

Study Group on Illicit Trades

*Preserving Our Legacy: Unveiling Solutions to
Combat Cultural Property Trafficking*

NUP UNESCO/Jean Monnet Working Papers

13/2023



With the support of the
Erasmus+ Programme
of the European Union



**Neapolis
University
Pafos**

UNESCO Chair in Human
Development, Security & the
Fight against Transnational
Crime and Illicit Trafficking in
Cultural Property



The NUP UNESCO/Jean Monnet Working Paper Series can be found at:

<https://www.nup.ac.cy/unesco-chair/working-papers/>

Publications in the Series should be cited as:

AUTHOR, TITLE, NUP UNESCO/JEAN MONNET WORKING PAPER NO. x/YEAR [URL]

Copy Editor: G. Pavlidis

© NUP UNESCO Chair 2023

Neapolis University Pafos, School of Law

Pafos, 8042, Cyprus

All rights reserved. No part of this paper may be reproduced in any form without the permission of the author.

Frontpage picture: Free picture by nonbirinonko from Pixabay

The support of the European Commission and of UNESCO for the production of this publication does not constitute an endorsement of the contents which reflects the views only of the authors; the European Commission and UNESCO cannot be held responsible for any use which may be made of the information contained therein.

Preserving Our Legacy:

Unveiling Solutions to Combat Cultural Property Trafficking

Abstract

This working paper examines the problem of cultural property trafficking, emphasizing the profound importance of cultural heritage and the role of legal frameworks in its protection. Cultural property, with its diverse forms and significant value, is increasingly threatened by illicit trafficking, often associated with organized crime and terrorism. The paper explores international conventions and the involvement of international organizations in the legal protection of cultural property. It identifies the need for harmonization between national and international laws and improved enforcement and coordination. Repatriation and restitution are key elements in rectifying historical injustices and preserving cultural identities. The paper underscores the importance of public awareness and education in empowering communities to protect their heritage and foster cultural sensitivity and global understanding. In conclusion, it advocates for a collective global effort to safeguard the legacy of humanity by preserving and respecting cultural heritage.

Keywords

cultural property trafficking, legal frameworks, repatriation, cultural heritage preservation, technology in cultural property protection, public awareness

1. Introduction

Cultural property, an intricate tapestry of tangible and intangible artifacts, carries great significance due to its cultural, historical, religious, and artistic value. It encompasses a wide spectrum of items, including moveable cultural property, immovable cultural property, intangible cultural property, and archives and libraries, each encapsulating the heritage and identity of communities, societies, or civilizations. Cultural property holds a key role in preserving the rich mosaic of human heritage, serving as the custodian of traditions, historical narratives, and the collective memory of a people. It creates a sense of belonging, pride, and identity within communities and nations, transcending its cultural and historical importance to become a catalyst for tourism and economic development, contributing to local and national economies.

However, the illicit trafficking of cultural property has become a global menace, linked to transnational organized crime, and even terrorism. The trafficking of cultural property is a multi-billion-dollar industry, leading to the depletion of communities' history and identity. These losses are often irreplaceable, leading to a fracture in the continuity of cultural traditions. The trafficking raises moral and ethical dilemmas, including questions of ownership, repatriation, and restitution. In conflict zones, cultural property theft and trafficking can intensify hostilities and fuel violence, further threatening the preservation of cultural identities and contributing to the destabilization of regions. Understanding these challenges is important in addressing the global issue of cultural property trafficking.

2. Understanding Cultural Property

The concept of cultural property encompasses a diverse range of tangible and intangible artifacts that hold cultural, historical, religious, or artistic value. It is typically categorized into four primary classifications: moveable cultural property, immovable cultural property, intangible cultural property, and archives and libraries. These items or artifacts encapsulate the heritage and identity of a particular community, society, or civilization.

Cultural property plays a key role in preserving human heritage. It holds cultural, historical, and economic value by serving as the custodian of traditions, historical narratives, and the collective memory of a people. This cultural wealth fosters a sense of belonging, pride, and identity within communities and nations. Beyond its cultural and historical significance, cultural property often acts as a driver of tourism and economic development. It attracts visitors from around the world, contributing to local and national economies.

Cultural property trafficking is a significant global concern due to several interconnected factors. The illegal trafficking of cultural property has become a multi-billion-dollar industry, often linked to transnational organized crime (Borgstede, 2014). The proceeds from these activities may fund other illegal endeavours, including terrorism, as is very often the case with illicit trades.

When cultural property is stolen or trafficked, it results in the erasure of parts of a community's history and identity. These losses are often irreplaceable, leading to

a fracture in the continuity of cultural traditions. The trafficking of cultural property also raises complex moral and ethical dilemmas, including questions of ownership, repatriation, and restitution, which have legal and ethical dimensions.

