

With its decision of September 12, 2018, the criminal division of the French Court of Appeals upheld the principle that the “UNESCO Convention of November 14, 1970, cannot in itself be used to impose a criminal penalty.” This obvious fact, understood by any informed legal professional and indeed by anyone who has actually gone to the trouble of reading the 1970 Convention in question, may well have needed to be affirmed by the French high courts since so many prosecutors have erroneously based their cases on its principles, despite the fact that they are not directly applicable in the sovereign laws of nations (*Tribal Art*, no. 77, pp. 140–144).

Since the 1970 UNESCO Convention concerns “the measures needed to prohibit and prevent the illicit import, export, and transfer of ownership of cultural property” in the broadest sense, we thought it worthwhile to give an account here

cial trade in fossils—and many of its wares were even on exhibit in French museums—no one should have been particularly surprised that dinosaur, fish, and reptile skeletons from all over the world were “discovered” at its place of business. Nevertheless, more than 200 fossils were seized.

An official investigation was opened and, after having been in custody for four days, the owners of the fossil importing business were accused of nothing less than “participating by association with miscreants in preparation for committing a crime punishable by ten years’ imprisonment, the detention of national treasures and cultural goods without valid authorizing documentation, the import as an illegal organized group of prohibited merchandise without customs declarations, and organized theft, as well as the reception and possession of stolen goods.”

The UNESCO Convention of November 14, 1970

Not a Law for Criminal Prosecution

By Yves-Bernard Debie

of the French high court’s ruling, even though the case in point relates to the import of fossils and not cultural objects.

Just as Guy de Maupassant’s novel *Pierre et Jean* does, this legal tragedy begins in Le Havre. On a beautiful August morning in 2013, customs agents in that Norman port, which is located on the right bank of the Seine’s estuary and is France’s largest port for container ships, proceeded to inspect a vessel’s cargo. Upon unloading it, they noted an irregularity in the declaration for a container containing a large number of prehistoric fossils from South America. Instead of issuing a ticket and imposing a fine as they normally would, they opted to execute multiple searches of the physical premises of the French company to which the shipment was addressed.

Since the function of the business in question was obvious and clearly stated to be commer-

About the only thing they weren’t charged with was the murder of the dinosaurs, which we can only assume they were disqualified from being suspected of since the creatures in question died some sixty-five million years ago.

The dumbfounded presumed culprits incredulously repeated that they had been actively buying and selling fossils “with invoices” for as many years as they had been in business; that they had long imported and exported them; that they had been suppliers to many major museums; that dozens of fossil fairs were held every year not only in France but all over Europe, the United States, and elsewhere in the world; that comparable fossils were regularly and continued to be offered for sale at auctions; and that there was, to their knowledge, nothing about those activities that was prohibited.

Nonetheless, in the eyes of French customs officials and the judge handling the case, the impor-



Triceratops horridus skull. Maastrichtian Stage, Late Cretaceous Period, between 70 and 67 million year BP. Hell Creek Formation, Montana, USA.

Private Belgian collection.
Photo: ROAR Atelier, © *Tribal Art* magazine.

tation of fossils into France was prohibited by the 1970 UNESCO Convention and the ensuing French *code du patrimoine* (Heritage Code). Following this logic, the receipts, bills of sale, and transport documents were all fraudulent, and the buyers and sellers were all thieves and conspirators.

However, the Court of Appeals reminded us that

The import of cultural goods into France has only been targeted by the rules of the Heritage Code since the passage of the law of July 7, 2016 [it actually became law on July 9]. Prior to this reform, only the unauthorized export of cultural goods was prohibited.

The 1970 UNESCO Convention is not a document that can serve as grounds for the imposition of criminal penalties.

Obviously, the clarity of that statement should not require further discussion, but one must ask how or why it even came up. It is astonishing—and even terrifying—to consider the implications upon the legitimacy of crime and punishment that this case conjures. Among the specific issues is that it stands in opposition to the idea that an incriminating statute could be based on legislation that had not yet entered into force at the time of the facts in question. And further that the codes in question were interpreted based on an international convention that has no effect on internal law. How can they be enforced in this way?

It should be remembered that the trade in cultural goods in the broadest sense (and, in fact, how can the fossils of dinosaurs that disappeared millions of years before civilization appeared be considered cultural goods?) is not prohibited. While the case we are discussing here has thankfully been resolved, going forward the authorities are still mandated with the task of supervising such trade and, when the necessity arises, of prosecuting wrongdoers. Wielding such authority, they must understand how and when to apply the law.

Many legal codes around the world hold to the principle of *nullum crimen, nulla poena sine lege*, that is, crime and punishment must be defined by law. The authorities would do well to remember this.

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