CONVENTION MECHANISM FOR INTERNATIONAL COOPERATION IN THE FIELD OF CULTURAL PROPERTY ILLEGAL TRAFFIC
DOI: https://doi.org/10.24115/S2446-6220206Extra-C642p.197-202

Natalya Yu. Sudnikova

ABSTRACT
The article examines the foundations of the convention mechanism for international cooperation in the field of cultural property illegal trafficking. The author notes that not all international legal norms are implemented by states into national legislation, and therefore, the uniformity of their application is violated. Thus, there is still a need to sign and ratify treaties, the provisions of which are aimed at cultural value illegal trafficking prevention and the development of a mechanism for international legal control over compliance with agreements in this area.

Keywords: Convention mechanism. Smuggling. Cultural values. Organized crime. Illegal traffic.

MECANISMO DE CONVENÇÃO PARA COOPERAÇÃO INTERNACIONAL NO CAMPO DO TRÁFICO ILÉGAL DE BENS CULTURAIS

MÉCANISME DE LA CONVÉNION POUR LA COOPÉRATION INTERNATIONALE EN LA ESPERA DEL TRÁFICO ILÍCITO DE BIENES CULTURALES

RESUMO
O artigo examina as bases do mecanismo da convenção para a cooperação internacional no campo do tráfico ilegal de bens culturais. O autor observa que nem todas as normas jurídicas internacionais são implementadas pelos estados na legislação nacional e, portanto, a uniformidade de sua aplicação é violada. Assim, ainda é necessária a assinatura e ratificação de tratados cujas disposições visem valorizar a cultura da prevenção do tráfico ilegal e o desenvolvimento de um mecanismo de controle jurídico internacional sobre o cumprimento dos acordos nessa área.


RESUMEN
El artículo examina los fundamentos del mecanismo de la convención para la cooperación internacional en el campo del tráfico ilegal de bienes culturales. El autor señala que no todas las normas legales internacionales son implementadas por los estados en la legislación nacional y, por lo tanto, se viola la uniformidad de su aplicación. Por lo tanto, sigue siendo necesaria la firma y ratificación de tratados cuyas disposiciones tienen por objeto la prevención del tráfico ilícito de valores culturales y el desarrollo de un mecanismo de control legal internacional sobre el cumplimiento de los acuerdos en esta materia.

INTRODUCTION
Theft, illicit trafficking and counterfeiting of cultural property and cultural heritage objects are particularly complex crimes, which often have significant negative consequences not only for an individual state, but also for the entire international community (MANACORDA, CHAPPELL, 2011). The report of the World Customs Organization (WCO) "Illegal Trade in 2016" provides a special attention to the problem of cultural property and works of art smuggling. First of all, the data presented in it allow us to check the validity of the widespread and often found in the media assertion that the illegal trade in cultural property is the third after the smuggling of drugs and weapons in terms of profitability (BERGER, 2018).

However, despite the volume of illegal trafficking in cultural property from 3.4 to 6.3 billion US dollars annually (UNESCO MEETINGS ON ILICIT TRAFFICKING IN CULTURAL PROPERTIES, 2016), the share of smuggling of cultural property in the total number of criminal cases initiated by the customs authorities of various states is insignificant: in 2017 and 2018 they amounted to only 0.22% of all investigations and seizures, in 2018 - 0.08%. Only 227 cases were related to cultural property out of 102,214 cases investigated by customs of different countries in 2019 (ILICIT TRADE REPORT, 2019). This is primarily due to the fact that cultural heritage is more difficult to analyze than other categories of goods, and there is no uniform reporting in this area, with some countries reporting general statistics, others reporting specific cases.

