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## Deliberate destruction and illegal trafficking of cultural heritage

### Report<sup>1</sup>

Committee on Culture, Science, Education and Media

Rapporteur: Mr Stefan SCHENNACH, Austria, Socialists, Democrats and Greens Group

### *Summary*

Cultural heritage in all its forms constitutes a unique and important testimony of the history and identity of different peoples and is a common asset that should be preserved in all circumstances. The report welcomes the new Council of Europe Convention on Offences relating to Cultural Property, adopted in Nicosia in May 2017, and calls on the member States to sign and ratify it as well as to sign and ratify, if not yet done, the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954) and its Protocols (1999), the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Sale of Cultural Property (1970) and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995), which all form a complementary legal framework together with the Council of Europe Convention.

The report also makes a number of practical recommendations, including setting up a central national authority, and engaging in international co-operation between source, transit and final destination countries, enabling the exchange of information, the harmonisation of laws and the standardisation of procedures and expectations of due diligence at all links in the marketing chain. Furthermore, it calls for co-operation between the Council of Europe, UNESCO and UNIDROIT with a view to codifying the international requirement of due diligence for auction houses, dealers and individual purchasers, creating incentives for internet marketing platforms to regulate internet transactions and developing strategies required for the protection of threatened heritage in archaeologically sensitive potential combat zones.

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1. Reference to committee: [Doc. 14100](#), Reference 4235 of 14 October 2016.



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## A. Draft resolution<sup>2</sup>

1. Cultural heritage has social and political value, as well as intrinsic worth. It stands for the ideas and achievements which have shaped human development; throughout history, it has been celebrated as a manifestation of creativity, but it has also been targeted in times of conflict as a symbol of identity to be attacked in order to demoralise, defeat and eradicate populations.
2. Due to its intrinsic worth, cultural heritage has been legitimately commissioned, displayed, bought and sold, but it has also been stolen, looted, trafficked and forged for illicit financial gain. Notably, in Iraq and Syria, Daesh has been plundering the region's cultural heritage, deliberately destroying important archaeological sites and profiting from the sale of valuable excavated artefacts.
3. Illegal trafficking in cultural heritage has always been transnational, feeding into a black market trade in antiquities, art and artefacts. Nowadays, the black market is also moving away from the traditional means of trading towards social media and internet. Moreover, the Assembly is concerned that these illicit financial gains are used in turn to fund corruption, terrorism and violence.
4. In this context, the Parliamentary Assembly refers to its [Resolution 2057 \(2015\)](#) and [Recommendation 2071 \(2015\)](#) on cultural heritage in crisis and post-crisis situations and the Namur Call adopted at the Council of Europe Conference of Ministers responsible for Cultural Heritage (2015) and welcomes the work undertaken as a result of this decision which has led to the new Council of Europe Convention on Offences relating to Cultural Property (CETS No. 221), adopted in Nicosia in May 2017.
5. The new convention builds on the existing legal framework following the Convention of the United Nations Educational, Scientific and Cultural Organization (UNESCO) for the Protection of Cultural Property in the Event of Armed Conflict ("the Hague Convention") (1954) and its Protocols (1999), the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Sale of Cultural Property (1970), the Convention of the International Institute for the Unification of Private Law (UNIDROIT) on Stolen or Illegally Exported Cultural Objects (1995) and the various regulations and directives of the European Union, and therefore aims to close the gaps which remain in the criminal law.
6. Accordingly, the Assembly recommends that the member States of the Council of Europe:
  - 6.1. sign and ratify the Council of Europe Convention on Offences relating to Cultural Property;
  - 6.2. sign and ratify, if not done yet, the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict and its Protocols, the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Sale of Cultural Property and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects;
  - 6.3. establish close co-operation between relevant ministries, involving also public agencies, the police, customs and representatives of the trade in art and antiquities, and set up a central national authority which would also be a focal point for international co-operation;
  - 6.4. engage in international co-operation (on gathering evidence, convicting perpetrators and recovering objects) between source, transit and final destination countries, enabling the exchange of information, the harmonisation of laws and the standardisation of procedures and expectations of due diligence at all levels of the marketing chain; and in particular:
    - 6.4.1. establish regularly maintained digital inventories for the safeguarding of cultural property with regulated, differential levels of access and common standards in denomination and description of objects and sites to facilitate international co-operation, *inter alia* through Interpol's Stolen Works of Art database;
    - 6.4.2. introduce mandatory "passports" for cultural objects in order to facilitate object identification and data exchange, by using the Object ID standard (including photographs as part of the record) developed by the Getty Information Institute and hosted by UNESCO;
    - 6.4.3. harmonise mandatory import and export procedures (including the photographic requirement) to combat widespread falsification of documentation;
    - 6.4.4. develop accredited training programmes for all those professionally concerned with the protection of cultural property, including museum staff, military personnel, police, customs officers and archaeologists;

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2. Draft resolution adopted unanimously by the committee on 24 April 2018.

- 6.4.5. create incentives for the legitimate art market to participate in all substantive discussions in combating trafficking and creating a more open and transparent market, urging adherence to codes of practice, explaining proper procedures to the wider public and participating fully in outlawing illegitimacy;
- 6.5. engage in co-operation activities with the Council of Europe, UNESCO, UNIDROIT and other relevant international organisations, with a view to:
  - 6.5.1. codifying the international requirement of due diligence for auction houses and dealers (with an obligation to establish records of transactions) and individual purchasers, following the creation of the Code of Ethics for Museums by the International Council of Museums (ICOM); and develop guidance for private buyers in co-operation with established dealers and auction houses;
  - 6.5.2. creating incentives for internet marketing platforms, such as eBay, to regulate internet transactions and use the procedures which are required for the legitimate art market, namely to publicise and prevent potential illegality in transactions and insist on the presentation of documentation on provenance alongside the object;
  - 6.5.3. developing strategies required for the protection of threatened heritage in archaeologically sensitive potential combat zones, and if feasible provide technical and financial assistance to their effective implementation; participate in the training initiative launched by UNESCO and the Italian Government for the United Nations Blue Helmets for Culture in Turin.

