

27 June 2012

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Expert group on protection against trafficking in cultural property

Vienna, 27-29 June 2012

Item 2 (a) of the agenda

Guidelines on crime prevention and criminal justice responses with respect to trafficking in cultural property

Draft guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property

CHAPTER I: PREVENTION STRATEGIES

SECTION I: INFORMATION AND DATA COLLECTION

GUIDELINE 1

States should consider to establish and develop inventories of relevant cultural properties.

GUIDELINE 2

States should consider establishing and develop databases on trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly dealt in or missing cultural property.

GUIDELINE 3

States should consider introducing or improving statistics on import and export of cultural property, as well as on administrative and criminal offences against cultural property.

GUIDELINE 4

States should consider establishing a Central National Authority or to empower an existing Authority (and/or enact other mechanisms) for the protection of cultural property.

Deleted: States should consider to establish and develop databases on stolen, missing or illicitly imported or exported cultural property.¶

Deleted: States should consider to introduce and improve the statistics on import and export of cultural property, as well as on offences against cultural property.¶

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Deleted: States should consider to establish and implement a Central National Authority for cultural property protection.¶

SECTION II: THE ROLE OF CULTURAL INSTITUTIONS AND PRIVATE SECTOR

GUIDELINE 5

States should consider encouraging cultural institutions to adopt codes of conduct, and to disseminate best practices.

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GUIDELINE 6

States should consider encouraging cultural institutions and private sector to report suspected cases to law-enforcement agencies.

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GUIDELINE 7

States should consider promoting and supporting training on cultural property regulations for cultural institutions and private sector.

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GUIDELINE 8

States should encourage internet providers and web based auctioneers to cooperate in preventing trafficking in cultural objects through the adoption of specific codes of conduct.

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SECTION III: MONITORING

GUIDELINE 9

States should consider introducing and implementing certificates for export and (where possible) import of cultural property.

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GUIDELINE 10

States should consider creating and implementing monitoring programs for the market of cultural property, including on the Internet.

GUIDELINE 11

States should consider creating and implementing programs of research, mapping and surveillance of archaeological sites.

SECTION IV: EDUCATION AND PUBLIC AWARENESS

GUIDELINE 12

States should consider supporting and promoting public campaigns, including through the media, to foster a culture of care for for cultural heritage among the general public.

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Deleted: a culture of care for cultural heritage, including media campaign.¶

CHAPTER II: CRIMINAL JUSTICE POLICIES

SECTION I: INTERNATIONAL LEGAL TEXTS

GUIDELINE 13

States should consider adopting criminal law responses and applying existing international instruments (in particular the United Nations Convention against Transnational Organized Crime.) in relation with cultural heritage protection.

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GUIDELINE 14

In bilateral cooperation, States may consider making use of the UN Model Treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.

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SECTION II: CRIMINAL AND ADMINISTRATIVE OFFENCES

GUIDELINE 15

States should consider defining the concept of “movable cultural property” for the purposes of criminal law.

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GUIDELINE 16

States should consider introducing in their criminal legislation an offence of trafficking in movable cultural property.

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GUIDELINE 17

States should consider introducing in their legislation criminal offences of illicit export and illicit import of movable cultural property.

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GUIDELINE 18

States should consider introducing in their criminal legislation an offence of theft of movable cultural property, or make it an aggravating circumstance of the offence of ordinary theft.

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GUIDELINE 19

States should consider introducing in their legislation a criminal offence of looting of archaeological and cultural sites, and/or a criminal offence of illicit excavation.

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GUIDELINE 20

States should consider introducing in their criminal legislation other offences related to movable cultural property.

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GUIDELINE 21

States should consider introducing in their criminal legislation an offence of conspiracy or participation in an organized crime group for trafficking in cultural property and related offences.

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GUIDELINE 22

States should consider making it possible to infer a perpetrator's knowledge when the movable cultural property is registered as trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly dealt in or missing in a publicly accessible database.

Deleted: States should consider to exclude a good faith defence for the perpetrator, when the acquired or handled cultural property is registered as stolen, missing or illicitly exported in one or more publicly accessible databases.

GUIDELINE 23

States may consider introducing in their legislation an offence for the violation of the obligation to report suspected cases of trafficking and related offences against cultural property.

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GUIDELINE 24

States may consider introducing in their legislation an offence for the violation of the obligation to report the discovery of archaeological sites, archaeological finds or other object of relevant cultural interest.

SECTION III: CRIMINAL SANCTIONS

GUIDELINE 25

States should consider providing proportionate, effective and dissuasive sanctions for the aforementioned criminal offences.

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GUIDELINE 26

States may consider adopting custodial sanctions for some selected criminal offences, so as to meet the standard required by article 2(b) of the Convention against Transnational Organized Crime for "serious crimes".

