

Report on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

NETHERLANDS

I. Information on the implementation of the UNESCO Convention of 1970

1. Ratification of the Convention

The Netherlands accepted the Convention on 17 July, 2009.

2. Implementation in the national legal system and in the organization of services

(a) References of the principal national regulations adopted in order to implement the 1970 Convention.

The 1970 UNESCO Convention on the Illicit Import, Export, and Transfer of Ownership of Cultural Property Act (2009) and the Cultural Heritage Preservation Act (1984/2009) implement the Convention.

(b) Definition of “cultural property” used by the national laws

The 1970 Convention Act defines “cultural property” as that which has been designated, on religious or secular grounds, as being of importance to archaeology, prehistory, history, literature, art, or science and of essential importance to the country’s cultural heritage. The Cultural Heritage Preservation Act designates cultural property as that which is of special cultural-historical or scholarly significance and, being irreplaceable and indispensable, should be preserved as part of the Dutch cultural heritage.

(c) Specialized units

The Cultural Heritage Inspectorate (henceforth, the Inspectorate) of the Ministry of Education, Culture, and Science, supervises the compliance of provisions of the 1954 and 1970 UNESCO Conventions and is the authority for both the Iraq Sanctions Order and the implementation of European legislation.

Customs officials of the Tax and Customs Administration work with the Ministry of Finance to control the traffic of cultural property. A Central Licensing Unit handles the import and export of cultural goods.

The Arts and Antiques Crime Unit (AACU), housed within the Department of International Police Information, works closely with the Inspectorate on the subject of stolen works of art and antiquities.

(d) Administrative coordination

An agreement between the Ministries of Finance and of Education, Culture, and Science demonstrates cooperation between the Inspectorate and the Customs Administration. The Inspectorate is charged with monitoring excavations, central government archives, movable cultural heritage, and listed monuments.

The AACU is the national point of contact regarding stolen works. It coordinates activities with the Inspectorate, including the exchange of information and the training of police officers. The execution of a tripartite agreement between the Inspectorate, Customs, and the AACU is being discussed.

(e) Working meetings

Led by the Chairman of the Cultural Heritage Department, representatives from the Inspectorate and the Ministries of Finance and of Justice and Security meet 3-4 times annually to discuss development. Police officers, customs officials, and ministerial representatives also meet to coordinate control and investigation and draft agreements concerning supervision and maintenance.

3. Inventories and identification

(a) Inventories

The Inspectorate supervises the Delta Plan for Cultural Heritage Preservation. Between 1990 and 2000, the government invested 150 million euro in the registration, conservation, and preservation of movable heritage. In compliance with established agreements, museums that receive government funding and manage state collections should have 90% of their collections registered by 2012.

(b) Definition of “cultural property” and “national treasures”

An object is considered “cultural property” if it falls in one of the following categories: the Cultural Heritage Preservation Act “Wbc list” of government-designated works; movable property in public collections, museum inventories, and library archives, any of which the State or public body is an owner; movable property listed in the inventory of a church or other religious institution; a public collection listed as part of a museum inventory or library archives, of which a legal person in private law is the owner; property listed in the inventory kept by the Minister; protected monuments and historic buildings; illicitly excavated objects; and archival materials and those over fifty years old.

(c) Reference to the Object ID standard

The Object ID standard is the basis for most registration systems used by Dutch museums, as was the case in the 1990-2000 Delta Plan for Cultural Heritage Protection.

(d) Systems to combat theft and to train staff

Since 2002, the Ministry of Education, Culture, and Science has taken measures against theft and natural disaster. Government-funded networks for the prevention of damage to cultural heritage protect museums, archives, libraries, churches, mills, monuments, and archaeological services in towns and regions throughout the country. Established in 2008, the Expertise Centre on Safety and Security for Heritage Institutions disseminates information on risk preparedness to government-subsidized museums.

4. Archaeological excavations

(a) Basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force

All excavations conducted without the permission of the Minister are prohibited. Permits are granted to those applicants that demonstrate their competence in accordance with the requirements of the quality standard developed by professional archaeologists. The Inspectorate ensures the compliance of the law.

