the complexity and the aggravation of the dissension between Burmese Buddhists and Muslims, following the departure of English colonizing powers in 1948. The author explains that while it is certain that conflict started to arise between the Buddhist and Muslim inhabitants, it is unclear how the conflict exactly originated. Nevertheless, the Burmese army certainly brought a violent response.⁴⁵ The escalation of the conflict led about 70,000 men, women, and children, nearly all from the Muslim Rohingya minority, to flee to neighbouring Bangladesh, bringing with them accounts of rape and massacre.⁴⁶ The Burmese government was accused of genocide and crimes against humanity.⁴⁷ In February 2017, the United Nations (UN) alleged the existence of abuses and called for an international inquiry.⁴⁸ Despite the recommendations of the UN, the Burmese military forces and the civil government rejected the allegations. Aung San Suu Kyi's status as democracy advocate and humanist was compromised in January 2020 when she urged the United Nations International Court of Justice in The Hague not to take actions against the military.⁴⁹

The Rohingya crisis received the most media attention due to its gravity. However, ethnic conflicts have recurred on many occasions in Burma throughout its history. The Burmese narrative of the foundation of the country and the origin of its people is often perceived by ethnic minorities as ethno-centric while the version proposed by ethnic minority groups is accused of vilifying Burmans.⁵⁰ The minor-

⁴³ Also designated as Rakhine State.

⁴⁴ M. Crouch, *States...*, p. 94.

⁴⁵ T. Myint-U, *The Hidden History...*

⁴⁶ Amnesty International, *Myanmar: Remaking Rakhine State*, 12 March 2018, <https://www.amnesty.org/en/documents/asa16/8018/2018/en/> [accessed: 25.08.2022]; E. Albert, L. Maizland, *What Forces Are Fueling Myanmar's Rohingya Crisis?*, "Council on Foreign Relations", 23 January 2020, <https://www.cfr.org/backgrounder/rohingya-crisis> [accessed: 25.08.2022].

⁴⁷ International Court of Justice, *The Republic of The Gambia Institutes Proceedings against the Republic of the Union of Myanmar and Asks the Court to Indicate Provisional Measures*, Press Release No. 2019/47, 11 November 2019.

⁴⁸ In March 2017, the United Nations Human Rights Council established the Independent International Fact-Finding Mission on Myanmar (IIFMM) to establish the facts and circumstances of the alleged human rights violations by military and security forces, and abuses, in Myanmar. OHCHR, *Independent International Fact-Finding Mission on Myanmar*, <https://www.ohchr.org/en/hr-bodies/hrc/myanmar-ffm/index> [accessed: 25.08.2022].

⁴⁹ Aung San Suu Kyi: *Myanmar Democracy Icon Who Fell from Grace*, "BBC News", 6 December 2021, <https://www.bbc.com/news/world-asia-pacific-11685977> [accessed: 25.08.2022].

⁵⁰ R. Metro, *Postconflict History Curriculum Revision as an "Intergroup Encounter" Promoting Interethnic Reconciliation among Burmese Migrants and Refugees in Thailand*, "Comparative Education Review" 2013, Vol. 57(1),

ities are often seen by the central government as tending to obstruct the exercise and legitimacy of their powers.⁵¹ This is particularly true of Burma, a nation still under construction since the British left the country in 1948.⁵² The central government has constantly battled for legitimacy within the country's recognized international borders.⁵³

The coup of 1 February 2021 provoked a visceral reaction among the population.⁵⁴ General Aung Hlaing arrested State Councillor Aung San Suu Kyi and other NLD leaders.⁵⁵ He declared his actions not as a "coup" but as a state of emergency under the controversial provision of the 2008 Constitution.⁵⁶ A National Unity Government (NUG) now claims legitimate rule in the shadows.⁵⁷ The situation in Myanmar is on the point of no return. The military is now more violent than ever. The population has engaged in a civil disobedience movement (CDM):⁵⁸ "I don't want to do my duty under military dictators".⁵⁹ Many civil servants have resigned including those in the heritage sector, such as civil servants of the Department of Archaeology and National Museum within the Ministry of Religious Affairs and Culture of Myanmar.

Domestic Cultural Heritage Law

Against the background of the historical developments described in the first section, this section assesses the influences of the ratification of international conventions in the context of ethno-nationalism. Myanmar has coordinated its legal actions to meet the standard of international conventions and invested substantial

p. 156; N.N. Kyaw, *Unpacking the Presumed Statelessness of Rohingyas*, "Journal of Immigrant & Refugee Studies" 2017, Vol. 15(3), p. 270.

⁵¹ M. Mann, *The Dark Side of Democracy: Explaining Ethnic Cleansing*, Cambridge University Press, New York 2005.

⁵² W. Logan, *Cultural Diversity, Cultural Heritage and Human Rights: Towards Heritage Management as Human Rights-Based Cultural Practice*, "International Journal of Heritage Studies" 2012, Vol. 18(3), pp. 231-244.

⁵³ N. Cheesman, *Introduction: Interpreting Communal Violence in Myanmar*, "Journal of Contemporary Asia" 2017, Vol. 47(3), p. 338.

⁵⁴ R. Goldman, op. cit.; see also I. Frydenlund et al., *Religious Responses to the Military Coup in Myanmar*, "The Review of Faith & International Affairs" 2021, Vol. 19(3), pp. 77-88.

⁵⁵ D.I. Steinberg, *The Military in Burma/Myanmar: On the Longevity of Tatmadaw Rule and Influence*, ISEAS – Yusof Ishak Institute, Singapore 2021, p. 29.

⁵⁶ M. Crouch, *The Illegality of Myanmar's Coup*, 7 February 2021, <https://melissacrouch.com/2021/02/07/the-illegality-of-myanmars-coup/> [accessed: 21.07.2022]; P. Clapp, op. cit., p. 87.

