

Cultural Europe

International cooperation on crimes involving cultural
property



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INTRODUCTION

Illicit trading, stealing and looting cultural property is an ancient and global phenomenon. Different factors such as improved communication networks, easier travelling possibilities and the increase of value influence these types of crimes in a negative way. National legislation differs widely and these types of crimes have long not been a priority. The protection of cultural heritage against illicit trafficking has tended to be rather a one-sided exercise, since it has in effect involved only the so-called “exporting” States. Most of the “importing” nations have held aloof from such international cooperation schemes where they existed.

This paper aims to investigate the sufficiency of international cooperation on cultural property crimes and how this can be improved.

For the purpose of this paper the term cultural property will only cover tangible and movable cultural objects. Furthermore, there are many crimes one can think of involving cultural property. For example it can be stolen, looted or traded. These crimes will be referred to as cultural property crimes. There are several reasons why these crimes are interesting. Cultural property is often valuable, it can be easy to steal, carrying a cultural object can be less suspicious than carrying drugs and there are not many people who are knowledgeable enough to recognise cultural property and know the difference between fake and valuable. The consequences for the owners and countries stolen from are, however, underestimated. Cultural property can have two kinds of value; on one hand there is the financial value and on the other hand, objects have a cultural value, which cannot be expressed into a financial value easily. Especially the loss of cultural value can be devastating for countries.

To determine the subject of this paper it is important to define the term cultural property. In literature and legislation terms such as cultural property, cultural heritage and cultural objects have been used to refer to more or less the same thing. In this paper the term ‘cultural property’ will be used and it will refer to the definition of this term as described in Article 1 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Unesco Convention, 1970): *the term ‘cultural property’ means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which*

belongs to one of the following categories, for example rare collections, property relating to history (including science and technology), products of archaeological excavations. elements of artistic or historical monuments which have been dismembered; antiquities more than one hundred years old, such as inscriptions, coins and engraved seals, objects of ethnological interest, property of artistic interest, such as pictures, paintings and drawings produced entirely by hand.

In this paper we will first give an overview of the legislation involving cultural property crimes. Second, we will elaborate on international cooperation. Third, we will describe the problems and flaws in the current international cooperation. Fourth, we will introduce recommendations on the subject.

This paper is written on the basis of not only literature and legislation, but supplemented by interviews with two persons who work in the field of cultural property crimes. They give their perspective on the subject and the evolution and awareness of the international cooperation on cultural property crimes.¹

CHAPTER 1: RULES AND REGULATIONS ON CULTURAL PROPERTY CRIMES

The interest in preservation of cultural property crimes has increased since World War II. During this war there has been a massive destruction of cultural heritage and art has been looted from many private collections. After the war media picked up on this topic and the public slowly became aware of the consequences of these crimes. Due to international cooperation, three major conventions have been introduced since. The “The Hague” convention, the UNESCO convention of 1970 and the UNIDROIT convention of 1995. Beside these conventions, there is also European and national legislation. The headlines of this legislation concerning cultural property will be

¹ Ms. Ruth Godthelp is an investigator at the criminal investigation department of the police union Amsterdam-Amstelland, specialised in art theft. We met on 2 August 2010. Mr. Martin Finkelberg works at the national police force, is expert on cultural property crimes at the Dutch intelligence service called IPOL and works together with international and European units in this field. We met on 27 August 2010.

described. To reproduce all national legislation would be too complicated, therefore the Dutch legislation on art crimes will be used as an example.

