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## **Report on the meeting of the expert group on protection against trafficking in cultural property held in Vienna from 15 to 17 January 2014**

### **I. Introduction**

1. In its resolution 68/186, the General Assembly requested the United Nations Office on Drugs and Crime to reconvene the expert group on protection against trafficking in cultural property for Member States to review and revise the draft guidelines on crime prevention and criminal justice responses with respect to trafficking in cultural property, taking into account an updated compendium from the Secretariat of comments made by Member States on the draft guidelines, with a view to finalizing and submitting the draft guidelines to the Commission on Crime Prevention and Criminal Justice at its twenty-third session.
2. In the same resolution, the General Assembly welcomed the progress made in exploring the development of the guidelines, and stressed the need for their expeditious finalization, bearing in mind the importance of the matter for all Member States.
3. The first meeting of the open-ended intergovernmental expert group on protection against trafficking in cultural property was held in Vienna from 24 to 26 November 2009 (the report on that meeting is contained in document UNODC/CCPCJ/EG.1/2009/2). The second meeting of the expert group was held in Vienna from 27 to 29 June 2012 (the report on that meeting is contained in documents UNODC/CCPCJ/EG.1/2012/4 and Corr.1).

### **II. Outcome of the meeting**

4. The discussions of the expert group were based on the version of the draft guidelines contained in a conference room paper (UNODC/CCPCJ/EG.1/2012/CRP.2/Rev.2) and the version contained in the technical background document dated April 2012. In their revision of the guidelines, the expert group took into consideration the comments by Member States



on the draft guidelines contained in the updated compendium (E/CN.15/2013/CRP.7/Rev.1).

5. The expert group recommended that the reviewed and revised guidelines annexed to the present report be adopted by the Commission on Crime Prevention and Criminal Justice at its twenty-third session. On the basis of the guidelines finalized by the intergovernmental expert group and submitted to the Commission on Crime Prevention and Criminal Justice, and taking into consideration the technical background document containing the version of the guidelines dated April 2012, and the comments made by Member States, the Commission may ask the Secretariat to develop a practical assistance tool, as appropriate, to aid in the implementation of the guidelines.

### **III. Organization of the meeting**

#### **A. Opening of the meeting**

6. The third meeting of the open-ended intergovernmental expert group on protection against trafficking in cultural property was held in Vienna from 15 to 17 January 2014. Six individual meetings were held during the meeting of the expert group.

7. The Chair of the Commission on Crime Prevention and Criminal Justice at its twenty-third session made an opening statement. The elected Chair of the expert group addressed the meeting, presenting an overview of the mandate of the group, its objective and matters under its consideration.

8. At the opening of the meeting, statements were made by the representatives of the following States: Morocco (on behalf of the States Members of the United Nations that are members of the Group of 77 and China) and Mexico (on behalf of the States Members of the United Nations that are members of the Group of Latin American and Caribbean States). A statement was also made by the Secretariat.

9. Statements were made by representatives of the following States: Canada, China, Egypt, Germany, Turkey, Italy, France, United Kingdom of Great Britain and Northern Ireland, Norway, Japan, United States of America, Austria, Mexico, Israel, Ecuador, Azerbaijan, Argentina, Iran (Islamic Republic of), Indonesia, Belgium, Saudi Arabia, Belarus, Algeria, Lebanon, Nicaragua, Russian Federation, Guatemala, Libya, Iraq, Peru, Armenia, Qatar, Oman, Chile, Spain and Colombia.

10. A statement was made by the observer for the State of Palestine.

11. The expert group also heard statements by the observers for the United Nations Educational, Scientific and Cultural Organization and the International Institute for the Unification of Private Law.

## **B. Election of officers**

12. At its 1st meeting, on 15 January 2014, the open-ended intergovernmental expert group on protection against trafficking in cultural property elected its Chair, Luis Alfonso de Alba (Mexico), by acclamation.

## **C. Adoption of the agenda and organization of work**

13. At its 1st meeting, on 15 January 2014, the expert group adopted by consensus its provisional agenda:

1. Organizational matters:
  - (a) Opening of the meeting;
  - (b) Adoption of the agenda and organization of work.
2. Draft specific guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property:
  - (a) Chapter I: Prevention strategies;
  - (b) Chapter II: Criminal justice policies;
  - (c) Chapter III: Cooperation.
3. Discussion of the way forward.
4. Other matters.
5. Adoption of the report.

