



United Nations  
Educational, Scientific and  
Cultural Organization



Convention for the fight  
against the illicit trafficking  
of cultural property

26-28 November 2018  
UNESCO Headquarters

# Fighting the Illicit Trafficking of Cultural Property

## A TRAINING WORKSHOP FOR EUROPEAN JUDICIARY AND LAW ENFORCEMENT



With the support of



European Union

# OUTCOMES

Published in 2019 by the United Nations Educational, Scientific and Cultural Organization,  
7, place de Fontenoy, 75352 Paris 07 SP, France

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**The Secretariat of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property**

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Printed by: UNESCO

*Printed in France*

# Introduction ..... 5

- 1. States' related outcomes ..... 5
  - 1.1. National Legislations and Key Terms ..... 5
  - 1.2. Cultural Property and Archeological Objects ..... 6
  - 1.3. Online Sales ..... 7
  - 1.4. Money Laundering and Violent Extremism Financing ..... 7
- 2. European and international organizations ..... 8
  - 2.1. Joint and Special Investigation Teams ..... 8
  - 2.2. Databases ..... 9

# Conclusion ..... 11





# Introduction

On November 26, 2018, and over the course of three days, with the support of the European Union, UNESCO's Secretariat to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (the "1970 Convention") launched the first ever workshop for European judiciary and law enforcement authorities on the fight against the illicit trafficking of cultural property.

Nearly 60 representatives from 31 European countries attended the event and benefited from the contributions of international and national experts on various topics such as the economic and security consequences of illicit trafficking of cultural property, the international and European legal framework in this field, investigation and cooperation techniques, etc.<sup>1</sup>

This report focuses on the workshop's outcomes through the recent successes and current issues that were identified for and by participating States, and European and international organizations.

## 1. States' related outcomes

During the meetings, participating States shared their successes in fighting illicit trafficking of cultural property. However, several weakness points were raised, which concerned governmental agencies, judiciary and law enforcement national authorities. The most important outcome, which applies to every subject raised by the participants, is the need for States to sensitize and train their relevant authorities to illicit trafficking. Nationally, this would create efficient seizures and authorities will know what objects to look out for. Internationally, there can then be an active dialogue amongst nations' specialized forces to counter the speed of illicit imports and exports of cultural property.

### 1.1. National Legislations and Key Terms

The illicit trafficking of cultural property is an international crime that concerns all States, whether they be *source*, *transit* or *destination* countries. Therefore, it begins at a national level, with its recognition as a crime. Amongst the States that shared successful examples of seizures, all had strong legislations protecting movable and immovable heritage. When a State does not consider the destruction of its own heritage as a punishable crime, the international community cannot gather nor protect that State's heritage either. According to one participant, only seventeen of the twenty-eight EU member states recognize illegal export as a crime. During the meetings, strong legislations were found to include:

- the prohibition of importing cultural goods that were illegally exported from other European countries and States Parties to the 1970 Convention;
- the protection of historic goods as national treasures;
- dissuasive punishment against the sell, import and export of counterfeit objects.

Once reliable national legislations are implemented, they must be harmonized. This need for a legislative consistency in the fight against illicit trafficking of cultural property applies to the EU and to all States more extensively. European countries must comply with the protection of cultural heritage that is required by EU texts, such as the Council Regulation (EC) No 116/2009 on the export of cultural goods, or 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.<sup>2</sup>

<sup>1</sup> More about the participants and the program of this event on: [Training-workshop-for-European-judiciary-and-law-enforcement/](http://www.training-workshop-for-european-judiciary-and-law-enforcement/)

<sup>2</sup> More recently, the European Parliament and the Council adopted new Regulation on the import of cultural goods. More information on: [http://www.europarl.europa.eu/doceo/document/TA-8-2019-0154\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2019-0154_EN.html)

One of the main issues EU countries are faced with is the difference in key term definitions. “Cultural heritage,” “war crime” and “provenance,” for example, have different meanings amongst EU member states. These differences lead to unharmonized interpretations of the European legislations themselves. Today, States are working towards the creation of uniform definitions for the essential terms in fighting illicit trafficking. With the help of the EU Commission, for example, Belgium and the Netherlands began a Project Group on provenance and customs controls for a uniformed notion of “provenance”. Ultimately, the EU hopes there will be harmonized definitions relating to cultural property amongst all member states. Uniformity can be obtained by ratifying essential conventions related to the protection of cultural heritage, such as the UNIDROIT Convention.

## *1.2. Cultural Property and Archeological Objects*

Stolen cultural property must be effectively seized by national customs. This will only be possible if law enforcement authorities (police, customs) and prosecutors are trained to identify cultural property as more than common objects.

