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**World crime trends and emerging issues and responses in
the field of crime prevention and criminal justice**

Strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking

Report of the Secretary-General

Summary

The present report was prepared pursuant to General Assembly resolution 66/180, entitled “Strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking”. It provides an overview of the activities undertaken by the United Nations Office on Drugs and Crime (UNODC) with regard to strengthening crime prevention and criminal justice responses to trafficking in cultural property. It also provides a summary of the activities carried out by UNODC to implement the follow-up to the recommendations of the open-ended intergovernmental expert group on protection against trafficking in cultural property, to develop specific guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property and to promote international cooperation among Member States for the protection of cultural property from trafficking.

* E/CN.15/2013/1.



I. Introduction

1. The present report provides an overview of the activities undertaken by the United Nations Office on Drugs and Crime (UNODC) with regard to strengthening crime prevention and criminal justice responses to protect cultural property from trafficking since the previous session of the Commission on Crime Prevention and Criminal Justice. These activities include the organization of a second meeting of the open-ended intergovernmental expert group on protection against trafficking in cultural property, as mandated by the Economic and Social Council in its resolutions 2010/19 and 2011/42; efforts undertaken to develop specific guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property; consultations on the utility of, and possible amendments to, the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property; the organization of a joint discussion on trafficking in cultural property of the Working Group of Government Experts on Technical Assistance and the Working Group on International Cooperation during the sixth session of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, held from 15 to 19 October 2012; and cooperation with other relevant international organizations in the field of protection against trafficking in cultural property.

2. The present document should be read in conjunction with the note by the Secretariat on comments on the potential utility of and improvements to the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property (E/CN.15/2013/22) and the report on the meeting of the expert group on protection against trafficking in cultural property held in Vienna from 27 to 29 June 2012 (UNODC/CCPCJ/EG.1/2012/4), which contains the recommendations adopted by the expert group at that meeting.

II. Outcome of the meeting of the open-ended intergovernmental expert group on protection against trafficking in cultural property held in Vienna from 27 to 29 June 2012

3. The General Assembly, in its resolution 66/180, welcomed the decision of the Economic and Social Council, in its resolution 2010/19, to convene at least one additional meeting of the open-ended intergovernmental expert group on protection against trafficking in cultural property, established within the framework of the Commission on Crime Prevention and Criminal Justice, and encouraged Member States and other donors to submit to the Commission practical proposals for implementing, where appropriate, the recommendations of the expert group at its meeting held from 24 to 26 November 2009, with due attention to aspects of criminalization, international cooperation and mutual legal assistance (see UNODC/CCPCJ/EG.1/2009/2). The expert group held its next meeting in Vienna from 27 to 29 June 2012.

4. At that meeting, the expert group discussed and made practical proposals for implementing, where necessary, the recommendations made at its first meeting, in 2009.

5. Furthermore, the expert group discussed the draft guidelines on crime prevention and criminal justice responses with respect to trafficking in cultural property, which were made available to the experts, in conjunction with consultations with Member States, in order to obtain their comments and views on the draft.

6. In addition, the expert group considered the views of the participating Government experts on the possible review of the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.

7. The expert group recommended, *inter alia*, that the Commission consider the possibility of convening another meeting of the expert group in order to allow Member States to further consider those matters.

8. In accordance with resolution 5/7 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, the recommendations and outcomes of the meetings of the expert group were examined at the joint discussion on trafficking in cultural property of the Working Group of Government Experts on Technical Assistance and the Working Group on International Cooperation held during the sixth session of the Conference.

III. Activities to develop specific guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property

9. The Economic and Social Council, in its resolutions 2010/19 and 2011/42, and the General Assembly, in its resolution 66/180, requested UNODC, within its mandate, 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, to, *inter alia*, explore the development of specific guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property.

10. Pursuant to that mandate, UNODC, with the assistance of an expert consultant and in the course of an informal meeting of a diverse group of experts, held in November 2011, prepared a first draft of the guidelines.¹ In further consultation with Member States, UNODC presented the draft guidelines to the expert group at its meeting held in Vienna from 27 to 29 June 2012.

