



## Illegal Trade Fighting illicit traffic in cultural goods within the European Union

The Hague, 22 February 2005

Dear participant,

It is with great pleasure that I send you the results of the Conference held in Rotterdam on 8 and 9 November 2004. The text you will find enclosed comprises the conclusions adopted at the end of the Conference.

In my own perspective as Chairman, there were a few points which merit to be recalled with some emphasis:

- the need for a central register for stolen cultural goods in every member state, accessible for law enforcement officials in all member states,
- the empowerment of the customs services to inspect and investigate cultural imports, and to detain them for verification,
- the role of the European and national institutions to create a level playing field in terms of control efforts,
- better coordination at European level concerning the "ownership" of the issue of illicit traffic in cultural goods,
- the European agenda, with various issues that need to be addressed,
- the desirability of national studies into the nature and scope of illicit traffic in cultural goods,
- the need to combat the element of organised crime.

As the Chair I greatly appreciated your active participation during the conference and I am certain that you are just as dedicated to the implementation of its final recommendations.

Steven van Hoogstraten,

Chair of the Conference Illegal Trade

# Illegal Trade

## Fighting illicit traffic in cultural goods within the European Union

### Main points from the Conference

One of the conferences organized in the framework of the Netherlands Presidency of the European Union was the Conference Illegal Trade: Fighting illicit traffic in cultural goods.

120 participants from 27 different states, members and candidate members of the EU, met in Rotterdam together with representatives of the EFTA countries, European Commission, UNESCO, UNIDROIT, Interpol and Europol. Participants represented customs, law enforcement and cultural authorities.

Main focus of the conference was to discuss the existing European legislation in the field of cultural goods : Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods and Directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a Member State. In addition the conference aimed at sharing views on the fight against illicit traffic in a global perspective. The relevance in the European context of existing international treaties such as the 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property and the 1995 UNIDROIT Convention on stolen or illegally exported cultural goods were also discussed.

During the opening session the broader picture of both the protection and the violation of cultural heritage were reviewed. In her opening speech the Netherlands State Secretary for Culture, Medy van der Laan, drew the attention of participants to the harm caused by the destruction and theft of cultural goods by pointing to cultural heritage as a tool to gain a better understanding of ourselves and each other and to refer to cultural heritage as a mirror: we look at it and we see ourselves. And we see each other.

The State Secretary also made some concrete suggestions to the participants to focus their discussions on. She mentioned three points in particular:

- The importance of cooperation and communication and the need for improvement on a national level, between the member states and within the European Commission; with respect to the European Commission she suggested that the Cultural Department take the coordination for this upon itself.
- the need to develop some standard requirements for national databases in order to facilitate the exchange of information.
- security for museums, churches and private collections and other preventive measures as a field in which gains are to be made. In that respect she also mentioned the need to catalogue collections in greater detail since it is then immediately apparent when objects have gone missing and where they are likely to be found.

Medy van der Laan concluded her speech by presenting a research report in to the nature and scope of the illicit traffic of cultural goods in the Netherlands to the deputy Representative of the European Commission in The Netherlands, Klasja van de Ridder. She also ensured participants she would take it upon herself to put recommendations into practice, both here in the Netherlands and in the wider European context.

In her words of thanks Klasja van de Ridder encouraged other Member States to follow the Dutch example in order to be able to make an assessment of the impact of illicit traffic in cultural goods on a European level. She also promised participants to bring the results of the conference to the attention of the European Commission.

Subsequently Dick Ellis, former Scotland Yard and participating in the conference as an expert on the ins and outs of the illicit trade in cultural goods, showed the audience an interview with Michel van Rijn, an art dealer who gave an inside view into ways to legalize cultural goods that had come into the market illegally and into the ways to organize illicit traffic. He mentioned the at times questionable role of lawyers, museums, scholars, civil service and financial institutions in that respect and expressed his conviction that the illicit traffic in drugs, arms and cultural goods are related. He also cast doubt on the effectiveness of legal instruments and pointed to the possibilities to circumvent the law. Ellis subsequently advised to keep on closing down the legal loopholes.

The Rumanian State Secretary for Cultural Heritage Ioan Opris drew the attention of the conference to the situation in the new and candidate member states of the European Union. He argued that a combination of determining factors explains why the theft and looting of cultural goods has intensified in these countries. The unprecedented growth of the art market and the increasing demand for cultural goods, political instability, the fact that borders are easy to cross, the absence of national legislation and the lack of resources were mentioned as major threats to the protection of cultural goods. Mr Opris therefore called for a closer cooperation between the member states and the candidate members focusing on both training and legislation.

Peter Sigmond, director of Collections at the Rijksmuseum, gave an overview of the issues related to the protection of our cultural heritage at large. He reminded the audience that apart from financial considerations, our cultural heritage tells us who we are and where we come from. Cultural heritage has a predominantly emotional value, a value that gives a nation and individuals their identity. Every loss of parts of that heritage, either the movable or the immovable parts of it, is a loss forever.

The working groups that set out to work, on the first day along the lines of the three disciplines involved, on the second day in an interdisciplinary setting, came up with some concrete suggestions for enhancing the implementation of the existing legislation. This resulted in the following recommendations of the conference.

## **Recommendations**

### **Policy Issues**

#### ***Priority***

Fighting illicit traffic in cultural goods and the preservation of cultural heritage are of great importance to society. Therefore fighting illicit traffic in cultural goods needs to be clearly put on the political agenda, both nationally and internationally.