Several participating States confirmed the benefits of having specialized forces. Generally, specializing national customs and police forces in the fight against illicit trafficking of cultural goods entails training these authorities to recognize suspicious artefacts as such, and providing them with a contact list and the appropriate human resources.

Customs and police authorities can be trained by cultural heritage professionals and relevant ministries for example, in order to develop a flow of knowledge within States regarding cultural property. When law enforcement authorities participate in these trainings, they can also meet with art market professionals and national cultural authorities. Trainings in France, Germany, and the Netherlands, have

involved national museum professionals. This interaction is essential because museums have the necessary tools (databases, experts, inventories...) to identify the goods seized by customs. Regional museums can also compare discoveries with out-of-State institutions, eventually leading to restitution.

Looted artefacts are more easily protectable when their owner and provenance are clearly identified. Throughout the workshop, several participants shared their struggle in monitoring archeological artefacts, the ones extracted from their own soil, as well as imported ones.

Archeological objects are specific in that they cannot be identified until their excavation. Therefore, national legislations must protect the land in which they are buried, before their discovery. Rather than focusing on monitoring their circulation, States can prevent their excavation by implementing laws that would protect their archeological sites. Punishments would focus on looting. As an example, French legislation extensively protects national archeological sites. In 2010, the French Ministry of Culture created a specialized section for the inspection and monitoring of archeological sites. The section works closely with French law enforcement officials so that looters are efficiently prosecuted. In addition, according to French law, the person in possession of an archeological object has the burden of proving that it acquired it in good faith. States Parties can further protect their archeological heritage with clear legislations that qualify these artefacts as national property, and make them inalienable.

In addition, some States have archeological experts affiliated to their national institutions. For instance, Bulgaria’s investigation teams receive regular support from the National Archeology Museum’s experts in Sofia, to help identify looted artefacts.

Participants also discussed the idea of creating an international database specialized in archeological objects. In light of INTERPOL’s current database, the

information could be gathered from national museums and ministries, and regrouped on an online platform. This tool could be used by customs and cultural institutions to prevent the import of illicitly looted archeological objects. Such a database would also create provenance for objects that were unknown until their excavation.

### *1.3. Online Sales*

A large number of States are faced with online trafficking and difficulties in monitor them. Unlike with traditional trafficking where cultural property can be physically seized at national borders, online sales are constant, opaque and uncontrolled. These attributes have attracted illicit traffickers to online auction sites (eBay and Vcoin, i.e.) and general sales sites (Etsy, i.e.), and to social media (Facebook, WhatsApp i.e.). These online sales are increasingly present, especially for small objects like coins, which are easier to sell and ship. Sales of antiquities from the Mediterranean and the Middle East were also identified reported as popular in online trafficking.

Several successful investigations against online trafficking were shared during the meetings. All insisted on the importance of trained customs officials and police forces. The Safety Advisor at the Mission of Safety, Security and Accessibility at the French Ministry of Culture described an operation that enabled the discovery of thousands of coins that had been trafficked online. The investigation took place from 2013 to 2017. Its success was the result of a close collaboration between the Safety Mission, the OCBC<sup>3</sup>, regional prosecutors, the Ministries of Culture and Justice.

One of the specificities of online trafficking is that the criminals involved are more likely to be geographically dispersed. This difficulty requires even further cooperation from regional entities for a better chance at finding traffickers. Spain's Guardia Civil, for example, became a positive illustration of collaboration amongst its regional prosecutors and law

enforcement officials. The Guardia Civil is spread across the country and works closely with INTERPOL, Europol and UNESCO.

As a more long-term goal, States can continue, through the support of the EU, the UN and other international organizations like INTERPOL, to try to build an active dialogue with the platforms' owners by insisting on the importance that they also monitor the sales which take place on their websites. Unfortunately, much of the challenge is induced by social media's secrecy, which States alone cannot combat. States can enact legislations that allow specialized investigators to enter online auction websites and social media platforms. Mostly, it is essential that police forces and customs officials are sensitized to online trafficking.

### *1.4. Money Laundering and Violent Extremism Financing*

Illicit trafficking of cultural property creates money laundering and violent extremism financing. This issue is of equal concern to national governments and private companies. Companies are usually in a more favorable position to counter money laundering as they have a better insight on their own supply chains. Money laundering is also present within the art market, due to its opacity. Thus, the diminishment of money laundering can be addressed on two levels through law enforcement authorities and within private companies.

The trafficking of cultural property that eventually leads to money laundering begins at State borders. On a national level, customs officials need extensive training. This is especially urgent for States that keep large amounts of goods in their free ports. Switzerland's Cultural Property Transfer Act (CPTA) was an important step towards the State's control over money laundering and free ports. Following its adoption, customs officials were trained and free ports regularly inventoried. As for the OSCE, it provides extensive trainings for customs officials, nationally and internationally. Some of

<sup>3</sup> See list of acronyms.

its trainings have included ministries of culture and museum professionals. As stressed by the OSCE representative to this training workshop, countering money laundering requires thorough investigations, which cannot be properly performed without national legislations enabling law enforcement officials to act undercover.

