PERSPECTIVES ON THE INVESTIGATION, PROSECUTION AND PREVENTION OF ART CRIME IN ASIA

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Art crime in Asia is an ever expanding phenomenon that has become increasingly difficult to police and prosecute. Asia is home to a vast number of culturally diverse and distinct communities, and boasts a rich history of significant ancient – and in some cases, continuous – civilisations that have left their traces in many regions, both urban and remote. Cultural heritage sites and artefacts represent the precious tactile legacies of these unique and distinct groups. Consequently, it is not surprising that the high quality of craftsmanship, value, and sophistication of such treasures have long attracted looters, thieves, and illicit art traders.

Art crime in Asia developed and adapted alongside political and social turmoil in the region. Throughout the centuries, countless wars and invasions in Asia frequently resulted in the deliberate destruction and pillaging of cultural property. Once Western forces began to colonise Asia, a new era of art trafficking took shape. The emergence of rival colonial powers on the Asian stage and the enforcement of their sovereign claims were accompanied by widespread destruction and looting of historic and cultural assets. During this period, the amassing of trophies and 'souvenirs' by soldiers, officials, and wealthy travellers was widespread, and cultural goods were shipped overseas in large quantities. One of the most notorious examples is the ransacking and destruction of the Old Summer Palace in Beijing by Anglo-French troops during the Second Opium War in 1860. The Old Summer Place was

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said to have hosted the most magnificent collection of treasures ever collected at one place.[1] Items stolen during that incident still surface on a frequent basis at art auctions worldwide.

Other factors which caused the large-scale loss of cultural relics and promoted the uncontrolled export of cultural goods include civil wars and the collapse of Asian political systems in the twentieth century. A prominent example is the reign of the Khmer Rouge in Cambodia in the 1970s, during which time numerous ancient temples were damaged or demolished, and countless frescos, statues, and other cultural objects were looted, crudely removed from their original locations, and shipped overseas. A recent high-profile case of an artefact smuggled from Cambodia during that period involves the confiscation by American customs agents of a statue looted from the Prasat Chen Temple in Koh Ker from the possession of Sotheby's.[2] The counterpart of the statue is currently owned by the Norton Simon Museum in California, while the severed feet remain on the pedestal at the temple from which the figures were sawn off by looters.[3] Cambodia has sought the return of both artefacts from the United States under the 1970 UNESCO Convention.[4] In response, federal prosecutors and legal representatives of Sotheby's have raised many issues before the United States District Court for the Southern District of New York, including whether or not any laws which prohibit the removal of such items were in force in Cambodia during the relevant time.[5] Similar uncertainties substantially complicate the investigations and reparations of earlier incidences of looting in many Asian countries.

This chapter explores existing forms of art crime in parts of Asia, where looting and trafficking of regional artefacts have developed extensively in contemporary times. The

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1 Jack Beeching, *The Chinese Opium Wars* (Hutchinson 1975) 315.

2 'US Seeks Halt to Auction of Rare Cambodian Statue' *Australia Network News* (27 Feb 2013) <http://www.abc.net.au/news/2013-02-27/an-us-lawyer-seeks-return-of-rare-cambodian-statue/4543572>.

3 Ralph Blumenthal, 'Cambodia Is Seeking 2nd Statue' *The New York Times* (28 September 2012) <http://www.nytimes.com/2012/09/29/arts/design/cambodia-now-seeking-return-of-norton-simon-statue.html>.

4 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (adopted 14 November 1970, entered into force 24 April 1972) 823 UNTS 231.

5 Tom Mashberg, 'Legal Tussle Over Statue Turns Nasty' *The New York Times* (14 September 2013) C1 <http://www.nytimes.com/2013/09/14/arts/design/legal-tussle-over-statue-turns-nasty.html?smid=fb-share&_r=0>.

sophisticated methods of looters and middlemen, the highly efficient smuggling networks which support them, and the involvement and resources of international art dealers collectively make the detection, investigation and prosecution of art crime very difficult. Factors contributing to such circumstances, which include the rising margins on the international art market, the opening of borders, and increased trade throughout the region, are also considered. Globalisation, the simplified circulation of goods, and the diversity of political and legal systems in Asia are other aspects which add to the challenges facing cross-border regulation of the art trade and the tracking of cultural artefacts. Following this discussion, the final part of the chapter examines several mechanisms and issues which are relevant to the prevention of art crime in Asia.

Pillaging of archaeological sites

Most forms of art crime are driven by the demands of the art market and collectors for 'fresh' items. With each legitimately obtained acquisition by museums and private collectors, the number of such items on the market decreases while their appeal remains on the rise.[6] The strong demand is often met by way of illegal excavations or art theft in contravention of export bans. This section focuses on the pillaging of heritage sites, rather than the theft of art from collections or museums, as it is the looting of cultural sites which primarily reflects the complexities involved in the prosecution and detection of art crime. This is particularly so in Asia, where several heritage sites are currently unprotected or not yet officially recorded.

