

IReflect – Student Journal of International Relations



www.ireflect-journal.de

Good intentions, little impact: The EU
Commission's approach to tackle the illegal art
trade

CLARA CASSAN & PAUL FABEL

IReflect – Student Journal of International Relations 2018,
Vol. 5 (1), pp 57-59

Published by



IB an der Spree

Additional information can be found at:

Website: www.ireflect-journal.de

E-Mail: board@ireflect-journal.de

Website: www.ibanderspree.de

E-Mail: vorstand@ibanderspree.de

Berlin, May 2018



Good intentions, little impact: The EU Commission's approach to tackle the illegal art trade

Clara Cassan & Paul Fabel

*"The looting and illicit trafficking of cultural goods (...) destroys the cultural heritage of humankind."*¹

Expressed on 13 July 2017, this statement was given by European Commission putting forward its Proposal² to fight the illegal trafficking and import of cultural goods from outside the EU. The Proposal was communicated just days after the G7 and G20 called on countries to "address all alternative sources of financing of terrorism, including [...] looting [...] of antiquities"³.

On an international level, this text would join a series of important legal conventions, namely those of UNESCO⁴, UNIDROIT⁵ and, more recently, the Council of Europe⁶, all of which are correspondent. However, the Proposal seems to neither harmonize nor reinforce International Law's main texts regarding the fight against illicit trafficking of cultural goods. It could though – would it only be aligned with the notions (I), and practical plans (II) brought by the spearhead texts.

¹ EU Commission (2017). Security Union: Cracking down on the illegal import of cultural goods used to finance terrorism, Brussels. Available at: http://europa.eu/rapid/press-release_IP-17-1932_en.htm [accessed 20 Nov 2017].

² Proposal for a Regulation of the European Parliament and of the Council on the import of cultural goods, COM/2017/0375 (hereinafter "Proposal").

³ Supra FN 1.

⁴ UNESCO, 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 (hereinafter "1970 UNESCO Convention").

⁵ UNIDROIT, Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457 (hereinafter "UNIDROIT Convention").

⁶ Council of Europe, Convention on Offences relating to Cultural Property, 3 May 2017, Council of Europe Treaty Series No 221.

On the debatable notion of an export country

The Proposal adds the notion of “export country” to the preexisting concept of “source country,” which is used by most international conventions. However, these two terms are incomparable. By a good’s “source country,” the three international texts related to illicit trafficking refer to the object’s national territory: thus, cultural property originating from or created on the territory of its States Parties. All three Conventions are based on the common assumption that governments aim at protecting *their own* cultural property according to their national laws and regulations, regardless of where they might be found or trafficked to. Although this rule may come as a nationalistic excess, it is actually a State’s sovereign right to unconditionally control its property. Culture is vital to a State’s sense of community and history – a vitality that should not be chocked by an increasingly integrated EU. Better yet, Member States will feel more inclined to implement the Proposal, shall it respect their respective authority upon cultural goods that originally belong to them.

Furthermore, the current Proposal may even worsen the already heterogeneous national implementation of the 1970 UNESCO Convention. Unlike the 1995 UNIDROIT Convention, UNESCO one is not self-implementing. Thus, its effectiveness is based on its transposition into national laws by each State Party. As a result, UNESCO struggles with a diverse level of adherence. Some States Parties’ implementation legislations are quite weak, and the Secretariat to the 1970 Convention is working on strengthening them. Now, these disparities result in an uneven treatment of cultural goods being brought into the EU from third countries with a different level of implementation of the 1970 Convention. Forum shopping could become one of many undesirable results. Specific paperwork upon import into the EU aims at preventing that from happening. The Proposal’s suggestions though create more loopholes than administrative efficiency (II).

On the doubtful necessity of an import licensing system and the use of the importer statements

As already mentioned, the existing legal framework puts the responsibility on each state individually. It is, thus, the obligation of each government to protect its own treasures and to set up export restrictions that hinder the export of cultural property of importance. Consequently, an important object can only leave the country (which it should not under normal circumstances, since it is of high value), if it is accompanied by an export license – because only then is it legally exiting the State. Without supporting documents of that kind, it is not. In other words, any document other than an export license will not consequently add extra layers of certainty to the object’s legality. Moreo-

ver, it will obviously not replace the export license, since it is only the so-called country of origin that is in the position to do so.

The Proposal introduces an import licensing system for goods that are about to enter the EU Single Market. The EU Commission draws up a procedure of how to apply for a license and what documents to submit, arguing that it will decrease customs' work and ease the exportation process. However, things are as simple as they stand: cultural property that is not accompanied by an export license cannot enter the EU single market. This is how the global legal regime works.

Worse yet, should the licensing system remain, it might give the impression that goods, which have ultimately made it into the EU, are here 100% legally, as they have been granted an import license. In that case, the Commission should at least insert a notion that the import license is by any means neither changing nor improving the legal status of any item. According to the Proposal, the import license procedure shall apply for archeological items and antiquities. For all other kinds of cultural objects, the EU Commission suggests to merely accept a statement written by the importer, stating that the object will enter the EU legally. For those objects, neither verification measure is foreseen nor granting or confirmation. Whoever imports shall provide customs with an "importer statement" which will basically serve as an affidavit: it only relies on the importer's good faith, but requires neither control nor checking.

It is difficult to understand why a different treatment should be applied to different cultural property. In the Proposal's introductory phrases, financing terrorism and money laundering belong to the driving points for the legislative project. Especially since high value objects could be easily imported using a mere importer statement, this Proposal could contribute to such crimes. Not requiring an import license for those objects is highly worrying. Apart from the fact that this is an incoherent approach to fight terrorism financing and money laundering, as it opens up loopholes, this Proposal is also contradicting the legal regime on cultural property protection as a whole, as different sets of rules start to apply for different kinds of objects. This should be prevented.⁷

Clara Cassan

Master 2 Marché de l'art, 1st semester, Panthéon-Sorbonne, Université Paris I

Contact: claracassan@gmail.com

Paul Fabel

MA International Relations, Technische Universität Dresden

Contact: paul.fabel@posteo.de

⁷ The Proposal is currently on its way of being reviewed by the European Parliament and Council under ordinary legislative procedure.

- I reflect - Cassan & Fabel: The EU Commission's approach to tackle illegal art trade