## **D. Attendance**

14. The following States were represented in the third meeting of the expert group: Afghanistan, Algeria, Angola, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Brazil, Canada, Chile, China, Colombia, Côte d'Ivoire, Cuba, Czech Republic, Dominican Republic, Ecuador, Egypt, El Salvador, France, Germany, Guatemala, Indonesia, Iran (Islamic Republic of), Iraq, Israel, Italy, Japan, Kenya, Lebanon, Libya, Liechtenstein, Luxembourg, Malaysia, Mexico, Morocco, Nicaragua, Niger, Norway, Oman, Pakistan, Panama, Peru, Philippines, Poland, Portugal, Qatar, Romania, Russian Federation, Saudi Arabia, Slovenia, Spain, Switzerland, Syrian Arab Republic, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America and Venezuela (Bolivarian Republic of).

15. The State of Palestine, a non-Member State maintaining a permanent observer mission to the United Nations, was represented.

16. The United Nations Educational, Scientific and Cultural Organization, a specialized agency, was represented by an observer.

17. The following intergovernmental organizations were represented by observers: European Union, International Institute for the Unification of Private Law, League of Arab States and Organization for Security and Cooperation in Europe.

18. A list of participants is contained in document UNODC/CCPCJ/EG.1/2014/INF/1/Rev.1.

## **E. Documentation**

19. The documents before the expert group are listed in annex II to the present report.

## Annex I

### **Guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property and other related offences**

#### **Introduction**

1. The guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property and other related offences have been developed in recognition of the criminal character of such offences and their devastating consequences for the cultural heritage of humankind. Pursuant to General Assembly resolutions 66/180 and 68/186 and Economic and Social Council resolution 2010/19, draft guidelines were developed by the United Nations Office on Drugs and Crime (UNODC) in consultation with Member States and in close cooperation, as appropriate, with the United Nations Educational, Scientific and Cultural Organization (UNESCO), the International Criminal Police Organization (INTERPOL) and other competent international organizations.

2. The first draft of the guidelines was reviewed at an informal expert group meeting, held from 21 to 23 November 2011, composed of 20 experts from around the world, with expertise in various fields related to the subject matter of the guidelines, including representatives of INTERPOL, UNESCO and the International Institute for the Unification of Private Law (Unidroit). Based on the valuable comments and advice on improving the draft, a second draft was presented to and discussed by the intergovernmental expert group on protection against trafficking in cultural property in its second meeting, held from 27 to 29 June 2012. Taking into account a compendium, prepared by the Secretariat, of comments made by Member States on the draft guidelines, the intergovernmental expert group reviewed and revised the guidelines at its third meeting, held from 15 to 17 January 2014, with a view to their finalization.

3. The guidelines are based on crime prevention and criminal justice aspects of protection against trafficking in cultural property, taking into consideration a review of current practices and initiatives in several countries in addressing the problem of trafficking in cultural property, as well as principles and norms arising from the analysis of the following international legal instruments: the United Nations Convention against Transnational Organized Crime of 2000; the United Nations Convention against Corruption of 2003; the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954; the First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954; the Second Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1999; the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts of 1977 (Additional Protocol I); the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970; the Unidroit Convention on Stolen or Illegally Exported Cultural Objects of 1995 and the Convention on the Protection of the Underwater Cultural Heritage of 2001.

4. This set of non-binding guidelines is available to Member States for their consideration in the development and strengthening of crime prevention and criminal justice policies, strategies, legislation and cooperation mechanisms to prevent and combat trafficking in cultural property and related offences in all situations. Their development follows the expression, by the General Assembly and the Economic and Social Council in their resolutions, of alarm at the growing involvement of organized criminal groups in all forms and aspects of trafficking in cultural property and related offences, and of the need to promote international cooperation to combat crime in a concerted manner.