“The Hague” Convention

The Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954 (The Hague Convention) was first introduced to prevent further destruction of cultural heritage during armed conflicts. In addition to this convention a protocol was added in 1954. The contents of this protocol determine that stolen artefacts from occupied territories have to be returned to the rightful owner. A second protocol was introduced in 1999 and, when implemented, requires States to take measures to protect and secure cultural property in times of armed conflicts. This withholds that some cultural property will be placed under special protection. According to article 9 of the protocol, the State Parties have to ensure the immunity of this cultural property. This cultural property shall also be open for international control. The concerned states may call upon the UNESCO for technical assistance in organizing this protection. A violation of article 9 by one of the State Parties will release the opposing party of the obligation to ensure the immunity of the cultural property concerned. According to article 28 of the convention, the State Parties, within their ordinary criminal jurisdiction, undertake all necessary steps to prosecute and impose penal or disciplinary sanctions upon those persons committing a breach of this convention. The nationality of the person committing the breach is irrelevant. Article 38 of the protocol determines that no provision in this protocol relating to individual criminal responsibility shall affect the international responsibility under international law of the State Parties. Many states, such as the Netherlands, have only accessed the convention.²

UNESCO Convention 1970

The UNESCO Convention has 120 State Parties.³ Its founding idea is that every state has the moral duty to respect the cultural history and cultural property of its own and

² <http://portal.unesco.org/la/convention.asp?KO=15207&language=E>. The second protocol entered into force on 9 March 2004 and has 56 contracting parties, which not all have yet ratified the convention.

³ This Convention entered into force on 24 April 1972. It subsequently entered into force for each State three months after the date of deposit of that State's instrument, except in cases of notifications of

the other State Parties. The aim of this Convention is to protect cultural property worldwide, to oppose the illicit import, export and transfer within cultural property and to stimulate the restitution of art pieces to their lawful owners. The UNESCO Convention also obliges State Parties to set up one or more national services with numerous services such as contributing to the formation of draft laws and regulations designed to secure the protection of cultural property within their territories. According to article 5 of the Convention the State Parties also have to draw up a list with important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage. With the implementation of the Convention, the lawful owner of cultural heritage stolen or exported against the rules, will have a much better position of getting back (by restitution) his or her piece of cultural heritage. Article 7 under B / II of the Convention determines that, at the request of the State Party of origin, State Parties undertake appropriate steps to recover and return any such cultural property imported in another State Party. The requesting State Party shall only pay compensation to a purchaser in due diligence or to a person who has a valid title to that property.

UNIDROIT Convention

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was introduced in 1995. The State Parties of this convention have stated that they are ‘deeply concerned by the illicit trade in cultural objects and the irreparable damage frequently caused by it, both to these objects themselves and to the cultural heritage of national, tribal, indigenous or other communities, and also to the heritage of all peoples, and in particular by the pillage of archaeological sites and the resulting loss of irreplaceable archaeological, historical and scientific information, and are determined to contribute effectively to the fight against illicit trade in cultural objects by taking the important step of establishing common, minimal legal rules for the restitution and return of cultural objects between Contracting States, with the objective of improving the preservation and protection of the cultural heritage in the interest of all’.⁴ This introduction returns in the text of the provisions. Article 3 starts with the principle that the possessor of a cultural object which has been stolen shall

succession, where the entry into force occurred on the date on which the State assumed responsibility for conducting its international relations.

⁴ Preamble 1995 Unidroit Convention.

return it. Article 4 is a key article. It states that the possessor of a stolen cultural object must return the object to the Contract State which claims an object, whether the possessor knew the object was stolen or not: the object has to be returned to the rightful owner. The possessor is only entitled to payment of fair and reasonable compensation if he neither knew nor ought reasonably to have known that the object was stolen and can prove that he exercised due diligence when acquiring the object. This means that it is no longer a State Party that should prove the possessor did not exercise due diligence, but the other way around: the reversal of the burden of proof. Article 3 determines the periods of prescription of any claim for restitution. In contrary to the UNESCO Convention the UNIDROIT Convention has been ratified by only 30 State Parties. Although official comment has not been given, the main explanation is probably that the UNIDROIT Convention is too much a threat to the sovereignty of States.⁵

European legislation

Council Regulation (EEC) no 3911/92 of 9 December 1992 is the first Council Regulation of the EEC on the export of cultural goods. It has been substantially amended several times and was the forerunner of Council Regulation (EC) no 116/2009 of 18 December 2008 on the export of cultural goods. According to these Council Regulations the export of cultural goods outside the customs territory of the European Community shall be subject to the presentation of an export licence. Apart from the Council regulations on the export of cultural goods in 1993 a Council Directive⁶ on the return of cultural objects unlawfully removed from the territory of a Member State was introduced, which provides Member States with procedural rules and regulations regarding the illicit trafficking of cultural property. According to this Directive, each Member State shall appoint one or more central authorities to carry

