The Nicosia Convention: Rethinking Criminal Law Approaches to Cultural Property Offences

Ioannis Gkountis
Postdoctoral Fellow of the Jean Monnet Center of Excellence AI-2-TRACE-CRIME, NUP
PhD University of Munich

Georgios Pavlidis
UNESCO Chair & Jean Monnet Chair Associate Professor of International and EU Economic Law
School of Law, Neapolis University Pafos

The Council of Europe's 2017 Convention on Offences Relating to Cultural Property (the "Nicosia Convention") represents an ambitious attempt to bring binding criminal law obligations into a domain long dominated by administrative and civil frameworks. This article offers a critical analysis of the Convention's normative architecture, the criminalisation of a range of offences, the reliance on national definitions of cultural property, and the inclusion of flexibility clauses that may undermine harmonisation. The article situates the Convention within broader international and EU legal frameworks, exploring its potential to strengthen cross-border enforcement. While the Convention marks a significant normative development, the article argues that its impact will depend on sustained political will, institutional capacity, and meaningful engagement by market actors. This study was prepared in the context of the Jean Monnet Center of Excellence AI-2-TRACE-CRIME and was funded by the European Union. Views and opinions expressed are however those of the author only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor EACEA can be held responsible for them.

1. Introduction

Cultural property, both movable and immovable, represents a very significant, most times irreplaceable, expression of the identity, memory, and history of peoples.[1] Yet, such property is increasingly targeted by illicit actors, across peacetime and conflict zones alike.[2] These actors may seek profit, ideological impact, or both. Offences against cultural property have evolved in scale and sophistication, from the looting of archaeological sites and the deliberate destruction of monuments to the illicit trade using online platforms.[3] This has devastating consequences for the preservation of the world's shared heritage.

The trend has been amplified by armed conflicts in recent decades, notably in Syria and Iraq, where cultural objects have been systematically plundered and trafficked, often by organised criminal networks or terrorist groups seeking to sustain their operations financially. However, even outside conflict zones, the persistent illicit circulation of antiquities, from clandestine excavations to questionable acquisitions by art market intermediaries, has exposed serious weaknesses in the legal framework governing cultural heritage protection.

The transnational nature of these activities requires cross-border cooperation and coherent international responses.[4] However, some prior instruments, such as the 1985 European Convention on Offences relating to Cultural Property (the "Delphi Convention"), failed to attract sufficient ratifications and never entered into force. Other international frameworks, most notably the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and

1. Brodie, N., "Illicit antiquities: The theft of culture" in G. Corsane (ed.), Heritage, Museums and Galleries (Routledge, 2004) pp. 133-153.
2. Toman, J., *Protection of Cultural Property in the event of Armed Conflict* (Routledge, 2017)
3. Campbell, P., "The illicit antiquities trade as a transnational criminal network: Characterizing and anticipating trafficking of cultural heritage" (2013) International Journal of cultural property, Vol. 20.2, pp. 113-153
4. Casertano, L., "Combating the Illicit Trafficking of Cultural Property: The Multifaceted Response to a Complex Challenge" (2020) Global Jurist, Vol. 20.1, 20190025.

Transfer of Ownership of Cultural Property [5] and the 1995 UNIDROIT Convention,[6] have contributed important civil and administrative tools, but they offer limited recourse in criminal law. In this fragmented landscape, the Council of Europe's Convention on Offences Relating to Cultural Property (CETS No. 221), adopted in 2017, is the first binding international instrument to establish a comprehensive set of criminal law obligations concerning the destruction, damage, and trafficking of cultural property.

This article explores the Nicosia Convention's ambitions and architecture. It critically assesses its provisions, enforceability, and potential to fill longstanding normative gaps. Rather than offering a purely descriptive account, the analysis highlights key challenges for the Convention's implementation, ranging from its reliance on State classifications of cultural property to its interaction with existing legal regimes. The article situates the Convention within broader debates on transnational criminal law, cultural heritage governance, and market regulation. It ultimately questions whether the Nicosia Convention marks a genuine step forward or merely repackages aspirations in a new legal form.

