

# CONFERENCE REPORT

Cornelia Gersch



## **INTERNATIONALE TAGUNG KULTURGUT IN GEFAHR: RAUBGRABUNGEN UND ILLEGALER HANDEL 11. UND 12. DEZEMBER 2014**

Organised by:

Stiftung Preußischer Kulturbesitz, Deutsches Archäologisches Institut, Deutscher Verband für Archäologie

Supported by:

Beauftragte der Bundesregierung für Kultur und Medien, Auswärtiges Amt

# **CULTURAL HERITAGE IN DANGER – ILLICIT EXCAVATIONS AND ILLEGAL TRADE Conference Report**

Cornelia Gersch

Published by the  
Stiftung Preußischer Kulturbesitz  
(Prussian Cultural Heritage Foundation)  
Von-der-Heydt-Str. 16–18  
10785 Berlin

Deutsches Archäologisches Institut  
(German Archaeological Institute)  
Podbielskiallee 69-71  
14195 Berlin

Deutscher Verband für Archäologie  
(German Association for Archeology)  
Von-der-Heydt-Str. 16–18  
10785 Berlin

30 July 2015

Translation  
Auswärtiges Amt (Foreign Office) Berlin, Sprachendienst

## Contents

Introduction .....	- 3 -
I Protection at the national and international level against illicit excavations .....	- 6 -
Panel 1: Middle East .....	- 6 -
Panel 2: Africa .....	- 8 -
Panel 3: Latin America .....	- 9 -
Panel 4: South-East Europe.....	- 10 -
Panel 5: Central Europe and Germany .....	- 11 -
II Evening lecture: transnational organised crime.....	- 11 -
III Law and ethics .....	- 13 -
Panel 6: Legal mechanisms .....	- 13 -
a. UNESCO Convention of 1970 .....	- 13 -
b. UNIDROIT Convention of 1995 .....	- 14 -
c. German legislation on the protection of cultural property.....	- 14 -
d. Pending amendment of the Act on the Return of Cultural Objects .....	- 15 -
Panel 7: Self-regulation and ethical codes.....	- 17 -
IV Measures to counter illegal trade.....	- 19 -
Panel 8: Documentation and databases .....	- 20 -
Panel 9: Raising awareness.....	- 20 -
V General discussion and podium discussion .....	- 22 -
The legal framework.....	- 23 -
Law enforcement.....	- 24 -
Research into undetected cases.....	- 24 -
International cooperation.....	- 25 -
VI Conclusion .....	- 26 -
Illicit excavations and illegal trade harm everyone.....	- 26 -
Investigating and dealing with illegal trade.....	- 26 -
Legal reforms and application of the law .....	- 27 -
Voluntary commitments.....	- 27 -
Documentation .....	- 27 -
Raising awareness.....	- 28 -
Law enforcement.....	- 28 -
Enhanced international cooperation.....	- 28 -
Continuing the discussion .....	- 29 -

## Introduction

On 11 and 12 December 2014, international experts from the spheres of politics, the field and research met in the Weltsaal at the Federal Foreign Office in Berlin to draw attention to the threats posed to cultural property worldwide by illicit excavations, looting of cultural heritage sites and trade in stolen and illegally exported cultural objects. During the event, around 300 participants discussed which national and international measures could protect cultural property more effectively in the future.

The conference was co-organised by the Prussian Cultural Heritage Foundation, the German Archaeological Institute and the German Association for Archaeology, with support from the Federal Foreign Office and the Federal Government Commissioner for Culture and the Media.

In their opening remarks, the conference organisers **Friederike Fless**<sup>1</sup>, President of the German Archaeological Institute and Vice-President of the German Association for Archaeology, and **Hermann Parzinger**, President of the Prussian Cultural Heritage Foundation and President of the German Association for Archaeology, said that the aim of the conference was to highlight fundamental structures and concrete solutions.

Experts from the Middle East, Africa, Latin America, South-East Europe and Germany had been invited to the conference as representatives of various regions in order to draw attention to the threats to cultural property worldwide.

The economic value and political significance of protecting cultural property were still underestimated, although the enormous loss of cultural property in the countries of origin could be documented clearly. According to estimates by international organisations such as UNESCO<sup>2</sup>, the total volume of international illegal trade in cultural property was worth several billion dollars per year. Illegal trade in cultural property thus held third place in international crime after international arms and drug trafficking.<sup>3</sup>

The conference organisers emphasised that every find contained information whose value to researchers could only develop in the context where the item was found. Illicit excavations irretrievably destroyed any knowledge that could be obtained from a find.

---

<sup>1</sup> For the sake of simplicity, no academic titles will be used in the report.

<sup>2</sup> United Nations Educational, Scientific and Cultural Organization. [www.unesco.de/kulturgutschutz.html](http://www.unesco.de/kulturgutschutz.html).

<sup>3</sup> Cf. Report of the Federal Government on the Protection of Cultural Property in Germany, April 2013 (in German). Bundestag Printed Paper 17/13378. Also available as a PDF file at [www.bundesregierung.de/Content/DE/\\_Anlagen/BKM/2013-04-24-bericht-kulturgutschutz.pdf?\\_\\_blob=publicationFile&v=2](http://www.bundesregierung.de/Content/DE/_Anlagen/BKM/2013-04-24-bericht-kulturgutschutz.pdf?__blob=publicationFile&v=2). For an executive summary in English, please see [www.bundesregierung.de/Content/DE/\\_Anlagen/BKM/2013-07-11-bericht-kulturgutschutz-englisch.pdf?\\_\\_blob=publicationFile&v=2](http://www.bundesregierung.de/Content/DE/_Anlagen/BKM/2013-07-11-bericht-kulturgutschutz-englisch.pdf?__blob=publicationFile&v=2).

**Friederike Fless** made it clear that government permits were required for excavations in most countries in the world. The finds from these legal excavations remained the property of the country in question, and these items were kept in museums and cultural heritage authorities in the countries. Excavations conducted without a government permit were always illicit excavations and thus illegal.

Like illegal trade and the purchase of illegally excavated and illegally exported cultural property, illicit excavations were a global phenomenon. In many cases, the buyers would not even have been aware that the purchase could be problematic, that is, that the objects could – or indeed, often did – come from excavations that had been conducted illegally. In turn, the buyers' purchasing behaviour boosted the market and made illicit excavations lucrative, as buyers were available. Similarly to species and monument protection, a new awareness was needed in art trade, cultural institutions, politics and among the public in order to tighten international bans on illegal trade in cultural objects and to halt this trade effectively.

**Hermann Parzinger** underlined that fundamental legal changes were needed, particularly in Germany. (See the section on legal mechanisms.) However, German institutions could already help to contain trade in archaeological cultural objects. Voluntary undertakings, such as those by eBay, helped to keep artefacts that did not have a legal provenance out of circulation. Systematic research by the museums on the provenance of items in these collections, as well as agreements on long-term loans between partner countries and institutions, offered very interesting and useful alternatives to acquisitions, the traditional practice in the past.

**Maria Böhmer**, Minister of State at the Federal Foreign Office, gave the opening address, in which she underlined the political importance of protecting cultural property.

She quoted the Secretary-General of the United Nations, Ban Ki-moon, who had pointed out that as symbols of identity, cultural objects played an important role in achieving and maintaining peace. This was the case worldwide, but particularly in the current crisis regions in Iraq, Syria and parts of Africa, where terrorist organisations were deliberately destroying, desecrating and looting cultural property and religious sites.

