

The Nicosia Convention: A Global Treaty to Fight Cultural Property Crimes

Introduction

On April 1, 2022, the Council of Europe Convention on Offences relating to Cultural Property (Nicosia Convention or Convention) entered into force.¹ It was opened for signature by any state worldwide on May 19, 2017, and expresses the profound relevance of cultural heritage as the only fundamental testimony of the history and identity of different people, deserving the highest standards of protection so they can be enjoyed by both present and future generations.²

While there are numerous international instruments for the protection of cultural property, the Nicosia Convention is the first treaty open to any country that specifically treats common cultural heritage of humanity through a criminal law perspective, bridging the gaps in the existing international legal framework. The protection of cultural property is accomplished through criminalization of the unauthorized taking and sale of cultural property (Articles 3-11), the identification of proportionate, effective, and dissuasive sanctions when criminal offenses are committed (Article 14), as well as cooperation between national authorities to facilitate the consultation and exchange of information pertaining to cultural property that has been subject to an offence (Articles 19 and 21).

The Convention was drafted to complement the existing global protection regime concerning cultural heritage, operating in harmony with, and building upon, existing international instruments such as the 1954 Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict³ and additional protocols,⁴ the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export

and Transfer of Ownership of Cultural Property,⁵ and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.⁶

This approach of building on previous agreements was consciously adopted by the drafters to emphasize the importance of concerted international action regarding cultural property crimes and to further facilitate the widest possible cooperation between all states to preserve precious art and antiquities for present and future generations.⁷ Accordingly, even states that are not members of the Council of Europe but that meet the conditions enshrined in Article 28 may join the Convention.⁸

The far-reaching scope of the Convention is also reflected in Article 2 containing the definitions of moveable and immoveable cultural property “largely accepted at the global level.”⁹

Within the Council of Europe framework, the Nicosia Convention introduces a new normative regime to strengthen the protection of cultural heritage, replacing and superseding the 1985 “Delphi Convention”¹⁰ that no country ratified due to differing perspectives among Council of Europe member states regarding the desirability of criminalizing certain cultural heritage offences. Some “importing” countries, for example, strongly opposed the criminalization of certain activities, such as the illicit excavation, theft, or unjustified possession of cultural goods. The Nicosia Convention is the result of efforts of the Council of Europe intergovernmental Committee appointed to reach a compromise to enable the largest possible ratification.¹¹ Notably, Article 30 of the Nicosia Convention allows parties to reserve the right to provide non-criminal instead of criminal sanctions for certain conduct.

A treaty of this nature was necessary within the European framework to ensure that these offenses involving cultural property would be criminalized. Whilst the offenses in question certainly concern “areas of particularly serious crime with a cross-border dimension” under Article 83(1) of the Treaty on the Functioning of the European Union (TFEU), they are neither listed under “Eurocrimes” enabling EU institutions to adopt “minimum rules relating to the definition of crimes and sanctions,” nor do they fall under the material scope of competence of the new European Public Prosecutor's Office, limited to criminal offences affecting the financial interests of the European Union.¹²

Despite being ratified by only six states to date, the Nicosia Convention is the main international instrument dedicated to the criminal protection of cultural heritage. Its drafting was accomplished through intense collaboration between numerous international organizations, such as the EU, UNIDROIT, UNESCO, and the United Nations Office for

Drug Control and Crime Prevention (UNODC), confirming the global reach of offenses against cultural heritage as well as the need to prioritize the fight against this new form of transnational crime.

The Substantive Criminal Law Provisions

The substantive criminal law provisions of Chapter II are the core of the Nicosia Convention. Reflecting the “dynamics” of the phenomenon of trafficking in cultural property, they are intended to cover a variety of offences linked to the fact that cultural goods that are stolen or illicitly excavated in peacetime or during armed conflicts are usually furtively transported abroad after their removal.

Chapter II first obliges state parties to ensure the criminalization of offences directly and intentionally affecting the integrity of tangible cultural property. More precisely, this obligation requires states to apply their respective domestic law provisions in the course of criminal proceedings and impose criminal sanctions for certain acts such as theft,¹³ unlawful excavation,¹⁴ illicit trafficking,¹⁵ illegal acquisition¹⁶ and placing on the market,¹⁷ destruction or damage of cultural property,¹⁸ and the intentional falsification of documents.¹⁹

Second, state parties shall take the necessary measures to establish jurisdiction over the offences referred to in the Convention. This obligation means that each party is required to set “minimum rules” in its domestic law enabling its courts to punish these offences, for example, when they are committed on its territory.²⁰

Finally, in compliance with the current legal trend recognizing the liability of legal persons for criminal offences, the Nicosia Convention covers corporate liability in addition to individual responsibility for cultural property crimes. Article 13 requires the parties to establish liability (criminal, civil, or administrative) of an entity for criminal offences referenced in the Convention “when committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within that legal person.”