2. Cultural Property, Criminal Law, and the Turn to Treaty Reform

While the destruction, looting, and illicit transfer of cultural objects have long been denounced in soft-law instruments and public discourse, binding obligations, especially in the field of criminal law, have remained limited and uneven. In this context, not all countries follow the same approach to criminalisation. The Delphi Convention[7], adopted by the Council of Europe in 1985, sought to address this gap by introducing criminal law provisions relating to cultural property. However, it never entered into force, owing to a lack of ratifications. It was eclipsed by more widely ratified instruments, which used however a different legal toolbox. These instruments, such as the 1970 UNESCO, primarily rely on civil, administrative, or restitution-based approaches, with only some peripheral attention to the criminal law approach.[8]

The 2017 Nicosia Convention represents an ambitious attempt by the Council of Europe to revive this neglected agenda. It reflects a shift from hortatory norms to binding obligations. The Convention was drafted with a dual objective: first, to criminalise a range of conduct relating to cultural property, including unlawful excavation, illicit import/export, and market placement; and second, to enhance international cooperation in the prosecution and prevention of such offences. This pivot to criminal law mirrors broader trends, where the logic of repression is increasingly mobilised in areas previously governed by heritage law or administrative regimes.[9]

Importantly, the Nicosia Convention emerged in a geopolitical context marked by the rise of transnational threats to cultural heritage. It was adopted in the aftermath of the armed conflicts in the Middle East, the deliberate destruction of archaeological sites and the trafficking of antiquities by terrorist groups such as ISIS. These developments reanimated concerns about the use of heritage crimes for the financing of terrorism. They also reinforced the perception that existing instruments lacked the teeth to respond effectively to cultural property crimes. This is particularly true when such crimes are committed by non-State actors or across jurisdictional boundaries. The Convention's drafters sought to develop a treaty that would close the enforcement gap while complementing existing international norms.

At the same time, the Convention reflects a compromise between harmonisation and flexibility. It allows States to enter reservations in key areas, such as unlawful excavation or illegal importation, and does not impose universal criteria for classifying cultural property, instead deferring to national definitions. This approach has facilitated consensus during the drafting phase. However, it raises questions about consistency and the extent to which the Convention can overcome the limitations of its predecessors. As the following sections will show, the move toward criminalisation is normatively significant, but its practical effect hinges on how State Parties implement and enforce the Convention's provisions in their national legal orders.

3. Core Substantive Innovations: Between Criminalisation and Harmonisation

The normative core of the Nicosia Convention is its Chapter II. These provisions set out, for the first time in a Council of Europe treaty, a structured catalogue of criminal offences relating to cultural property, ranging from unlawful appropriation to document falsification and deliberate destruction. The Convention's contribution lies, first, in affirming that cultural property deserves protection through criminal law and, second, in establishing a shared legal

5. UNESCO, Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, No. 11806, 823 U.N.T.S. 231 (Nov. 14, 1970)
6. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995). Rome, Italy: UNIDROIT.
7. European Convention on Offences relating to Cultural Property (ETS No. 119) ("Delphi Convention")
8. Prott, L., "International control of illicit movement on the cultural heritage: The 1970 UNESCO convention and some possible alternatives" (1983) Syracuse Journal of International Law and Commerce, Vol. 10, p. 333 ff.
9. Shelbourn, C., 'Improving the treatment of heritage crime in criminal proceedings: towards a better understanding of the impact of heritage offences' in *Heritage Crime: Progress, Prospects and Prevention* (Palgrave Macmillan, 2014) 188-205.

vocabulary and minimum standard of criminalisation across jurisdictions with deeply heterogeneous legal traditions.

The list of offences is comprehensive. Article 3 criminalises theft and other forms of unlawful appropriation, while Article 4 focuses specifically on the unauthorised excavation and removal of cultural property, whether from land or underwater. Articles 5 and 6 respectively address illegal importation and exportation, targeting cross-border trafficking flows. Article 7 then tackles the acquisition of unlawfully sourced property, and Article 8 criminalises the placement of such property on the market. Therefore, the provisions are designed to address the entire trafficking chain, from illicit origin to final sale, through a coordinated legal response. Moreover, States are required to criminalise acts that were often addressed only through administrative or civil means.

