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Preventing Trafficking in Cultural Property: Import and Export Provisions as Two Sides of the Same Coin

Abstract: This article analyses the recent developments on the international, regional, and national level in preventing the trafficking in movable cultural property. The analysis starts by looking at the legal framework provided by the 1970 UNESCO Convention and the necessity of the Convention's implementation into national law. It then focuses on the 2016 law reform in Germany implementing the 1970 UNESCO Convention as well as Directive 2014/60/EU. Whereas most States have adopted national export provisions protecting their own national cultural property, only a few States – like Canada and Germany – provide for general import provisions. Against the backdrop of the UN Security Council Resolution 2347 (2017) and the 2019 EU Import Regulation, the article illustrates that import and export provisions are two sides of the same coin in terms of preventing trafficking in cultural property.

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Introduction

Despite all efforts in recent years, the destruction, plunder, and looting of cultural property, as well as the trafficking in cultural property, continue to be a problem internationally. Based on the principle of territoriality, many States have adopted national export laws, especially for archeological objects. The importance of border and customs controls is particularly apparent in times of war and political unrest, when the weakening or absence of controls is frequently correlated with an increase in the trafficking in cultural property, such as in Libya, Syria, and Yemen, as well as other parts of the world.

Looting and the illegal export of cultural property is, however, not a problem limited to regions of war and political unrest. These phenomena are also present in so-called “market countries”, as for example in the case of the so-called Nebra Sky Disc in Germany. This unique Bronze Age disc, dated to 1600 BC, was illegally excavated by treasure-hunters with metal detectors near Nebra, Saxony-Anhalt, Germany in 1999. Later it was detected in a police-led sting operation in Basel, Switzerland in 2002, and subsequently returned. The artifact has become part of the permanent exhibition in the Halle State Museum of Prehistory (Landesmuseum für Vorgeschichte) in Halle, Saxony-Anhalt. Since 2011, the bronze disc is registered as “cultural property of national significance” in Germany.¹ In addition, it has been included in the UNESCO Memory of the World Register since 2013.² This prominent case exemplifies that the traditional distinction between “source countries” on one hand and “market countries” on the other is arbitrary and outworn. As a consequence, it is fundamental for every State to protect cultural property and – within a framework of various protection mechanisms – to control both imports and exports in order to prevent trafficking in cultural property.

¹ Database of cultural property of national significance, see: http://www.kulturgutschutz-deutschland.de/DE/3_Datenbank/Kulturgut/SachsenAnhalt/14901_01.html [accessed: 25.07.2019].

² The Nebra Sky Disc features the oldest concrete depiction of cosmic phenomena worldwide. It was ritually buried along with other objects about 3,600 years ago near the town of Nebra, Saxony-Anhalt, Germany. Since 2008, it is on display at the State Museum of Prehistory in Halle, see: http://www.la-isa.de/en/nebra_sky_disc/ [accessed: 25.07.2019]. The bronze disc is considered to be one of the most important archeological finds of the 20th century and is included as documentary heritage in the Memory of the World Register, see: <http://www.unesco.org/new/en/communication-and-information/flagship-project-activities/memory-of-the-world/register/full-list-of-registered-heritage/registered-heritage-page-6/nebra-sky-disc/> [accessed: 25.07.2019].

The 1970 UNESCO Convention and National Export Regulations

On the international level, the 1970 UNESCO Convention³ aims at fostering the mutual recognition of national export laws. However, it does not prohibit the export of cultural property in itself, nor does it harmonize national export provisions, which vary from State to State. Only some States have established a specific date that acts as a threshold for the limits on exportation: cultural objects created prior to this date are not allowed to be exported without a valid export certificate. Examples include Israel (before 1700 BC),⁴ Cyprus (before 1850),⁵ and Brunei (before 1894).⁶ The majority of States have established a so-called “moving date” based on the age of the cultural object; examples include Kuwait (for objects more than 40 years old),⁷ Indonesia (for objects more than 50 years old),⁸ Belize (for objects more than 150 years old),⁹ and Yemen (for objects more than 200 years old).¹⁰

In addition to the national export regulations adopted by most European States, the European Union (EU) has established uniform export regulations,¹¹ which are binding to all EU Member States, in order to control the export of cultural property outside the Single European Market (SEM).¹² The EU export provisions depend on certain categories of cultural objects based on age and financial thresholds (for example, archeological objects more than 100 years old, with no financial threshold; mosaics, drawings, and photographs more than 50 years old and above the minimum financial threshold of €15,000; and paintings more than 50 years old and above the minimum financial threshold of €150,000). In addition to export laws, several States have established national ownership laws. These laws generally aim to protect cultural sites, limit archeological excavations,

³ Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231 (“1970 UNESCO Convention”).

