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TÍTULO: La cooperación internacional en la lucha contra el tráfico ilícito de bienes culturales.

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RESUMEN: El documento analiza los aspectos básicos de la cooperación internacional en el campo de la lucha contra el tráfico ilícito de bienes culturales. Se consideran las orientaciones de la cooperación internacional en el campo de la lucha contra el tráfico ilícito de bienes culturales y obras de arte: interacción entre organizaciones internacionales, representantes de los gobiernos de los estados miembros de las Naciones Unidas, organizaciones no gubernamentales y el sector privado. Se señala la contribución de la República Italiana al desarrollo de un régimen para la protección de los bienes culturales del tráfico ilícito que opera bajo el Cuerpo Carabinieri.

PALABRAS CLAVES: Valores culturales, delincuencia organizada, delincuencia transnacional, trata, cooperación legal internacional.

TITLE: International cooperation in combating illicit trafficking in cultural property.

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ABSTRACT: The paper discusses the basics of international cooperation in the field of combating illicit trafficking in cultural property. The directions of international cooperation in the field of combating illicit trafficking in cultural property and works of art are considered: interaction between international organizations, representatives of governments of UN member states, non-governmental organizations and the private sector. The contribution of the Italian Republic to the development of a regime for the protection of cultural property from illicit trafficking operating under the Carabinieri Corps is noted.

KEY WORDS: cultural values, organized crime, transnational crime, trafficking, international legal cooperation.

INTRODUCTION.

Currently, the practice of embezzlement, robbery, looting and / or illegal importation and exportation of cultural property is well known (Yates, 2016). Public and private museums, legal owners or owners of collections, religious institutions and archaeological sites around the world suffer from this phenomenon.

The report of the World Customs Organization (WCO) “Illegal trade in 2016” made special emphasis on the problem of smuggling cultural goods and works of art. First of all, the data presented in it make it possible to verify in numbers the validity of the widespread and often found in the media statement that the illegal trade in cultural property in terms of profitability ranks third after illegal drug and arms trade (Berger, 2018).

The volume of trafficking in cultural property worldwide is estimated at between 3.4 and 6.3 billion US dollars annually (UNESCO, 2016). Revenues 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 trafficking in cultural property, their plundering and destruction is one of the main threats to the cultural heritage of all mankind. The problem of trafficking in cultural property has become particularly acute in countries covered by conflicts and crises, including Iraq (Berger, 2018), the Syrian Arab Republic (Brodie and Sabrine, 2018) and Libya (UNESCO, 2018). They led to an increase in illicit trafficking in cultural property, mainly archaeological objects, which are subject to large-scale looting, and the sale of which is used to finance terrorism, as reflected in resolution 2199, unanimously adopted by the UN Security Council on February 12, 2015 (Crisan, et al. 2014; Ghasempour, Bakar & Jahanshahloo, 2013; Gillani & Eynon, 2014).

DEVELOPMENT.

Methodology.

Various general scientific methods and methods of logical cognition were used in the study: systemic, analysis and synthesis, abstraction, and formal-logical approaches.

Results and Discussion.

International combating trafficking in cultural property is one of the most pressing transnational problems.

States cannot cope with this disaster alone, therefore, international solidarity and balanced, collective and simultaneous actions of the international community are needed.

International legal cooperation in the field of combating illicit trafficking in cultural property can be represented as the interaction between two legal mechanisms: conventional and institutional.

The conventional mechanism of international cooperation includes a set of international legal agreements providing for legal coordination of the efforts of states in the area of countering the illicit trafficking of cultural property.

The institutional mechanism, in turn, provides for the creation of special bodies and organizations that contribute to the development of legislative recommendations and joint programs in the field of combating illicit trafficking in cultural values and works of art.

One of the universal international organizations that deal with a wide range of problems of international cultural and scientific cooperation, including the problem of trafficking in cultural property, is the United Nations Educational, Scientific and Cultural Organization (UNESCO). As of January 2018, UNESCO consists of 193 Member States and 11 Associate Members (Manacorda and Chappell D, 2011).