A significant feature of these provisions is their treatment of *mens rea*. While the Convention generally requires intent for criminal liability to attach, it also introduces a "should have known" (optional) standard for certain offences—specifically acquisition (Article 7(2)) and market placement (Article 8(2)). This is particularly relevant for market actors such as art dealers, auction houses, and collectors, who often rely on good faith as a shield against legal consequences. The Convention encourages States to hold these actors to a higher standard of due diligence, aligning with ethical norms developed in the art trade.[10] It is worth mentioning here the ICOM Code of Ethics[11] and the UNESCO 1970 Operational Guidelines.[12] This provision is phrased as an option ("shall consider taking the necessary measures"). However, its inclusion signals a new normative expectation that ignorance, especially when negligent or wilfully blind, should not excuse complicity in cultural property crime.

Regrettably, the Convention's harmonising potential is significantly constrained by the inclusion of numerous flexibility clauses. Articles 4, 5, 10, and 11 explicitly allow States to enter reservations permitting non-criminal sanctions in lieu of criminal ones. Importantly, these carve-outs apply to key offences, such as unauthorised excavation and unlawful importation. In those cases, national sensitivities or legal traditions may discourage criminalisation. While such flexibility may encourage broader ratification, it creates uneven implementation risks and undermines the Convention's core objectives. Moreover, the reservation mechanism allows for partial engagement with the Convention, enabling States to retain administrative approaches even where international cooperation and deterrence would benefit from stronger penal tools.

This tension between harmonisation and discretion is further illustrated by the Convention's reliance on national definitions of cultural property. Article 2 does not impose a universal taxonomy but instead allows each State to define, classify, or designate what qualifies as cultural property. The categories listed in Article 2—such as pictures, paintings and drawings, engravings, prints and lithographs, and articles of furniture—are illustrative rather than mandatory, and their qualification as cultural property depends on domestic legal classification. While this approach respects cultural sovereignty, it opens the door to interpretive divergence and complicates the transnational application of offences such as illegal export or importation, which hinge on the property's classification by each State.

Chapter II of the Nicosia Convention represents a meaningful advance, though cautious, in the criminal law response to cultural property offences. It balances obligations with flexibilities that reflect the diversity of national legal systems. Yet, this same pragmatism may dilute the Convention's normative force. This is particularly true if States rely heavily on reservations or adopt minimalist implementing legislation or minimalist definitions of cultural property. The result is a legal framework that encourages convergence but stops short of full harmonisation.

4. Enforcement and Jurisdictional Challenges

The effectiveness of the Nicosia Convention depends not only on the criminalisation of cultural property offences but also on the capacity of States to investigate, prosecute, and cooperate across borders. Chapter III of the Convention addresses these operational dimensions, yet it does so in a manner that reflects caution. While certain provisions signal an intent to strengthen enforcement, the Convention stops short of mandating reforms that would ensure uniform investigative or prosecutorial practices.

A key provision in this regard is Article 17, which requires Parties to ensure that criminal proceedings are not contingent on a prior complaint. This is significant, as many cultural property crimes, particularly theft or illicit excavation, go unreported by private actors or institutions due to reputational concerns or bureaucratic inertia. The Convention waives this requirement to empower law enforcement authorities to act *ex officio*. Nevertheless, the absence of an obligation to establish specialised law enforcement units (Article 18 encourages but does not require this) represents a missed opportunity. Investigating cultural property crimes often demands expertise in provenance research, art market

10. Manacorda, S, and Chappell, D. (eds.), Crime in the art and antiquities world: Illegal trafficking in cultural property (Springer, 2011).
11. International Council of Museums, *Code of Ethics for Museums* (ICOM, 2006)
12. UNESCO, Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, 1970)

practices, and international customs law. These skills are not always readily available within general police structures.

