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Thematic discussion on protection against trafficking in cultural property

Discussion guide for the thematic discussion on protection against trafficking in cultural property

Note by the Secretariat

Summary

The present note has been prepared by the Secretariat as a discussion guide for the thematic discussion of the Commission at its nineteenth session. In its decision 2009/246, entitled “Report of the Commission on Crime Prevention and Criminal Justice on its eighteenth session and provisional agenda and documentation of its nineteenth session”, the Economic and Social Council decided that the prominent theme for the nineteenth session of the Commission would be “Protection against illicit trafficking in cultural property”. The Commission, in its decision 18/1, entitled “Guidelines for the thematic discussions of the Commission on Crime Prevention and Criminal Justice”, decided that the discussion on the prominent theme at its nineteenth session would have a duration of one day and would be based on a discussion guide including a list of questions to be addressed by participants, such guide to be prepared by the Secretariat.

The present guide proposes a series of questions for discussion by the Commission, outlines some issues for shaping the discussion and further elaborates upon the relevant subthemes. It describes the main challenges to effective protection of cultural property and makes suggestions for improving it.

* E/CN.15/2010/1.



I. Introduction

Guidelines for the thematic discussions of the Commission on Crime Prevention and Criminal Justice

1. In its decision 18/1, entitled “Guidelines for the thematic discussions of the Commission on Crime Prevention and Criminal Justice”, the Commission:

“(a) Decided that the discussion on the prominent theme at its nineteenth session would have a duration of one day and would be based on a discussion guide including a list of questions to be addressed by participants, such guide to be prepared by the Secretariat in the six official languages of the United Nations not later than one month in advance of the session;

“(b) Urged Member States and regional groups to put forward their nominations for panellists not later than two months in advance of each session of the Commission and decided that the panellists would be selected one month in advance of the session, bearing in mind that five seats on the podium would be allocated to the regional groups;

“(c) Decided that independent experts, such as private sector representatives and academics, may be invited, pursuant to the rules of procedure of the Economic and Social Council, to contribute to the thematic discussions of the Commission, taking into account, inter alia, regional considerations and legal frameworks;

“(d) Decided also that the guidelines for the thematic discussions of the Commission would be as follows:

“(i) Each thematic discussion should be moderated under the authority of the Chairperson and the bureau of the Commission and should be conducted under the Chairperson’s authority as set out in the rules of procedure of the functional commissions of the Economic and Social Council;

“(ii) Introductory presentations by panellists should be brief, not exceeding 10 minutes, and panellists should be encouraged to share their presentations in advance;

“(iii) Participants should be prepared to focus on the theme and subthemes agreed upon by the Commission in order to allow for a dynamic and interactive exchange during the thematic discussion;

“(iv) In their statements, speakers should touch upon national experiences of their Governments in relation to the subthemes. Within the framework of the rules of procedure applicable to the Commission, the views of intergovernmental and non-governmental organizations would be welcome;

“(v) Statements by participants should be limited to a maximum of five minutes;

“(vi) The moderator should intervene to enforce time limits and should keep a list of speakers but may use his or her discretion to select speakers according to the thrust of the discussion;

“(vii) At the end of the thematic discussion, the Chairperson should prepare a summary including the most salient points discussed.”

Topic and subthemes for the thematic discussion

2. In its decision 2009/246, entitled “Report of the Commission on Crime Prevention and Criminal Justice on its eighteenth session and provisional agenda and documentation for its nineteenth session”, the Economic and Social Council decided that the prominent theme for the nineteenth session of the Commission would be “Protection against illicit trafficking in cultural property”.

3. At an intersessional meeting, held on 23 November 2009, the Commission endorsed the following subthemes agreed in the course of informal consultations, which were confirmed at the reconvened eighteenth session (E/2009/30/Add.1-E/CN.15/2009/20/Add.1, para. 18):

(a) Applicable law and policies, from the perspective of crime prevention and criminal justice, to combat trafficking in cultural property, including issues of criminalization and implementation of judicial decisions, with emphasis on the links between such trafficking and transnational organized crime;

(b) Preventing trafficking in cultural property, in particular through:

(i) Awareness-raising, capacity-building, technical assistance and interdisciplinary coordination;

(ii) Criminalization in the context of prevention;

(iii) Measures designed to safeguard cultural property, including means for the identification of cultural property and physical protection measures;

(c) Emerging trends (such as use of the Internet, electronic commerce and auctions) and adequate responses;

(d) International, regional and bilateral cooperation, within the mandate of the United Nations Office on Drugs and Crime (UNODC), in preventing and combating trafficking in cultural property, including through mutual legal assistance, private/public partnerships and mechanisms for the restitution and return of such property, with due regard to the role of technical assistance.