11. In reviewing the draft guidelines, the expert group expressed concern about the seriousness of the threat to cultural property, particularly as a result of the growing involvement of organized criminal groups in trafficking in cultural property. Some experts noted the importance of the guidelines and expressed their general support for their development. Other experts emphasized that the guidelines should be streamlined and made consistent with existing international legal instruments, as well as with the efforts of other relevant international organizations.

¹ The first draft, dated 24 April 2012, is available from www.unodc.org/documents/organized-crime/UNODC_CCPCJ_EG.1_2012/Draft_Guidelines_24_April_2012.pdf.

A number of guidelines were discussed in detail, and specific recommendations made for their improvement. The Secretariat was requested to continue consultations with Member States on the guidelines.

12. The Secretariat, through notes verbales dated 6 August 2012 and 9 October 2012, requested further comments on the draft guidelines. The Secretariat received responses from 17 Member States,² as well as from the Group of 77 and China.

13. Although States, in their responses, expressed general support for the development of such guidelines, the comments received diverged widely. Most States made specific proposals to amend, improve, merge and/or delete some of the guidelines. One State made a proposal for the inclusion of an additional guideline.

14. The draft guidelines currently contain three sections setting out the rationale, background and content of each proposed guideline. Four States proposed the deletion of those sections. One State proposed the replacement of those sections with three general chapters, namely one on the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (to be drafted by UNESCO), one on the INTERPOL enforcement tools (to be drafted by the INTERPOL secretariat) and one on examples of best practices (to be provided by Member States).

15. One State expressed the view that, in the light of the recent efforts of UNESCO to strengthen the 1970 Convention, there was no need for the guidelines and that States should instead support the efforts of UNESCO. Another State indicated that, although it was not opposed to the guidelines, the United Nations Convention on Transnational Organized Crime provided an adequate basis for protecting cultural property from trafficking.

16. Some States expressed the view that the guidelines should be limited to dealing only with the criminal aspects of trafficking in cultural property and that other international organizations, such as UNESCO and INTERPOL, should deal with the other aspects of protecting cultural property.

17. Some States made specific proposals regarding how the process of developing the guidelines should continue. One State proposed that the Secretariat should produce and distribute an annotated version of the draft guidelines, including a compendium of all comments received from Member States. That compendium would serve as the basis for the deliberations of a subsequent meeting of the expert group, which would have the mandate to draft and approve a final version to be submitted to the Commission. Any final document presented for approval or adoption by the Commission would need to be the product of consensus, however.

18. The representative of one State expressed the view that the guidelines were comprehensive and adequate for the purpose of formulating national criminal justice responses regarding trafficking in cultural property and that that State was taking steps to adopt legislation in that regard. The representatives of some States, however, noted that it would be impossible for their States to apply some of the guidelines under their domestic legal systems.

² Algeria, Canada, China, Egypt, El Salvador, France, Germany, Greece, Iran (Islamic Republic of), Israel, Italy, Japan, Mexico, Nigeria, Sweden, Turkmenistan and United States of America.

IV. Outcome of the joint discussion on trafficking in cultural property of the Working Group of Government Experts on Technical Assistance and the Working Group on International Cooperation

19. In accordance with resolution 5/7 of the Conference of States Parties to the United Nations Convention on Transnational Organized Crime, the Working Group of Government Experts on Technical Assistance and the Working Group on International Cooperation held a joint discussion on the topic of trafficking in cultural property on 18 October 2012, during the sixth session of the Conference.

20. During that discussion, the two working groups considered the recommendations and outcomes of the two meetings of the open-ended intergovernmental expert group on protection against trafficking in cultural property and the application of the Organized Crime Convention by States parties to criminal offences against cultural property.

21. The two working groups agreed on a set of recommendations, subsequently endorsed by the Conference, aimed at promoting the practical application of the Convention.³

V. Work on the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property

22. In its resolution 66/180, the General Assembly invited Member States to continue to submit, in writing, comments on the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, including views on its potential utility and on whether any improvements to it should be considered at the earliest possible date, in order to assist the Secretariat in preparing an analysis and a report for presentation to the expert group at its next meeting, as well as to the Commission at its twenty-second session.