## **B. Draft recommendation<sup>3</sup>**

1. The Parliamentary Assembly, referring to its Resolution ... (2018) on the deliberate destruction and illegal trafficking of cultural heritage, recalls that cultural heritage in all its forms constitutes a unique and important testimony of the history and identity of different peoples and is a common asset that should be preserved in all circumstances.
2. The Assembly is deeply concerned that cultural heritage is targeted with alarming frequency in both peacetime and wartime. It welcomes the new Council of Europe Convention on Offences relating to Cultural Property (CETS No. 221) and urges its wide ratification and implementation.
3. Accordingly, the Assembly recommends that the Committee of Ministers instruct the relevant bodies of the Council of Europe to:
  - 3.1. raise public awareness and produce a general publication to accompany the convention, encouraging ratification and implementation by alerting audiences to key problems and highlighting the ethical and legal issues which are vital to the acceptance of the convention and its implementation;
  - 3.2. organise regional and national conferences on harmonising criminal law with a view to facilitating a discussion among member States on the implications of ratifying and implementing the convention in both legislative and policy terms;
  - 3.3. if required, provide necessary technical assistance and guidance to member States seeking to ratify the convention, by for instance making available a “standard model law” to help States adapt their legislation;
  - 3.4. work closely with member States in order to address the transnational aspects of illicit trafficking in cultural property in a more efficient manner by strengthening international co-operation in criminal matters and, where necessary, establishing joint investigative teams composed of experts from law-enforcement agencies, judiciary and customs authorities, as well as experts in cultural heritage;
  - 3.5. in co-operation with the United Nations Educational, Scientific and Cultural Organization (UNESCO), the European Union and Interpol:
    - 3.5.1. undertake a feasibility study to explore the possibilities of creating and funding a European observatory, as a permanent platform to systematically monitor and co-ordinate efforts to fight cultural property crimes; this could be envisaged in the format of an enlarged partial agreement;
    - 3.5.2. promote the ratification of the convention by non-member States.

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3. Draft recommendation adopted unanimously by the committee on 24 April 2018.

## C. Explanatory memorandum by Mr Stefan Schennach, rapporteur

### 1. Introduction

1. In the Namur Call (2015),<sup>4</sup> the Ministers of the Council of Europe member States responsible for cultural heritage, “[a]larmed by the increasing number of acts of deliberate destruction of cultural heritage in the context of conflicts all over the world”, decided “to initiate discussions in the Council of Europe to reinforce European co-operation, including on legal instruments, on the deliberate destruction of cultural heritage and illicit trafficking of cultural property, with the relevant stakeholders including the United Nations and the European Union”.

2. This work coincided with work undertaken by the Council of Europe’s criminal law experts (the European Committee on Criminal Problems (CDPC)), which determined that there was a significant gap in the international legal framework concerning cultural property crimes and related offences. These developments led to the creation of an intergovernmental drafting group, which, acting in concert with relevant experts, drafted the new Council of Europe Convention on Offences relating to Cultural Property (CETS No. 221, “the Convention”), which was adopted in May 2017. It is broad in scope, seeking to enable the harmonisation of national initiatives and laws and to encourage co-operation between States. In setting out criminal sanctions for offences against cultural property, it supersedes the unratified 1985 European Convention on Offences relating to Cultural Property (ETS No. 119, “Delphi Convention”) and is seen as the completion of an international framework designed to protect cultural property, complementing the Convention of the United Nations Educational, Scientific and Cultural Organization (UNESCO) for the Protection of Cultural Property in the Event of Armed Conflict (“the Hague Convention”) (1954) and its Protocols (1999), the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Sale of Cultural Property (1970), the Convention of the International Institute for the Unification of Private Law (UNIDROIT) on Stolen or Illegally Exported Cultural Objects (1995) and the regulations and directives of the European Union.

3. As rapporteur, I have been closely involved in this process, attending the international seminar in Lucca (Italy) and the last meeting of the Committee on Offences relating to Cultural Property (PC-IBC) in February 2017 in Strasbourg, where the articles of the new Convention were discussed among experts from 47 member States. I was also rapporteur for the Assembly’s opinion on the draft Convention<sup>5</sup> which was adopted in April 2017.

4. At the seminar in Lucca, the Italian Minister of Culture, Mr Dario Franceschini, and the Minister of Justice, Mr Andrea Orlando, both underlined the importance and added value of a new legal instrument within the Council of Europe to reinforce international protection and to ensure better protection of cultural property through criminal law. The issue of protection of cultural heritage, illicit traffic and culture as an instrument of dialogue between peoples was the main theme at the G7 Culture meeting in Florence on 30 and 31 March 2017. The Italian Government deploys indeed great efforts to bring to global attention the issue of culture as a tool for integration, growth and sustainable development.

5. I fully adhere to this line of action and consider that the Parliamentary Assembly should support and encourage national parliaments in member and non-member States to sign and ratify this timely legal instrument. The European Year of Cultural Heritage in 2018 represents a window of opportunity to launch the new Convention. The present report therefore draws attention to some of the difficulties and gaps in the way the problem of illicit trafficking is currently tackled and makes a number of proposals for further action to accompany the implementation of the new Council of Europe Convention.

6. Let me thank here Dr John Bold who has assisted me in this process by drafting an expert report which he presented to the Committee on Culture, Science, Education and Media in May 2017. I also wish to thank all the other experts whom I have met during my three fact-finding visits to the United Kingdom and Greece in September 2017 and Malta in February 2018, for their insights and valuable contribution to this report.

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4. <https://rm.coe.int/16802f8129> and [https://www.coe.int/en/web/chairmanship/belgium-news/-/asset\\_publisher/QLBOIlyuxE9F/content/6th-conference-of-ministers-responsible-for-cultural-heritage/16695?inheritRedirect=false&desktop=true](https://www.coe.int/en/web/chairmanship/belgium-news/-/asset_publisher/QLBOIlyuxE9F/content/6th-conference-of-ministers-responsible-for-cultural-heritage/16695?inheritRedirect=false&desktop=true).

5. Opinion 293 (2017).

## 2. The extent of the problem and its impact

7. Cultural property in all its forms constitutes a unique and important testimony of the history and identity of different peoples and is a common asset that should be preserved in all circumstances. Cultural property has social and political value, as well as intrinsic worth. It is a basic element of local and national cultures. It stands for the ideas and achievements which have shaped human development and so throughout recorded history it has been celebrated as a manifestation of creativity but also targeted in times of conflict as a symbol of identity to be attacked in order to demoralise, defeat and eradicate populations. Because of its intrinsic worth it has been legitimately commissioned, displayed, bought and sold as well as being stolen, looted, trafficked and forged for illicit financial gain.

8. The destructive targeting of cultural property is a problem of long standing: writing 2 000 years ago, Livy recorded the systematic devastation of Rome by the Gauls in 390 BC. The English Civil War in the 17th century saw the iconoclastic destruction of religious monuments. In the 20th century, historic cities were systematically bombed in the Second World War and in 1991 the shelling of Dubrovnik, now recognised as a war crime, outraged world opinion and radically influenced international perceptions of the conflict in the Balkans. The destruction of the Bamiyan Buddhas by the Taliban in Afghanistan in 2001 represented the eradication of a cultural manifestation whose message was not shared by the perpetrators. The destruction and pillaging, and illegal excavation of antiquities in Iraq following the invasion in 2003, demonstrated the profound failures in planning for the aftermath of military intervention. In recent years there has been consistent and well publicised destruction of cultural property by ISIL in Iraq, Syria and Libya, targeting places of worship and ancient and medieval sites including Palmyra.