4. The present note has been prepared by the Secretariat as a discussion guide. It proposes a series of questions for discussion by the Commission and also provides background information to support the discussion.

II. Illicit trafficking in cultural property

A. Issues for discussion

5. It is suggested that Member States consider including in their delegations to the nineteenth session of the Commission experts on trafficking in cultural property to address the issues proposed for discussion.

1. Questions on applicable law and policies, from the perspective of crime prevention and criminal justice

6. Questions on applicable law and policies, from the perspective of crime prevention and criminal justice, to combat trafficking in cultural property, including issues of criminalization and implementation of judicial decisions, with emphasis on the links between such trafficking and transnational organized crime, might include:

1. To what extent do existing international/regional instruments include criminal justice provisions to combat trafficking in cultural property? Are there mechanisms for their implementation? Do they include their assessment from the perspective of crime prevention?
2. Would harmonization of the key features of the different conventions be effective in combating trafficking in cultural property, or would assessment of the existing legal instruments and suggestions for potential improvements be more constructive?
3. How could the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property¹ be better used as a tool for crime prevention?
4. What is the extent of the involvement of organized criminal groups in trafficking in cultural property? Would the United Nations Convention against Transnational Organized Crime² be an appropriate legal basis for addressing trafficking in cultural property? How can the Convention be used to address these activities?
5. In what ways should trafficking in cultural property be criminalized in national legislation? Should trafficking in cultural property be established as a serious offence³ in national law?

2. Questions on prevention of trafficking in cultural property

7. Questions on preventing trafficking in cultural property might include:

(a) *Awareness-raising, capacity-building, technical assistance and interdisciplinary coordination*

1. What good practices exist in relation to awareness-raising and dissemination of information about trafficking in cultural property?
2. How could the involvement of local communities in the protection of cultural property be strengthened as a preventive measure?

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. 2225, No. 39574.

³ Article 2 (b) of the Organized Crime Convention defines a serious crime as “conduct constituting offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty”.

3. What practices and techniques have proved effective in training law enforcement and other relevant agencies in the detection and investigation of trafficking in cultural property?
4. What are the priority technical assistance needs in the field of preventing and combating trafficking in cultural property?
5. Which national authorities should be involved in prevention efforts? Could the model of the international cooperative network⁴ be applied at the national level?
6. Could the use of export certificates be further encouraged and what format should they have? What measures could be used to deal with counterfeit and fake objects?
7. How could the amount of data in the area on trafficking in cultural property be increased? In what way could relevant data be collected so as to ensure a response from Member States and enhance coordination in international data collection exercises?

(b) Criminalization in the context of prevention

1. Is there a need for further specific legislation and further criminalization of trafficking in cultural property? Would increased sanctions have a positive impact in deterring trafficking in cultural property?
2. Would the reversal of the burden of proof result in greater due diligence of purchasers?
3. How should the penal law assess the knowledge of a purchaser regarding the source of the object?
4. In what ways could reduction of demand for cultural property contribute to the control/elimination of criminality? Do sanctions imposed on offenders, when sufficiently harsh, have a deterrent effect on all offenders?
5. What type of sanctions, if any, should be imposed on those who fail to comply with regulatory obligations (such as record-keeping, reporting, etc.)?
6. Should legal persons be held liable for their involvement in trafficking? If so, should such liability be criminal, civil or administrative?
7. What practices are available to deal with corruption in the cultural sector that facilitates trafficking?

⁴ The cooperative network consists of the United Nations Educational, Scientific and Cultural Organization, the International Council of Museums, the International Criminal Police Organization (INTERPOL), the International Institute for the Unification of Private Law and the World Customs Organization in the areas of trafficking in cultural property and its return or restitution.