⁵ The Dutch government does not ratify the Unidroit Convention because of the broad definition of cultural objects in combination with the fundamental consequences for traders who have operated with due diligence, and the 'extreme long prescription with the thereby inherent further weakening of the evidence position of the aforementioned traders, Kamerstukken TK 2007-2008, 31255 nr. 10, letter of the minister of Justice and the minister of Education, Culture and Science of 14 August 2008. Also, it will influence the art trade and increases the workload of the courts: Kunstroof (art theft), www.fairpolitics.nl/nederland/cases/kunstroof, 8-2-2010. p.2.

⁶ Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.

out the tasks provided for in this Directive. The Directive is also important because of article 7, which states the periods of prescription of the return proceedings on which we will elaborate below.

Legislation on cultural property crimes in the Netherlands

On 19 June 2009 the Netherlands finally accepted the UNESCO Convention.⁷ One of the reasons the Netherlands waited so long to ratify the UNESCO Convention is that they gave attention nor priority to cultural heritage and property. The protection of cultural property and the protection of the rights of private property are conflicting, with the latter being considered more important by Dutch government. Traders of cultural property were averse to its ratification because of its obligation to research the origin of a piece. Next to implementing the UNESCO Convention, the Netherlands have always been subject to the European legislation, as elaborated upon above. Apart from implementing international and European legislation, most of the cultural property crimes are also regulated in Dutch law, be it often not as a specific type of crime.⁸

CHAPTER 2: INTERNATIONAL COOPERATION ON CULTURAL PROPERTY CRIMES

The three main Conventions on cultural property crimes have been described in the previous chapter. They provide several regulations on the subject. More interesting however, is how these conventions are implemented by countries and what other international initiatives have been introduced.

International cooperation according to the conventions

Although most countries have accepted at least one of the conventions, many have not yet ratified or implemented them. This causes an enormous delay in the international cooperation on this subject. Not only the countries themselves were reserved towards international interference on cultural property crimes. When the UNESCO convention

⁷ 1 July 2009 the 'Uitvoeringswet UNESCO-Verdrag 1970' came into force and thereby the UNESCO Convention is being implemented into the Dutch law system.

⁸ R. Godthelp 2 August 2010, M. Finkelberg 27 August 2010.

was introduced, many museum curators were very sceptical. They saw the UNESCO as an organization that put obstacles in their way instead of helping them. Fortunately that attitude has changed over the years. The International Council of Museums (ICOM) cooperates closely with UNESCO and it has drafted a code of conduct, which most museums have adopted.⁹ In spite of the international conventions, there are other international and national initiatives in the fight against crimes on cultural property. Interpol, the Federal Bureau of Investigation, Scotland Yard and the Italian Carabinieri for example have their own specialized art involved crimes unit.

Databases

Several countries and organizations have founded databases for lost or stolen art. These databases register art pieces and are often accessible not only for police or other investigating institutions, but also for art dealers and auction houses. Databases will also make selling more difficult and it will be harder for a seller or purchaser to claim that he was not able to check the background of the object. It runs too far to describe all of them, therefore the most important databases will be described.

Interpol has started the first open global stolen works of art database, the Interpol stolen art database. The access of this database is open for all interested users; all they have to do is apply for access. The database features the latest information on approximately 35.000 works of art stolen worldwide. The information only includes object related information and when available photographs of the stolen objects.¹⁰ Although the database itself is update continually, countries fail to provide the database with data. It looks like countries rather invest in a national database instead of using the one from Interpol.¹¹

The Art Loss Register (ALR) is the largest private database of lost and stolen art, antiquities and collectables. Excellent IT technology and a team of specially trained art historians provide an efficient search and recovery system for collectors, insurers and national and international law enforcement agencies. The ALR not only lists lost or stolen art. It also encourages the registration of art and it has a due diligence

⁹ M. Bessieres, *The cost of looting*, The Unesco courier, April 2001, p. 19.