23. On 21 March 2012, a note verbale was circulated to Member States, in which they were invited to submit their views on the model treaty. The analysis of those views, which was undertaken by UNODC,⁴ was considered by the expert group at its second meeting, in June 2012, at which meeting the expert group recommended that the Commission should request UNODC to continue work and analysis on the model treaty, taking into account additional comments to be submitted by Member States in accordance with paragraph 8 of General Assembly resolution 66/180.

³ See CTOC/COP/WG.3/2012/5 and CTOC/COP/WG.2/2012/4.

⁴ See UNODC/CCPCJ/EG.1/2012/2.

VI. Activities undertaken by the Secretariat to promote international cooperation to protect cultural property

24. UNODC continues to collaborate and cooperate with relevant partner organizations in the fight against trafficking in cultural property in the delivery of programmes and activities, in order to avoid duplication and to leverage resources.

25. In accordance with Economic and Social Council resolution 2010/19, UNODC continues to be an active partner of the cooperative network that consists of UNESCO, the International Council of Museums, INTERPOL, the International Institute for the Unification of Private Law (Unidroit) and the World Customs Organization, in the areas of trafficking in cultural property and its recovery and return. All partner organizations were invited to the meetings of UNODC on trafficking in cultural property. UNESCO and the World Customs Organization, in particular, attended and played an active role in the expert group meeting held in June 2012.

26. UNODC attended, as an observer, the first meeting to review the practical operation of the 1995 Convention on Stolen or Illegally Exported Cultural Objects and the meeting of States parties to the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property held in Paris in June 2012.

27. UNODC also participated in a regional workshop on building capacities and raising awareness of the fight against illicit trafficking in cultural objects. That workshop, held in Lima from 23 to 25 October 2012, brought together participants from across the Latin American region. At the workshop, UNODC made a presentation on the use of the Organized Crime Convention and on the role of law enforcement in the fight against illicit trafficking in cultural objects.

28. During the reporting period, UNODC took part in a conference on the national and international dimensions of the prevention of and the fight against illicit trafficking in cultural property, held in Milan, Italy, on 16 January 2013, under the auspices of the International Scientific and Professional Advisory Council of the United Nations crime prevention and criminal justice programme, Centro Studi "Federico Stella" sulla Giustizia Penale e la Politica Criminale (Università Cattolica del Sacro Cuore) and the Fondazione Centro Nazionale di Prevenzione e Difesa Sociale.

VII. Recommendations

29. In order to increase the protection of cultural property and to prevent its trafficking, the Commission may wish to invite Member States to consider taking the following measures:

- (a) Promoting cooperation at the bilateral, regional and international levels;
- (b) Providing UNODC with information and statistical data on trafficking in cultural property involving, in particular, organized criminal groups;

(c) Informing UNODC of technical assistance needs, such as training programmes or legislative drafting assistance, in order to better prevent and combat trafficking in cultural property;

(d) Continuing to submit, in writing, comments on the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, including views on its potential utility and on whether any improvements to it should be considered at the earliest possible date, in order to assist the Secretariat in preparing an analysis and a report to be presented to the open-ended intergovernmental expert group on protection against trafficking in cultural property at its next meeting, as well as to the Commission;

(e) Using relevant databases and tools already developed by competent international organizations such as UNESCO, Unidroit, INTERPOL, the International Council of Museums and the World Customs Organization in the fight against trafficking in cultural property;

(f) Acceding to or ratifying, if they have not yet done so, and applying the existing international instruments relevant to protection against trafficking in cultural property, in particular, the Organized Crime Convention.

30. The Commission may consider the possibility of convening another meeting of the expert group, as recommended by the expert group at its meeting held in June 2012.

31. In view of the diverging views received from Member States on the draft guidelines for crime prevention and criminal justice responses with respect to trafficking in cultural property, the Commission may wish to provide guidance to the Secretariat on the way forward, in order to ensure that its work on the guidelines is completed within a reasonable amount of time.

32. The Commission may also wish to request UNODC:

(a) To undertake a review of the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property, taking into account comments received from Member States, with a view to proposing a revised and modernized model treaty to the Commission;

(b) To provide technical assistance, upon request, to Member States in strengthening crime prevention and criminal justice responses to protect cultural property;

(c) To facilitate the implementation of the recommendations of the expert group at its meeting held in June 2012.