

REPORT BY THE NETHERLANDS

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

2011 - JUNE 2015

Annex 1: Sections from relevant Cultural Heritage Acts of the Netherlands

Annex 2: Report of the Netherlands, on the implementation of national measures in regard to UN Security Council Resolution 2199 of 12 February 2015, especially on the paragraphs 15 to 17 concerning cultural heritage, June 2015

Annex 3: Reaction on the recommendations in the Evaluation Report on the 1970 Convention (IOS/EVS/PI/133REV.4), April 2014

I. Information on the implementation of the UNESCO Convention of 1970 (with reference to its provisions)

1. Ratification of the Convention

(a) Has this Convention already been ratified?

The Convention has been ratified in 2009 for the Kingdom of the Netherlands (The Netherlands and the six Caribbean Islands Aruba, Curacao, Bonaire, St. Eustatius, Saba and St Maarten). The Conventions' implementation Act applies only to the Netherlands.

(b) If not, please indicate, where applicable:

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term);
- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;
- the extent to which UNESCO can assist in completing the process?

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

(a) Give the references of the principal national regulations adopted in order to implement the 1970 Convention?

- 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act (2009)

[Wet tot uitvoering van de op 14 november 1970 te Parijs tot stand gekomen Overeenkomst inzake de middelen om de onrechtmatige invoer, uitvoer of eigendomsoverdracht van culturele goederen te verbieden en te verhinderen (Uitvoeringswet UNESCO-verdrag 1970 inzake onrechtmatige invoer, uitvoer of eigendomsoverdracht van cultuurgooederen)]

- Cultural Heritage Preservation Act (1984/2009) [Wet tot behoud van cultuurbezit]

- a new *Heritage Act* [*Erfgoedwet*] is under discussion in Parliament at the moment. It will probably enter into force on 1 January 2016. In this act the present implementation acts of the 1954 Convention and its First Protocol (Cultural Property (Return from Occupied Territory) Act (2007), and the 1970 Convention will be included as separate chapters. Also the implementation of the European legislation (Directive 2014/60/EU and Regulation 116/2009) will be included in the Heritage Act.

(b) A definition of “cultural property” agreeing with the definition proposed by the 1970 Convention is important in order to increase the effectiveness of international cooperation. State what definition is used by the national laws of the country concerned.

Cultural Property in the 1970 UNESCO Convention (Implementation) Act is defined in Chapter 1, Section 1d as: property which has been designated by each state, on religious or secular grounds, as being of importance for archaeology, prehistory, history, literature, art or science and hence of essential importance to its cultural heritage and which belongs to one of the categories of cultural property listed in article 1 of the UNESCO 1970 Convention.

Designation of Cultural Property in the Netherlands is described in the Cultural Heritage Preservation Act, Section 2 and Section 14a. In Section 2 protected objects are defined as movable property of special cultural-historical or scholarly significance that, being irreplaceable and indispensable, should be preserved as part of the Dutch cultural heritage.

An item of moveable property shall be deemed irreplaceable if there are no other similar objects or objects of a similar type, or virtually no such objects, to be found in good condition in the Netherlands. Indispensable are objects that fulfill one or more of the following functions:

- a. a symbolic function, meaning that the item serves as a clear reminder of persons or events which are of evident importance to the history of the Netherlands;
- b. a link function, meaning that the item serves as an essential element in a development which is of evident importance to the practice of scholarship in the Netherlands, including the study of the history of culture;
- c. a benchmark function, meaning that the item makes an essential contribution to research into or knowledge of other objects of artistic or scholarly importance.

Movable property in public and church collections, listed in inventories, are protected in Section 14a of the Cultural Heritage Preservation Act. It is prohibited to export these objects without the written permission of the owner. The prohibition also applies to protected monuments and historic buildings and parts thereof, illicitly excavated objects and archival materials and elements thereof provided that they are more than fifty years old.

See for the exact wording of the articles regarding cultural property in the Cultural Heritage Preservation Act, the Annex 1.

(c) Have specialized units been established in order to prevent and combat trafficking and ensure international cooperation for the protection of cultural heritage? Within the Heritage Department? In other government departments (police, customs)?

The following are responsible for supervising compliance with the provisions of the 1970 Convention (Implementation) Act and for carrying out the requisite investigations:

- a) the Cultural Heritage Inspectorate, within the Ministry of Education, Culture and Science, and
 - b) customs officials of the Tax and Customs Administration.
- (1970 UNESCO Convention (Implementation) Act, Section 8)

The Cultural Heritage Inspectorate has also the supervision of compliance in relation to the Cultural Property (Return from Occupied Territory) Act (2007), the 1954 Convention's First Protocol (Implementation) Act. It is the competent authority for the Iraq Sanctions Order (II) (2004), the Syrian Sanctions Order (2012) and it is the central authority for European legislation. Some inspectors of the Inspectorate are 'special police investigating officers' which gives them added investigation powers.

Within the Ministry of Finance Customs have a controlling task. Within Customs

contact-persons in respect of cultural goods are designated. Customs have a Central Licensing Unit for Import and Export of Cultural Goods.

The Police has the task to investigate offences in the field of crime in general. Art crime is recognized as an issue to be addressed, although it is not specified as such in our penal code. In 2009 the Art Crime Unit of the National Police has been reinstated. As of 2013 all 10 regional police forces in the Netherlands have a dedicated police officer for the coordination of information regarding art criminality. This is not a full time job but a collateral duty. The Police has no specific task in relation to the UNESCO 1970 Convention as such.

The Netherlands Police Agency comes under the Ministry of Security and Justice. The Art Crime Unit works closely together with the Cultural Heritage Inspectorate.

The Police in the Netherlands works under the authority of the Public Prosecutors office. As of 2013 a dedicated Public Prosecutor has been appointed on the subject of art criminality, who can serve as a contact point within the Public Prosecutors office.

With the appointment of the Public Prosecutor, the enforcement chain of Customs, Cultural Heritage Inspectorate and Police was 'completed'. It gives a good basis for cooperation in the field of art criminality, including the illicit import and export of cultural goods.

All organizations ensure international cooperation with their respective colleagues, networks or international organizations.

(d) Describe briefly the administrative coordination of the activities of these specialized units, especially with the police and customs authorities.

The cooperation between the Cultural Heritage Inspectorate and Customs is laid down in an Agreement between the Ministries of Finance and of Education, Culture and Science (2000, confirmed in 2007 and 2011). In the Netherlands the Cultural Heritage Inspectorate is charged with overseeing an important part of the Dutch cultural heritage at a national level. The supervision encompasses archaeological excavations, central government archives and movable cultural heritage. The Inspectorate supervises compliance with the heritage laws and promotes improvements to the management and care of cultural heritage and its proper handling.

Customs, part of the Ministry of Finance, have contact persons for cultural goods. These contact persons are trained in recognizing cultural goods as part of their controlling task at the outside borders of the EU. Special training programmes and a system of permanent education were developed for Customs in close cooperation with the Cultural Heritage Inspectorate, as well as a system of risk analysis with designated actors for control and specific pilot actions during fairs and auctions.

Within the Netherlands Police Agency, National Criminal Intelligence Department, a special Art and Antiquities Crime Unit has been formed in order to combat not only the theft of works of art and antiques, but also any other type of crime related to art and antiques. It is both the national as well as the international point of contact regarding art and antiques crime. The Unit does not investigate these crimes itself but it provides regional police forces with necessary information and expertise. Occasionally they assist regional police forces in carrying out their investigations. Information on stolen works of art is listed in an internal national database and is also sent to Lyon for the registration in the Interpol database on stolen works of art.

Between the Cultural Heritage Inspectorate and the Art and Antiques Crime Unit of the National Police Agency also cooperation exists on the level of exchange of information and training of police officers in the field of cultural goods.

Exchange with art insurance firms has led to better information sharing with the Police: information on theft or loss of cultural property is reported by these firms to the Police, whereas before only the Art Loss Register received this information.

(e) Are working meetings held to enable police officers, customs officials and ministerial representatives to meet and coordinate their activities?

