



UNODC

United Nations Office on Drugs and Crime

PRACTICAL ASSISTANCE TOOL

to assist in the implementation of the
International Guidelines for Crime Prevention
and Criminal Justice Responses with Respect
to Trafficking in Cultural Property and
Other Related Offences



UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

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The practical assistance tool is based largely on input from Member States. The technical background document developed for the elaboration of the Guidelines was prepared by Stefano Manacorda (consultant), and the practical assistance tool was finalized by Marc Balcells (consultant). Valuable contributions were provided by UNODC staff members Tania Bañuelos, Citlalin Castañeda, Celso Coracini, Nodirjon Ibragimov, Xiaohong Li and Catherine Muganga, and by interns Timur Tusiray and Anna Lunghi. The tool also benefited from comments offered by UNODC partner agencies, including the United Nations Educational, Scientific and Cultural Organization, the World Customs Organization, the International Institute for the Unification of Private Law and the International Criminal Police Organization.



Preface

This practical assistance tool, sponsored by Italy, is aimed at promoting the implementation of the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences, approved by the Commission on Crime Prevention and Criminal Justice in Vienna in 2014 and adopted by the General Assembly in its resolution 69/196, of 18 December 2014.

Cultural heritage is a unique testimony to the identity of peoples and humankind. Its protection is an imperative for humanity.

Trafficking in cultural property deprives peoples of fundamental elements of their identity and of valuable resources for their sustainable development, dispossessing them of their past and thus prejudicing their future. Developing countries are among the countries most affected by this form of organized crime. Hence, it is particularly significant that the fight against all forms of organized crime and the protection of cultural heritage were included in the 2030 Agenda for Sustainable Development.

The inestimable value of cultural property makes it a potential source of profit for criminal organizations. Cultural property is also increasingly exposed to the threat of certain terrorist groups, which use it to finance their criminal activities or destroy it because it represents values that challenge their criminal ideologies. The General Assembly and the Economic and Social Council have repeatedly called upon Member States to counter in a more effective manner this type of “emerging crime”. The preparation of the International Guidelines has therefore been encouraged by the Commission on Crime Prevention and Criminal Justice and by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime. The Palermo Convention indeed offers many useful tools for this purpose, as one of the most advanced international legal instruments with an almost universal level of ratification.

The Guidelines are a comprehensive corpus for the protection of cultural property from a crime prevention and criminal justice perspective. They certainly contribute to filling a gap in the international legal system, as they provide the international community with a comprehensive instrument against offences related to cultural property.

Since they should be applied “in any situations, including exceptional circumstances” (Guideline 48), the Guidelines are a very useful tool against a wide range of criminal activities, including the heinous destruction of and illegal trade in cultural property by terrorist groups, which has been recognized by the Security Council as an increasing threat.

The long-standing commitment of Italy to the fight against transnational organized crime and the protection of cultural heritage has led our country to contribute to the drafting of the Guidelines and to strongly support their adoption, in close cooperation with all Member States, and to finance the preparation of the present practical assistance tool.

Over the years, Italian cooperation has actively promoted the protection of cultural heritage, in partnership with relevant international entities, including through training and capacity-building programmes, the restoration of architectural and artistic heritage, urban renewal, studies and research. In this context, in 2011 Italian cooperation financed the preparation of the first draft Guidelines by the International Scientific and Professional Advisory Council of the United Nations Crime Prevention and Criminal Justice Programme.

In this context, Italy also contributed to the establishment of a subgroup of the Counter-ISIL Finance Group on the looting of antiquities and cultural property, which we currently chair.

We are also pleased to recall the role of the Command for the Protection of Cultural Property of the *Arma dei Carabinieri*. In 1969, Italy was the first country to establish such a specialized law enforcement body, a crucial instrument for the effective protection of cultural heritage, as indicated under Guideline 29. The Command will also form the basis of the Task Force Unite4Heritage, under the coordination of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

In implementing the Guidelines at the national level, Member States should accordingly review their domestic legislation. Moreover, the need to bring closer—or even to harmonize—national legislation has been widely recognized as a priority for the protection of cultural heritage, with the possible ultimate goal of developing a *lex culturalis*, which could fully take into account the unique character of this subject.

The effective implementation of the Guidelines will require the highest degree of synergy between the United Nations Office on Drugs and Crime and other relevant international organizations, such as UNESCO, the International Criminal Police Organization, the International Institute for the Unification of Private Law, the World Customs Organization, the International Council of Museums and the International Centre for the Study of the Preservation and Restoration of Cultural Property. The active engagement of the private sector and civil society will also be crucial in the implementation of the Guidelines.

The adoption of the Guidelines demonstrates the evolving and growing awareness within the international community of the need to increase international cooperation in this field. We hope that all Member States will guarantee the highest consideration to each Guideline and to the spirit that inspired their adoption and the development of this practical assistance tool.

Italy is ready to share its experience with all partners. Our joint efforts will thus contribute to the effective protection of cultural heritage from organized crime and terrorism, in defence of all peoples, their history and their identity.



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Contents

Preface.....	v
INTRODUCTION.....	1
I. PREVENTION STRATEGIES.....	3
A. Information and data collection	3
Guideline 1	3
Guideline 2	6
Guideline 3	8
Guideline 4	15
B. The role of cultural institutions and the private sector.....	17
Guideline 5	17
Guideline 6	21
Guideline 7	22
Guideline 8	23
C. Monitoring.....	25
Guideline 9	25
Guideline 10.....	28
Guideline 11	30
D. Education and public awareness.....	32
Guideline 12.....	32
II. CRIMINAL JUSTICE POLICIES	35
A. International legal texts	35
Guideline 13.....	35
Guideline 14.....	36
B. Criminal and administrative offences.....	37
Guideline 15.....	37
Guideline 16.....	38
Guideline 17.....	45
Guideline 18.....	46
Guideline 19.....	47
C. Criminal and administrative sanctions	48
Guideline 20.....	48
Guideline 21	49
Guideline 22.....	49

D. Corporate liability	50
Guideline 23	50
Guideline 24	51
E. Seizure and confiscation	52
Guideline 25	52
Guideline 26	53
Guideline 27	54
Guideline 28	54
F. Investigations	55
Guideline 29	55
Guideline 30	56
Guideline 31	57
III. COOPERATION	59
A. Jurisdiction	59
Guideline 32	59
B. Judicial cooperation in criminal matters	59
Guideline 33	59
Guideline 34	60
Guideline 35	62
C. Extradition	63
Guideline 36	63
Guideline 37	65
Guideline 38	65
D. International cooperation for purposes of seizure and confiscation	66
Guideline 39	66
Guideline 40	67
E. International cooperation among law enforcement and investigating authorities ..	68
Guideline 41	68
Guideline 42	69
Guideline 43	70
Guideline 44	71
Guideline 45	72
F. Return, restitution or repatriation	73
Guideline 46	73
Guideline 47	74

IV. SCOPE OF APPLICATION.....75
Guideline 48.....75

ANNEXES

I. Treaties, conventions and other official documents, with selected sections relating to the protection and return of cultural property, applicable to certain Guidelines77

II. Glossary.....87



INTRODUCTION

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.

The International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences were adopted by the General Assembly in its resolution 69/196, on 18 December 2014.

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 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;¹ the Convention on Stolen or Illegally Exported Cultural Objects,² adopted by the International Institute for the Unification of Private Law; the Convention on the Protection of the Underwater Cultural Heritage;³ the United Nations Convention against Transnational Organized Crime;⁴ the United Nations Convention against Corruption;⁵ the Convention for the Protection of Cultural Property in the Event of Armed Conflict⁶ and its First⁶ and Second Protocols;⁷ and the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts.⁸

As indicated in General Assembly resolution 69/196, the Guidelines are non-binding and available to Member States for their consideration in the development and

¹United Nations, *Treaty Series*, vol. 823, No. 11806.

²*Ibid.*, vol. 2421, No. 43718.

³*Ibid.*, vol. 2562, No. 45694.

⁴*Ibid.*, vol. 2225, No. 39574.

⁵*Ibid.*, vol. 2349, No. 42146.

⁶*Ibid.*, vol. 249, No. 3511.

⁷*Ibid.*, vol. 2253, No. 3511.

⁸*Ibid.*, vol. 1125, No. 17512.

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. The Guidelines serve 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 and other competent international organizations, as appropriate.

In its resolution 69/196, the General Assembly requested UNODC, where appropriate, in consultation with Member States, to develop a practical assistance tool to assist in the implementation of the Guidelines, taking into consideration the technical background document developed for the elaboration of the Guidelines⁹ and the comments made by Member States.¹⁰

Accordingly, the present practical assistance tool was developed with the aim of assisting States in the implementation of the Guidelines. It is designed for use by relevant national authorities, law enforcement authorities, practitioners and policymakers working in the field of cultural property. Proposals for the practical implementation of some Guidelines may also be relevant to individuals and legal persons working in the licit art market and related areas.

The practical assistance tool is non-binding and is meant to be used in a manner consistent with relevant international and national law.

⁹Available at www.unodc.org.

¹⁰Updated 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 (E/CN.15/2013/CRP.7/Rev.1).



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.

The registration of a relevant cultural property in an inventory (with restricted access for relevant personnel of any given institution) is a useful measure in preventing its trafficking and achieving the recovery of trafficked objects. Registration can facilitate the identification of cultural objects by the authorities, support police and other control agencies in monitoring cultural objects and determining provenance and provide a sound basis for claims for restitution and return.¹¹

Currently, there is very limited reliable and comprehensive data on art crime; this does not mean that there is a lack of statistical data per se, but information that is made available has potential shortcomings, such as States not supplying information to international databases on trafficking in cultural property or regarding the estimated value of an item.¹² Research indicates that there is a positive correlation between information existing in a database or inventory and the chance of a missing piece of art being recovered thanks to the related publicity generated because of the database or inventory.¹³

It is important to note that, because of the vast amount of cultural property that remains undiscovered and the limited resources available for the comprehensive inventorying of all relevant forms of cultural property, a State's inventories and databases may not take into account every object within its borders. The absence of documentation of such objects should not, however, exclude them from protection from trafficking and related offences. In addition,

¹¹A comprehensive inventory may also be of particular importance in war-torn or other crisis areas in order to establish the potential direct and indirect impact of a conflict on cultural property.