⁴ *Antiquities Law No. 5738* [Israel], 1978, art. 1.

⁵ *Antiquities Law*, “Laws of Cyprus”, ch. 31, art. 2(1), http://www.mcw.gov.cy/mcw/da/da.nsf/DMLlaw_en/DMLlaw_en?OpenDocument [accessed: 25.07.2019].

⁶ *Antiquities and Treasure Trove Act* [2002 Ed.], “Laws of Brunei”, ch. 31, art. 2 (1), https://en.unesco.org/sites/default/files/brunei_lawant_02_enorof.pdf [accessed: 25.07.2019].

⁷ *Princely Decree no. 11 of 1960 Law of Antiquities* [Kuwait], art. 3, https://en.unesco.org/sites/default/files/kuw_decree_11_law_antiquities_engtof.pdf [accessed: 25.07.2019].

⁸ *Undang-undang No. 5 Tahun 1992 tentang Benda Cagar Budaya* [Act No. 5 of 1992 on cultural heritage objects], Lembaran Negara No. 10, 1993, art. 1.

⁹ *Ancient Monuments and Antiquities Ordinance*, “The Laws of Belize”, ch. 259, 1972, art. 2, https://en.unesco.org/sites/default/files/belize_monuments_antiquities_ordinance_engorof.pdf [accessed: 25.07.2019].

¹⁰ *Law on Antiquities No. 21/1994* [Yemen], 29 October 1994, art. 3.

¹¹ Council Regulation (EC) No. 116/2009 of 18 December 2008 on the export of cultural goods (codified version), OJ L 39, 10.02.2009, p. 1 (“EU Export Regulation”).

¹² For more details, see: R. Peters, *The Protection of Cultural Property: Recent Developments in Germany in the Context of New EU Law and the 1970 UNESCO Convention*, “Santander Art and Culture Law Review” 2016, Vol. 2, p. 88.

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and designate that all archeological items are state property upon discovery. Early examples of such laws include Greece (1834),¹³ the Ottoman Empire (1874),¹⁴ and Italy (1907).¹⁵

The connection between a State and a specific cultural object is, however, not sufficiently defined by the 1970 UNESCO Convention. This is left to the determination of each State's national regulation, without a right of review by either another State or an international body. Thus, it remains completely within a State's discretion to designate what constitutes its national cultural property. The only requirement the 1970 UNESCO Convention sets out is that the respective cultural property has been found in, created in, or has legitimately entered the State beforehand.¹⁶ There is, however, no time limit for cultural property to have remained in a State's territory before that State may legitimately claim it as national cultural property. Most importantly however, States have to implement the 1970 UNESCO Convention into their national law in order to enforce the obligations under the Convention, especially with regard to returning illegally exported cultural property, and to give effect to foreign export regulations. While several States have failed to implement the 1970 UNESCO Convention (including UNESCO headquarters host country France),¹⁷ other States lack proper implementation with regard to recognizing other States' export laws. Most States exclusively protect their own national cultural property. Thus, import regulations are often missing despite the fact that the 1970 UNESCO Convention requires States Parties to protect cultural property against illicit import *and* export.¹⁸ Import and export are two sides of the same coin and should go hand in hand in national legislation.

¹³ *Νόμος Υπ'Αριθμ. 3028 Για την Προστασία των Αρχαιοτήτων και εν γένει της Πολιτιστικής Κληρονομιάς* [Law No. 3028 on the protection of antiquities and cultural heritage in general], Government Gazette No. 153, 28 June 2002, art. 21.

¹⁴ For the text of the law, published on 24 March 1874, see *Asar-i Atika Nizamnamesi* [Antiquities act], in: *Düstur*, Vol. III, Istanbul 1876, pp. 426-431; French translation: *Règlement sur les antiquités*, in: *Législation ottomane*, Vol. III, Constantinople 1874, pp. 162-167. For more information, see: Z. Bahrani, Z. Çelik, E. Eldem (eds.), *Scramble for the Past: A Story of Archaeology in the Ottoman Empire 1753-1914*, Salt Galata, Istanbul 2012.