Looting, one of the most destructive types of art crime, damages cultural heritage, destroys archaeological evidence, and culturally impoverishes the nations in which it occurs. In many regions archaeological items and sites are the only available sources of knowledge of ancient civilisations, particularly where no written records are available or ever existed.[7] It is estimated that ninety percent of all archaeological material is destroyed during illegal excavations. This is due in part to the fact that most looters lack archaeological expertise and excavate sites within short periods of time in order to avoid detection. To an extent, the

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6 James A.R. Nafziger, Robert Kirkwood Paterson and Alison Dundes Renteln, *Cultural Law: International, Comparative, and Indigenous* (Cambridge University Press 2010) 241.

7 Tom Bazley, *Crimes of the Art World* (Praeger 2010) 105.

damage inflicted by such looting irreparably impedes the full recovery of those items and goes beyond their material loss. The knowledge of its exact location and initial condition, which would have added crucial information to the archaeological context, is permanently lost, even if the item is later retrieved.

Particularly in Asia, looting is a phenomenon of enormous scale. It is estimated that approximately eighty percent of antiquities from Southeast Asia on the art market in the United States were illegally smuggled into the country, while allegedly ten million cultural artefacts have been transported out of China over the years.[8] Reports indicate that even concrete replicas meant to replace the looted authentic heads of statues at Angkor Thom in Cambodia have been stolen.[9] Such occurrences not only illustrate the general lack of sophistication of local looters, but also highlight the alarming scale of the dilemma even at such prominent sites.

Art forgery

A form of art crime that has become particularly widespread in Asia alongside theft, pillaging, and illegal exporting of items is art forgery, a practice fuelled by the substantial monetary value of and consistent demand by the international art market for 'new' authentic items. Art forgery has consequently become a significant industry. For example, southern China has numerous factories that specialise in the reproduction of pieces of art and antiquities, although not necessarily always with the intention to mislead customers. Nonetheless, many of these factories have the expertise and resources to produce items that resemble antiquities from centuries ago. There are replicas which even pass scientific tests for authenticity because of their carefully arranged composition, which may include, for instance, fragments of genuine pieces.[10] Such items, consisting of various degrees of quality, are produced to deliberately scam purchasers and often evade detection by specialists. A

8 See ibid 103-9.

9 Seth Mydans, 'Raiders of Lost Art Loot Temples in Cambodia' *The New York Times* (1 April 1999) <http://www.nytimes.com/1999/04/01/world/raiders-of-lost-art-loot-temples-in-cambodia.html>.

10 Toby Bull, 'Lack of Due Diligence and Unregulated Markets: Trade in Illicit Antiquities and Fakes in Hong Kong' in Noah Charney (ed), *Art and Crime: Exploring the Dark Side of the Art World* (Praeger 2009) 28-9.

variety of methods involve fabricating other 'proof' and producing ceramics with clay collected from the same pits as those used for the originals made centuries ago. Sophisticated forgers also often 'create' provenance for their items to make them appear authentic, again conning even experts in the field.[11] Because of the increasingly sophisticated methods of forgery, art markets in many regions of Asia are nowadays swamped with counterfeits. For example, in 2013 Chinese authorities closed the Jibaozhai Museum in Jizhou after discovering that almost all of its approximately 40,000 items on display were actually fakes.[12] Of course, vast numbers of fakes are not exclusively sold to 'honest' buyers on the 'genuine' local art markets. In fact, a substantial part of all smuggled and illegally traded antiquities appear to be counterfeit.[13] For instance, fakes produced in southern China for international export are often loaded in the Pearl River Delta, falsely declared, and shipped overseas via Hong Kong.

Criminal law and prosecution of art crime

There is a wide range of repressive options available to prevent and prosecute offences related to art crime. Since most legislative systems regard undiscovered and buried items as the property of the state, excavating or removing such an item without permission would constitute theft and be punishable under the relevant criminal law.[14] However, looters and illicit antique traders must first be apprehended and linked to the evidence before prosecution may occur. Unfortunately, prosecuting and bringing offenders to justice have proved challenging because of the considerable difficulty involved in detecting thefts, especially in areas which are inadequately monitored and guarded.[15] Adding to these challenges is the fact

[11] Kenneth Polk and Duncan Chappell, 'Fakes and Deception: Examining Fraud in the Art Market' in Noah Charney (ed), *Art and Crime: Exploring the Dark Side of the Art World* (Praeger 2009) 74.

[12] Jonathan Jones, 'Scandal in China over the Museum with 40,000 Fake Artefacts' *The Guardian* (18 July 2013) <http://www.theguardian.com/culture/2013/jul/17/jibaozhai-museum-closed-fakes-china>.

[13] Bazley (n 7) 70-2.

[14] See for example Law on Cultural Heritage (Socialist Republic of Vietnam), arts 70-2.