⁵⁷ S. Strangio, *EU Parliament Voices Support for Myanmar's Opposition Government*, "The Diplomat", 11 October 2021, <https://thediplomat.com/2021/10/eu-parliament-voices-support-for-myanmars-opposition-government/> [accessed: 25.08.2022]; see also <https://www.nugmyanmar.org/en/>.

⁵⁸ A.J. Harding, N.N. Kyaw, *The Long Struggle for Constitutional Change in Myanmar*, "Federal Law Review" 2022, Vol. 50(2), p. 194.

⁵⁹ S. Naing, D. Tun, *Myanmar's Longest Lasting Civil Disobedience Movement*, 21 January 2022, <https://www.thaibpsworld.com/myanmars-longest-lasting-civil-disobedience-movement/> [accessed: 25.08.2022].

efforts in incorporating international instruments into its domestic legal system. However, cultural heritage conservation was misappropriated to serve a national narrative. The military regime in the 1990s actively made use of this misappropriation to bolster its legitimacy. Later, the ratification of international instruments imposed the regular use of international technical vocabulary on heritage conservation and the legal technical transposition of international conventions into domestic law. However, the legal imports did not eradicate ethnonationalism from cultural heritage law.

Heritage for national pride and patriotism

In 2015, the Burmese Assembly of the Union adopted two separate pieces of legislation to protect movable and immovable cultural heritage.⁶⁰ The first, entitled Law Protecting Ancient Objects, was adopted in July. This law applies to movables, i.e. objects and pieces that can be removed and potentially sold or smuggled separately. The second act of legislation was adopted a month later as the Law on the Preservation and Protection of Ancient Buildings. As its title reads, the statute offers legal protection to monuments which are by nature immovable, such as archaeological sites and ancient Buddhist temples. The two texts can be read in parallel. They contain similar dispositions about civil law, property rights, and criminal offenses.

The objectives of the laws partly reflect the usual standard of protecting and preserving sites and antiquities from destruction (Article 3). But both statutes have highlighted that the objective of the law was to “uplift hereditary pride and cause dynamism of patriotic spirit by protecting and preserving ancient objects/monuments” (Article 3.c). The preservation of Buddhist sites and antiquities has been indissolubly interwoven with a certain conception of national pride. This objective is ubiquitous. In the National Museum in Yangon, for instance, there is a Twelve National Objectives Nation-Building Endeavours Showroom,⁶¹ where a sign reads in English and Burmese that the objective of the exhibition is to “uplift [...] national prestige and integrity and preservation and safeguarding of cultural heritage and national character”.⁶² The exhibition displays the royal Lion Throne from Mandalay and the royal regalia that were returned by the British (see below). Similarly, when generals of the Than Shwe regime rebuilt the Pagan Palace at high cost, there was

⁶⁰ Pyidaungsu Hluttaw Law No. 43/2015: Law Protecting Ancient Objects, 22 July 2015, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs21/2015-07-22-Law_Protecting_Ancient_Materials-43-bu.pdf [accessed: 25.08.2022] and Pyidaungsu Hluttaw Law No. 51/2015: Law on the Preservation and Protection of Ancient Buildings, 26 August 2015, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs21/2015-08-31-Law_on_the_Preservation_and_Protection_of_Ancient_Buildings-51-bu.pdf [accessed: 25.08.2022].

⁶¹ W. Logan, *Whose Heritage? Conflicting Narratives and Top-Down and Bottom-Up Approaches to Heritage Management in Yangon, Myanmar*, in: S. Labadi, W. Logan (eds.), *Urban Heritage, Development and Sustainability: International Frameworks, National and Local Governance*, Routledge, London 2016, p. 263.

⁶² See *ibidem*, p. 262, fig. 14.3: The “four social objectives” of Myanmar’s nation-building project.

no other justification for the project than the one the generals had given: “to increase the nationalism and patriotism of the population”.⁶³

In heritage policies and elsewhere, the NLD did not disrupt the nationalist narrative promoted by the Tatmadaw.⁶⁴ The agenda of the NLD maintained a relatively similar unity of the country under the supremacy of the Burman ethnicity and culture. Before the coup, Aung San Suu Kyi inaugurated a statue of her father Aung San in Loikaw, Karen State. The event started the uprising of Karenni inhabitants of the region who protested for the equality of ethnic minorities.⁶⁵

During the democratic political reforms of 2010-2021, nationalist narratives revolved around the legitimacy and charisma of Aung San Suu Kyi, her party, rule of law, and democracy rather than the long history of the Tatmadaw.⁶⁶ In terms of conservation, legitimacy was given to new standards imported from international conventions and foreign expertise. The efforts to harmonize Burmese law with the legal standards of modern democratic regimes are reflected in the various forms of legal assistance the different institutions in the country received between 2011 and 2021. The influx of technical aid to Myanmar, contributed to aligning the new Burmese cultural heritage laws with the requirements of the international conventions.⁶⁷ During the brief “Burmese Moment”, Western actors could deploy their democratic approaches and technical aid in archaeology and conservation.⁶⁸ Their enthusiasm was not shared by historians who lamented that in the process of democratization that took place last decade, too few efforts were deployed to understand the origins of authoritarianism, interethnic relations, colonial legacies, and the traumatic past of the country.⁶⁹ The so-called “West” was perhaps too eager to engage in a process for liberalization in a country closed to all forms of legal development for half a century.⁷⁰ Myint-U wrote: “The seductively powerful Man-

⁶³ P. Pichard, *Today's Pagan: Conservation under the Generals*, in: M. Falser, M. Juneja (eds.), *‘Archaeologizing Heritage?’ Transcultural Entanglements between Local Social Practices and Global Virtual Realities*, Springer, New York 2013, p. 246.

⁶⁴ Official name of the military in Myanmar.