#### ***Cooperation and coordination***

Cooperation, communication and the exchange of information -among others things on stolen goods- are of immense importance, to which even greater attention should be devoted. Participants encourage the European Commission to take the lead in improving coordination at the European and national level.

#### ***Concerted policy***

While retaining national competence all Member States are encouraged to develop a common policy on such issues as:

- a common interpretation of the relevant legal concepts and mechanisms such as due diligence and good faith;
- common standards on the effect of applying certain legal concepts;
- common policy on the effect of the expiration of limitation periods for goods that do not fall under the directive;
- common views on applying export systems on goods unlawfully removed originating from third countries;

#### ***European action***

Areas for a discussion on possible action at the EU level would be:

- anti-seizure law, being the provisions through which countries guarantee that their courts have no jurisdiction in cases involving a seizure of certain cultural goods that have entered those countries on loan;
- alternative dispute settlement;
- directive 93/7, notably to engage in a discussion on the scope of the directive and on a possible extension of the relative limitation period from one to three years;
- regulation 3911/92, notably to discuss ways and means to ensure a better protection of stolen cultural goods under the regulation.

#### ***Level Playing Field***

The nature and rigour of management and control systems vary greatly between countries, even within the European Union. In order to create a level playing field between Member States, there should be a consistent and comparable effort of control by official authorities.

### ***Research***

In order to increase the level of factual information to enable policy makers to take the right policy and legislative measures and to enable the making of effective (European) risk analysis all Member States should engage in studies on the nature and scope of the illicit traffic in cultural goods in their respective countries under coordination of the European Commission. This should also include research into a possible link between illicit traffic in cultural goods and the illicit traffic of arms and drugs.

## **Legislation**

### ***International Conventions***

The existing international conventions, notably the 1970 UNESCO Convention and the 1995 UNIDROIT convention, are important instruments in the fight against the illicit traffic in cultural goods, that should be ratified by all Member States .

### ***EU legislation***

It is recommended that the deliberate import of, dealing in or possession of stolen cultural goods, irrespective of their origin, is made into a criminal offence. A harmonized EU approach in that respect should be studied.

In issuing export licenses authorities should work on the basis of documentation, which is complete and takes into account the provenance of an object and its legality referring specifically to the possible application of export restrictions in another member state.

As far as public authorities are concerned cooperation between authorities both at national and Community level has not taken sufficient practical shape. Improving cooperation between national authorities in this area would lend the necessary cohesion to the Community system. Therefore all incidents relating to the application and implementation of the directive should be notified at a European level

### ***Mandate for customs controls***

Customs authorities should be expressly mandated to perform import, export and transit controls, of illegally obtained cultural goods. This requires a proper legal basis.

In order to enable customs authorities to classify a cultural good a specific power for detaining goods is recommended to be given to customs within the framework of regulation 3911/92.

## **Databases**

### ***Central registration of stolen goods***

All member states should proceed to a central registration of all stolen cultural goods. In developing national databases for stolen cultural good, the data model to be drawn up by Europol should be used as a standard, in order to facilitate the linking of the different databases and in order to facilitate the exchange of information. In the mean time states are encouraged to fill the Interpol database.

### ***Accessibility***

Central databases should be easily accessible by all law enforcement officials. Part of the information should also be accessible to those who want to verify the provenance of a given object, the latter being a prerequisite for encouraging buyers of cultural goods to apply due diligence.

## **Law enforcement**

### ***Organised crime***

In as much as the traffic in stolen cultural objects is a form of organized crime, Europol should, in close cooperation with Interpol and Eurojust, play a leading role in the fight against it.

It is recommended that at the national level central units be created, both within the police force as within the public prosecutors office, dedicated to fighting the illicit traffic in cultural goods.

### ***Police cooperation***

The cooperation between police forces could be further enhanced by developing common standards in the field of definition, formats and language. In that respect it is recommended that the EU comes up with a catalogue of best practices, including an overview of relevant differences in legal systems.

It is recommended that some selective form of police control is exercised on illicit intra-community movements of cultural goods.

### ***Training and expertise***

The Task Force of European Police Chiefs should be invited to look at the possibilities for specialized training of law enforcement officials.

Expertise in the field of crimes related to cultural goods is a prerequisite for effective enforcement by customs, police and prosecutors as well as communication and flexible cooperation between these experts. Developing training programmes for law enforcement officers and customs officials and building up expertise in tackling crimes against cultural goods are essential in that respect.

### ***Customs cooperation***

Better use should be made of existing tools of mutual assistance in the field of customs such as relevant European regulations and the Convention Naples II.

Risk analysis is an essential tool in customs control of cultural goods. Member States are encouraged to develop, use and structurally update these analyses.

## **Preventive measures**

### ***Security and inventories***

Gains are to be made in the field of prevention of theft. Member States should promote better security for museums, churches and private collections and should encourage the cataloguing of collections in greater detail preferably on the basis of the Object ID criteria.

### ***Public awareness***

Raising public awareness is an effective tool in the fights against illicit traffic of cultural goods. The growing demand for cultural goods, due to increasing tourism and globalisation, fuels the illicit traffic in these objects. Better public information is needed to alert tourists, in particular to the damage caused to cultural heritage by the illicit traffic in cultural goods.

### ***Traceability of cultural goods***

Focus should be put both on a national and a European level on improving the traceability of cultural goods as an essential element in the fight against illicit traffic

### ***Codes of ethics***

Professional buyers and sellers of cultural goods should respect Codes of ethics which determine which precautions to take in relation to stolen goods and guaranteed provenance.