9. Destruction is frequently accompanied by the looting of sites and theft of artefacts from public and private collections. The Napoleonic and Second World Wars both saw the widespread appropriation of artworks in occupied territories for public and private consumption at home. In Cyprus, post-1974, many hundreds of monuments were looted with an incomparably rich cultural heritage dispersed around the world. The Iraq National Museum and numerous archaeological sites were looted after the invasion of 2003. In addition to destruction, ISIL has also marketed fragments from destroyed monuments and looted religious buildings in order to secure valuable items for sale to fund future activities. But the large-scale theft of cultural property is not confined to periods of conflict: Operation Pandora (2016), led by Spain and Cyprus, resulted in the recovery of over 3 500 cultural objects, half of which are antiquities, many stolen from museums and museum stores.

10. The scale of the problem is immense: between 2008 and 2010, the Italian Carabinieri Command for the Protection of Cultural Property recovered over 44 000 artefacts. In the discussions I had with experts in London it would appear that much of the illicit trade seems not to be in “headline” items of great cultural, artistic and financial value but in small, portable objects of low individual value, the loss of which has a cumulative, destructive effect on the heritage and on the archaeological and historical record: mosaics, cuneiform tablets, cylinder seals, jars, coins and glass.

11. Illegal trafficking has been closely linked with terrorism and organised crime. After drugs and weapons, it has been suggested that cultural property is the third most lucrative source of funding for illegal activities and in South-East Europe recent cases have demonstrated an interaction between stolen cultural property and those involved in drug or weapon trafficking. But figures inevitably are elusive, unverifiable and contested in the assessment of a long-standing illicit trade which is necessarily dependent for its success on the absence of transparency. Evidence suggests that the trade in objects looted in conflict zones follows routes already established by networks of handlers which may then be utilised for the purpose of funding terrorism. It is further suggested that it is small groups rather than mafia-like organisations which are responsible for the bulk of the activity. This is an international trade which transcends borders, generates huge profits and carries few risks. It is a trade which is very difficult to monitor or control since places of origin may not be clear and imports and exports thereafter may go through several countries and jurisdictions – designated by the International Council of Museums (ICOM) as source countries, transit countries and market countries.

## 3. Difficulties and gaps in the way the problem is tackled and their consequences

12. The identification of stolen or looted cultural property is complex because the marketed object itself, unlike drugs, is not an illegal product; illegality resides in the ownership and provenance of the object rather than the object itself. Positive identification of stolen or looted cultural property and the consequent criminalising of illegal activity will depend on a number of variables – the quality of the documentation, its availability and its circulation; the extent to which the data is accessed by those involved at all points in the

marketing chain; the due diligence in checking available databases by both sellers and buyers; the efficacy of the initial notification of loss; the alertness and knowledge of customs, police and military officers; the extent of public support for the principle of criminalising and the process of so doing.

13. Problems also arise through the very breadth of the notion of cultural property: how it is defined; which objects are included and whether they are defined by type, quality, age or significance. It must be noted also that much of the cultural property which comes onto the market is not known before it appears since it has been the subject of illegal excavation on land or retrieval from undocumented underwater sites. The problem in identifying the source of an object is compounded in those “cradles of civilisation” which have been host to many successive or overlapping cultures (and which have been particularly under threat in the 21st century).

14. There are legal discrepancies between countries which hamper the criminalisation of activities in all points of the marketing chain from source to transit to marketing to final destination, with consequent criminal exploitation of gaps and weaknesses. These gaps may be exacerbated in those jurisdictions where there is a reluctance to prosecute or where organised crime or political involvement may inhibit due process, benefiting those who may not wish to follow internationally agreed rules. Tainted titles to ownership may illegitimately obscure legal process. The delay in processing objects along the marketing chain, putting objects into temporary store, may legitimately exploit the statute of limitations and allow legitimate marketing after a period of time has elapsed since the initial loss. There is a clear need for international co-operation beyond the signing of conventions in order to incorporate their recommendations into national law and then to enforce them, with international co-operation and agreements on procedures for extradition. There is also a need for greater clarity at all levels – clarity about the objects of concern and clarity about what constitutes criminal activity, so that offences may be properly defined and understood in a manner which the general public will understand and support.

15. The International Observatory on Illicit Traffic in Cultural Goods (ICOM) has listed current legal weaknesses in combating the illicit trafficking of cultural property:

- the main international legal instruments are rarely fully implemented;
- in many countries, theft, concealment and illegal excavations are not considered as serious crimes;
- penal sanctions are unfortunately very light in a large number of countries;
- short time limitations make the legal recovery of a stolen object that much more difficult;
- few countries have specific import procedures for cultural objects;
- short deadlines for seizing complicate the work of customs officers in identifying tainted objects.

16. There is a lack of liability in acquisition of cultural property since many buyers may do so in innocence or ignorance. Tourists inexperienced in the ways of the market may innocently purchase stolen or excavated objects, believing them to be legitimate since they are supported by documentation which they do not recognise as false. This raises the question of whether the due diligence now expected in reputable dealers and auction houses should also be expected from the purchaser. It is always likely that there will be a lack of transparency where (as in the art market) much depends on confidentiality and professional secrecy: the aim must be to balance necessary market confidentiality with due diligence on provenance from both sides of the transaction.

17. There is a code of conduct for museums and in the United Kingdom self-regulatory codes of practice have been agreed within the legitimate art and antiquities market, but nevertheless it remains the case internationally that “cultural property is the last major valuable asset which can be traded without fully checking the title and the only one where concealment of provenance is defended”.<sup>6</sup> The development of information technologies has greatly increased the scope for due diligence carried out through internet searches of databases such as those hosted by Interpol, the Carabinieri (Banca Dati Leonardo) and the British Art Loss Register. However, consultation of such registers may be abused by those who would argue speciously that the non-appearance of an object on databases signifies its legitimacy. Paradoxically it is the development in information technology which has also exacerbated the problems involved in the identification of illicit dealing in works of art: the internet has become an uncontrolled market place for stolen or looted cultural property as well as being a legitimate market place for legally acquired goods.

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6. L.V.Prott, “The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects – Ten Years On”, revised 2009, HeinOnline.

18. Deliberately erroneous certification may mask the true provenance of cultural property. The falsification of documents intended to demonstrate a legitimate provenance, or tampering with existing documents to the same end should be criminalised. But it should be noted that diligence will be required to identify that which is false since further rapid, successive transactions may deliberately create an accumulation of documents with the intention of burying the true history of the object in paperwork. The forgery or falsification of documents must be distinguished from the forgery of objects.

#### 4. Brief analysis of the existing legal framework and soft law at international and European level

19. The existing conventions on offences against cultural property which underpin current legal frameworks should be seen as generally complementary and successive rather than superseding each other.