In conflict zones, cultural property theft and trafficking can intensify hostilities and fuel violence (Weiss & Connelly, 2019). It deprives communities of their cultural symbols, exacerbating the already volatile situation. Cultural property trafficking is, therefore, a global issue that threatens the preservation of cultural identities, raises profound ethical concerns, and can contribute to the destabilization of regions.

3. Legal Frameworks for Protecting Cultural Property

Legal frameworks for protecting cultural property form the cornerstone of efforts to combat the trafficking and illicit trade of these invaluable assets. It is worth examining relevant international conventions, the significance of national laws, and the role of international organizations and institutions in upholding and enforcing these legal measures.

3.1. International Conventions and Treaties

International efforts to safeguard cultural property have given rise to various conventions and treaties. The most notable among them are those administered by UNESCO (the United Nations Educational, Scientific and Cultural Organization) and UNIDROIT (the International Institute for the Unification of Private Law). These agreements provide a set of norms and standards to guide nations in the protection and preservation of cultural property (Veres, 2014).

UNESCO, for instance, administers the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (see next page). This convention establishes guidelines for the identification, protection, and restitution of cultural property, contributing to international cooperation in this field. With 143 ratified States Parties, the Convention establishes a comprehensive framework to combat the illicit trafficking of cultural property and ensures the safeguarding of global cultural heritage.

The 1970 UNESCO Convention

Key Principles:

- 1. Prevention:** Emphasizes the importance of prevention through measures such as regular inventories, export certificates, trader controls, and educational campaigns; criminal and administrative sanctions are essential components of prevention efforts.
- 2. Restitution:** Contains provisions for the restitution of cultural property; States Parties are obligated to seize and return stolen cultural property, with a focus on items taken from museums, public monuments, and religious institutions.
- 3. International Cooperation:** Encourages international collaboration among States Parties, committing parties to participate in concerted international operations and allows for specific actions, including bilateral treaties and the regulation of international trade.
- 4. Private Law Supplement:** Acknowledging gaps in private law coverage, UNESCO collaborated with UNIDROIT to address issues not directly handled by the 1970 Convention. The 1995 Convention on Stolen or Illegally Exported Cultural Objects complements the 1970 Convention, especially in matters related to private law.

Implementation:

- 1. States Parties Responsibilities:** The Convention, ratified by 143 states, entered into force on April 24, 1972. States Parties are required to adopt protective measures, including national legislation, services for cultural heritage protection, and the promotion of cultural institutions.
- 2. Control of Movement:** States Parties must establish systems for export certificates, prohibit exports without proper documentation, and penalize unlawful import or acquisition of cultural property. Emergency import bans are permitted to protect a State Party's cultural heritage from intense looting.
- 3. Return of Stolen Property:** A State Party can request the seizure and return of stolen cultural property located in another State Party's territory. Requests are made through diplomatic channels, and the requesting State must provide evidence supporting its claim. Compensation to a good-faith purchaser may be required.

3.2. The Importance of National Laws

National laws are fundamental in the safeguarding of cultural heritage, as they allow countries to adapt international standards to their specific circumstances. These laws create the legal infrastructure necessary to protect and regulate cultural property within their borders. National laws can encompass a range of topics, such as export controls, heritage preservation, and restitution. For instance, they may impose export restrictions on certain categories of cultural property, require licenses for the sale of antiquities, or outline measures for the repatriation of stolen or unlawfully acquired items.

3.3. The Role of International Organizations and Institutions

International organizations and institutions play a key role in promoting adherence to international conventions and treaties related to cultural property. They provide guidance, facilitate cooperation, and offer resources to assist nations in implementing these legal measures effectively. UNESCO, as a prime example, not only administers conventions but also fosters capacity-building and awareness campaigns. It assists countries in the development of national legislation and the creation of inventories and databases for cultural property (Warring, 2005). Additionally, INTERPOL, the International Criminal Police Organization, collaborates with countries to combat cultural property trafficking through its specialized units and tools (e.g. Stolen Works of Art Database), aiding in the recovery of stolen items and the apprehension of traffickers (Jouanny, 2008).

4. Challenges in the Legal Framework

While legal frameworks exist to protect cultural property, they are not without their challenges. This section explores common legal challenges in combating cultural property trafficking, including the lack of harmonization between national and international laws, inadequate enforcement and coordination, and the complexities surrounding provenance research and repatriation.

4.1. Lack of Harmonization Between National and International Laws

A significant challenge in combating cultural property trafficking is the lack of harmonization between national laws (Lehavi, 2022). Each country may have its own legal framework and definitions regarding cultural property, and these definitions may not align with international standards. This creates a legal loophole that traffickers can exploit. For instance, an item considered stolen or an item considered to be an antiquity in one country may not be treated as such in another, allowing traffickers to exploit these discrepancies and move stolen artifacts across borders with relative ease. Achieving consistency and alignment between national and international laws is crucial to addressing this issue effectively.