Transnational Crimes and Cultural Heritage

The Nicosia Convention recognizes the challenges of cross-border crimes and the connections between crimes involving cultural property and other criminal offenses.²¹ Trafficking in cultural property is intrinsically a transnational phenomenon given that experienced thieves and smugglers are all too aware of the legal discrepancies between

states and seek to exploit loopholes or shortcomings in the law to maximize profits from their misdeeds and reduce the likelihood of capture. This is evidenced by the fact that stolen or illicitly excavated artefacts are often moved to countries where they can be hidden easily from custom and border officials, where tainted titles can be laundered (for instance, through norms protecting *bona fide* acquirers or statutes of limitation) and then sold to private individuals, institutional collectors, established art dealers, or private galleries.

Moreover, as reported in several UN Security Council resolutions, illicit trafficking in cultural goods, second only to the arms and drugs trade, is one of the most profitable forms of organized crime and can culminate in financing corruption, terrorism, and violence, among other crimes.²² Unsurprisingly, as recognized in the Preamble, the Nicosia Convention is aimed at preventing and combating cultural property crimes within the broader framework of the fight against terrorism and organized crime.

In this regard, at the universal level, despite the 1970 UNESCO Convention and other UN initiatives adopting a *Model Treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property*,²³ the legal framework of the Nicosia Convention draws from the 2000 UN Convention against Transnational Organized Crime.²⁴

Conclusion

The recent deliberate destruction of World Heritage Sites in Mali, Iraq, and Syria by terrorist groups, as well as the evolution and consequent expansion of the illicit art market, increasingly through social media and the deep web,²⁵ stress the urgency of concerted action by the global community to protect, restore, and preserve the cultural heritage of humanity. Entry into force of the 2017 Nicosia Convention, intended to be applied beyond the Council of Europe, is therefore a crucial step in this direction, introducing preventive, investigative, and punitive measures to end the impunity of those who intentionally destroy, steal, unlawfully excavate, or trade cultural property.

About the Author: Anna Oriolo, Ph.D. is Associate Professor of "International Law" and of "EU Law"; Lecturer of "European and International Criminal Law," "Diplomatic and Consular Law," "International Law,;" Key Teacher of *Jean Monnet* Module "EU Western Balkans Cooperation on Justice and Home Affairs" University of Salerno, Italy; Member of the Editorial Board of the *Journal of International Criminal Law* (JICL); Member of the Referees Committee of *Freedom, Security & Justice: European Legal Studies*, Managing Editor of the Journal *EUWEB Legal Essays: Global & International Perspectives*, Lawyer.

¹ C.E.T.S. No. 221; M.M. Bieczyński, *The Nicosia Convention 2017: A New International Instrument Regarding Criminal Offences against Cultural Property*, 2 SANTANDER ART & CULTURE L.R. 255 (2017).

² See *Explanatory Report to the Council of Europe Convention on Offences relating to Cultural Property* [hereinafter *Explanatory Report*], ¶ 1.

³ May 14, 1954, 249 U.N.T.S. 240.

⁴ Protocol for the Protection of Cultural Property in the Event of Armed Conflict (May 14, 1954), 249 U.N.T.S. 358; Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Mar. 26, 1999), 2253 U.N.T.S. 21.

⁵ Nov. 14, 1970, 823 U.N.T.S. 231.

⁶ June 24, 1995, 34 I.L.M. 1322.

⁷ Explanatory Report, ¶ 13.

⁸ *Id.*, ¶ 28.

⁹ *Id.*, ¶ 24.

¹⁰ *Council of Europe European Convention on Offences relating to Cultural Property*, (June 23, 1985), E.T.S. 119.

¹¹ *Committee on offences relating to cultural property* (PC-IBC),

<https://www.coe.int/en/web/cdpc/activities/offences-relating-to-cultural-property>.

¹² The European Council and the Council of the European Union may respectively identify other areas of crimes and extend the EPPO's powers to include other serious [financial?] crime having a cross-border dimension, acting unanimously after obtaining European Parliament consent (see arts. 83 (1), 86 (4) TFEU).

¹³ Nicosia Convention, art. 3.

¹⁴ *Id.*, art. 4.

¹⁵ *Id.*, arts. 5, 6.

¹⁶ *Id.*, art. 7.

¹⁷ *Id.*, art. 8.

¹⁸ *Id.*, art. 10.

¹⁹ *Id.*, art. 9.

²⁰ *Id.*, art. 12; *Explanatory Report*, ¶ 74,

²¹ See *EU Strategy to Tackle Organised Crime 2021-2025* (Apr. 14, 2021) COM/2021/170 final.

²² See SC Res 2199/2015 ¶¶ 15, 16, 17; SC Res. 2253/2015 ¶¶ 14-15; SC Res. 2322/2016 ¶ 12; SC Res. 2347/2017.

²³ See Report of the Committee on Crime Prevention and Control on its 11th session, 5-16 Feb February 1990, E/1990/31-E/AC.57/1990/8 (Apr. 10, 1990) at 153-158, E/AC.57/DEC/11/119.

²⁴ Nov. 15, 2000, 2225 U.N.T.S. 209.

²⁵ *Explanatory Report*, ¶ 5.