20. The destruction or damage of cultural property and the requisition of movable cultural property in the event of armed conflict were expressly forbidden except in cases of military necessity under the terms of the UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict (“The Hague Convention”, 1954). By the terms of the Second Protocol to the Hague Convention (1999), such attacks on cultural property and the theft, pillaging or misappropriation of cultural property were criminalised, each party to the convention being mandated to establish such offences as punishable in its domestic law and moreover extending criminal responsibility to persons other than those who directly commit the act. The illicit export, other removal or transfer of ownership of cultural property from occupied territory was specifically forbidden.

21. The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Sale of Cultural Property (1970) places its emphasis on prevention and international co-operation. The convention usefully begins with a broad listing of items to be regarded as cultural property, now widely adopted. It goes on to state its opposition to the illicit import, export and transfer of ownership of such property since this impoverishes the cultural heritage of the countries of origin and international co-operation is required to make such conduct illicit: States Parties should establish services to protect cultural heritage, supported by laws and regulations preventing illicit activities, including the development of national inventories of protected property, the supervision of archaeological excavations, the establishment of rules of conduct for curators, collectors and antique dealers (who should be obliged to maintain a register of origin of cultural property with details of suppliers and description and price of each item sold), and taking educational measures to stimulate respect for the cultural heritage of all States. Additionally, States are also required to take steps to recover and return it to its rightful owner with compensation paid to an innocent purchaser or one who has valid title to the property.

22. In an evaluation of the 1970 UNESCO Convention,<sup>7</sup> it was noted that certain States with large public and private collections of artefacts (“holding States”) or States with a large commercial trade in cultural objects (“art market States”) were initially reluctant to undertake controls within their jurisdiction for heritage items of other countries and to change their own laws and practices accordingly. But the convention has now been ratified by 137 States and public attitudes have been influenced: in many cases the location of an object in 1970 has become a key consideration in establishing provenance. Some problems however remained: the absence of time limitations to claims, the question of good-faith acquisition, and mandatory compensation. Difficulties also arose over the establishment of transnational responsibilities in cases in which archaeological objects were discovered by looters before they had been inventoried.

23. Mindful of the private law omissions in the 1970 convention, the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was drafted at the request of UNESCO to develop rules *inter alia* on time limitations and good-faith acquisition. Using the same categories of property as UNESCO, the convention is concerned with private law, placing greater emphasis than UNESCO on the process of restitution, stating clearly that “the possessor of a cultural object which has been stolen shall return it” (“stolen” being defined as including unlawful excavation or lawfully excavated but unlawfully retained). The convention seeks to establish common, minimal legal rules for the restitution and return of cultural objects between States, providing for contracting States to request the court or competent authority of another contracting State to order the return of an illegally exported cultural object within specified time limits, varying according to circumstance and with compensation payable if the object was acquired in good faith and due diligence exercised (the need for which has had a growing influence on art and heritage professionals).

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7. L.V. Prott, “Strengths and weaknesses of the 1970 Convention: an evaluation 40 years after its adoption”, UNESCO 2012.

24. A further collaboration between UNESCO and UNIDROIT was prompted by the need to clarify the issue of whether illegally excavated antiquities should be treated in the same way as those which had been stolen, a question relating to the ownership of the undiscovered which was addressed in the jointly issued Model Provisions on State Ownership of Undiscovered Cultural Objects (2011). These guidelines were devised for the benefit of States in the process of drafting or strengthening national legislation: undiscovered cultural objects may be in the soil or underwater and should be deemed to be owned by the State provided that there is no prior existing ownership; cultural objects excavated contrary to the law or licitly excavated but illicitly retained are deemed to be stolen and the transfer of ownership of such an object is therefore null and void.

25. While the UNESCO and UNIDROIT conventions have been the principal international instruments in combating the illegal trafficking of cultural property, other conventions have contributed in addressing aspects of the wider problems involved. Recalling the deliberate destruction of the Bamiyan Buddhas (Afghanistan, 2001), UNESCO proclaimed a Declaration concerning the Intentional Destruction of Cultural Heritage (2003), urging States to take all appropriate measures to prevent such destruction and to criminalise those who commit or order to be committed acts of intentional destruction of cultural heritage of great importance for humanity.

26. The United Nations, responding to the transnational threats posed by organised crime and corruption, both of which bear on the trafficking of cultural property, also produced two successive, substantial and detailed conventions which usefully share a broad definition of “property”. In both the United Nations Convention against Transnational Organised Crime (2000) and the United Nations Convention against Corruption (2003), “property” is defined as “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets”.

27. Building on previous instruments, the General Assembly of the United Nations, “[a]larmed at the growing involvement of organised criminal groups in all forms and aspects of trafficking in cultural property and related offences”, in 2014 adopted the non-binding [Resolution 69/196: International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Heritage and Other Related Offences](#).<sup>8</sup>

28. In response to the threat posed by terrorism to international peace and security, the United Nations Security Council in 2015 adopted Resolution 2199, condemning trade with terrorist groups and threatening financial sanctions. The resolution condemns the incidental and deliberate destruction of cultural heritage in Iraq and Syria, the looting and smuggling of artefacts in order to generate terrorist income for recruitment and operational purposes, reaffirming that all member States should take steps to prevent trade in Iraqi and Syrian cultural property by prohibiting cross-border trade and calling *inter alia* for the support of UNESCO and Interpol.

29. Acknowledging the resolution, Interpol has recognised the increase in illicit trafficking from Middle Eastern countries affected by armed conflict, creating a black market in works of art which is becoming as lucrative as those for drugs, weapons and counterfeit goods. Interpol is working to raise awareness of the problem among relevant organisations and the general public, encouraging not only the police but also art and antique dealers to exchange information. The organisation has acknowledged that for its effectiveness in combating illicit trafficking in cultural heritage it depends on its networks of information and therefore in a recent publication has urged individual countries to establish specialised police units at national level to investigate cases of trafficking, creating national databases which can then be connected with its own Stolen Works of Art Database. It gives the examples of the Carabinieri Command for the Protection of Cultural Heritage (*sic*) (Italy), the National Centre for the Protection of Cultural Heritage (Argentina) and the FBI Art Crime Team (United States): “The history of mankind is at stake in this fight against the illicit traffic and forgery of works of art worldwide. Every country can and should contribute.”<sup>9</sup>

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8. The guidelines are arranged in three substantial, wide ranging sections:

- crime prevention strategies (inventories and data collection, roles of institutions and the private sector, codes of conduct and best practice, market monitoring, education and public awareness – fostering a culture of concern about trafficking);
- criminal justice policies (international treaties, criminalisation of conduct – trafficking, illicit export and import, theft, looting, conspiracy and laundering, damaging or vandalising – confiscation and investigative measures);
- international co-operation (jurisdictional basis, extradition, seizure and confiscation, co-operation among investigating authorities, restitution of property).