¹²See Thomas D. Bazley, *Crimes of the Art World* (Santa Barbara, California, Praeger, 2010).

¹³See Mark Durney, "How an art theft's publicity and documentation can impact the stolen object's recovery rate", *Journal of Contemporary Criminal Justice*, vol. 27, No. 4 (2011), pp. 438-448.

States could enter information on archaeological items in an inventory as soon as they are found, even before the conclusion of the identification procedures.¹⁴

States could consider establishing—or developing, where they exist¹⁵—unified national inventories, which should be comprehensive and coordinated and should include all relevant publicly owned cultural properties. Such inventories could consolidate existing registers and catalogues and connect existing inventories (both public and private) in a coordinated network of national databases. They could also be made accessible to all national and foreign public authorities, preferably through a single multilingual online portal or digital database to facilitate easy access and cross-checking. Under strict conditions, States could consider making access to such inventories (or to some restricted areas of them) available to private individuals and entities (such as insurance companies, lawyers and researchers) that have been registered.

States could also consider including in the inventories relevant private collections and properties, such as ecclesiastical cultural properties and the contents or property of ancient libraries, private foundations, museums and corporations. The listing of an object of art in an inventory could also include an annotation by its owner or holder; in such cases, authorization by the owner should be obtained, while incentives (for example, fiscal incentives) could be granted.

States could, in cooperation with cultural institutions and the private sector, consider adopting a common multilingual international standard for inventorying cultural property as a means of facilitating the exchange and circulation of information. In this regard, States could use as a reference point existing national and international standards, such as Object ID. Sponsored by the International Council of Museums (ICOM), this is an international standard for describing cultural objects and includes photographs of the works of art in question, a brief description of it and a classification of the type of object and the materials and the techniques used to create it.¹⁶ ICOM also publishes the “Red List”,¹⁷ which classifies the categories of endangered archaeological objects or works of art in the most vulnerable areas of the world with a view to preventing them from being sold or illegally exported.

In the course of the thematic discussion on protection against illicit trafficking in cultural property held during the nineteenth session of the Commission on Crime Prevention and Criminal Justice, States referred to the establishment of national inventories, lists of cultural objects and, if possible, a photographic archive of such objects and the establishment of a national database, with the possibility of linking national databases to each other and to international databases, in particular the INTERPOL stolen works of art database.

¹⁴See also Economic and Social Council resolution 2008/23, entitled “Protection against trafficking in cultural property”; the reports on the nineteenth and twentieth sessions of the Commission on Crime Prevention and Criminal Justice (*Official Records of the Economic and Social Council, 2010, Supplement No. 10 (E/2010/30)* and *ibid., 2011, Supplement No. 10 (E/2011/30)*); report on the meeting of the expert group on protection against trafficking in cultural property held in Vienna from 24 to 26 November 2009 (UNODC/CCPCJ/EG.1/2009/2); UNESCO, *Legal and Practical Measures against Illicit Trafficking in Cultural Property*, UNESCO Handbook (Paris, Division of Cultural Heritage, International Standards Section, 2006); and the Charter of Courmayeur, adopted during the International Workshop on the Protection of Artistic and Cultural Patrimony held in Courmayeur, Italy, from 25 to 27 June 1992.

¹⁵For examples of countries that have established such inventories, refer to the reports of Member States on measures they have adopted to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), UNESCO documents 167 EX/20 and 28 C/35.

¹⁶Available at <http://archives.icom.museum/objectid>.

¹⁷Available at <http://icom.museum/what-we-do/programmes/fighting-illicit-traffic.html>.

Recommendations in this regard were included among the relevant preventive measures that States should take in order to protect cultural property, as reflected in other United Nations documents.¹⁸

Examples of databases include the following:

Governmental/police databases

- The National Stolen Art File, managed by the Federal Bureau of Investigation of the United States of America
- The INTERPOL stolen works of art database
- The London Stolen Art Database, managed by the New Scotland Yard, United Kingdom of Great Britain and Northern Ireland
- The Banca Dati Leonardo, operated by the *Carabinieri* of Italy
- The NNSACH, operated by the Federal Criminal Office of Germany
- TREMA, operated by the French Home Office
- Dulcinea, operated by the Spanish Civil Guard, among others

Private databases

- The Art Loss Register stolen art database
- Stolen Art Belgium, operated by AXA Art
- Stolen-book.org, operated by the International League of Antiquarian Booksellers
- Lost Art Internet Database, operated by the German Lost Art Foundation (Deutsches Zentrum Kulturgutverluste)

Non-governmental/charity databases

- The Central Registry of Information on Looted Cultural Property, operated by the Commission of Looted Art in Europe

Public and private partnership databases

- Cultural Plunder by the Einsatzstab Reichsleiter Rosenberg: Database of Art Objects at the Jeu de Paume, jointly operated by the Conference on Jewish Material Claims against Germany and the United States Holocaust Memorial Museum, with the cooperation of the German Federal Archives (Bundesarchiv)¹⁹
- France Diplomatie: Diplomatic Archive Centre of the Ministry of Foreign and European Affairs, administered by the United States National Archives and Records Administration and the Commission for Art Recovery²⁰

¹⁸See footnote 14 and conference room paper on protection against trafficking in cultural property (UNODC/CCPCJ/EG.1/2009/CRP.1).

¹⁹Available at www.errproject.org/jeudepaume.

²⁰Available at www.archives.gov/research/holocaust/international-resources/navigate.html.

Guideline 2. States should consider, where possible under their national 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.

Relevant cultural property as discussed in this guideline refers to (a) undiscovered cultural property that falls within the relevant national or State ownership laws or (b) discovered cultural property that falls within the relevant national or State ownership laws and is either unregistered or already registered (see also Guideline 1 for a discussion on discovered cultural property and inventories and databases).

States could recognize, where possible, another State's relevant cultural property as registered in that State's national inventories in order to increase international cooperation to combat and prevent illicit trafficking in cultural property and related crimes. The recognition of relevant cultural property as registered in a State's inventories can have several positive impacts, including the following:

- Addressing the issue of unregistered cultural property
- Contributing towards greater accessibility and presence of State inventories internationally, which would lead to greater connectivity among national and international inventories and databases
- Prosecutors and judges would have a clear determination of ownership, and therefore of evidence of theft, by having inventories endorsed by multiple States, which could lead to more efficient prosecutions of trafficked, illicitly exported or imported, stolen, looted or illicitly excavated and, more generally, illicitly traded cultural property
- Dealers, museums and private individuals would have clear notice of State ownership of relevant cultural property and of the validity of that claim in local and foreign States

In accordance with their duty to protect cultural heritage, several States have enacted unambiguous laws on national or State ownership of certain cultural property regardless of prior exercise of physical control over it, including when the relevant cultural property remains officially undiscovered or otherwise uncatalogued.

Article 13 (d) of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property recognizes “the indefeasible right of each State party to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.”²¹ States parties to the Convention are encouraged to establish State ownership for whatever is deemed appropriate by the national authorities, which could also include undiscovered cultural property and cultural property illicitly excavated from the national territory. This provision may help in requesting the return or restitution of such property domestically or even abroad.²²

The results of an evaluation survey conducted by UNESCO regarding the relevance and effectiveness of the standard-setting work of the cultural sector with a focus on its impact on ratification, as well as on the legislation, policies and strategies of parties to UNESCO

²¹The Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, as adopted by consensus on 18 May 2015 by the Meeting of States Parties to the Convention, should also be considered, in particular paragraphs 33, 34 and 35.

²²*Legal and Practical Measures Against Illicit Trafficking in Cultural Property*, pp. 5-7.

culture conventions and on the implementation of the conventions at the national level, showed that around 83 per cent of States parties responding to the survey had established State ownership of undiscovered cultural heritage.

Examples of countries with State ownership of certain cultural property

Italy passed a law in 1909 that made every archaeological find property of the Italian State.²³ Examples of such legislative action protecting cultural heritage can be found in other countries worldwide.

In Greece, according to article 21 of Law 3028/2002 on the protection of antiquities and cultural heritage in general, movable ancient monuments dating to 1453 and finds from excavations or other archeological research, regardless of date, belong to the State in terms of ownership and possession.

The law in Turkey clearly states that “immovable cultural and natural property to be protected that is known to exist or will be discovered on an immovable property owned by real and legal persons subject to civil law” shall be State property. Owners or occupants of the ground or waterway where the cultural property is discovered must notify a local museum or authority, which must then protect and secure the property and inform the Ministry of Culture and Tourism.

In Egypt, accidental finds of movable antiquity or fragments of immovable antiquity must be reported and become State property with compensation paid to the finder, and in China, movable cultural relics remaining underground, in inland waters or territorial seas within the boundary of China are owned by the State. The State also owns cultural relics unearthed in China.

In Mexico, the law first restricted the exportation of archeological artefacts in 1827. According to the current Mexican Federal Law on Archeological, Artistic and Historical Monuments and Zones, archeological artefacts, including those officially undiscovered or otherwise uncatalogued, are the inalienable and imprescriptible property of the Mexican nation.

On the other hand, in a number of countries, undiscovered cultural property can also be private property. This is the case in Peru, for instance, where such private property is, however, subject to certain limitations contained in the relevant legislation. In Mali, movable and immovable objects discovered during archaeological excavations on public or private State land are State property. If the movable archaeological material is discovered on another (privately held) land, ownership will be shared with the private owner, while the State has the right of pre-emption over cultural property.²⁴

The existence of State ownership laws has not always guaranteed their recognition in foreign courts. As noted in the background document on the UNESCO-International Institute for the Unification of International Law (UNIDROIT) Model Provisions on State Ownership of Undiscovered Cultural Objects, national legislation on undiscovered antiquities is “... often too vague ... and this lack of precision is often penalized by (foreign) courts.”²⁵ In some cases, domestic courts have resisted recognition of such laws concerning national ownership for years but have gradually changed their position where the laws of the other State are clear concerning the assertion of state ownership.²⁶

²³Vito A. Iannizzotto, *I beni culturale nell'ottica criminale: forme di agressione, leggi e poteri di tutela* (Roma, Euro-polis, 2006).