A coordination committee under the chairmanship of the Cultural Heritage Department, Ministry of Culture, meets at least once a year for coordination purposes. Representatives from the Ministries of Finance, Security and Justice, the Cultural Heritage Inspectorate, Customs and Police are members of this committee. Developments and strategies in relation to the subject are being discussed here. On topical subjects direct contact is being sought, in order to work on this subject in an integrated manner.

Working meetings are being held between cultural heritage inspectors, police officers, customs officials and ministerial representatives in order to coordinate the controlling and investigating actions and to prepare agreements on the desired supervising and maintenance level.

3. Inventories and identification

(a) State briefly the extent to which inventories provide for the risks of misappropriation and theft.

Inventories and collection registration contribute to the traceability of objects and to the proof of origin (provenance) in case of unlawful removal from the collections and return proceedings.

In agreements concerning the management between the national government and the museums that receive funding from the national government and that manage state collections, agreements of performance on collection registration are included. Up to 95% of their collections should be registered in the period 2013-2016. The goal is that the complete collections are digitally registered and online accessible. A central portal of the registered state collection is being developed, under the name 'Digitale Museale Collectie Nederland' (DiMCoN), coordinated by the Netherlands Cultural Heritage Agency.

Museums, archives and libraries are responsible for the registration and establishment of inventories of the collections. The Netherlands Cultural Heritage Agency has registered state-owned collections and the works of art which are seen as irreplaceable and indispensable for our national heritage in a special database. The Cultural Heritage Inspectorate supervises these requirements and the presence of these works of art.

The degree of registration (both registration degree and quality) is quite high in the Netherlands. Cultural property that has not been inventoried is generally considered as working backlog. Digitization of inventories is high on the agenda's.

Religious collections in museums are almost all inventoried. Most collections in churches and monasteries are registered, but not all. In comparison to other countries the registration of movable property in religious monuments is on a high level: 220.000 religious objects are inventoried, of which two third is digitized. A web based registration tool has been developed ('kerkcollectie digitaal'), with a limited access to owners of ecclesiastical collections, in which

they can complete their collection registration. With the help of the heritage community the level of registration can be increased substantially.

A database of decorative wall-paintings in secular buildings exists including professional photo's (Survey of Decorative Interior Paintings in the Netherlands (1600-1940).

Also all the archaeological sites are registered.

(b) Specify the degree of precision, at the national level, of the definition of “cultural property” covered by international conventions (see above I.2(b)). State whether “national treasures” are identified in an official, tentative or exhaustive list.

Cultural property has been defined broadly in the Cultural Heritage Preservation Act.¹ An object is considered a cultural property if it appears in one of the registrations mentioned below:

- The Cultural Heritage Preservation Act (Wet tot behoud van cultuurbezit (Wbc) distinguishes designated objects in an official list kept by the Minister of Education, Culture and Science: the 'Wbc-list'. It exists of objects or collections of exceptional cultural value in private or ecclesiastical ownership. An additional protection regime exists for objects on this list.
- In the Cultural Heritage Preservation is further stated what is legally protected on a generic level:
 - o moveable property which forms an integral part of a public collection, as listed in the inventory of a museum, an archive or permanent collection of a library, and of which the State or other public body is owner;
 - o moveable property of cultural-historical or scholarly value listed in the inventory of which a church association, an independent part thereof, or another religious association is owner;
 - o a public collection listed as part of the inventory of a museum, an archive or permanent collection of a library, whose owner is a legal person in private law, which is largely funded by grants awarded by the State or another public body and which has been designated by the Minister as falling within the scope of this prohibition;
 - o moveable property of cultural-historical or scholarly value listed in the inventory which is kept by the minister;
 - o protected monuments and historic buildings and parts thereof;
 - o illicitly excavated objects;
 - o archival materials and elements thereof provided that they are more than fifty years old.

(See exact texts of Section 2 and 14a of the Cultural Heritage Preservation Act in Annex 1).

(c) To what extent is the Object ID standard used? Is the standard adapted to the State's needs?

In general it can be said that the Object ID standard is the basis for most registration schemes used by Dutch museums. The registration schemes that heritage institutions use, have developed since then and have been adapted according to the professional needs and the nature of the collections.

(d) Are there systems to combat theft and to train museum staff and have specific measures been adopted for libraries, archival and manuscript repositories, and any specialized units established to monitor them?

¹ The Cultural Heritage Preservation Act will be integrated in the new Heritage Act of The Netherlands.

In the Netherlands much attention exists for preventive measures against theft and other calamities like fire and flooding. The Ministry of Education, Culture and Science has put means available for calamity plans and for regional networks to promote prevention and/or security measures among heritage institutions.

Networks for the prevention of damage to cultural heritage, which have been established exist in some towns and regions in the Netherlands. The principle in the networks is integral safety and security management for people, collections and buildings. The networks received governmental financial support through the Mondriaan Foundation. The networks include a broad scope of (local) heritage institutions. The goal of the networks is to establish emergency plans for all participants, as well as cooperation between participants and the Police and the fire brigade in the event of a calamity e.g. for the evacuation of collections. The support through the Mondriaan Foundation is continued in the years 2015-2016, with a focus on churches and ecclesiastical heritage and safeguarding measures for cultural heritage in the Caribbean part of the Kingdom of the Netherlands.

The program 'Safe Heritage' (Veilig Erfgoed) at the Netherlands Cultural Heritage Agency has a national role in collecting and making information and expertise on risk preparedness and safety available to heritage institutions (museums, archives, libraries, monuments, interiors, archaeology).²

Risk preparedness through disaster plans is mandatory for museums and heritage institutions subsidized by the national government. State subsidized museums received subsidies for drawing up an integral safety plan and for making up the backlog regarding safety issues. Non state subsidized museums can get a subsidy for a risk assessment.

Through the Archive decree and the Archive arrangement³ archives have the obligation to take measures to secure archival depots against breaking in and other risks. The Cultural Heritage Inspectorate supervises the management and care of the state collections and archives, including the risk preparedness.

A research into possible unlawful handling and dealing in archives and archaeological objects in the Netherlands in 2010-2011 by the Cultural Heritage Inspectorate has shown that theft of archival material is a hidden problem. The number of thefts is not large, but it is possible that thefts remain unnoticed due to its way of registration. Often it concerns irreplaceable material. It appears that safety and security measures are not at the same level as in museums. The results were discussed with the archival field and several actions have been taken, like improvement of security measures and registration of incidents. At a seminar on this subject earlier this year a guideline on the prevention of theft from archives and what to do if thefts occur anyway was presented. For archaeological objects the problems were different, see under 4 (b).

4. Archaeological excavations

(a) Summarize the basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force in the country.

The basic principle of the regulations on archaeological excavations is that excavations without permission of the Minister, are prohibited (See Annex 1: Monuments Act 1988, Section 45). An excavation permit is granted if the applicant demonstrates that he is competent to carry out excavations. The professional group of Archaeologists has developed a quality standard, in which detailed requirements in relation to actors, processes and products are described.

² <http://cultureelerfgoed.nl/>, <https://veilig-erfgoed.nl/en> and <https://veilig-erfgoed.nl/en/subjects/theft/theft-collections-checklist>

³ Archive Decree (Archiefbesluit 1995) art. 13; Archive arrangement (Archief regeling 2009) art. 46, 55.

The supervision of compliance with the law in relation to archaeology and excavations is done by the Cultural Heritage Inspectorate.

In 2016 the excavation permit will be replaced by a system of certification, using the same professional standards.

(b) Is there a recurrent problem of illegal excavations? If so, what are the reasons and when did it begin? What steps have been taken to combat this scourge?

Ever since the introduction of the prohibition to excavate in 1961 illegal excavations have taken place. Facts and figures are however not available. Four groups of illegal excavations can be identified:

- organized amateur archaeologists excavate, without using the possibilities of legalizing their researches. This leads to the loss of information, but as far as we know, not to illicit traffic.
- treasure diggers are active, and sell excavated objects as 17th century majolica, porcelain, glass and earthenware through art dealers to collectors and museums.
- the search of metal detection amateurs in deeper soil and in protected monuments/areas, or during official excavations does occur.
- underwater activities as the looting of shipwrecks happen, which can lead to the loss of historic cultural objects and to the destruction of historic vessels.

