

THE NICOSIA CONVENTION IN 10 QUESTIONS AND ANSWERS

The Council of Europe Convention
on Offences Relating to Cultural Property



COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

French edition:

*La Convention de Nicosie
en 10 questions et réponses*

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Council of Europe Convention on
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Editorial director: Mónica Redondo Álvarez
with the co-operation of Óscar Alarcón
Jimenez and Cristina Guisasaola Lerma

THE NICOSIA CONVENTION IN 10 QUESTIONS AND ANSWERS

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The NICOSIA Convention in 10 Questions and Answers

Cultural property crimes are a danger to the preservation, legacy and sustainability of human culture. Each year, these crimes destroy thousands of artefacts, archaeological sites and monuments; they also cause irreparable damage to museums, galleries, public and private collections, as well as to religious buildings, thereby impoverishing humanity as a whole. To stop these phenomena and protect cultural property, it is necessary to criminalise those activities which are connected to the perpetuation of cultural heritage offences and to strengthen international co-operation. This is the aim of the [Council of Europe Convention on Offences Relating to Cultural Property](#), known as the Nicosia Convention (CETS No. 221).

The Convention entered into force on 1 April 2022, is open for signature to any country in the world and sets out substantive criminal law provisions. Under the Convention, theft and other forms of unlawful appropriation, unlawful excavation and removal, illegal exportation or importation, falsification of documents as well as illegal acquisition or placing on the market are considered criminal acts when committed intentionally. In order to put a stop to this international threat to cultural rights, this innovative treaty calls for multi-lateral collaboration across nations, disciplines and sectors, triggering co-operation with and between international bodies such as INTERPOL, EUROPOL, UNESCO, the EU and UNIDROIT.

Offences against cultural heritage constitute a transnational crime that does not respect boundaries and, therefore, each new ratification improves the Convention's capacity to combat this scourge. Your Parliament and your country can only benefit from becoming a Party to the Convention, thus protecting not only your own cultural heritage, but also the heritage of humanity as a whole.

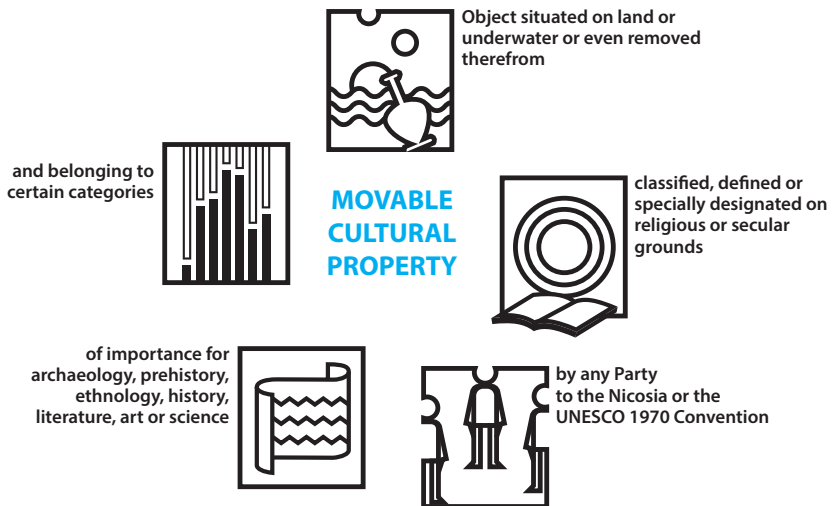
This Question and Answer booklet presents ten key issues relevant to understanding how the Nicosia Convention functions:

1. What **type** of cultural property is protected under the Nicosia Convention?
2. What **crimes** can be combatted under the Nicosia Convention?
3. How is cultural property **protected** by the Nicosia Convention?
4. Why do we **need a criminal** Convention in the **cultural sector**?
5. Are the **measures** proposed by the Convention only criminal?
6. Why a **Council of Europe Convention**?
7. What is the **added value** of the Nicosia Convention?
8. **Why** should my country **join** the Nicosia Convention and what are the **benefits**?
9. **Who** can **join** the Nicosia Convention and what will **happen** after they join?
10. How will the Nicosia Convention **help the cultural sector**?