⁶⁵ *Ethnic People Protest General Aung San's Statue - Police Respond with Violence*, “Karen News”, 13 February 2019, <https://karennews.org/2019/02/ethnic-people-protest-general-aung-sans-statu-police-respond-with-violence/> [accessed: 25.08.2022]; B. Pedroletti, *Dans l'est de la Birmanie, les Karenni tentent de construire leur avenir sous les frappes de l'aviation birmane*, “Le Monde”, 14 April 2022, https://www.lemonde.fr/international/article/2022/04/14/dans-l-est-de-la-birmanie-les-karenni-tentent-de-construire-leur-avenir-sous-les-frappes-de-l-aviation-birmane_6122152_3210.html [accessed: 25.08.2022].

⁶⁶ T. Myint-U, *Myanmar's...*

⁶⁷ See below.

⁶⁸ A.J. Harding, *Law and Development in its Burmese Moment: Legal Reform in an Emerging Democracy*, in: M. Crouch, T. Lindsey (eds.), *Law, Society and Transition in Myanmar*, Hart Publishing, Oxford 2014, p. 377; M. Crouch, *Understanding the Business...*, p. 14; E. Avrami (ed.), *Building the Future: The Role of Heritage in the Sustainable Development of Yangon*, World Monuments Fund, New York 2015. See below.

⁶⁹ T. Myint-U, *The Hidden History...*, p. 45.

⁷⁰ N.Y. Kham, *An Introduction to the Law and Judicial System of Myanmar*, NUS Centre for Asian Legal Studies, Singapore 2014.

ichean narrative trumped all other considerations”.⁷¹ This historically informed remark is a direct criticism of the law and development approach.⁷² The prospects for liberal democracy cannot rely only on the modernization of law but also depend on dealing with the past.⁷³

The following subsections highlight further the strong compliance of the 2015 Law Protecting Ancient Objects and the 2015 Law on the Preservation and Protection of Ancient Buildings with the standards set by the World Heritage Convention, the 1970 UNESCO Convention, and the 1995 UNIDROIT Convention. However, the interpretation of heritage leaves room for ethnonationalism.

Protection and restitution of movables

The Law Protecting Ancient Objects was adopted to conform and to enforce the 1970 UNESCO Convention.⁷⁴ It provides a broad definition of “ancient objects” that recalls the definition provided by Article 1 of the 1970 UNESCO Convention.⁷⁵ The definition enumerates similar examples and categories.⁷⁶ To fall under legal protection, the object must be over a hundred years old (Article 1.a). The Ministry may designate certain specific objects as protected. In addition, a broad list of examples is provided in Article 4. For instance, there is a special mention of Buddha’s image, votive tablet, mural painting, cloth painting, figurine, collapsed damages, religious objects (Article 4.c), pre-historic objects such as fossils, human or animal remains, tusk, horns, and ancient pottery (Article 4).

The 1970 UNESCO Convention requires that members take all necessary measures to return cultural objects that were stolen or illegally exported.⁷⁷ However, in the case of Myanmar, there is virtually no market for imported antiquities while there is a relatively high chance that Burmese antiques may be exported and sold abroad. Burmese antiquities are in high demand on the Thai market.⁷⁸ The ob-

⁷¹ T. Myint-U, *The Hidden History...*, p. 45.

⁷² J. Kroncke, *Legal Innovation as a Global Public Good: Remaking Comparative Law as Indigenization*, in: P. Dann, M. Riegner, M. Bönnemann (eds.), *The Global South and Comparative Constitutional Law*, Oxford University Press, Oxford 2020, p. 110.

⁷³ R. David, I. Holliday, op. cit., p. 145.

⁷⁴ 1970 UNESCO Convention, Art. 21.

⁷⁵ 1970 UNESCO Convention, Art. 1: “For the purposes of this Convention, the term ‘cultural property’ means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science”.

⁷⁶ J. Blake, *On Defining the Cultural Heritage*, “International and Comparative Law Quarterly” 2000, Vol. 49(1), p. 62.

⁷⁷ P.J. O’Keefe, *Commentary on the UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, 2nd ed., Institute of Art and Law, Bulth Wells 2007.

⁷⁸ B. Hauser-Schäublin, L.V. Prött (eds.), *Cultural Property and Contested Ownership: The Trafficking of Artefacts and the Quest for Restitution*, Routledge, Abingdon 2016, p. 60; T. Davis, *Supply and Demand: Exposing*

ligations contained in the 1970 UNESCO Convention mostly require for the country of origin to take all necessary measures in national legislation to prevent the theft and looting of local cultural heritage (Article 2). These obligations translate into different mechanisms. Firstly, the Convention requires for each State Party to introduce a “national service” to safeguard its cultural heritage.⁷⁹ In conformity with the Convention, Myanmar delegated this task to the Department of Archaeology, a section under the Ministry of Culture. The export of antiquities outside of the country requires formal permission from the Department of Archaeology. Secondly, Article 8 of the 1970 UNESCO Convention also demands that State Parties introduce penal sanctions for the violation of export in breach of national provisions. The export of Burmese antiquities without the required permission puts the offender at risk of five to ten years in prison or a fine of 5 to 10 million kyats, or both (Article 15).⁸⁰ In addition, the transportation of antique objects from one part of the country to another is also made illegal without due authorization (Article 18.b). The penal sentence provided by the law here is up to three years in prison.⁸¹ Finally, the Law Protecting Ancient Objects seems to make the business of antiques strictly illegal. Other illicit activities regarding antique objects include commercial activities of selling and purchasing antiquities (Article 17). It appears that the prohibition is unconditional, as the law does not allow antiquities to be traded under any circumstances or permissions. This legal measure was not prescribed by international conventions.