5. The guidelines have the purpose of serving as a reference for national policymakers and as a tool for capacity-building in the area of crime prevention and criminal justice responses to trafficking in cultural property and related offences, in coordination with UNESCO, INTERPOL and other competent international organizations, as appropriate. On the basis of the guidelines finalized by the intergovernmental expert group and submitted to the Commission on Crime Prevention and Criminal Justice, and taking into consideration the technical background document containing the version of the guidelines dated April 2012, and the comments made by Member States, the Commission may ask the Secretariat to develop a practical assistance tool, as appropriate, to aid in the implementation of the guidelines.

6. The guidelines contain four chapters:

(a) Chapter I contains guidelines on crime prevention strategies (including information and data collection, the role of cultural institutions and the private sector, the monitoring of the cultural property market, imports and exports, and archaeological sites, as well as education and public awareness);

(b) Chapter II contains guidelines on criminal justice policies (including adherence to and implementation of relevant international treaties, the criminalization of specific harmful conduct or the establishment of administrative offences, corporate liability, seizure and confiscation and investigative measures);

(c) Chapter III contains guidelines on international cooperation (including matters related to jurisdictional basis, extradition, seizure and confiscation, cooperation among law enforcement and investigating authorities, as well as the return, restitution or repatriation of cultural property);

(d) Chapter IV contains a guideline on the scope of application of the guidelines.

## **I. Prevention strategies**

### **A. Information and data collection**

Guideline 1. States should consider establishing and developing inventories or databases, as appropriate, of cultural property for the purpose of protection against its trafficking. The absence of registration of cultural property in such inventories shall by no means exclude it from protection against trafficking and related offences.

Guideline 2. States should consider, where possible under their domestic legislation, the relevant cultural property as registered in the official inventory of a State that has enacted laws on national or State ownership, provided that the owner State has issued a public formal statement to that effect.

Guideline 3. States should consider:

(a) Introducing or improving statistics on import and export of cultural property;

(b) Introducing or improving statistics, where practical, on administrative and criminal offences against cultural property;

(c) Establishing or improving national databases, as appropriate, on trafficking in cultural property and related offences and on trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded or missing cultural property;

(d) Introducing mechanisms to enable the reporting of suspicious dealings or sales on the Internet;

(e) Contributing to international data collection on trafficking in cultural property and related offences through the United Nations Survey on Crime Trends and Operations of Criminal Justice Systems, conducted by UNODC and the INTERPOL database on stolen works of art and through other relevant organizations;

(f) Contributing to the UNESCO database of national laws and regulations pertaining to cultural property.

Guideline 4. States should consider, as appropriate, establishing a central national authority or empowering an existing authority, and/or enact other mechanisms, for coordinating the activities related to the protection of cultural property against trafficking and related offences.

## **B. The role of cultural institutions and the private sector**

Guideline 5. States should consider encouraging cultural institutions and the private sector to adopt codes of conduct and to disseminate best practices on policies on the acquisition of cultural property.

Guideline 6. States should encourage cultural institutions and the private sector to report suspected trafficking in cultural property cases to law enforcement authorities.

Guideline 7. States should consider promoting and supporting training on cultural property regulations for cultural institutions and the private sector, in cooperation with relevant international organizations, including, inter alia, rules on the acquisition of cultural property.

Guideline 8. States should encourage, as appropriate, Internet providers and web-based auctioneers and vendors to cooperate in preventing trafficking in cultural property, including through the adoption of specific codes of conduct.

### **C. Monitoring**

Guideline 9. States should consider, in accordance with the relevant international instruments, introducing and implementing appropriate import and export control procedures, such as certificates for the export and import of cultural property.

Guideline 10. States should consider creating and implementing monitoring measures for the market of cultural property, including for the Internet.

Guideline 11. States should, where possible, create and implement programmes for research, mapping and surveillance of archaeological sites for the purpose of protecting them against pillage, clandestine excavations and trafficking.

### **D. Education and public awareness**

Guideline 12. States should consider supporting and promoting public awareness campaigns, including through the media, to foster among the general public a culture of concern about trafficking in cultural property for the purpose of protecting that cultural property against pillage and trafficking.

## **II. Criminal justice policies**

### **A. International legal texts**

Guideline 13. States should consider adopting legislation criminalizing trafficking in cultural property and related offences in accordance with applicable existing international instruments, in particular the Organized Crime Convention, relating to trafficking in cultural property and related offences.

