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Thematic discussion on protection against illicit trafficking in cultural property

Recommendations of the expert group on protection against trafficking in cultural property

Note by the Secretariat

I. Introduction

1. The Economic and Social Council, in its resolutions 2004/34 and 2008/23, entitled “Protection against trafficking in cultural property”, recalled the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property,¹ which was adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and welcomed by the General Assembly in its resolution 45/121.

2. In its resolutions 2004/34 and 2008/23, the Council emphasized the importance for States of protecting and preserving their cultural heritage in accordance with relevant international instruments such as the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,² the Convention on Stolen or Illegally Exported Cultural Objects,³ and the Convention for the Protection of Cultural Property in the Event of Armed Conflict and the two protocols thereto.⁴

* E/CN.15/2010/1.

¹ *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.1, annex.

² United Nations, *Treaty Series*, vol. 823, No. 11806.

³ Available from www.unidroit.org.

⁴ United Nations, *Treaty Series*, vol. 249 and vol. 2253, No. 3511.



3. In its resolution 2008/23, the Council reiterated the significance of cultural property as part of the common heritage of humankind and as unique and important testimony of the culture and identity of peoples and the necessity of protecting it. The Council reaffirmed the necessity of international cooperation in preventing and combating all aspects of trafficking in cultural property, and noted that such cultural property was especially transferred through licit markets, such as auctions, including through the Internet. The Council expressed concern about the demand for cultural property, which led to its loss, destruction, removal, theft and trafficking, and was alarmed at the growing involvement of organized criminal groups in all aspects of trafficking in cultural property.

4. In that same resolution, the Council reiterated the request made in its resolution 2004/34 that the United Nations Office on Drugs and Crime (UNODC), in close cooperation with the United Nations Educational, Scientific and Cultural Organization (UNESCO), convene an open-ended intergovernmental expert group meeting to submit relevant recommendations on protection against trafficking in cultural property to the Commission on Crime Prevention and Criminal Justice. Those recommendations were to include ways of making the model treaty more effective.

II. Recommendations

5. At its 5th and 6th meetings, on 26 November 2009, the expert group on protection against trafficking in cultural property adopted, pursuant to Economic and Social Council resolution 2008/23, the recommendations below.

A. International instruments

6. All States are encouraged to consider ratifying the conventions related to protection against trafficking in cultural property, in particular the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the Convention on Stolen or Illegally Exported Cultural Objects and the United Nations Convention against Transnational Organized Crime.⁵

7. UNODC, UNESCO and the International Institute for the Unification of Private Law (Unidroit), within their respective mandates, should jointly explore linkages and synergies between those three conventions, as well as with other relevant instruments, when applicable.

8. As a complement to existing work, and in close cooperation with UNESCO, Unidroit and other competent organizations, UNODC, within its mandate, should explore the development of specific guidelines for crime prevention with respect to trafficking in cultural property including, inter alia, the criteria of due diligence when acquiring a cultural object.

9. UNODC should continue to invite all Member States to submit in writing their views on the model treaty for the prevention of crimes that infringe on the cultural

⁵ United Nations, *Treaty Series*, vol. 2225, No. 39574.

heritage of peoples in the form of movable property, including on the practical utility of the model treaty and on whether any improvements to it should be considered. A report on those views should be submitted to the Commission.

10. UNODC, within its mandate, should encourage all Member States to use the model export certificate for movable cultural property jointly drafted by UNESCO and the World Customs Organization (WCO), and assist them in its use.

11. The Conference of the Parties to the United Nations Convention against Transnational Organized Crime should be invited to consider using the Convention to protect against trafficking in cultural property, bearing in mind that in it the General Assembly expressed its strong conviction that the Convention would constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, offences against cultural heritage.

B. Prevention

12. States and competent international organizations should enhance and, as appropriate, create databases of stolen or missing objects.

13. States should take effective measures to prevent the transfer of illicitly acquired cultural property, in particular by:

(a) Encouraging institutions dealing with auctions, including through the Internet, to ascertain the true provenance of cultural objects to be auctioned, as well as to provide in advance, as far as feasible, information on the provenance of such cultural objects;

(b) Better regulating the export of cultural objects by using, as appropriate, the model export certificate designed by UNESCO and WCO;

(c) Promptly reporting, when feasible and preferably to the International Criminal Police Organization (INTERPOL), information on losses of cultural property;

(d) Using, as appropriate, the "Object-ID" international standard to facilitate prompt circulation of information in case of crime;

(e) Encouraging and, when appropriate, increasing regulation and supervision of dealers in antiquities and similar institutions, for example by keeping a registry of all transactions of cultural objects, including sales, purchases and exchanges; considering developing codes of conduct, keeping in mind the UNESCO international code of ethics for dealers in cultural property; and, as appropriate, by introducing professional requirements by way of licensing;

(f) Conducting checks of cultural property, in particular suspicious or questionable cultural property, using all relevant sources of information, including the INTERPOL stolen works of art database;

(g) Extending, as much as possible and whenever appropriate, the registration, guarding, monitoring and policing of archaeological sites, including of those in which illegal excavations could be conducted, preferably with the participation of local communities and making use of new technologies.