The ratification of the 1970 UNESCO and 1995 UNIDROIT Conventions facilitates the restitution of stolen cultural objects.⁸² In terms of political agendas, successive governments never proactively demanded the restitution of cultural relics. A few cultural relics were returned to Myanmar, but in most cases the initiatives came from the possessors. Experiences have shown that the restitution of antique Buddhist relics led to a display of Burman patriotic feelings. Decades before the 1970 UNESCO Convention, upon Burmese independence in 1948 the British government authorized the transfer of King Thibaw’s Throne from the Museum of Kolkata where it had been held since 1902.⁸³ Other cases of restitution followed. The British government returned many of royal objects transferred during colonial rule. In the early 1960s, the Burmese Ambassador in London introduced an infor-

the Illicit Trade in Cambodian Antiquities through a Study of Sotheby’s Auction House, “Crime, Law and Social Change” 2011, Vol. 56, p. 155.

⁷⁹ 1970 UNESCO Convention, Art. 5.

⁸⁰ Around €3,200.

⁸¹ Three to seven years in prison or with a fine from a minimum of 3 million kyats to a maximum of 5 million kyats or with both (Article 16).

⁸² L.V. Prott, op. cit.

⁸³ J. Clarke, *On the Road Back to Mandalay: The Burmese Regalia – Seizure, Display and Return to Myanmar in 1964*, in: L. Tythacott, P. Ardiyansyah (eds.), *Returning Southeast Asia’s Past: Objects, Museums, and Restitution*, NUS Press, Singapore 2021, pp. 112-113.

mal request for the restitution of the Mandalay Royal Regalia. The request was refused on the grounds that the government did not want to set a precedent for other colonial relics in the custody of the UK.⁸⁴ Finally however the British Foreign Office and the Victoria & Albert Museum voluntarily returned 140 pieces with an estimated value of £20,000. To General Ne Win, who had just taken power, the return of the Regalia was represented as an instrument of propaganda.⁸⁵ These restitutions are isolated cases. In fact, when Ne Win and the SPDC were in power, few repatriations were counted.⁸⁶ For the Western world, establishing contact with Myanmar was virtually impossible. Diplomatic relations had been cut as strict sanctions were imposed by American and European governments.⁸⁷

As democracy emerged again in the 2010s, the international community felt more compelled to act in accordance with the moral standards set out in the 1970 UNESCO Convention to return looted cultural property to Myanmar and its civil government. The Northern Illinois University returned a millennial Buddha statue in 2013.⁸⁸ Another initiative came from a New Zealand family of British descent in 2017. One of their ancestors had fought in the Second Anglo-Burmese War and brought back a remarkable Buddhist relic about 160 years earlier. The family felt compelled by ethical considerations to return the relic to Myanmar.⁸⁹ In direct application of the 1970 UNESCO Convention, Norway, also a member of the Convention, returned a statue allegedly stolen in 2011.⁹⁰ The restitution was celebrated in a formal ceremony in the capital Nay Pyi Taw, where the Norwegian Foreign Minister met State Councillor Aung San Suu Kyi. UNESCO acknowledged the restitution as a case of best practice for return of cultural property.⁹¹ It could be argued that since the coup, in light of the politically challenging climate, these guidelines for good practices could be modified. UNESCO has not yet given recommendations

⁸⁴ Ibidem, p. 116.

⁸⁵ Ibidem, pp. 133-134.

⁸⁶ C. Galloway, op. cit.

⁸⁷ T. Myint-U, *The Hidden History...*, p. 44.

⁸⁸ NIU Burma Studies Directors Rescue, *Return 1,000-Year-Old Buddha Statue to Myanmar*, "NIU Today", 1 April 2013, <https://niuoday.info/2013/04/01/niu-burma-studies-directors-rescue-return-1000-year-old-buddha-statue-to-myanmar/> [accessed: 25.08.2022]; C. Raymond, *Shan Buddhist Art on the Market: What, Where and Why?*, "Contemporary Buddhism" 2009, Vol. 10, p. 141.

⁸⁹ K. Bayer, *Family Vows to Return Priceless Artefacts Taken from Burmese Temple by Conquering Ancestors*, "NZ Herald", 1 July 2017, <https://www.nzherald.co.nz/nz/family-vows-to-return-priceless-artefacts-taken-from-burmese-temple-by-conquering-ancestors/QMSTNCBDRltI4WEXS6XAP46YXA/> [accessed: 25.08.2022].

⁹⁰ J. Baltà Portolés, *Norway Returns Antique Buddha Sculpture to Myanmar*, "ASEF culture360", 11 July 2017, <https://culture360.asef.org/news-events/norway-returns-antique-buddha-sculpture-to-myanmar/> [accessed: 25.08.2022].

⁹¹ Fifth Session of the Subsidiary Committee of the Meeting of States Parties to the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Paris, 17-19 May 2017.

on restitution and return of cultural properties to the 1970 UNESCO Convention States Parties which are no longer democracies, although they were at the time of ratification.⁹²

In practice, Myanmar faces challenges that are more pressing than the looting and trafficking of properties.⁹³ The country hosts a multi-billion illegal drug business which, according to the United Nations Office for Drugs and Crime, is the largest producer of heroine.⁹⁴ When authorities exercise the border controls, searching for looted antiquities is not a priority.⁹⁵

The protection of sites

The Law on the Preservation and Protection of Ancient Buildings was adopted in the same breath as the Law Protecting Ancient Objects. These two pieces of legislation thus share analogous political frames, concepts, and definitions. Unlike the Ancient Objects Law, however, the Ancient Buildings Law does not directly transfer an international legal instrument into the domestic framework. The domestic legal framework is nevertheless consistent with the 1972 UNESCO Convention as it conveys international norms of heritage conservation.⁹⁶

In the definition provided by Article 2(a), sites and monuments that are “over a hundred years old” become “Ancient Monuments”. The age of the construction is the criterion for qualifying buildings as heritage-worthy. Moreover, the Ministry of Culture may establish a list of “Ancient Monuments” for built heritage that is less than a century old but nevertheless deserves special protection (Article 2.b). Article 4 provides a few indicative examples of what may constitute an ancient monument. The definition emphasizes Buddhist buildings such as stupas, temples, and monasteries. In addition, natural sites such as caves, natural or ancient roads, bridges, and burial sites benefit from the same protection, as well as buildings of high historical, architectural, or artistic value (Article 4.g).