Guideline 14. In bilateral cooperation, States may consider making use of the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.<sup>a</sup>

### **B. Criminal and administrative offences**

Guideline 15. States should consider defining the concept of “cultural property”, including movable and immovable cultural property, when necessary, for the purposes of criminal law.

Guideline 16. States should consider criminalizing, as serious offences, acts, inter alia, such as:

- (a) Trafficking in cultural property;
- (b) Illicit export and illicit import of cultural property;

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<sup>a</sup> *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.

- (c) Theft of cultural property, or elevating the offence of ordinary theft to a serious offence when it involves cultural property;
- (d) Looting of archaeological and cultural sites, and/or illicit excavation;
- (e) Conspiracy or participation in an organized criminal group for trafficking in cultural property and related offences;
- (f) Laundering, as referred to in article 6 of the Organized Crime Convention, of trafficked cultural property.

Guideline 17. States should consider introducing in their criminal legislation other offences, such as damaging or vandalizing cultural property and the acquisition, with conscious avoidance of the legal status, of trafficked cultural property, when such offences are related to trafficking in cultural property.

Guideline 18. States should consider introducing obligations, as appropriate, to report suspected cases of trafficking of and related offences against cultural property, and to report the discovery of archaeological sites, archaeological finds or other objects of relevant cultural interest and, for those States that have done so, to criminalize the failure to meet those obligations.

Guideline 19. States should consider making it possible, in a way not contradictory to their fundamental legal principles, to infer a perpetrator's knowledge that an object has been reported as trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded, on the basis of objective factual circumstances, including, inter alia, when the cultural property is registered as such in a publicly accessible database.

### **C. Criminal and administrative sanctions**

Guideline 20. States should consider providing proportionate, effective and dissuasive sanctions for the above-mentioned criminal offences.

Guideline 21. States may consider adopting custodial sanctions for some selected criminal offences so as to meet the standard, required under article 2 (b) of the Organized Crime Convention, for "serious crime".

Guideline 22. States should consider adopting bans, disqualifications and the revocation of licences as complementary criminal or administrative sanctions whenever possible.

### **D. Corporate liability**

Guideline 23. States should consider introducing or extending liability (criminal, administrative or civil in nature) of corporations or legal persons for the above-mentioned offences.

Guideline 24. States should consider introducing proportionate, effective and dissuasive sanctions for corporate offences of trafficking in cultural property and related offences, including fines, bans or disqualifications, the revocation of licences, and the revocation of benefits, including tax exemptions or government subsidies where possible.

## **E. Seizure and confiscation**

Guideline 25. States should consider introducing criminal investigation and the search, seizure and confiscation of trafficked cultural property, as well as the proceeds of crimes related to such trafficking, and ensure its return, restitution or repatriation.

Guideline 26. States should consider, in a way not contradictory to their fundamental legal principles, the possibility of requiring that the alleged offender, the owner or the holder (if different) demonstrate the lawful origin of cultural property liable to seizure or confiscation for trafficking or related offences.

Guideline 27. States should consider introducing confiscation of the proceeds of the offence or of property of a value equivalent to such proceeds.

Guideline 28. States may consider using confiscated economic assets for financing expenses for recovery and other prevention measures.

## **F. Investigations**

Guideline 29. States should consider creating specialized law enforcement bodies or units for trafficking in cultural property and related offences, as well as providing specialized training for customs officials, law enforcement personnel and public prosecutors.

Guideline 30. States should consider enhancing coordination, at both the national and international levels, among law enforcement bodies in order to increase the probability of discovering and successfully investigating trafficking in cultural property and related offences.

Guideline 31. States may consider, in the investigation of the above-mentioned offences, especially if related to organized crime, allowing for the appropriate use by their competent authorities of controlled delivery and other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within their territory, and to allow for the admissibility in court of evidence derived therefrom.

## **III. Cooperation**

### **A. Jurisdiction**

Guideline 32. States should consider establishing their jurisdiction over the above-mentioned criminal offences when such offences are committed within their territory or when committed outside their territory by one of their nationals, in a manner consistent with the principles of sovereign equality, the territorial integrity of States and the non-intervention in the domestic affairs of other States, as enshrined in the Charter of the United Nations and the Organized Crime Convention.