[15] Stefan Gruber, 'The Fight Against the Illicit Trade in Asian Cultural Artefacts: Connecting International Agreements, Regional Cooperation and Domestic Strategies' (2013) 3 Asian Journal of International Law 341, 346.

that more thefts of cultural property, as with theft of any kind of property to a certain extent, occur than are reported to the police. Resultantly, offences arising from such instances are neither investigated nor prosecuted.[16] Furthermore, it is often difficult to link recovered items to specific sites once they are removed. These obstacles are amplified by the reality that many looters are organised professionals and act in coordinated operations. The hardest to link to looting operations are the illicit antique dealers who hire looters, request specific items, and pick sites to be pillaged. The string-pullers usually escape any prosecution as they are much better connected than the looters and take care not to leave any evidence which would allow for items to be traced back to their centres of operation or to the sites where the lootings were committed. The risk of being caught is considerably lessened once the item, or key evidence, is smuggled out of the country and is no longer within its jurisdiction.[17] These factors make successful investigations and convictions unlikely.

Penalties for offences related to art crime in Asia often reflect how serious the respective governments consider the problem to be. In the case of China, for example, serious punishments may be imposed when offenders are apprehended by authorities despite the presence of complications regarding the identification and prosecution of looters and other wrongdoers involved in illicit art trafficking. The Law of the People's Republic of China on Protection of Cultural Relics of 2007 lists several activities that are punishable under Chinese law. They include the illicit excavation of ancient sites, the damage to or destruction of any valuable cultural relics under state protection, the robbing or plundering of state-owned cultural relics, and the illegal sale, export or smuggling of protected cultural relics.[18] Furthermore, the Criminal Law of the People's Republic of China of 1997 imposes severe punishments for related crimes.[19] Depending on the nature and seriousness of the crime, criminals may have fines imposed for minor offences or receive a sentence of up to life imprisonment and confiscation of their property for the most serious offences.

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16 Guido Carducci, '"Repatriation", "Restitution" and "Return" of "Cultural Property": International Law and Practice' in Mille Gabriel and Jens Dahl (eds), *Utimut: Past Heritage - Future Partnerships, Discussions on Repatriation in the 21st Century* (International Work Group for Indigenous Affairs 2008) 122.

17 ibid 123.

18 2007 Law of the People's Republic of China on Protection of Cultural Relics (China Cultural Relics Law), art 64.

19 1997 Criminal Law of the People's Republic of China, arts 151, 264, 324-9.

In 1998, China implemented the death penalty in an attempt to crack down on the organised smuggling of cultural relics; this provision was ultimately repealed for all crimes related to cultural relics when the relevant provisions were revised in 2011.[20] While the provision was in effect, the application of the death penalty for such offences was not a hollow threat.[21] For example, in 1998 several men were executed and others imprisoned in Shanxi Province for stealing fifteen frescos from the Zhaoling Museum in Xianyang City which were part of the Shaolin Tombs of the second emperor of the Tang Dynasty.[22] Another example concerns a case in 2010 involving the former chief of the cultural relics protection authorities of the Imperial Garden in Chengde in Hebei Province, who was executed after being convicted of stealing 259 cultural relics between 1993 and 2002 from the depository of the World Heritage-listed Mountain Resort and its Outlying Temples, replacing them with copies and inferior or incomplete objects, and ordering his subordinates to alter the records.[23] The thefts were discovered only after two cultural relics from the collection of the Palace Museum in Beijing were identified at an auction in Hong Kong in 2002, nearly a decade after the known criminal activities first began.[24]

Other countries take very different approaches to art crime. For example, in India, where the looting and illegal export of antiquities is severe, section 25 of the Antiquities and Art Treasures Act (1972) provides for punishment with imprisonment or fines for certain offences related to the illegal export of antiquities. In contrast, section 30 of the Ancient Monuments and Archaeological Sites and Remains Act (1958) provides for punishment with imprisonment for up to two years or a fine of up to 100,000 rupees (less than USD 2,000) or both for removing "from a protected monument any sculpture, carving, image, bas-relief, inscription, or other like object". As lawyers often take advantage of inconsistencies between the acts to defend their clients and attain lower sentences, looters and art dealers are hardly

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20 Amendment VIII to the Criminal Law of the People's Republic of China, adopted at the 19th session of the Standing Committee of the Eleventh National People's Congress of the People's Republic of China on 25 February 2011.

21 See, eg, 'China Executes Three Men for Plundering Ancient Tombs' *Associated Press* (18 April 2003).

22 Jeanette Greenfield, *The Return of Cultural Treasures* (3rd edn, Cambridge University Press 2007) 275.

23 'China Executes Official for Plundering Cultural Relics' *Sify News* (19 November 2010) <http://www.sify.com/news/china-executes-official-for-plundering-cultural-relics-news-international-kltqkochjjb.html>.

24 ibid.

deterred by the soft penalties when lured by the comparatively sizeable profits that they would make through illegal dealings.[25]

Procedural and jurisdictional complications add to the difficulties surrounding the prosecution of criminals. Prosecutions are costly, time-consuming, and often exceed the resources available to heritage protection authorities, police investigators, and public prosecutors. In addition, many cases are based in different jurisdictions, a fact which significantly impedes the successful prosecution of art crimes. Indeed, law enforcement agencies from jurisdictions where art crimes are committed have no authority to apprehend offenders who operate in foreign jurisdictions. Similar jurisdictional challenges arise in the context of illicit antique dealers who trade in countries where their actions would not constitute any violation of law. For example, the provisions of the1961 Act on Ancient Monuments, Antiques, Objects of Art and Natural Museums of Thailand, which prohibit the export of any antique or object of art without a license[26] and provide for punishment of anyone who exports non-registered[27] or registered[28] antiques or 'objects of art, only apply to objects of Thai origin. Therefore, the trafficking of Cambodian artefacts in Thailand, for instance, would not be governed by the act.