¹⁵ *Legge 27 giugno 1907 n. 386 sul consiglio superiore, uffici e personale delle antichità e belle arti* [Law No. 386 of 27 June 1907 on the superior council, offices, and personnel of antiquities and fine arts], *Gazzetta Ufficiale* No. 158, 4 July 1907. The law of 1907 has been amended in 1939 and in 2004: *Legge 1 giugno 1939, n. 1089 "Tutela delle cose di interesse artistico e storico"* [Law No. 1089 of 1 June 1939 "Protection of objects of artistic or historical interest"], *Gazzetta Ufficiale* No. 184, 8 August 1939, has been replaced by *Codice dei beni culturali e del paesaggio* [Landscape and cultural heritage code], 22 January 2004, *Gazzetta Ufficiale* No. 45.

¹⁶ 1970 UNESCO Convention, art. 4(a-e).

¹⁷ See Paris Appeal Court, *The Federal Republic of Nigeria v Alain de Montbrison*, Judgment of 5 April 2004 (2002/09897). Nigeria based its claim on the 1970 UNESCO Convention, but the claim was rejected because the Convention, ratified by France in 1997, was not directly applicable and no legislation implementing the provisions of the Convention had been enacted.

¹⁸ 1970 UNESCO Convention, arts. 3, 5.

Whereas the United States¹⁹ and Switzerland²⁰ do not recognize foreign export laws *per se* but rather require supplemental bilateral agreements in order to enforce import restrictions for specific categories of cultural property set out in these bilateral agreements, both Canada (since 1985)²¹ and Germany (since 2016)²² provide general import regulations on cultural property protected by *all* States Parties to the 1970 UNESCO Convention.²³

Canada's Cultural Property Export and Import Act states that "after the coming into force of a cultural property agreement in Canada and a reciprocating state, it is illegal to import into Canada any foreign cultural property that has been illegally exported from the reciprocating state".²⁴ This is the case even if the cultural property arrives in Canada via a third State. Unlike in US and Swiss law, a "cultural property agreement" does not exclusively refer to bilateral agreements but includes the 1970 UNESCO Convention as such; thus, cultural property illegally exported from other States Parties to the Convention may not be imported into Canada.²⁵ Cultural property imported into Canada may be detained by the Canadian border controls if it does not have proper paperwork. The importer must ensure (1) that the object has been legally exported from the foreign State; and (2) that it has all the necessary documents, such as export permits.

Along these lines, Germany enacted similar import regulations in 2016,²⁶ doing so within its general cultural property law reform. While Canada shares only one land border (with the United States), Germany is geographically positioned in the heart of Europe, which makes import controls much more difficult. In addition, Germany is an EU Member State within the SEM, i.e. without internal border controls. This, and public criticism by the German art and antiquities market assessing the 2016 law as being onerous and too restrictive,²⁷ have made the 2016

¹⁹ Convention on Cultural Property Implementation Act (CPIA) 19 USC 2601 (1983).

²⁰ *Bundesgesetz über den internationalen Kulturgütertransfer* [Federal act on the international transfer of cultural property], Systematische Rechtssammlung 444.1, 20 June 2003, <https://www.bak.admin.ch/bak/en/home/cultural-heritage/transfer-of-cultural-property/legal-basis.html> [accessed: 25.07.2019].

²¹ *Cultural Property Export and Import Act*, Revised Statutes of Canada, 1985, c. C-51 ("Canadian CPA"), <http://laws-lois.justice.gc.ca/eng/acts/C-51/> [accessed: 01.02.2020].

²² *Gesetz zum Schutz von Kulturgut* [Act on the protection of cultural property], Bundesgesetzblatt 2016, Part I, p. 1914 ("German CPA"), http://www.gesetze-im-internet.de/englisch_kgsg/index.html [accessed: 25.07.2019].

²³ See the 1970 UNESCO Convention, which has 140 States Parties, <http://www.unesco.org/eri/la/convention.asp?language=E&KO=13039> [accessed: 25.07.2019].

²⁴ Canadian CPA, sec. 37(2).

²⁵ See *Memorandum on Export and Import of Cultural Property*, D19-4-1, 12 April 2018, <http://www.cbsa-asfc.gc.ca/publications/dm-md/d19/d19-4-1-eng.pdf> [accessed: 25.07.2019].

²⁶ German CPA.