²⁴See Barbara Toggler and others, *Evaluation of UNESCO's Standard-setting Work of the Culture Sector: Part II — 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, final report, document IOS/EVS/PI/133 Rev. 2 (Paris, UNESCO, 2014).

²⁵Available at www.unidroit.org/instruments/cultural-property/model-legislative-provisions.

²⁶Patty Gerstenblith, “Schultz and Barakat: universal recognition of national ownership of antiquities”, *Art Antiquity and Law*, vol. 14, No. 1 (2009).

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 the United Nations Office on Drugs and Crime, and the INTERPOL database on stolen works of art and through other relevant organizations;
- (f) Contributing to the United Nations Educational, Scientific and Cultural Organization database of national laws and regulations pertaining to cultural property.

Introducing or improving statistics on import and export of cultural property

One of the challenges to preventing and combating trafficking in cultural property is the lack of reliable and comprehensive data (including statistics) describing the scope of this illicit activity. As stated in Guideline 1, this challenge is compounded by the fact that illicit activities in this field are difficult to discover and monitor, in part because actors and organizations in the art and antiquities markets often do not report thefts. Similarly, both the resources and the will of States to update inventories and databases often fall behind the pace of the crimes committed, leading to the discovery of crimes only years after they were perpetrated.

Estimating the prevalence and incidence of trafficking in cultural property presents a number of particular problems. First, it is difficult to quantify the damage caused worldwide by theft, despoliation and illegal excavation and to assign value and structure to the market. There are very few facts and figures; discussions often rely on anecdotal evidence and assertions. Arriving at reliable estimates is difficult, given that conventional crime statistics are generally not revealing in relation to this type of offence. Recording practices with regard to crimes against antiquities vary across jurisdictions, and often such crimes are recorded only in the category of thefts, along with other property violations.²⁷ Publicly available data present estimates given by cultural institutions, archaeologists and law enforcement agencies. Following are three examples regarding data on the worldwide trade in cultural material:

- The Museums Association has estimated that profits from the illicit antiquities trade range from \$225 million and \$3 billion per year.²⁸
- The Organized Crime Group of the United Kingdom Metropolitan Police and INTERPOL has calculated that profits from the illicit antiquities trade amounted to between \$300 million and \$6 billion per year.²⁹

²⁷ See Neil Brodie, Jenny Doole and Peter Watson, *Stealing History: The Illicit Trade in Cultural Material* (Cambridge, McDonald Institute for Archaeological Research, 2000); and Simon Mackenzie, "Trafficking antiquities" in *International Crime and Justice*, Mangai Natarajan, ed. (Cambridge, Cambridge University Press, 2011).

²⁸ United Kingdom, House of Commons, Culture, Media and Sport Select Committee, *Cultural Property: Return and Illicit Trade*, seventh report, vols. 1, 2 and 3 (London, 2000).

²⁹ Ibid.

- The European Association of Archaeologists has calculated that these same profits amounted to around \$4.5 billion per year.³⁰

However, there is a lack of certainty with regard to these figures, as private sources tend to estimate that the high figure is 20 times the low.³¹ Nonetheless, the figures reveal that the illicit trade in antiquities is highly lucrative, due in part to the fact that cultural heritage is a non-renewable source and that objects continue to circulate openly in the art market for many years, generating money in transaction after transaction. It must be pointed out, however, from an economic standpoint, that the trade is lucrative for everyone except the communities where the artefacts are found, as looting severely undermines their economic base.³²

Introducing or improving statistics, where practical, regarding administrative and criminal offences against cultural property

The collection of specific and reliable empirical data by States with a view to providing statistics related to both licit and illicit activities concerning cultural property can have a variety of positive effects:

- The systematic collection of data on the flow of imported and exported cultural objects, their provenance and destination, their characteristics and the type of dealers can provide valuable information on trends and assist proactive investigations by police and customs authorities.
- It can greatly enhance the criminological knowledge of the phenomenon of illicit dealings in cultural property by providing specific and disaggregated statistics on criminal offences against cultural property. In particular, it can show trends in reporting and discovery, prosecution, sentencing and recovery of assets, as well as in terms of the numbers and characteristics of people reported, arrested, prosecuted and sentenced, and in the typology and extent of sanctions imposed.
- If supported by specific criminological research,³³ improving statistics can reduce the number of “dark figure” offences (offences that escape detection by authorities), which are especially high because of the “porosity” between the legal and illegal market in art and antiquities, the frequent transnational character of the offences, the prevalence of the involvement of professionals in such crimes and the risk of lack of registration or inventorying.
- It can support national legislators in planning prevention policies or when testing the efficacy and effectiveness of already existing laws and regulations.

Statistics can include both legal activities (import/export and selling/purchasing) and illicit ones (administrative and criminal offences against cultural property). States could consider adopting all necessary measures in order to collect regularly (at least on an annual basis) the aforementioned data, so as to have comparable statistical series available.

³⁰ Ibid.

³¹ See David Gill and Christopher Chippindale, “The trade in looted antiquities and the return of cultural property: a British parliamentary inquiry”, *International Journal of Cultural Property*, vol. 11, No. 1 (2002), pp. 50-64.

³² Brodie, Doole and Watson, *Stealing History*.

³³ The development of specific criminological research includes instruments other than official statistics (victimization surveys, self-assessment reports, case studies and so forth) on crimes against cultural property.

The data should be as disaggregated as possible (for example, persons involved should be disaggregated by sex, age and, possibly, profession and presence or absence of previous records; offences should be disaggregated by typology, location and, possibly, number of persons involved and typology of cultural property involved). States may also consider passing regulations whereby local police reporting systems have separate categories for art crimes. This is particularly important, as a lack of separate police reporting systems for art crimes represents a serious data management problem. Many police departments file stolen cultural heritage under, and among other cases of, general stolen property, mostly because of a lack of knowledge about the severity and specific nature of this particular form of crime. As a result, the problem becomes cyclical: there is a lack of reliable analysis of the prevalence and incidence of cultural heritage crime because of poor statistical data, which is in turn caused by the inadequate classification of these offences.³⁴

In addition, States could pay special attention to surveys on the involvement of organized crime in offences against cultural property and support independent criminological research (for example, by national research centres or universities, in partnership with other public and private cultural institutions) and other types of studies, such as victimization surveys,³⁵ self-report studies³⁶ and case studies³⁷ (this particular method is gaining importance within the field of cultural heritage crime³⁸), among others.

States could make use of their existing statistical services or give the task of collecting and analysing the data to the central national authority created or identified according to Guideline 4 (in cooperation with the police, the judiciary and customs authorities). They could also consider some form of interaction and cooperation among those institutions.

Establishing or improving national databases

(see also examples of databases provided under Guideline 1)

Some advantages that could arise from the creation of databases on trafficking in cultural property and related offences are set out below:

- Art and antiquities dealers, as well as museums and other professionals, could be required to consult the databases before engaging in any professional dealings regarding any cultural property.³⁹
- Police and customs authorities could use them to identify the proceeds of a crime (for example, when attempts are made to send cultural property across borders with false documents, or when it is presented in online auctions or appears in a collection).⁴⁰
- Prosecutors and judges could rely on them in collecting evidence on the illicit origin of a cultural property.

³⁴Noah Charney, ed., *Art and Crime. Exploring the Dark Side of the Art World* (Santa Barbara, California, Praeger, 2009).

³⁵Harry R. Dammer and Jay S. Albanese, *Comparative Criminal Justice Systems*, 4th ed. (Belmont, California, Wadsworth Cengage Learning, 2010).

³⁶Ibid.

³⁷Robert K. Yin, *Case Study Research: Design and Methods*, 5th ed. (Thousand Oaks, California, Sage Publications, 2014).

³⁸Joris D. Kila and Marc Balcells, eds., *Cultural Property Crime: An Overview and Analysis of Contemporary Perspectives and Trends*, Heritage and Identity: Issues in Cultural Heritage Protection Series (Leiden, Netherlands; Boston, Brill, 2014).

³⁹The consultation of a database of stolen objects is one of the criteria of due diligence under the Convention on Stolen or Illegally Exported Cultural Objects, adopted in Rome on 24 June 1995.

⁴⁰See also article 5 (g) of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (United Nations, *Treaty Series*, vol. 823, No. 11806).

- The diffusion of this system would lead to a greater interconnection among national and international databases on trafficked, illicitly exported or imported, stolen, looted or illicitly excavated and, more generally, illicitly traded cultural property.

In order to develop the system, States could consider adopting a series of necessary measures, such as the creation or improvement of an existing national database on trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property.

In addition, States could contribute to the INTERPOL stolen works of art database, which is the only such international public database, in order to ensure the immediate inclusion of a trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property in both international and national databases. The publishing of international bulletins with the specifications of such cultural property may be also considered.

National databases could be made available to the public by means of a system of registration or secured access for professionals and private individuals. States may consider making all existing databases more widely and freely accessible, not only to law enforcement agencies, but also to museums and cultural institutions, art and antiquity market professionals and the general public.⁴¹

Consulting such databases before engaging in any professional activity could be considered as necessary to assess a good-faith defence for any person caught in possession of a trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property. States may also consider, when the database is publicly accessible (at least with a system of registration and passwords, such as in the case of the INTERPOL stolen works of art database), imposing an obligation of consultation by art and antiques dealers, as well as by museum and collection functionaries appointed to acquisitions.

States could consider taking measures to ensure the immediate inclusion of a cultural property in the national database whenever notice of an offence involving a cultural property is brought to the attention of the authorities. States could consider basing their national databases on existing international databases (see Guideline 1 concerning this point) in order to facilitate information exchange and circulation at the international level.

States could also consider adding the data on clearly identifiable objects, including photographs, from their national databases into the INTERPOL stolen works of art database. States could also take measures (including through the implementation of technologies currently in use) to ensure the automatic transmission to international databases of any additional data to their national databases, provided the registered data allows for the indubitable identification of the object in question. States could also consider directly linking their national databases to international ones in order to create a larger, more efficient and immediately accessible international network of databases.