Some countries in Asia function as areas of transit for looted antiquities.[29] Thailand, which has suffered significantly from the large-scale looting of its archaeological and cultural sites, remains an important hub for the trafficking of illegally exported cultural relics from other countries, predominantly Cambodia.[30] Looters in Cambodia, who are usually locals with knowledge about accessing valuable sites and pillaging them without being caught, often smuggle the looted items to Thailand via the many roads leading to its northern region; many such instances also involve middlemen from Thailand.[31] Once the items reach major

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[25] Neeta Lal, 'India Blinks as Art Treasures Disappear' *Asia Times* (15 October 2011) <http://atimes.com/atimes/South_Asia/MJ15Df03.html>.

[26] 1961 Act on Ancient Monuments, Antiques, Objects of Art and Natural Museums (Thailand), s 22.

[27] ibid s 38.

[28] ibid s 39.

[29] See also Simon Mackenzie, 'Trafficking Antiquities' in Mangai Natarajan (ed), *International Crime and Justice* (Cambridge University Press 2011) 143.

[30] Sylvain Gharbi, 'Khmer Heritage Plundered' *7Days* (Phnom Penh, 18 January) <http://www.phnompenhpost.com/7days/2936-khmer-heritage-plundered> 19.

[31] ibid.

cities, such as Bangkok, they enter the international art market and are sold, where they can hardly be tracked and virtually disappear.[32] The same occurs in other major transportation hubs with large ports and airports, such as Hong Kong and Singapore. The sheer amount of containers and other freight processed daily allows only for a small number of them to be checked for illegally exported or looted goods.[33] When such items are detected, customs officers are frequently unable to determine their true value and origin, whether they are exported legitimately, and whether they are genuine. Most looted items therefore remain undetected.

Certain countries have realised the necessity of tackling the cross-border smuggling of illegally exported antiquities by cooperating with other nations. For instance, Cambodia and Thailand signed an agreement in 2000 which focuses on increased bilateral cooperation in the fight against illicit art trafficking, the sharing of relevant information, sanctions against smugglers, the fostering of public awareness, and the establishment of a joint system of export certificates and provisions for the return of illegally exported cultural property.[34] Art crime involving cross-boundary operations can only be effectively prevented by cooperation between source countries and transit countries, and source countries and market states.[35] Relevant agreements which involve the sharing of intelligence and regulations regarding law enforcement and the penalisation of related offences are particularly important in the context of this chapter.

Long-term strategies for the prevention of art crime in Asia

There are several aspects and strategies that should be considered when contemplating long-term approaches to address art crime in Asia. Although the investigation and prosecution of art crime is crucial in terms of deterrence and reparation, factors which contribute to the

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[32] ibid.

[33] Gruber (n 15) 355.

[34] Agreement Between the Government of Cambodia and the Government of the Kingdom of Thailand to Combat Against Illicit Trafficking and Cross-border Smuggling of Movable Cultural Property and to Restitute it to the Country of Origin (signed and entered into force 14 June 2000).

[35] Generally on this topic, see Gruber (n 15).

sources of the problem must also be examined. While collaboration between illicit art dealers and corrupt officials is one of the more obvious issues concerning crimes related to art, problems arising from the involvement of those who lack adequate understanding of their wrongdoing or act out of monetary necessity must also be addressed in order to alleviate the situation permanently.

Capacity building and strengthening of heritage protection agencies

The prevention of art crime in Asia requires effective capacity building and sufficient funds to support cultural heritage protection agencies that are responsible for the protection of sites and buried artefacts as well as the initial investigations into instances of looting and other offences related to art. In most Asian countries, these agencies are understaffed and underfunded. As a result, many sites in remote locations are not effectively patrolled and protected against looters.[36] Moreover, existing departments and staff often lack the training and authority to investigate and prevent such offences, and often cannot compete with the resources of professional looters and illegal art dealers. Additionally, even when general police forces are able to detect looting, they are often unable to investigate the damages caused by the looting or to gather evidence as effectively as specially trained staff would be able to do. The same dilemma applies to the trading of counterfeit items, for the detection of well-manufactured and forged pieces of art usually requires expert analyses and scientific tests, as detailed above. It is clear from these issues that prosecutions cannot be secured without appropriate staff and funding to detect offences and carry out investigations.