¹⁰ www.interpol.int/Public/ICPO/PressReleases?PR2009?PR200978.asp Interpol creates online access to global stolen works of art database to reduce illicit trade, 8-17-2009.

¹¹ R. Godthelp 2 August 2010 & M. Finkelnberg 27 August 2010.

service for art salesmen. Furthermore the ALR runs a recovery service to return lost or stolen art objects to the rightful owners, negotiate compensation for victims of art theft and legitimizing of current ownership.¹²

In 1969 (one year before the UNESCO Convention) a special art trafficking squad was set up in Italy. The Carabinieri (the Italian police force) have recorded over 630.000 thefts in the past 30 years. Due to their investigations they have recovered 180.000 art works and 360.000 archaeological objects. They also operate on foreign soil. They have found around 8.000 works abroad and international cooperation was essential. The Leonardo is the Italian national database and it is the world largest internet-accessible databank. The database contains 1.100.000 stolen art works of which 300.000 are not stolen from Italy.¹³

The Thésaurus de Recherche Electronique et d'Imagerie en Matière Artistique (TREIMA) The TREIMA is the French equivalent of the Italian Leonardo. It is the Office Central de lutte contre le trafic des Biens Culturels (OCBC) stolen art database. The TREIMA contains the pictures and descriptions of about 72.000 art objects that have been reported stolen. The police uses this database to check suspicious items they find, but others people can use the database as well to check if an object is under investigation, stolen and who and where it was taken from. The big advantage of the TREIMA is however the ability to run visual searches as well. A photo can be scanned and compared with the pictures in the database. This way found items can be easily matched to the person or institution it was stolen from. And the other way around a photo of a stolen object can be compared to see if it has been found.¹⁴

Other international measures against cultural property crimes

Apart from implementing international and European legislation and initiating databases, most countries have bilateral agreements. They set their own terms on art trade and restitution. Several countries use these agreements to invest in the preservation of cultural heritage in developing countries. The Dutch government for example works together with seven priority countries such as India, Indonesia, Ghana and South Africa. The ministries of foreign affairs and culture of these countries work

¹² www.artloss.com/content/history-and-business , 8-13-2010.

¹³ J. Faroucky, *www.time.com spirited away: art thieves target Europe's churches*, p. 4/5.

¹⁴ J. Faroucky, *www.time.com spirited away: art thieves target Europe's churches*, p. 4/5.

together by exchanging knowledge, information and providing money, expertise for restoration and training the national police and border security. Raising the awareness of the local population is another key element in this cooperation.¹⁵

The practice of restitution

Restitution of cultural heritage is a process in development. The above elaborated rules and regulations try to create a practice in which cultural heritage will find its way back to the culture from which it has been stolen. Part of this process is the political claims for important pieces,¹⁶ another part is the confiscation in criminal processes. A very effective method in the latter is effectuating the confiscation without starting a criminal procedure. A trader can be unaware of the illicit character of his goods and, at the moment he becomes aware thereof, yield the goods to the authorities. These goods are then handed over to the (ambassador of) the country they belong to. In the Netherlands this already happens on a regular basis.¹⁷

International cooperation by The Netherlands

Compared to other European countries, the Netherlands have responded very late to the developments regarding cultural property crimes. In the rest of Europe, countries have been focussing and investing on prevention, databases, repression and research capacity of art theft. However, the Netherlands does not have a separate unit on art theft. The Erfgoedinspectie (translation: the cultural heritage inspectorate) takes care of repatriation of the cultural objects to the rightful owner. It also takes care of determining the value of a certain cultural object. The national police force has been focussing on this subject for some time now. A particular action has been the appointment of a specialised investigator in every department, but cultural property crimes are still not a priority. Important for the Netherlands in particular is the countries port function as ‘gate to Europe’. Being situated at the North Sea, combined with a lack of investigation or prioritising on the theft of cultural objects, the

¹⁵ Kunstroof (art theft), www.fairpolitics.nl/nederland/cases/kunstroof, 8-2-2010. p.1-2.