In order to achieve the international integration of information, States could also consider connecting their national databases to create a unified network to which each national competent authority has access.

⁴¹ See also the conclusions of the INTERPOL seventh International Symposium on the Theft of and Illicit Traffic in Works of Art, Cultural Property and Antiques, held in Lyon, France, from 17 to 19 June 2008.

Introducing mechanisms to enable the reporting of suspicious dealings or sales over the Internet

It has been recognized internationally that the illicit sale of cultural property over the Internet is a very serious and growing problem⁴² that requires public reporting of suspicious actions to help authorities combat its growth. For instance, according to specialized research in the area of trafficking in cultural property over the Internet, only a small number of the objects offered for sale have recently entered the market, and an unknown proportion of them are fakes.⁴³ In addition, there is a lack of regard on the part of buyers and even of well-known auction houses for looted or fake antiquities. The combination of the lack of effective regulation and customer indifference is a potent boost for this line of illicit trade in cultural property.⁴⁴

Both legally and illegally obtained cultural property artefacts are often sold through the same markets. This overlap is now greatly facilitated by online auctions and sales, as the Internet has no boundaries and it is easier for sellers and buyers to conceal their identity and to avoid national requirements for certification and licensing.

Practical challenges posed by the growing online marketplace are facilitated by the sheer size and diversity of goods sold, the various platforms available online for the sale of objects, the lack of published information on such objects, which hinders their proper identification, and the limited window of time during which they are placed online before their sale. In view of these practical challenges, States could consider creating mechanisms whereby individuals and companies could report suspicious online activity to help monitor the market.

States are invited to request Internet platforms to disclose information and cooperate with the authorities on investigations of suspicious sales of cultural objects, according to Basic Action No. 2, issued jointly by INTERPOL, UNESCO and ICOM in 2007.⁴⁵

In order to supplement other official Internet monitoring efforts, States could create mechanisms to encourage Internet providers, online auctioneers, members of the public and other qualified individuals to report suspicious offers of objects that are potentially of significant importance not previously seen for sale, or of foreign objects that are known to come from regions with high levels of illicit activity related to cultural property. Furthermore, States could consider entering into specific bilateral agreements with Internet providers and online auctioneers to restrict, monitor and/or set up notification systems when suspicious operations occur. Such notifications should be examined immediately by the relevant State authority, if necessary using experts (from universities, museums, libraries and other institutions) to verify the nature and importance of the items being offered.

⁴²INTERPOL, UNESCO and the International Council of Museums, “Basic actions concerning cultural objects being offered for sale over the Internet”, available at <http://portal.unesco.org/culture/en/files/21559/11836509429MesuresTraficIlliciteEn.pdf/MesuresTraficIlliciteEn.pdf>. See also the study by B. Bieleman, R. van der Stope and H. Naayer, *Schone Kunsten: Preventieve Doorlichting kunst-en Antiekhandel* (Groningen, Netherlands, IntraVal, 2007).

⁴³For an example of the trade in fake artworks, see the entry related to “Operation Plotter” at the UNODC Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal, available at www.unodc.org.

⁴⁴Neil Brodie, “The Internet market in pre-Columbian antiquities”, in *Cultural Property Crime*, Kila and Balcells, eds.

⁴⁵See “Basic actions concerning cultural objects”.

Contributing to international data collection

The worldwide collection and comparison of official statistical data on offences against cultural property could have a positive impact in enhancing the knowledge of this phenomenon and its various ramifications. Data collection could focus on matters such as reporting and discovery, as well as prosecution, sentencing, asset recovery, the number and characteristics of suspected offenders reported, arrested, prosecuted and sentenced and the typology and extent of sanctions imposed. This, in turn, could help international organizations, as well as national legislators, in planning and implementing more effective criminal justice policies to combat cultural property crimes. It could also help in testing the efficacy of existing laws and regulations, thereby indirectly contributing to improving the prevention of offences against cultural property and the protection of cultural heritage.

States could contribute to the United Nations Survey on Crime Trends and Operations of Criminal Justice Systems, conducted by the UNODC,⁴⁶ and contribute to and regularly update the UNESCO Database of National Cultural Heritage Laws⁴⁷ in order to facilitate international investigative and judicial cooperation. The UNESCO database includes former national laws and laws currently in force related to the protection of the cultural heritage in general; import/export certificates for cultural property (available upon request); official or unofficial translations of national laws and certificates; contact details for the national authorities responsible for the protection of cultural heritage; and the addresses of the official national websites dedicated to the protection of cultural heritage. A summary or excerpt of the relevant national legislation, especially with regard to which categories of cultural objects are protected and what kind of cultural objects require national export certificates, but also with regard to provisions relating to the illegal excavation or theft and offering or selling of cultural objects, would be an excellent tool when quick decisions on appropriate law enforcement measures have to be made. Moreover, such information would be very useful for national authorities in providing information to tourists and the public in general.

States could consider taking all necessary measures in order to collect regularly and at least on an annual basis, the aforementioned data, so as to have comparable statistical series available (data should be disaggregated as much as possible).

In addition, the 2003 Meeting of the States Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property recommended that States members of UNESCO be encouraged to promptly submit all of their national legislation aimed at the protection, prevention and combating of trafficking in cultural property and related offences. States were also encouraged to update regularly the UNESCO database on national cultural heritage law by providing all of their national laws and regulations; national rules currently applicable should be included, as well as a history of past legislation and regulations.

Moreover, States could make use of the UNODC Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal and submit legislation on cultural property protection not yet contained therein, as well as periodically review the laws already registered to ensure that the entries are updated.⁴⁸ In particular, States could consider setting

⁴⁶United Nations Surveys on Crime Trends and the Operations of Criminal Justice Systems, available at www.unodc.org.

⁴⁷Available at www.unesco.org/culture/natlaws.

⁴⁸Available at www.unodc.org/cld/search-sherloc-cld.jspx?f=en%23__el.caseLaw.crimeType_s%3aTrafficking%5c+in%5c+cultural%5c+property.

up a more specific international database of domestic criminal legislation on cultural property protection, following the model of the UNODC counter-terrorism legislation database or the Anti-Money Laundering International Database.⁴⁹ Such a database could contain excerpts from the different laws, as well as practical guidelines addressed to law enforcement agencies, and should be provided by States to UNODC.

States could also consider keeping such legislative databases up to date by regularly including new and amended legislation on cultural property protection and relevant case law, national laws and regulations referring to judicial cooperation in criminal matters, as well as cases and best practices. Such a database could also be linked to the UNESCO draft database on the return of cultural property.

Examples of relevant international data collection points

- INTERPOL has created the important stolen works of art database, which is accessible to all INTERPOL member countries;⁵⁰ up until 2009, INTERPOL periodically issued a widely available *Stolen Works of Art CD-ROM* as well as posters showing the most sought-after stolen works of art. The INTERPOL database is being modernized through project PSYCHE (Protection System for Cultural Heritage), in collaboration with the Italian *Carabinieri* specialized unit for the protection of cultural heritage. The main objectives of the project are:
 - To enable direct data integration by member countries using a formatted message system
 - To enact direct data transfer from Italy's Leonardo database into the INTERPOL database
 - To simplify queries with the use of an image similarity software tool
 - To provide training (e-learning module and training sessions) to member countries
- In 2009, UNODC included a module on trafficking in cultural property in the Eleventh Crime Trend Survey, on a pilot basis. The module covered police and court statistics on a number of crimes, including trafficking (defined by the Survey as import, export or transport) in cultural property, theft of cultural property, possession/handling of cultural property and unlawful excavation of cultural property. National police were asked to provide information on the number of recorded offences and persons suspected of, arrested for or accused of those crimes. Courts were also asked to provide information on the number of persons tried and convicted for those crimes. Only 24 States entered data into the module on trafficking in cultural property. Responding States were more frequently able to provide police data (20 responses) than court data (12 responses). Only five States provided data on the number of offences involving unlawful excavation of cultural property.⁵¹
- In the past, ICOM provided the "One-hundred missing objects series",⁵² which listed objects that had been stolen and whose disappearance had been reported to the police. It also integrated the "Red List", which more generally classifies the endangered categories of archaeological objects or works of art in the most vulnerable areas of the world, with a view to preventing them from being sold or illegally exported.

⁴⁹ Available at www.unodc.org/tldb and www.unodc.org/unodc/en/money-laundering/imolin-amlid.html.

⁵⁰ Available at www.interpol.int/Public/WorkOfArt/Default.asp.

⁵¹ See the report of the Secretary-General on protection against trafficking in cultural property (E/CN.15/2010/4) and the note by the Secretariat on world crime trends and emerging issues and responses in the field of crime prevention and criminal justice: protection against trafficking in cultural property (E/CN.15/2010/17), submitted to the Commission on Crime Prevention and Criminal Justice at its nineteenth session.

⁵² International Council of Museums, One hundred missing objects series. Available at <http://icom.museum/programmes/fighting-illicit-traffic/100-missing-objects>.

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

While a large number of States have national services that fulfil at least some of the functions necessary to prevent and combat trafficking in cultural property and other related offences, according to the survey conducted by UNESCO, a considerable number of them have similarly reported that coordination between the relevant national organizations presented non-negligible challenges.⁵³ In this regard, when establishing or strengthening this type of central national authority or equivalent appropriate mechanism, States could bear in mind the coordinating functions at both the domestic and international levels.

The centralized coordination of prevention policies is important in view of the fact that trafficking in cultural property and related offences are complex phenomena, as they involve national and transnational aspects and public and private agents and institutions. Moreover, these illegal activities tend to hide within a market of large dimensions and great complexity, often opaque and largely in need of monitoring, and impinge on a vast, often dispersed and always heterogeneous cultural heritage. Therefore, cooperation between law enforcement agencies and other competent authorities, and between museums and other cultural institutions (private and public) and private operators in the art and antiques market must be very strong if it is to be effective.