9. Interpol, Creating a National Cultural Heritage Unit, 2017.

30. Working together transnationally is recognised throughout the current conventions, resolutions and guidelines as being fundamental to future success in combating the illicit trafficking of cultural property: it is a global issue with a profound national and local impact. It is in this spirit of working together that in 2013 ICOM published a Code of Ethics for Museums, seeing museums as being at the core of the problem as victims of the illegal activity. The Code stresses the need for the full documentation of collections, a valid title (an indisputable right to ownership) for any object which is acquired, with due diligence applied in investigating provenance: “Museums should not acquire objects where there is reasonable cause to believe their recovery involved unauthorised or unscientific fieldwork or intentional destruction or damage of monuments ... or ... sites.” The museum should respect international conventions – it has a duty to inform the appropriate authorities if it believes objects have been illegally or illicitly acquired and should be prepared to take steps to ensure that objects so acquired should be returned. Museum staff should make an exception to customary professional confidentiality by helping the authorities to investigate possible stolen cultural property.

31. ICOM has attempted to reach beyond its immediate professional audience in producing online an accessible guide, the ICOM International Observatory on Illicit Traffic in Cultural Goods, first defining its subject: “Unlike other illegal goods being trafficked, the definition given to illicit trafficking in cultural goods does not depend on the nature of the good being trafficked, but rather on the nature or the ownership of the cultural object.” It goes on to consider who is involved – tourists, random buyers and the ill-informed as well as criminals. The lack of due diligence in the market remains a concern but ICOM has seen a shift in attitude towards the ethics of acquisition in major auction houses, if not in smaller ones.

32. In the view of ICOM, the fight against illegal traffic is constrained (for the reasons listed in paragraph 15 above). Such difficulties will need to be addressed and overcome in successfully combating the illegal trade in cultural property, a fight which will require the support of the general population as well as the ratification and implementation of conventions.

33. Since trade in general and trade in cultural property in particular are transnational in scope, European directives and regulations have international consequences even if they are couched as beginning at a European level. In 1992, the Council of the European Communities issued Regulation (EEC) 3911/92 on the export of cultural goods, to ensure that they are subject to uniform controls at the Community’s external borders. Export licences are required and may be refused “when the cultural goods in question [defined in a lengthy annex] are covered by legislation protecting national treasures of artistic, historical or archaeological value”. The following year, the Council [Directive 93/7/EEC](#) (1993) on the return of cultural objects unlawfully removed from the territory of a member State was designed to ensure the return of national treasures unlawfully removed from public, inventoried collections; the possessor would be entitled to compensation if it could be proved that due care had been exercised in the acquisition.

34. Council Regulation (EC) 116/2009 (2008) on the export of cultural goods clarified the amended measures to ensure that exports of cultural goods are subject to uniform controls at the Community’s external borders. Regulation (EU) 1024/2012 of the European Parliament and of the Council on administrative co-operation through the Internal Market Information System, describes the centralised communication mechanism designed to facilitate cross-border exchange of information, so improving the functioning of the internal market.

35. [Directive 2014/60/EU](#) (2014) on the return of cultural objects unlawfully removed from the territory of a member State clarified previous directives and qualified the provisions of Regulation 1024/2012: the relevant provisions on free movement of goods within the internal market do not preclude prohibitions or restrictions on import and export of national treasures as defined by individual member States. The scope of [Directive 93/7](#) was here extended to include any cultural object defined by a member State as possessing artistic, historic or archaeological value, whether part of public or other collections and whether originating from regular or clandestine excavations. The time limit for bringing return proceedings is extended from one to three years and the 30 years directive subject to extension to 75 years under certain circumstances (except in member States where proceedings are not time-limited). The Council recommends in this directive that member States consider the ratification of the UNESCO and UNIDROIT conventions: “It is desirable to ensure that all those involved in the market exercise due care and attention in transactions involving cultural objects. The consequences of acquiring a cultural object of unlawful origin will only be genuinely dissuasive if the payment of compensation is coupled with an obligation on the possessor to prove the exercise of due care and attention.” This includes documentation of provenance, authorisation for removal, character of the parties, price paid, consultation of accessible registers, etc. Any person, particularly those involved in the market, should have easy access to public information on cultural objects which are classified as national treasures by member States.

36. In July 2017, the European Commission put forward new rules for submission to the European Parliament and the Council of the European Union to clamp down on the illegal import and trafficking of cultural goods (which are at least 250 years old) from outside the European Union, proposing a new import licensing system requiring proof that goods have been exported legally and giving customs officers the power to seize and retain goods when it cannot be demonstrated that they have been legally exported.

37. The Council of Europe's 1985 European Convention on Offences relating to Cultural Property aimed to promote co-operation between States in combating illicit trafficking in cultural property through criminal law: each party was enjoined to take appropriate measures to enhance public awareness of the need to protect cultural property and to co-operate in the prevention of offences and the discovery of property after such offences, with a view to restitution. Each Party was to establish its competence to prosecute any offence relating to cultural property committed on its territory, including territorial waters and airspace, or outside its territory by one of its nationals. This convention never entered into force.

## **5. The new Council of Europe Convention on Offences Relating to Cultural Property**

38. The new Convention is predicated on the belief that cultural property is fragile and irreplaceable. Such property is targeted with alarming frequency in both peace and war: cultural objects have been stolen and looted and important archaeological sites have been illicitly excavated and destroyed. Trafficking is transnational: there is a black market trade in antiquities, art and artefacts which may fund corruption, terrorism and violence. In recent years, western markets have seen a major increase in the number of looted and stolen antiquities, notably from important sites in Iraq and Syria. The struggle against trafficking has changed in recent years since the black market has moved away from traditional means of trading towards social media and the Deep Web.

39. The purpose of the new Convention is to:

- prevent and combat the destruction of, damage to, and trafficking in cultural property by providing for criminalisation of certain acts;
- strengthen crime prevention and the criminal justice response;
- promote national and international co-operation, thereby protecting cultural property.

40. The definition of movable cultural property follows the UNESCO Convention and the EU [Directive 2014/60](#) since these have largely been accepted around the world, including by all Council of Europe member States that have signed or ratified the UNESCO Convention.

41. Chapter II of the Convention, on the substantive criminal law, is intended to ensure the criminalisation of the different elements of the phenomenon of trafficking in cultural property, including aiding and abetting such offences, when they are carried out intentionally. These offences (in summary) comprise theft, unlawful excavation and removal, illegal importation, illegal exportation, acquisition, placing on the market and falsification of documents. It also includes destruction and damaging of cultural property (prompted by the demolition carried out at major cultural sites in Mali, Iraq and Syria) and the unlawful removal of any element of such property with a view to importing, exporting or placing on the market.

42. Each Party to the Convention is enjoined to apply “effective, proportionate and dissuasive” penalties for criminal offences involving cultural property which may involve deprivation of liberty and/or monetary sanctions.

43. It is recommended that Parties taking legislative or other measures should ensure that those in charge of investigations are specialised in combating trafficking in cultural property and are appropriately trained.