For ease of understanding, the term “cultural property” and the more commonly used term “cultural heritage” are used interchangeably in this brochure.

ACRONYMS

- ▶ **CDCPP:** Steering Committee for Culture, Heritage and Landscape
- ▶ **CDPC:** European Committee on Crime Problems
- ▶ **COE:** Council of Europe
- ▶ **EU:** European Union
- ▶ **EUROPOL:** European Union Agency for Law Enforcement Cooperation
- ▶ **ICOM:** International Council of Museums
- ▶ **INTERPOL:** International Criminal Police Organisation
- ▶ **UNESCO:** United Nations Educational, Scientific and Cultural Organisation
- ▶ **UNIDROIT:** International Institute for the Unification of Private Law.



1. What type of cultural property is protected under the Nicosia Convention?

The **scope** of the Convention is the **prevention** of and the **fight against offences** relating to *tangible items* of cultural heritage, **either movable or immovable**, that fall within the definition of cultural property of the Nicosia Convention. This **definition is modelled** on the categories already prescribed in pre-existing legal instruments in order to ensure the **compatibility** of the Convention with other legally binding standards, be they international or supranational.¹

- ▶ **Movable** cultural property is defined as any object situated on land or underwater or even removed therefrom, which is, on religious or secular grounds, classified, defined or specifically **designated by any Party to the Nicosia Convention**, or by **any Party to the 1970 Convention** as being of importance for archaeology, prehistory, ethnology, history, literature, art or science, and which belongs to certain categories.²
- ▶ **Immovable** cultural property refers to any monument, group of buildings, site or structure of any other kind, whether situated on land or underwater, which is, on religious or secular grounds, defined or specifically **designated by any Party to this Convention** or by **any Party to the 1970 UNESCO Convention** as being of importance for archaeology, prehistory, ethnology, history, art or science or **listed** in accordance with Article 1 and Article 11 (paragraphs 2 or 4) of the **1972 UNESCO Convention** concerning the Protection of the World Cultural and Natural Heritage.

1. Mainly inspired by the [1970 UNESCO Convention on the means of prohibiting and preventing the illicit Import, export and transfer of ownership of cultural property](#), and the [EU Directive 2014/60 of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a member State](#)

2. Contained in UNESCO's 1970 Convention Article 2, paragraph 2a.

or listed in accordance with
Articles 1 and 11 of the
UNESCO 1972 Convention on
the Protection of the World
Cultural and Natural Heritage.



of importance for
archaeology, prehistory,
ethnology, history, art
or science



Monument, group of buildings,
site or structure of any other kind

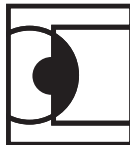


situated on land or
underwater

IMMOVABLE CULTURAL PROPERTY



by any Party to the Nicosia
or to the UNESCO 1970
Convention



defined or specially
designated on religious
or secular grounds

As the Convention was designed to allow signature and ratification by both Council of Europe member States and non-member States, this **wide definition of cultural property** further **broadens the scope of the Convention** to help protect the cultural heritage of States.

What about counterfeit goods?

Offences that do not directly affect the integrity of cultural property **are not included** under the Convention. This is the case of the making and/or selling of faked or forged art objects. Although such activities can disrupt the stability and security of the art market, they **do not have a direct impact on the preservation of cultural heritage items**.



2. What crimes can be combated under the Nicosia Convention?

The Nicosia Convention focuses on **three criminal acts**: destruction, damage and illicit trafficking; notwithstanding, it also deals with various other related offences. The first two, whose **irreversibility** make them actions of the utmost gravity, have been orphaned of an international legal basis. In this respect, the Convention takes into account that crimes against cultural property **go beyond illicit trafficking** and occur in a series of closely interrelated stages.