¹⁶ The Parthenon Marbles are an example of this. They have been removed from Athens by Thomas Bruce, 7th Earl of Elgin, the British ambassador to the Ottoman Empire in 1799-1803, when Greece belonged to the Ottoman Empire, and transported to Britain. Nowadays they remain displayed in the British museum in London, regardless of claims by Greece for their recovery to the Parthenon.

¹⁷ M. Finkelnberg, 27 August 2010.

Netherlands is the ideal country for criminals to work their way around.¹⁸ The Dutch government has been working on its own database for a few years now, and because of the interest of the national police over the last few years, a network with some other European Member States and their databases has been set up.¹⁹

CHAPTER 3: PROBLEMS IN THE CURRENT INTERNATIONAL COOPERATION ON CULTURAL PROPERTY CRIMES

In the previous chapters the accent has been on what has been achieved so far in the fight against art crimes. Although there is movement in this field, much more still can and needs to be done. Developments in technology and communication, combined with sophisticated smuggling networks have made art looters better organized and more efficient. The current legislation and international cooperation is not sufficient to put these cultural property crimes to a halt. In this chapter the problems of the current international measures against cultural property crimes will be described.

Registration and documentation

A major problem in the fight against cultural property crimes is the disorganized or even non existing registration and documentation of cultural property. When valuable possessions such as a car or a piece of land are sold, some form of registration is required, cultural property however seems to be an exception.²⁰ Estimates put the share of looted art objects that are recovered at five to ten percent.²¹ Furthermore, the art theft is often not discovered until the stolen object turns up on the official art market.²² Most of the cultural objects in private collections, churches and archaeological sites are not registered and/or photographed. When such an object is stolen it is therefore very difficult for the police to start an investigation or check the database. Instead of using pictures one has to describe the object. And when objects are found governments are often unable to find out where they come from and how to

¹⁸ R. Godhelp, 2 August 2010.

¹⁹ M. Finkelberg, 27 August 2010.

²⁰ M. Bessieres, *The cost of looting*, The Unesco courier, April 2001, p. 18.

²¹ *Stop the art thieves*, Unesco courier, April 2001, p. 21.

²² [www.interpol.int/Public/WorkOf Art/Default.asp](http://www.interpol.int/Public/WorkOfArt/Default.asp), Stolen works of art, 16 juli 2010.

return it.²³ Moreover, when archaeological sites are looted, not only the object disappears, but also the information that could have been gained from the object and the location where it was found is lost. The sites itself are ruined and the object that are worthless to the looters thrashed.²⁴ Even when countries have a database they send little information to Interpol. Many do not keep statistics of this type of crimes. In the Netherlands for example art thieves are often convicted for robbery of theft. No one keeps track of the numbers of thefts where cultural property is involved. Instead of cooperating and providing Interpol with information, they initiate their own. The Netherlands are also, as mentioned before, developing a database. It is technically ready to run, but it is still being filled with data. It is striking that the Netherlands did not cooperate or join an already existing database. Until now, the Netherlands used the database of Interpol, but they consider it not up to date because many countries do not send information to Interpol. Instead of investing more in international cooperation, countries design their own database. Traders and looters will most surely benefit from this.²⁵ There are several reasons one can think of why art dealers are not fond of registering their art. Foremost it is a privacy issue. When art will be registered, the owner will be made public plus what the object is worth. Furthermore it will mean more administration and the consequence that certain people will stop dealing or selling art.

Security

Another problem especially with cultural property in churches and on archaeological sites is the security. Many people can visit those places and the artefacts are therefore easy accessible. The spiritual connection of the religious artefacts makes churches easy targets for looters. Security measures are often seen as barriers between religious people and their religious symbols. Archaeological sites have a more practical problem. The sites are often widespread or located in poor countries. Securing those areas is hard to accomplish.²⁶ Another problem is that the materials itself such as lead,

²³ J. Faroucky, www.time.com *spirited away: art thieves target Europe's churches*, p. 4/5.