Establishing efficient systems of documentation and registration of heritage items and sites is another viable scheme which has the potential to substantially impair the illicit trafficking of antiquities. Ideally, further implementation of such arrangements in official repositories, museums, and archaeological sites for the purpose of identifying and establishing the provenance of stolen items which surface on the international art market would be highly valuable to law enforcement agencies and the original owners requesting their return. Unfortunately, local and regional museums in many parts of Asia often do not have adequate registers of their items. Furthermore, where they do, the registrations do not

[36] Stefan Gruber, 'Protecting China's Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law' 10 Asia Pacific Journal of Environmental Law 253, 284.

conform to international standards for forms and descriptions, and are thereby rather ineffective for investigations concerning the repatriation of claims. For example, in January 2013 when thieves stole several priceless pre-Angkorian artefacts made of gold and bronze from the Rajabo Pagoda in Siem Reap province, some of which date back to the BCE era, only the pagoda committee knew about the exact number and kind of artefacts that were part of the collection.[37] In such cases, the exclusivity of information and lack of any records significantly complicates the process of identifying the perpetrators and recovering the items once they are transported outside the region for sale on the international art market. Many existing systems of registration are undoubtedly in need of further development.

Corruption, greed and lack of responsibility

Another major, if not the primary, problem regarding art crime in Asia is the corruption or ignorance of local authorities. The officials are often unaware of the impact and relevance of art crime and relating legal regulations, or they deliberately ignore such cases.[38] In some areas, government officials even appear to be involved in the smuggling process. Certainly one of the most notorious looting operations involving the Cambodian army was the pillaging of the twelfth century temple of Banteay Chhmar, which is located fifteen kilometres from the Thai border. Under the commission of a Bangkok-based art dealer, a Cambodian army unit cut off over five hundred square feet of reliefs, dismantled twelve metre-long walls and removed a large number of statues with heavy equipment over a period of four weeks.[39] Numerous pieces were put on sale in antique shops in Bangkok before the Thai police intercepted several trucks transporting further fragments of the reliefs into Thailand.

The structure of the international art market and the general attitudes of those involved towards unprovenanced items add to the difficulties of policing art crime. [40] To a certain extent, the collection of antiquities, the trade in cultural artefacts, and the supply of new items to the antique market have always involved the services of dubious characters and

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[37] Heritage Watch, 'Artifacts Stolen from Reach Bo Pagoda' (2013) <http://www.heritagewatchinternational.org/wat-bo-theft.html>.

[38] Gruber (n 15) 362.

[39] Mydans (n 9).

[40] Generally on the lack of due diligence amongst art dealers, see Bull (n 10).

organised crime. As Bogdanos stated: "Indeed, the patina of gentility we usually associate with the world of antiquities has always rested atop a solid core of criminal activity".[41] This is particularly so for Asia, which has a vast number of heritage sites that are often unprotected or not yet officially recorded and constitute profitable targets for looters.

A large share of antiquities on the international art market is advertised with insufficient details as to their provenance, thereby precluding any proper assessment of their legitimacy.[42] This is common practice and seems to be the accepted norm rather than the exception within the art market. In many cases, art dealers tend to protect the seller and keep him or her anonymous.[43] This makes any investigation regarding the origins of allegedly stolen items and the potentially criminal circumstances surrounding the acquisitions very difficult to ascertain. That many items are in fact loot is often denied by art dealers. Some merchants avoid exploring this issue at all, while still others overtly support looting as a means to supply the art market with stolen items. Many traders who are aware of the illegality of such activities either downplay the destructive impact of looting or justify it by maintaining that some stolen items would otherwise not have been discovered at all.[44]

One of the greatest challenges is to involve the art market in developing effective strategies and to convince art dealers and auctioneers to be part of the solution rather than the problem. As mentioned above, the margins in the international art market are significant and, due to the generally low cost of acquisition, apply particularly to stolen and looted items.

Education and raising awareness

Despite the problems of corruption discussed above, not everyone involved in the illicit art market is actually aware of the severity of his or her wrongdoings. In such cases, education

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41 Matthew Bogdanos, 'The Terrorist in the Art Gallery' *The New York Times* (10 December 2005) <http://www.nytimes.com/2005/12/10/opinion/10bogdanos.html?pagewanted=all>.

42 See the extensive research and interviews conducted by Mackenzie in Simon Mackenzie, *Going, Going, Gone: Regulating the Market in Illicit Antiquities* (Institute of Art and Law 2005) 32-62.

43 Carolyn Olsburgh, *Authenticity in the Art Market: A Comparative Study of Swiss, French and English Contract Law* (Institute of Art and Law 2005) 48-50.

44 Mackenzie (n 42) 60-1.

can play an important role in addition to repressive measures.[45] Unlike punitive actions, education is non-threatening and achieves better long-term results. In many cases, unprofessional looters, such as local farmers, are not even aware of the value and significance of the items they loot. They also often lack knowledge of the relevant laws related to looting and heritage protection. Resultantly, they may not even be aware of the penalties that they would face if caught. A useful means of informing such persons of the criminality of pillaging and contributing to activities related to art trafficking is to circulate reports of recent prosecutions and relevant legal provisions in the affected regions. Cultivating an appreciation of the importance of preserving the local heritage and fostering pride in the local culture is also of great importance.[46] Long-term benefits are more likely to result where members of a population cooperate to protect their heritage.[47] Establishing a common respect for the local cultural heritage and support for the necessity of conservation will make the pillaging of heritage sites much more difficult for looters. For instance, members of the local community may stop looters from their illicit activities, inform the authorities, or assist with investigations. Tolerance of looting activities should decrease drastically when local populations understand that looters effectively rob them of tangible treasures of their cultural history.