As stipulated in article 5 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, States shall establish a central national authority endowed with powers of coordination and/or regulation in matters related to the protection of cultural property. As an alternative, States could consider empowering already existing authorities and/or establishing other equivalent mechanisms. This authority would be in charge of coordinating all the existing public actors engaged in preventing trafficking in cultural objects and/or managing all the relevant activities and would cooperate at the international level. With the aim of strengthening public-private partnerships, States may consider the involvement of private actors (museums, auctions houses, insurance companies and so forth) for specific activities on an ad hoc basis.

The authority could be responsible for either conducting or supervising the following activities: (a) inventorying national cultural property; (b) supporting criminological research and statistical data collection on the illicit market in cultural property; (c) implementing specialized training programmes for public and private actors in cultural institutions, the art and antiquities market and police and customs authorities; (d) developing and promoting codes of conduct for operators in cultural institutions as well as in the art and antiquities market in conformity with international standards/provisions (such as the UNESCO International Code of Ethics for Dealers in Cultural Property and the Code of Ethics for Museums of the International Council of Museums); (e) supporting and coordinating market monitoring programmes; (f) promoting public campaigns to raise awareness and care for cultural heritage; and (g) sharing information with their national counterparts and relevant international organizations to strengthen international cooperation.

Another relevant task for the authorities could be the development of a public-private partnership on cultural property protection that promotes and coordinates contacts, communications and exchanges among public and private cultural institutions or their national

⁵³Toggler and others, *Evaluation of UNESCO's Standard-setting Work of the Culture Sector*.

associations, law enforcement and other competent public agencies, Internet providers, national professional associations of dealers in art and antiques and auctioneers.⁵⁴

In its resolution 68/186, the General Assembly invited Member States that had not yet done so to consider designating contact points to facilitate international cooperation within the application of the United Nations Convention against Transnational Organized Crime for the purpose of preventing and combating trafficking in cultural property, and to report such information to UNODC for inclusion in the directory of competent national authorities. The UNODC Directory of Competent National Authorities now includes information on contact points designated to facilitate international cooperation within the application of the Convention for purposes of combating trafficking in cultural property.⁵⁵

As a practical matter, States could ensure that the central national authority is endowed with the resources and the authority needed to effectively pursue its aims.

Some examples of national mechanisms for the coordination of cultural property protection

- In Egypt, the Ministry of State for Antiquities has the mission of protecting and promoting Egypt's cultural heritage, both nationally and internationally. Currently, the Ministry has the specific mission of formulating and implementing all policies concerned with antiquities; issuing guidelines and permits for the excavation, restoration, conservation, documentation and study of sites and monuments; managing a country-wide system of museums containing antiquities; overseeing the publication of journals and books on archaeology and cultural heritage; and financing its own archaeological excavation, documentation and conservation projects.⁵⁶
- In South Africa, the National Forum for the Law Enforcement of Heritage-related Matters was established in 2005 to serve as a platform for collaboration between heritage and law enforcement officials. The Forum includes representatives from the South African Police Service, the Department of Arts and Culture, INTERPOL, the South African Heritage Resources Agency, the South African Museums Association, ICOM South Africa, the customs authority and the University of South Africa. It has established short training courses for police officers on topics such as the identification of cultural objects and best practices for the storage of confiscated objects and developed a database of heritage experts across the country on whom the police can call to help identify and store stolen objects. The Forum has also created a stolen works of art poster that has been distributed to police stations and museums across the country. A few cultural objects have been recovered after having been identified from the poster, and a police officer who had received training from the Forum recognized a stolen bronze sculpture as having heritage value, resulting in a harsher punishment for the offender than if this value had not been recognized.⁵⁷
- The Argentine Committee for the Fight against Illicit Traffic in Cultural Goods was established in 2003 and includes the Ministry of Foreign Affairs, the Ministry of Education, the National Commission for UNESCO, the Federal Administration for Public Revenue, the Customs Bureau, INTERPOL and the National Library. Coordinated by the National Directorate of Heritage and Museums, the functions of the committee include establishing procedures to combat illicit traffic; raising public awareness; processing the International Council of Museums Red List of cultural objects; maintaining up-to-date identifying information on objects; implementing training programmes through regional workshops; and promoting the exchange of information within the various groups that make up the committee.⁵⁸

⁵⁴For example, in October 2006, the British Museum and the Museums, Libraries and Archives Council signed a memorandum of understanding with a major online auction company, whereby the British Museum would monitor the company's website for items constituting potential cultural property, question vendors and notify the Metropolitan Police Art and Antiques Unit, as appropriate.

⁵⁵Online directory of competent national authorities under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 and the Organized Crime Convention, available at www.unodc.org.

⁵⁶For more information, see the website of the Supreme Council of Antiquities (www.sca-egypt.org).

⁵⁷*Evaluation of UNESCO's Standard-setting Work of the Culture Sector*, p. 37, Box 1.

⁵⁸*Ibid.*

- In Italy, cultural property protection is coordinated through the close partnership between the Ministry of Cultural Heritage and Activities and a special *Carabinieri* cultural property division, the *Tutela del Patrimonio Culturale* (TPC).⁵⁹ The two organizations work closely together to investigate crimes against cultural property, monitor archaeological sites and players in the State's art market, develop educational material and coordinate and advise foreign Governments and police forces on cultural property protection. TPC also works closely with international organizations, including UNESCO, UNIDROIT, the International Council on Monuments and Sites, ICOM and INTERPOL, and domestically has partnerships with various universities, cultural foundations, research centres, religious bodies and local governments. It also maintains one of the world's largest databases on stolen artwork, with over a million objects on record. Over the course of 40 years in operation, TPC has succeeded in recovering more than 200,000 Italian works of art. A combination of the efforts of the Ministry, TPC and international collaboration resulted in a 14.5 per cent decrease in the theft of Italian artworks from 2008 to 2009.⁶⁰
- In Spain, law 16/1985 addresses the protection of the country's cultural heritage and deals with pieces found after 1986, when the law became active and created a competent entity for safeguarding the heritage of the State. Following the adoption of the law, an administrative body was created that can apply administrative sanctions for particular conduct of lesser gravitas, in accordance with the Spanish Criminal Code, mostly through the issuance of fines. In addition, criminal convictions for perpetrators of more serious offences to cultural heritage was made possible, and law enforcement agencies have developed specific competences, specialized units and databases on the topic of trafficking of cultural heritage.⁶¹

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.

Cultural institutions (public and private museums, archives and collections), as well as other private actors (art dealers, auction houses, professional traders, private collectors and so forth) should be encouraged to adopt codes of conduct and/or ethics, with specific provisions on acquisition policies.

At the international level, UNESCO developed the International Code of Ethics for Dealers in Cultural Property,⁶² which was adopted in 1999. In addition, the Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO Operational Guidelines) also include regulatory provisions for market and heritage professionals.⁶³

⁵⁹ For more information, see the website of the Tutela del Patrimonio Culturale, available at www.carabinieri.it/cittadino/tutela/patrimonio-culturale/introduzione.

⁶⁰ Monika R. DiFonzo, "Think you can steal our Caravaggio and get away with it? Think again: an analysis of the Italian cultural property model", *George Washington International Law Review*, vol. 44 (2012), pp. 539-571.

⁶¹ See A. Roma Valdés, *La aplicación de los delitos sobre el patrimonio cultural* (Granada, Spain, Editorial Comares, 2008); and I. Rodríguez Temiño, *Indiana Jones sin futuro. La lucha contra el expolio del patrimonio arqueológico* (Madrid, JAS Arqueología, 2012).

⁶² See UNESCO, *Records of the General Conference, Thirtieth Session, Paris, 26 October–17 November 1999*, vol. 1 and corrigendum: *Resolutions*, sect. IV, resolution 27.

⁶³ Available at www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/OPERATIONAL_GUIDELINES_EN_FINAL.pdf.

A first step towards ensuring cooperation among relevant actors could be the adoption, by participants in the trade in cultural property, of codes of conduct and/or ethics and other similar tools, such as corporate guidelines and self-regulations.⁶⁴

Such codes of conduct and/or ethics should set the minimum standard rules that dealers in cultural property should observe. Violations of such internal rules, especially when intentional, should be indicative of bad faith and, at the penal level, of malicious conduct. The conduct of someone who has violated such internal rules should be censured and sanctioned. It should not be easy for him/her to invoke ignorance of the norms in this field.⁶⁵

As mentioned in Guideline 4, in order to reach a standard, national codes of conduct and/or ethics, in conformity with the UNESCO International Codes of Ethics for Dealers in Cultural Property, could include rules aimed at:

- Preventing cultural institutions from acquiring cultural property that has been trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded, and so forth
- Strengthening the cooperation between cultural institutions and law-enforcement agencies
- Disseminating a culture of compliance among the functionaries and other personnel of museums and other cultural institutions
- Enabling smaller, younger, less well-organized institutions to take advantage of the experience of larger, older, better organized, better funded or more innovative ones
- Refraining from any further transaction with cultural property when there is reasonable cause to believe that has been illegally exported and facilitating its return to the exporting country
- Refraining from involvement in trading in cultural property in the absence of proper information regarding provenance
- Highlighting the necessity of due diligence standards when trading in cultural property

States could encourage cultural institutions (both public and private) to adopt codes of conduct which provide their personnel with clear and effective rules (including disciplinary sanctions), especially with regard to the fairness and transparency of acquisition policies, and the related duty to report suspect cases of trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, or illicitly traded cultural property (see Guideline 6).

States could also encourage cultural institutions to effectively enforce and disseminate existing codes of conduct, such as the UNESCO International Code of Ethics for Dealers in Cultural Property and the ICOM code of ethics for major cultural institutions.⁶⁶ States could consider directly entrusting the central national authority (or comparable institution or organization) proposed in Guideline 4 with the task of promoting and developing these codes of conduct or guidelines, possibly through a public-private partnership.

⁶⁴See E/2010/30-E/CN.15/2010/20 and the note by the Secretariat on the use of the United Nations Convention against Transnational Organized Crime for protection against trafficking in cultural property (CTOC/COP/2010/12).