²⁷ See for example: A. Forbes, I. Kaplan, *Germany's Onerous New Art Export Law, Explained*, "Artsy", 11 July 2016, <https://www.artsy.net/article/artsy-editorial-what-germany-s-strict-new-regulations-mean-for-the-international-art-market> [accessed: 25.07.2019].

German law reform a challenging political endeavor. At the same time, it makes for an interesting case study in setting new standards for the protection of cultural property, and might have an impact on future legal developments. Moreover, a 2019 government evaluation report demonstrates that the 2016 law turned out to be less costly and bureaucratic in terms of administrative expenses than was alleged by its critics.²⁸

The detailed report states that Germany's art market is stable; that losses in sales at German auction houses are not yet apparent; and that the number of export licenses required under the 2016 law reform is much lower than was predicted by the art market. As expected by the German government in 2016, the "bureaucracy monster" predicted by some actors in the art market during the legislative process in 2015/2016 did not emerge:²⁹ the average annual number of licenses applied for with respect to the export within the SEM is 950 (new since the 2016 law reform), while the number of licenses applied for the export outside the SEM is constant at 1,200 (EU legislation in force since 1993). Thus, the report proves wrong those critics that predicted over 130,000 export licenses in Germany per year.³⁰ These 2016-2018 figures highlight the administrative burden for the federal states (*Länder*) and the federal government after two years of the law's entry into force in 2016. An overall evaluation of the 2016 law reform is scheduled for five years after the law's entry into force, i.e. in 2021.³¹

Combining Import and Export Regulations: The 2016 Law Reform in Germany

Germany ratified and implemented the 1970 UNESCO Convention in 2007,³² which was quite late in comparison with Canada (1978),³³ the United States (1983),³⁴

²⁸ See German Bundestag, *Bericht zum Umfang des Verwaltungsaufwandes von Bund und Ländern - Zwei Jahre Kulturgutschutzgesetz* [Report on the extent of the administrative burdens of federal and state governments - two years of cultural property protection law], BT-Drs. 19/7145, presented to Parliament on 16 January 2019, in German only ("German report"), <http://dipbt.bundestag.de/extrakt/ba/WP19/2432/243257.html> [accessed: 25.07.2019].

²⁹ See the press release by the German Federal Government Commissioner for Culture and the Media, *Evaluierungsbericht zum Kulturgutschutzgesetz vorgelegt - Grütters: Deutschland schützt seine Kulturgüter mit zumutbarem Aufwand*, 18 January 2019, <https://www.bundesregierung.de/breg-de/bundesregierung/staatsministerin-fuer-kultur-und-medien/aktuelles/evaluierungsbericht-zum-kulturgutschutzgesetz-vorgelegt-gruetters-deutschland-schuetzt-seine-kulturgueter-mit-zumutbarem-aufwand-1570092> [accessed: 25.07.2019].

³⁰ German report, p. 29.

³¹ See the German CPA, sec. 89.

³² Germany joined the 1970 UNESCO Convention on 30 November 2007 (ratification), adoption under German law on 26 April 2007.

³³ Canada joined the 1970 UNESCO Convention on 28 March 1978 (acceptance).

³⁴ The United States of America joined the 1970 UNESCO Convention on 2 September 1983 (acceptance).

and Switzerland (2003).³⁵ Germany's implementation Act of 2007³⁶ did not last long however, since it revealed several shortcomings outlined in the government's evaluation report presented to Parliament in 2013;³⁷ among which were the lack of proper export and import regulations as well as ineffective return provisions. These shortcomings led to the 2016 reforms and the adoption of new legislation.³⁸ This 2016 Act consists of four major pillars: (1) import and export provisions; (2) provisions for the return of cultural property; (3) due diligence provisions in dealing with cultural property; and (4) penal sanctions.

Import and export provisions

Firstly, the 2016 law provides for harmonized import and export regulations. Whereas the import regulations of the 2007 law required the establishment of inventories of movable cultural property protected by foreign States, the 2016 law relies on the simple rule that cultural property illegally exported from one State is considered as illegally imported into Germany. Thus, similar to Canada's legislation, the new German law is based on mutual recognition and enforces foreign export rules for cultural property in line with the 1970 UNESCO Convention. With regard to cultural property in Germany, the new law requires, in turn, an export license not only for the export from Germany outside the SEM, e.g., to Switzerland or the United States, based on the EU Export Regulation, but also – in line with general EU law³⁹ – for the export of certain categories of cultural property outside of Germany but within the SEM, e.g., to France or Spain.⁴⁰ Whereas the vast majority of EU Member States has already adopted national export provisions like those Germany now has, only the Netherlands as well as parts of Belgium do not require such an export license within the SEM. In order to mitigate the burden on the German art and antiquities market, the financial thresholds for an export license within the SEM have been doubled with regard to the categories of cultural property established under EU law.⁴¹

³⁵ Switzerland joined the 1970 UNESCO Convention on 3 October 2003 (acceptance).