⁹² A. Jakubowski, *Cultural Heritage and State Succession*, in: F. Francioni, A.F. Vrdoljak (eds.), *The Oxford Handbook of International Cultural Heritage Law*, Oxford University Press, Oxford 2020.

⁹³ C. Raymond, *op. cit.*

⁹⁴ <https://www.unodc.org/roseap/myanmar/index.html>; P. Wongcha-um, T. Allard, *Drug Trafficking Surging in Year since Myanmar Coup*, “Reuters”, 2 February 2022, <https://www.reuters.com/world/asia-pacific/drug-trafficking-surg-ing-year-since-myanmar-coup-2022-02-01/> [accessed: 25.08.2022].

⁹⁵ P. Phanomvan, *Cost of Trinkets: A Growing Archaeological Looting Network Between Thailand and Myanmar*, “The Irrawaddy”, 12 July 2017, <https://www.irrawaddy.com/opinion/guest-column/cost-trinkets-growing-archaeological-looting-network-thailand-myanmar.html> [accessed: 25.08.2022].

⁹⁶ See also The State Peace and Development Council Law No. 9/98: The Protection and Preservation of Cultural Heritage Regions Law, 10 September 1998, https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/docs15/1998-SPDC_Law1998-09-Protection_and_Preservation_of_Cultural_Heritage_Regions_Law-en.pdf [accessed: 25.08.2022] and Pyidaungsu Hluttaw Law No. 6/2019: Protection of Cultural Heritage of the Regions Law, 28 February 2019, <https://www.burmalibrary.org/sites/burmalibrary.org/files/obl/2019-02-28-PH-Act6-bu.pdf> [accessed: 25.08.2022].

Nonetheless the law envisioned relatively old heritage and organized a procedure for instances where ancient monuments are discovered (Articles 12-13). If a person suspects that they have found an ancient site, they are required to inform the Ward or Village-Tract Administrative Office. The latter is responsible for keeping and conserving the site until the Township Administrative Office takes over within a time limit of 14 days. The Township Administrator, in turn, should be in charge for a maximum of 7 days while themselves informing the Department of Archaeology. The Department then carries out an assessment to determine whether the site deserves more attention and performs the due conservation duties.

When a site falls under the scope of the law, most works of repair and preservation require formal permission from the Department of Archaeology regardless of whether they are done by a private individual, or by an organization (Article 14). Indeed, permission is required even when the works consist of maintenance and repair that does not alter the structure of the site (Article 14.a). All conservation activities, digging, or surveying must be conducted with the Department's authorization. Infringements or absence of required permissions can potentially lead to a sentence of six months to one year imprisonment, or a fine from a minimum of 300,000 kyats to a maximum of 1,500,000 kyats or both (Article 21).

According to the law, the Department of Archaeology may give permission for: "(a) destroying or carrying out to damage an ancient monument; (b) carrying out to alter the original form or the original workmanship of an ancient monument; (c) digging to search an antique object; (d) looting and removing original elements and artefacts from an ancient monument" (Article 19).

Although carrying out the works without permission can lead to severe sentences, the looting of sites in the Ancient Buildings Law seems to not fall under absolute prohibition.

Moreover, even activities that would usually not affect the structure of the sites must be carried out following strict procedures. Although they only superficially affect the sites, agricultural activities such as gardening or breeding animals (Article 20.c) require a formal governmental authorization. They are presumed to cause damage even though they only affect the site's surface.

For any damages caused to ancient monuments, the law prescribes that if sentenced by the court, the wrongdoers can be condemned to repair the damages and fix the illegal construction or additions. They would have to return the monuments to a pristine state.

During the time of the SPDC, a vivid controversy was sparked by the arbitrary expulsion of the Old Bagan population. Notably, in 1990, the government ordered the expulsion of the population of about 500 people living in Old Bagan to New Bagan (4 km to the south), on the pretext that this was necessary to the protection of the monuments and for Bagan to become a World Heritage site. Although the World Heritage recognition did not ensue at that time, the former

inhabitants of Old Bagan had to move to shaky housing, whilst luxury hotels, a museum, and a palace were built where they used to live.⁹⁷ Pierre Pichard expressly recommended against this move, and the military carried out the order without further consultation with any foreign archaeologist.⁹⁸ A field study conducted by Anne-Laura Kraak showed that the Burmese nationalist concept of “conservation” was at times instrumentalized to repress the population’s rights and freedom. Activities such as farming and agriculture are part of the traditional way of life in Bagan for the villagers.⁹⁹ For the SPDC the Buddhist narrative of making-merit superseded the human rights requirement of the population that lived on the site.¹⁰⁰ Janette Philp and David Mercer recommend a more humane approach to heritage law in the future.¹⁰¹

Conflicting Interests in the Protection of Burmese Sites

This section highlights that the preservation and protection of sites under military dictatorship and ethnic cleansing is complex beyond the formal legal prescriptions examined above. In the future, in Burma and abroad, conservation specialists must be aware of local governments’ interpretation of heritage. Heritage specialists are vigilant when a government is totalitarian, but alertness must persist during a democratic transition.

Bagan

The military has routinely emphasized its connection to ancient kingdoms, using Theravada Buddhism mythologies to fortify its legitimacy. The Bagan case, and the Burmese heritage conservation context more generally, highlight the challenges and the complex reality behind questions of modernization of law and alignment with Western conservation techniques.