Private recreational collectors must also be deterred from promoting the destruction of cultural heritage by purchasing from illicit art dealers. As with many local communities, several of these collectors are uninformed of the relevant provisions and are ignorant of the connections between illegally imported artefacts and organised crime. They are often unaware of the wrongdoing of their own dealings with illicit antique dealers and do not make sufficient inquiries as to the background of their purchases. By addressing these issues in the media, emphasising the destruction caused by looting[48], and approaching collectors in a non-repressive way, it may be possible to use their expertise and interest in the preservation of

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45 Thomas King, 'Some Dimensions of the Pothunting Problem' in George Smith and John Ehrenhard (eds), *Protecting the Past* (CRC Press 1991) 88.

46 Gruber (n 36) 295.

47 See in this context, eg, Shuzhong He, 'Illicit Excavation in Contemporary China' in Neil Brodie, Jennifer Doole and Colin Renfrew (eds), *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage* (McDonald Institute for Archaeological Research 2001) 24.

48 Magnus Fiskesjo, 'Tomb Raiders and Destruction of History' *China Daily* (23 June 2010) 9 <http://www.chinadaily.com.cn/cndy/2010-06/23/content_10005909.htm>.

cultural heritage to assist authorities involved with heritage protection. Nevertheless, many private collectors are clearly very well aware of the impact of their wrongdoing and are actively involved in those destructive activities, which make them impervious to non-threatening and non-repressive strategies.

Improved education and training must also be provided to the police, customs officers, and officials, including judges and prosecutors, who deal with heritage protection. Access to relevant information is a key issue in the effective implementation of policies and applies to government officials and private actors equally.[49] As mentioned above, effective prevention and investigation of art crime is very difficult where there is an insufficient number of trained specialist staff and a lack of awareness among relevant authorities who are involved in law enforcement, investigation units, and customs.

Social programs and poverty alleviation

Education cannot be sufficiently effective unless combined with programs to improve the social problems in heritage-rich regions where looting occurs. It is important to explore the circumstances and causes which promote the looting of artefacts. These considerations must be taken into account when structuring a sustainable and long-term solution for the looting and trafficking of cultural artefacts. This is especially pertinent to projects with objectives which aim to alleviate poverty and reduce the disparity between urban and rural areas as poverty is often the driving force behind looting and the wilful destruction of sites in order to obtain tradeable items.[50] Two of the primary obstacles impeding the effective prevention of looting in countries such as Cambodia are the poor economic conditions of many regions on the one hand and significant prices and high demand for cultural relics at the international level on the other.[51] In many cases, selling cultural relics is simply a practical source of

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[49] E. Somanathan and Thomas Sterner, 'Environmental Policy Instruments and Institutions in Developing Countries' in Ramón López and Michael A. Toman (eds), *Economic Development and Environmental Sustainability: New Policy Options* (Oxford University Press 2006) 229.

[50] Generally regarding the connection between poverty and the loss of cultural heritage, see Stefan Gruber, 'Poverty and the Loss of Cultural Heritage Sites' in Yves Le Bouthillier and others (eds), *Poverty Alleviation and Environmental Law* (Edward Elgar 2012).

[51] Jane Perlez, 'A Cruel Race to Loot the Splendor That Was Angkor' *The New York Times* (21 March) <http://www.nytimes.com/2005/03/21/international/asia/21cambodia.html?_r=1&>.

income and means to feed families. Some looters either personally dig up the artefacts to sell them, act as participants in larger pillaging operations that are orchestrated by professional looters, or rent their properties to looters who then excavate anything that is discovered.[52] Other instances of looting relate to well-equipped professional grave robbers, who sometimes receive detailed orders and photos of sites from antique dealers[53] indicating which sites to loot and what items to steal. Such dealers are known to direct pillaging and smuggling operations from their offices, while much of the physical work is carried out by farmers and others who are paid by art dealers for their loot. Many looters may not even be aware of the value of the items.[54] This allows illicit art dealers to make lucrative profits while shifting the risk of apprehension by law enforcement authorities onto others.

It is important to note that any measure aimed at reducing poverty in heritage-rich regions will also help protect heritage and make it harder for illicit antique dealers to recruit looters. With decreased poverty, locals will be less likely to risk prosecution and penalties in order to sell their region's cultural treasures for profit. Likewise, guards would have less of an incentive to take bribes from looters if paid adequate wages.

