

# EVENTS AND CONFERENCES

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## *New Challenges to Cultural Heritage in Contexts of Crisis. Legal Dynamics in the Evolution of the International Protection of Cultural Heritage*

Paris, 19-20 November 2018

On 19 and 20 November 2018, the French National Commission for UNESCO held a two-day conference to celebrate a dual milestone: two anniversaries of French ratifications (twenty years since the ratification of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and the first anniversary of the ratification of the Second Protocol to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict). The conference brought together a range of international academics and practitioners on issues related to the main topic: “New Challenges to Cultural Heritage in Contexts of Crisis. Legal Dynamics in the Evolution of the International Protection of Cultural Heritage”. At a time when growing awareness of the “heritage of others” goes hand in hand with the proliferation of norms, the conference aimed to analyse the dynamics of these norms’ impact on the evolution of the international protection of cultural heritage. The event sought to engage in a critical analysis of the ways in which

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various norms adopted at the national, regional, and international levels are coordinated – both at the stages of their conceptualization as well as their implementation – to ensure the protection of cultural heritage.

The conference's opening, with keynote speeches by institutional members Ernesto Ottone Ramirez (UNESCO Assistant Director-General for Culture) and Daniel Janicot (President of the French National Commission for UNESCO), as well as academics Marie Cornu (CNRS Director of Research, member of the administrative board of the French National Commission for UNESCO), Jérôme Fromageau (Advisor for the French National Commission for UNESCO) and Vincent Négri (Researcher affiliated to the Institute for Political Social Sciences [ISP]), demonstrated a vision that would become tangible over the two days of presentations, approaching the main topic from diverse angles. Vincent Négri offered the audience a historical insight into the genesis of the protection of cultural heritage in international law, while noting the precursory role of the work accomplished by the International Committee on Intellectual Cooperation in the 1930s. Situating current issues within this larger historical perspective, Marie Cornu then provided a comprehensive and detailed explanation of the various issues at stake in the chosen conference topic. This analysis demonstrated how various norms of heritage protection are linked, and identified potential gaps in their coordination in order to reflect on the ways in which they can evolve and strengthen the international protection of cultural heritage. Despite the legal nature of these reflections, the inaugural presentation was given, notably, by an anthropologist, Benoît L'Estoile (CNRS Director of Research). Based on the works of Marcel Mauss, Alain Testart, and David Graeber, he encouraged the search for a new paradigm regarding the "heritage of others" – one based on a shared property and one that could allow multiple appropriations. This critical approach would prove characteristic of numerous contributions over the four conference sessions.

The aim of the first session, chaired by Sandra Szurek (Professor emeritus at the Faculty of Paris Nanterre), was to demonstrate the rise, in the international space, of the need for heritage protection. Manlio Frigo (Counsel for BonelliErede, Milan) outlined the gradual historical development of the international protection of cultural heritage, both in the doctrine and in international instruments, from the 18th century. Regarding the period after the Second World War, he suggested that protection could be addressed from three angles: the role of international organizations; the qualification of the object of protection (including the various terminologies, and the pertinence of the "common heritage of mankind" being applied to cultural heritage); and the different sources of law (custom, soft law). Although a growing number of norms are being adopted in the international sphere, one may question the impact of this soft law on national laws. By engaging in a thorough analysis of the United Nations Security Council Resolution 2347 (2017), Anne-Thida Norodom (Professor at the University of Paris Descartes) then demonstrated the efficient impact of this instrument on national laws. She explained this efficiency by the in-

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scription of this resolution into the framework of previous resolutions about terrorism and the relevance of soft law in relation to cultural heritage issues. The session was closed by Jihane Chedouki (Delegate for the International Committee of the Red Cross) who, while focusing on the evolution of international humanitarian law, underlined that the Geneva conventions provided stronger protection for cultural heritage than the 1954 Hague Convention, and insisted upon the key role of international organizations in the dissemination of standards for heritage protection.

The presentations in the second session, chaired by Jean-François Poli (the Honorary Dean of the Faculty of Law at the University of Corsica), were devoted to the question of responsibility regarding crimes against cultural heritage. The various presentations analysed how European and international laws currently provide for criminal responsibility for these crimes, or how they might evolve to do so. The speakers also explored the key question of what kind of reparations are suitable. Pascal Beauvais and Elisabeth Fortis (Professors at the University of Paris Nanterre) opened the floor with a theoretical approach, touching upon recent advancements (the Nicosia Convention, the upcoming European regulation regarding the importation of cultural goods) and formulating a range of proposals to strengthen the criminalization of offences against cultural heritage. They identified obstacles to the recognition of individual criminal responsibility in international law. The speakers posited that the efficiency of law enforcement cooperation could be fostered by additional treaties which oblige states to cooperate, and by capitalizing on the technical support provided by international organizations. Bringing a practical point of view to the debate, Eleni Chaitidou (Legal Officer at the International Criminal Court [ICC], Pre-Trial/Trial Division) explored ICC judgments on cultural goods, *Prosecutor v. Ahmad Al Faqi Al Mahdi* (ICC-01/12-01/15) and *Prosecutor v. Al Hasan Ag Abdoul Aziz Ag Mohammad Ag Mahmoud* (ICC-01/12-01/18). As regards the first case, she examined how the court analysed the destruction of heritage (requirements for the legal characterization of the facts or the amount destroyed, factors related to the gravity of the crime, or the conduct of the accused) and what were the effects of the nature of the goods destroyed on the judgment regarding reparation measures. Nonetheless, Alice Fabris (Ph.D. student at the ISP), after a comprehensive analysis of multiple cases clarifying the merging, the hierarchy, and the evolutions of forms of reparations in international law across history, recognized the lack of a suitable form of reparation on account of the specific nature of cultural heritage. To overcome this difficulty, she encouraged us to rethink the mechanisms of reparation by combining its different forms in order to reach an adequate compensation. The session was concluded by Edouard Planche (Programme Specialist, Section of Movable Heritage and Museums at UNESCO) who encouraged not only the ratification of international conventions but also the monitoring of their implementation over time. In order to do so, he shed light on the need for unified national laws, broader institutional cooperation, and the involvement of various stakeholders.