(c) *Measures designed to safeguard cultural property, including means for the identification of cultural property and physical protection measures*

1. In what ways could the monitoring of illegal excavations be improved and how could States be encouraged to increasingly assert ownership of discovered and excavated objects of cultural value?
2. What measures could be introduced to improve and ensure the security for cultural objects that have been returned to the source country? In what ways could the cooperation and input of States at the national level and between relevant authorities be developed in order to build the capacity needed to provide such information and data?
3. How would a comprehensive data management system be set up to provide security in the documentation of objects? Would a central database providing links to different national inventories be an effective system?
4. How could ways of asserting ownership of cultural property be developed or enhanced? Would the development of a legal form of trust established by source countries be a useful measure?
5. What measures could overcome the difficulty of establishing inventories for all cultural property, especially for property yet to be discovered?
6. What means are available to ensure stricter control over the transfer of cultural property?

3. Questions on emerging trends

8. Questions on emerging trends (such as use of the Internet, electronic commerce and auctions) and adequate responses might include:
 1. How could the “grey market” be eliminated? Should sellers be required to provide an export licence when trading cultural property?
 2. What tools are available to promote cooperation and sharing of information on Internet auctions? How could cooperation in the monitoring of the Internet be strengthened?
 3. Are the costs of new technologies that support the detection of trafficking in cultural property excessively high? Are there more affordable alternatives?
 4. How could technological means be improved to ensure the physical security of objects in some States?
 5. Are there any new national laws that go beyond the requirements of international instruments in order to allow the return of cultural property?

4. Questions on international cooperation, capacity-building and technical assistance

9. Questions on international cooperation, capacity-building and technical assistance might include:

1. What types of cooperation (bilateral, regional and/or international) could be used effectively and how would these relate to each other?
2. How could regional cultural and historical specificities and local knowledge be maintained and used in order to establish efficient restitution measures and with regard to ownership of cultural property?
3. What are the existing international mechanisms for restitution of stolen cultural property, and how could they be more widely used? What measures and good practices are in place for mediation regarding restitution?
4. How could the use of bilateral agreements that enable countries to return and request the return of cultural property be encouraged?
5. What role could transit countries play in improving the effective tracing of cultural property?
6. What measures are in place to enhance national coordination to facilitate international cooperation?
7. What types of assistance should be provided to source countries that are more vulnerable to trafficking?
8. What experience exists with regard to judicial cooperation for the purpose of return? What other types of cooperation have been used successfully to ensure return?
9. How could the provisions of the Organized Crime Convention on international cooperation be applied in the context of combating trafficking in cultural property?

B. Background

1. Overview

10. In recent years, the problem of theft and trafficking in cultural property has acquired an increasingly prominent place in the agenda of the United Nations. In 2007, the General Assembly adopted resolution 61/52, entitled "Return or restitution of cultural property to the countries of origin", in which it called upon all relevant bodies, agencies, funds and programmes of the United Nations system and other relevant intergovernmental organizations to work in coordination with the United Nations Educational, Scientific and Cultural Organization (UNESCO), within their mandates and in cooperation with Member States, in order to continue to address the issue of return or restitution of cultural property to the countries of origin and to provide appropriate support accordingly. In its resolution 64/78, the Assembly reiterated its call to Member States to cooperate actively in returning displaced cultural artefacts to their countries of origin.

11. In spite of considerable efforts made to address trafficking in cultural property, the problem still exists and new trends can be detected. One of the characteristics of cultural property is that a large proportion of it is still undiscovered, that is, it is still buried under the ground or otherwise in situ as part, for example, of a temple or other heritage structure. Items are often removed illegally from the source country and trafficked internationally for sale in a market country. Source countries for cultural property tend to be developing countries, whereas market countries are richer, developed nations. However, some major market countries are both the source of local illicitly trafficked cultural property as well as the markets for such items and others coming from overseas. Trafficking in cultural property is often the result of looting or theft, leading to the loss of important objects that constitute part of the culture and identity of a people. In the case of underground thefts, the associated destruction of context means that archaeologists are no longer able to gather historical knowledge. Cultural property can also be stolen from museums or private collections. In order to address all these forms of trafficking, several legal instruments have been adopted to combat the trafficking in cultural property. The problem is not the lack of legal instruments, however, but rather inadequate implementation and enforcement of the law.