Philp explains how the SPDC central Burmese government instrumentalized relics of heritage to fortify the power of the military leaders. For instance, in Mon State, where most of the residents are of the Mon ethnic minority, the site

⁹⁷ A.-L. Kraak, *Human Rights-Based Approaches to World Heritage Conservation in Bagan, Myanmar: Conceptual, Political, and Practical Considerations*, “International Journal of Cultural Property” 2018, Vol. 25(1).

⁹⁸ P. Pichard, *Today’s Pagan....*, p. 239, fig. 3.

⁹⁹ ICOMOS, *2019 Evaluations of Nominations of Cultural and Mixed Properties. Report for the World Heritage Committee, 43rd Ordinary Session, Baku, 30 June – 10 July 2019*, UN Doc. WHC-19/43.COM/INF.8B1, p. 166.

¹⁰⁰ J. Philp, *The Political Appropriation of Burma’s Cultural Heritage and Its Implications for Human Rights*, in: M. Langfield, W. Logan, M. Nic Craith (eds.), *Cultural Diversity, Heritage and Human Rights: Intersections in Theory and Practice*, Routledge, New York 2010, p. 91.

¹⁰¹ J. Philp, D. Mercer, *Politicised Pagodas and Veiled Resistance: Contested Urban Space in Burma*, “Urban Studies” 2002, Vol. 39(9), pp. 1606-1607.

of “Oktha-myo” was left in disrepair, thus denying the historical importance and artistic contribution of the Mon people and neglecting the importance of Mon narratives in Burmese culture.¹⁰² By contrast, the Mon city of Bago has received more conservation efforts and attention because the landscape of the city displays versions of history where the Burman ethnic group is dominant. The site was also added to the tentative list for UNESCO World Heritage.¹⁰³

The military has long had an ambiguous relationship with international standards for the conservation of Buddhist heritage. On the one hand, international recognition, in the form of inscription on the World Heritage List for instance, adds prestige and legitimacy to the regime. On the other hand, in the past the military carried out “conservation” activities on its own, contrary to the opinion of archaeology experts. Such was the case of the decision to move the villagers from Old Bagan to New Bagan in 1990 and the pagodas “beautification” project that took place subsequently.¹⁰⁴

Than Shwe’s military government attempted to inscribe the ancient capital city of Bagan with its 3,000 pagodas to UNESCO World Heritage List in 1996. The choice of Bagan was not accidental. The archaeological zone of Bagan has had enormous importance in the country’s history and foundation because the Burman majority established themselves near the banks of the Irrawaddy River in the 11th century. The Burmans were, at that time, introduced to Theravada Buddhism by the kings of Bagan.¹⁰⁵

Pierre Pichard, the UNESCO archaeologist in charge of the mapping conservation project, reflects on his work under the military junta.¹⁰⁶ He recalls that the full nomination forms were never submitted to the UNESCO World Heritage Centre: it was clear to him that the Burmese regime did not wish for the sites to be included.¹⁰⁷ The new government was probably not ready to expose itself to the scrutiny of external inspections and criticism by the international community. The repairs and “beautifications” on Bagan’s pagodas made in 1990s and 2000s were indeed controversial. Instead of carrying out the projects under the auspices of UNESCO, the regime began its own large renovation campaign.¹⁰⁸ The project was funded by donations from Buddhists within the country and sometimes from abroad.¹⁰⁹

¹⁰² J. Philp, *op. cit.*, p. 86.

¹⁰³ <https://whc.unesco.org/en/tentativelists/826>.

¹⁰⁴ A.-L. Kraak, *Heritage Destruction and Cultural Rights: Insights From Bagan in Myanmar*, “International Journal of Heritage Studies” 2018, Vol. 24(9).

¹⁰⁵ Mi. Aung-Thwin, Ma. Aung-Thwin, *op. cit.*, pp. 77-85.

¹⁰⁶ P. Pichard, *Inventary of Monuments at Pagan / Inventaire des monuments de Pagan*, UNESCO, Paris 1992.

¹⁰⁷ *Ibidem*, p. 247.

¹⁰⁸ A.-L. Kraak, *Heritage Destruction...*, p. 1002.

¹⁰⁹ P. Pichard, *Inventary...*

From 1995 to 2011, the Department of Archaeology, then under the military generals, reconstructed more than 1,200 pagodas and built around 800 new ones.¹¹⁰ The results were met with widely negative reviews from international and Burmese conservation experts. U Than Tun wrote, “By any standard of archaeological excavation and restoration, the work done was ignoble”.¹¹¹ ICOMOS later pointed out the works as not satisfying the authenticity criterion necessary for inscription on the World Heritage List.¹¹²

According to Philp, the military tried to create a sense of cultural continuity with the traditions, rituals, and customs of the ancient monarchical rule.¹¹³ The military sought to revive the glory of these past monuments by renovating and “making merit” at the pagodas. The activity of building or repairing pagodas and Buddhist archaeological structures is a customary way of making merit (*dana*) in Theravadin Buddhism. The word *dana* means donation or charity and is one of the pillars of Buddhism in Myanmar. *Dana* is practiced daily by Burmese people by providing food for the monks. But donations can be made for building a monastery or pagoda. Matthew J. Walton explains that merit-making is very present on the Burmese political scene.¹¹⁴ Than Shwe and other generals personally spent a considerable portion of their fortune supporting Buddhist foundations, monasteries, and temples. Kings continued building in Bagan as a way of gaining merit by *dana* for centuries. This dimension of Bagan as a place of merit-making was also emphasized in the ICOMOS report: Bagan, as a sacred cultural landscape “demonstrates centuries of the cultural tradition of Buddhist merit-making, and provides important evidence of the Bagan civilisation”.¹¹⁵ The military, by continuing the generous activity of the kings, sought to increase its spiritual legitimacy in Myanmar.