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GUIDELINE 27

States should consider adopting bans and disqualifications as criminal sanctions whenever possible.

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SECTION IV: CORPORATE LIABILITY

GUIDELINE 28

States should consider introducing (or extending) liability (criminal, administrative or civil in its nature) of corporations or legal persons to the aforementioned offences against cultural property, where committed on their behalf.

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GUIDELINE 29

States should consider introducing proportionate, effective and dissuasive sanctions for corporate offences against cultural property, including fines and bans or disqualifications, where possible.

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SECTION V: SEIZURE AND CONFISCATION

GUIDELINE 30

States should consider introducing search, seizure and confiscation of cultural property, which is the object of illicit trafficking or other related offences, and, to ensure their return, restitution and repatriation.

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GUIDELINE 31

States may consider the possibility of requiring that the alleged offender, the owner or the holder (if different), demonstrates the lawful origin of suspicious cultural property which is the object of seizure or confiscation.

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GUIDELINE 32

States should consider introducing confiscation of the proceeds of the offence, or of property of equivalent value of such proceeds.

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GUIDELINE 33

States may consider using confiscated economic assets for financing expenses for recovering and other prevention measures.

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SECTION VI: INVESTIGATIONS

GUIDELINE 34

States should consider creating specialized law enforcement bodies or units for offences against cultural property, as well as providing specialized training for them.

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GUIDELINE 35

States should consider enhancing coordination among law enforcement agencies in order to increase the probability of discovering and successfully investigating offences against cultural property.

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GUIDELINE 36

States may consider allowing the use of special investigative techniques in the investigation of offences against cultural property, especially if related to organized crime.

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GUIDELINE 37

States should consider putting in place national databases on trafficking in cultural objects and related offences.

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CHAPTER III: COOPERATION

SECTION I: JURISDICTION

GUIDELINE 38

States should consider establishing their jurisdiction over the mentioned criminal offences when the offence is committed within their territory, or by or against one of their nationals.

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GUIDELINE 39

States should consider establishing their jurisdiction over the mentioned criminal offences, if committed abroad, when they impinge on a cultural property that belongs to their cultural heritage or is subject to enhanced protection.

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GUIDELINE 40

States should consider to adopt all necessary measures to ensure the respect of ne bis in idem principle.

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States may consider to establish their jurisdiction over the aforementioned criminal offences on the basis of the universality principle.¶

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SECTION II: JUDICIAL COOPERATION IN CRIMINAL MATTERS

GUIDELINE 41

States should consider signing, ratifying and implementing existing international law instruments (in particular the UN Convention on Transnational Organized Crime) for granting judicial cooperation in criminal cases related to the protection of cultural property.

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GUIDELINE 42

States should consider providing each other with the widest possible mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to offences against cultural property, and in order to enhance the effectiveness and speed of the procedures.

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GUIDELINE 43

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

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- Deleted: States should consider to enact and implement a shared international database of national laws related to cultural property protection.¶

SECTION III: EXTRADITION

GUIDELINE 44

States should consider making crimes against cultural property extraditable offences, and link whenever possible, the extradition of the alleged offender with the recovery and restitution of the cultural property involved.

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GUIDELINE 45

States should consider enhancing the effectiveness and speed of extradition for offences against cultural property, and provide for the principle of 'extradite or prosecute'.

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SECTION IV: INTERNATIONAL SEIZURE AND CONFISCATION

GUIDELINE 46

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

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GUIDELINE 47

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

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- Deleted: States should consider to cooperate in executing searches and seizures or freezing, as well as in identifying, tracing and seizing or confiscating cultural property, at the request of another State.¶

SECTION V: POLICE AND INVESTIGATIVE COOPERATION

GUIDELINE 48

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

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- Deleted: States may consider to conclude agreements or arrangements in order to assign confiscated financial assets to international or intergovernmental bodies specialized in the fight against trafficking in cultural property and related offences.¶
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GUIDELINE 49

States should consider enhancing exchange of information on previous convictions and ongoing investigations of offences against cultural property.

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GUIDELINE 50

States may consider concluding bilateral or multilateral agreements or arrangements in order to establish joint investigative teams for crimes against cultural property.

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GUIDELINE 51

States should consider assisting each other in planning and implementing specialised training programs for law enforcement personnel.

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GUIDELINE 52

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

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GUIDELINE 53

States should consider cooperating in international data collection through the UNODC Crime Trend Survey.

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SECTION VI: RETURN, RESTITUTION AND REPATRIATION

GUIDELINE 54

States should consider undertaking all necessary measures to recover trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly dealt in or missing cultural property for the purpose of return, restitution and repatriation.

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Deleted: and return, at the request of another State, any stolen, looted or illicitly exported cultural property