- ▶ **Destruction and theft**, including looting and illicit excavation, can be considered **“primary crimes”**, **committed before objects reach the market, if at all**. Many objects obtained through these means may remain in the national territory for years before entering the international market; or they may never reach it, either being traded within the borders of their country of provenance or discarded as not valuable.
- ▶ **Damage** to property occurs for various reasons, including **ideology or politically-driven vandalism**. In addition, damage occurs collaterally when another crime is committed as a **consequence of physical actions** on cultural property.
- ▶ As a **second step**, **illicit trafficking** occurs when the goods become **part of the so-called “art market”** because of the **economic benefits** to be gained from them. The issue of international illicit trafficking of cultural property, as opposed to damage and destruction, has long been addressed in UNESCO 1970 and UNIDROIT 1995 Conventions, as well as in EU directives and regulations.³

3. Mainly: 1970 UNESCO Convention on the means of prohibiting and preventing the illicit Import, export and transfer of ownership of cultural property
1995 UNIDROIT Convention on stolen or illegally exported cultural objects
EU Directive 2014/60 of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a member State
Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods
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



3. How is Cultural Property protected by the Nicosia Convention?

Taking the criminological reality into account

The Convention introduces common standards and legislative measures which address the most frequent and serious offences that may bring about the destruction, deterioration or loss of cultural property. It contains **essential substantive criminal law provisions** aimed at strengthening local, national and international efforts to protect cultural property from:

- ▶ Theft and other forms of unlawful appropriation;
- ▶ Unlawful excavation and removal;
- ▶ Illegal importation;
- ▶ Illegal exportation;
- ▶ Acquisition;
- ▶ Placing on the market;
- ▶ Falsification of documents;
- ▶ Destruction and damage.

The offences are only punishable when committed intentionally. This does not mean that Parties would not be allowed to **go beyond this minimum requirement** by also criminalising non-intentional acts. Together with this, the Convention foresees administrative proceedings allowing the imposition of administrative or other non-criminal sanctions.

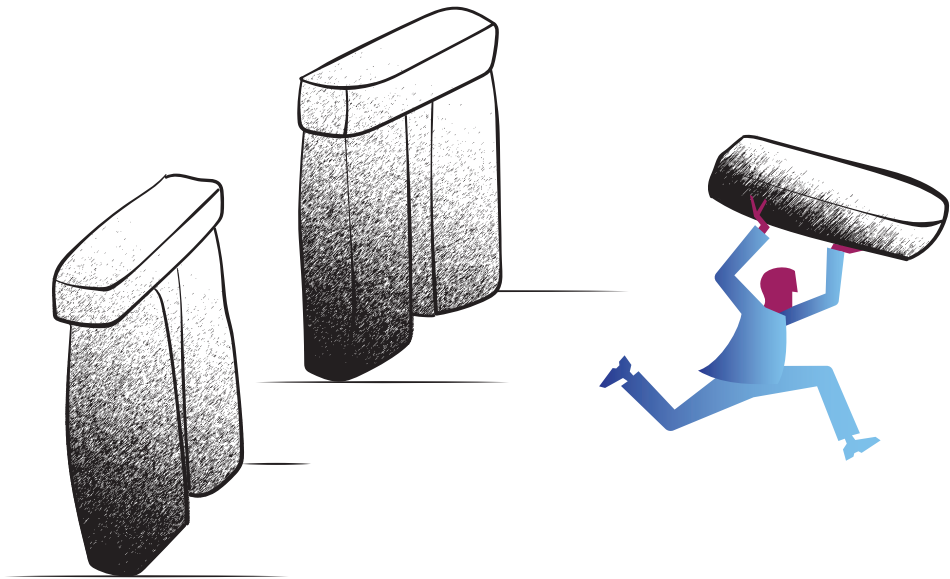
The Convention includes other provisions related to the commission of offences, such as, **aiding and abetting and attempt** or the possibility of taking into account previous **sentences passed by another Party**.

Holding legal persons responsible and incorporating aggravating circumstances

Offences may be committed by looters, vandals, thieves, buyers or sellers. However, on occasion, the actions of these individuals may also taint and transfer liability to legal persons. By providing for the liability of legal persons, the Convention **seeks to address the growing involvement of organised criminal groups** in all forms of damage to, destruction of and illicit trade in cultural property.

Aggravating circumstances are also foreseen when the offence is committed:

- ▶ by a **person abusing the trust** placed in them in their capacity as professionals;
- ▶ by a **public official** tasked with the conservation or the protection of movable or immovable cultural property;
- ▶ in the framework of a **criminal organisation**;
- ▶ or when the perpetrator has been **previously convicted** of offences referred to in the Convention.