The proceeds from the sale of cultural property are often used to finance terrorist activities. The involvement of terrorists and organized criminal groups in all types of cultural property illegal trafficking, their looting and destruction is one of the main threats to the heritage of all mankind. The problem of illicit trafficking in cultural property has become particularly acute in the countries affected by conflicts and crises, including Iraq (BERGER, 2018), the Syrian Arab Republic (Brodie, 2018) and Libya (BRODIE, 2017) which have led to the illicit trafficking increase concerning cultural property, mainly archaeological objects which are subjected to large-scale robberies and whose sale is used to finance terrorism, as reflected in the Resolution 2199 (RESOLUTION ADOPTED BY THE SECURITY COUNCIL S/RES/2199 2015), unanimously adopted by the UN Security Council on 12 February 2015.

METHODOLOGY
The work uses various general scientific techniques and methods of logical cognition: system method, analysis and synthesis, abstraction and formal-logical approaches.

DISCUSSION AND RESULTS
The international fight against illicit trafficking in cultural property is one of the most pressing transnational problems. A significant volume of illicit trafficking in cultural property around the world makes states and international organizations need to take urgent measures and expand mutually beneficial cooperation on this issue, develop and adopt appropriate legal acts for their implementation.

One of the key components of interstate cooperation in the field of cultural property illicit trafficking is the convention mechanism, which includes a set of interstate agreements providing for contractual and legal coordination of state efforts in the fight against cultural property smuggling. Control over the import and export of cultural property is mainly a tool for preserving the cultural heritage of peoples, and therefore a number of multilateral agreements address this problem.

The first international document aimed at cultural property protection is the Convention for the Protection of Cultural Property in the Event of an Armed Conflict, signed in The Hague on May 14, 1954 (CONVENTION FOR THE PROTECTION OF CULTURAL PROPERTY IN THE EVENT OF ARMED CONFLICT, HAGUE, 14 MAY 1954). The adoption of this Convention was largely influenced by the Second World War, after which many monuments of history and culture (cultural values) were destroyed and damaged. There was an awareness of the peaceful prevention of class and religious armed conflicts.

The 1970 UNESCO Convention emphasized the importance of cooperation between states in the fight against cultural property illicit trafficking, by ensuring the interaction of competent services in order to return illegally exported cultural property to their rightful owners. The practical effectiveness of this document is emphasized by many scholars - since its adoption at the international level, better protection of cultural values has been carried out, which is also confirmed by a retrospective analysis of the procedure for its adoption.

So, France, Japan, Germany, Great Britain and a number of other states joined it after several decades, which was due to the confrontation between the scientific community and art dealers (who reacted negatively to the considered document). The United States, for example, has developed the amendments that radically changed the essence and activities of this convention, but they were only adopted partially.

Meanwhile, the scholars highlight the “weaknesses” of this contractual act. Thus, the terminological characteristics of some legal structures used in it are subjected to ambiguous interpretation in practice, which, in turn, leads to imperfection of borrowed norms at the national level (for example, the deadline for filing a claim in the Article 13 of the considered document is not defined); the mechanism of action is not fixed in the cases where cultural values were obtained after unauthorized excavations (accordingly, information about the values was not included in the register) [ORESHINA, 2018]. The text of the act does not contain an answer to the following question: what is the mechanism of value return, the illegal circulation of which was made before the date of adoption of this act? There are no special clauses on the possibility of applying the principle of its retroactive effect or its retroactivity [JANUSZKIEWICZ, 1970].

In 1983, the Committee of Experts of the Convention addressed the UNESCO Executive Board with a question regarding the resolution of the emerging contradictions, substantiating their proposals on the numerous difficulties encountered in law enforcement practice. It was assumed that the shortcomings we considered could be eliminated by adopting a protocol to this document with a step-by-step detailing of gaps and measures for their resolution. However, the council's experts stated that such issues had been repeatedly worked out at the initial stage of the convention adoption, and the most optimal ways of consolidation were not found, and therefore, making changes is inappropriate. Moreover, their inclusion in the text of the instrument may affect the convention credibility. For these reasons the work was suspended in this field.

