Economic and Social Council


“Preservation of one’s own culture does not require contempt or disrespect for other cultures.”
—Cesar Chavez

Illicit trafficking of cultural property has become a growing concern among various Member States as a result of the growing black market for cultural objects. Even though the international community has sought to reduce the negative effects of this illicit trade by implementing the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, there remains a growing demand for these items. If such trends are allowed to continue the physical integrity of these historical items, their discovery sites, and their cultural and historical significance to the nation in which they were found and worldwide may be in jeopardy.

Background

Terminology

In order to understand some of the background information on the illicit import, export, and transfer of cultural property, it is necessary to highlight some of the terminology that is used in the relevant literature concerning this topic. Cultural property, according to the 1970 Convention, refers to “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.” Furthermore, country of origin and source nation stand for, “nations where a given cultural object originated.” Other nations which participate in the illegal sale of cultural property are deemed either transit nations, if the cultural artifacts are primarily trafficked through their boarders, or nations of destination (also known as market nations) if cultural artifacts are sold within their borders. Countries may be any combination of these terms, given the complex nature of the issue.

1 See Chavez, Cesar. “Quotes on Culture.” http://www.brainyquote.com
5 Ibid.
The crime of trafficking cultural property has become a highly profitable business with an estimated US six billion dollar per year revenue stream, according to the United States Federal Bureau of Investigation. Falling slightly behind the illegal drug trade, arms trafficking, and money laundering, the theft of cultural property continues to grow in popularity and demand around the world.

The primary source of all thefts is from private museums, collectors’ private collections, churches, and discovered or undiscovered archaeological sites. Artifacts are then transferred for sale on the global black market to the highest bidder, with as little as a five to ten percent rate of recovery. For those that are recovered, the estimated recovery time remains high with most being recovered within a thirteen year period, while some artifacts take even longer to be recovered. Factors such as political instability, inconsistent laws regarding ownership and repatriation of cultural property, more sophisticated methods of transportation, and unsecured borders provide an environment in which the illegal trafficking of cultural property can flourish.

During political unrest, which involves periods of war, military occupation, and colonial rule, cultural property is taken as spoils of war, or “transferred pursuant to capitulation agreements that are often coerced” by the occupying nation. During more peaceful times, cultural property can be looted from collections or illegally excavated from archaeological sites and sold on the black market.

Items stolen from collectors’ public and private collections are extremely susceptible to theft because the cost of insurance is oftentimes too expensive to pay for. Archaeological sites are susceptible to a phenomenon called subsistence looting, which refers to a group of impoverished citizens, “who can easily and profitably sell their nation’s cultural patrimony on the black market,” and make more money than they would working in the formal sector. Finally, the international community lacks a sufficient export law system to ensure that cultural property is not illegally exported. Due to economic weakness, most countries of origin cannot supply the necessary funds to safeguard against theft and possible exploitation of archaeological dig sites. Many Member States have laws in place to protect against theft, but weak regulations and an inability to implement these laws leave these states vulnerable to theft, especially when it come to ineffective customs screenings at borders.

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9 Ibid.
10 Ibid.
11 Ibid.
12 Ibid.
Perhaps the most tragic result of the illicit theft of cultural property is that most pieces, as well as the archaeological sites themselves, are severely damaged by those who are unskilled at excavation. Thieves routinely dig for objects that they believe will ultimately sell for a relatively high price on the black market, as well as those that are unique in design.13 When thieves excavate various items from dig sites, most destroy the site and any items that were deemed insignificant for potential sale once they are done looting. However, to the scientific and archaeological community, these items have great value for study and historical preservation.14 Furthermore, once excavated, there is no guarantee that such items will not face some form of damage as a result of poor transportation methods.