4. Why do we need a criminal Convention in the cultural sector?

Protection of a collective interest

Cultural heritage constitutes a **unique and important testimony** of the history and identity of different peoples, thus making it a common asset that should be preserved in all circumstances, deserving of the highest standards of stewardship so that it can be **enjoyed by present and future generations** alike. Its destruction, damage and trafficking provokes losses that go beyond the mere disappearance of tangible materials but result in the **loss of scientific, historical and cultural information** as well as of the store of meanings which are precious to individuals, peoples and nations.

For these reasons, the criminal protection of cultural property is part of the general trend of incorporating the **protection of supra-individual or collective interest** into law-based systems in order to **benefit society as a whole**.

High complexity of causes

There is a complex web of causes underlying the offences related to cultural property:

- ▶ **Structural reasons**, including the opening of borders and the blossoming of the international art market, but also the multiplication of armed conflicts.
- ▶ **Issues related to the art market**, such as the lack of regulation, a culture of secrecy or insufficient due diligence, have created favourable conditions for illicit practices. The lack of transparency, monitoring and control also affects free ports, which are widely used by art dealers and collectors.
- ▶ At the **regulatory level**, factors include criminal laws that provide for light and not very dissuasive penalties, national rules on chance discoveries lack satisfactory systems of reward, provisions on good faith, due diligence, statutes of limitation and money laundering are not effective, or export and import regulations are not easily enforceable.

- ▶ Moreover, **technological advancements** have enabled a new online marketplace and facilitated illegal excavations. Thus, the black market has moved away from traditional means of trading, such as flea markets, to trading antiquities through online platforms, social media and the Deep Web which make it possible to trade wrongfully taken cultural property in an environment that is **difficult to control**.

As a result, in a globalised world, crimes relating to cultural heritage have **multiplied**, involving a growing **variety of actors and criminal actions** while **society has a lack of knowledge and awareness of the criminal nature of these crimes**.

Links to other criminal activities

Trafficking in cultural property has offered **organised crime** yet another means of **laundering their money and financing their illicit activities** (trafficking in drugs, arms, human beings, etc.). It provides organised criminal groups, terrorists and other violent non-State actors with an income that can be used to support their recruitment efforts and **strengthen their operational capability**. In addition, offences to cultural property are often **associated with other illicit conducts** such as:

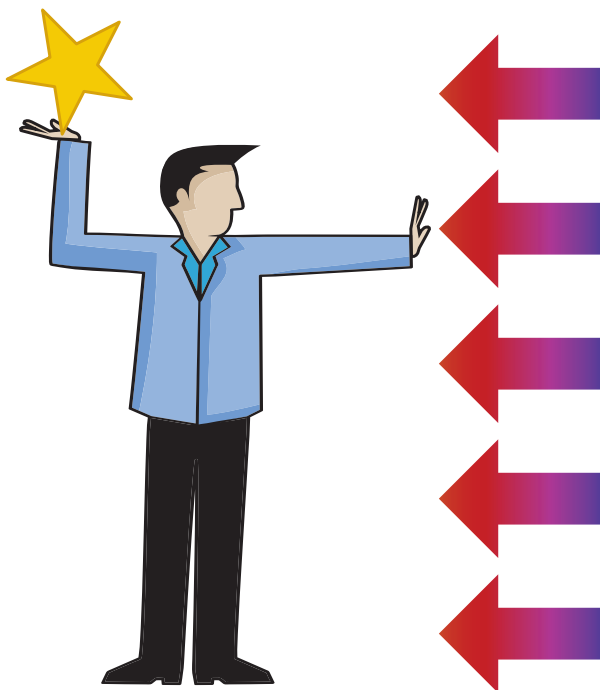
- ▶ **Corruption of persons** abusing the trust placed in them in their professional capacity;
- ▶ **Corruption of public officials** tasked with the conservation or protection of movable or immovable cultural heritage;
- ▶ Commission of **tax offences**;
- ▶ **Money laundering**;
- ▶ **Falsification or manipulation of documents** to deceive and mislead customs agents or other officials into thinking that cultural property has a lawful provenance.

Need for action

The legal instruments available to authorities are **falling short** of what is needed to address the complexity of the criminal environment. Consequently, cultural property is left defenceless in the face of those who might want to take advantage of the current legal structure.