While the UNESCO Convention of 1970 is applied to both the prevention of trafficking in cultural property and the return phase, the 1995 Unidroit Convention focuses on the return process exclusively. It applies to international claims for the restitution of stolen cultural property and the return of illegally exported cultural property. The objectives of the 1995 UNIDROIT Convention are, in particular, the protection of cultural property and cultural exchanges, and the promotion of an effective fight against theft and illicit trade in cultural property.

Ratification of these conventions or accession to them means the readiness of the governments of national states to promote the implementation of international norms in the field of control over the circulation of cultural property and works of art, which provides a basis for the development and implementation of national strategies to combat illicit trafficking in cultural property, coordinated with international efforts in this area. It should be noted that the Convention of 1970 has been ratified by 137 states, and the Unidroit Convention on Stolen or Illegally Exported Cultural Property by 45 states only, in particular, such countries as France, Russia, Switzerland and the Netherlands that have signed the Unidroit Convention of 1995 have not ratified it yet.

As some scholars note, the relatively low number of countries that have spoken out in favor of this document ratification is due to the following objective reasons: according to the text of the act under consideration, and the list of items that make up cultural values, it seems possible to include private collections, to link not to a specific state, but to the world as a whole, which in turn will significantly expand it in comparison with the definition given in the 1970 UNESCO Convention, and this, in turn, is a significant threat to the interests of antique dealers and collectors.

Considering the complex history of the problem development concerning cultural property protection throughout the world, the signing and further ratification of the Unidroit Convention seems to be very relevant. Such participation of states in this international treaty will complement the existing protection mechanism both in the field of national cultural heritage protection from exports across borders, including open ones, and in provision the rights and legitimate interests of persons importing cultural property into the territory of various states. Let us emphasize that over the past few decades, the international community has been making numerous attempts to put into practice the preventive measures against the smuggling of cultural property. Thus, the framework of legal instruments in this area is rapidly expanding, namely: the Convention against Transnational Organized Crime has been adopted.
The Convention against Corruption (https://www.unodc.org/en/corruption/uncac.html); UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (CONVENTION FOR THE SAFEGUARDING OF THE INTANGIBLE CULTURAL HERITAGE, Paris 17 October 2003) were also adopted. Besides, in order to protect cultural heritage and prevent crimes in the arts, various resolutions are adopted by international organizations.

Thus, in March 2017, the historic UN Security Council Resolution 2347 (https://undocs.org/ru/S/RES/2347, 2017) was adopted, which consolidated the process of securitization of the regime for the protection of cultural heritage and introduced the issue of cultural object protection to the agenda of the world community to ensure international security. This is the first resolution focused on cultural heritage exclusively. It welcomes the central role that UNESCO plays in cultural heritage protection and culture promotion as a tool for bringing people together and dialogue promotion.

The First Report on UN Security Council Resolution 2347 concerning the Protection of Cultural Heritage underlines the importance of strengthening the implementation of a resolution that links the protection of cultural heritage to the maintenance of international peace and security. The report reviews best practices from 29 Member States and provides recommendations for heritage protection strengthening, awareness raising, data collection and training for peacekeepers to integrate better the cultural issues into future peacekeeping missions. (https://en.unesco.org/news/security-council-highlights-role-cultural-heritage-peace-and-security, 2017).

The universal level of cooperation between states in the sphere of cultural property illicit trafficking is complemented by a regional one, which makes it possible to consider the political, historical, cultural, economic characteristics of the region and reflect all this in the adopted documents.

Let us consider the convention mechanism of international cooperation within the framework of the Council of Europe, which is represented by the Council of Europe Convention on the Suppression of Offences in Relation to Cultural Property (https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680710435).

The Convention aims to prevent and combat illicit trade and destruction of cultural property in the framework of the Organization activities against terrorism and organized crime. “The Convention is the only international treaty that criminalizes the illicit traffic in cultural property and introduces a list of punishable offenses related to cultural property, in particular, theft, illegal excavations, import and export of cultural property, their illegal acquisition and placing on the market. Along with the above mentioned crimes, falsification of relevant documents, as well as deliberate destruction or damage to cultural property will be subject to criminal prosecution.