⁶⁵The above-mentioned Operational Guidelines require that States should consider encouraging cultural institutions and the private sector to adopt codes of conduct: "The rules to be developed regarding acquisitions should be equally applied to collectors, dealers, curators, and others involved in the trade in cultural property so as not to disadvantage or exempt any single group. Also, such rules should be internationally standardized to ensure maximum effectiveness" (para. 50).

⁶⁶See also *Legal and Practical Measures*, part. II, sect. D.

Codes of conduct could include clear and effective rules for auctioneers and dealers in the art and antiquities market, imposing effective disciplinary sanctions when needed. They should promote the fairness and transparency of transactions (for example, through the keeping of a registry of all transactions of cultural objects),⁶⁷ as well as establish a duty to report suspected cases of trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, or more generally illicitly traded cultural property.

It is important to highlight the criminological research on sanctions and desistance and their particularities with regard to trafficking in cultural heritage. As demand is very high in certain purchasing countries, it is important to caution about the potential success of legal prohibition. This does not mean that legal prohibition should not be used: on the contrary, there is room for more effective regulation in market countries. The specific nature of this illicit market could allow for more deterrence-based policies involving the imposition of a criminal punishment, as the decision to purchase an object, especially an expensive one, is more likely to meet the conditions of “rational choice” presumed in deterrence; furthermore, the fact that individuals might suffer public humiliation as a consequence of an arrest and prosecution adds further weight to the consideration of the use of deterrence-based measures. However, the measures must be correctly enforced in order to be effective.

Another approach is to create a culture of compliance, a theoretical framework used mostly for white-collar crime and based on the idea that it is more important to persuade than to punish offenders. In the case of the illicit market in cultural heritage, the task should be to reduce demand by a combination of criminal justice strategies (based on the use of appropriately severe punishments) supported by wider educational projects designed to convince buyers in the market place that they should not purchase antiquities that lack clear and legitimate provenience.⁶⁸

Attention should also be paid to rules of conduct when dealing with customs or police officials, civil servants and public functionaries, in order to prevent possible bribery and corruption, which is often an integral part of illicit transactions in the art market. Art dealers and experts, including academics, should fully comply with their codes of conduct, especially when dealing with cultural objects coming from war-torn or other crisis areas. Accredited dealers and experts with experience in such areas or in objects at risk should also cooperate when identifying and inventorying items. Each object coming from war-torn zones that reaches the attention of scholars and dealers should be inventoried.

In cases of questionable provenance and attribution, cultural goods coming from areas at risk should be considered to be of illegal acquisition. As such, they should be seized and returned at the end of the hostilities. To counter the funding of terrorism, scholars, experts and knowledgeable dealers should identify cultural items, report suspicious offers, authenticate intercepted shipments and provide crucial in-court expert testimony.

States could promote the national and international dissemination of the highest standards in acquisition policies and of transparency in dealing with cultural property. States could also take all available measures in order to enhance the knowledge and diffusion of existing best practices among the personnel of museums and other cultural institutions, at both the national

⁶⁷ States adhering to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property Convention already have similar legislative provisions, in accordance with article 10 of the Convention.

⁶⁸ See John Braithwaite, *Restorative Justice and Responsive Regulation*, Studies in Crime and Public Policy Series (Oxford, Oxford University Press, 2002).

and international levels. Such codes of conduct would also be relevant in stimulating an exchange among museums and other cultural institutions, both directly and through the central national authority (or comparable institution or organization), and in strengthening rules of accountability, impartiality and fairness for functionaries and employees.

States could consider fostering the adoption of codes of conduct through a strategy based on incentives (for compliant operators) and disincentives (for non-compliant ones). Moreover, States could consider providing public funding to private museums, collections and other institutions that adopt the codes of conduct. States could also consider introducing other economic and even fiscal incentives on an ad hoc basis for institutions that are in compliance.⁶⁹

States whose laws or regulations impose professional requirements by way of licensing or accreditation could consider making it a condition for the granting of a licence or accreditation to a corporate entity that the entity adopt a code of conduct or corporate guidelines. The same condition could be imposed on an individual's access to professional registers, professional qualifications, accreditation or licences. States that don't possess a system of licences or professional qualifications in this area could consider adopting one. States could further consider a policy that allows public cultural institutions to trade only with dealers that operate under appropriate codes of conduct.

States whose laws provide for criminal liability for trafficking in cultural property and related offences, even when the offence is committed out of negligence, could take into account the violation of a code of conduct when assessing criminal negligence; this should also be considered when assessing criminal intent (see also Guideline 19). States whose laws provide for corporate liability for trafficking in cultural property and related offences could consider granting a mitigation or exclusion of sanctions when a code of conduct or equivalent set of corporate guidelines is adopted and effectively enforced (for further guidance on corporate liability, see Guidelines 23 and 24).

At the regional level, according to recommendations 16, 23 and 25 of the final report and recommendations to the Cultural Affairs Committee on improving the means of increasing the mobility of collections and related documents of the Open Method of Coordination Expert Working Group on the Mobility of Collections,⁷⁰ existing guidelines on due diligence (which include provenance researches to be undertaken before art loans are agreed), as well as the ICOM Code of Ethics for Museums, shall be followed by all museums in the European Union. States members of the European Union which do not yet have such guidelines shall incorporate or adopt provisions of the UNESCO Codes of Ethics for Dealers and the ICOM Codes of Ethics for Museums relevant to due diligence to be exercised by cultural heritage institutions, collectors, owners and dealers. Furthermore, common standards shall be provided concerning the necessary documentation before the acquisition of a cultural object, for example based on those provided by the Convention on Stolen or Illegally Exported Cultural Objects, in particular articles 4 (5) and 6 (5), and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

⁶⁹ An additional and related suggestion is for States to tax the market for antiquities in order to cover the costs of investigations and prosecutions related to trafficking in cultural property and, whenever possible, for the rehabilitation and protection of sites.

⁷⁰ Available at www.lending-for-europe.eu.

European Union Directive 2014/60, on the return of cultural objects unlawfully removed from the territory of a member State, adopted on 15 May 2014, recognizes due diligence principles as set forth in the Convention on Stolen or Illegally Exported Cultural Objects, and must be implemented by all States members of the European Union. In the spirit of this current regional development, the European Commission is to promote the existing Code of Ethics concerning acquisitions, lending and/or sales of cultural goods by professionals of cultural institutions, as well as collectors, owners, dealers and auction houses. In addition, museums are to place their collections policies on their websites.

At the thirty-eighth session of the General Conference of UNESCO, a recommendation concerning the protection and promotion of museums and collections, their diversity and their role in society was adopted. The recommendation included guidelines concerning the reinforcement of national inventories, the observance of provisions of existing legal instruments and professional and deontological standards of museum professionals and return or restitution of cultural property in accordance with applicable laws and policies. Museums could consider this recommendation while drafting or updating their policies.

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

Both public and private cultural institutions should report suspected cases of trafficking in cultural property (or other related offences) to enforcement agencies. In the case of white-collar offences, to which trafficking in cultural property and related offences can be largely equated, only a minority of discovered offences can be traced back to institutional actors, while the largest number of reports comes from private entities. There are three traditional white-collar crimes associated with the art market:

- Many instances of white-collar crime in the art world do not fit the standard definitions of corporate or related types of crime, as “corporations” are in general no more than an art or antiquities dealers with a small staff or no staff at all. Offences committed by such individuals would be similar to occupational crimes.
- In most cases it is unclear who, aside from the dealer, is involved in the crime and whether the dealer started his business for criminal purposes or is committing crimes in addition to operating a mainly legitimate trade.
- Depending on where the offence takes place, the specific jurisdictions involved and the applicable laws and regulations, it may not always be clear whether one should speak of a crime or of a corporate transgression.⁷¹

The art and antiquities market is particularly opaque, thus increasing the need for States to find ways to motivate cultural institutions, which in such a market are “insiders”, to report cases of trafficking in cultural property and related offences that they come across in the course of their activities, as stated in Guideline 4. States could consider taking all possible measures to increase the number of suspected cases of trafficking and related offences reported by museums and other cultural institutions. This could be facilitated by the adoption of codes of conduct and the extension of existing best practices (see Guideline 5), as well as other ad hoc interventions (see Guidelines 12 and 18).

⁷¹ See M. Balcells, “Art crime as white-collar crime” in *Cultural Property Crime*, Balcells and Kila, eds.

States could charge the personnel of both public and private cultural institutions with a legal obligation to report suspected cases, backed by a proportionate and effective sanctions in case of missed reporting. Alternatively, States could consider charging only the personnel of public cultural institutions with a legal obligation to report suspected cases, while leaving the personnel of private institutions to be dealt with according to internal regulations and codes of conduct, although such measures should include the withholding of public funds from the institution if a voluntarily missed report is discovered by law enforcement agencies.

Reports could be addressed directly to law enforcement agencies or to the central national authority outlined in Guideline 4 (or a comparable institution or organization) for a preliminary evaluation. States could also consider setting up, under the same central national authority, a “cultural heritage hotline” to cater for the quick and discreet receipt of reports.⁷² States could also consider adopting other legislative provisions in order to protect possible whistle-blowers inside cultural institutions against the risk of retaliation, harassment, dismissal and so forth. In this regard, it is important to reach an agreement with or even impose obligations on website providers to report suspected trafficking in cultural property cases to law enforcement authorities (see also Guidelines 3 and 8).

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 rules on the acquisition of cultural property.

An awareness of laws, regulations and duties relating to the protection of cultural property on the part of the personnel of cultural institutions is important in order to promote a culture of compliance among professional operators and may contribute to the prevention of trafficking in cultural property and related offences. States could consider promoting and supporting specialized training on regulations relating to cultural property for operators in public and private cultural institutions in cooperation with relevant international organizations. The training of conservators and the personnel of collections and museums is listed among relevant preventive measures to combat trafficking in cultural property and related offences as contained in relevant United Nations documents.⁷³

Specialized training programmes for the personnel of cultural institutions are required in order to effectively transmit the contents and spirit of the rules to individuals. New laws, regulations and codes of conduct and/or ethics should be widely circulated to the personnel of museums and other cultural institutions, who should be made aware of their contents, implications and significance. This should ensure, more generally, a wider and well-grounded culture of compliance among professional operators.