Existing international rules have been instrumental in curbing the illicit trafficking in cultural property. However, their focus on export, import, and restitution issues comes at a price. **A plethora of other criminal activities**, which are **largely absent in the current international framework, are proliferating**.

International organisations, State entities, law enforcement agents and civil society must be able to take, **based on instruments appropriate to the current situation**, the necessary action to prevent and suppress the destruction of/damage to cultural property and the continued marketing of illegally sourced assets.



5. Are the measures proposed by the Convention only criminal?

Prevention and criminalisation are two sides of the same coin that must work together. A holistic approach and strong cooperation, together with documentation, investigation, awareness-raising, education and communication campaigns, are necessary to successfully combat crimes against cultural heritage, reduce damage and destruction and prevent criminal behaviour.

Criminal sanctions

- ▶ As regards criminal sanctions for **natural persons**, the Convention requires Parties to match their criminal law response to the seriousness of the offences and lay down sanctions which are “effective, proportionate and dissuasive” and which may include penalties involving **deprivation of liberty** and/or **monetary sanctions**.
- ▶ Concerning the liability of **legal persons**, the criminal sanctions shall also be “effective, proportionate and dissuasive”, but may be criminal or non-criminal monetary sanctions such as administrative sanctions or civil liability. The Convention gives examples of measures which could be taken in respect of legal persons: temporary or permanent **disqualification** from the practice of commercial activities; **exclusion** from entitlement to **public benefits or aid**; placing under **judicial supervision**; or a **judicial winding-up order**.

The list of measures is not mandatory or exhaustive and Parties are free to apply none of these measures or envisage other measures.

Non-criminal measures

States Parties are recommended to address non-criminal measures for **preventive purposes**, in order to reduce the likelihood of offences contained within the Convention from occurring, since the use of criminal sanctions, in line with the principle of *ultima ratio*, is understood as a means of last resort.

Some of them are reflective of measures contained within other international instruments,⁴ such as the inventories or databases of cultural property, the import and export control procedures or the due diligence provisions for art and antiquity dealers, etc. Others such as those related to the **awareness-raising** of the **criminal nature of the offences**, the regulation of **internet service providers**, **internet platforms** and **web-based sellers** and **free ports** are **specific** to the Nicosia Convention.

4. Such as the 1970 and 1972 UNESCO Conventions and 1995 UNIDROIT Convention.



6. Why a Council of Europe Convention?

The Council of Europe is a leader in legal and cultural co-operation with a well established network of policy makers and practitioners from the governmental and non-governmental level in Europe and beyond, and with decades of experience in creating international standards. The Nicosia Convention unites actors from across the globe under a legally-binding treaty that defines the offences related to cultural heritage as criminal. Other partners in the field, such as UNESCO or the EU are vital, but **neither can tackle the offences related to cultural heritage via criminal law.**

Background

In 2015, at the 6th Council of Europe Conference of Ministers responsible for Culture and Cultural Heritage, the Ministers issued the '[Namur Call](#)'⁵, deploring 'the deliberate destruction of cultural heritage and the illicit trafficking of cultural property' and deciding to 'reinforce European cooperation' in this field. This initiative was meant to supersede and replace the already-existing European Convention on Offences relating to Cultural Property (ETS No. 119), also known as the Delphi Convention.

5. "Cultural heritage in the 21st century for living better together. Towards a common strategy for Europe".