One of the important tools for the preservation of the cultural heritage of peoples is the control over the import and export of cultural property and therefore a number of multilateral agreements address this problem. Two international conventions deserve special attention: The Convention on Measures to Ban and Prevent the Illegal Import, Export and Transfer of Ownership of Cultural Values (1970 UNESCO Convention) and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Values (UNIDROIT 1995 Convention).

The 1970 UNESCO Convention emphasized the importance of cooperation between states in the fight against illicit trafficking in cultural property, by ensuring the interaction of competent services for the return of illegally exported cultural property to their rightful owners. Currently, it is the main international document establishing minimum rules that member states should adopt to curb the illicit traffic in cultural property.

While the 1970 UNESCO Convention operates both in relation to the prevention of illicit trafficking in cultural property and at the stage of their return, the 1995 UNIDROIT Convention focuses exclusively on the return process. It applies to international claims regarding 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 heritage and cultural exchanges, the promotion of an effective fight against theft and the illicit trafficking of cultural property.

Ratification of these conventions or accession to them means the willingness of national governments to promote the implementation of international standards on the control of trafficking in cultural property and works of art, which provides the basis for the development and implementation of national strategies to combat the illicit trafficking of cultural property coordinated with international efforts in this area.

It should be noted that the 1970 Convention was ratified by 137 states, and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was ratified by only 45 states, in particular, such countries as France, Russia, Switzerland and the Netherlands, which signed the 1995 UNIDROIT Convention, have not yet ratified it.

Taking into account the complex history on the development of the problem of the cultural values protection throughout the world, the signing and further ratification of the UNIDROIT Convention is highly relevant. Such participation of states in this international treaty will complement the existing

mechanism of protection in the field of protection of national cultural heritage from exports across borders, including open ones, and in the field of ensuring the rights and legitimate interests of individuals importing cultural values into the territory of various states.

One of the priorities of international cooperation in the field of illicit trafficking in cultural property and works of art is the interaction between UNESCO with the International Criminal Police Organization (Interpol) (Foradori, 2017), UNIDROIT, the World Customs Organization, the UN Office on Drugs and Crime, the International Council of Museums and the European Union, as well as the relevant specialized police forces of Spain, Italy and France.

These organizations often interact with each other, in particular on issues related to the theft and illegal export of cultural property throughout the world and the procedures for their restitution (United Nations Office on Drugs and Crime, 2016); for example, in 2016, in cooperation with Interpol and the United Nations Office on Drugs and Crime, and with the support of Italy UNESCO has developed a practical guide for Member States to implement the International Recommendations on the Prevention of Illicit Trafficking of Cultural Property and Criminal Justice in such cases (UNESCO, 2017).

The adoption of the Guidelines indicates that the international community has become increasingly aware of the need to strengthen international cooperation in this area.

We would like to note the contribution of the Italian Republic to the development of the regime for the protection of cultural property from illicit trafficking. This regime in Italy operates under the Carabinieri Corps. In 1969, Italy became the first country in which such a specialized law enforcement agency was created, serving as an important mechanism for the effective protection of cultural heritage.

In 2015, in response to the barbaric destruction of the cultural heritage of mankind by the terrorist organization ISIL, Italy put forward the concept of creating "blue helmets of culture", (by analogy with "Blue Helmets" peacekeepers group by UN) which has already received its practical implementation and appreciation of the international community. According to the Memorandum of Understanding dated February 16, 2016, a Crisis Response Group was created by common efforts of Italy and UNESCO in areas where cultural heritage is threatened for one reason or another.

It is assumed that if the tasks assigned to the group are successful, this experience will be able to be adopted and implemented by other UNESCO Member States.

Italy also (in close cooperation with France) put forward a number of initiatives within multilateral institutions which resulted in the unanimous adoption by the UN Security Council of historic Resolution 2347 which consolidated the process of securitization of the cultural heritage protection regime and introduced the issue of the protection of cultural sites ensuring international security.

