

**FOR THE FREE CIRCULATION OF WORKS OF ART**  
a critical assessment of the  
1970 Unesco Convention and 1995 Unidroit Convention

**Preamble**

The two Conventions categorize art as national patrimony : this is reactionary, erroneous and destructively divisive ; contrary to nature and what our aim should be.

The essence of our species is movement, and as Heraclitus said : « Everything is in flux ».

Nature is diversity, ecology is diversity. Ambiguity is part of our culture<sup>1</sup>.

Quantum physics confirms randomness.

Culture is our material, intellectual and spiritual heritage : the refined understanding of the arts and other human achievements.

« It is culture that has given man his soul »<sup>2</sup>. The type of culture that we intend for ourselves and for future generations will determine our destiny, and it is high time that we realize this.

If our aim is a society of human dimension, one must nurture the human dimension.

Art is a world language. One of the essences of *homo sapiens* is art, and Anati adds : « we can already postulate that the elements fundamental to culture are common to all of humanity and stem from one single mould »<sup>3</sup>.

On the other hand, science is the study of causation, for causality is what enables our capacity to postulate, ensuing in scientific progress and the consequent *hubris* that randomness is illusory. This is the ideological approach.

Recent discoveries in genetics confirm human complexity, leading to the collapse of doctrines and the failure of reductionism in biology. The key to complexity is combinations and interactions and not the number of our genes ; organisms can only be explained as organisms. To which one can say : « the deflation of *hubris* is blessedly positive, not cynically disabling »<sup>4</sup>.

The organisations concerned with the past and surviving art, like many human organisations, lack an openness to the reality of life. They wish control over resources and to distribute them as they see fit.

This demagogic approach leads to progressive reduction of individual and minority rights.

The consequent dehumanisation of the individual leads to the hardening of society.

They make up an ideology in contradiction with reality, they are not looking for the truth.

They have not resorted to dialectics (Socrates) : to put opinions to the test. « They have not gone from the particular to the general, using an inductive method that *homo sapiens* has employed for 40.000 years to get where he is »<sup>5</sup>.

To revert to national patrimony, the sorry observation is that man's intelligence has not yet overcome the powerful tribal instinct, ensuing in the monstrosity of war. We produce weapons that grow out of fashion and will be of no use, do we likewise need to develop an immoderate bureaucracy, the consequences of which could be to favour a « society of apathetics, of drug addicts or worker ants »<sup>6</sup> ?

The two Conventions do not define the term "theft", the extension of which is unreal. Do not differentiate for example between the ransacking of the collections of the Museums in Kabul and Beirut and chance or accidental finds. They do not differentiate between movable and immovable goods.

They give priority to the national interest of retention over considerations of conservation, truth and access.

There is also another aspect, there is a tidal wave against all idea of private collecting – only archaeologists and the source countries are entitled to speak out. Thus, those concerned retain their privileges as civil servants to the exclusion of all others, their position becomes a monopoly.

The collector is an individual acting in isolation.

In the measure that an individual manifestation is not contrary to ethics or the general well-being, to suppress it is contrary to the positive evolution of humanity.

For given the facts to acquire antiquities, even if they have left a country « illegally », more often than not amounts to saving these artefacts. It ensures their survival.

Think of the consequences of the ratification of both Conventions : save for the few objects in old collections that will soon dry up, it will not be possible to trade legally in archaeological artefacts. And very difficult, if at all possible, to trade freely in any form of art over fifty years of age.

## **General remarks**

I am for the free movement of works of art and their protection.

**I am for human rights, the dissemination and preservation of art.**

I am opposed to the two Conventions because they are flawed and unfortunately ideological and simplistic, **in contradiction with history and reality.**

They disregard the vital role played by dissemination in the safeguarding of art.

They are opposed to dissemination.

Art is the **heritage of mankind**, an universal heritage.

**It is evident that one must fight against and prevent the depredation of world heritage sites** such as Borobudur, Angkor Vat and others, prevent theft from these sites, from within archaeological areas and their storehouses, from museums and their storerooms, etc.

**It is evident that one must fight against illicit and clandestine digging, against the theft of works of art in the classical sense of the term.**

The two Conventions are in **most grievous error** when they acknowledge that **unauthorised export** of any work of art **is a crime** and equivalent to theft.

The projected regulations speak only of crime don't even question whether retentionism effectively protects artefacts. - The answer is no.

They lose sight that **the essential for art is its preservation**. There is an obligation to preserve, protect, restore, exhibit, publish and share.

**There is often no link** between works of art from the past and the country with its inhabitants of today: borders have changed, as have populations and religions.

**Turkey** claims ancient Greek art from the coast of Asia Minor as its national heritage. In the 1920s it drove out the Greek inhabitants after a blood-bath.