The Convention's approach to jurisdiction further illustrates the difficult balance it attempts to strike. Article 12 obliges States to establish jurisdiction over offences committed within their territory, on vessels or aircraft under their flag, or by their nationals. It also includes an *aut dedere aut judicare* clause that obliges States to assert jurisdiction when the alleged offender is present in their territory and cannot be extradited. This latter provision plays a crucial role in preventing impunity; however, its effectiveness may be limited by the possibility for States to enter a reservation excluding the extradition of their own nationals. Furthermore, when multiple States assert jurisdiction over the same offence, the Convention merely encourages consultation to determine the most appropriate prosecuting State. Thus, the persistent challenges of forum shopping or jurisdictional inertia remains unresolved.

Cross-border cooperation, central to the Convention's rationale, is addressed in Article 19. It calls for mutual legal assistance and extradition under existing frameworks, including the United Nations Convention against Transnational Organized Crime.[13] However, it is well-established that such cooperation is hindered by legal, linguistic, and evidentiary differences among States, as well as by the absence of specialised prosecutorial bodies capable of pursuing complex transnational cases. Unlike the EU legal order, where mutual recognition of judicial decisions has become a cornerstone of cooperation,[14] the Council of Europe framework relies largely on voluntary compliance and reciprocal trust. These mechanisms are often inefficient in dealing with urgent cultural property cases.

Administrative and preventive mechanisms, such as those outlined in Chapter IV, offer some promise but remain non-binding. Parties are encouraged to develop inventories, enforce import/export controls,[15] and monitor online markets. Nevertheless, these provisions function as best practices rather than enforceable obligations. Importantly, the Convention does not mandate the establishment of central databases, nor does it create a reporting duty to Interpol or other international monitoring bodies. The monitoring of freeports, often used to shield high-value artworks from scrutiny, is also left to the discretion of States. This approach fails to address the enforcement deficits that the Convention was promising to overcome.

Moreover, the follow-up mechanism introduced in Chapter V is limited in scope. The Committee of the Parties may monitor implementation and facilitate information exchange, but it lacks investigative powers or sanctioning capacity. Civil society participation is merely optional, and no independent expert body is tasked with issuing binding recommendations or compliance assessments. As such, enforcement under the Convention depends almost entirely on the political will and institutional resources of national authorities—factors that vary widely across jurisdictions.

5. The Convention in a Global and EU Context

The Nicosia Convention was drafted with the understanding that national-level reforms alone would not suffice to address the complex and transnational nature of cultural property offences. Its drafters explicitly positioned it as part of a broader international legal framework. Thus, the Nicosia Convention is intended to operate in synergy with pre-existing global instruments such as the 1970 UNESCO Convention, the 1995 UNIDROIT Convention, and the 2000 United Nations Convention against Transnational Organized Crime. However, the Convention's relationship with these instruments, while complementary, reveals some areas of overlap.

The most direct complementarity lies in the Nicosia Convention's use of criminal law to reinforce international commitments that are primarily administrative or civil in nature. Neither the UNESCO nor the UNIDROIT Conventions obliges States to criminalise the unlawful excavation, export, or acquisition of cultural property.[16] The Nicosia Convention fills this gap by imposing such binding obligations. Moreover, by explicitly referencing the operational guidelines of these instruments in its Explanatory Report, the Nicosia Convention demonstrates its intent to build upon existing standards, rather than displace them.

Nevertheless, divergences in legal definitions and scope may complicate this alignment. For instance, the UNESCO Convention permits States to define cultural property in accordance with national law, a flexibility preserved by the Nicosia Convention in Article 2. However, this reliance on State-level designation creates interpretive fragmentation: what qualifies as protected cultural property in one jurisdiction may fall outside the scope of another's legal protection, limiting the Convention's efficacy in cross-border enforcement. This definitional inconsistency is particularly problematic in relation to export/import offences (Articles

13. United Nations Convention Against Transnational Organized Crime, New York, November 15, 2000, UN General Assembly, A/RES/55/25, United Nations Treaty Series Vol. 2225, p. 209
14. Pavlidis, G., 'Asset recovery in the European Union: implementing a "no safe haven" strategy for illicit proceeds', (2022) Journal of Money Laundering Control, Vol. 25.1, pp. 109-117.
15. Vigneron, S., "Protecting cultural objects: Enforcing the illicit export of foreign cultural objects" in V. Vadi, H. Schneider (eds), Art, Cultural Heritage and the Market: Ethical and Legal Issues (Springer, 2014) pp. 117-139.
16. Levine, A., "The need for uniform legal protection against cultural property theft: A final cry for the 1995 Unidroit convention" (2010) Brooklyn Journal of International Law, Vol. 36, p. 751 ff.