44. General principles governing the Convention include the consideration of:

- the establishment and development of inventories and databases of cultural property (which may include safeguards limiting accessibility to keep some information, such as location, confidential);
- the introduction of import and export control procedures providing appropriate certification of property;
- the introduction of due diligence provisions for dealers, auction houses and others involved in the trade in cultural property, together with the obligation to maintain records of all transactions (which may be made available to the competent authorities);
- the establishment of a means for co-ordinating activities relating to the protection of cultural property;

- the promotion of awareness-raising campaigns addressed to the general public about the protection of cultural property and the threats to which it is subject;
- the encouragement of both State-controlled and private museums, galleries, auction houses and dealers to comply with existing ethical rules;
- ensuring that internet providers take proactive measures to fight criminal offences against cultural property by reminding buyers of the need to verify the provenance of such property;
- adopting measures to prevent free ports from being used for trafficking cultural property by allowing the storage of illicitly traded artworks;
- enhancing information exchange to enable customs and police authorities to take more effective preventive measures in cases of cultural property at risk.

45. It is believed that information exchange and strong and robust international co-operation are key to the effective combating of the illicit trade in cultural property. Consultation and data collection are required both nationally and internationally – States Parties should explore the sharing or interconnecting of national inventories or databases on cultural property to enhance information both on property which has been the subject of an offence and property which is potentially endangered in times of instability or conflict. It is indeed regrettable that the proposal of the PC-IBC to set up a “European observatory” with the task of gathering and facilitating exchange of data was not retained in the final round of negotiations. I raised this point in [Opinion 293 \(2017\)](#) which was adopted by the Parliamentary Assembly in April 2017.

46. In summary, this is an innovative Convention, representing the next step in the sequence of instruments which began with the Hague Convention of 1954, in calling explicitly for the criminalisation of offences related to cultural property (and so removing the long-standing difficulties caused by disparities between civil and criminal laws and between States), and addressing the difficult issue of the wide range of different actors engaged in illegal trafficking. Although the new Convention reflects rules that are already part of national and international laws, its success will depend on the interests of individual States, their resources and their willingness to cede a part of their sovereignty in harmonising their national laws in accordance with international criminal legislative systems; balancing the respect for cultural differences on which national laws depend, with the desirability of harmonising those laws for purposes of international co-operation in combating a shared transnational problem.

## **6. Proposals for further action to accompany the new Council of Europe Convention**

47. During my fact-finding visits to the United Kingdom, an art market country (11-12 September 2017) and Greece, a country with a wealth of heritage sites and antiquities (26-27 September 2017), I have discussed a number of important issues with relevant government representatives (responsible for culture, legal affairs, foreign affairs, police and customs), with experts in the field (including archaeologists and conservationists in museums, art dealers, directors of auction houses and lawyers), with university researchers and non-governmental organisations (NGOs). Their insight and sometimes contradictory positions have led me to draw the following conclusions:

### **6.1. Ratification and implementation of the Convention**

48. A first imperative following the adoption of the new Convention is to encourage its ratification and implementation. The Convention will enter into force following the first five ratifications, including at least three member States of the Council of Europe.<sup>10</sup> In the coming period, the Council of Europe should consider organising national or regional conferences for relevant high-level government representatives in order to improve official awareness and understanding of the Convention. These conferences should be accompanied by events involving national parliamentarians to promote the ratification and implementation of the Convention. These activities are of crucial importance since this is the only international treaty dealing specifically with the criminalisation of the illicit trafficking of cultural property. A Committee of the Parties convened by the Secretary General of the Council of Europe will monitor the implementation of the Convention, enable the exchange of information and make appropriate recommendations. It will be necessary in support of implementation to argue for the maintenance of a balance between the harmonisation of systems of law and the maintenance of cultural differences which will continue to be respected.

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10. See Article 27 of the Convention, <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680710435>.

## **6.2. Co-ordination of competencies**

49. I believe that a concerted effort is required to encourage the co-ordination of competencies and the sharing of information within States. Sustainable mechanisms within States are needed to eliminate the risk of activities being vested with individuals (who may move on) rather than being embedded as responsibilities within continuing institutions – responsibility for the maintenance of databases would be one such activity. Institutional stability and longevity, allowing for the building up of experience and data and the development of reliable contacts in associated organisations, police forces and the art market, at home and abroad, will be crucial.<sup>11</sup>

50. Co-ordination within States may begin with inter-ministerial co-operation and include collaboration with the police, public agencies and representatives of the trade in art and antiquities, leading potentially to the establishment of a central national authority. Such an authority may be a new entity, properly funded, with clear responsibilities and remit for action, or it may be a small executive body responsible for ensuring that existing authorities are empowered and funded, for example ensuring that a well-staffed police unit continues to take the lead in investigating cases of potentially illicit trafficking, supported by teams of experts in the many disciplines involved in the discovery of artefacts and their subsequent transit and marketing.

## **6.3. International co-operation and information management**

51. The key to the success of the new Convention and to the fight against the deliberate destruction and illegal trafficking of cultural heritage lies in international co-operation, enabling the exchange of information, the harmonisation of laws (co-operation on gathering evidence, convicting perpetrators and recovering objects) and the standardisation of procedures (import-export requirements, documentation and expectations of due diligence at all links in the marketing chain). To fight against trafficking in cultural property, the application of effective minimum standards, such as those set out in the Convention, is necessary to facilitate and co-ordinate international co-operative activities.

52. The various Council of Europe conventions on international co-operation in criminal matters, such as the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30), the European Convention on Extradition (ETS No. 24) and the other Council of Europe treaties in this field, will play an essential role in ensuring that those who perpetrate crimes targeted by the new Convention can be effectively prosecuted and sentenced. Together with the different instruments developed by the United Nations and the European Union, the best way to achieve these objectives is to make current approaches to international co-operation in criminal matters more efficient by encouraging the effective use of these current instruments.<sup>12</sup> Furthermore, there needs to be improved concrete and practical cross-border co-operation between law-enforcement bodies, including the police and judiciary, to tackle this transnational phenomenon. In this respect, I would like to support further efforts to establish joint investigative teams composed of law enforcement, customs officials, prosecutors, judges, and experts in arts and antiquities as an effective way for States to work together on complex transnational cases and would encourage ratification of the Second Additional Protocol to the Mutual Legal Assistance Convention (ETS No. 182).<sup>13</sup>

53. In an illicit trade which inevitably is characterised by secrecy and obfuscation, we still require a better overview of the workings and impact of this global phenomenon in order to better combat it. The problem should be attacked at all points: source, transit and final destination. It is in the interests of the legitimate art market, whose reputation is damaged by the illegal activity of others, that it should participate in all substantive discussions in combating trafficking, urging adherence to codes of practice, explaining proper procedures to the wider public and participating fully in outlawing illegitimacy. As the number of international treaties and conventions grows, as the number of guidelines increases and as national laws evolve in all jurisdictions, there is more than ever a need for information management, not just pertaining to information about objects but also about the regulatory procedures which apply to their transit and sale.