³⁶ *Gesetz zur Ausführung des UNESCO-Übereinkommens vom 14. November 1970 über Maßnahmen zum Verbot und zur Verhütung der rechtswidrigen Einfuhr, Ausfuhr und Übereignung von Kulturgut* [Act implementing the UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property], Bundesgesetzblatt 2007, Part I, p. 757.

³⁷ See German Bundestag, *Bericht über die Auswirkungen des Gesetzes zur Ausführung des UNESCO-Übereinkommens vom 14. November 1970 über Maßnahmen zum Verbot und zur Verhütung der rechtswidrigen Einfuhr, Ausfuhr und Übereignung von Kulturgut* [Report on the effects of the law implementing the UNESCO Convention of 14 November 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property], BT-Drs. 17/13378, in German only, <http://dipbt.bundestag.de/dip21/btd/17/133/1713378.pdf> [accessed: 25.07.2019]. Overview in: R. Peters, op. cit., p. 96.

³⁸ German CPA.

³⁹ Treaty on the Functioning of the European Union (consolidated version), OJ C 326, 26.10.2012, p. 47, art. 36.

⁴⁰ For more details, see: R. Peters, op. cit.

⁴¹ EU Export Regulation.

Provisions for the return of cultural property

Secondly, the conditions of the 2016 Act for the return of illegally exported cultural property are aligned with international standards. The 2016 law grants a right to return for all cultural property illegally exported from another State Party to the 1970 UNESCO Convention after the date of both the requesting State's and Germany's ratification of the 1970 UNESCO Convention (26 April 2007). With regard to EU Member States, the 2016 law transposes the provisions for the return of cultural property as set out by Directive 2014/60/EU,⁴² providing for the return of illegally exported cultural property within the SEM.

Due diligence provisions in dealing with cultural property

Thirdly, the new law establishes due diligence provisions not only for the professional art and antiquities market, but also for everyone selling cultural property, including private individuals in online auction platforms. These new due diligence provisions require the seller to make sure that cultural objects have not been stolen, illegally imported, or illegally excavated. This due diligence also includes "verifying relevant information that can be obtained *with reasonable effort* or carrying out any other examination that a reasonable person would carry out".⁴³ Such provisions are also in line with modern standards of consumer protection: a buyer of cultural property should be assured of the legality of his or her financial investment and not face the risk of being confronted with a claim for return made by a foreign State or private entity. Moreover, the law makes reference to the Red Lists published by the International Council of Museums (ICOM),⁴⁴ which classify endangered categories of cultural property in the most vulnerable areas of the world in order to prevent them from being illegally exported or sold. The law also includes special due diligence requirements with regard to Nazi-looted art, "if it has been proven or is assumed that the cultural property was taken from its original owner between 30 January 1933 and 8 May 1945 due to National Socialist persecution".⁴⁵

Penal sanctions

Fourthly, the new law establishes stronger penal sanctions (up to five years of imprisonment) and administrative offences in case of violation of the import and

⁴² Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No. 1024/2012 [Recast], OJ L 159, 28.05.2014, p. 1.

⁴³ German CPA, sec. 41 (emphasis added).

⁴⁴ International Council of Museums (ICOM) Red Lists Database, <https://icom.museum/en/resources/red-lists> [accessed: 25.07.2019].

⁴⁵ German CPA, sec. 44.

export as well as the due diligence requirements. Although the new law will not solve all problems, it is a major step forward in combating the trafficking in cultural property. Penal sanctions are part of such a robust system.

Recent Developments: 2019 EU Import Regulation

Although the 2016 German law provides for import and export regulations of cultural property, the practical effect of national import regulations is limited within the SEM, which has eliminated national customs border controls among its EU Member States. Without a uniform EU import regulation, EU law allows legal loopholes whereby unlawfully removed cultural property from outside the SEM can enter it without any import controls. Once cultural property is within EU borders, smugglers can benefit from the free movement of goods within the SEM.