Those involved in illegal trade were possibly even financing terrorism. The terrorist organisation ISIS was calling for illicit excavations and using the revenue to directly finance its campaign of terror in Syria and Iraq.

The Federal Foreign Office was involved in many projects on protecting cultural property internationally, such as the Syrian Heritage Archive Project described below, and the protection of cultural objects in Mali. It was also working closely with UNESCO. It was also the job of

politicians, experts, art dealers and the media to raise public awareness of illegal trade in cultural property.

Finally, the system for returning cultural property imported illegally into Germany needed to be made less complex, also to prevent damage to foreign relations.

In her speech, Federal Government Commissioner for Culture and the Media **Monika Grütters** underlined that illicit excavations and illegal trade in cultural property posed a threat to humankind's cultural heritage as a whole.

Referring to the Federal Government's 2013 Report on the Protection of Cultural Property in Germany<sup>4</sup> and its recommendation that German legislation on the protection of cultural property be overhauled, she announced that a bill would be presented in the first half of 2015 in order to implement new EU<sup>5</sup> legislation and improve how the terms of the UNESCO Convention of 1970<sup>6</sup> are enshrined in German law.

The amendment had been planned for a long time, and was therefore not a reaction to current images of the destruction of cultural heritage in Iraq and Syria. However, her hope was that current increased public awareness of the protection of cultural property would lend the necessary political and public impetus to the urgently required bill during this legislative term.

Present legislation was so limited that not a single item had been returned under the 2007 Act on the Return of Cultural Property<sup>7</sup>, which implements the UNESCO Convention of 1970, since this Act had entered into force. The aim was therefore to fundamentally strengthen German

---

<sup>4</sup> Cf. Report of the Federal Government on the Protection of Cultural Property in Germany, April 2013 (in German). Bundestag Printed Paper 17/13378. Also available as a PDF file at [www.bundesregierung.de/Content/DE/\\_Anlagen/BKM/2013-04-24-bericht-kulturgutschutz.pdf?\\_\\_blob=publicationFile&v=2](http://www.bundesregierung.de/Content/DE/_Anlagen/BKM/2013-04-24-bericht-kulturgutschutz.pdf?__blob=publicationFile&v=2). For an executive summary in English, please see [www.bundesregierung.de/Content/DE/\\_Anlagen/BKM/2013-07-11-bericht-kulturgutschutz-englisch.pdf?\\_\\_blob=publicationFile&v=2](http://www.bundesregierung.de/Content/DE/_Anlagen/BKM/2013-07-11-bericht-kulturgutschutz-englisch.pdf?__blob=publicationFile&v=2).

<sup>5</sup> Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast).

<sup>6</sup> UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970. [http://portal.unesco.org/en/ev.php-URL\\_ID=13039&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html).

<sup>7</sup> Act implementing the UNESCO Convention of 14 November 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property (Act implementing the cultural property convention of 18 May 2007, enacted as a compilation of amendments to existing legislation, Federal Law Gazette I, p. 747), Article 1: Act implementing the UNESCO Convention of 14 November 1970 on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property and implementing Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State. (Act on the Return of Cultural Property – KultGürückG). [http://www.gesetze-im-internet.de/englisch\\_kultg\\_r\\_ckg/index.html](http://www.gesetze-im-internet.de/englisch_kultg_r_ckg/index.html).

legislation on the protection of cultural property by establishing import and export regulations and introducing clear duties of care.

**Mechthild Rössler**, Deputy Director of the UNESCO World Heritage Centre, pointed out in her address that the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 had celebrated its 60<sup>th</sup> anniversary in 2014, but that the current threats to cultural property, as currently seen in Syria, Iraq and parts of Africa, made special international endeavours necessary once again. She underlined that the loss of cultural property endangered humankind's cultural heritage and had a security policy dimension, as it harmed mutual cultural understanding.

## **I Protection at the national and international level against illicit excavations**

The speakers on the first day of the conference made evident that cultural property is not only being destroyed, illegally excavated, stolen and sold at lucrative prices in certain regions, but rather all over the world.

### **Panel 1: Middle East**

The speakers from Syria, Iraq and Egypt brought home the devastating impact that military and political conflicts can have on cultural property.

According to **Maamoun Abdulkarim**, Director-General of Antiquities and Museums in Syria, over 100 archaeological sites have already been damaged in Syria, including six UNESCO World Cultural Heritage sites.

Some of those responsible for the damage were ISIS terrorists, who deliberately destroyed cultural heritage for ideological reasons and looted cultural sites as a means of financing terrorism. Criminal gangs were also taking advantage of the unstable situation to loot archaeological sites and museums on a grand scale, with the help of hundreds of recruited helpers and at times using heavy equipment such as earthmovers and bulldozers.

As examples, he mentioned looting and destruction in Raqqa and Aleppo, illegal excavations in Deraa, Ebla, Apamea, al-Omari Mosque, Wadi al-Yarmouk and Tell al-Ash'ari, as well as the looting of museums. Bombing had also caused damage.

Syria was unable to guard all archaeological sites or to monitor the borders to all neighbouring countries on its own, and urgently needed international support. The EU regulation of 2013<sup>8</sup> banning imports, exports and trade in Syrian cultural property was an important step. However, a closer watch needed to be kept on trade in the markets in Europe, North America and the Gulf states.

He described the measures being undertaken by the Directorate-General of Antiquities and Museums to protect cultural heritage in Syria. He opposed the idea of taking Syrian cultural property to a safe place abroad – a type of “asylum for cultural objects” – on the grounds of state sovereignty. He regarded the cultural property depots in the government zone, where most of all Syrian museum collections have been stored, as safe.

**Halah Mohammed Abbas al-Badrawi**, Chief Registrar at the Iraq Museum of the State Board of Antiques and Heritage, also made an urgent appeal to the conference participants. Priceless archaeological sites were damaged during the Iraq War in 2003 or subsequently destroyed by illicit excavations.

The US Army was previously stationed in the site of ancient Babylon. It destroyed parts of the ruins and carelessly used archaeological artefacts as fortifications.

The Malwiya Tower, the minaret of the famous Abbasid Great Mosque of Samarra, was damaged during the fighting. During the invasion of 2003 and the post-war chaos, the Iraq Museum in Baghdad and a large number of archaeological sites, such as Umma, sites to the north of the city of Nasiriyah and sites near Basra, were looted.

She also called for tighter border controls in neighbouring countries and for international endeavours to combat illegal trade in Iraqi cultural objects, which unfortunately was still booming despite the UN Resolution<sup>9</sup> and the EU Regulation of 2003<sup>10</sup> aimed at protecting Iraq’s cultural property.

**Mamdouh Mohamed Gad el-Damaty**, Egyptian Minister of Antiquities and Heritage, said that Egypt had a long history of illicit excavations. However, since the start of the revolution on 25 January 2011, there had been another significant increase in illicit excavations and art thefts.

---

<sup>8</sup> Council Regulation (EU) No 1332/2013 of 13 December 2013 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria. Available at [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:335:0003:0007:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:335:0003:0007:EN:PDF).

<sup>9</sup> Security Council Resolution 1483 (2003) on the situation between Iraq and Kuwait. Available at [www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3f45dbe70](http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3f45dbe70).

<sup>10</sup> Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96 (OJ L 169, 8.7.2003, p. 6). Available at [eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2003R1210:20080304:EN:PDF](http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:2003R1210:20080304:EN:PDF).



Criminals had exploited the unstable security situation to loot excavation sites and museums, sometimes at gunpoint and using heavy equipment. As examples, he mentioned illegal excavations in Abusir al-Malaq, el-Lisht and Saqqara, as well as an attack on the Egyptian Museum in Cairo.