The fight against the money laundering in the private sector requires that businesses act with due diligence and transparency. Due diligence is relevant for all companies involved in a supply chain as a collaborative effort. The OECD's Guidelines for Multinational Enterprises (MNE) suggest companies perform due diligence by:

- mapping out their supply chains and identifying the key risks within those chains;
- working to address, mitigate and/or prevent those risks;
- publicly reporting their due diligence efforts and communicate their successes, and remaining challenges.

More broadly, due diligence is an obligation that must be applied by the art market. UNIDROIT provides four elements to determine the rightful application of due diligence on the art market:

- the conditions under which a good was acquired;
- the good's provenance and country of origin;
- whether the parties to the transaction were professionals;
- whether the acquirer performed reasonable, informative research about the good.

As a solution to limiting money laundering in the art market, some States have established a presumption of wrongfulness if these elements have not been met by a person in possession of a cultural good.

ICOM's Codes of Ethics regulate over four

thousand museum professionals to ensure that they perform due diligence before acquiring an artwork.

National museums must comply with UNIDROIT's definition of due diligence.

## 2. European and international organizations

European and international organizations were major participants in the November workshop. Each organization brings member states together to tackle a specific issue caused by the illicit trafficking of cultural property, including through their respective joint investigation techniques (JITs) and databases. Each organization shared its successes and current challenges in implementing their tools and investigation teams. Generally, it was found that these organizations are not able to reach their full potential without heightened implementation, and more transparency from member states.

### 2.1. Joint and Special Investigation Teams

A joint investigation team (JIT) is an international cooperation tool based on an agreement between two or more States' law enforcement authorities to carry out criminal investigation within the relevant States.<sup>4</sup> Several participating organizations discussed past JITs conducted to tackle illicit trafficking of cultural property.

Europol has distinguished three aspects of illicit trafficking of cultural property: illegal looting, forgery and theft. Most of its JITs are introduced in this last phase. Europol provides member states' law enforcement authorities with advice, operational analysis and information on various issues, including illicit trafficking. It is an important asset for national authorities in need of long-term investigations. Authorities can be put in touch with other member states and regional organizations like Eurojust. Since

<sup>4</sup> EUROPOL – Activities and Services - Joint Investigation Teams (JITs). More information here.



2002, Europol provides States with a joint investigation team in the form of legal assistance. The parties to this contract must agree on the amount and the JIT's content, which is then settled into the legal framework with the help of Europol. These JITs require:

- A serious offence;
- A cross-border or international dimension;
- A coordinated approach.

It is important that the parties define the scope, duration and geographical areas of their contract. Europol can then support the States financially and strategically. Setting the framework can take some time because it requires coordination from national legal authorities. Once the JIT is in place though, communication is greatly facilitated. Evidence for a case, for example, can travel and be used between the parties to a JIT.

WCO currently has 182 Members divided into six regions around the world, that process 98% of international trade. One of its roles entails the protection of society by combatting illicit trafficking. In 2011, WCO created a sixth area of priority focused on cultural heritage. Its team develops capacity building activities in a two-fold approach of identifying a region's needs and training customs officials. WCO's Operation ATHENA was created to seize illicitly trafficked cultural goods at State border. The operation was conceived as a joint customs-police operation to address the importance of interagency cooperation.

ATHENA revealed the importance of "joint inspections" between police and customs, at different locations. In some cases, joint inspections took place at an airport, and later, at a national border. Thousands of artefacts were seized during the operation, mostly archeological objects. Prior to launching a JIT, WCO promotes joint targeting teams to work on avoiding work duplication. At airports or free ports, for example, missions are divided between customs and police officials.

During the workshop, the WCO identified the most urgent needs in terms of border security against illicit trafficking:

- A need for States to involve more experts and professionals prior to customs to avoid overwhelming borders. For example, there could be an involvement of risk management or intelligence authorities prior;
- A need for efficient exchange of operational information between prosecutors without being slowed down by legal bases;
- A need to develop a structure at national level that would allow better dissemination of alerts and warnings. Illicit trafficking is often time sensitive, and information must move quickly amongst the relevant authorities.

Similarly, Europol's on-going PANDORA operations have tackled the issues of illicit trafficking of cultural goods at a criminal level. PANDORA I and II particularly focused on the online market by conducting "internet checks" on webpages.

From these operations, Europol reported a lack of communication internally amongst customs administrations. It suggested the strengthening of "customs area" where customs have special responsibility to conduct import and export checks. In the future, Europol will continue to focus on the online market and target risk indicators.