In exceptional cases legal action has been taken against violations of the Monuments Act.

For the Police and the Public Prosecutor it has not always been possible to take action, due to lack of proof and due to priorities made by the Public Prosecutor.

In order to get more insight into the size and nature of this problem, the Cultural Heritage Inspectorate has done a research in 2010-2011 regarding the illegal handling of archaeological objects. The report indicates that in 5000-10.000 cases each year findings are not reported or excavations take place without permit. This is not to say that this is in all cases harmful or that objects are traded illegally. The majority of violations are connected to metal detection (coins). Another conclusion of the Inspectorate is that it is not always clear how findings can be reported.

In reaction to the report and to improve the fight against illegal excavations special investigating authority is granted to inspectors of the Cultural Heritage Inspectorate. These specialized investigating officers can be used in addition to regular police capacity. The cooperation with other control agencies has been reinforced, among others with the coast guards.

Also in reaction to the above mentioned research the Cultural Heritage Agency of the Netherlands has taken steps to make the online reporting of findings more user friendly.

Rules on metal detection

Rules on metal detection will be adapted. From early 2016 metal detection up to 30 cm deep will no longer be prohibited, with the exception of archaeological sites and protected (archaeological) monuments on local, provincial or national level. The local government can establish local rules in which no exemptions to a general prohibition of the use of metal detectors can be included.

The reason for giving some room for metal detection is that the use of metal detectors for retrieving archaeological findings has become common practice. If findings subsequently are being taken out of the underground, this is an archaeological excavation, on the basis of the new *Erfgoedwet* (Heritage Act). Not only is a total ban on the use of metal detection seen from a societal perspective undesirable and not in proportion, also the control on metal detection towards retrieving archaeological objects is a difficult task.

Metal detection has been accepted, also in circles of archaeologists, if the activity is not disturbing the ground. The findings through metal detection are found to be of added value to our knowledge of the past, for which reason it is preferred that these findings are being notified to the representatives of our minister, rather than letting them disappear in an illicit circuit. The found objects do not have to be transferred to the provincial or municipal repository.

The 30 cm depth has been decided upon, as this is the soil depth which usually already has been disturbed due to other activities (agriculture, building, roadwork etc). The legal permission for metal detection is only valid on land, not under water, as objects of archaeological value might be found just above or directly under the surface. Direct damage might be caused.

5. Monitoring of the export and import of cultural property

(a) Give an estimate of the scale of the illicit export or import of cultural property. Are up-to-date statistics compiled on the theft of cultural property?

There are no reliable data on the illicit export or import of cultural property. The Cultural Heritage Inspectorate is faced annually with ca. 25 reports by Dutch Customs of possible illegal import and ca. two reports of illegal export. In most cases legal action is not necessary. In its supervising and controlling task, a 'supervising and maintenance'-plan has been set up by Customs and the Cultural Heritage Inspectorate, in which risk analysis is an important part. Research and studies as a follow up of the studies *Pure Art* (2007) and *The Art of the internet* (2011), continue to give more insight into the trafficking of cultural goods. In 2015 a new research is started by the Cultural Heritage Inspectorate on the trade of cultural goods through the internet, with a focus on archaeological objects which may originate from conflict areas in the Middle East. Results are expected in 2016.

The Police keeps records of art and antiques theft in general. They do not make a distinction between protected cultural property and non-legally protected art and antiques. The Police does not have up-to-date statistics in relation to cultural goods specifically, but one could say that in the Netherlands ca. 700 works of art and antiques are stolen annually; a still unknown part could be classified as protected cultural heritage.

(b) Is the illicit export of cultural property a recurring problem? If so, for which reasons (lack of financial and human resources, shortcomings in the legal supervision framework, etc.)?

In the Netherlands the illicit export of legally protected cultural heritage seems not to be a serious problem. In general there are adequate safety and security measures in heritage institutions, a well-functioning network and short lines between the supervising institutions. The illicit export of cultural property originating from other countries and leaving the territory of the Netherlands is something different and difficult to measure.

The notion is that both the EU Directive and the 1970 UNESCO Implementation Act have preventive effects.

(c) What are the main rules (administrative and legal) for monitoring the export and import of cultural property (existence of an export certificate, public information about the rules in force)? What categories of cultural property are covered by the rules?

The main rules for monitoring the export and import of cultural property are the EU rules:
- Council Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State

- Council Regulation (EC) No. 116/2009 on the export of cultural goods. The categories used are those as described in Annex 1 to these rules.
- 1970 UNESCO Implementation Act.

In relation to the 1970 UNESCO Implementation Act cultural goods as described in Section 1 are covered. In relation to the implementation of this Convention in the Netherlands, no further definition of categories or financial thresholds has been made. (see 3b)

(d) Do the rules provide for the restitution of illicitly imported cultural property?

Yes, in Section 4 of the 1970 UNESCO Convention (Implementation) Act the return of cultural property imported into the Netherlands in breach of the prohibition referred to in section 3 of the Act may be claimed by proceedings brought by the State Party from which the property originates or by the person with valid title to such property, (see the exact wording in Annex 1).

(e) What are the main obstacles encountered in securing the restitution of illicitly exported cultural property? What type of obstacles are they (administrative, legal or political) and why do they arise (legal loopholes, unwillingness by importing countries, lack of international cooperation, etc.)?

In the Netherlands there is limited experience with restitution of illicitly exported cultural property.

We have encountered limitations in the EU Council Directive 93/7 in relation to terms of limitation for e.g. starting a return procedure. Amendments to improve this Directive on e.g. this point have been made in the new Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State. From 18 December 2015 the Netherlands will have implemented this Directive in national law.

The obstacle of high juridical costs will however not be solved by the recast of the Directive 93/7, and is also an issue in relation to the working of the UNESCO 1970 Convention. The costs can prevent owners of illicitly exported cultural property from taking legal action. To prove ownership or to prove that a holder of a cultural good possesses it illegally, or not being able to prove that he acts in good faith or is applying due diligence, is often complicated.

(f) If the country has succeeded in securing the restitution of a stolen cultural object, describe the circumstances and state whether that involved legal proceedings, arbitration or alternative dispute resolution.

As stated under (e) experience in relation to restitution is limited in the Netherlands.

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

(a) Give a brief 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 our 2011 report we have given a brief description of the antiquities market in the Netherlands, on the basis of a 2007 report 'Pure Art, Preventive Criminal Analysis of the Dutch Art and Antiques trade'.⁴ As we do not have more recent figures, we refer to our previous report.

⁴ http://www.intraval.nl/pdf/DKN_b65_en.pdf

The European Fine Art Fair Foundation (TEFAF) publishes in cooperation with Dr. Clare McAndrew, an annual overview of the (top) art and antiquities market in the world, the TEFAF Art Market Report. Statistical information of the art market in the Netherlands is part of this report.⁵

In a research of the gallery market in contemporary art in the Netherlands from 2014, the effects of the economic recession were measured. It appears that the economic recession has influenced one third of the buyers (or lenders) of contemporary art. The main reason is that their budget has decreased (35%) and that they have bought less art (27%). Buyers that incidentally buy art were buying less, those who regular buy continue to buy, also more expensive art works.⁶

From this report it also appears that online sales are increasing: 33% of buyers of art has bought an artwork over the internet. In 2006 this was 9%, in 2010 13%. Online auctions (16%) are the most popular way of buying through internet.

The 2011 report 'The Art of the Internet, A study of illegal online trading in cultural goods'⁷, was at the time of publication a baseline study of the trade in antiquities through the internet in the Netherlands, as hardly any research was available on the subject. It built on the 2007 'Pure Art, Preventive Criminal Analysis of the Dutch Art and Antiques trade' report, in which the trade through the internet was examined as one of the sales channels.