Although the Egyptian police had a special unit to combat antiquity smuggling and strict legislation was in place, illegal trade could be tackled more effectively in the countries to which such cultural objects were exported. Close cooperation between these countries and on the expert level was essential in this area.

**Margarete van Ess**, Scientific Director of the Orient Department at the German Archaeological Institute, who chaired the first panel, described the consequences of illicit excavations from her personal experience of excavations in the Middle East. She cited striking figures: when a space of 10 m<sup>2</sup> in this region is excavated to a depth of around 2.5 metres, around 10,000 shards and some 200 small finds are found on average. However, only around ten small finds (that is, one per mille) are worth exhibiting or of commercial interest.

In cases of illicit excavations, where the perpetrators usually discard finds that are not of use to them, vast numbers of objects are lost to archaeological research and the archaeological sites are irreparably destroyed.

Such destruction had already occurred in many places in Iraq, for example, where around 18 km<sup>2</sup> were illegally excavated between 2003 and 2005, during the conflicts, as shown by satellite pictures from the time.

## **Panel 2: Africa**

The panel chair, **Peter Breunig**, Professor of African Archaeology at the Institute of Archaeological Sciences at Goethe University Frankfurt, highlighted the very wide-ranging problems with protecting cultural property in Africa. Terrorists were a threat to cultural treasures, as were perpetrators motivated by criminal intent or poverty. Ethnological artefacts from Sub-Saharan West Africa were most affected, but so too were a large number of other cultural objects.

**Musa Oluwaseyi Hambolu** of the Department of History and International Relations at Veritas University and the National Commission for Museums and Monuments in Nigeria showed how devastating the current situation is in Nigeria. Large swathes of the country were controlled by the radical Islamic terrorist organisation Boko Haram. Many of the cultural objects on the

International Council of Museums' (ICOM) red list of endangered African cultural property<sup>11</sup> came from Nigeria.

However, the demand for illegally sourced Nigerian cultural objects came almost entirely from abroad, primarily from Europe and the United States. As the Nigerian authorities had limited resources on the ground, measures urgently needed to be taken on the international level.

**Solange Laura Macamo**, Director of the National Cultural Heritage Department at the Ministry of Culture of Mozambique, and **Décio Muianga** of the Department of Archaeology and Anthropology at Eduardo Mondlane University in Mozambique spoke about their country's endeavours to protect underwater cultural heritage.

Mozambique's coastline was around 3000 kilometres long, and it was not possible to guard it completely. Important testimony to the historical trade relations with Asia, Europe and America lay underwater. Above all, shipwrecks from the 15<sup>th</sup> and 16<sup>th</sup> centuries were valuable underwater heritage.

In the past, Mozambique had made the mistake of granting commercial "treasure hunters" permits to search for wrecks. However, a new approach had been taken in recent times. In 2009, Mozambique welcomed the UNESCO 2001 Convention on the Protection of the Underwater Cultural Heritage<sup>12</sup>, although for practical reasons, it had not yet ratified the text. Mozambique was endeavouring to make an inventory of found wrecks, had introduced a strict permit system, and was investing in training its own experts. In addition to this, international support on conducting research in the field and the fight against illegal trade in cultural property on international markets were important.

### **Panel 3: Latin America**

Using Mexico as an example, **Pedro Francisco Sánchez Nava**, National Coordinator of Archaeology at Mexico's National Institute of Anthropology and History (INAH), and the panel chair, lawyer and legal advisor to the Permanent Delegation of Mexico to UNESCO, **Robert Kugler**, spoke about the protection of cultural property in Latin America.

Although strict laws against illegal excavations had been in force in Mexico since 1827 and the country was also active on the international level as regards the protection of cultural property, finds from the Maya era, or Olmec figures, could be sold for very high prices, simply because they were so old. As a result, there was a booming international trade in Mexican antiquities.

---

<sup>11</sup> ICOM Red List of African Archaeological Objects. Available in English and French at [icom.museum/resources/red-lists-database/red-list/africa/](http://icom.museum/resources/red-lists-database/red-list/africa/).

<sup>12</sup> Convention on the Protection of the Underwater Cultural Heritage of 2 November 2001. <http://www.unesco.org/new/en/culture/themes/underwater-cultural-heritage/>.

During the past five years, the INAH had registered around 1600 thefts of cultural objects. Commercial land use also posed a threat to the 48,724 archaeological excavation sites in Mexico.

**Pedro Francisco Sánchez Nava** said that action was primarily needed as regards taking an inventory of the protection of cultural property and implementing international measures to combat illegal trade in cultural objects. The conference could play an important role in this.

#### **Panel 4: South-East Europe**

In Greece, which was used as an example of the state of play as regards the protection of cultural property in South-East Europe, the situation was similar, as **Kostas Nikolentzos**, Head of Administration at the National Archive of Monuments and the Hellenic Archaeological Cadastre in the Hellenic Ministry of Culture and Sports, Greek lawyer **Ira Kaliampetsos**, Director of the Hellenic Society for Law and Archaeology, and the panel chair **Katharina Cramer-Hadjidimos**, International Cooperation Division at the office of the Federal Government Commissioner for Culture and the Media, explained.

Despite very strict laws in Greece (illegal excavations are punishable by up to ten years in prison, while antiquities traders and private collectors are monitored) and extensive international cooperation, interest in Greek antiquities was so great that illegal trade was still thriving. Time and again, cultural objects had been stolen, for example from the Archaeological Museum of Olympia and the excavation site in Eleusis. In times of economic hardship, such thefts were on the rise. Old cases also needed to be resolved, such as those of Greek antiquities in foreign museums and collections. Demands for the return of artefacts from abroad often failed because it was unclear who was responsible, because the objects had been acquired in good faith, because of acquisitive prescription or because of the statutes of limitation in other legal systems. In addition, it was difficult to prove ownership.

The fact that 198 objects had been returned to Greece in 2013, including from Germany, was often only due to a sense of moral responsibility and greater awareness that illegally acquired cultural property rightfully belonged in its country of origin.

The panel would welcome tighter regulations on trade in antiquities and more effective laws on the return of cultural property in the future, particularly in the countries that served as markets for these objects.

## **Panel 5: Central Europe and Germany**

In a panel discussion chaired by **Matthias Wemhoff**, Director of the Museum of Prehistory and Early History of the National Museums in Berlin, **Jonathan Scheschkewitz** of the State Office for the Conservation of Historic Monuments in the Stuttgart Regional Commissioner's Office and **Eckhard Laufer**, Coordinator of Cultural Property Protection at Land Hesse Office of Criminal Investigation, Central Office for Transport and Crime Prevention, underlined that excavations in Germany were strictly regulated by the conservation authorities of the Länder. A permit was needed for excavations, and even for certain research, everywhere in Germany. There were also protected excavation zones. The authorities had to be notified of any finds, which then became the property of the Land.

Nevertheless, illicit excavations were the order of the day in Germany, too. Since the 1970s, a large part of the problem had been caused by detectorists – amateurs who use metal detectors to look for “hidden treasure”. As in other countries, this had led to some spectacular finds, such as the famous Nebra Sky Disc found in Land Saxony-Anhalt. Detectorists were often alarmingly unaware of the fact that their activities were illegal. Training could help to raise awareness of the problem. The state also cooperated with detectorists by granting excavation permits based on certain conditions. However, much remained to be done as regards teaching people about this subject. It was very difficult to estimate the number of active detectorists, but a German-language online forum had around 50,000 users.