The same applies to Byzantine (Christian) and Armenian churches and antiquities.

Likewise, **the Taliban Moslems in Afghanistan** destroy Buddhist monuments<sup>7</sup>. If such monuments are saved, it is because they have a market value.

What is happening for example in **Indonesia** ? The island of Java was Buddhist until the year 1000, then Hindu, and Muslim as of 1400. Buddhist figurines of gold are found off and on during agricultural work. Being of no religious significance for the inhabitants, these are always melted down for the metal value. Recently, some were saved thanks to the awareness of the existence of a market.

**Nigerian** tribal animist art means nothing to the present largely Islamic population, and is regarded as a bar to material progress and to the modernisation of their country.

Recently, Professor Frank Willett, an ethnologist of international standing, has come to accept reality. He cited cases of theft from different museums as a result of incompetence, corruption and sale by those in charge. He now urges that such stolen artefacts should not be returned to Nigeria<sup>8</sup>.

**Dissemination saves because it enables works of art to survive the precariousness inherent to our planet such as natural cataclysms, wars and revolutions.**

Dissemination of art by free movement has played an essential role in its preservation for humanity. It has enabled the artistic inheritance of the world to be shared.

**Man since time immemorial has acquired objects from elsewhere.**

Fundamental to the saving of the past has been **the collector** : he assembled and conserved. Whatever his motivations he **has served and fulfilled a social function.**

**At the inception of all art museum collections are passionate collectors.**

From their cabinets of curios were born the museums, giving rise to university studies which in turn produced the archaeologists of today. Millions of school children and citizens from countless countries have enjoyed, learnt and shared the cultural heritage of humanity in museums and exhibitions.

Patronage and preservation of our world-wide cultural inheritance has been made possible historically by collectors and not by states.

But one ought not to forget that generally the source nations have neither the expertise, the structures, the laboratories, the museums nor the scientists to care for, to restore, to publish and exhibit the works found in their countries.

Even the archaeologists in our countries publish less than half of what they have uncovered, and there are still major official finds that remain unpublished half a century later.

The Naples Museum has in its storerooms 300,000 artefacts uninventoried and uncatalogued.

In the Cairo museum there are still textiles wrapped in newspaper dating from the time of the discovery of the tomb of Tutankhamen 80 years ago.

**UNESCO imposes no obligation on source countries, on claiming countries and others to care themselves for the testimonies of the past in their countries.**

**Let us not forget that it is their citizens who steal** from their museums, it is their citizens who resell the artefacts that have been returned to them. It is their citizens who, often with the complicity or the involvement of the political, police and customs authorities contravene their laws and don't have an ethical or civic behaviour in relation to the art in their countries.

The globalisation of art is ethical and moral, essential to its survival for the benefit of all.

Like Pic de la Mirandole (1463-1494) in "The Dignity of Man" whose great idea was a convergence of doctrines to attain an universal humanism, I believe that art is the best means to enable this understanding among peoples.

I would like to repeat something I have already said : **"Art is far more than just commerce. Art is the material manifestation of man's noblest expression. It is an idealism made into matter, it is a message. It is a message of communication. It is a surpassing of oneself, and as such must move freely to promote comprehension, mutual respect and humanity, for we must make one world in which all peoples accept each other."**

**Is there not a dimension to art that goes far beyond the pursuit of a context**, of data called scientific and rational ? The same dimension as to music, as to poetry, as to falling in love. Positive emotions essential to our existence.

Isn't art – as the smile – a dimension natural to man ? In the same manner that the smile is flesh motivated by spirit, as the twinkling eye is the revelation of our unconsciously expressed essence in perception or awareness, art embodies a consciously expressed essence.

## **I What would happen were the Conventions to pass**

**They would put an end to dissemination that saves because it enables works of art to survive the precariousness inherent to our planet such as natural cataclysms, wars and revolutions**, because they disregard that art is the **heritage of mankind**, an universal heritage.

The definition of a cultural object is so broad that it will permit any and all kinds of abuse. It even includes currency and postage stamps made for commerce and circulation.

They will be an **infringement on human rights**, on the free movement of people and goods, on property, on its free disposal, on trade, undermine democratic traditions, culture, private and public collections.

There will be no outlet for **most archaeological finds that, it must not be forgotten, are accidental and generally without context** ensuing from the enormous economic development over the last 100 years, and are only saved in the measure that they are by the existence of the market.

Example : a peasant ploughing his field or digging irrigation ditches falls upon archaeological artefacts.

He does not want to lose his field; what is he going to do ? He will destroy everything.

But if he knows that there is an outlet, the artefacts may be saved.

They will lead to the destruction of almost all archaeological finds, to the melting down of all objects of precious metal, to the loss of all context and provenance. Art will go underground.