The earthquakes of 2016 damaged most of the beautifications. The repairs following the earthquakes were largely led by UNESCO to comply with standards of authenticity.¹¹⁶ The proper inscription process could take place. Bagan succeeded in becoming part of World Heritage in July 2019. Only one other Burmese cultural site is featured on the list: Pyu Ancient Cities, added in 2014. The listing took

¹¹⁰ C. Rellensmann, *Appropriating Sacred Spaces: An Investigation of Bagan's Transformed Landscape*, PhD dissertation, University of Brandenburg, 2020; B. Hudson, *Restoration and Reconstruction of Monuments at Bagan (Pagan), Myanmar (Burma), 1995-2008*, “World Archaeology” 2008, Vol. 40(4), pp. 553-571.

¹¹¹ U Than Tun, *An Original Inscription Dated 10 September 1223 that King Badon Copied on 27 October 1785*, in: P. Pichard, F. Robinne (eds.), *Études birmanes en hommage à Denise Bernot*, EFEO – École française d'Extrême-Orient, Paris 1998, cited after P. Pichard, *Today's Pagan...*, p. 239.

¹¹² ICOMOS, op. cit., p. 170.

¹¹³ J. Philp, op. cit., p. 91.

¹¹⁴ M.J. Walton, op. cit., p. 60.

¹¹⁵ ICOMOS, op. cit., p. 168.

¹¹⁶ *Ibidem*.

place after the more democratic government accepted the UNESCO standards of archaeological conservation.¹¹⁷

The inscription of Bagan was met with enthusiasm by the international community. The fact that Bagan is an outstanding historical and architectural ensemble contributed to the experts being more lenient with the authenticity criterion.¹¹⁸ Moreover, the civil Burmese government inspired sympathy and generated much interest in meeting international standards of conservation practices in the future.

Yangon urban heritage

The definition of ancient monuments provided in the Law on the Preservation and Protection of Ancient Buildings potentially excludes some colonial buildings. Indeed, to benefit from the protection granted to “ancient monuments”, the site or building must be over a hundred years old (Article 1). Although many colonial buildings have reached the century threshold, not all have acquired such seniority. When the law was adopted, the urban landscape of Yangon was partly excluded from legal protection. Moreover, the government initially paid little attention to conservation initiatives directed towards urban colonial heritage. Thus, even though the 19th century façades were a century old, they were until recently, not a concern of the regime. The colonial-era heritage is threatened by the pressure for development and modernization.¹¹⁹

The first time I visited downtown Yangon, I remember the driver telling me with pride to look at the beautiful old buildings. They were beautiful indeed. But they also appeared oddly dilapidated. Colonial houses and official buildings were crumbling with tropical vegetation growing from their neglected façades. These constructions are the last surviving witnesses of the time when Yangon was a cosmopolitan city attracting European, Chinese, and Indian immigrants.¹²⁰ Actually, Yangon is unique in all of Asia for hosting the largest concentration of colonial period architecture.¹²¹ Yangon flourished economically as the economic centre of British Burma and stagnated during most of the second half of the 20th century. Downtown Yangon and its urban plan remained mostly unchanged.¹²² The city has

¹¹⁷ For more on the procedure of inscription on the UNESCO World Heritage List, see L. Meskell, *The Rush to Inscribe: Reflections on the 35th Session of the World Heritage Committee, UNESCO Paris, 2011*, “Journal of Field Archaeology” 2012, Vol. 37(2).

¹¹⁸ ICOMOS, op. cit., p. 170.

¹¹⁹ W. Logan, *Cultural Diversity...*, p. 259.

¹²⁰ T. Myint-U, *The Hidden History...*, p. 20.

¹²¹ Ibidem.

¹²² *Survey Report on the Protection of Cultural Heritage in Republic of the Union of Myanmar*, Japan Consortium for International Cooperation in Cultural Heritage, Tokyo 2013, p. 52.

hosted a high diversity of different religions and buildings that reflect the cosmopolitan character of the city during the 19th century.¹²³ Thant Myint-U explains:

Yangon is home to an unparalleled collection of sites belonging to all the world's major religions: Anglican and Roman Catholic cathedrals, Protestant churches of every imaginable denomination, an Armenian church, a Jewish synagogue, dozens of Hindu, Chinese, Sikh, and Parsi temples, Buddhist pagodas and monasteries, and dozens of mosques, both Sunni and Shia.¹²⁴

Yangon inhabitants came from Britain, India, and China, all of whom left their mark on the diversity of the city. The ethnographic study of Jayde Lin Roberts highlights the unappreciated Chinese remains of past Chinese immigrants of Yangon.¹²⁵ This landscape is culturally significant with its stories of war, riots, revolution, colonialism, and anti-colonialism.¹²⁶

The cosmopolitan narrative of downtown Yangon does not resonate with the Tatmadaw's Buddho-nationalist mythology.¹²⁷ The preservation of Yangon's urban landscape was thus of little interest to the SPDC.¹²⁸ On the one hand, the urban landscape is disconnected from the Buddhist merit-making traditions, dear to Theravadin Buddhists of Burma and keenly instrumentalized by the military for their own symbolic prestige. On the other hand, for a major part of the population, old buildings were simply viewed inconvenient in comparison to newer constructions. The dilapidated look of heritage buildings was resented and considered an embarrassment for a city struggling for modernity in a country striving for development.

With the transition to democracy around 2011, foreign influence in the form of financial support, capacity building, training courses, conservation projects, advocacy campaigns, and production of expertise shaped a new language in heritage conservation and resulting legal change. Substantial projects were undertaken by agencies such as the Japan International Cooperation Agency, the European Union, Getty Institute.¹²⁹ UNESCO established a liaison office in Yangon in 2012. The notion of "urban heritage" in Myanmar was informed by imported discourses and definitions that came from the international standard of culture conservation.