Thus the importance of and need for an EU import regulation was jointly addressed by France, Italy, and Germany in December 2015.⁴⁶ In July 2017, the EU Commission presented its proposal for an EU import regulation⁴⁷ and couched it within the framework of the 2016 EU Action Plan to fight against the financing of terrorism.⁴⁸ Beginning in the fall of 2017 and throughout 2018, the EU Commission's proposal was discussed among EU Member States. Based on these negotiations, the EU Commission's proposal was entirely redrafted until final negotiations between the EU Commission, the EU Council, and the European Parliament – the so-called formal trilogue meetings – took place in late 2018 and early 2019. The legislative process was concluded by the vote of the European Parliament on the consolidated text of the Regulation on the introduction and the import of cultural goods⁴⁹ on 12 March 2019,⁵⁰ and by the formal approval of the Council on 9 April 2019.⁵¹

⁴⁶ See the press release by the German Federal Government Commissioner for Culture and the Media, *Illegal Handel mit Kulturgut – Deutschland, Frankreich und Italien schreiben an die EU*, 8 December 2015, <https://www.bundesregierung.de/Content/DE/Pressemitteilungen/BPA/2015/12/2015-12-08-bkm-illegaler-handel.html?nn=811064> [accessed: 25.07.2019].

⁴⁷ European Commission, *Proposal for a Regulation of the European Parliament and of the Council on the import of cultural goods*, 13.07.2017, COM(2017) 375 final, https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-375_en [accessed: 25.07.2019].

⁴⁸ European Commission, *Communication from the Commission to the European Parliament and the Council on an Action Plan for strengthening the fight against terrorist financing*, 2.02.2016, COM(2016) 50 final.

⁴⁹ Generally, EU provisions on “cultural property” come under the heading of the movement of and trade in “cultural goods” within the SEM; see Articles 34 and 35 of the Treaty on the Functioning of the European Union. Therefore, EU legislative acts use the term “cultural goods” instead of “cultural property”.

⁵⁰ European Parliament legislative resolution of 12 March 2019 on the proposal for a regulation of the European Parliament and of the Council on the import of cultural goods (COM(2017)0375 – C8-0227/2017 – 2017/0158(COD)), P8_TA-PROV(2019)0154.

⁵¹ Regulation (EU) 2019/880 of the European Parliament and of the Council of 17 April 2019 on the introduction and the import of cultural goods, OJ L 151, 7.06.2019, p. 1 (“2019 EU Import Regulation”); see the press release by the German Federal Government Commissioner for Culture and the Media, *EU verabschiedet europaweite Einfuhrregeln für Kulturgut – Kulturstaatsministerin Grütters: „Gegen illegalen Handel gemeinsam*

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The new EU Import Regulation, which entered into force on 28 June 2019, unifies and strengthens the protection of cultural property from non-EU States against being trafficked into the SEM. At the same time, the Regulation is intended to make organized crime more difficult, in particular “where such illicit trade could contribute to terrorist financing”.⁵² The Regulation is binding to all EU Member States. It only applies to cultural property originating from States outside the EU;⁵³ thus it does not apply to the (re)-import of cultural property created or discovered within the European Union. Hence, a cultural object illegally excavated in an EU Member State and subsequently illegally exported (e.g., from Italy into the United States) will not be covered by the new EU Import Regulation upon its (re)-import into the SEM.

The 2019 EU Import Regulation provides a system of import licenses and importer statements for certain categories of cultural objects listed in the Annex of the Regulation. An import license (Article 4) is required for cultural objects most at risk, namely archeological finds⁵⁴ and items removed from monuments and sites,⁵⁵ being more than 250 years old, without any financial threshold (Annex, Part B). Other cultural objects (Annex, Part C) require an importer statement (Article 5) if they exceed 200 years in age with a minimum financial threshold of €18,000. The application for an import license:

shall be accompanied by any supporting documents and information providing evidence that the cultural goods in question have been exported from the country where they were created or discovered in accordance with the laws and regulations of that country or providing evidence of the absence of such laws and regulations at the time they were taken out of its territory.⁵⁶

In the case of an importer statement, such statement has to consist of a signed declaration “stating that the cultural goods have been exported from the country where they were created or discovered in accordance with the laws and regulations of that country at the time they were taken out of its territory”.⁵⁷

vorgehen“, 9 April 2019, <https://www.bundesregierung.de/breg-de/aktuelles/eu-verabschiedet-europa-weite-einfuhrregeln-fuer-kulturgut-kulturstaatsministerin-gruetters-gegen-illegalen-handel-gemeinsam-vorgehen--1599176> [accessed: 25.07.2019].