2. Mandate and work of the United Nations Office on Drugs and Crime

12. The Economic and Social Council has emphasized the importance for Member States of protecting and preserving their cultural heritage in accordance with relevant international instruments on several occasions. In its resolutions 2004/34 and 2008/23, both entitled “Protection against trafficking in cultural property”, the Council recalled the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, adopted by 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.

13. In those resolutions, the Council also requested UNODC, in close cooperation with UNESCO, to convene an open-ended intergovernmental expert group meeting to submit to the Commission on Crime Prevention and Criminal Justice relevant recommendations on protection against trafficking in cultural property. UNODC subsequently convened the expert group meeting from 24 to 26 November 2009. The meeting reaffirmed the need for international cooperation in preventing and combating all aspects of trafficking in cultural property. It was noted that such cultural property was widely transferred through licit markets, such as auctions, including through the Internet. Concern was expressed about the demand for cultural property, which led to its trafficking, theft, removal, destruction and loss. Alarm was also expressed at the growing involvement of organized criminal groups in all aspects of trafficking in cultural property. The recommendations of the expert group are presented to the Commission in a separate document (E/CN.15/2010/5) and the deliberations of the group are also available (UNODC/CCPCJ/EG.1/2009/2). A further report has been prepared on measures taken by Member States to implement other elements of Council resolution 2008/23 (E/CN.15/2010/4).

3. Legal instruments and mechanisms

14. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property⁵ was adopted by UNESCO in November 1970 and entered into force in 1972. Currently some 120 States are party to the Convention, including market States. The main obligation of States parties under the Convention is to prevent the illicit import of stolen cultural property and to encourage dealers to keep inventories of objects to determine their provenance.⁶ It also allows concerned States parties to ask other States parties for help in protecting the affected categories of materials through measures that may include restrictions on imports and exports. States parties have implemented the Convention in various ways and with different degrees of vigour. Some have focused on establishing mechanisms to allow bilateral agreements regarding the trafficking in cultural property to be drawn up, at the request of source countries, while others have put in place systems to regulate their cultural property markets, which are capable of affording quite significant protection against illicit imports, with a view to avoiding the high level of bureaucracy and forward planning involved in the bilateral approach.

15. Article 1 of the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property provides a definition of movable cultural property as “property which, on religious or secular grounds, is specifically designated by a State Party as being subject to export control by reason of its importance for archaeology, prehistory, history, literature, art or science”.⁷ This is a general definition, which refers to the law of the States parties, and it is generally consistent with the provisions of the UNESCO Convention and the Convention on Stolen or Illegally Exported Cultural Objects, adopted by the International Institute for the Unification of Private Law (Unidroit), although, unlike the approach taken in those two instruments, it does not include a detailed list of items that will be considered cultural property. States are free to adopt different standards of specificity in delineating objects as subject to border control, from broad categories of controlled objects to more specific provisions. This is in line with the fact that the model treaty may be adapted to the circumstances of the contracting parties.

16. The Unidroit Convention consists of a range of provisions applicable to claims for restitution of stolen cultural property and return of cultural objects removed from the territory of a contracting State contrary to its law regulating the export of cultural objects for the purpose of protecting its cultural heritage. It creates a specific mechanism giving an individual dispossessed owner the right to access a foreign court in another State party to the Convention for the purpose of suing for the return of the lost cultural object. The Unidroit Convention, which currently has 30 States parties, applies to “claims of an international character”, sets the minimum

⁵ United Nations, *Treaty Series*, vol. 823, No. 11806.

⁶ Provenance is the history and ownership of an object. Dealers in antiquities may neglect to ask the relevant questions about the origin of an object, which can fuel the illicit market in cultural property, making stolen goods easily accessible and in wide circulation.

⁷ These categories follow closely the list contained in article 1 of the UNESCO Convention. However, the list may not be exhaustive and States parties may wish to add other categories.

standards for protection and allows States parties to enhance the protection of cultural property.