In the Netherlands in 2011 the researchers found a total of nine auction sites on which art and antiques were on offer. 'Five of these sites concentrate specifically on art and antiques, the other four sites offer a wide range of other goods. The objects on offer can generally be divided into two main categories: art and antiques, which are then divided into several subcategories (for example: icons, African paintings and ancient objects). Most of the Dutch auction sites (seven) are categorized as 'conventional online auctions'. The range on offer on these sites is fairly limited in comparison to other sites that we found: only goods in the category art were on offer and all in all there were 194 objects. There were two auction sites in the category 'monitored online auctions'. In total 4,550 goods were on offer on these two sites, of these 4,090 in the antique category and 460 in the art category. Finally, one of the auction sites belongs to the category 'monitored online auctions', namely eBay.nl. This auction site contains the most items: the total number of items on offer in the category art and antiques amounted to 464,624, of which 244,370 in the category antique and 220,254 in the category art. eBay accounts for 98.9% of a total of 469,368 advertisements. If the person searching asks for objects in the Netherlands only, then 9,629 objects remain. In this case, eBay the Netherlands accounts for 67% of the 14,373 advertisements.'

Regarding the volume of the supply a comparison was made with the 2007 Report Pure Art. An enormous increase was found of 100-350 %, depending on the auction or internet site.⁸

One part of the research was to scan two market platforms Marktplaats and eBay.nl on goods which have a high risk of being traded illegally. It was found that protected cultural Dutch goods and goods from other parts of the world were offered. The financial value of these goods were relatively low. Only limited background or provenance information appeared to be available. In some instances it was hard to determine whether originals or fakes were offered for sale. It showed the difficulty in researching the internet on supply of (il)licit cultural goods.

⁵ See e.g.

<http://www.tefaf.com/DesktopDefault.aspx?tabid=15&tabindex=14&pressrelease=16959&presslanguage>

⁶ Motivation Research and Strategy, Herhaling onderzoek kunstkopers, Nederlandse Galerie Associatie, May 2014. <http://nederlandsegalerieassociatie.nl/wp-content/uploads/2012/11/Marktonderzoek-2014-vraagrijde.pdf>

⁷ http://www.beke.nl/doc/publicaties/2011/The_Art_of_the_Internet.pdf

⁸ see Appendix 2 in the report 'The art of the internet', p.7 and 8.

Another study⁹ concentrated on archaeological objects and private Dutch websites. The conclusion was that e-commerce in archaeological objects via private websites (personal websites and Internet forums) should not be considered as a severe problem or threat. The major part of the objects found on the private websites were not of an outstanding archaeological value. The objects that were offered the most, were small objects (coins and clay pipes) from the New Age. The New Age is overrepresented, because the archaeological finds of this period are situated in the top layer of the soil of the Netherlands and are thus easy to find with metal detectors.

The owners of the personal websites are mainly amateur archaeologists. The provenance of the objects is almost never mentioned. In some cases, only a broad description of the finding spot was given. No objects had been inserted into the official databases of the Netherlands.

It seems that the personal websites do not form a great threat when it comes down to the selling of archaeological objects. However, the private websites might be considered to be a threat when it comes to their *accessibility*. If any selling of valuable goods is being done, it is definitely not visible for the public. The layers of accessibility identified in the study have shown that a lot of the transactions are completed behind 'closed doors'. The closed character and the difficult accessibility of the Internet forums can be seen as soft spots in the national supervision of the e-commerce in archaeological objects in the Netherlands.

(b) What are the main rules governing trade in cultural goods? Are control measures in place for such trade (maintenance of a police register), in particular through the Internet (for example, reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)?

Regarding the 'regular' trade: under article 437 of the Criminal Code dealers designated by order in council (including 'dealers in second-hand and unregulated goods, platinum, gold, silver, precious stones, timepieces, art objects' and a series of other objects) are guilty of a criminal offence if they fail to keep records of the objects they have obtained or if they have obtained an object from someone without having kept a record of that person's identity. They are required immediately to produce such records for inspection upon request by an official designated for this purpose. They are also guilty of an offence if they obtain or hold an item in circumstances where they are aware from a report by or on behalf of the police, which contains a clear written description of the property, that it has been lost by or unlawfully appropriated from the person with valid title to it.

The above is valid for the trade and traders on the internet as well. The government is in contact with the umbrella organization of the internet trade in the Netherlands on the best way to make reference to the basic measures. With internet platforms as *Marktplaats* and *eBay the Netherlands* this exchange has resulted in making rules of thumb accessible on those websites on buying art and antiquities through internet channels.

As the internet trade is an international business, UNESCO could address this issue on a higher level with some of the major players like eBay.

(c) Do measures exist to control the acquisition of cultural property (for example, mechanisms to prevent museums and similar institutions from acquiring cultural property exported illegally from another State)

The Netherlands Museum Association keeps the Dutch Museum register. Registered museums are required to apply the ICOM code of ethics. The Association regularly asks the attention for the code and its application by its members. Museums in the Netherlands use the UK Spectrum system, an overview of procedures for the museum management, which is also being used in respect to acquisitions.

⁹ *E-commerce and Archaeology, an Investigation into the Supply and Demand of Dutch Archaeological Objects on the Internet*, Faculty of Archaeology Leiden University, 2011.

The Government demands from the cultural heritage institutions which are financed by a public body 'good house-keeping' in relation to their collection and (museum or institutional) management, which implies the active application of the ICOM code of ethics.

Libraries work along IFLA standards, and archives use 'beroepscode voor archivariissen' (the code of conduct for archivists (1997)), which includes that archivists are not allowed to collect and deal in archives.

Regular attention is being asked for the application of acquisition and ethical codes by heritage institutions in the Netherlands. This is done through monitoring instruments, among which the biannual Cultural Heritage Monitor of the Cultural Heritage Inspectorate.

(d) Specify the existing legal system concerning ownership of cultural property:

- Is the principle of inalienability applied to cultural items in national collections and objects originating in heritage sites?

Yes; national heritage collections (state, municipal or provincial) are in principle inalienable, unless cultural items do not respond anymore to the criteria of the collection policy of the institution. Guidelines have been developed for de-accessioning of museum objects and for religious heritage.¹⁰ These guidelines have been widely accepted as a professional standard for selecting and de-accessioning objects from museum collections, and can be regarded as a practical extension of the Code of Ethics drawn up by the International Council of Museums.

The public function of the museum is the central tenet of the Code of Ethics. In managing its collection, the museum serves a wider social purpose and in this capacity it bears a responsibility to safeguard the collection for future generations. When considering de-accessioning as an option, the museum should therefore make absolutely clear that the preservation of an artefact in the public domain is no longer possible or desirable.

- What is the status of yet unfound cultural objects, of cultural items found by chance and archaeological artefacts found during legal or illegal excavations?

For cultural items found by chance a rule of shared ownership exists which is described in the Civil Code (Section 13 of Book 5): A found treasure belongs for equal parts to the one who has discovered it and the owner of the movable or immovable property in which it was found. In the Civil Code reference is made to a treasure, not to a cultural good or monument. The possible finds of a supplementary excavation are, to begin with, the property of the *original* owner. In relation to archaeological finds usually no one can claim the ownership (apart from WW II remnants perhaps). The monuments/cultural objects become then the property of the province [regional authority] or municipality where they were found, if the municipality possesses a repository. (See Section 50 Monuments Act in Annex 1).

For other objects from legal or illegal excavations the ownership belongs to the province (Monuments Act, Section 50). (see Annex 1)

If the ownership of an archaeological object, protected under the Cultural Heritage Preservation Act, transfers to a new owner, who brings it outside the Netherlands, the permission of the Minister of Education, Culture and Science is required.

¹⁰ *Leidraad voor het Afstoten van Museale Objecten (LAMO)* [only in Dutch], 2006, <http://www.museumvereniging.nl/Portals/0/4-VoorLeden/Bestanden/LAMO.pdf>. Due to new rules in the future *Heritage Law*, the guideline is being reviewed.

- Are there any due diligence requirements in place?