The old urban landscape of Yangon was first protected by the civil initiative of the Yangon Heritage Trust (YHT), founded by the historian Thant Myint-U

¹²³ P.D. Rupasinghe, *Down the Memory Lane, Along the Footsteps of Orwell and Neruda*, "The Asian Review", 5 January 2021, <https://asian-reviews.com/2021/01/05/down-the-memory-lane-along-the-footsteps-of-orwell-and-neruda> [accessed: 25.08.2022].

¹²⁴ T. Myint-U, *The Hidden History...*

¹²⁵ J.L. Roberts, *Urban*, in: A. Simpson, N. Farrelly, I. Holliday (eds.), *Routledge Handbook of Contemporary Myanmar*, Routledge, London 2018, p. 64.

¹²⁶ T. Myint-U, *The Hidden History...*

¹²⁷ K. Fong, *Imagining Yangon: Assembling Heritage, National Identity, and Modern Futures*, "Historic Environment" 2014, Vol. 26(3), p. 35.

¹²⁸ W. Logan, *Whose Heritage?*, p. 256.

¹²⁹ K. Fong, *op. cit.*, p. 33.

in 2012. Yangon Heritage Trust campaigned relentlessly for the government to recognize the historical and architectural importance of colonial façades. Its efforts were met with success. Public opinion shifted from annoyance and boredom with the old for a newly established reverence for what they now understand to be “heritage”. Around 2019, the government picked up the mission of the YHT and took over conservation efforts for the preservation of the urban centre of Yangon.

The military coup of 2021 did not go back to pre-2012 practices. Understanding that the label “heritage” is an asset, the government has maintained interest in heritage conservation. The heritage laws are strict and are actively enforced. On 23 March 2022, U Khin Shwe and his son Zay Thiha were prosecuted for demolishing colonial buildings in Yangon. They were charged with violation of Article 19 and Article 24 of the Law on the Preservation and Protection of Ancient Buildings.¹³⁰ U Khin Shwe was a wealthy Yangon real estate entrepreneur and longtime chum of the military. He is also the owner of the Zaykabar Museum. His company of the same name, Zaykabar Co. Ltd, contracted a long-term lease of a colonial compound owned by the Minister of Defense. U Khin Shwe maintained that the demolished house was built around 1957 and was thus less than 70 years old, and not a heritage building.¹³¹ However, according to the administration the compound was composed of historic buildings that had been classified “ancient monuments”, according to the Yangon City Heritage Preservation Committee and Yangon City Development Committee. The Ministry of Religion and Culture also proclaimed that the destruction caused a “loss of heritage values for the government and the Ministry of Defense”.¹³²

This episode of incrimination under the Law on the Preservation and Protection of Ancient Buildings can lead to a few interpretations. The military regime of Min Aung Hlaing has perhaps understood the way to instrumentalize Western standards and legal vocabulary of culture conservation. It can now use it to its advantage including for purging its own ranks.

Conclusion

The World Heritage Convention embodies a universal conception of heritage promoted by UNESCO and is credited with establishing a certain consensus in the international community. The concept of protecting heritage as belonging to

¹³⁰ *Zaykabar Museum Owner Khin Shwe and His Son Zay Thiha Charged and Sent to Insein Prison*, “Eleven Media Group”, 24 March 2022, <https://elevenmyanmar.com/news/zaykabar-museum-owner-khin-shwe-and-his-son-zay-thiha-charged-and-sent-to-insein-prison> [accessed: 25.08.2022].

¹³¹ K.Y. Lynn, *Tycoon Seeks Shwe Mann's Help over Halted Project*, “Frontier Myanmar”, 8 June 2018, <https://www.frontiermyanmar.net/en/tycoon-seeks-shwe-manns-help-over-halted-project/> [accessed: 25.08.2022].

¹³² K.H. Mon, *Zaykabar Group's U Khin Shwe to Open Private Museum*, “The Irrawaddy”, 18 November 2016, <https://www.irrawaddy.com/news/burma/zaykabar-groups-u-khin-shwe-to-open-private-museum.html> [accessed: 25.08.2022].

humankind has prevailed since the end of the Second World War and has been the basis of international cooperation in cultural heritage law.¹³³ In practice, however, the task of heritage protection is carried out locally, often by national governments.¹³⁴ The Burmese military government and law-makers interpreted the text of international conventions as endorsing their claims as upholders of Burman cultural heritage. International law protecting cultural heritage was repurposed for aims diametrically different from the ones originally envisioned. In this case, the complex ethnic history and the central government's challenges to unite the country promote the surfacing of ethnonationalist sentiment. The domestic legislation was adopted in conformity with modern standards of international law. However, the purpose of the law was underpinned by ethnonationalist ideologies. Thus, although respecting international directives in drafting legislation, the law-makers managed to twist the universal protection of the cultural heritage of humankind to serve the promotion of the dominant ethnic group in the country. Perhaps, as David Lowenthal suggested, "too much is now being asked of heritage. In the same breath we commend national patrimony, regional and ethnic legacies, and a global heritage shared and sheltered in common. We forget that these aims are usually incompatible".¹³⁵ In the Burmese context, too much is asked from cultural heritage in the sense that the international legal framework and the national government serve opposite objectives. Whereas international law aimed to create universalist standard-setting instruments, the Burman central power had in mind to promote one culture and identity reference at the expense of other cultural and ethnic minorities.

This analysis provided an account of the difficulties in heritage conservation in Burma, against the background of political and social unrest. Ultimately neither the feeble transition to democracy nor the implementation of international legal instruments expunged the root of ethnonationalism inseparable from the vision of culture as a symbol of race and power.

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¹³³ J. Blake, *International Cultural Heritage Law*, Oxford University Press, Oxford 2015.

¹³⁴ L. Meskell, *A Future in Ruins: UNESCO, World Heritage, and the Dream of Peace*, Oxford University Press, Oxford 2018.

¹³⁵ D. Lowenthal, *The Heritage Crusade and the Spoils of History*, Cambridge University Press, Cambridge 1998.

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