4.2. Inadequate Enforcement and Coordination

Inadequate enforcement and coordination between countries and law enforcement agencies pose significant challenges (Blake, 2020). Cultural property trafficking is often a transnational crime, and effective enforcement requires cooperation between multiple jurisdictions. Insufficient resources, training, and prioritization can hinder the efforts to combat trafficking. Additionally, the lack of coordination among various agencies, both domestically and internationally, can lead to missed opportunities to apprehend traffickers and recover stolen items. Enhanced cooperation and the allocation of resources are essential to address this challenge.

4.3. Provenance Research and Repatriation Issues

The path from tracing and freezing of assets, to their confiscation and their repatriation is a long and complex one in many areas of criminality (Pavlidis, 2022). Regarding cultural property, provenance research, the process of determining the history and ownership of cultural artifacts, is essential for identifying stolen items and facilitating their repatriation. However, conducting thorough research can be a daunting task, especially for objects with incomplete or murky histories. Repatriation issues often arise due to legal, ethical, and diplomatic complexities. Determining the rightful owners and the circumstances of theft or looting can be challenging, and disputes may arise regarding the return of cultural property. Furthermore, the legal mechanisms for repatriation may not be well-defined or may vary between countries.

5. The Role of Technology

Technology has the potential to become a valuable ally in the ongoing battle against cultural property trafficking (Winterbottom and others, 2022). Technology can be harnessed to combat the illicit trade, using tools and databases to identify and recover stolen cultural property.

Technology plays a pivotal role in the fight against cultural property trafficking, providing a range of mechanisms for its mitigation. Digital archives and catalogues are instrumental in cataloguing and preserving cultural property, establishing a digital repository that can be invaluable in tracking stolen artifacts. High-resolution digital imaging and 3D scanning techniques contribute to detailed artifact records, simplifying the identification and recovery process. Blockchain technology, with its transparent and immutable ownership records, creates barriers for traffickers attempting to sell stolen artifacts. Additionally, crowdsourcing through online platforms and social media may encourage public participation in recovery efforts, mobilizing a broader network of individuals and organizations.

Various tools and databases aid in the identification and recovery of stolen cultural property. Interpol's Stolen Works of Art Database offers international support by providing critical information about stolen artifacts, facilitating their identification and recovery. The Art Loss Register, a private database, maintains a comprehensive database of stolen art and cultural property, enabling the identification of stolen items

and preventing their illicit sale. The Global Heritage Network focuses on documenting and sharing information about cultural property at risk, supporting recovery and protection initiatives. Specialized software for photographic and imaging analysis assists in detecting alterations, forgeries, and issues of authenticity in cultural artifacts.

Nonetheless, the use of technology in combatting cultural property trafficking is not without its challenges and ethical concerns. Managing sensitive data related to cultural property, particularly in digital databases, raises concerns about privacy and data security. The use of 3D scanning, while beneficial for preservation and recovery, can pose some ethical questions, particularly when artifacts hold cultural or religious significance. The determination of ownership and repatriation can be intricate and may lead to disputes and ethical dilemmas. Furthermore, technology, despite its benefits, can also be employed to create sophisticated forgeries, making artifact authentication a complex issue.

6. Repatriation and Restitution

Repatriation and restitution are integral aspects of the fight against cultural property trafficking, bearing significant importance in the preservation of cultural heritage and the rectification of historical injustices (Bouchenaki, 2009). These processes include the preservation of cultural identity, the restoration of justice, and deterrence for traffickers. The repatriation of stolen cultural property involves a combination of international, national, and ethical legal mechanisms.

Countries often establish legal frameworks that allow them to request the return of stolen artifacts, either through specific restitution laws or general property laws. International treaties and agreements, such as the aforementioned 1970 UNESCO Convention and bilateral agreements between countries, can facilitate repatriation efforts.

One of the primary challenges is the need for thorough provenance research, which establishes the history of an artifact. This process can be complex and time-consuming, particularly for items with incomplete or convoluted histories. Ownership disputes frequently stall repatriation efforts, necessitating legal resolutions and negotiations to reach a consensus. Ethical considerations, including cultural sensitivity, the treatment of artifacts, and the impact on museums and institutions currently housing these items, can further complicate the repatriation process.