Lastly, the illicit trade of cultural property can have a highly negative impact on the cultural heritage of a country of origin. Linked with the history and culture of that particular country, “the loss of an artifact…creates a significant gap in the source group’s collective sense of identity.”15

The illicit market for cultural property often takes place within source countries or developing nations that do not have the capacity to stop such illicit activities. Many artifacts find their final destination in developed nations with collectors who possess adequate wealth to purchase these illegal, and often costly, items. In addition to economic impacts on nations of origin, archaeologists and experts that conduct extensive field research lose the capacity to gather knowledge about the site’s past as a result of extensive looting and damage to the archaeological dig site.16


The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property was the first international convention to provide possible solutions for the theft of cultural property.17 It is one of two conventions, the other being the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Property, to do so. The situation throughout the 1960s prompted the international community to take a closer look into the incidents of theft within vulnerable countries. Specifically, they found items that were stolen from a country of origin and were then imported into various destination states for a

14 Ibid.
16 Meeting of the expert group on protection against trafficking in cultural property, Vienna, 24-26 November 2009 “Protection against trafficking in cultural property”
significant source of revenue. Seeing the negative effects, including the diminishing of cultural heritage that this form of illegal trafficking had on countries of origin, the international community ultimately came together to draft a framework of prevention.¹⁸

The 1970 Convention includes measures to prevent the illicit trafficking of cultural property, such as restitution provisions, trade monitoring, collection inventories, export certifications, promulgating a standardized code of ethics for individuals associated with handling cultural artifacts, penal and administrative sanctions, and creating an international framework that is inclusive and respectful to all Member States and which promotes enhanced cooperation among all signatories to the Convention.¹⁹ It entered into force in 1972 and has approximately 125 ratifications.

The Convention does not ultimately deter the effort to export cultural property, despite having preventative measures in place to ensure that illegal imports do not occur. Instead, the Convention promotes “non-self-executing obligations,” that require Member States and their internal legislative bodies to pass laws that adhere to the Convention’s standards that without the Convention and its provisions do not function properly.²⁰ Most of the Convention’s obligations uphold the principle of sovereignty and call for all signatories, “to protect the cultural property within [their] territories against dangers of theft, clandestine excavation and illicit export.”²¹

All Member States party to the Convention are encouraged to take any and all means at their disposal in making necessary reparations, prevent illicit import, export, and ownership transfer of cultural property. Cooperation among Member States can be further enhanced through bi- and multilateral capacity building and knowledge sharing. States that are in need of help to combat illicit trafficking may call upon other Member States to assist in the protection of cultural property.²² Lastly, it is within Article 1 of the Convention that an internationally agreed upon definition of “cultural property” is provide (see above).

²² Ibid.
²³ UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, art. 2, June 24, 1995, 2421 U.N.T.S. 457 [hereinafter Convention on Stolen or Illegally Exported Cultural Objects],
Convention provides civil law provisions, private law perspectives, and improves the chances of restitution if items have been damaged or stolen. Approximately thirty-three Member States have signed on to the UNIDROIT Convention.

UNIDROIT requires Member States to enact all of the major provisions of the Convention in order for it to comprehensively address any and all situations concerning cultural property. In addition to the creation of uniform law, the UNIDROIT Convention expands the definition of a cultural object to one “which on religious or secular grounds [is] of importance for archaeology, prehistory, history, literature, art or science and belongs to one of the listed categories.”

Finally, the Convention also extends protection to undiscovered and unexcavated items.

The Convention also contains a statute of limitations which mandates that all claims of theft of cultural property must be made within a period of three years with the potential for extension limits of up to seventy-five years. This period is based on the time that the country of origin knew of the location of the cultural object, as well as the identity of the person(s) who have it in their possession. If a person happens to come into possession of an object that is of cultural importance, then under the provisions of the Convention, he or she is permitted to receive some form of compensation if the collector can provide adequate proof that he or she had no prior knowledge of the item’s listing as a stolen object.

Current Issue

Convention Weaknesses

Despite numerous successes since both Conventions’ drafting there are still problems concerning implementation. Looking at the language of the Conventions, there are obvious mistakes that have been made as a result of haphazard drafting. This is due both to the unique legal nature of the document and the language compromises demanded by some Member States.

