



United Nations  
Educational, Scientific and  
Cultural Organization



Convention for the fight  
against the illicit trafficking  
of cultural property

**7 SC**

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**Subsidiary Committee of the Meeting of States Parties to the UNESCO Convention  
on the Means of Prohibiting and Preventing the Illicit Import, Export and  
Transfer of Ownership of Cultural Property  
(UNESCO, Paris, 1970)**

**Seventh Session**  
**UNESCO Headquarters, Room XI**  
**22 and 23 May 2019**

**Item 8b of the Provisional Agenda:** Cooperation with the Art Market

This document presents a study on the "Cooperation with the art market", one of the priority topics to be addressed at this session, as reflected in Decision 6.SC 10

**Draft Decision:** Paragraph 16

## Introduction

1. The Subsidiary Committee of the Meeting of States Parties to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (henceforth 1970 Convention) adopted at its Sixth session (28-29 May 2018) Decision [6.SC.10](#) to include the item “cooperation with the art market” as one of the priority topics in the provisional agenda of its Seventh session (2019).
2. Many antiquities on the global market come from illicit origins,<sup>1</sup> and their trade is often associated with other forms of organised crime, such as drug trafficking and money laundering. However, the true value of illicit trafficking in antiquities is “hard to assess due to its invisible and seamless character”.<sup>2</sup> Moreover, the trade in such objects has become one of the major means for the financing of extremist groups. Hence, the fight against illicit trafficking of antiquities has become a global imperative. In this regard, the United Nations Security Council (UNSC), in [its Resolution 2199](#), decided that all UN Member States are bound to “take appropriate steps to prevent the trade in Iraqi and Syrian cultural property”. Significantly, the UNSC, in its landmark [Resolution 2347](#) (2017) focused on the protection of cultural heritage as a matter of maintenance of international peace.

## Tools and mechanisms in counteracting illicit trafficking in cultural property

### *International and regional framework*

3. Alongside the legislative activity of the UNSC and the existing treaty law (in particular, the [1954 Hague Convention](#), the 1970 UNESCO Convention, the [1995 UNIDROIT Convention](#), and the [2000 UN Convention against Transnational Organized Crime](#)<sup>3</sup>) a number of developments have appeared in international law.
4. First of all, the [Council of Europe’s Convention on Offences relating to Cultural Property of 2017](#) (Nicosia Convention), while criminalizing the illicit trafficking in cultural property, provides a catalogue of criminal offences, including illegal acquisition, market placement, and document falsification.
5. Secondly, the European Union (EU) has also undertaken important legislative steps. The current proposal of the regulation on the import of cultural goods is designed to offer a complex legal regime to disrupt the illicit trade in cultural goods in the EU. The [resolution of the European Parliament on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars](#) (17 January 2019) calls upon the Commission to take the further step of making an ethical art market one of the cultural priorities of the EU. Moreover, [Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State](#) absorbed the UNIDROIT “due diligence” regime, which subsequently has been implemented in the EU Member States’ national legislation.
6. Undoubtedly, the fight against illicit trafficking in cultural property has become a key concern of global governance. In December 2014, the United Nations General Assembly

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<sup>1</sup> European Commission, “Impact Assessment Accompanying the document ‘Proposal for a Regulation of the European Parliament and of the Council on the import of cultural goods’” (13 July 2017) SWD (2017) 263 final, 12.

<sup>2</sup> European Commission, “Impact Assessment” (n 7) 12; D Chappell & K Polk, “Unravelling the ‘Cordata’: Just How Organized Is the International Traffic in Cultural Objects?” in S Manacorda & D Chappell (eds), *Crime in the Art and Antiquities* World. *Illegal Trafficking in Cultural Property* (Springer 2011) 99-113.

<sup>3</sup> United Nations Convention against Transnational Organized Crime (signed 12 December 2000, in force 29 September 2003) 2237 UNTS 319.

adopted, without a vote, [Resolution 69/196](#) “International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences”. This called for, *inter alia*, “encouraging cultural institutions and the private sector to adopt codes of conduct and to disseminate best practices on policies on the acquisition of cultural property”. UN Member States were also asked to “consider promoting and supporting training on cultural property regulations for cultural institutions and the private sector, in cooperation with relevant international organizations, including rules on the acquisition of cultural property”. States should also cooperate with online Internet providers and web-based auctioneers and vendors “in preventing trafficking in cultural property, including through the adoption of specific codes of conduct”.