²⁴ J. Doole, *Stealing the past from under our feet*, The Unesco courier, April 2001, p. 22.

²⁵ R. Godthelp, 2 August 2010.

²⁶ J. Faroucky, www.time.com *spirited away: art thieves target Europe's churches*, p. 4/5.

copper and bronze are worth a lot. This makes art looting a very profitable business and the public prosecutor often does not oversee the consequences of these crimes.²⁷

Public awareness

One of the major problems with cultural property crimes is the lack of public awareness. There are three kinds of public awareness. First, the public awareness among governments and police forces to make it a priority in their investigations. Second, the public awareness among the museum curators and art traders and last but not least the awareness of the public itself. All three are connected. When the awareness of the public raises, governments will probably be keener to make it a priority, which will result in regulations and awareness on the cultural property market. Media always are very influential when it comes to the public opinion, therefore they can be of major influence on raising awareness of the public about cultural property crimes and the consequences for a country that loses cultural property. In the 1980s a raise in public awareness could be determined when both media and non-governmental organisations challenged the “Indiana Jones” mentality of looters. People began to realise what problems were created for the countries concerned when their cultural heritage disappeared. However, many countries are still in the stage that they acknowledge art theft and the loss of cultural heritage as a problem. Unfortunately, acknowledgment alone is not enough.²⁸ Furthermore, many archaeological rich countries are economically poor. Locals steal objects and sell it for next to nothing to make a living and support their family. Ruth Godthelp and Martin Finkelberg consider the public awareness the most important factor for efficient international cooperation on the subject. With more priority on the subject of cultural property, the investigation within this field of experience can be upgraded and governments would invest more. At this moment there is a lack of cases because the subject is not a priority. Therefore, there is no public awareness. These two factors influence each other on a big scale.²⁹

Periods of prescription

²⁷ M. Finkelberg, 27 August 2010.

²⁸ *Stop the art thieves*, Unesco Courier, April 2001, p. 19.

²⁹ Ruth Godthelp, 2 August 2010 & M. Finkelberg, 27 August 2010.

Another problem is caused by the periods of prescription in civil law. In all regulations mentioned in chapter one a period of prescription has been determined. The Council Directive 93/7 mentions a period of prescription of 30 years after the object was unlawfully removed from the territory of the requesting Member State. However, in the case of objects forming part of public collections and ecclesiastical goods in the Member States where they are subject to special protection arrangements under national law, return proceedings shall be subject to a time-limit of a minimum of 75 years. Once the period of acquisitive prescription has elapsed, anyone can be lawful owner of an object regardless of the importance of the object or the circumstances in which it was removed from its original location. The period of prescription for a state to recover a stolen object is mostly twofold. First, the action has to be brought within one year after becoming aware of the whereabouts of the object and the identity of the possessor / holder. Second, there is an absolute time limit irrespective of the knowledge of the Member State seeking a return: after the lapse of this period a Member State can no longer seek the return of an object, unless the legislation of the Member State in which the object is residing does not know time limits for such proceedings or in case of bi-lateral agreements stating otherwise.³⁰ Hence there is no more action against theft and handling stolen goods when the object has been kept hidden long enough, not even when the object in question would for example be the Mona Lisa. The problem caused by periods of prescription is that stolen cultural property is not protected against acquisition. With 'normal' objects that would be less of a problem. The impact on society of a bike stolen thirty years ago is indeed less than when it was stolen last week. But in the case of cultural objects the infringement can stay the same or even get worse over time. The same ratio has been preliminary to the exclusion of War Crimes, crimes against humanity and often murder and similar crimes, in national proceedings, from periods of prescription. In the case of cultural property the impact on society will not diminish over time. Moreover, retracing stolen cultural heritage can take decades, making the 30 and 75 years periods stated in most conventions and regulations, in perspective, very short.