A few cases involved a huge amount of criminal energy. For example, an entire tunnel system that had been used for illegal excavations was discovered in the area around an old ceramics plant in the town of Frechen (Land North Rhine-Westphalia), while in the Konstanz district (Land Baden-Württemberg), traces of illicit excavations had been found in nine castles.

In the future, both the public and the competent authorities needed to be made more aware of the fact that illicit excavations and illegal trade were not minor offences, but rather criminal acts that destroyed cultural sites and erased scientific information.

## **II Evening lecture: transnational organised crime**

In his evening lecture on organised crime in the art trade, **Neil Brodie** of the Scottish Centre for Crime and Justice Research at the University of Glasgow explained the structures of illegal trade in cultural property, using three spectacular cases as examples.

He suggested that most trade in cultural property was illegal. The United Nations defined an organised criminal group as “*a structured group of three or more persons, existing for a period of*

*time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”<sup>13</sup>*

In the first case study, Brodie spoke about the illegal trade in antiquities carried out by Giacomo Medici and Gianfranco Becchina between the 1970s and the 1990s. They found prestigious buyers, such as the J. Paul Getty Museum, for stolen antiquities from Italy. In a later trial, the Getty’s Curator of Antiquities at the time, Marion True, justified her acquisitions on the grounds that the museum’s mission, as stated in its internal guidelines of 1987, was to assemble the most prestigious collection possible. She said there had been consensus in the Getty on prioritising this goal and not querying the details of the antiquities’ provenance.

Renowned museums, including the Metropolitan Museum of Art and the National Gallery of Australia, were also among the buyers in the second case, that of antiquities dealer Subhash Kapoor, who traded in objects that had been illegally exported from Asian countries from the 1970s until his arrest in 2012.

For example, it had been proven that he had hired people in India via a middleman, Sanjivi Asokan, to steal statues from the temples in the villages of Sripuranthan and Suthamalli in 2006 and 2008. In order to smuggle these artefacts out of India, Asokan packed them with reproductions and sent them to New York.

This antiquities smuggling had been extremely profitable, Brodie said. For example, the National Gallery of Australia had paid \$5 million for one of the stolen sculptures. Kapoor had kept most of this money. In the case of the sculpture sold to the National Gallery of Australia, the Indian thieves only received \$3350, while the middleman Asokan was paid \$129,885.

In the third case study, Brodie presented an example of antiquities smuggling from Cambodia involving a statue that US Customs say was stolen from the Khmer city of Koh Ker in 1972. The statue was offered for auction by Sotheby’s in New York in 2010.

The subsequent trial brought to light e-mails revealing that an expert did not want to share his report so as not to attract the attention of the authorities. Sotheby’s had also requested a written declaration that the statue had already been outside Cambodia during the 1960s, without asking any further questions on its provenance. In the auction catalogue, the artefact’s provenance was given as “Spink & Son 1975”, a London-based auction house that had acquired the statue in 1975 with the help of the collector Douglas A. J. Latchford.

---

<sup>13</sup> United Nations Convention against Transnational Organized Crime of 15 November 2000. Available at [www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf](http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf).

Brodie drew the following conclusions from his case studies: more effective prosecution of the gangs would be welcome, but this is often very costly, so the best solution was to address potential buyers abroad; experts, museums, auction houses, collectors and dealers must be persuaded via legislation and awareness-raising activities to exercise strict due diligence when dealing with cultural objects.

### **III Law and ethics**

During the second day of the conference, one of the main points of the discussion was the presentation of existing legal regulations and ethical voluntary commitments in the field of cultural property protection, with a focus on the situation in Germany. A discussion on current problems and reform proposals was chaired by **Markus Hilgert**, Director of the Museum of Ancient Near Eastern Antiquities of the National Museums in Berlin.

#### **Panel 6: Legal mechanisms**

**Christian Manhart**, Head of the UNESCO office in Nepal, and **Sophie Lenski**, Chair of Constitutional, Administrative, Media, Art and Cultural Law at the University of Konstanz, gave an overview of legal principles and mechanisms in the field of cultural property protection.

**Christian Manhart** explained ways of preserving and safeguarding artefacts, using Afghanistan as an example and focusing on the limitations of the regulations available to the international community.

**Sophie Lenski** gave a presentation on the existing international conventions and the current legal situation in Germany. As these tools form the heart of effective cultural property protection, they will be outlined below.

##### **a. UNESCO Convention of 1970**

The aim of the UNESCO Convention of 1970 is to protect moveable cultural property from illicit import, export or transfer of ownership. The Convention cannot be applied directly in the current 127 States Parties, but must instead be implemented in national law. Under the Convention, countries must introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized, compile inventories of national cultural objects and adopt laws on the import, export and return of unlawfully removed cultural objects. The United States were one of the main “national markets” to ratify the Convention (in 1983). Germany only ratified it in 2007.

### **b. UNIDROIT Convention of 1995**<sup>14</sup>

As UNESCO was aware of the weaknesses of its 1970 Convention, it commissioned the International Institute for the Unification of Private Law (UNIDROIT) in Rome to draw up a successor agreement, which was adopted on 24 June 1995 as a UNIDROIT Convention.

Unlike the UNESCO Convention, the UNIDROIT Convention does not have to be implemented in national law, but can be used directly. Moreover, the UNIDROIT Convention does not only apply between countries, but also in private law matters. It provides for the restitution of cultural objects, even if they were acquired in good faith, in return for fair and reasonable compensation, provided that the owner exercised the due diligence stipulated under the Convention when acquiring the object. The time limitations are relatively long (“fifty years from the time of the theft or three years from the time when the claimant knew the location of the cultural object and the identity of its possessor”). The Convention also contains regulations on sanctions for breaches.

However, these strict regulations and the direct applicability of the Convention have deterred many countries from ratifying the UNIDROIT Convention of 1995 to date. In many cases, the countries are highly influenced by the art and auction trade. Germany has not ratified the Convention either.

### **c. German legislation on the protection of cultural property**

In Germany, the development of legislation on the protection of cultural property began during the aftermath of the Second World War.

In 1919, economic hardship increasingly led German cultural property to be sold abroad, a phenomenon which there was a desire to prevent. Therefore, a regulation on the export of works of art was passed. Following that, the export of cultural property listed as of national value was banned. This principle was applied once again in the 1955 Act to Protect German Cultural Property against Removal, which remains in force today. As part of the implementation of EU Directive 93/7/EEC<sup>15</sup>, the 1998 version of the Act to Protect German Cultural Property against Removal<sup>16</sup> was passed to regulate the return of cultural property within the EU internal market. In 2007, Germany ratified the UNESCO Convention of 1970 and implemented it through the Act

---

<sup>14</sup> UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 24 June 1995. Available at [www.unidroit.org/instruments/cultural-property/1995-convention](http://www.unidroit.org/instruments/cultural-property/1995-convention).

<sup>15</sup> Directive 93/7/EEC of the Council of the European Communities of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State (Official Journal L 074, 27/03/1993), available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:31993L0007>.

<sup>16</sup> Law on the implementation of the Directive of the European Communities on the return of cultural objects unlawfully removed from the territory of a Member State and on the amendment to the Act to Protect German Cultural Property against Removal (in German: Kulturgutsicherungsgesetz [KultgutSiG]) of 15 October 1998 (Federal Law Gazette I, p. 3162).

on the Return of Cultural Objects. The law was predominantly based on the German principle of using lists and was thus formulated in a very restrictive manner. Alongside the demanding requirements of the law on return, the regulations on the costs of return were also problematic as these had to be borne by the requesting state which, if necessary, had to pay compensation to the acquiring party if it had acquired the object in good faith.