### ***National legislations***

7. There have also been a number of developments at the national level<sup>4</sup>. It is worth mentioning three examples. The 2016 [United States’ Protect and Preserve International Cultural Property Act](#) was adopted to “protect and preserve international cultural property at risk.” Specifically, Syria’s cultural property is protected by import restrictions that can be waived only if such property is intended to be temporarily located in the US for protection purposes.”<sup>5</sup> Hence the new US federal legislation offers an important tool to protect foreign cultural heritage.
8. The second example regards the [Law of Antiquities, Museums and Urban Heritage introduced by Saudi Arabia](#) in 2014. Pursuant to this law, all transactions in movable antiquities are to be authorized by the public administration. The import of such objects is hence controlled by the State.
9. The third instance of national legislative practices concerns the recent reform of the [Polish Law on the Protection and Guardianship of Monuments](#) (2017),<sup>6</sup> which has introduced a set of new obligations on art dealers. These consist in keeping special register books that need to include not only a list of all transactions concluded by a dealer, but also all documentation relating to art expertise, provenance research, pricing, and written opinions offered to clients.

### ***Involvement of the private sector***

10. In the same spirit, in its [Resolution 73/130](#) (2018) art dealers and their associations were invited to contribute to the effective implementation of the [UNESCO International Code of Ethics for Dealers in Cultural Property](#), the [ICOM Code of Ethics for Museums](#), and other existing codes of conduct. It also emphasized the importance of the dialogue between UNESCO and “art market professionals in order to improve existing codes of ethics, professional practices and trade, raise awareness and provide education in areas such as provenance investigations, due diligence exercises, return or restitution procedures, the use of practical tools and appropriate knowledge of the international legal framework”. Importantly, the role of cooperation with art market professionals has also been stressed in UNSC Resolution 2347.

### ***Self-regulation***

11. The role of art market self-regulation is increasingly highlighted in the global debate on illicit trafficking in antiquities. Alongside the already-mentioned UNESCO and ICOM codes,

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<sup>4</sup> As evidenced in the 2017 Report of the UN Secretary-General on the implementation of [UNSC Resolution 2347](#).

<sup>5</sup> See section 3(a) of the 2016 United States’ Protect and Preserve International Cultural Property Act.

<sup>6</sup> Poland, Law on the Protection and Guardianship of Monuments of 23 July 2003, Dz U 2018 poz 2067, as amended.

the relevance of other professional ethics frameworks should not be overlooked. These particularly refer to codes of ethics of archaeological associations (e.g. [Code of Ethics of the Archaeological Institute of America \(AIA\)](#), and the [European Association of Archaeologists Code of Conduct](#)—both endorsing the 1970 UNESCO Convention, and the [Code of Ethics of Museum Association \(MA\)](#), as well as acquisition policies introduced by museums and their associations (e.g. the [AIA Principles for Museum Acquisitions of Antiquities](#), the [MA's Guidelines of Acquisition](#), or the revised [J. Paul Getty Museum Collection Policy](#)).

### **Databases**

12. As an additional important tool for counteracting illicit trafficking in cultural property, different databases also play an important role. These databases aim to exchange all different sorts of information relevant to art dealers, and authorities that need to identify stolen objects, or who need to check regulations when dealing with objects of various origins. Main examples of these databases are:
  - [INTERPOL's Stolen Works of Art Database](#), accessible not only to law-enforcement agencies, but also to individuals, which centralizes information on stolen items and circulates that information globally.
  - [UNESCO's Database of National Cultural Heritage Laws](#) which offers all stakeholders involved (Governments, customs officials, art dealers, organizations, lawyers, buyers etc.) a complete and easily accessible source of information. This database shows not only the national laws, but gives also access to import and export certificates for cultural property.
  - [ICOM's Emergency Red Lists of Cultural Objects at Risk](#) that presents the categories of cultural objects that subjected to theft and traffic. It helps individuals, organisations and authorities, such as police or customs officials, identify these objects.
  - [ARCHEO information exchange platform on illicit cultural property](#), which is managed by the World Customs Organization acts as a real-time communication tool for the information exchange and cooperation among Customs administrations, national authorities, international organisations and experts.
  - [United Nations Office on Drug and Crime's \(UNODC\) SHERLOC platform](#), although not solely dedicated to traffic of cultural property, which contains valuable information regarding case law and national and regional legislations relevant to the illicit traffic of cultural property.
  - [The Internal Market Information system \(IMI\)](#) introduced through EU Directive 2014/60/EU, which acts as a new platform of exchange for unlawfully exported cultural goods. It enables national authorities: to cooperate and to search for a specified cultural object that has been unlawfully removed; or to notify the discovery of such cultural object.