As part of the implementation of the UNESCO 1970 Convention, it is explained in the Civil Code how it can be determined whether a possessor, dealer or auctioneer has exercised due diligence in acquiring a cultural property or accepting it for auction. Article 4.4 of the UNIDROIT Convention has been used when formulating the criteria. (see Section 6 in the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act; article 87a, Civil Code).

A court has to judge on the basis of these criteria whether a State Party or person with valid title to a property must pay a compensation to a possessor, if he has exercised due diligence in acquiring the object. (see Section 6 in the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act; article 86b, Civil Code) (see the articles in Annex 1).

In the new EU Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State also the wording on due diligence from article 4.4. of the UNIDROIT Convention has been used. This Directive and the Dutch implementation Act, will enter into force on 18 December 2015.

- What are the rules governing the search of provenance?

In the Civil Code a possessor can be determined to have exercised due diligence when acquiring an object if he has (among others) consulted every reasonably accessible register of stolen cultural property and any other relevant information and documentation which he could reasonably have obtained and if he consulted accessible agencies; also the possessor should have taken all steps that a reasonable person would have taken in the circumstances.

A dealer or auctioneer should additionally require the seller to provide a written declaration that he is competent to dispose of the property and record in the register to be kept by him the provenance of the cultural property, the name and address of the seller, the purchase price paid to the seller and a description of the cultural property.

Similar rules are requested under the new EU Directive 2014/60/EU: In determining whether the possessor exercised due care and attention, consideration shall be given to all the circumstances of the acquisition, in particular the documentation on the object's provenance, the authorizations for removal required under the law of the requesting Member State, the character of the parties, the price paid, whether the possessor consulted any accessible register of stolen cultural objects and any relevant information which he could reasonably have obtained, or took any other step which a reasonable person would have taken in the circumstances.

Box 17 of the Regulation (EU) no 1081/2012 of 9 November 2012 for the purposes of Council Regulation (EC) No 116/2009 on the export of cultural goods, provides the opportunity to request further information on provenance with the application for an export license. It is planned to make this information obligatory for applicants for export licenses in the course of 2015.

The wording of box 17 is 'Other characteristics: Give any other information on formal aspects that could be useful for identification, for example historical antecedents, conditions of execution, former owners, state of preservation and restoration, bibliography, electronic code or marking.'

(e) Are there special rules on the transfer of title deeds in respect of cultural property? If so, please summarize their content.

The Netherlands has no particular rules regarding the transfer of formal title deeds in respect of cultural property.

7. Bilateral agreements

(a) List the bilateral agreements concluded with other countries on the import, export and return of cultural property and comment briefly on their results.

The Netherlands have not stipulated in the 1970 UNESCO Convention (Implementation) Act that property can be recovered only by countries with which a bilateral agreement for such return has been concluded on the basis of the Convention. Like various other states the Netherlands preferred to provide in the Bill that the only condition for the return of property is that the requirements of Dutch law are fulfilled, without the need for the prior conclusion of a bilateral agreement. The advantage of this approach is that, where necessary, decisive action can be taken without the necessity of first concluding an agreement.

In the international cultural policy the Netherlands cooperate with target countries, and has a Memorandum of Understanding (MoU) with some of these. In the MoU with China (April 2014-2017) it is agreed that the countries 'will discuss to take all kinds of measures aimed at the prevention of illegal export, import and transfer of ownership with regard to cultural property as well as measures aimed at their return in case of illegal export and import in line with the UNESCO 1970 Convention which both participants have ratified and implemented'.

The EU and its member states have MoU's on subjects of culture with other countries, which sometimes also include the illicit traffic.

(b) What conditions are set by the importing country with regard to the admissibility of requests for restitution from a country of origin?

Not applicable.

(c) Apart from these agreements, is there administrative aid or any other type of cooperation with neighbouring countries, particularly in respect of police and customs services?

With the recast of EU Directive 93/7 into directive 2014/60/EU a new information exchange (IMI) system between the competent authorities in the EU member states is introduced. In December 2015 the new system shall be taken into use.

The Netherlands cooperate with its neighboring country Belgium on the exchange of information with customs and heritage institutions and explores possibilities of collective pilot controlling projects.

The Netherlands participated in joint customs operations like Colosseum (2012) and Odysseus (2014).

The Police takes part in formal networks, and also makes use of a large network of police professionals for quick response information exchange.

II. Code of ethics, awareness raising and education

Ethical standards

(a) Are the UNESCO International Code of Ethics for Dealers in Cultural Property and that of ICOM for museums known to the professionals concerned (in particular, curators, antique dealers, merchants and collectors)? How is their observance checked?

Issues of ethical standards and transparency with regard to provenance are being brought to the attention of both the art trade- and the museum sector, also in the light of the implementation of the 1970 UNESCO Convention. Further communication and application is the responsibility of the diverse (umbrella) organizations, as part of the self- regulation policy of sectors and the self-cleaning capacity of the sectors.

The Netherlands Museum Association keeps the Dutch Museum register. Registered museums are required to apply the ICOM code of ethics. The Association has an Ethical Code Commission for Museums since 1991 which advises on ethical questions from the museum sector.

During the last year the Ministry of Culture has had meetings with the most important art and antiques dealer organizations: the TEFAF, the 'Association of Fine Art Dealers in the Netherlands' (Vereeniging Handelaren in Oude Kunst, VHOK, the largest antique dealers organization, member of the international art dealers association CINOA), and the Federation of Valuers, Brokers and Auctioneers in movable goods (Federatie van Taxateurs, Makelaars en Veilinghouders in roerende Zaken, member of the European Federation of Auctioneers) and the Netherlands Gallery Association (Nederlandse Galerie Associatie). Discussed are preventive measures against the illicit traffic in cultural goods, especially also in relation to the situation in Iraq and Syria. The meetings were appreciated and will be continued with several issues related to exchange of information, best practices and cooperation.

Awareness raising and education

(b) Are the “One hundred missing objects” series and the ICOM Red Lists disseminated and read?

The ICOM Red Lists are well known in the Dutch museum sector, especially in those museums dealing with objects from the respective regions covered by the Lists (Antiquities and Ethnology museums).

The Cultural Heritage Inspectorate has links to the Red Lists on its website and actively circulates the Red Lists among Customs and Police.

(c) Briefly describe 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?

Awareness raising is a constant effort, with target groups as law enforcement agencies (Customs, Police), heritage institutions, the art trade and the general public. A brochure on the Import and export of cultural goods as well as flyers for raising awareness are available. These flyers are e.g. distributed in a stand of the National UNESCO Commission at a tourism and leisure fair in January 2014 and 2015, but also at fairs (2014 to art dealers at TEFAF) and information meetings organized by Customs. Customs inform travelers on what to import and export and what not, with simple visual information panels in e.g. airport Schiphol, which include protected animals and cultural property. On their website

more specific information can be found including a link to the website of the Cultural Heritage Inspectorate

(http://www.belastingdienst.nl/wps/wcm/connect/bldcontenten/belastingdienst/customs/safety_health_economy_and_environment/economy/import_and_export_of_cultural_goods/), Customs also give information through an app and through social media (Facebook)

III. Cooperation with other international and regional agencies

Police

(a) What is the state of national cooperation with INTERPOL? What specialized police services can heritage officials call on for enquiries, legal proceedings and punitive measures?

Interpol The Hague is an integrated part of the Department of International Police Information (IPOL). As a result of this the Art and Antiques Crime Unit automatically takes care of all issues in which Interpol is involved. As stated above the Art and Antiques Crime Unit is the national and international point of contact regarding art, antiques and cultural property crime.

(b) If a cultural object is stolen, is the INTERPOL database on stolen objects checked? Is information on the persons implicated in the theft of cultural property transmitted to INTERPOL?

The Art and Antiques Crime Unit aims at having all items stolen in the Netherlands to be included in the Interpol database. The Unit does not transmit information of suspects to Interpol other than by request of the Public Prosecutor.

(c) Do members of police services follow a specific training programme?