In addition to penalties, several heritage protection laws also provide rewards for turning in discovered relics and notifying authorities of undiscovered sites and looting operations.[55] Such rewards are intended to prevent people from participating in illicit art trafficking.[56] Unfortunately, the weakness of these provisions lies in the fact that the monetary value of the proposed rewards fall far below the value of the profits which could be made by the sale of the cultural relics concerned. It is quite naive to expect someone to turn in a heritage item for a small reward if he or she could be paid many times that amount on the illicit art market. Professional looters generally would also not be attracted by such small rewards as they are well aware of the fact that they are committing crimes when pillaging

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[52] Rachanie Thosarat, 'The Destruction of the Cultural Heritage of Thailand and Cambodia' in Brodie N, Doole J and Renfrew C (eds), *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage* (McDonald Institute for Archaeological Research 2001) 13.

[53] Fiskesjo (n 48).

[54] Michael L. Dutra, 'Sir, How Much Is That Ming Vase in the Window?: Protecting Cultural Relics in the People's Republic of China' 5 Asian-Pacific Law & Policy Journal 62, 71.

[55] See, eg, China Cultural Relics Law, art 12.

[56] Phillip Newell, 'The PRC's Law for the Protection of Cultural Relics' 13 Art, Antiquity and Law 1, 16.

sites.[57] It is therefore preferable to provide adequate monetary rewards to people for assisting authorities in protecting national heritages and to threaten looters with grim penalties. String-pullers and corrupt officials must be punished with more severe penalties than hired local looters who act out of economic despair rather than criminal intent.

Conclusion

This chapter provided an overview of the primary problems relating to the investigation, prosecution and prevention of art crime in Asia. In particular, it focused on issues regarding the smuggling and selling of looted artefacts and to a lesser extent on art forgery. Many illegal art dealers operate across borders and are therefore difficult to link back to offences and be prosecuted. This is particularly due to the large scale of art crime in Asia and the enormous profits that are involved. Cooperation between neighbouring countries and assistance by market countries are of particular importance in this context. Additionally, it is crucial that particular source and transit countries collaborate closely in the gathering of intelligence, the regulation of exports, the punishment of relevant offences, and the repatriation of seized items. Particular care must be taken with international efforts, such as those concerning the administration of relevant laws which vary between countries in terms of penalties and enforcement.

The chapter also examined certain long-term measures for the prevention of art crime, which are of equal importance. Indeed, enhanced training of relevant government officials, the judiciary, and other persons involved in the enforcement of related laws are as important as raising awareness among local populations. The benefits of introducing educational measures and programs to reduce poverty with regard to preventing illicit art trading was also considered. The tasks of preserving cultural heritage and fighting art crime will become much easier as poverty is diminished. When people are not prompted to act out of economic despair, they are much more likely to be receptive to the concept of heritage protection. The same results are anticipated in the contexts of harsh penalties imposed against corrupt officials and string-pullers who orchestrate the looting operations, and enhanced moral and economic rewards offered to those who assist in the protection of cultural relics. The effect

[57] See further, Gruber (n 36) 296.

of these dual measures is to disable the structures of organised art trafficking. The gravity of involvement in such activities must be reflected in legislative penalties, lest the high profits from looting, art theft, and illicit art trafficking otherwise prove to be too strong of incentives to ignore.

Issues relating to art crime in Asia are extremely complex and cannot be effectively addressed with isolated, singular strategies. Investigation and prosecution of art crime is hindered by numerous factors ranging from specific local and regional features in Asia to the structure of the international art market. Similarly, the prevention of art crime cannot be remedied by insulated stratagems; collaborative efforts are required. A range of approaches must be combined in a holistic manner in order to achieve long-term results. Regardless of the complexities and difficulties of corresponding issues, decisive action is crucial in this context, for art crime is wreaking havoc on Asia's cultural heritage. As the cultural heritage and archaeological contexts of different regions are non-renewable resources and generally cannot be fully recovered even if looted items are returned and perpetrators prosecuted, it is imperative that swift action and cooperation be effected in order to prevent further permanent harm and cultural impoverishment in Asia.[58]

Bibliography

——, 'China Executes Three Men for Plundering Ancient Tombs' *Associated Press* (18 April 2003)

——, 'China Executes Official for Plundering Cultural Relics' *Sify News* (19 November 2010) <http://www.sify.com/news/china-executes-official-for-plundering-cultural-relics-news-international-kltqkochjjb.html>

——, 'US Seeks Halt to Auction of Rare Cambodian Statue' *Australia Network News* (27 February 2013) <http://www.abc.net.au/news/2013-02-27/an-us-lawyer-seeks-return-of-rare-cambodian-statue/4543572>

Bazley T, *Crimes of the Art World* (Praeger 2010)

[58] Compare in this context similar ideas in Stefan Gruber, 'The Impact of Climate Change on Cultural Heritage Sites: Environmental Law and Adaptation' [2011] *Carbon and Climate Law Review* 209, 219.