7. Public Awareness and Education

Public awareness and education play a critical role in the fight against cultural property trafficking, emphasizing the significance of these aspects and their essential contributions to preserving cultural heritage (Minana, 2019). Public awareness serves as a cornerstone in the protection of cultural property. When the public is informed about the value of cultural heritage and the threats posed by trafficking, it becomes an engaged and active participant in safeguarding these assets. Raising awareness can

take many forms, including public campaigns, exhibitions, and media coverage. It not only educates the public about the issue but also mobilizes them to report suspicious activities, support protective measures, and demand accountability from authorities and institutions.

Education is equally vital in the fight against cultural property trafficking. Educational programs, whether in schools, universities, or within communities, help build an understanding of the cultural and historical significance of artifacts and the consequences of their loss. By integrating cultural heritage education into curricula, individuals gain a profound appreciation for the value of their own heritage and that of others. Furthermore, education encourages future generations to become responsible stewards of cultural property and creates a sense of cultural sensitivity.

Finally, cultural sensitivity is an integral component of preserving cultural property. It entails understanding and respecting the customs, traditions, and beliefs of different cultures and recognizing the importance of repatriation, restitution, and the ethical treatment of artifacts. Cultural sensitivity not only aids in preventing the illicit trade of cultural property but also fosters respectful dialogues between countries, institutions, and communities. By promoting international understanding, it paves the way for collaboration in repatriation efforts.

8. Conclusion

The fight against cultural property trafficking requires understanding the profound significance of cultural property, establishing robust legal frameworks for protection, addressing challenges within these legal frameworks, harnessing the power of technology, and advocating for repatriation and restitution. These efforts are underpinned by public awareness and education, which empower individuals and communities to become active protectors of cultural heritage. Cultural property serves as a testament to the rich and diverse history of human civilization, and its protection is not merely a legal or ethical duty but a collective responsibility of societies, nations, and the international community (Fechner, 1998).

The repatriation and restitution of stolen cultural property are not merely about returning artifacts but about rectifying historical injustices and preserving cultural identities. In this context, it is important to understand the significance of harmonization between national and international laws, the critical need for enforcement and coordination, and the complexities of provenance research and repatriation. Technology has emerged as a powerful ally in the battle against cultural property trafficking, offering tools for identification and recovery, yet it brings forth ethical concerns that require thoughtful management.

Public awareness and education hold the potential to mobilize societies and individuals to actively participate in the preservation of cultural heritage, fostering cultural sensitivity, and international understanding. In the face of cultural property trafficking's threats, a collective effort, steeped in appreciation for the value of cultural heritage and respectful dialogues between nations and communities, is essential for safeguarding the legacy of humanity for generations to come.

Bibliography

1. Blake, J., 'Trafficking in Cultural Property: Where Cultural Heritage Law and the International Fight Against Transnational Organized Crime Coincide', in Anne-Marie Carstens, and Elizabeth Varner (eds), *Intersections in International Cultural Heritage Law* (Oxford, 2020)
2. Borgstede, G., 'Cultural Property, the Palermo Convention, and Transnational Organized Crime' (2014) 21(3) *International Journal of Cultural Property* 281.
3. Bouchenaki, M., 'Return and restitution of cultural property in the wake of the 1970 Convention' (2009) LXI(61) *Museum international* 241.
4. Fechner, F., 'The fundamental aims of cultural property law' (1998) 7(2) *International Journal of Cultural Property* 376.
5. Jouanny, J.P., 'The Role of INTERPOL in Countering the Traffic in Cultural Property' (2008) *International Preservation News*, issue 45, pp. 7-9.
6. Lehavi, A., 'From Global Databases to Global Norms? The Case of Cultural Property Law' (2022) 44 *University of Pennsylvania Journal of International Law* 359.
7. Minana, M., 'Raising the awareness on the illicit trafficking of cultural property: UNESCO's experience', Background Paper for the Council of Europe as a background paper for the Conference "Act for Heritage", 2019.
8. Pavlidis, G., 'Asset Recovery in the European Union: Implementing a No Safe Haven Strategy for Illicit Proceeds' (2022) 25(1) *Journal of Money Laundering Control* 109-117, <https://doi.org/10.1108/JMLC-11-2020-0131>
9. Veres, Z., 'The Fight against Illicit Trafficking of Cultural Property: The 1970 UNESCO Convention and the 1995 UNIDROIT Convention' (2014) 12 *Santa Clara Journal of International Law* 91.
10. Warring, J., 'Underground Debates: The Fundamental Differences of Opinion That Thwart UNESCO's Progress in Fighting the Illicit Trade in Cultural Property' (2005) 19 *Emory International Law Review* 227.
11. Weiss, T., Connelly, N., 'Protecting cultural heritage in war zones' (2019) 40 *Third World Quarterly* 1.
12. Winterbottom, T., Leone, A. & Al Moubayed, N. 'A deep learning approach to fight illicit trafficking of antiquities using artefact instance classification' (2022) 12 *Scientific Reports*, 13468 (2022).