In order to promote and support such training programmes, States could consider directly financing training programmes for personnel of public cultural institutions. States could also consider promoting a public-private partnership for training, through the activities of the central national authority outlined in Guideline 4, and sponsoring international exchanges for training purposes, through the help and support of international entities such as the

⁷²For example, the Italian *Carabinieri* have recently launched a smartphone application, iTPC, that encourages the public to cooperate in investigating art-related crimes. Users have access to information on artworks which police are actively searching for, as well as a list of heritage police offices to facilitate the reporting of a crime or the submission of a claim relating to an artwork.

⁷³See E/CN.15/2010/4 and E/CN.15/2010/6. See also *Reports of Member States on Measures they have adopted to implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, twenty-eighth session (Paris, 1995) and thirty-second session (Paris, 2003) of the UNESCO General Conference.

International Council of Museums,⁷⁴ UNODC and UNESCO,⁷⁵ the International Centre for the Study of the Preservation and Restoration of Cultural Property and UNIDROIT.

.....

CASE STUDY: example of cooperation in cultural matters between Italy and Iraq

Italy and Iraq began cooperating in cultural matters in the context of the war in Iraq, with the goal of conserving and restoring Iraq's cultural and archaeological heritage. According to a report by the Ministry of Foreign Affairs of Italy, there was a firm conviction that supporting Iraq's cultural sector would contribute towards supporting its society and economy.

Public and private institutions in Italy, such as the Ministry of Foreign Affairs, the Ministry of Culture, the cultural heritage unit of the *Carabinieri*, private companies such as Telecom and university departments, among others, created a joint venture in order to execute safeguarding operations. Before starting the task, the *Carabinieri* created a list of missing cultural items and relayed it to INTERPOL. This action brought about the recovery of 300 objects, while 40 looters were brought to justice. In parallel, the cultural heritage protection unit provided training for its counterpart in Iraq, with the collaboration of UNESCO, in Amman.

With a view to improving the process of restoring cultural heritage, funds were provided for the creation of a high-technology laboratory at the National Museum in Baghdad. Experts provided training to museum staff, and important pieces were restored, properly catalogued and scanned.

The funds also allowed for the launch of a cartography project, which mapped all relevant archaeological sites in Iraq in order to assess their condition and monitor the excavations and conservation of the sites.⁷⁶

.....

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.

The constant and rapid development of e-commerce in cultural property has further exacerbated the opaqueness of the art and antiquities market, as the sale of cultural objects over the Internet provides a convenient mechanism for placing assets of dubious provenance on the international market. The monitoring of such a vast virtual marketplace by law enforcement agencies, without some form of cooperation by private operators,⁷⁷ is almost impossible. Therefore, with regard to Internet providers and web-based auctioneers, the first step towards a clear and effective prevention policy could be the adoption of codes of conduct. In addition, as indicated in Guideline 3, there is still room for improvement in addressing research gaps in this particular field.

States are encouraged to take measures appropriate in their domestic legal context to control trafficking in cultural objects over the Internet and to ensure their detention or seizure where there is a reasonable doubt concerning their licit provenance, as well as their restitution and return to their rightful owners (see Guidelines 25-28, 39, 40, 46 and 47 on seizures, restitution

⁷⁴ The International Council of Museums organizes workshops worldwide on the illicit trafficking in cultural goods for museum professionals, police and customs agents (see <http://icom.museum/activities/training>).

⁷⁵ See, for example, article 17 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

⁷⁶ For further examples, see the report "*Ministero degli Affari Esteri per la salvaguarda del patrimonio culturale nel mondo*" by the Ministry of Foreign Affairs and International Cooperation of Italy, available at www.esteri.it.

⁷⁷ See UNODC/CCPCJ/EG.1/2009/2.

and return). Moreover, States should endeavour to establish coordination and management mechanisms, as well as set in place adequate protocols, in order to carry out, when necessary, actions to prevent the commission of crimes in advance of auctions.

In the framework of international cooperation, States should promote the conclusion of agreements and concrete actions aimed at inhibiting and preventing the illegal trade in cultural and artistic goods before auctions, considering the very short time between the announcement and the holding of an auction (see also Guidelines 25-28, 39 and 40).

In relation to trafficking in cultural property and related offences committed through the use of the Internet, States could consider taking all appropriate measures to encourage Internet providers and web-based auctioneers to adopt codes of conduct. States could provide “model” codes of conduct and corporate guidelines or simply set the guidelines for them to draft their own codes of conduct.

The existing national and international codes of conduct for dealers in the art and antiquities market could be used as a basis for drafting such codes, which should be adapted to the peculiarities of e-commerce (see Guideline 5). They should include clear and effective rules, including disciplinary sanctions, when needed, especially with regard to the fairness and transparency of transactions (for example, by maintaining a registry of all online transactions of cultural objects), as well as related duties to report suspected cases of illicit activity in relation to cultural property.

Most national cultural administrations do not have sufficient resources to continually monitor offers on the Internet. States could therefore consider organizing a “watch” team of volunteers to monitor offers over the Internet and to inform relevant authorities when it appears that an object of national heritage not previously known or an object of threatened foreign heritage is being offered on a website. Such notifications should be examined by cultural administrations.

Examples of efforts to create good online practices

The British Museum and the Museums, Libraries and Archives Council have partnered with eBay.co.uk to ensure that antiquities found in the United Kingdom are sold legally on its site. In order to prevent the illegal sales of treasure, the Portable Antiquities Scheme, which is managed by the British Museum on behalf of the Museums, Libraries and Archives Council, has set up a team to monitor antiquities sold on eBay.co.uk and to ensure that sellers have the right to trade them. Where the listing is illegal, the Scheme will report it to the Art and Antiques Unit of the Metropolitan Police and eBay.co.uk, which has made a commitment to ending illegal listings.⁷⁸ Similar initiatives have taken place in cooperation with the Cultural Protection Offices of Austria, Germany and Switzerland.

Faced with the growing trafficking of cultural goods on the Internet and the difficulties encountered by national authorities in controlling the phenomenon, UNESCO, in close cooperation with INTERPOL and ICOM, had made available a document entitled “Basic actions concerning cultural objects being offered for sale over the Internet”⁷⁹

⁷⁸ See the eBay Antiquities Buying Guide, available at <http://pages.ebay.co.uk/buy/guides/antiquities>, and the eBay policy on artefacts, archives, antiques, cultural items and grave-related items, available at <http://pages.ebay.co.uk/help/policies/artefacts.html>.

⁷⁹ Available at <http://portal.unesco.org/culture/en/files/21559/11836509429MesuresTraficIlliciteEn.pdf>/MesuresTraficIlliciteEn.pdf.

The document asks States to:

“1. Strongly encourage Internet sales platforms to post the following disclaimer on all their cultural objects sales pages:

‘With regard to cultural objects proposed for sale, and before buying them, buyers are advised to: (i) Check and request a verification of the licit provenance of the object, including documents providing evidence of legal export (and possibly import) of the object likely to have been imported; (ii) Request evidence of the seller’s legal title. In case of doubt, check primarily with the national authorities of the country of origin and INTERPOL, and possibly with UNESCO or ICOM; [...]

“6. Establish legal measures to immediately seize cultural objects in case of a reasonable doubt concerning their licit provenance;

“7. Assure the return of seized objects of illicit provenance to their rightful owners.”

At the regional level, according to recommendation 37 of the final report and recommendations to the Cultural Affairs Committee on improving the means of increasing the mobility of collections and related documents of the Open Method of Coordination Expert Working Group on the Mobility of Collections,⁸⁰ States members of the European Union shall inform potential buyers about the risks of purchasing illegally acquired cultural goods via the Internet; in particular, they shall consider requesting websites to introduce or insert a “flag” or notification that contains the regulations on the protection of cultural property when a prospective buyer is trying to buy.⁸¹

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.

States should consider finding ways to monitor the export of significant cultural property from their territories that enable customs and border control authorities to verify whether exported objects are of illicit origin or, for example, subject to export limitations because of they are cultural property. Import certificates could also substantially contribute to the prevention and control of illicit trafficking.⁸²

States should consider putting in place and implementing a system requiring export certificates and, where possible, import certificates. States could choose a system of authorizations whereby an owner or holder who intends to export a cultural property obtains an export licence from the competent national authority, having provided all relevant documentation. States could also choose a system of tacit consent whereby an export licence is issued by

⁸⁰ Available at www.lending-for-europe.eu/eu-activities.

⁸¹ See E/CN.15/2010/5, paras. 13 (a) and 31.

⁸² See the UNESCO Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property, available at http://portal.unesco.org/en/ev.php-URL_ID=13083&URL_DO=DO_TOPIC&URL_SECTION=201.html, and the Recommendation concerning the International Exchange of Cultural Property, available at http://portal.unesco.org/en/ev.php-URL_ID=13132&URL_DO=DO_TOPIC&URL_SECTION=201.html.

the competent national authority for a period of time determined by law and subject to internal checks, on the basis of a previous communication of the owner or holder's intention to export the cultural property.

States should also consider taking into account the UNESCO Operational Guidelines, in particular paragraph 58, which states that "State Parties should prohibit the entering into their territory of cultural property, to which the Convention applies, that are not accompanied by such export certificate" and that the absence of the "export certificate should make illicit the import of that cultural property into another State Party, as the cultural property has not been exported legally from the country affected".⁸³

States could also consider taking into account official inventories produced through types of cultural objects categorized by region and epoch or any other suitable reference, lists of which should be made readily available to the customs authorities of other States parties and other relevant authorities and entities.⁸⁴ Inventories realized through types of cultural objects can be useful in case the national legislation prohibiting the import of illegally exported cultural objects of foreign States requires that such objects be classified in an accessible inventory by the country of exportation.⁸⁵

Import certificates are also considered by UNESCO Operational Guideline 71, which encourages States to introduce national legislation, where appropriate, to ensure that the cultural properties involved have been licitly imported, as documented by a legally issued export certificate, to inform the State of origin of the properties of any doubts in this regard, and to put in place the appropriate interim measures.⁸⁶

Consideration should be given to using the model of export certificates or similar existing certificates, as adopted by European Union countries;⁸⁷ in addition, States could consider using the UNESCO and World Customs Organization (WCO) model export certificate for cultural objects,⁸⁸ which includes all the necessary features of a cultural property, as well as information on conditions for export. The certificate should permit the easy and precise identification of the exported object (including photographs). States are encouraged to refer the model export certificate, which includes information on the owner, the duration of the export licence (when temporary), the issuing authority, the object's destination, its legal status and use, and possibly its value. Moreover, a copy of the export certificate should be presented to the customs export office, which should retain and register it, and another copy should accompany the cultural object and should be presented at importation into the country of destination to certify the legality of the exportation. This documentation should be at the disposal of customs officers in another country, especially when they are verifying the validity of export certificates. A copy of the full export certificate should also be sent to the foreign customs office whenever agreements are established as a form of exchange of information (see also the UNESCO Operational Guidelines, in particular paragraph 59).