The Police, in close cooperation with the Cultural Heritage Inspectorate, is working on a training programme for the dedicated police officers which includes: recognition of cultural objects, knowledge of legislation, knowledge of special detection and research. Since the introduction of regional contact persons for art crime in 2012, three trainings have taken place.

(d) Do criminal law provisions allow for the punishment of fraud and theft related to cultural property? Are judges specialized in this field?

No specific criminal law provisions exist in relation to fraud and theft of cultural property. The Criminal Code is applicable on offences, which may include fraud and theft of cultural property. Refer also to 6 b. Judges have general knowledge, which is applicable on art crime as well. The Police and Public Prosecutor have tasks under criminal law. The illicit import and export of cultural goods is not as such part of criminal law in the Netherlands:

As of 2013 a dedicated Public Prosecutor has been appointed on the subject of art criminality, who can serve as a contact point within the Public Prosecutors Office.

(e) Does cooperation exist with the United Nations Office on Drugs and Crime (UNODC)?

Yes, through the Ministry of Security and Justice. The Netherlands is actively following the discussions on organized crime and trafficking in cultural goods.

Customs

(f) What is the status of cooperation with the World Customs Organization and which specialized customs services can assist heritage officials in preventing the illicit export of cultural property?

The Netherlands actively cooperates with the WCO in diverse joint customs operations (JCO). The experiences with the JCO Odysseus (2012) and Colosseum (2014) were fruitful. It resulted in advancing to a level playing field, and to work towards more cooperation and exchange of information in this particular field.

(g) Do members of the customs administration follow a specific training programme?

All customs officers have followed a basic education programme on cultural goods. This training is also available on the customs intranet for every custom officer. Annually specialized courses are organized for special contact persons for cultural goods within Customs in order to educate them at a higher level with up to date knowledge and information, also on legal aspects.

(h) Is the UNESCO-WCO Model Export Certificate for Cultural Objects used?

The Netherlands, as a EU Member State, uses the different EU export certificates, which is comparable with the UNESCO-WCO Model.

European Union

Have particular measures been adopted to apply 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.

Yes, this directive has been implemented through the Protection of Cultural Property against Illegal Export (Implementation) Act (1995).

This directive has been recasted. A new Act has been prepared to implement the new EU Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State. As of 18 December 2015 the Netherlands will have implemented this directive in national law.

IV. Emergency situations and heritage at risk

(a) What is the strategy in place in your country to face emergency situations for heritage in case of natural disaster or conflict?

Customs and the Cultural Heritage Inspectorate are in regular contact to update their risk assessments. In the case of emergency situations in case of natural or manmade disasters, information from UNESCO and from other sources as ICOM are used in the development of the risk assessments.

In the Netherlands the preparatory measures for emergency situations are covered by the Safety Regions Act [Wet veiligheidsregio's]. Some of the Safety Regions have taken the safeguarding of heritage in such situations explicitly into account in their regional safety or calamity plans.

The method for regional risk inventory and assessment in the Netherlands is described in a national guideline in which cultural heritage is included. An annex deals specifically with the use of a method to assess the impact of a threat to cultural heritage.

Please refer also to the information under 3d.

(b) More particularly, what are the measures undertaken to implement UNSC Resolution 2199 (paragraph 17, 12 February 2015) for the protection of Syrian and Iraqi cultural heritage?

See separate report, in Annex 2

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

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

(a) Has this Convention been ratified, in addition to that of 1970?

No

(b) If not, please indicate, where applicable:

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term) ;
- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;
- the extent to which UNESCO can assist in completing the process.

In the 1970 UNESCO Convention (Implementation) Act (2009) elements of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995) have been implemented, in particular the private law approach in relation to the returning of cultural goods. With the ratification of the UNESCO Convention the Netherlands sought to base the implementation in part on the good elements of the UNIDROIT Convention while also taking account of the EU Council Directive 93/7/EEC and its implementing legislation. Now these elements of the UNIDROIT Convention are also included in the recast of Directive 93/7/EEC: Directive 2014/60/EU.

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

Describe the extent to which the State concerned is following the work of the UNESCO Intergovernmental Committee (observer, member, State concerned by a case under discussion, etc.).

The Netherlands follow the work of the UNESCO Intergovernmental Committee as an observer. It appreciates to receive the invitation as an observer to Committee meetings.

3. UNESCO Database of National Cultural Heritage Laws

Indicate action taken to organize the contribution to the UNESCO Database of National Cultural Heritage Laws and to check whether it contains all historical and existing laws and regulations, including successive amendments.

The Netherlands send relevant national cultural heritage laws to the UNESCO Database. The 1970 UNESCO Convention ratification and implementation Acts (2009) are among others available in this database.

ANNEX 1

Sections from relevant Cultural Heritage Acts of the Netherlands

Ad. 2b

The texts of the articles in the **Cultural Heritage Preservation Act** in which cultural property is defined:

Chapter II The designation of protected objects

Section 2

1. Our Minister, having heard the Council, may designate as protected objects items of moveable property of special cultural-historical or scholarly significance that, being irreplaceable and indispensable, should be preserved as part of the Dutch cultural heritage.
2. An item of moveable property shall be deemed irreplaceable as referred to in subsection 1 if there are no other similar objects or objects of a similar type, or virtually no such objects, to be found in good condition in the Netherlands.
3. An item of moveable property shall be deemed indispensable as referred to in subsection 1 if it fulfils one or more of the following functions:
 - a. a symbolic function, meaning that the item serves as a clear reminder of persons or events which are of evident importance to the history of the Netherlands;
 - b. a link function, meaning that the item serves as an essential element in a development which is of evident importance to the practice of scholarship in the Netherlands, including the study of the history of culture;
 - c. a benchmark function, meaning that the item makes an essential contribution to research into or knowledge of other objects of artistic or scholarly importance.

Section 3

1. Our Minister, having heard the owner and the Council, may designate as a protected collection a collection of special cultural-historical or scholarly significance that, being irreplaceable and indispensable, either as such or by virtue of one or more of the items of moveable property that form essential parts thereof, should be preserved as part of the Dutch cultural heritage. Designations shall be accompanied by a general description of the protected collection and a catalogue of the items of moveable property belonging thereto.
2. Section 2, subsections 2 and 3, shall apply mutatis mutandis.
3. Every item of moveable property that is included in a catalogue as referred to in subsection 1 shall be deemed to be a protected object.

...

Chapter IIIA Protection of public and church collections

Section 14a

1. No one may take out of the Netherlands, without the written permission of the owner, moveable property which forms an integral part of a public collection, as listed in the inventory of a museum, an archive or permanent collection of a library, and of which the State or other public body is owner. Should the owner fail to issue a statement on the matter, a licence issued by Our Minister may be substituted, at the request of the interested party, for this permission.
2. The prohibition referred to in subsection 1 shall also apply to moveable property that forms part of:
 - a. the inventory of moveable property of cultural-historical or scholarly value of which a church association, an independent part thereof, or another religious association is owner;
 - b. a public collection listed as part of the inventory of a museum, an archive or permanent collection of a library, whose owner is a legal person in private law,

- which is largely funded by grants awarded by the State or another public body and which has been designated by Our Minister as falling within the scope of this prohibition;
- c. the inventory of moveable property of cultural-historical or scholarly value which is kept by Our Minister;
3. The prohibition referred to subsection 1 also applies to:
- a. protected monuments and historic buildings and parts thereof, within the meaning of section 1 (d) of the Monuments and Historic Buildings Act;
 - b. illicitly excavated objects;
 - c. archival materials and elements thereof within the meaning of section 1 (c) (1o),(2o) and (3o) of the Public Records Act 1995, provided that they are more than fifty years old.
4. Section 9, subsection 2 shall apply mutatis mutandis.

Ad 4 a

Monuments Act (1988)

Section 45

1. Carrying out excavations without or in contravention of an excavation permit granted by Our Minister is prohibited.
2. An excavation permit is granted if the applicant demonstrates that he is competent to carry out excavations.
3. An excavation permit may be granted subject to restrictions.
4. Our Minister may impose charges in connection with granting an excavation permit in accordance with rates to be set by him.