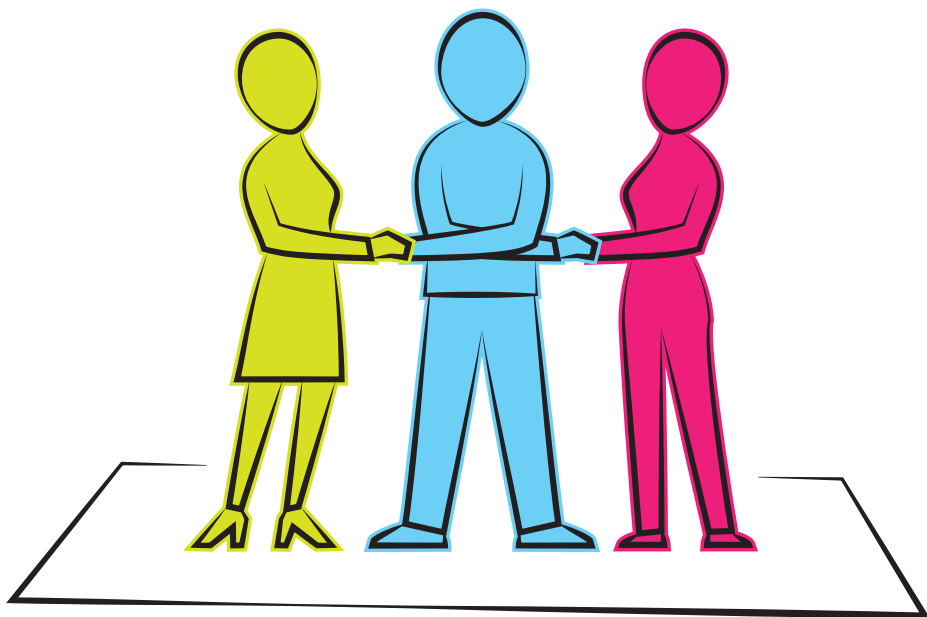
Drafting Committee

The drafting committee, under the authority of the [European Committee on Crime Problems \(CDPC\)](#), included participants from [CoE member States](#) **external experts**, representatives from several **Council of Europe bodies**, including the Parliamentary Assembly (PACE), the [Steering Committee for Culture, Heritage and Landscape \(CDCPP\)](#), the Committee of Experts on the evaluation of Anti-Money Laundering Measures and Financing of Terrorism (MONEYVAL), and the former Committee of Experts on Terrorism (CODEXTER).⁶ Additionally the process was attended by several **observer States** and representatives from associated **international organisations** including the European Union, the International Criminal Police Organization (INTERPOL), UN Educational, Scientific and Cultural Organization (UNESCO), International Institute for the Unification of Private Law (UNIDROIT), UN Office on Drugs and Crime (UNODC) and the Organization for Security and Co-Operation in Europe (OSCE).

Adoption of the Nicosia Convention in 2017

As a result, based on more than 50 years of experience in enhancing cooperation in culture and criminal matters among Council of Europe member States, the Convention on Offences Related to Cultural Property was adopted on May 2017 as the **first and only criminal-law convention to prevent and combat the intentional destruction of, damage to, and illegal trafficking of cultural property** building on, and complementing, key international instruments such as the 1970 UNESCO Convention, the 1995 UNIDROIT Convention and the EU regulations.

6. Nowadays, Council of Europe Committee on Counter-Terrorism (CDCT).



7. What is the added value of the Nicosia Convention?

The official recognition of several threats/acts as crimes

The Council of Europe is an organisation of European countries that seeks to protect democracy and human rights and to promote European unity by fostering cooperation on legal, cultural and social issues. Offences related to cultural property are proliferating, thus leading to an increasing extent, to the destruction of the world's cultural heritage. Until now, instruments for the protection of cultural heritage have focused mainly on the illicit trafficking of cultural property. However, additional offences are taking a toll on cultural heritage.

The Nicosia Convention **provides a legal basis for prosecution** by obliging States Parties to criminalise offences against cultural property, allowing also for the modulation of their intensity through the use of non-criminal sanctions for some offences. By doing so, the Convention strengthens the prevention of crimes against cultural property and the criminal justice response to all of them.

A comprehensive criminal law instrument to protect cultural heritage

The Nicosia Convention is the only international instrument that addresses crimes committed against cultural property from a **holistic perspective**, going beyond the problem of trafficking and acting on primary crimes such as loss, destruction or deterioration.

Cross-cutting strategies

Signing and ratifying the Convention allows countries to participate in a **global coalition** that employs cross-sector co-operation between the governmental institutions, the judiciary as well as cultural and law-enforcement bodies that deal with offences relating to cultural property.

Open to all

As the Convention was consciously drafted to **operate in harmony with, and build upon, universal instruments**, it is intended to further facilitate co-operation between all States willing and able to take concerted action to preserve precious cultural heritage for present and future generations. The Convention is not intended for Europe only; it is also **open to any country in the world** that would like to accede to it. For example, Mexico ratified the Convention in 2018.