5 and 6), where the criminalisation of conduct depends on another State's classification of property and applicable export controls.

The Convention must also be situated in relation to evolving EU legal frameworks. While the Council of Europe and the EU are distinct institutions, their strategies and agendas often intersect. This can be observed in fields involving cross-border crime. The EU has adopted some legislative instruments relevant to cultural property, most notably Regulation (EU) 2019/880 on the introduction and import of cultural goods and Directive 2014/60/EU on the return of cultural objects unlawfully removed from the territory of a Member State. These instruments focus on administrative enforcement, border controls, and intra-EU restitution but do not mandate criminalisation. In this respect, the Nicosia Convention offers a more robust penal framework, although implementation may be uneven and depend on ratification status.

Furthermore, the Convention's provisions on jurisdiction, mutual legal assistance, and seizure (Articles 12, 14, and 19) do not benefit from the efficiencies of the EU's mutual recognition framework, which includes tools such as the European Arrest Warrant and the European Investigation Order. This institutional asymmetry creates a two-speed enforcement landscape: while EU Member States may be bound by both regimes, third countries, particularly source States of illicit antiquities, may lack access to equivalent cooperation mechanisms unless they are Parties to the Convention or to other regional treaties.

Despite its framing as an open and globally oriented instrument, uptake of the Nicosia Convention has been slow. As of early 2026, the number of ratifications remains modest (seven ratifications and signatures not followed by ratifications). In practice, its impact has been largely confined to policy discourse rather than judicial or enforcement outcomes. The Committee of the Parties, envisaged as a soft governance body to monitor implementation and facilitate exchange, has yet to demonstrate its capacity to influence national practice or drive harmonisation.

In light of these observations, the Convention's added value appears strongest where it helps bridge the normative divide between source and market countries, between jurisdictions often characterised by strong patrimonial claims and those with historically permissive market practices. If effectively ratified and implemented by key market States, the Convention could recalibrate long-standing asymmetries in legal obligation and enforcement capacity. Conversely, if market actors continue to rely on national reservations, minimal transpositions, or weak prosecutorial practices, the Convention risks failing to achieve its purpose.

6. Concluding Reflections: Between Symbolism and Enforcement

The Council of Europe's Convention on Offences Relating to Cultural Property represents an important development in the international legal response to the destruction, looting, and trafficking of cultural heritage. It brings long-overdue criminal law specificity to an area historically governed by civil and administrative regimes. It offers a framework that – if implemented robustly – could facilitate more effective transnational cooperation.

Yet, this achievement is tempered by significant limitations. First, the Convention's dependence on national classifications of cultural property and its allowance for wide-ranging reservations introduce serious inconsistencies. Second, the lack of mandatory investigative structures or binding enforcement mechanisms at international level dilutes the Convention's impact. Furthermore, the Convention's interaction with other legal regimes remains both a strength and a source of friction. Within the EU, the Convention adds a criminal dimension to a regulatory field that has hitherto relied on administrative tools and mutual recognition procedures, but this dual track may also result in duplication or conflicting obligations if not carefully coordinated.

Looking ahead, the Convention's effectiveness will be measured not by the elegance of its legal drafting and the principles it embodies, but by its capacity to shift institutional behaviour and legal practice. That will depend on several factors: the extent to which States ratify and implement its provisions in good faith; the resources devoted to enforcement and cross-border cooperation; and the willingness of market actors—dealers, auction houses, museums—to internalise due diligence as a preventive tool.[17] Due diligence in this context must be used as normative standard rather than a box-ticking exercise. Where implemented with resolve, the Convention could help disrupt the illicit supply chains that continue to threaten the world's cultural heritage. If implementation is half-hearted, the Convention may remain a largely symbolic affirmation of good intentions.

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