Ad 5 d

1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act (2009)

Section 4

The return of cultural property imported into the Netherlands in breach of the prohibition referred to in section 3 may be claimed, subject to articles 1011a-1011d of the Code of Civil Procedure, by proceedings brought by the State Party from which the property originates or by the person with valid title to such property.

CHAPTER 3: AMENDMENT OF THE CIVIL CODE

Section 6

Book 3 of the Civil Code is amended as follows:

A. The following article is inserted after article 86a:

Article 86b

1. Article 86 may not be invoked against a State Party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted in Paris on 14 November 1970 or against a person with valid title to such property if, pursuant to section 4 of the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act, they institute legal proceedings as referred to in article 1011a of the Code of Civil Procedure for the return of a movable as referred to in that article.
2. A court that allows a claim in proceedings as referred to in paragraph 1 must award the possessor such compensation as it deems fair according to the circumstances of the case if it is satisfied that the possessor exercised due diligence in acquiring the movable, unless a claim without compensation would have been possible where article 86, paragraph 3 is applicable.

3. The compensation must in any event include what is owed to the possessor under articles 120 and 121. It must be paid when the movable is handed over.

...

C. The following new article is inserted after article 87:

Article 87a

1. To determine whether a possessor has exercised due diligence in acquiring cultural property as referred to in section 1 (d) of the 1970 UNESCO Convention on the Illicit Import, Export and Transfer of Ownership of Cultural Property (Implementation) Act, account is taken of all circumstances of the acquisition, in particular:

- a) the capacity of the parties;
- b) the price paid;
- c) whether the possessor consulted every reasonably accessible register of stolen cultural property and any other relevant information and documentation which he could reasonably have obtained and whether the possessor consulted accessible agencies;
- d) whether the possessor took all steps that a reasonable person would have taken in the circumstances.

2. A dealer as referred to in article 437 of the Criminal Code will not be deemed to have exercised due diligence in accordance with article 86b, paragraph 2 in acquiring cultural property if he has failed to:

- a) ascertain the identity of the seller;
- b) require the seller to provide a written declaration that he is competent to dispose of the property;
- c) record in the register to be kept by him the provenance of the cultural property, the name and address of the seller, the purchase price paid to the seller and a description of the cultural property;
- d) consult the registers of stolen cultural property which it would be appropriate to consult in the circumstances, given the nature of the cultural property.

3. An auctioneer who does not fulfil the requirements of due diligence referred to in paragraphs 1 and 2 when accepting cultural property for public auction or who returns this cultural property to the person presenting it for public auction without having fulfilled these requirements of due diligence acts unlawfully in relation to the persons who are able to institute proceedings for return as referred to in article 86b.

Ad 6d

Monuments Act

§5. Ownership, Section 50

Movable objects of archaeological importance which are found while carrying out excavations and to which no one can prove a right of ownership are the property of:

- a. the province where they were found; or
- b. the municipality where they were found, if the municipality possesses a repository as referred to in section 51, subsection 2; or
- c. the State, if the movable objects of archaeological importance were not found within the boundaries of any municipality.

Annex 2

Report of the Netherlands

on the implementation of national measures in regard to

UN Security Council Resolution 2199 of 12 February 2015,

especially on the paragraphs 15 to 17 concerning cultural heritage June 2015

The Netherlands condemns the destruction of cultural heritage in Iraq and Syria particularly by ISIL and ANF.

In order to stop the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, the Netherlands together with the EU member states (27 MS) have established a sanction measure:

Council Regulation (EU) No 1332/2013 of 13 December 2013, which amended Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria, in particular art. 11c.

This regulation is amended on 28 May 2015, Council regulation (EU) 2015/827 (<http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32015R0827&from=NL>) in order to align the date of application to the date in the UNSC resolution 2199, being 15 March 2011.

An earlier EU sanction measure to protect cultural property from Iraq is still in force.

In the Netherlands the sanction measures are coordinated by the Ministry of Foreign Affairs.

For cultural heritage the Cultural Heritage Inspectorate is the competent authority. Dutch Customs has a controlling task and Police can assist in investigation matters.

Sanction measures are implemented in the Netherlands in the Iraq Sanctions Order (II) (2004) and the Syria Sanctions Order (2012).

Violations are laid down in the Sanction Act (1977) and the Economic Offences Act (1950).

The Netherlands have taken appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011. The Netherlands is cooperating with other Member States, Interpol, ICOM and UNESCO on this issue.

The Cultural Heritage Inspectorate cooperates closely with Customs and Police.

For both Customs and Police the Cultural Heritage Inspectorate has set up an education programme with special brochures on Iraq and Syria to raise awareness on the importance of the cultural heritage from Iraq and Syria and its legislation and to recognize cultural goods. The education programme is based on the alerts of DG UNESCO, Interpol and the Red Lists provided by ICOM. Special risk indicators are part of the controlling strategy of Dutch Customs.

At one occasion some objects from Syria were discovered by Customs in 2012, of which two are stored in the Netherlands awaiting reestablished contacts with the Syrian authorities.

The Ministry of Education Culture and Science and the National UNESCO Commission are reaching out to the art trade and heritage institutions to make them aware of the situation in Iraq and Syria, and to ask them for their active cooperation in the fight against the illicit traffic in cultural goods. Information on legislation has been sent to the relevant umbrella organizations of the art trade.

The media (newspapers, radio, television) is paying regular attention to the huge problems in Iraq and Syria, including the attacks on cultural heritage and the illicit traffic in cultural goods. This helps to make the public at large aware of the risks when buying antiquities, especially from the Middle East.

The Ministry of Foreign Affairs supports the Prince Claus Fund which has a Cultural Emergency Programme (CER) that provides first aid to heritage damaged by man-made or natural disaster, including in countries like Iraq or Syria.

In April the Netherlands hosted the international course First Aid to Cultural Heritage in Times of Crisis. The training was a collaboration between the Netherlands National Commission for UNESCO, ICCROM and the Smithsonian Institution. The course was organized with the help of over ten local Dutch partners. Twenty heritage professionals from all over the world (from Syria, Afghanistan, Egypt, Argentina, Guatemala and many other countries) were selected to take part in this course.

Under the guidance of internationally renowned trainers, among whom one from Iraq, the participants strengthened their capacities on planning cultural emergency response in coordination with other relief agencies, working with damaged materials, fighting illicit trafficking in cultural goods, assessing and mitigating future risks in order to ensure early recovery. At the end of the course certificates were handed out in the presence of the Minister of Education, Culture and Science.

The participants are encouraged to pass on their knowledge and skills within their own organizations, national and regional networks. The Prince Claus Fund declared they intent to finance some follow up projects in the participants' home countries.

ANNEX 3

Reaction on the recommendations in the Evaluation Report on the 1970 Convention (IOS/EVS/PI/133REV.4), April 2014

Recommendation 1. Provide targeted support, through awareness raising and capacity building activities, to regions where ratification rates are low. (**State Parties**/Subsidiary Committee/Secretariat)

The Netherlands have supported the UNESCO Secretariat through extra budgetary funding to undertake trainings on the 1970 Convention in West Africa, the Caribbean (both in 2012/13) and in South East Asia (2014). Several countries that have not yet ratified the Convention took part in these trainings.

Recommendation 2. Review existing national legislation to ensure it complies with all the obligations that State Parties have under the 1970 Convention. Issues to be looked at include, but are not limited to, the definition of cultural property for the purpose of the 1970 Convention, classification and inventorying of cultural property, regulations for the trade of cultural property (including those relating to dealers and online sales), export and import controls, and procedures facilitating restitution claims. (**State Parties**)

In the past years the Netherlands have been active in reviewing the European legislation, which has led to a recast of EU Directive 93/7/EEC into Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State, which enters into force on 18 December 2015.