Overall, **Sophie Lenski** called for closer dovetailing of legislation on the protection of cultural property and civil law in order to improve the protection of cultural property and avoid contradictions.

#### **d. Pending amendment of the Act on the Return of Cultural Objects**

In her welcome address on the first day, Federal Government Commissioner for Culture and the Media **Monika Grütters** offered an insight into the key points of the bill to amend the Act on the Return of Cultural Objects. She noted that, firstly, the amendment had to transpose EU Directive 2014/60 of May 2014 into German law. Yet it also sought to better protect German cultural property from being taken abroad and to more effectively implement the provisions of the 1970 UNESCO Convention.

Thus, in particular, she wanted to put an end to the use of the list principle in Germany's implementation of the UNESCO Convention. When the 2007 Act was evaluated it became clear that this principle had not proven effective. Most States Parties to the UNESCO Convention used legal bans, yet primarily based on categories of protected cultural property rather than lists of individual objects to protect their cultural property – and sometimes the entirety of their archaeological heritage. The EU also applies the principle of using categories rather than lists in its Directive on the removal of cultural objects. Moreover, Grütters said that the principle of using lists was not practical particularly in crisis and war zones and when illicit excavations were an issue because it was impossible for states to keep the lists up-to-date in times of crisis and, in any case, it was impossible to list archaeological artefacts not yet discovered. She also advocated simplifying the procedure for returning cultural property brought to Germany illegally.

A further aim was to create a clear legal framework for the import and export of cultural property. Thus the amendment to the law would ensure that, in future, certain cultural objects would only be granted entry into Germany upon presentation of an export permit from the country of origin. This rule would apply to tourists, too.

Finally, stricter due diligence rules were to be imposed on the sale and purchase of cultural property. This was something which, if necessary, Grütters said she wanted to implement even if



the art trade resisted, for clear due diligence rules boosted Germany's reputation as a location for art and benefited honest art dealers.

Later in the panel discussion, **Hermann Parzinger** expressly welcomed the bill and called for the proof of origin and an Object ID of the cultural object in question – stating its origin, the place and date of its excavation or discovery as well as verifiable details of the previous owners – from the country of origin to be demanded. Only trade in verified and documented archaeological artefacts should be permitted in future. Sanctions had to be imposed should art dealers fail to comply with these requirements, and the authorities should not shy away from rescinding trade permits.

Parzinger said that Switzerland's legislation on the transfer of cultural goods offered interesting approaches. It required antiquities traders to practice due diligence and keep the following records: the name and address of the supplier or seller, a written declaration from them confirming that they had power of disposal for the cultural object in question as well as a description of said object and details of the purchase price. Moreover, the art dealer had to inform the customer of the applicable import and export regulations. Violations were liable to prosecution.

Conference participant **Henrik Hanstein** from the Europäischer Versteigererverband (European auctioneers' association) in Brussels and owner of Lempertz auction house in Cologne called for stronger regulation to be restricted to the antiquities trade, saying that in practice this was the only category affected by illicit excavations and illegal export.

**Michael Müller-Karpe**, Archaeological research institute at the Römisch-Germanisches Zentralmuseum in Mainz and participant **Bernd Gackstätter** from the journal Kunst und Recht pointed out that new regulations containing an effective date could have a negative impact in that it would be possible to treat all cultural property acquired prior to the given date as legalised in Germany. **Bernd Gackstätter** proposed offering private buyers alternatives to purchasing antiquities, too, for instance legislation providing for private individuals to acquire objects on loan.

As Chair of the Cultural Affairs Committee of the German Bundestag, **Siegfried Ehrmann** assured the Minister of State that he would explicitly support adoption of the reform bill. Amending the legislation on the protection of German cultural property was an important task during this legislative term and had thus been anchored in the coalition agreement between the

CDU/CSU and the SPD.<sup>17</sup> Germany had to rid itself of the reputation that it was a hub of illegal trade but had to act carefully rather than hastily in adopting effective legislation.

### **Panel 7: Self-regulation and ethical codes**

**France Desmarais**, Director of Programmes and Partnerships at the International Council of Museums (ICOM), Paris, presented the ICOM Code of Ethics for Museums.

The International Council of Museums, an NGO founded by museum experts in cooperation with UNESCO in 1946, had over 5000 members in Germany alone, she reported. Globally, it represented some 33,000 experts from 136 countries. Desmarais explained that in the late 1980s ICOM had already developed guidelines for museums which had since repeatedly been adapted, most recently in 2004.

They strictly banned the purchase of objects from illicit or unscientific excavations (article 2.4) or from occupied territory. The guidelines also stipulated clear due diligence requirements for the purchase of cultural property. In particular, provenance had to be extensively verified and documented. The red lists of cultural objects at risk compiled by ICOM were relevant here; to date lists had been compiled for 13 countries and/or regions. Cultural objects were documented using a standard Object ID. Furthermore, in cooperation with WIPO<sup>18</sup>, ICOM had created its own mediation procedures in cases of dispute over cultural property.<sup>19</sup> ICOM's guidelines also set rules on the return of illegally acquired cultural objects. In addition to this, promoting transparency and the educational mission of museums were important aspects of ICOM's cultural property work.

**Andreas Scholl**, Director of the Collection of Classical Antiquities at the National Museums in Berlin, laid out the voluntary commitments made by the National Museums in Berlin. 1976 saw the adoption of the Declaration on acquisition, oriented towards the 1970 UNESCO Convention which stipulated that the sale, donation and loan of antiquities were only permitted for antiquities which had been excavated or discovered before 1970. It was only under the exceptional circumstance that the provenance could not be established that the purchase of so-called "dormant cultural assets" was allowed as a means of providing a 'repository of last resort or safe haven'. In addition to this, the Berlin Declaration of 25 May 1988 on the loan and new acquisition of archaeological objects by museums adopted due diligence requirements for the purchase of antiquities excavated or discovered post-1970. In light of an increase in illegal excavations, in

---

<sup>17</sup> Cf. Page 92 of the coalition agreement between the CDU, CSU and SPD for the 18th legislative term, available (in German) at [www.cdu.de/sites/default/files/media/dokumente/koalitionsvertrag.pdf](http://www.cdu.de/sites/default/files/media/dokumente/koalitionsvertrag.pdf).

<sup>18</sup> World Intellectual Property Organization.

<sup>19</sup> Description available at [icom.museum/programmes/art-and-cultural-heritage-mediation/](http://icom.museum/programmes/art-and-cultural-heritage-mediation/).

2003 the Berlin Declaration was reaffirmed and a call was made for an Object ID for antiquities.<sup>20</sup> Recent years have thus seen museums rethink their strategy. Loaning objects has been favoured over purchasing them and value has been placed on renovating existing collections.

In the ensuing panel discussion, **Eckart Köhne**, President of the German Museums Association, **Matthias Wemhoff** and **Hermann Parzinger** all stressed that the ethical guidelines cited should be used by all museums, something which was largely already happening, and that in future the exchange of cultural property should increasingly be arranged through international loans. In order to document the existing collections, it was also desirable to invest in digitising holdings and to agree on common standards.