8. Why should my country join the Nicosia Convention and what are the benefits?

Global crime requires a global coalition

- ▶ Over the last few years, contemporary societies have faced cultural property crimes that now present **new characteristics**.
- ▶ Given the **fragmented nature** of these crimes, countries regardless of how tightly they control their borders are vulnerable to offences against cultural property. **No single country alone can counter the offences against cultural property** because these are **transnational** crimes that do not respect borders.

- ▶ Due to the **high-profit and low impunity** nature of cultural property crimes, these have attracted the attention of organised crime groups. The difficulties surrounding cross-border prosecution, which is largely motivated by the lack of an international criminal-law framework, hampers progress. Consequently, more cultural, police and judicial (criminal) cooperation is needed, based on **up-to-date standards**.

A common legal framework for prosecution

- ▶ There is no doubt about the **urgent need** for adequate and effective national regulatory systems aimed at the prevention and criminalisation of offences relating to cultural property requires the **adoption of international instruments capable of harmonising the legislation** as well as establishing and applying effective, proportionate and dissuasive criminal penalties.
- ▶ The Nicosia Convention is the **first treaty to prescribe a set of common and legally-binding definitions** for cultural property and its related offences. Likewise, it is the first treaty that requires States Parties to accommodate these definitions into their national legislation, thus aiding in the harmonisation of legislation between countries and facilitating the international prosecution of these crimes.

International cooperation, expertise and communication channels in criminal matters

- ▶ Detection of these crimes is often hindered by a lack of communication between cultural, customs, police and judiciary authorities as well as the private sector. To resolve this issue, the Nicosia Convention **promotes co-operation at both national and international levels**, information exchange and collection of data on crimes included in the Convention.
- ▶ The **Committee of the Parties**, established by the Convention, as a simple and flexible mechanism, is destined to serve as a centre for the collection, analysis and sharing of information, experiences and good practice between Parties to improve their policies in this field using a **multisectoral and multidisciplinary** approach.

From signatures to co-operation



9. Who can join the Nicosia Convention and what will happen after they join?

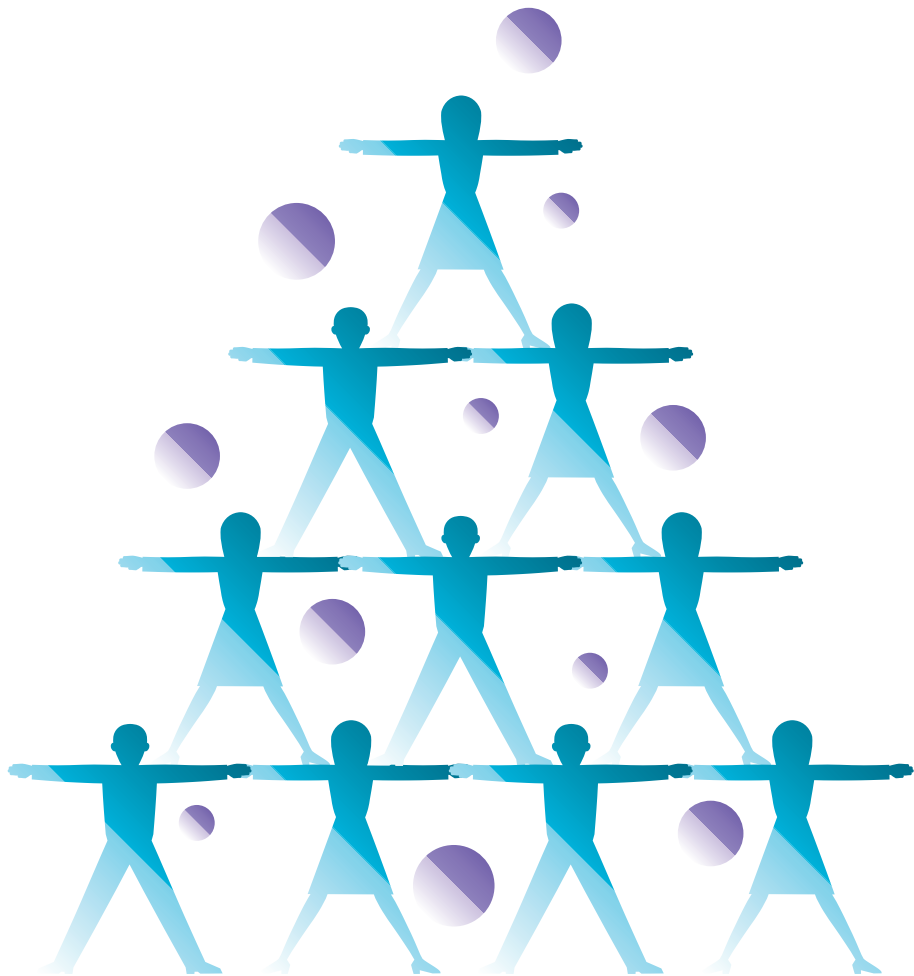
The Convention has a universal purpose and is **open to any country in the world**.