Recommendation 3. Identify crucial issues (such as the ones mentioned in the previous Recommendation and throughout the report) and facilitate a dialogue among State Parties and with concerned partners in order to collectively take the implementation of these issues forward. (Subsidiary Committee)

Recommendation 4. Assign responsibility for coordinating the various stakeholders involved in the implementation of the Convention to one specific service/unit. (**State Parties**)

Since 2013 the 'enforcement chain' has been completed, including the Cultural Heritage Inspectorate, Police, Customs and the Public Prosecutor. A national coordinating committee consists of the Ministries of Culture, Security and Justice, Finances and Customs, Police and the Cultural Heritage Inspectorate. The Ministry of Culture coordinates this committee.

Recommendation 5. Consider establishing a specialized police unit to deal specifically with crime against cultural property (including looting and illicit traffic), and provide it with the necessary resources. (**State Parties**)

See under 4, the Netherlands works with an 'enforcement chain', where each control and enforcement organization has its own expertise and competences. Cooperation and exchange of information and best practices are key elements within this chain.

Recommendation 6. Establish an up-to-date and accurate national inventory system for cultural property with a minimum of information recorded in line with the Object ID Standard. (**State Parties**)

The collection in museums subsidized by the national government is digitally registered up to a level of 95%. Two third of cultural objects in ownership of religious organizations are registered.

In general it can be said that the Object ID standard is the basis for most registration schemes used by Dutch museums. The registration schemes that heritage institutions use, have developed since then and have been adapted according to the professional needs and the nature of the collections.

Recommendation 7. Link national databases of stolen objects with the INTERPOL database. **(State Parties)**

The Art and Antiques Crime Unit of the Netherlands Police aims at having all items stolen in the Netherlands to be included in the Interpol database.

Recommendation 8. Institutionalize trainings on cultural property crime for policy and customs, for example by incorporating it into their basic training programmes. **(State Parties)**

The Cultural Heritage Inspectorate trains Customs and Police officers in the field of cultural goods. Special training programmes and a system of permanent education have been developed which includes recognition of cultural objects, knowledge of legislation, knowledge of special detection and research.

Recommendation 9. Strengthen relationships with actors in the art market to encourage stronger cooperation, greater adherence to rules, regulations and codes of ethics, and improved self-regulation. **(State Parties)**

During the last year the Ministry of Culture has had meetings with the most important art and antiques dealer organizations: The European Fine Art Fair, the 'Association of Fine Art Dealers in the Netherlands' (Vereeniging Handelaren in Oude Kunst, VHOK, the largest antique dealers organization, member of the international art dealers association CINO), the Federation of Valuers, Brokers and Auctioneers in movable goods (Federatie van Taxateurs, Makelaars en Veilinghouders in roerende zaken, member of the European Federation of Auctioneers) and the Netherlands Gallery Association (Nederlandse Galerie Associatie).

Discussed are preventive measures against the illicit traffic in cultural goods, especially also in relation to the situation in Iraq and Syria. The meetings were appreciated and will be continued with several issues related to exchange of information, best practices and cooperation.

Recommendation 10. Follow a more comprehensive approach to awareness-raising at the national level based on a systematic identification of the target audience, of the most appropriate mechanisms to be used and of clear objectives to be achieved. Responsibilities of all involved actors also need to be clearly defined. **(State Parties)**

The Ministry of Culture is working on awareness raising activities, together with the National UNESCO Commission.

Recommendation 11. Facilitate international cooperation by clarifying procedures for return/restitution on the national level and by designating focal points that can be contacted by other State Parties. **(State Parties/Subsidiary Committee)**

The meetings of the Subsidiary Committee and the Meeting of States Parties could work on this subject further.

The UNESCO 1970 implementation legislation of the Netherlands is available in the UNESCO cultural heritage law database in English. The Cultural Heritage Inspectorate and the Ministry of Foreign Affairs can be contacted if another State Party wishes to receive information or clarification. A brochure on the Import and Export of Cultural Property in English is available on the web site of the Cultural Heritage Inspectorate (<http://www.erfgoedinspectie.nl/toezichtvelden/cultuurgoederen/publicaties/brochure/2010/3/08/brochure-import-and-export-of-cultural-property>). English texts regarding the implementation of the UNESCO 1970 Convention in the Netherlands will soon be available on the website of the Cultural Heritage Inspectorate.

Within the EU an information exchange system (IMI) will be taken in use by central authorities under the EU directive 2014/60/EU by the end of this year.

Recommendation 12. Strengthen the dialogue about illegally excavated archaeological objects to build consensus on how they can be protected through international cooperation. (**State Parties**/Subsidiary Committee)

On a national level a continuous dialogue between national, regional and local governments, archaeologists, amateur archaeologists and other stakeholders takes place for the improvement of the archaeology sector in the Netherlands.

Museums and universities in the Netherlands take part in international archaeology networks, including ICOM and ICOMOS. Together with them and these organizations the Netherlands would like to take part in an international dialogue on building a consensus on how illegally excavated archaeological objects can be protected through international cooperation. The meetings of the Subsidiary Committee and the Meeting of States Parties could work on this subject further.

Recommendation 13. Revisit and define the role of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation and initiate coordination with the Subsidiary Committee. (ICPRCP)

Recommendation 14. Develop a comprehensive capacity-building strategy that foresees a long term engagement with SPs, enhanced follow-up, and the use of a variety of different capacity building modalities. (Secretariat)

Recommendation 15. Focus capacity-building activities on those regions that have low ratification rates and/or capacity constraints and implementation challenges. (Secretariat)

Recommendation 16. Continue to expand the National Cultural Heritage Law Database by increasing the coverage of legislation and the availability of translations. (Secretariat/**State Parties**)

The Netherlands will send new national heritage legislation to the National Cultural Heritage Law Database in Dutch and in a English translation, whenever relevant.

Recommendation 17. Prioritize the use of awareness raising tools (videos, website, events) in light of their specific quality and effectiveness. (Secretariat)

Recommendation 18. Further improve the Convention website in order to increase its user friendliness, and introduce more frequent alerts about issues related to the 1970 Convention in order to direct visitors of the UNESCO's general website to the Convention website. (Secretariat/Sector for External Relations and Public Information)

Recommendation 19. Better integrate Global Priority Africa into planning and programs in support of the 1970 Convention. (Secretariat)

Recommendation 20. Given the human and financial resource constraints of the Secretariat, provide clear direction about what areas of work should be prioritized over others. (**State Parties**)

The Netherlands would like to discuss this in the context of the meeting of States Parties, and hope the Subsidiary Committee will see this as an important task and will prepare proposals on priorities for the meeting of State Parties.

Recommendation 21. Strengthen the Secretariat with the level of expertise, stability and resources required to respond to the ever increasing demand for its services. (**State Parties**)

As a State Party to UNESCO and especially as an Executive Board member, the Netherlands is concerned about these issues on capacity and resources of the UNESCO Secretariat.

Recommendation 22. Continue the dialogue with partners to clarify roles and to enhance complementarity of the work. (Subsidiary Committee/Secretariat)

Recommendation 23. Identify ways of continuously engaging with representatives of the art market to enhance the implementation of the Convention and develop a road-map, with a view of creating a shared understanding of the issues at stake and a commitment to enhance collaboration. (Subsidiary Committee/Secretariat)

Recommendation 24. Familiarize State Parties, especially in those regions that only make limited use of it, with the 1970 Convention website as a tool for information sharing and knowledge management. (Secretariat)

Recommendation 25. Strengthen the engagement with research institutions, experts and partners with a view of reinforcing UNESCO's role as a broker for knowledge related to the implementation of the 1970 Convention. (Subsidiary Committee/Secretariat)

Recommendation 26. Develop an overall results framework for the Convention, linked to a Convention Theory of Change (or another type of intervention logic) and including clear objectives, time-frames, indicators and benchmarks. (Subsidiary Committee/Secretariat)

Recommendation 27. Improve Periodic Reporting by revisiting the reporting format and introducing an online system for submission and analysis of Periodic Reports (benefitting from what other Conventions do already have in use.) (Subsidiary Committee/Secretariat)

Recommendation 28. Request State Parties to all submit their Periodic Reports every four years (next round in 2015) in order to provide the Secretariat with the required information on the national and regional implementation of the Convention. (**State Parties**/Subsidiary Committee/Secretariat)

DONE!