³⁰ K. Lubina, *Protection and Preservation of Cultural Heritage in the Netherlands in the 21st Century*, 2009 Netherlands comparative law association, p. 41

Jurisdiction of cases on cultural property crimes

Around 170 claims regarding looted goods at World War II are currently pending in courts all over Europe all facing the same legal problems: establishing the origin of a cultural object, deciding who may be a ‘good faith’ purchaser and what his or hers rights may be, but also defining the applicable jurisdiction.³¹ Every member state has different rules about the jurisdiction for theft of cultural objects. However, the main two principles are the territoriality principle (everyone who commits a crime in the territory of for example the Netherlands is subject to Dutch criminal law (*locus delicti*) and the principle of active nationality / personality (if a Dutch citizen steals a cultural object in Germany, the Dutch courts have jurisdiction on this case, because this Dutch citizen committed a crime which is a crime by Dutch law as well). It appears that the problem is not *which* state or country has jurisdiction, because all countries have comparable rules on jurisdiction, but that it is hard for private parties to find out to what court they have to go to because all states have different rules and different applicable laws. Luckily, since the Statute of Rome of the International Criminal Court (ICC) of 1 July 2002, the ICC has jurisdiction – and applicable rules, article 8, – on cultural property crimes during war times. Like the UNESCO and UNIDROIT Convention, the problem is that the Statute of Rome does not have any retroactive effects, therefore cultural objects stolen before 1 July 2002 do not fall within the scope of the Statute (as a result the ICC does not have jurisdiction). Another effect is that both conflicting states must have accepted the Statute of Rome. Like the other Conventions, the State of Rome does not make it easier for a private party to reclaim his or hers cultural objects.³²

These problems are one of the reasons that the European Union has come with a Framework Decision³³ which aims to improve judicial cooperation between member states, in order to prevent unnecessary parallel criminal proceedings concerning the same facts and the same person. In short, the Framework Decision states that

³¹ European Parliament Resolution and Report of Committee on Legal Affairs and the Internal Market, 26 November 2003 (2002/2114(INI)).

³² J.H. Valgaeren, *Geroofde kunstvoorwerpen tijdens WO II / Een juridisch en historisch overzicht (Looted art during WWII/ a juridical and historical overview)*.
<http://www.law.kuleuven.be/jura/art/42n4/valgaeren.html>.

³³ Council Framework Decision 2009/948/JHA of 30 November 2009 on prevention and settlement of conflicts of exercise of jurisdiction in criminal proceedings
OJ L 328, 15.12.2009, p. 42–47.

competent national authorities shall contact each other when they have reasonable grounds to believe that parallel proceedings are being conducted in another EU country. It also establishes the framework for these authorities to enter into direct consultations when parallel proceedings exist, in order to find a solution aimed at avoiding the negative consequences arising from these proceedings. Because of the transgressing character of cultural property crimes the Framework Decision is very important. The system the Framework Decision provides is a good solution to take away a lot of indistinctness rules and practices. However, it is questionable what the exact outcome is for practice, because the Framework Decision does not oblige member states to contact for example the country of origin when trying a non-native suspect.³⁴

CHAPTER 4: THE FUTURE OF INTERNATIONAL COOPERATION ON CULTURAL PROPERTY CRIMES

As previous chapters have shown, international cooperation against cultural property crimes can be improved. Several problems have already been pointed out. In this chapter we give some recommendations which, according to us, will result in more efficient international cooperation on the subject.

Public awareness: The lack of knowledge and unawareness is the key problem on the subject of cultural property crime. Governments and politicians do not give priority to this subject. The public awareness and the prioritizing of these types of crimes are closely connected. This results in a vicious circle in which criminal cases on cultural property do not get publicity and hence do not get prioritized in law enforcement; and when these types of crimes are not prioritized, there will be less cases solved, leading to publicity. Therefore, people should be made more aware of the broad scope of the subject and the impact and measures of crimes involved in it.

Unawareness is a problem because, without knowing it, the public itself is deeply involved. First, cultural heritage belongs to the public, making the public the potential

victim. Second, an unaware public can be ignorant with respect to the scope of its acts. One could for example buy a souvenir in a foreign country without realizing it was actually just boldly robbed from an archaeological site, or violently stolen from an indigenous tribe.