Beeching J, *The Chinese Opium Wars* (Hutchinson 1975)

Blumenthal R, 'Cambodia Is Seeking 2nd Statue' *The New York Times* (28 September 2012) <http://www.nytimes.com/2012/09/29/arts/design/cambodia-now-seeking-return-of-norton-simon-statue.html>

Bogdanos M, 'The Terrorist in the Art Gallery' *The New York Times* (10 December 2005) <http://www.nytimes.com/2005/12/10/opinion/10bogdanos.html?pagewanted=all>

Bull T, 'Lack of Due Diligence and Unregulated Markets: Trade in Illicit Antiquities and Fakes in Hong Kong' in Charney N (ed), *Art and Crime: Exploring the Dark Side of the Art World* (Praeger 2009)

Carducci G, '"Repatriation", "Restitution" and "Return" of "Cultural Property": International Law and Practice' in Gabriel M and Dahl J (eds), *Utimut: Past Heritage - Future Partnerships, Discussions on Repatriation in the 21st Century* (International Work Group for Indigenous Affairs 2008)

Dutra ML, 'Sir, How Much Is That Ming Vase in the Window?: Protecting Cultural Relics in the People's Republic of China' (2004) 5 Asian-Pacific Law & Policy Journal 62

Fiskesjo M, 'Tomb Raiders and Destruction of History' *China Daily* (23 June 2010) 9 <http://www.chinadaily.com.cn/cndy/2010-06/23/content_10005909.htm>

Gharbi S, 'Khmer Heritage Plundered' *7Days* (Phnom Penh, 18 January 2013) <http://www.phnompenhpost.com/7days/2936-khmer-heritage-plundered>

Gruber S, 'Protecting China's Cultural Heritage Sites in Times of Rapid Change: Current Developments, Practice and Law' (2007) 10 Asia Pacific Journal of Environmental Law 253

——, 'The Impact of Climate Change on Cultural Heritage Sites: Environmental Law and Adaptation' [2011] *Carbon and Climate Law Review* 209

——, 'Poverty and the Loss of Cultural Heritage Sites' in Le Bouthillier Y and others (eds), *Poverty Alleviation and Environmental Law* (Edward Elgar 2012)

——, 'The Fight Against the Illicit Trade in Asian Cultural Artefacts: Connecting International Agreements, Regional Cooperation and Domestic Strategies' (2013) 3 Asian Journal of International Law 341

Greenfield J, *The Return of Cultural Treasures* (3rd edn, Cambridge University Press 2007)

He S, ‘Illicit Excavation in Contemporary China’ in Brodie N, Doole J and Renfrew C (eds), *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage* (McDonald Institute for Archaeological Research 2001)

Heritage Watch, ‘Artifacts Stolen from Reach Bo Pagoda’ (2013) <http://www.heritagewatchinternational.org/wat-bo-theft.html>

Jones J, ‘Scandal in China over the Museum with 40,000 Fake Artefacts’ *The Guardian* (18 July 2013) <http://www.theguardian.com/culture/2013/jul/17/jibaozhai-museum-closed-fakes-china>

King T, ‘Some Dimensions of the Pothunting Problem’ in Smith G and Ehrenhard J (eds), *Protecting the Past* (CRC Press 1991)

Lal N, ‘India Blinks as Art Treasures Disappear’ *Asia Times* (15 October 2011) <http://atimes.com/atimes/South_Asia/MJ15Df03.html>

Mackenzie S, *Going, Going, Gone: Regulating the Market in Illicit Antiquities* (Institute of Art and Law 2005)

——, ‘Trafficking Antiquities’ in Natarajan M (ed), *International Crime and Justice* (Cambridge University Press 2011)

Mashberg T, ‘Legal Tussle Over Statue Turns Nasty’ *The New York Times* (14 September 2013) C1 <http://www.nytimes.com/2013/09/14/arts/design/legal-tussle-over-statue-turns-nasty.html?smid=fb-share&_r=0>

Mydans S, ‘Raiders of Lost Art Loot Temples in Cambodia’ *The New York Times* (1 April 1999) <http://www.nytimes.com/1999/04/01/world/raiders-of-lost-art-loot-temples-in-cambodia.html>

Nafziger JAR, Paterson RK and Renteln AD, *Cultural Law: International, Comparative, and Indigenous* (Cambridge University Press 2010)

Newell P, ‘The PRC's Law for the Protection of Cultural Relics’ (2008) 13 Art, Antiquity and Law 1

Olsburgh C, *Authenticity in the Art Market: A Comparative Study of Swiss, French and English Contract Law* (Institute of Art and Law 2005)

Perlez J, ‘A Cruel Race to Loot the Splendor That Was Angkor’ *The New York Times* (21 March 2005) <http://www.nytimes.com/2005/03/21/international/asia/21cambodia.html?_r=1&>

Polk K and Chappell D, ‘Fakes and Deception: Examining Fraud in the Art Market’ in Charney N (ed), *Art and Crime: Exploring the Dark Side of the Art World* (Praeger 2009)

Somanathan E and Sterner T, ‘Environmental Policy Instruments and Institutions in Developing Countries’ in López R and Toman MA (eds), *Economic development and environmental sustainability: new policy options* (Oxford University Press 2006)

Thosarat R, ‘The Destruction of the Cultural Heritage of Thailand and Cambodia’ in Brodie N, Doole J and Renfrew C (eds), *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage* (McDonald Institute for Archaeological Research 2001)