This is the first resolution that focuses solely on cultural heritage. It welcomes the central role that UNESCO plays in protecting cultural heritage and promoting culture as a tool for bringing people together and promoting dialogue.

The First Report on Resolution 2347 of the UN Security Council on the Protection of Cultural Heritage emphasized the importance of strengthening the implementation of the resolution which links the protection of cultural heritage with the maintenance of international peace and security. The report examines examples of good practices shared by 29 Member States, and provides recommendations for enhancing heritage protection, raising awareness, collecting data and training peacekeepers to better integrate cultural issues in future peacekeeping missions (UNESCO, 2017).

Thus, joint efforts will contribute to the effective protection of the cultural heritage from organized crime and terrorism in order to protect all nations and preserve their history and identity.

It should be noted that these efforts need to more actively involve representatives of the governments of the UN member states, non-governmental organizations and the private sector.

Every year, numerous international conferences, forums and seminars take place under the auspices of UNESCO, on which problems of countering the illicit trafficking of cultural property and works of art are discussed, and appropriate decisions are made, including those enshrined in international legal norms. For example, in March 2018, a conference was held on “Engaging the European Art Market in the fight against cultural trafficking”, which was attended for the first time by representatives of the public and private sectors from EU member states to strengthen dialogue and cooperation in combating trafficking in cultural property.

In fulfillment of its mandate, the UNESCO Director-General submits reports every three years to curb the illicit traffic in cultural property and to facilitate the return of such property to its countries of origin or their restitution in case of misappropriation.

Since the last cycle of periodic reporting (2015) the Subsidiary Committee has taken steps to improve the efficiency and effectiveness of periodic reporting cycles. In particular, at its fourth session, a modified reporting form was adopted in order to more effectively collect information on new trends and events in the fight against illicit trafficking in cultural property. In addition, the fifth session of the Subsidiary Committee adopted a decision welcoming the proposal to develop an electronic reporting tool (United Nations Office on Drugs and Crime, 2016).

Thus, the Secretariat launched in mid-October 2018 a new cycle of electronic periodic reporting for 2019 and invites all participating States to submit their national reports. Those new tools are aimed to create a comprehensive searchable database covering the policies, legislative systems, implementation mechanisms and operational frameworks of the participating States. In addition, it will present facts regarding best practices and international cooperation, as well as updated statistics on thefts, illegal exploitation, seizures and restitution.

CONCLUSIONS.

International cooperation between states, international organizations and various specialized bodies at the national level intensifies combating illicit trafficking in cultural property, and the latter is currently experiencing unprecedented growth.

Illicit trafficking in cultural property has become a serious problem for the international community, and it requires transnational approaches to its solution.

With the help of the UNESCO Conventions dated 1970 and 1995 UNIDROIT, the international community was able to create a single set of legal norms governing the prevention and control of theft and illicit trafficking in cultural property.

However, the mere existence of international treaties on the fight against illicit trafficking in cultural property and works of art still does not solve the problem of countering this evil. It is necessary that these agreements work effectively. This, in turn, depends on many factors, among which a clear mechanism for international legal cooperation in this area can be called. At the same time, international cooperation is not limited only to the statement of the fact of fulfillment or non-fulfillment by States of their obligations. In the process of its implementation, the causes of deficiencies are analyzed and specific recommendations are made for their elimination.

To combat the illicit trafficking of cultural property, it is necessary to unite the efforts of the entire world community. In this context, it is vital to strengthen cooperation between international and national governmental as well as non-governmental organizations with art market stakeholders (auction houses, antique dealers, gallery owners, brokers, experts, operators of online sales platforms and collectors).

One of the important elements of this cooperation is the exchange of best practices in countering the illegal movement of cultural property, which is an extremely effective and timely step in protecting the cultural heritage of peoples and creating a common cultural space.

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