As a participant in the discussion, IADAA Chairman **Vincent Geerling**<sup>21</sup> pointed out the existing ethical voluntary commitments made by part of the art trade. For example, his organisation had set itself a code of ethics<sup>22</sup> which, amongst other things, banned the purchase of stolen antiquities and imposed a duty of care to research objects worth over 5000 euros on the Art Loss Register<sup>23</sup>. The register is a privately-run database<sup>24</sup> for cultural objects registered as missing. In reaction to this, **Silvelie Karfeld** an expert in the field of art and culture-related crime at the Federal Criminal Police Office cautioned that the Art Loss Register only included missing cultural objects which had been reported and thus could not guarantee problem-free purchase and sale of cultural property.

Cultural Property Commissioner for the IADAA **Ursula Kampmann** advocated that rules for the industry should differ from those applied to museums, suggesting that it could thus be useful, for instance, to use private funds to finance part of the repurchase of lost antiquities and, in such cases, to allow certain pieces to be privately purchased. Following the British example, detectorists should be allowed to keep findings which are of no scientific importance, she added. Other conference participants strongly criticised her remarks, saying that her proposals would encourage illicit excavations and destroy the scientific context of discovery sites.

---

<sup>20</sup> Available (in German) at [ww2.smb.museum/smb/media/collection/14973/RF\\_BerlinerResolution\\_dt.pdf](http://ww2.smb.museum/smb/media/collection/14973/RF_BerlinerResolution_dt.pdf). The Declaration was adopted by the majority of the participants at the international conference on future problems related to illegal trade in antiques, held in Berlin from 23 to 25 May 2003 on the occasion of the 15<sup>th</sup> anniversary of the Berlin Declaration (organised by the Collection of Classical Antiquities at the National Museums in Berlin and sponsored by the Deutsche Forschungsgemeinschaft (German Research Foundation), UNESCO, the McDonald Institute for Archaeological Research in Cambridge, England, and the School of American Research in Santa Fe, New Mexico).

<sup>21</sup> International Association of Dealers in Ancient Art.

<sup>22</sup> Available at [www.iadaa.org/en/about-us](http://www.iadaa.org/en/about-us).

<sup>23</sup> Website: [www.artloss.com/en](http://www.artloss.com/en).

<sup>24</sup> United Nations Convention against Transnational Organized Crime of 15 November 2000, available at [www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf](http://www.unodc.org/documents/treaties/UNTOC/Publications/TOC%20Convention/TOCebook-e.pdf).

Referring to traditions which have developed over time, Kampmann refuted **Silvelie Karfeld's** argument that the illegal provenance of cultural objects was often disguised when they were traded. According to Kampmann, antiquities from Iraq and Syria whose provenance was given as Mesopotamia and those from Yemen listed as from South Arabia were not described as such as a means of disguise but because the art trade had operated this way for decades. Numerous participants voiced their disagreement with this assertion. **Friederike Fless** proposed always adding an additional note with the modern name of the place of discovery to prevent obfuscation. Commenting on this, **Hermann Parzinger** praised eBay's policy on archaeological finds outlined in its guidelines. The policy can now be found on various eBay platforms with links to respective national legislation.

The policy on eBay's German website translates as follows:

*“Archaeological finds are not allowed to be listed for sale without documents which prove that the legal regulations on archaeological finds have been adhered to and attest to the legal ownership (proof of origin and/or provenance or derivation). A clearly legible image of the proof of origin must be included in the listing posted online.*

*Fossils and coins may be offered without proof of origin if they were acquired as part of old collections and in accordance with the relevant legal regulations.*

*Under no circumstances is it permissible to list cultural objects at risk which feature on the International Council of Museums (ICOM)'s red lists.”<sup>25</sup>*

Parzinger noted that according to these eBay sales regulations the burden of proof lay with the seller. Moreover, they gave precise details of the definition of an archaeological find, what exactly was required from a proof of origin and the sanctions which could be imposed by the state and eBay (breach of contract) if the policy was violated.

#### **IV Measures to counter illegal trade**

Over the course of the whole session and in particular in the two panel discussions on documentation and databases as well as awareness raising, many concrete suggestions on better protecting cultural property at the national and international level were discussed under the chair of **Christina Haak**, Deputy Director General of the National Museums in Berlin.

---

<sup>25</sup> Available (in German) at [pages.ebay.de/help/policies/artifacts.html](https://pages.ebay.de/help/policies/artifacts.html).

## **Panel 8: Documentation and databases**

Director of the IT Department at the German Archaeological Institute and the Cologne Digital Archaeology Laboratory **Reinhard Förtsch** described a joint project to compile a digital register of Syrian cultural property run by the Museum of Islamic Art of the National Museums in Berlin and the German Archaeological Institute. The project enables data on Syrian cultural property from German archives to be entered into a database and, for example, links it to both historical and up-to-date maps so that stolen cultural property can swiftly be assigned a place of discovery.

**Françoise Bortolotti** from INTERPOL's drugs, organised crime and art theft sub-directorate<sup>26</sup> presented INTERPOL's database on stolen works of art. It had been set up in 1995 and now contained details of around 44,500 objects from 150 countries around the world. It had been made accessible to the public in 2009; users simply had to register and obtain authorisation in advance. The database was being very well received, said Bortolotti, access to its information had enabled many previously unsettled investigations to achieve successful results.

Both speakers cited the digital documentation of data as an important instrument in ensuring a better exchange of information. **Christina Haak** stressed the need for museums to participate in such kind of projects, too.

The ensuing panel discussion made it clear that setting up and maintaining such databases cost a great deal of time and money, meaning it was necessary to invest in staff and projects as well as international cooperation. In addition to this, consideration had to be given to cooperation projects and common standards in order to promote interoperability and pattern recognition.

IADAA Chairman **Vincent Geerling's** question of whether INTERPOL could provide a certificate proving that the research had been undertaken and thus that due diligence had been carried out met with a negative response from **Silvelie Karfeld** on behalf of Germany. She said that the database could not be used as a means of proving that due diligence had been carried out because, given the nature of the context, it could not be guaranteed that the database was exhaustive.

## **Panel 9: Raising awareness**

The need to raise widespread awareness amongst the public at home and abroad was repeatedly cited as a key measure in ensuring effective protection of cultural property. Federal Government Commissioner for Culture and the Media **Monika Grütters** and **Friederike Fless**

---

<sup>26</sup> Further information available at [www.interpol.int/Crime-areas/Works-of-art/Works-of-art](http://www.interpol.int/Crime-areas/Works-of-art/Works-of-art).

compared this task with successful campaigns on the protection of biodiversity. An extremely broad range of target groups and stakeholders were mentioned in connection with this.

When he spoke, **Michael Müller-Karpe** from the Archaeological research institute at the Römisch-Germanisches Zentralmuseum in Mainz, clearly reiterated that illicit excavations could not be downplayed as trivial offences: by removing objects from the context of the sites where they were discovered the perpetrators caused immeasurable damage, both in terms of science and culture. Therefore, calling looters “hobby archaeologists” was entirely inappropriate as their actions in fact hampered archaeological research.

It was important not to trivialise the illegal trade in cultural objects either, he said, pointing out that the trade made billions and in criminal terms was on a par with the drugs trade and human trafficking. Moreover, the harmful effect that the illegal trade had on the community was completely underestimated. As long as there was demand for illegally traded cultural objects, illicit excavations would continue to take place: the potential profits of the trade were simply too large and the number of excavation sites too high for effective surveillance to be possible.

The antiquities trade was currently not sufficiently regulated and the existing legislation was not implemented effectively, said Müller-Karpe, and thus in his view the principle of exception to the rule had to be applied, meaning that exit permits should always be required for antiquities and it should be assumed that when the origin of an antiquity was unknown, it had been illicitly excavated, which was a crime. In the future this needed to be taken into consideration both within the context of the burden of proof and by traders, museums and collectors. For example, without proof no one should trust claims that there were no doubts as to the origin of an antiquity because it was a family heirloom or from an old collection.