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11. See article 20.d of the Convention; See also Marie Cornu, "Implementation of the 1970 UNESCO Convention in Europe", UNESCO 2012, and Interpol, "Creating a National Cultural Heritage Unit", 2017.

12. The website of the Council of Europe's Committee of Experts on the Operation of Council of Europe Conventions on Co-operation in Criminal Matters (PC-OC) contains relevant legal and practical information on the application of the Council of Europe treaties, but also links to European Union, United Nations and regional treaties of relevance in this field. See: [www.coe.int/tcj](http://www.coe.int/tcj).

13. See Article 19 of the new Council of Europe Convention on Offences related to Cultural Property.

#### **6.4. Databases and inventories**

54. Databases and inventories are critical in cultural heritage management, providing the basis for the care and conservation of objects and sites, the dissemination of knowledge, sharing information and combating trafficking.<sup>14</sup> The preparation of inventories for the safeguarding of cultural property is specifically recommended as a peacetime task in the Second Protocol of the Hague Convention (Article 5). In order to be effective, inventories must be regularly maintained with new information added and obsolete and superseded information deleted.<sup>15</sup> Interpol's Stolen Works of Art database comprises more than 50 000 items submitted by 133 countries; Interpol believes that this would be significantly increased if countries established their own databases and shared the data, committing to updating it regularly.

55. Information is a crucial requirement for effective policing and customs checking. Both Interpol and UNESCO recommend the use of the Object ID standard developed by the Getty Information Institute, now hosted by UNESCO and widely used in creating a basic record of objects. Since databases are crucial to rapid information-sharing and the dissemination of information, it is important to record quickly the basic "core" data which can enable identification. Steps should be taken in the establishment of databases to provide protocols and mechanisms dictating levels of access so that confidential information may remain with the host body rather than being shared. The need for confidentiality and the notion of the host body owning its own information are both impediments to sharing. This may be overcome by sharing only the uncontroversial, verifiable core information, retaining privately that which is speculative, contested or a threat to individual liberty. While the sharing of digitised information becomes ever easier and technically cheaper to accomplish, the compilation of inventories remains a time-consuming and skilled task requiring investment and training even at the basic level of object identification and data entry. So in the service of combating the illicit trafficking of art and artefacts, phased inventory programmes are recommended: consideration should be given to beginning with the inventorisation of "hot-spots" – Iraq and Syria – where the need for protection and identification is most pressing. The funding of such databases in combat zones should form part of any strategy following occupation and in advance of potential conflict.

56. Object ID stresses the fundamental importance of the photograph as part of the record. The digitisation of photography and the almost universal capacity for the taking and instantaneous dissemination of photographs through websites, email and social media has removed a previously major impediment to the identification of objects and the delay in transmission of visual information.

#### **6.5. Documentation**

57. The photographic requirement should not be confined to the compilation of inventories but should also be mandatory in import and export procedures, embedded in, rather than annexed to, the documentation, in order to combat the widespread falsification of documents which characterises the illicit trade in antiquities and works of art. Variations in the standards of documentation required in different jurisdictions may be exploited by traffickers. As a follow-up to the Convention, I consider that it would be desirable to agree – in consultation with the responsible authorities, museums and galleries, art dealers and auction houses – the standard requirements for documentation of art and antiquities in transit, including provenance (the location of the object since at least 1970, the date of the UNESCO Convention) and appearances on the market. This should be done bearing in mind the need to balance the requirements for the identification of illegality with the maintenance of straightforward transit within the legal market and between museums and galleries for purposes of loan exhibitions.

#### **6.6. Due diligence**

58. A key issue would be the codification of the requirement of due diligence for auction houses and dealers (with an obligation to establish records of transactions),<sup>16</sup> and individual purchasers, following the creation of the ICOM Code of Ethics for Museums. Any further regulation of the traditional art market, going beyond the self-regulation which already exists in some countries, will require the striking of a balance between public interest in protecting cultural property and the need for confidentiality and the protection of the interests of private owners and dealers, minimising any risk to the free movement of legally marketed goods. Regulation of internet transactions will require the full co-operation of internet providers.<sup>17</sup> If dealers, auction

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14. See Articles 20.a and 10./ of the new Council of Europe Convention on Offences related to Cultural Property.

15. Although deletion should be considered with care since records pertaining to cases solved may have a continuing value.

16. See article 20.e of the new Council of Europe Convention on Offences related to Cultural Property.

17. Ibid.

houses and private owners see that they are not only saved from potential criminal activity but will actually benefit from further codes of conduct and due diligence through the creation of a more open and transparent market, they will be more likely to be supportive of the endeavour.

59. In exercising their own due diligence, private buyers should be encouraged to buy only from reputable dealers who are signed up to codes of practice. Due diligence would also be facilitated through the creation of “passports” for cultural objects, detailing provenance and transactions, although it should be acknowledged that the creation of such passports would be resource-intensive. It would be desirable to provide prospective buyers with guidance on what is expected in fulfilling the requirement for due diligence, beginning with the explanation that the expectation is not necessarily onerous: “due diligence” may be interpreted as the “diligence which is due” – it should be proportionate and will vary according to objects and circumstances. Guidance for private buyers could be developed by established dealers and auction houses in association with relevant agencies and government departments.

### **6.7. Restitution**

60. The complexity of the return of illicitly traded art and antiquities falls outside the remit of the new Convention since it is a logical consequence of the criminalisation process but not a substantive part of that process. Restitution may be best treated through bilateral or multilateral agreements, outside a formal, internationally agreed convention, but without derogating from the Council of Europe Convention. A case-by-case approach may be desirable, not least since it is not always clear where rightful ownership may lie and moreover whether safety and security following return can be guaranteed. It may be noted that in both France and the United Kingdom there are museum stores holding antiquities from Iraq pending their return to a country in which the responsible institutions are once more fully functioning, with their holdings protected. I would suggest here that bilateral agreements may represent a suitable model. The questions surrounding the procedures required to resolve recent issues of loss and illicit trade are complex, subject to detailed negotiations, often with a *quid pro quo* attached. The question of how to resolve such long-standing issues as the contested ownership and location of the Parthenon Marbles, held in London, will certainly require bilateral talks, possibly mediated by international organisations, in order to arrive at a resolution which so far has proved elusive.