17. The Convention for the Protection of Cultural Property in the Event of Armed Conflict⁸ was adopted in the Hague in May 1954 and the two protocols thereto were adopted in May 1954 (100 States parties) and March 1999 (56 States parties) respectively. The Convention itself has 123 States parties, with the most recent ratification being that of the United States of America in March 2009. It is the only international instrument aimed at protecting cultural heritage in wartime.⁹

18. The Organized Crime Convention does not specifically address trafficking in cultural property, but it does categorize as a serious crime conduct where the offence is transnational and involves an organized criminal group (see the definition in footnote 3 above). The Convention was adopted in November 2000 and there are currently 154 States parties. The Convention's provisions on criminalization of money-laundering in particular may prove useful when applied to trafficking in cultural property as a predicate offence, as well as other measures such as cooperation in confiscation. The Convention provides that parties must afford each other the maximum measure of mutual legal assistance in terms of investigations, prosecutions and judicial proceedings. It is an effective instrument in that it provides a basis for law enforcement and judicial cooperation, especially in the absence of an appropriate bilateral or multilateral treaty.¹⁰

19. The Convention on the Protection of the Underwater Cultural Heritage¹¹ was adopted by UNESCO in November 2001 and entered into force in January 2009. It now has 31 States parties. The provisions of the Convention require States parties to take measures to prevent the import, dealing in or possession of underwater cultural heritage illicitly exported and/or recovered where recovery was contrary to the Convention.¹² A key aim of the Convention is to enable protection of cultural property on the ocean floor, beyond national jurisdictional waters.¹³ Perhaps most controversial has been the Convention's ban on commercial exploitation of underwater sites (art. 2, para. 7), which would prevent future collaboration between source countries, archaeologists and commercial salvage firms.

20. The Convention for the Safeguarding of the Intangible Cultural Heritage¹⁴ and the Convention on the Protection and Promotion of the Diversity of Cultural

⁸ United Nations, *Treaty Series*, vol. 249, No. 3511.

⁹ "Report on the implementation of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two 1954 and 1999 Protocols: report on the activities from 1995 to 2004", CLT-2005/WS/6, 2005.

¹⁰ Loide Lungameni, "United Nations instruments in fighting organized crime and protection of art and antiquities", in *Organised Crime in Art and Antiquities*, Stefano Manacorda, ed. (Milan, International Scientific and Professional Advisory Council, 2009), p. 183.

¹¹ UNESCO, *Records of the General Conference, Thirty-first Session, Paris, 15 October-3 November 2001*, vol. 1 and corrigendum: *Resolutions*, resolution 24.

¹² Lyndel V. Prott, ed., *Finishing the Interrupted Voyage: Papers of the UNESCO Asia-Pacific Workshop on the 2001 Convention on the Protection of the Underwater Cultural Heritage* (Bangkok, UNESCO; Leicester, United Kingdom, Institute of Art and Law, 2006).

¹³ Patrick J. O'Keefe, *Shipwrecked Heritage: A Commentary on the UNESCO Convention on Underwater Cultural Heritage* (Leicester, United Kingdom, Institute of Art and Law, 2002).

¹⁴ See UNESCO, *Records of the General Conference, Thirty-second Session, Paris, 29 September-17 October 2003*, vol. 1: *Resolutions*.

Expressions¹⁵ were adopted by UNESCO on 17 October 2003 and 20 October 2005 respectively. Both instruments reflect international concern to provide a broad range of protection for all aspects of culture.

21. In its resolution 1483 (2003), regarding the restitution of the cultural property of Iraq, the Security Council decided that all Member States should take appropriate steps to facilitate the safe return of cultural property illegally removed from Iraq since 6 August 1990. By implementing the resolution by means of its *Iraq (United Nations Sanctions) Order 2003* (para. 8), the United Kingdom of Great Britain and Northern Ireland has taken an approach of strict liability by reversing the conventional burden of proof. This appears to have dealt quite effectively with the usual difficulties in persuading the market to use due diligence, as well as the impracticality for state prosecutors to prove knowledge of wrongdoing if illicitly obtained objects are bought.¹⁶

22. The UNESCO Declaration concerning the Intentional Destruction of Cultural Heritage¹⁴ of 2003 contains a series of statements of principle and suggestions for protection against acts of intentional destruction (such as that of the Buddhas of Bamiyan in Afghanistan).