## **B. Judicial cooperation in criminal matters**

Guideline 33. States that have not yet done so should consider becoming parties to existing international law instruments, in particular the Organized Crime Convention, and use them as a basis for international cooperation in criminal matters in respect of trafficking in cultural property and related offences.

Guideline 34. States should consider providing each other with the widest possible mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the above-mentioned offences, also in order to enhance the effectiveness and speed of the procedures.

Guideline 35. States should contribute to and regularly update the UNESCO database of national cultural heritage laws and any other relevant database.

## **C. Extradition**

Guideline 36. States should consider making the crimes against cultural property enumerated in guideline 16 extraditable offences. In the context of extradition procedures, States should also consider adopting and applying, where possible, provisional measures to preserve the cultural property related to the alleged offence for the purpose of restitution.

Guideline 37. States should consider enhancing the effectiveness and speed of extradition for trafficking in cultural property and related offences, where such offences are considered extraditable.

Guideline 38. States should consider, in the case of refusal of extradition only on the basis of nationality, submitting, when requested by the State that had sought extradition, the case to the competent authority in order to consider prosecution.

## **D. International cooperation for purposes of seizure and confiscation**

Guideline 39. States should consider cooperating in identifying, tracing, seizing and confiscating trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property.

Guideline 40. States may consider putting in place mechanisms to enable the contribution of confiscated financial assets to international or intergovernmental bodies concerned with the fight against transnational organized crime, including trafficking in cultural property and related offences.

## **E. International cooperation among law enforcement and investigating authorities**

Guideline 41. States should consider enhancing the exchange of information on trafficking in cultural property and related offences by sharing or interconnecting inventories of cultural property and databases on trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property, and/or contributing to international ones.

Guideline 42. States should consider, where appropriate, in the framework of international judicial cooperation, enhancing the exchange of information on previous convictions and ongoing investigations of trafficking in cultural property and related offences.

Guideline 43. States should consider concluding bilateral or multilateral agreements or arrangements in order to establish joint investigative teams for trafficking in cultural property and related offences.

Guideline 44. States should consider assisting each other in planning and implementing specialized training programmes for law enforcement personnel.

Guideline 45. States should consider enhancing or establishing privileged channels of communication between their law enforcement agencies.

## **F. Return, restitution or repatriation**

Guideline 46. States should consider, in order to enhance international cooperation in criminal matters, undertaking appropriate measures to recover trafficked, illicitly exported or imported, stolen, looted or illicitly excavated or illicitly traded cultural property for the purpose of their return, restitution or repatriation.

Guideline 47. States should consider pondering, procedurally, as appropriate, the owner State's provisions on national or State ownership in order to facilitate the return, restitution or repatriation of public cultural property.

## **IV. Scope of application**

Guideline 48. States should consider applying the guidelines in any situation, including exceptional circumstances, that foster trafficking in cultural property and related offences, in the framework of the above-mentioned conventions and other relevant international instruments.

## Annex II

## List of documents before the expert group on protection against trafficking in cultural property

<i>Document number</i>	<i>Agenda item</i>	<i>Title or description</i>
UNODC/CCPCJ/EG.1/2014/1	1 (b)	Annotated provisional agenda
UNODC/CCPCJ/EG.1/2014/2	2	Compilation of references to comments and proposals by Member States on the draft specific guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property
UNODC/CCPCJ/EG.1/2014/CRP.1	2	Draft specific guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property
UNODC/CCPCJ/EG.1/2014/CRP.2	2	Comments submitted by Turkey on the draft guidelines
UNODC/CCPCJ/EG.1/2012/CRP.2/Rev.2	2	Draft specific guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property
E/CN.15/2013/CRP.7/Rev.1	2	Updated compendium of comments from Member States on the draft specific guidelines on crime prevention and criminal justice responses with respect to trafficking in cultural property
<i>(no symbol)</i>	2	Guidelines for crime prevention and criminal justice responses in relation with trafficking and other illicit behaviours in cultural property (advance unedited version dated April 2012)