⁵² 2019 EU Import Regulation, art. 1(1).

⁵³ *Ibidem*, art 1(2).

⁵⁴ *Ibidem*, Annex, Part B: “Products of archaeological excavations (including regular and clandestine) or of archaeological discoveries on land or underwater”.

⁵⁵ *Ibidem*, Annex, Part B: “Elements of artistic or historical monuments or archaeological sites which have been dismembered; liturgical icons and statutes, even free-standing, are to be considered as cultural goods belonging to this category”.

⁵⁶ *Ibidem*, art. 4(4).

⁵⁷ *Ibidem*, art. 5(2)(a).

The EU Import Regulation establishes a new cut-off date of 24 April 1972.⁵⁸ This is when the 1970 UNESCO Convention, adopted on 14 November 1970, entered into force in accordance with the Convention's Article 21, ratified by currently 140 States.⁵⁹ If, however, the country where the cultural object was created or discovered cannot be reliably determined, or the export, creation, or discovery of the object pre-dated the 1972 cut-off date, it is sufficient for the importer to provide evidence (in case of an import license), or to declare (in case of an importer statement) that the cultural object in question has been exported in accordance with the laws and regulations of the "last country" where it was located for a period of more than five years and for purposes other than temporary use, transit, re-export, or transshipment.⁶⁰ The upcoming years will show whether this exception of the "country of last location" might create a loophole in the effectiveness of the 2019 EU Import Regulation, since – as a matter of fact – trafficked cultural property is often stored for years or even decades until it re-surfaces on the international market.

In order to minimize the administrative burden for both the importer and the national authorities, the 2019 EU Import Regulation foresees a centralized electronic system (Article 8), to be established by the EU Commission (Article 9) within six years (Articles 8 and 16(2)(b), thus at the latest in 2025), for the storage and the exchange of information between the authorities of the EU Member States, in particular regarding import licenses and importer statements.

Most importantly however, the 2019 EU Import Regulation follows – like Canada's 1985 law and Germany's 2016 law – the simple rule that cultural property illegally exported is considered as being illegally imported. Based on this principle, Article 3(1) of the Regulation reads: "The introduction of cultural goods [...] which were removed from the territory of the country where they were created or discovered in breach of the laws and regulations of that country shall be prohibited". This shows, as German Minister of State for Culture and Media Monika Grütters stated, "that Germany has taken the right path early on" by adopting a new cultural property law in 2016.⁶¹

Future Perspectives

Within the broader context of international cultural heritage law, the 2019 EU Import Regulation is also in line with the UN Security Council Resolution 2347 (2017),⁶² adopted in March 2017, calling upon States to consider adopting "adequate and

⁵⁸ Ibidem, arts. 4(4)(b), 5(2)(b).

⁵⁹ See status of ratification of the 1970 UNESCO Convention: <http://www.unesco.org/eri/la/convention.asp?language=E&KO=13039> [accessed: 01.02.2020].

⁶⁰ 2019 EU Import Regulation, arts. 4(4), 5(2).

⁶¹ See German press release, 9 April 2019.

⁶² 24 March 2017, S/RES/2347 (2017).

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effective regulations on export and import, including certification of provenance”.⁶³ Germany did so in 2016 by adopting provisions on the import *and* export of cultural property. In 2019, the European Union adopted Regulation (EU) 2019/880 on the import of cultural property from third States into the SEM, and thus completed the EU system of a uniform EU Export Regulation with a uniform EU Import Regulation, as being two sides of the same coin.

These recent developments on the national (Germany, 2016), international (UNSC Resolution 2347/2017), and regional (EU Import Regulation, 2019) levels are important steps in the protection of cultural property against trafficking, and they could accelerate future developments in the area of international cultural heritage law. In the near future, it will be interesting to see whether Brexit will turn Great Britain into a hub for trafficking in cultural property offshore the EU customs territory, since Britain, as one of the largest art markets worldwide (besides the United States and China), will not be bound by EU legislation, including the 2019 EU Import Regulation. Moreover, it will be interesting to see if other States or regional organizations follow the examples of Canada, Germany, and the European Union in light of the UN Security Council Resolution 2347 (2017).

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⁶³ Ibidem, para. 17 (b).

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