**Almost all works of art that are over one hundred years old will be hampered in their movement** and many will become part of a black market, with the loss of their history and provenance.

It will be impossible for India and China 2/5 of the world population to have a National Museum some day with Sumerian, Egyptian, Greek, Roman and Byzantine and other works of art which would enable them to understand what we are. Our spiritual birth that came about in Greece and which gave rise to democracy, the notion of ethics, of individual responsibility, of a civic approach. But, if they are unable to understand us, don't we run the risk that some day they may destroy us ?

**Demanding that works of art should be treated as national heritage leads to retrograde ethnocentrism and ensuing cultural destruction. It is divisive and in the final analysis leads to cultural and physical genocide.**

It should be pointed out that the first thing that the **orthodox Serbs did to Islamic Bosnia** was to destroy museums and mosques, before they killed the inhabitants.

**The proposed regulations will leave ethnic minorities without any protection, as also their cultural heritage, in countries under dictatorship.**

### **Tibet**

6000 monasteries – almost all destroyed

98% of the works of art – destroyed

medical library of Lhasa – more than 1000 years of uninterrupted history – destroyed.

**The Dalai Lama** has declared time and again that he was delighted that the West buys Buddhist works of art originating in Tibet because they are thus saved for future humanity, which includes his own people.

## **II What would happen were the Conventions not to pass**

The situation would remain as it has been in the past and what it is today, unfortunate as this is in certain aspects.

But this situation permitted the Renaissance with its extraordinary awakening and the marvellous exchanges due to the Silk Road from Rome through Persia, Samarkand, Afghanistan, the Taklaman desert and on to Beijing. (And all that Marco Polo brought back from his journeys.)

(Two examples among so many in the history of mankind : contributing to the opening up of ideas and to understanding between peoples. The stimulation to development in the first example and the exchanges of ideas and works of art in the to and fro of the second.)

## **III Conclusion**

**In the name of what** are UNESCO and regulations suddenly going to freeze everything ?

**The enactment of this legislation will be morally deplorable, counter-productive in practice and criminal in its consequences for world culture.**

Those who have called into question the legitimacy of the imposition of the 1970 Unesco Convention and of the 1995 Unidroit Convention have done so because after mature consideration they have deemed the consequences disastrous for the future of our universal cultural inheritance.

**What will be the world of tomorrow, for our children, grandchildren and mankind to come if we envisage controlling art with the same approach that the UN has adopted in the conflicts of the last 15 years where the political and the economic have taken precedence under the guise of morality ?**

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Humanist and Collector

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<sup>1</sup> Emmanuel Anati, *Les racines de la culture*, Studi Camuni XV, 1995, p. 17. Anati is Director of the Centro Camuno di Studi Preistorici and Professor of Palaeoethnology at the University of Lecce.

I am indebted to Anati's publication for many of the points raised in the Preamble.

<sup>2</sup> Yves Coppens (Collège de France) in his Preface to Anati, *op. cit.*, p. 7.

<sup>3</sup> Anati, *op. cit.*, p. 22.

<sup>4</sup> Stephen Jay Gould, Professor of Zoology, Harvard University.

<sup>5</sup> Anati, *op. cit.*, p. 13.

<sup>6</sup> Anati, *op. cit.*, p. 208.

<sup>7</sup> Regarding what has just taken place in Afghanistan (March 2001) : not only are the statues completely destroyed, but every work of art and every sculpture in Afghanistan also. This may be less striking, but from the perspective of humanity, far worse.

Afghanistan was at the crossroads of the great route that went back and forth between Beijing and Rome, we had just begun to perceive that there was a relationship between Sumer in the 3rd millennium and Mohenjo Daro in India. A major font of information and striking works of art have been totally wiped out. Unfortunately only a few items that found their way to the west are what remain to help us hypothesize and possibly have a vague idea of what was.

Contrary to the disinformation the illicit digging that went on, on a vast scale, was not for works of art to sell but in search of precious metal hoards : gold and silver coins, gold objects; for Afghanistan was immensely wealthy in these metals.

The total destruction of Aï Khanum is such an example. All that is left are pits like bomb holes, not the work of bull-dozers, as claimed, but of shovels and pick-axes. They even destroyed the column drums and the mosaic floors believing that the former contained gold and the latter covered treasures below.

The Kabul Museum was destroyed by war and pillage. At a later stage some realized that works of art could be sold in the west and these illicit and criminal, as Unesco would qualify them, are all that is saved today.

As a humanist, I am horrified by the destruction that takes place in the world, but shattered by the totally inappropriate approach of Unesco.

<sup>8</sup> The Art Newspaper, Vol. XI, no. 107, October 2000 "Don't return artefacts to Nigeria" "Leading expert on Nigerian antiquities warns that government and museum officials in the country are involved with the illicit trade of artefacts to the West."