23. A number of regional instruments also exist, for example, in Europe, the European Cultural Convention of 1954;¹⁷ the European Convention on the Protection of the Archaeological Heritage of 1969¹⁸ and its 1992 revision;¹⁹ the European Convention on Offences relating to Cultural Property;²⁰ the Council of the European Communities regulation No. 3911/92 on the export of cultural goods and Council directive 93/7/EEC on the return of cultural objects unlawfully removed from the territory of a member State. These instruments contain provisions concerning the prohibition of unauthorized excavation, site protection and supervision, inventorying, reporting of discoveries, public education and the provision of adequate sanctions. The 1992 regulation enforces source nation export controls at the external borders of European Union member States. The Council of the European Communities directive 93/7/EEC confers on member States of the European Union a right of action to recover unlawfully removed cultural objects (see E/CN.15/2010/4).

4. Current challenges in protection of cultural property

24. Major causes of the transnational problem of trafficking in cultural property are a combination of high levels of crime in source countries and the demand for illicitly traded objects in market countries, while varying levels of corruption and the difficulty of enforcing the relevant laws in source countries owing to lack of resources are also very significant. In some market countries a conflicted law enforcement and policy response to the issue is debilitating, as market and free trade

¹⁵ Ibid., *Thirty-third Session, Paris, 3-21 October 2005*, vol. 1 and corrigenda: *Resolutions*.

¹⁶ Neil Brodie, "The plunder of Iraq's archaeological heritage 1991-2005 and the London antiquities trade", in *Archaeology, Cultural Heritage, and the Antiquities Trade*, Neil Brodie and others, eds. (Gainesville, Florida, University Press of Florida, 2006), p. 206.

¹⁷ United Nations, *Treaty Series*, vol. 218, No. 2955.

¹⁸ Council of Europe, *European Treaty Series*, No. 66.

¹⁹ Ibid., No. 143.

²⁰ Ibid., No. 119.

principles tend to weigh against restrictive controls on the cross-border movement of cultural property. When illicit objects are mixed together in the chain of supply with licit ones it is extremely difficult to identify their origin.

25. The existing trade infrastructure contributes to the lack of documentation of origin. It has a history and culture of dealing in cultural property without necessarily knowing its provenance. Research among high-level dealers in cultural property has shown them to be more concerned with collecting these prized objects, regardless of their origin, than with cooperating in the protection of cultural property on an international scale.²¹

26. There is some evidence that transnational trafficking in cultural property is linked to other illicit markets in which organized crime operates. These observed links include ties to smuggling of drugs and arms, violence, corruption and money-laundering.²²

5. Preventive measures

27. Trafficking in cultural property affects the vast majority of States. In addition to the international instruments, therefore, there are numerous mechanisms available at the national level. In order to facilitate the implementation of legal instruments and their enforcement, relevant resources must be available. There are a number of existing legal tools, accessible data and security measures for the protection of cultural property.

(a) National legislation and databases

28. There are several legal instruments at the international level, such as the UNESCO Database of National Cultural Heritage Laws, launched in 2005. Member States of the United Nations were invited to provide electronic copies of their relevant national legislation for inclusion in the database, which now contains more than 2500 texts from almost 180 countries. The International Criminal Police Organization (INTERPOL) stolen works of art database opened to the public in late 2009. The database contains information on some 34,000 stolen artworks and is accessible upon application for an online password. These tools provide easily accessible data, assisting in the legal process and promoting awareness of individual stolen items of cultural property.

29. Member States have adopted or are in the process of developing an array of measures, including:

(a) The establishment of inventories, or lists, often accompanied by the establishment of databases, as well as data collection and data exchange with other States or through international institutions such as INTERPOL and the European Police Office (Europol) (see E/CN.15/2010/5);

²¹ Simon Mackenzie, *Going, Going, Gone: Regulating the Market in Illicit Antiquities* (Leicester, United Kingdom, Institute of Art and Law, 2005).

²² Neil Brodie, Jenny Doole and Peter Watson, *Stealing History: the Illicit Trade in Cultural Material* (Cambridge, United Kingdom, McDonald Institute for Archaeological Research, 2000), p. 16.

- (b) Training involving customs officers, police, conservators of cultural property, owners of monuments, collections and museum and/or gallery personnel;
- (c) Specific measures on seizure, return and/or restitution, as well as mutual legal assistance;
- (d) Security measures to protect cultural property, including manned and modern security systems;
- (e) Measures to prevent illegal excavations.