(b) Illegal excavations

Illegal excavations have been a problem since the 1961 prohibition went into effect. Four scenarios of illegal excavations can be identified: Organized groups of archaeologists excavate without permission, which constitutes a loss of information, but not illicit traffic; treasure diggers sell unearthed porcelain, glassware, and the like to museums and collectors; amateurs use detectors to search for metals in protected areas; and underwater looting leads to a loss of historical objects and the destruction of sunken vessels. Legal action has been taken against violations of the Monuments Act, but, due to a lack of evidence and priorities made by the Public Prosecutor, it is not always possible to do so.

5. Monitoring of the export and import of cultural property

(a) Estimate of the scale of the illicit export or import of cultural property (statistics)

While there is no reliable data on the illicit export or import of cultural property, the Inspectorate processes roughly 20 reports of illegal import and 2 of illegal export annually. While police records do not distinguish theft of cultural property from theft of regular art and antiquities, it stands to mention that approximately 700 works are stolen annually, any part of which could be classified as cultural heritage.

(b) Problem of the illicit export of cultural property

The 1970 Convention Act will be evaluated in 2013, marking five years since its inception. An insubstantial length of time has passed since the ratification of the 1970 Convention to draw conclusions relevant to the problem. Nonetheless, the assumption is that both measures have preventive effects.

(c) Main rules for monitoring the export and import of cultural property

The EU Council Directive 93/7/EEC and the Council Regulation (EC) No. 116/2009 articulate the main rules for monitoring the export and import of cultural property, as defined in the Cultural Heritage Preservation Act [See Section 2(b) above].

(d) Rules provided for the restitution of illicitly imported cultural property

As per Section 4 of the 1970 Convention Act, illicitly imported cultural property may be claimed through proceedings brought by the State Party where the object originates or by the individual with valid title to it.

(e) Obstacles encountered in securing the restitution of illicitly exported cultural property

Limitations in EU Council Directive 93/7 for initiating the return procedure, as well as high legal costs and the difficulty of proving legal (or illegal) possession, are the main obstacles to restitution.

(f) Circumstances in securing the restitution of a stolen cultural object

Experience related to restitution is limited, but there has been a case in which a stolen object was returned by an EU member state to its original Dutch public collection for a negotiated price.

6. System for trade-in, acquisition, ownership and transfer of cultural property

(a) Description of the cultural goods market in the country (financial volume of the market, number and turnover of auction houses including via the Internet).

In a 2007 study conducted by the Ministry of Justice for the prevention of organized crime, a total of 6,484 companies, associations, and foundations were reported as participating in the trade of cultural property. A similar overview conducted by the Tax and Customs Administration counted 4,874 such organizations, of which 3,570 constitute a tax bracket of over 102 million euro. Research was commissioned in 2011 by the Ministry of Education, Culture, and Science to find data on internet sales.

(b) Rules governing trade in cultural goods, measures in place for such trade (maintenance of a police register), in particular through the Internet (reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)

As stated in the Criminal Code, dealers designated by order in council are guilty of a criminal offense if they fail to keep records of the objects they have attained or have obtained an object from someone whose identity they did not record. It is also unlawful to obtain or hold an object, knowing from police reports that it has been lost or stolen. The same applies to internet trade. As the internet is an international business, UNESCO could address the issue with some of the major players, like eBay.

(c) Existing Measures to control the acquisition of cultural property

The Netherlands Museum Association maintains the Dutch Museum register and ensures that museums apply the ICOM Code of Ethics and the UK Spectrum management system. The ethnology museums have further organized themselves into a foundation, an expert panel of which discusses restitution.

(d) Existing legal system concerning ownership of cultural property:

The principle of inalienability does not apply. The Civil Code states that a treasure found by chance is owned jointly by the one who discovered it and the owner of the property on which it was found. Excavated objects are the property of the original owner; however, should nobody claim ownership, the objects become property of the province or municipality where they were found.

(e) Special rules on the transfer of title deeds with respect to cultural property

Transfers of ownership of objects protected under the Cultural Heritage Preservation Act require the permission of the Ministry of Education, Culture, and Science, should the new owner intend to bring it outside the Netherlands.

7. Bilateral agreements

(a) Bilateral agreements concluded with other countries on the import, export and return of cultural property

The Netherlands does not mandate the conclusion of bilateral agreements with other countries; however, it has established a Memorandum of Understanding (2009) and a Mutual Action Program (2008-10) with the Russian Federation to intensify cooperation in preventing illicit traffic and promoting restitution.