According to the document, the aggravating circumstances in the qualification of such crimes will be their commission by the persons of the relevant professions through abuse of the trust of clients or officials responsible for the preservation of cultural property. Among the aggravating circumstances, the Convention also includes the commission of offenses by organized criminal groups and repeat offenders” (http://rapsinews.ru/international_news/20170519/278646931.html).

Moreover, the directions of preventive nature are detailed, namely: “... the creation of national registers of cultural property open to the public, as well as the imposition of obligations to keep records of transactions on art and antiquity dealers, auction houses and other persons involved in the sale of cultural property in the secondary market” (http://rapsinews.ru/international_news/20170519/278646931.html).

At the same time, it should not be argued that this document acts as the latest weapon in the fight against illicit trafficking in cultural property. Previously similar proposals were partially put forward by the international community (http://rapsinews.ru/international_news/20170519/278646931.html) but were not ratified by any state.

A natural question arises: what result is planned to be obtained based on the large-scale application of the presented document provisions? It seems that the current difficulties can be resolved on its basis by the means of the following measures: comprehensive study and identification of stolen or plundered cultural monuments; improving the quality of accompanying documentation for each piece of art prepared for sale. At the same time, it is essential to ensure that information about all participants in the trade chain is accessed with due diligence when checking the databases of both sellers and buyers. The legal toolkit is the creation of unified rules, which are not characterized by fragmentation, through the development of an approach that would be able to introduce a single concept in terms of criminalization of legislation in this area.
Meanwhile, a number of other tasks remain unresolved: it seems necessary not only to regulate, but also to formulate such terms to determine the origin of items by customs services that would fall under the realities of modern life. This rule should be applied to the items that have repeatedly acted as an object of illegal traffic. Moreover, when making deals in art objects, sellers and buyers must consider the risks - it requires increased diligence and vigilance, while it does not matter whether it is a reputable auction company or a collector. At the same time, at present, when information and telecommunication technologies have become part of the life of citizens, special attention should be paid to transactions carried out within the framework of the Internet. Thus, the joint efforts of the world community will contribute to the effective protection of cultural heritage from organized crime and terrorism in order to protect all peoples and preserve their history and identity.

CONCLUSIONS

International cooperation between states, international organizations and various specialized bodies strengthens the fight against illicit trafficking in cultural property at the national level, which has become a serious problem for the international community. The first international document aimed at the protection of cultural property during an armed conflict was the 1954 Convention for the Protection of Cultural Property in the Event of an Armed Conflict. UNESCO pioneered the efforts to combat the smuggling of cultural property during peace time with the 1970 Convention on the Measures Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, supplemented by the UNIDROIT Convention on the Stolen or Illegally Exported cultural values since 1995. At the regional level (in particular the Council of Europe), more attention is paid to the adoption of treaty-legal acts on offenses against cultural property.

Also, at present, quite a lot of “all kinds of recommendations”, “declarations”, “guidelines” of the so-called “soft law” instruments are being adopted, which are not mandatory for states, but are important for helping states implement international law. The very fact of the existence of international treaties on the fight against illicit trafficking in cultural property and works of art does not solve the problem of counteracting this evil. These agreements need to work effectively. This, in turn, depends on many factors, among which a clear mechanism of international legal control over compliance with the agreements in this area. At the same time, international control over the observance of agreements is not limited only to the statement of obligation fulfillment or non-fulfillment by states. In the process of its implementation, the reasons for the shortcomings are analyzed and specific recommendations for their elimination are developed.

ACKNOWLEDGEMENT

This article is performed within the framework of the work on the Grant of the President of the Russian Federation in 2020-2021. (MK-444.2020.6) State Support for Young Russian Candidates of Sciences.

REFERENCES


1Assistant in the Department of Forensic Science and Forensic Science at the Law Institute, Belgorod State National Research University, Russia E-mail: globalgeores.su. ORCID ID: https://orcid.org/0000-0001-9373-3366.

Received: 20 Oct. 2020
Approved: 01 Dec. 2020