### **6.8. Strategies to protect heritage in potential combat zones**

61. It is surely incumbent upon occupying countries in combat zones and non-combatant onlookers alike to have strategies and mechanisms in place in advance of potential crises: the wartime equivalent of earthquake precautions, enabling immediate action to be taken in the event of disaster. Since it is clear that the onset of conflict prompts looting through networks which are already established and also that looting continues after the cessation of hostilities, there is a need for international discussion and agreement about the strategies required for the protection of threatened heritage in archaeologically sensitive potential combat zones. I wish to refer here to the valuable work undertaken by the International Committee of the Blue Shield<sup>18</sup> which was set up following the 1954 Hague Convention and which brings together professionals from the following sectors: archives (including audiovisual archives), museums, libraries, monuments and sites.<sup>19</sup> In February 2016, an initiative was launched by UNESCO in co-operation with the Italian Government to set up a training centre for the United Nations Blue Helmets for Culture in Turin. A mixed team of approximately 30 civilian experts (historians, scholars and conservationists) and 30 officers from the art squad in Italy<sup>20</sup> would be training military personnel to develop capacity to protect the cultural heritage in conflict zones more adequately.<sup>21</sup>

### **6.9. Training**

62. Drawing on the existing experience within museums, police forces and the military, further accredited training programmes should be developed for all those who are professionally concerned with the protection of cultural property, including museum staff, military personnel, police, customs officers and archaeologists.<sup>22</sup> A range of specialisms will be required, including the identification of objects and potential sites of illicit

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18. <http://icom.museum/programmes/museums-emergency-programme/international-committee-of-the-blue-shield/>.

19. The International Council of Archives (ICA), the International Council of Museums (ICOM), the International Federation of Library Associations and Institutions (IFLA), the International Council on Monuments and Sites (ICOMOS) and the Coordinating Council of Audiovisual Archives Associations (CCAAA).

20. Carabinieri per la Tutela del Patrimonio Culturale.

21. <http://art-crime.blogspot.fr/2016/02/the-uns-blue-helmets-for-culture.html>.

22. See Article 20.h of the new Council of Europe Convention on Offences related to Cultural Property.

archaeological activity, prevention of such illicit activity, conservation of objects, publicity and awareness raising, data capture and entry onto databases, and dissemination of information. Significant and successful protection and training initiatives in Iraq have been carried out by the Italian Carabinieri, by Polish forces and archaeologists, by archaeologists from French, German and Italian archaeological institutes, and from the British Museum.<sup>23</sup> Although strategies have been developed for specific sites in a particular situation, the great experience gained should be transferable to other situations which may arise in the future.

### **6.10. Raising public awareness**

63. The problem of illegal trafficking is not just a matter of concern for experts and law-enforcement agencies. It is an issue which affects us all. Raising public awareness will be critical to the success of the Convention<sup>24</sup> since its proper implementation will require public support in both exporting and importing States. Clear statements of the problem and the ethical and legal issues are vital to the acceptance of the Convention and its implementation: laws and regulations should be explained in language accessible to non-specialists in order to achieve an informed consensus of opinion. The UNESCO Handbook [Legal and Practical Measures against Illicit Trafficking in Cultural Property](#) (2006) and Interpol's [Creating a National Cultural Heritage Unit](#) (2017) are models of what may be achieved in describing the problem of trafficking and the strategies for combating it. The Council of Europe should produce an equivalent general publication to accompany the new Convention, encouraging ratification and implementation with full public support.

64. This may be supported by political lobbying, newspaper and television exposure, publicity at heritage events, educational programmes and the dissemination of information on the internet and through social media. In addition to publications, exhibitions on illicit excavations and trade have been mounted successfully in both Greece and Italy. These may then travel to other locations within the country and internationally, supplemented with local examples at each venue to bring a greater urgency and topicality to the display.

65. There is a tendency for media interest to move on from looting in one combat zone to another once a more important political story evolves elsewhere. This should be countered by greater continuity of endeavour, appropriately funded, from the military and civil authorities in countries where the "farming" of antiquities is a continuing problem. The obligations of occupying powers to prohibit and prevent the illicit removal and export of cultural property (under the terms of the Hague Convention) are clearly stated in UNESCO's *Protection of Cultural Property Military Manual* (2016). The raising of awareness among the public in conflict zones will be crucial to the success of these initiatives.

66. Awareness raising is also required in the market place where the purchase for a small amount of money of an illegally trafficked ancient coin on the internet may seem innocuous to an individual buyer. Cumulatively such sales may bring significant amounts of money to the seller and be highly destructive of the archaeological and historical record. Public information campaigns together with warning signs on the internet are required. Regulation of internet transactions will require the full co-operation of internet providers.<sup>25</sup> Internet marketing platforms such as eBay should be encouraged by national jurisdictions to publicise and prevent potential illegality in transactions and insist on the presentation of documentation on provenance alongside the object.

### **6.11. European Observatory**

67. It is a matter for regret that the absence of funding has so far prevented the establishment of a European observatory on offences relating to cultural property. As mentioned earlier, this was the subject of discussion and negotiation among the experts within the PC-IBC. The observatory was intended to be a central mechanism to support the Committee of the Parties in facilitating implementation of the Convention. I would strongly argue that the potential added value of such a permanent institution, systematically monitoring and co-ordinating efforts in fighting cultural property crimes, is such that ways of establishing it should continue to be explored. In the meantime we recommended in the Assembly [Opinion 293 \(2017\)](#) that one of the important intended functions of the observatory, that of maintaining a record of offences relating to cultural property, should be discharged by the Committee of the Parties, which will be responsible for monitoring and facilitating the implementation of the new Convention and empowered to make recommendations.

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23. P.G. Stone and J.F. Bajjaly, *The Destruction of Cultural Heritage in Iraq*, 2008.

24. See Article 20.g of the new Council of Europe Convention on Offences related to Cultural Property.

25. See article 20.e of the new Council of Europe Convention on Offences related to Cultural Property.

## 7. Conclusion

68. By obliging States to criminalise the deliberate destruction and illegal trafficking of cultural heritage, to co-operate and harmonise national laws, the new Council of Europe Convention on Offences related to Cultural Property will build on previous conventions (the Hague, UNESCO and UNIDROIT Conventions) and the various European Union regulations and directives, and therefore “close the circle” by addressing the gaps which remain in the criminal law. Its wide ratification, entry into force and implementation are therefore crucial.

69. To this end, I would propose the following initiatives that should be undertaken by the Council of Europe to adequately promote the ratification of the new Convention and its implementation. Holding national and regional conferences at this early stage would create a good opportunity for the member States to discuss the thrust of the Convention and its implications in both legislative and policy terms, which would facilitate ratification. Furthermore I believe that some member States may require guidance through “standard model law” to adapt their legislation in order to ratify the Convention. As regards the implementation of the new Convention, alongside the existing conventions and European Union directives and regulations, I firmly believe member States would need a permanent platform to gather and exchange information in order to counter illicit trade in cultural property most efficiently. I would therefore recommend that the Committee of Ministers explore possibilities of creating and funding such a platform (an observatory) together with UNESCO, Interpol and the European Union. Perhaps this could be also envisaged through an enlarged partial agreement similar to the Cultural Routes Programme. The Council of Europe should undertake a feasibility study to this end. Finally, with a view to widening co-operation through criminal law globally, I would suggest co-operating with UNESCO to promote the new Council of Europe Convention for ratification by non-member States.