(b) Conditions settled by the importing country with regard to the admissibility of requests for restitution from a country of origin

Not applicable.

(c) Administrative aid or any other type of cooperation with neighbouring countries, particularly with respect to police and customs services?

The Netherlands participates regularly in EU forums (Collection Mobility expert group, Matra EU Pre-Accession Projects Program) and has worked with Hungary (2004-05) and Bulgaria (2005-08) on the implementation of European legislation on cultural goods.

II. Code of ethics, awareness raising and education

1. Ethical standards

(a) Application of the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM for museums

All museums registered with the Netherlands Museum Association are required to apply the ICOM Code of Ethics. Since 1991, the Association has received advice on ethical questions from the Ethical Code Commission. The Association of Fine Art Dealers in the Netherlands, the largest of its kind, is a member of CINOVA, an international association of art dealers with its own code of conduct.

2. Awareness raising and education

(b) Dissemination of the “One hundred missing objects” series and the ICOM Red Lists

The ICOM Red Lists are well known, especially in those museums dealing with objects from the respective relevant regions. The Inspectorate also provides links to the Red Lists on its website.

(c) Description of activities carried out to raise the awareness of the authorities and educate the public, children in particular, regarding the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export. How far can UNESCO contribute to these activities?

In 2009, the Ministry of Education, Culture, and Science worked with the Netherlands National Commission for UNESCO to create playing cards that raise attention to the protection of cultural heritage. The Ministry of Culture targeted five groups: Dealers and collectors; heritage institutions (museums, libraries, etc.); law enforcement and supervision (police, customs, etc.); specialized groups like military and business personnel; and the public at large. The 2010 brochure on the "Import and Export of Cultural Property" was distributed and discussed among these groups. In 2009, the Netherlands contributed financially to UNESCO to aid in the production of informative videos for the general public.

III. Cooperation with other international and regional agencies

Police

(a) State of national cooperation with INTERPOL. Specialized police services to whom the heritage officials can call on for enquiries, legal proceedings and punitive measures

The AACU of the Department of International Police Information works closely alongside INTERPOL-The Hague on crimes concerning arts, antiquities, and cultural property.

(b) Check on the INTERPOL database on stolen objects when a cultural object is stolen. Transmission of information on the persons implicated in the theft of cultural property

The AACU aims to upload all stolen objects to the database and transmits information on the implicated persons only at the request of the Public Prosecutor.

(c) Specific training program for members of police services

There is currently no specific program; however, the Police Academy of the Netherlands and the Inspectorate are considering the incorporation of a training course into the basic program.

(d) Punishment of fraud and theft related to cultural property via criminal law provisions. Specialized judges in this field

There are no specific provisions in relation to fraud and theft of cultural property; however, applications of the Criminal Code may punish such offenses. Judges are not specialized in the field.

(e) Cooperation with the United Nations Office on Drugs and Crime (UNODC)

The Ministry of Security and Justice works with the UNODC on fighting organized crime and trafficking.

Customs

(f) Status of cooperation with the World Customs Organization. Specialized customs services which could assist heritage officials in preventing the illicit export of cultural property

In the Netherlands, customs works with the Inspectorate to supervise the exportation of cultural objects.

(g) Specific training program for members of the customs administration

All customs officers take a basic training program. Special contact persons receive more education concerning pertinent information and knowledge of legal aspects.

(h) Reference to the UNESCO-WCO Model Export Certificate for Cultural Objects

The Netherlands uses the EU standard export certificate, which is similar to the UNESCO-WCO model.

European Union - Application of the Council of the European Communities Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State

This directive was implemented by the 1995 Protection of Cultural Property against Illegal Export Act.

IV. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

The 1995 UNIDROIT Convention has not been ratified, as the 1970 Convention Act of 2009 already implements elements of the UNIDROIT Convention, in particular the private law approach to the return of cultural objects. The Ministers of Justice and of Culture explain also that the definition of cultural objects provided by the UNIDROIT Convention is vague and excessively broad.

2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

The Netherlands participates in the Intergovernmental Committee as an Observer and is grateful to do so.

3. UNESCO Database of National Cultural Heritage Laws – contribution and update

The Netherlands sends relevant laws to the database, including the 2009 ratification of the 1970 Convention and the Acts that implement it.