### **Practical examples of cooperation with the art market that contribute to the effective implementation of the 1970 UNESCO Convention**

#### ***Institutional initiatives (UNESCO and UNIDROIT)***

13. Art dealers and their associations are continuously invited to participate in various initiatives launched by UNESCO and UNIDROIT (conferences, round tables and workshops). These serve to encourage and support their educational and awareness-raising agenda. For instance, on 24 March 2016, UNESCO held a round table on the fight

against illicit trafficking in cultural properties with the participation of many notable art market experts. Furthermore, on 20 and 21 March 2018 an event funded by the joint two-year EU-UNESCO project entitled “Engaging the European art market in the fight against the illicit trafficking of cultural property” was also held at UNESCO’s headquarters in Paris. This ongoing project aims to reinforce the exercise of due diligence conduct in the European art trade; to raise awareness of art market stakeholders regarding the legal framework of the fight against illicit trafficking of cultural property; and to strengthen cooperation and exchange good practices among European art market professionals and public authorities.

14. Similar goals are contained in the 1995 [UNIDROIT Convention Academic Project](#) (UCAP), which endeavours “to assist scholars, students, practising lawyers, judges, other government officials, as well as art market actors, such as art collectors, dealers, auction houses and museums by providing information about the 1995 Convention. It also serves to identify best practices in the art market with the objective of providing innovative means of implementation of the aforementioned instruments.

### **Art market professional initiatives**

15. Apart from the professional codes of ethics and codes of conduct, the practical operationalisation of the 1970 UNESCO and 1995 UNIDROIT Conventions can be observed in the context of global art fairs. For instance, the [TEFAF Maastricht 2019 Provisional Vetting Guidelines](#) recall the due diligence and provenance standards fostered by these two treaties. Moreover, a TEFAF exhibitor “must check every object on display against databases with information about stolen art, such as the Art Loss Register, the Interpol database and the ICOM Red Lists”. These Guidelines also state that any object found to be subject to a claim is removed from the fair immediately. Another art market initiative regards the establishment of the [Court of Arbitration for Art \(CAfA\)](#) in The Hague (Netherlands). This mechanism of alternative dispute resolution in art-related cases will emphasize, *inter alia*, the role of research provenance by bringing together various experts and disciplines and strictly following ethical rules.

### **Recommendations**

- 1) Further efforts to fully implement the provisions of the 1970 UNESCO and 1995 UNIDROIT Conventions into national legislation are highly recommended. In this process, public authorities should provide for the fullest participation of civic society, including art market experts and stakeholders, in order to elaborate “standards of provenance documentation, differentiated due diligence and all measures to prevent the trade of stolen or illegally traded cultural property”, as provided in the UNSC Resolution 2347;
- 2) Although many institutions in various countries follow the ethical rules of the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM Code of Ethics for Museums,<sup>7</sup> the promotion of the UNESCO Code as a global standard-setting tool in art trade should be taken into consideration by UNESCO. In particular, the establishment of effective mechanisms for the investigation of any violations of this code should be seriously considered and consulted with art dealers, and their associations;
- 3) Since museums play a special role in protecting cultural heritage, the International Council of Museums and its respective committees should be encouraged to cooperate closer with both law-enforcement agencies and art market professional organisations in order to strengthen provenance research and due diligence principles and standards;

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<sup>7</sup> Report of the Secretary General (n° 27) para 31.

16. The Subsidiary Committee may wish to consider adopting the following decision:

**DRAFT DECISION 7.SC 8b**

The Subsidiary Committee,

1. Having examined document C70/19/7.SC/8b,
2. Taking note of the Secretariat's initiatives to cooperate with the art market;
3. Encourages States Parties to initiate and further pursue cooperation with the art market in view of strengthening provenance research and due diligence principles;
4. Invites States Parties to consider developing awareness-raising and capacity-building initiatives targeting professional associations of the art market, where appropriate.