**Silvelie Karfeld**, an expert in the field of art and culture-related crime at the Federal Criminal Police Office, agreed with this assessment. She said that Germany was currently a market place for the illegal trade in cultural property. The assertion that proof of provenance was not available for private collections should be viewed with scepticism. If antiquities had been acquired legally, the place of discovery was generally known, there were numerous forms of proof such as catalogues, export licences and customs documents. All buyers could bolster legal trade and undermine illegal trade by demanding clear proof of provenance. Experts also needed to help by identifying illegal cultural objects and issuing customs with clear instructions to enable them to recognise illegal cultural objects as such.

A big problem was that buyers, traders and experts who doubted that an antiquity had been legally acquired too rarely informed the authorities of their concerns, making them complicit in the illegal trade.

**Stephan Seidlmayer**, Director of the German Archaeological Institute in Cairo, spoke about raising awareness in countries of origin. By way of example he described several projects through which the German Archaeological Institute was getting the Egyptian people involved in protecting cultural property.

As part of one such project, background information on excavation sites was being published in the local language in order to teach the local population about the significance of the sites. In Egypt, for example, a very successful Arabic language tour guide app had been developed and tour guides were being targeted in information campaigns on archaeological research results. The German Archaeological Institute had also compiled very popular educational material for schools which sought to convey the importance of culture and of preserving cultures, for example one topic was ancient Egyptian mathematics.

As the panel discussion continued, **Markus Hilgert** added that museums had a particular duty to raise public awareness, something which they could primarily do by being fully transparent with regard to the provenance of their own collections.

Moreover, niche subjects such as Byzantine Studies and Assyriology should continue to be taught to maintain the requisite level of expertise in cultural property belonging to other countries as well as research into provenance.

**Jürgen Kunow** advocated placing the protection of cultural property at the heart of archaeological studies, something which had not yet been the case when he had undertaken his studies. **Friederike Fless** agreed with him.

A member of staff from the Office for the Conservation of Historic Monuments, Land Lower Saxony, who took part in the meeting spoke about the role played by the media. She proposed discussing the need to correct the image of treasure-hunting archaeologists which was often portrayed in documentaries. For example she could remember a documentary screened by the broadcaster ZDF which glorified treasure-hunters who clearly did not have authorisation, rather than highlighting the illegal nature of their actions.

## **V General discussion and podium discussion**

In the concluding panel discussion chaired by **Friederike Fless**, **Siegfried Ehrmann**, Member of the German Bundestag, Chairman of the Cultural Affairs Committee of the German Bundestag, **Ursula Kampmann**, Cultural Property Commissioner for the IADAA, **Eckehard Köhne**, President of the German Museums Association, **Jürgen Kunow**, Head of the Association of State Archaeologists, **Günther Schauerte**, Vice President of the Prussian

Cultural Heritage Foundation and **Jörg Ziercke**, former President of the Federal Criminal Police Office, revisited the main discussion points more closely.

Numerous concrete measures on improving the protection of cultural property at the national and international level were raised in both the panel discussion and the discussion involving the audience. Further important discussion topics were prosecution, research into undetected cases and international cooperation. The following summary covers contributions to the discussions on both days of the conference as well as to the panel discussion.

### **The legal framework**

Some of the conference participants proposed reforming the regulations on the good faith acquisition of objects set out in Section 932 et seqq. of the German Civil Code taking into account cultural property. To date they stipulated that even property that the seller is not entitled to own could be acquired in good faith. A proposal was made to introduce a specific exclusion for archaeological finds without proof of origin.

Particular criticism was meted out to the provision on auctions in Section 935 of the German Civil Code, which allowed for objects stolen or lost in any other way to be acquired in good faith if the acquisition was made by way of public auction. A specific provision was needed to exclude cultural property from this.

With regard to civil and public law provisions, numerous suggestions were made on shifting the burden of proof for cultural property so that the proprietor of the cultural object and, not the requesting state, had to prove where and under what circumstances they had acquired the object.

Most of the participants agreed that the current criminal law framework was in principle adequate, but that there were practical difficulties implementing it, so much better use needed to be made of criminal law.

A member of staff at the Office for the Conservation of Historic Monuments, Land Lower Saxony, proposed making the negligent handling of stolen antiquities a crime – following the example of the negligent handling of precious metals and gems as stated in Section 148b of the Trade Regulation Act, expanding the elements of the crime of money laundering to take into account cultural property as well as introducing a special regulation enabling metal detectors to be confiscated from detectorists if they were being used illegally.



## **Law enforcement**

**Jörg Ziercke, Eckhard Laufer** and **Françoise Bortolotti** described current police work at the national and international level in the field of protecting cultural property and made concrete proposals on how to improve it.

According to **Françoise Bortolotti**, combating art crime was a high priority at INTERPOL. It was one of 18 key areas with an independent department and ran a database of stolen cultural property, organised a triennial international conference for civil servants specialising in the protection of cultural property, cooperated at the international level with ICOM and the UNESCO member states and ran information campaigns, for instance publishing posters showing the most urgently sought stolen artworks around the world.

**Jörg Ziercke** explained that, in Germany, primary jurisdiction for the relevant police work lay with the Länder. The Federal Criminal Police Office itself had only a small department for the protection of cultural property. Moreover, in Munich there was a special prosecution office for dealing with the protection of cultural property.

All participants lamented the staff shortage in special units: only two officers and one data administrator worked in INTERPOL's special unit, there were only three officers at the Federal Criminal Police Office and the Länder in particular lacked officers with training and experience in protecting cultural property. As a comparison, the Italian police had a centralised special unit with nearly 300 members of staff. So in the future, there needed to be a change in political priorities.

Moreover, the conference participants called for better training for active officers. This applied not only to police and customs officers but also to staff at heritage protection authorities, public prosecutors and judges. Instructions such as ICOM's red lists were helpful for training, but further and more comprehensive information and training material was needed. In addition to this the different units needed to be better coordinated, for instance by making use of institutions to pass on information to INTERPOL.

A shift in the burden of proof was demanded, whenever possible, as was the introduction of obligations to provide documentation for cultural property to facilitate faster identification of objects. Moreover, it was said that clearer due diligence requirements when purchasing and selling would simplify law enforcement agencies' access.

## **Research into undetected cases**

It was regularly noted that it was very difficult to obtain exact figures on the volume of illegal trade in cultural property in financial terms. **Hermann Parzinger** thus stressed the importance of

researching undetected cases, i.e. attempting to collect information on illegal trade, trade flows and supply chains. A project was currently being set up by the Prussian Cultural Heritage Foundation in cooperation with the German investigating authorities, cultural institutions and ministries with the aim of examining this question more closely.<sup>27</sup>

### **International cooperation**

The conference participants urgently called for better international cooperation at the level of states as well as at the level of investigating authorities and experts. Representatives of countries affected by current political crises made it very clear that illegal trade in cultural property could only be undermined if their neighbouring countries implemented strict border controls on illegally exported cultural objects. The examples of the previous evening's speech, which had been researched in-depth, clearly depicted the significance of the role that the illegal import of cultural property into neighbouring countries played in obscuring the origin of an object.

Effective protection in the 'trading countries' was, according to many participants, only possible if international standards for export licences were agreed. Above all, the licences needed to describe the exported object in enough detail for lay people to be able to identify them.