The power of the Convention in combatting offences against cultural heritage grows **stronger with each new ratification**. Its approval is of utmost interest to the international community, as it will facilitate greater and more effective collaboration between States in the prosecution of crimes related to cultural property.

The Nicosia Convention provides States Parties with:

- ▶ access to **legal expertise** for the purpose of accommodating the provisions of the Convention into national law;
- ▶ **training** for legal professionals in order to help them better understand the nature of cultural property crimes;
- ▶ a **framework for national and international co-operation** across the different sectors of public administration (police, customs, cultural and judicial authorities);
- ▶ participation in the **Convention's monitoring body** – the Committee of the Parties – which includes representatives from each State Party and is tasked with overseeing the implementation of the Convention and guiding international cross-sectoral collaboration.

In turn, the national legislator will have to **review the Penal Code and other related laws in the light of the Convention**.



10. How will the Nicosia Convention help the cultural sector?

Assist in taking legal action against perpetrators

The criminalisation of the aforementioned activities allows for the increased prosecution of offences against cultural property. By bringing **criminal charges**, as well as by adopting serious **preventive** and **repressive measures**, State authorities can make these activities less attractive to criminal groups and thus reaffirm the primacy of the law.

Exchange of good practices and communication for early detection

Adequate communication and the exchange of good practices helps professionals in the justice, culture, customs and law enforcement fields to better identify and put a stop to offences related to cultural property.

Designating a **national contact point** provides a clear framework for international communication that can detect criminal activity early on and share essential strategies for alleviating the dangers associated with it.

Help to protect the common cultural heritage of humanity

Drafted to operate in **harmony** with existing universal instruments, the Nicosia Convention will facilitate co-operation between all States coordinating action to preserve precious cultural heritage for present and future generations.

A **concerted international action** such as the Nicosia Convention is key to addressing the recurrent problems posed by the violation of national and international norms on the protection of cultural heritage.

Stronger together

The Nicosia Convention provides an **opportunity for the judicial, customs, law enforcement and cultural sectors** to come together and work towards achieving their shared goals. All in all, the Convention is a game-changer. **Ratification by many countries** will ensure a **unified approach that protects the cultural heritage of humanity as a whole**.

Crimes against cultural property are a danger to the preservation, legacy and sustainability of human culture and are a **violation of the principle of safeguarding the common heritage** enshrined in the European Cultural Convention of the Council of Europe. Each year, these crimes destroy thousands of artefacts, archaeological sites and monuments and cause irreparable damage to museums, galleries, public and private collections, as well as to religious buildings, thereby impoverishing humanity as a whole. To stop these phenomena, protect cultural property as well as to strengthen **crime prevention and the criminal justice response** to all those criminal offences it is necessary to criminalise those activities which are connected to the perpetuation of cultural heritage offences and to promote **national and international co-operation**. This is the aim of the Council of Europe Convention on Offences Relating to Cultural Property, known as the Nicosia Convention (CETS No. 221), intended to further facilitate co-operation between all States willing and able to take concerted action to preserve cultural heritage for present and future generations.

This booklet presents 10 key issues of relevance to the Nicosia Convention in an easy-to-understand format. It puts forth arguments in favour of signing, ratifying and implementing the Nicosia Convention and is aimed at promoting greater awareness of the threat posed by crimes against cultural heritage.

www.coe.int/cultural-property

www.coe.int/nicosia

nicosia.convention@coe.int

www.coe.int

The Council of Europe is the continent's leading human rights organisation. It comprises 46 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.

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