Public awareness and knowledge can hopefully result in awareness within the market of cultural property trade, and might influence the actors on this market. At present, auctioneers, traders and sellers scarcely have to investigate on the potential illicit character of an object because its buyers are unaware or not interested in the cultural implications of the commerce of the object. As with any market, the market in cultural property is driven by demand. Public awareness can thus make a change from the inside out. Furthermore, it can get prioritizing of the crimes involved in the subject on the political agenda.

Licensing: Legal or administrative licensing for cultural property traders and a traders union on cultural property could help controlling the ‘output’ of cultural property crimes. With a licensing system the police and justice can check the backgrounds of traders and keep track of their whereabouts, while in the mean time trades will have a licence that proves to buyers that their goods are well researched.

Registration and documentation: Traders, auctioneers and (private) institutions should be encouraged to register their art. Once art is registered, databases can be more useful. The police will be able to detect and recognize cultural property crimes more easily. This in turn will result in more specialized cultural property trials and create more public awareness. Apart from that, registration might have a preventive effect. Furthermore, the former recommendation regarding the licensing of traders goes hand in hand with a register system.

Due diligence: A trader should be obliged to check the background of a certain cultural object. Cultural objects should only be sold accompanied by its original papers. Otherwise, the buyer will not act with due diligence and he or she will not have a right to restitution once the object is claimed by its rightful owner. Another punishment should be the withdrawal of the licence of the particular trader. The reversal of the burden of proof of the Unidroit Convention could be the norm.

Public Databases: Even though most countries have their own national database, they should combine their knowledge and information into one European database. The Leonardo is the most developed database and could therefore be set as an example. The database should be available for traders and the public so that the former recommendations on licensing, due diligence and registration can be successful.

Periods of prescription: There should not be an acquisitive period of prescription for cultural objects. These are an inappropriate protection of a possessor in case of cultural heritage. The market of illegal cultural heritage is protected by these periods while the infringement on society does not necessarily fade over time. Moreover, finding stolen cultural objects can take a lot of time. Discarding this protection will also have a preventive effect.

Jurisdiction: Countries and courts should work together when cultural objects are involved. The country where an object has been found should be obliged to work together with the claiming country when it comes to jurisdiction, courts and applicable laws.

Outlaw internet auction sales of archaeological pieces: Marktplaats (the Dutch E-bay) and E-bay admit they cannot recognize cultural property because their lack of knowledge on the subject. These websites should be informed more properly on the topic, and should eventually be obliged to ban any suspicious object.

CONCLUSION

In this paper we have elaborated on cultural property crimes. This is a field of crimes that is transgressing and hugely underestimated. The basis on which the international cooperation hereon is built is provided by three major conventions, and European legislation. Together, this legislation determines the meaning of cultural property and sets different rules and regulations for cooperation between states.

We have shown that the increasing valuation of cultural property resulted in a few databases, both international and national. Furthermore, Member States of the European Union have slowly intensified their cooperation on the restitution of cultural objects. Resulting in a process in which an object can either be confiscated or be politically claimed by a country, in order to have it returned to its rightful owner.

Sadly though, we have seen that, due to underestimation of the problems caused by cultural property crimes, cooperation on this subject is still far from effective. Governments do not register or secure their objects accurately and periods of prescription and lack of cooperation on jurisdiction create lacunas that protect criminals either from being caught, or from their actions being illegal. But Foremost, there is a lack of public awareness that influences the entire cooperation and approach of cultural property crimes. When the subject is not high on the political agenda, no money nor people will be invested to investigate these cultural property crimes, eventually making criminals the ones who decide over our Cultural Heritage.

At the end of this paper, we have given some recommendations to counter these problems. Most of these are easily achievable. With a mere minimum of international cooperation on the matter of cultural property crimes, but most of all by creating public awareness of the immense and widely unknown criminal scene concerning cultural property, we are able to 'rob' the criminal circuit of their control over our Cultural Heritage.

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