14. States should explore the feasibility of marking or otherwise identifying cultural property to prevent them from being trafficked. Such marking or identification should be conducted with the assistance of competent international organizations, such as the International Council of Museums (ICOM), inter alia, by the collection of best practices.

15. The Conference of the States Parties to the United Nations Convention against Corruption should be invited to consider using the Convention to protect against trafficking in cultural property.

C. Criminalization

16. States should have legislation that is appropriate for criminalizing trafficking in cultural property and that takes into account the specificities of such property.

17. States should criminalize activities related to trafficking in cultural property by using a wide definition that can be applied to all stolen and illicitly exported cultural property. They should also criminalize the import, export or transfer of cultural property in accordance with article 3 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. States should also consider making the trafficking in cultural property (including stealing and looting at archaeological sites) a serious crime in accordance with their national legislation and article 2 of the Organized Crime Convention, especially when organized criminal groups are involved.

18. If consistent with their legal system, including the fundamental principles of their legal systems, States are invited to consider:

(a) Allowing cultural property to be seized when those in possession of the property cannot prove the licit provenance of the objects or that they have a reasonable belief in the licit provenance of the objects;

(b) Confiscating the proceeds of crime. In this regard, the Organized Crime Convention may constitute a useful basis.

19. In coordination with INTERPOL, and on the basis of replies to questionnaires submitted by Member States on the implementation of Economic and Social Council resolution 2008/23 and pursuant to Council resolutions 1984/48 and 2009/25, UNODC, within its mandate, should expand and update existing statistics on trafficking in cultural property and complement such statistics with relevant data, including on illicit excavations.

20. States, with the assistance of competent international organizations, should consider adopting measures to discourage the demand for stolen or trafficked cultural property.

D. Cooperation

21. UNODC should join the already established network between UNESCO, Unidroit, WCO, INTERPOL and ICOM, and collaborate with competent institutions in order to address the crime prevention and criminal justice aspects of trafficking in cultural property.

22. States should consider including, in their cooperation agreements on protection against trafficking in cultural property, specific provisions for information exchange; a coordinated follow up of the flow of cultural objects, whenever feasible; and the return or, as appropriate, the restitution of stolen cultural property to its rightful owner.

23. States should provide adequate resources to establish or develop central authorities focused on the protection of cultural property, including cultural heritage, and cooperate with each other, *inter alia*, with regard to checking the market (including Internet auctions) and to informing the competent international organizations about such authorities.

24. States should promote inter-agency cooperation for the purpose of strengthening mechanisms for protection against trafficking in cultural property.

25. For the purpose of providing each other with the widest possible mutual legal assistance in the protection against trafficking in cultural property, including with regard to investigation, prosecution and confiscation, States should endeavour to use the relevant existing instruments, including the Organized Crime Convention. In that regard, the Conference of the Parties to the Organized Crime Convention is invited to explore ways of using the provisions of the Convention as a legal basis for international cooperation.

26. In order to complement existing multilateral agreements, States are invited, *inter alia*, to enter into bilateral agreements for protection against trafficking in cultural property.

E. Awareness-raising, capacity-building and technical assistance

27. States and competent international organizations such as UNESCO and ICOM, within their existing mandates, should promote education and launch awareness-raising campaigns involving, *inter alia*, the media, in order to disseminate information on the theft and pillaging of cultural property targeting, for example and when appropriate, tourists visiting archaeological sites. They should also discourage buyers from collecting antiquities whose provenance cannot be ascertained by making such collecting socially unacceptable. States should also encourage their citizens to report finds and discourage speculative looting.

28. UNESCO, UNODC, ICOM, INTERPOL, Unidroit, WCO and other relevant organizations, within their respective mandates, should continue and, where feasible, strengthen their efforts to jointly promote and organize seminars, workshops and similar events for the following purposes:

(a) To build capacity and raise awareness about the drafting of criminal legislation on trafficking in cultural property;

(b) To raise awareness at the community and policymaking levels about the importance of protecting cultural property and of preventing and combating the trafficking of such property;

(c) To build capacity and raise awareness about the development of appropriate national inventories of cultural property;

(d) To build capacity and raise awareness about the uses of the Organized Crime Convention and the Convention against Corruption for protection against trafficking in cultural property.

29. States should provide, with the assistance of INTERPOL and ICOM, specialized training for police, customs and border services and museum personnel.

30. UNODC, in close cooperation with UNESCO, Unidroit and other relevant organizations, should identify technical assistance requirements for the implementation of crime prevention provisions applicable to protection against trafficking in cultural property.

F. Use of new technologies

31. States, consistent with their international legal obligations, including those relating to freedom of expression, should take effective measures to counter trafficking in cultural property via the Internet.

32. States should be encouraged to promote cooperation between representatives of the public and private sectors (such as Internet providers) to track the Internet sites dealing in cultural property.

33. UNODC is encouraged, in close cooperation with competent organizations, to collect and disseminate best practices in countering trafficking in cultural property via the Internet.

34. UNODC should periodically report on the implementation of the present recommendations to the Commission for consideration and possible action.