International exchange of information was needed to enable illegal trade to be prosecuted efficiently – and not only between authorities but also between traders and art experts.

In a closing speech at the conference, **Hermann Parzinger** stated that the event had made it very clear that the protection of cultural property was not a problem which affected individual states but rather a pressing international issue. The specific problems in the countries of origin had been highlighted on the first day of the conference, the second day had featured above all the acquirer's responsibility and the need to adapt the legal framework in order to better protect cultural property. Parzinger gave a final summary of the outcomes of the conference.

---

<sup>27</sup> The ILLICID project has since started and is tasked with researching the black market in cultural property in Germany. The Federal Ministry of Education and Research is providing the research project with 1.2 million euros of funding within the framework of the programme on research for civilian security which comes under the topic of civilian security – protection against organised crime. The kick-off event took place on 10 April 2015. More information available (in German) at [www.preussischer-kulturbesitz.de/pressemitteilung/news/2015/04/10/projekt-illcid-erforscht-illegalen-handel-mit-kulturgut-in-deutschland.html](http://www.preussischer-kulturbesitz.de/pressemitteilung/news/2015/04/10/projekt-illcid-erforscht-illegalen-handel-mit-kulturgut-in-deutschland.html).

## **VI Conclusion**

### **Illicit excavations and illegal trade harm everyone**

As the reports given by political representatives and experts from different countries and regions showed, the motives for illicit excavations and the destruction of cultural heritage sites differed – they ranged from the ideology-driven desire for destruction of IS and Boko Haram and the consequences of violent conflict (for instance the stationing of US military forces on the territory of ancient Babylon) to criminal interests (predominantly those of criminal groups but including those of terrorist organisations, too), economic hardship suffered by the local population, to ignorance (in terms of land use and construction activity, for instance) and misguided desire to research (for instance detectorists). The consequences however are equally destructive in all cases. In the crisis countries – such as currently in Syria and Iraq – air photos show a horrific scale of destruction of cultural heritage sites, yet the statistics from currently politically stable regions also show huge losses of cultural property due to illicit excavations and illegal trade in cultural objects.

A common consequence of all illicit excavations is that the context of the place in which a cultural object is discovered is lost and as a result scientific knowledge is irrevocably lost to all of mankind. Illicit excavations, looting cultural sites and illegal trade are thus harmful to everyone and must be internationally prosecuted and banned in a similar manner to trade in endangered animal species under the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

### **Investigating and dealing with illegal trade**

We currently have a good overview of the scale, causes and consequences of illicit excavations, lootings and the destruction of cultural heritage sites. As shown by reports from crisis regions of a lack of border control and **Neil Brodie's** presentation on organised crime within the antiquities trade, we still have too little knowledge of illegal trade in cultural property and the flows of this trade. In this regard, we absolutely need the contribution from research into undetected cases.

Moreover, legislation and law enforcement need to focus more on identifying and combating illegal trade networks and need to take action against experts and purchasers who, by issuing false assessments and knowingly or neglectfully buying illegal cultural property, facilitate illegal trade in the first place.

## **Legal reforms and application of the law**

Different countries have very different legislation on the protection of cultural property. But even in countries with strict regulations, it is difficult to apply these laws, as the speakers from Greece and Mexico reported.

Germany's planned amendment to the legislation on the protection of cultural property is urgently needed, as trade in archaeological artefacts of uncertain provenance can still be conducted almost unchecked. The key demands in Germany and abroad are for the abolition of the list principle, requirement of proof of an export permit, better documentation on objects offered for sale, a requirement for the antiquities trade to uphold obligations to provide proof and to exercise due diligence, and a thorough investigation of legal key date regulations.

Issues of intent and negligence also need to be re-evaluated, while the acquisition in good faith of cultural objects without proof of provenance must be prevented as much as possible. In this context, all purchases from public auctions must involve an assessment of the protection of good faith. In view of the dramatic impact of illicit excavations, the courage to adopt new approaches must be found. The UNESCO Convention of 1970 and the UNIDROIT Convention of 1995 serve as an important basis for all countries worldwide. All national regulations should be adapted to these conventions in order to improve the protection of cultural property.

## **Voluntary commitments**

Voluntary commitments should supplement legal regulations. However, they cannot replace legislation, as was discussed at the conference in the context of voluntary commitments by the International Association of Dealers in Ancient Art. The ICOM's ethical guidelines, the Berlin Declaration of 25 May 1988 on loans and new acquisitions of archaeological objects by museums, and the Berlin Resolution adopted in 2003 set benchmarks for museums. The terms and conditions used by the e-commerce company eBay are a positive step, which should be implemented internationally. However, eBay's voluntary commitments need to be applied generally in auction house and art trade.

## **Documentation**

Documenting cultural objects in databases plays an important role in protecting cultural property. Current examples include a geo-information database system to document Syrian cultural property, as well as INTERPOL and ICOM's databases of stolen objects. Database systems need to be expanded, linked as far as possible to each other, and made more accessible.

## **Raising awareness**

It is vital to raise awareness of the issue among the public in Germany and abroad, for example by providing information in schools, universities and museums on the protection of cultural property. This approach has already proved successful in the protection of biodiversity.

The most important target groups are people in the countries of origin, who can help to protect excavation sites, and potential buyers, who need to be made aware that illegal trade in cultural objects is not a minor offence, but can be prosecuted as a crime. Experts must not allow themselves to be complicit in illegal trade. On the contrary, any indications of illegal trade must be reported directly to the law enforcement agencies.

Museums have a special responsibility. They may not buy cultural objects of uncertain provenance. Fundamentally, the focus should no longer be on expanding a collection, but rather on conducting research on it, particularly as regards the provenance of archaeological artefacts whose background is unclear. This research also involves taking a systematic inventory and producing documentation, for example by setting up online registries and presenting information on provenance in exhibitions. Long-term loans of cultural objects can replace acquisitions. Such loans also foster cultural and academic exchange. Should research on the provenance of acquired cultural objects reveal that an object was acquired illegally, mediation could be used in cases where there is no legal requirement to return the object.

## **Law enforcement**

The suggestions made at the conference included increasing staff numbers in the special units in the surveillance and law enforcement agencies, providing officers with better training, and cooperating with international organisations and experts. For example, the ICOM's red lists of endangered cultural property have proved useful in identifying illegally acquired cultural objects.

## **Enhanced international cooperation**

There is a need for enhanced international cooperation, particularly between the law enforcement agencies. Improved cooperation is also needed in the implementation of international agreements, such as on the effective return of illegally exported cultural property under the UNESCO Convention of 1970, and in border control in crisis regions by neighbouring countries.

## **Continuing the discussion**

The conference participants agreed that the discussion needed to be continued. A formal consultation will take place shortly on the legislative process for the planned revision of the law on the protection of cultural property as was highlighted by **Monika Grütters**, Federal Government Commissioner for Culture and the Media. Minister of State **Maria Böhmer** also announced plans to continue the discussion at the forthcoming 39<sup>th</sup> session of the UNESCO World Heritage Committee in Bonn. Furthermore, the protection of cultural property forms part of the review process launched in the Federal Foreign Office by Foreign Minister **Frank-Walter Steinmeier**. The topic also needs to be included in the ongoing negotiations on the Transatlantic Trade and Investment Partnership (TTIP) free trade agreement between the EU and the United States.

Both the Prussian Cultural Heritage Foundation and the German Archaeological Institute will continue to address this topic, particularly as regards research into undetected cases. Although some progress has been made, much remains to be done in many areas in the near future as the conference showed.