## 2.2. Databases

The International Criminal Police Organization, INTERPOL, focuses on nineteen crime areas divided into three groups including works of art as an "emerging crime." INTERPOL's main tool has been its "Stolen Works of Art" database, which can only be efficient if States share information in real time. Therefore, INTERPOL strongly encouraged States to have public, national databases so it can keep its own database up to date. With the help of national databases, it could more easily analyze suspicious goods by comparing them with these online inventories' content.

Additionally, INTERPOL further stressed the need for national specialized law enforcement officials. Though it has its own specialized units, collaborations will be more efficient if its units can work with national specialists. Ideally, these collaborations will be conducted without creating “operational fatigue.” Instead of an ongoing investigation around art crime, participants suggested there could be four thorough operations a year. In between these operations, national authorities are encouraged to communicate with INTERPOL on their recent finds or struggles regarding cultural goods.

UNESCO’s Database “NATLAW” assembles national legislations related to the protection of cultural heritage. Launched in 2005, “NATLAW” centralized 2,973 laws from 188 countries at the time of the workshop (November 2018), and is aiming at 3,000 legislations in the upcoming year. The database offers an easy access to national legislations relating to cultural and natural heritage in general. It is intended for institutional and non-institutional actors including museums, NGOs, customs officials, law enforcement officials, national ministries and the global art market. Making these laws public helps international cooperation. The Secretariat to the 1970 Convention strongly encouraged States to send them their updated legislations relating to cultural heritage, export and import certificates, official translations and their official national web site addresses. This information will enable “NATLAW” to remain the second most consulted practical tool together with INTERPOL’s database and after ICOM’s Red Lists.

Indeed, ICOM’s databases have received excellent feedback from its users. During the workshop, ICOM presented its strategy in addressing the role of museums in the fight against illicit trafficking through its two main tools: the ICOM Red Lists and Code of Ethics. ICOM’s Red Lists centralize objects in provenance of different endangered States,

mostly from war-zones. These lists are created to sensitize public and private actors around these vulnerable goods. In creating its Red Lists, ICOM looks at:

- the extent to which an object is endangered;
- its attractiveness on the art market;
- the country of origin’s legislation regarding the object’s protection.

ICOM’s Red Lists have been very successful because of its active role on the market and the expert professionals involved. Still, ICOM called for further implication from national authorities, including law enforcement authorities, museums, archeologists, lawyers etc. to identify cultural goods originating from war zones, and inform ICOM of their results.

The ICOM Code of Ethics is intended to lead art institutions towards due diligence and ethical practices daily. According to ICOM, due diligence must be performed by museum professionals and by museums more generally in constituting their art collections. ICOM organizes regional workshops to train the relevant professionals on the Code’s implementation. As an example, if a museum finds that one of its works was illegally acquired, the Code draws the steps that can be taken by museums to plan this good’s restitution to its country of origin.

The Code is already included within several States’ legislations, or within museum’s internal handbooks. Further implementations will lead to uniformity amongst museum practices and a stronger basis to address remaining weaknesses.

# Conclusion

Since adopting the 1970 Convention, UNESCO's Secretariat to the Convention has created a framework to help implement the text on a national level. The strategy entails prevention, restitution and cooperation from and within States to fight against the illicit trafficking of cultural property. The November workshop was a successful manifestation of how the international community applies the Convention's framework and adapts it to unique situations. As of 1<sup>st</sup> June 2019, the Convention has 139 States Parties (ratifications and/or acceptance) counting Djibouti, Togo and Latvia as its most recent members.

UNESCO remains available to support all entities in their implementation of the 1970 Convention and of other essential texts, such as UNIDROIT's 1995 Convention. With the EU's ongoing support, UNESCO works on maintaining the workshops' dynamic dialogue and encourages all participants to pursue national and cross-border interagency cooperation against the illicit trafficking of cultural property.<sup>5</sup>

## List of acronyms:

<b>EU</b>	European Union
<b>ICOM</b>	International Council of Museums
<b>INTERPOL</b>	International Criminal Police Organization
<b>NGO</b>	Non-Governmental Organizations
<b>OCBC</b>	French Central Office for the Fight against Illicit Trafficking in Cultural Goods
<b>OSCE</b>	Organization for Security and Cooperation in Europe
<b>UNESCO</b>	United Nations Education, Scientific and Cultural Organization
<b>UNIDROIT</b>	International Institute for the Unification of Private Law
<b>WCO</b>	World Customs Organization

<sup>5</sup> More information on UNESCO's Secretariat to the 1970 Convention available on:  
<http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/>

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OUR HERITAGE:  
WHERE THE PAST  
MEETS THE FUTURE