Another identifiable weakness of the Conventions are certain limitations that national law may have on the overall effectiveness of implementing the Conventions with Member States, as this was not fully incorporated into the final draft of the Conventions. The issue of “good faith” acquisition and mandatory compensation as stated within Article 7 (b) (i) has become a contentious because of the difficulty in determining what “good faith” is and how Member States may demonstrate it. This was later addressed by the International Institute for the Unification of Private Law (UNIDROIT) during its 1995 Convention on the same topic.

available at

24 Ibid.
25 Ibid.
27 Ibid.
From a private law perspective, it is difficult to clearly show right of ownership by the country of origin. Further litigation to rectify this situation has to date, been unsuccessful because there is no clear definition of State ownership across all national legislatures. As a result, the ability to return objects has been increasingly made more difficult because such objects have not been fully catalogued or registered as official items. The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation did provide the means to return items before 1970, but it was seldom used.

Lastly, with forty-five years since drafting and only approximately 125 parties, Member States have been very slow to implement the Convention and all its provisions. There are two underlying reasons for this: the strong support among Member States for the two other conventions that deal with the topic but in a slightly different capacity (World Heritage Convention of 1972 and the Convention for the Safeguarding of the Intangible Cultural Heritage of 2003) and in the difficulties resulting from the compromise of opposed positions in the 1970 Convention. States have had difficulties with overall implementation, specifically in terms of domestic law, political sensitivity, and conflict with existing national law. As a result, States are reluctant to sign on to the Convention. As a result, the UNESCO Secretariat has focused its efforts building support for its ratification among non-ratifying Member States.

**Future Outlook**

In order for the 1970 Convention to gain more traction among Member States, a more effective campaign must be undertaken to increase participation. UNESCO Workshops at the regional level that are aimed at capacity building and knowledge sharing between Member States would be a great starting point for getting more States to participate. Additionally, UNESCO, as the main administrator of this Convention, must become more active in raising awareness among citizens, as it is their cultural heritage that may be in jeopardy.

Supporters of UNESCO’s efforts must also play a continuing role in an effort to garner further support for the 1970 Convention. These Member States also have the capacity to enhance their participation in the Convention by hosting regional workshops on training administrators, museum curators, archaeologists, anthropologists, and other professionals that work to preserve cultural artifacts. The same professionals could work with members of the police and customs officials within a Member State to ensure that such items are not being trafficked illegally. In short, there needs to be more communication, capacity building, and knowledge sharing at all levels and between all parties.

In addition to such undertakings, Member States can share their own cultural property legislation with UNESCO’s database of cultural legislation. In doing so, Member States would have a way

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28 Ibid.
29 Ibid.
30 Ibid.
to directly ensure that their own laws and regulations concerning the theft of cultural property are clear and free of loopholes to escape prosecution as a result of faulty laws.

Lastly, at the individual level, people are highly influential in promoting active participation in the Convention. Professionals dealing with cultural heritage have argued for more comprehensive acquisition policies to prevent organizations from acquiring and retaining cultural objects that are known to have been stolen or illegally trafficked from archaeological excavation sites.\textsuperscript{31}

**Focus Questions**

1.) What has your state done to promote more active participation in UNESCO’s 1970 Convention?
2.) What legislation and or documents has your country signed and ratified regarding the illicit trafficking of cultural property?
3.) What internal efforts has your country taken to eradicate the illicit trade of cultural items?
4.) What efforts has your country made to help other States dealing with this issue?

\textsuperscript{31} Ibid.

Chavez, Cesar. “Quotes on Culture.” http://www.brainyquote.com


Manhart, Christian. UNESCO’s Fight Against Illicit Traffic of Cultural Property, Questions Relating to Restitution and Needs of Museums in Developing Countries, http://www.mutec.de/de/_downloads/UNESCO_fight_illicit_traffic.PDF; Warring, supra note 3, at 250

Meeting of the expert group on protection against trafficking in cultural property, Vienna, 24-26 November 2009 “Protection against trafficking in cultural property*”