30. Awareness-raising campaigns have also been used in both market and source countries. Cultural heritage tourist attractions provide an obvious alternative source of revenue, given that local groups can share in the financial benefits of local museums.²³

(b) *Other prevention measures*

31. The International Code of Ethics for Dealers in Cultural Property²⁴ provides a means of limiting trafficking in cultural property by scrutinizing and guiding the professional conduct of traders in cultural property. The Code was adopted in January 1999 by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, and endorsed by UNESCO on 16 November 1999. Article 1 states:

“Professional traders in cultural property will not import, export or transfer the ownership of this property when they have reasonable cause to believe it has been stolen, illegally alienated, clandestinely excavated or illegally exported.”

32. There are a number of models of partage, which allow source countries to retain ownership of cultural property, but permit significant artefacts to be displayed in museums and collections around the world. These models are designed to diffuse some of the supply-and-demand pressures that currently drive the illicit market and are regularly recommended as part of the solution.²⁵ Some schemes in place permit very important objects to be acquired against compensation to the finder by national museums, while the finder is allowed to keep less important objects. The archaeological record benefits as the information about the find is at least recorded.²⁶ However, partage remains highly controversial among the international community and has gained little support in recent years.

33. Some measures have been taken to prevent the transfer of illicitly acquired cultural property through the Internet. For example, the British Museum and the

²³ Patrick J. O’Keefe, *Trade in Antiquities: Reducing Destruction and Theft* (London, Archetype; Paris, UNESCO Publishing, 1997).

²⁴ See UNESCO, *Records of the General Conference, Thirtieth Session, Paris, 26 October-17 November 1999*, vol. 1 and corrigendum: *Resolutions*.

²⁵ Robert K. Paterson, “The ‘caring and sharing’ alternative: recent progress in the International Law Association to develop draft cultural material principles”, *International Journal of Cultural Property*, vol. 12, No. 1 (2005), pp. 62-77; and M. Papa Sokal, “The US legal response to the protection of the world cultural heritage”, in *Archaeology, Cultural Heritage ...*, op. cit., pp. 36-67.

²⁶ Roger Bland, “The United Kingdom as a source country: some problems in regulating the market in UK antiquities and the challenge of the Internet”, in *Criminology and Archaeology: Studies in Looted Antiquities*, Simon Mackenzie and Penny Green, eds. (Oxford, Hart, 2009).

Museums, Libraries and Archives Council have signed a memorandum of understanding with the online auction and shopping website eBay. This allows the British Museum to monitor eBay for items of potential treasure, question sellers and notify the Metropolitan Police's Art and Antiques Unit of any unreported items. Switzerland also signed a declaration of intent with eBay in 2009 with a view to restricting the offer of cultural goods on the Internet.

6. International cooperation

34. In addition to the instruments mentioned above, there are a number of relevant international and regional mechanisms for international cooperation in the prevention of trafficking in cultural property. Bilateral and multilateral agreements can be very effective, but the return and restitution of cultural property can prove to have considerable financial implications for the parties concerned. Alternatives are being sought to ease the financial burden and to better facilitate cooperation and the return of illegally obtained cultural property.

35. There are several regional cooperation agreements to facilitate cooperation in this area. For example, among members of the Commonwealth of Independent States, a unified procedure has been established for the movement of cultural property across the border of the customs union (see E/CN.15/2010/4). Several States have negotiated specific bilateral agreements to protect cultural property and facilitate their return.

36. The financial cost of international civil litigation seeking the return of cultural property is often exorbitant, which makes such action unappealing or even impossible for developing countries and many private owners.²⁷ Existing international mechanisms, such as those created by the UNESCO Convention, the Unidroit Convention and the model treaty, could be further developed. A mediation infrastructure provided at low cost to participants may be one solution and UNESCO and the International Council of Museums have already developed international tools in this regard to help their member States and national committees to settle disputes in a costless manner.²⁸ Another mechanism is the International Fund for the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation, which was launched in November 2000 but which cannot be used to finance litigation costs.

²⁷ H. N. Spiegler and L. M. Kaye, "American litigation to recover cultural property: obstacles, options, and a proposal", in *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage*, Neil Brodie, Jennifer Doole and Colin Renfrew, eds. (Cambridge, United Kingdom, McDonald Institute for Archaeological Research, 2001).

²⁸ UNESCO, *Legal and Practical Measures Against Illicit Trafficking in Cultural Property*, UNESCO Handbook (Paris, Division of Cultural Heritage, International Standards Section, 2006), p. 13.