On the second day, the conference resumed with a session on comparative law, examining the role of collective responsibility in domestic laws. The chairman, Marc-André Renold (Professor at the University of Geneva), took to the floor first to examine recent innovations in the field of safe havens introduced in Switzerland by the Federal Law on the Protection of Cultural Property in the Event of Armed Conflict, Natural Disaster or Emergency (LPBC) in 2014. He explained some of the specificities of this Swiss mechanism, such as the legal framework of bilateral agreements, the protection of the works with a prohibition against third parties claiming an object, and the fact that the protection occurs under the auspices of UNESCO. Despite many similarities, Claire Chastanier (Heritage Directorate, French Ministry of Culture) explained that in French safe havens, as established by the Law on Freedom of Creation, Architecture and Heritage (LCAP) adopted in 2016, UNESCO is only informed. She then demonstrated how innovative the LCAP is in the fight against illicit trafficking in terms of both preventative measures, such as importation control, and curative ones, such as the possibility to withdraw an object from public collections if it was acquired in bad faith. Sabrina Urbinati (Researcher affiliated with the University of Milan Bicocca) then drew attention to another form of cultural-goods heritage protection in her presentation on the operation of the UNESCO Emergency Task Force for Culture, created by Italy in 2016. A round-table then broadened the picture by bringing together experts from various geographical areas, such as South America with Paulina Restrepo-Navarro (Researcher affiliated to ISP); Eastern Europe with Alicja Jagielska-Burduk (UNESCO Chair in Cultural Property Legal Studies at the University of Opole, Poland); Asia with Li Wang (Associate-Professor at the Central-South University, School of Law, China); and Arabic States with Jihane Chedouki (Delegate for the International Committee of the Red Cross). This created the opportunity to compare the major trends in public policy regarding the protection of heritage in various geographical areas while also comparing the diverse tools mobilized to that end. Some experts demonstrated the development of soft law as a regulation tool. Alicja Jagielska-Burduk, for example, discussed the 2018 Warsaw Recommendation on the Recovery and Reconstruction of Cultural Heritage, a new soft law instrument providing universal guidelines regarding recovery and reconstructions in post-conflict or post-disaster situations. Others illustrated mobilization of the tax system to protect cultural heritage. For instance, Li Wang explained the new Chinese reform for the tax status of returning cultural goods, starting from the adoption process, through to consultations via surveys, and until the final implementation of a 17% import VAT.

The fourth and final session, chaired by Bruno Favel (Head of the Foreign Relations Department, Ministry of Culture, France), provided the audience with a more practical angle on the protection of cultural heritage. The first part of the session dealt with issues related to the fight against the illicit trading in cultural goods. It was up to Benjamin Omer (Project Manager, affiliated with UNESCO) to analyse the growing trend of online illicit trade. After a brief historical analysis of this

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phenomenon, he identified its specificities compared to other means of trafficking in order to formulate specific measures, such as the conclusion of public/private agreements with online sales companies. Isabelle Le Masne de Chermont (Director of the Department of Manuscripts at the French National Library) demonstrated the involvement of the art market with a presentation concerning the *CINOA Code of Ethics* adopted by the international confederation of Art & Antique dealer associations in reaction to the trafficking and illegal exportation of stolen cultural goods. The session was very engaging because the audience was composed of experts from French institutions (Ministry of Culture and French Stolen Art Items Central Office) who, despite recognizing the inherent difficulties in quantifying illicit trade, have noted its decline in France in recent years. The second part of the session moved on to issues related to the protection of cultural heritage during armed conflicts. In a closing Round Table, the conference topic was approached from diverse angles, with François Mirikélam (Attorney at the Paris Bar), Mickaël Dupenloup (Legal Affairs Directorate, Ministry of Armed Forces, France), Vincent Michel (Professor of Archaeology at the University of Poitiers, France), and a video projection from ICONEM. In the spirit of ICOM red lists, Vincent Michel first provided a typology of cultural goods likely to be stolen, then offered the audience an insight into the ways in which export control can be subverted. He pointed to the lack of implementation of international instruments and advocated a more multidisciplinary approach. To reinforce the implementation of international instruments, François Mirikélam presented an operational guide, the *Handbook on the Protection of Cultural Property in the Event of Armed Conflict*, used to disseminate knowledge about, in particular, legal instruments and their implementation, military measures and rules concerning illicit exportation and trafficking of cultural property. This theoretical approach was completed by Mickaël Dupenloup, who exposed how cultural heritage was taken into consideration during the planning of national and international military campaigns led by France.

In his closing remarks, Jérôme Fromageau noted that despite gradual improvements made to the international framework over time, the current crises are putting the protection of cultural heritage to the test. The international framework has not been implemented rigorously by the States and it has had to adapt to difficulties arising, for example, from the changing nature of armed conflicts, the “new faces of war” and evolving markets. In spite of these difficulties, the pursuit of the protection of cultural heritage has not been discouraged. There is a growing collective awareness of its importance and this has led to multidisciplinary initiatives, a broader involvement of stakeholders, and an increasing set of standards. The protection of cultural heritage remains a priority, as international law evolves and expands.