⁸³ See also UNESCO Operational Guidelines, paras. 57, 64, and 89.

⁸⁴ See also UNESCO Operational Guidelines, paras. 20, 34, 35, 37, 63 and 108.

⁸⁵ For instance, sections 6 and 10 of the German Act implementing the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property require that cultural objects must be individually classified in an accessible inventory by the country of origin one year prior to removal.

⁸⁶ See *Legal and Practical Measures*, part. I, sect. A.

⁸⁷ According to recommendation 28 of the final report and recommendations to the Cultural Affairs Committee on improving the means of increasing the mobility of collections and related documents of the Open Method of Coordination Expert Working Group on the Mobility of Collections, States members of the European Union shall consider the introduction of an import and/or movement certificate of cultural goods, in order to improve the traceability of cultural goods.

⁸⁸ UNESCO-WCO Model Export Certificate for Cultural Objects available at <http://www.wcoomd.org/en/topics/enforcement-and-compliance/activities-and-programmes/trafficking-of-cultural-objects.aspx>

Pursuant to article 6 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, States parties undertake to introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized and prohibit the exportation of cultural property from their territory unless accompanied by an export certificate.

States should consider training customs officials in export controls and their specific issues. In particular, it is important to provide basic information on case analysis, types of offenders, modus operandi, routes, means of transport, methods of concealment used and links between these crimes and other criminal activities and networks.

States could consider providing customs and border authorities with appropriate technology to enable them to rapidly cross-check export certificate data with the national inventory of cultural object database and national and international databases on trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property (see also Guidelines 1 and 3).⁸⁹

States could consider making the absence of an export certificate accompanying an exportation of cultural property a suspicious transaction requiring further inquiry and investigation (see Guideline 34 for more on national competent authorities). States could consider requiring the presence of a valid export certificate, issued by a competent authority of the State of provenance, in order to allow the importation of a cultural object. This could be done on the basis of bilateral or multilateral agreements or arrangements. A uniform international standard for import certificates could be adopted in order to facilitate the work of police and customs officials. Import certificates are not yet the object of international provisions or recommendations (even though the use of such tools is taken into account, for example, in the UNESCO Handbook),⁹⁰ while export certificates are already provided for in many international conventions and other documents.

Certificates of export from the country of origin and/or provenance and certificates of import into the State of destination should be established as standard documentation by curators, collectors and dealers. Authorities should consider these certificates as evidence of the legality of the circulation of the good. This documentation should be also retained for an adequate period after the acquisition of the cultural good.

One suggestion for enhancing international cooperation with regard to import and export control procedures is that the relevant authorities publish their export control lists for cultural goods and make them available to other States (see also Guidelines 1, 3, 39 and 41).

Establishing risk analysis with customs to prevent the illicit import and export of cultural property, as well as exchange information and best practices among each other⁹¹ is another measure that should be considered. The systematic collection of data on exported and imported cultural goods, their country of origin/provenance, transit and market, their characteristics and the dealers involved can provide valuable information on the destination of cultural goods and market trends.

⁸⁹For instance, the adoption of technological measures could improve customs controls, including X-ray scanners deployed at transit and market countries borders to examine containers, lorries and other vehicles.

⁹⁰See *Legal and Practical Measures*, part I, sect. A.

⁹¹See Operational Guidelines, para. 79.

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

As mentioned under Guideline 3 (*d*) above, the same channels are used to trade cultural properties both legally and illegally. This overlap is greatly facilitated by online auctions and sales, as the Internet has no boundaries and it is easier for sellers and buyers to conceal their identity and to avoid national requirements for certification, licensing and so forth.

Cultural objects can be kept hidden indefinitely before being reintroduced into the market in order to allow time for law enforcement agency investigations to cease and/or to allow the relevant statute of limitations to apply.

A study of contested legislation on statutes of limitation and art theft arrived at two conclusions:

- Often art thefts cannot be solved within the common time frame established, which is often brief.
- Stolen art databases have come to provide an important step in the ability of (*a*) victims of theft to demonstrate that they were not “sleeping” on their loss, and (*b*) potential purchasers to consult such registers as a demonstration of their “due diligence” in future cases where questions might be raised regarding their pre-purchase care in terms of assuring that a legitimate title to the work would result with the purchase.

The study recommended a criminal policy under which “legal alterations would be in the direction of adding into the limitation periods a provision that the ‘time clock’ would only begin to run when the original theft victims (or their heirs) might reasonably be in possession of the knowledge of the location of the works in question.”⁹²

At the same time, illegally obtained cultural property can be put on the market with false documentation (fake export or import permits or fake provenance) or dismembered and sold separately in pieces to avoid detection. The latter is a relatively recent trend: looters break the findings into pieces and release them onto the market in a controlled manner over time to increase their sale value.⁹³ Objects can also be easily transferred and placed on markets where national laws are more accommodating.

Given the scale, scope and complexity of the illicit market in cultural property, the implementation of a State monitoring system would go a long way towards combating this widespread crime. States could implement a monitoring programme with a series of specific provisions aimed at the cultural property market. One provision could be the creation of specialized investigative units (possibly including police and customs officers, as well as experts in arts and antiques; see Guidelines 29 and 30) devoted to combating trafficking in cultural property and related offences, possibly within (or at least in close cooperation with) the central national authority charged with the protection of national cultural heritage (where enacted; see Guideline 4). In addition, it is suggested that States introduce adequate technologies to facilitate cross-checking between data in auction and gallery catalogues and on websites dealing in trade in cultural objects and databases of inventoried cultural properties and of trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly

⁹²Kenneth Polk and Duncan Chappell, “Art theft and time limits for recovery: do the facts of the crime fit the limits in the law?” in *Cultural Property Crime*, Kila and Balcells, eds.

⁹³See Fabio Isman, *I predatori dell’arte perduta: Il saccheggio dell’archeologia in Italia* (Milan, Skira, 2009).

traded or missing objects (see Guidelines 1, 3 and 4). Moreover, it is recommended that States implement public-private partnerships and joint monitoring programmes in order to better exploit the expertise of, and direct access to, the market of private operators, such as auction houses, professional dealers, Internet providers and so forth (see Guideline 4).

States should also increase the exchange of information with other States and, more generally, international cooperation in investigations (see Guidelines 29-45). The assistance of ICOM, the International Foundation for Art Research and other international institutions will be useful in this process so as to strengthen Internet monitoring (for more on the role of the Internet see Guidelines 3 (d) and 8).

Some international organizations⁹⁴ suggest the creation and implementation of market monitoring programmes as an effective strategy. UNESCO, in close cooperation with INTERPOL and the International Council of Museums, has made available to Member States some basic actions to counter the increasing illicit sale of cultural objects through the Internet.⁹⁵ The document asks States to:

- “[...] 2. Request Internet platforms to disclose relevant information to law enforcement agencies and to cooperate with them on investigations of suspicious sales offers of cultural objects;
- “3. Establish a central authority (within national police forces or other), which is also responsible for the protection of cultural properties, in charge of permanently checking and monitoring sales of cultural objects via the Internet; [...];
- “5. Maintain statistics and register information on the checks conducted concerning the sale of cultural objects via the Internet, the vendors in question and the results obtained”.

It also invites States to cooperate with national and foreign police forces and INTERPOL as well as the responsible authorities of other States concerned, in order to:

- “(a) Ensure that any theft and/or any illegal appropriation of cultural objects be reported to INTERPOL National Central Bureau, in order to enable relevant information to be posted on the INTERPOL stolen works of art database;
- (b) Make information available about theft and/or any illegal appropriation of cultural objects, as well as about any subsequent sale of such cultural objects, from or to national territories, using the Internet;
- (c) Facilitate rapid identification of cultural objects by:
 - (i) Ensuring updated inventories with photographs of cultural objects, or at least their description, for example through the Object ID standard;
 - (ii) Maintaining a list of recommended experts;
- (d) Use all the tools at their disposal to conduct checks of suspicious cultural property,

⁹⁴In the Conclusions of the seventh International Symposium on the Theft of and Illicit Traffic in Works of Art, Cultural Property and Antiques, held in Lyon from 17 to 19 June 2008, as well as in the Conclusions of the seventh meeting of the INTERPOL Expert Group on Stolen Cultural Property, held in Lyon on 23 and 24 February 2010, it was strongly recommended that States Members of the United Nations conclude agreements with auction platforms on the Internet in order to reduce illegal sales and to monitor this type of trade as effectively as possible.

⁹⁵<http://portal.unesco.org/culture/fr/files/21559/11836509429MesuresTraficIlliciteEn.pdf/MesuresTraficIlliciteEn.pdf>.

in particular the INTERPOL stolen works of art database and the corresponding INTERPOL DVD;

(e) Track and prosecute criminal activities related to the sale of cultural objects on the Internet and inform the INTERPOL General Secretariat of major investigations involving several countries [...].”

Regionally, according to recommendations 34, 35 and 36 of the final report and recommendations to the Cultural Affairs Committee on improving the means of increasing the mobility of collections and related documents of the Open Method of Coordination Expert Working Group on the Mobility, States members of the European Union shall formulate a standardized procedure for specific actions to be undertaken in relation to illicit trafficking of cultural goods via the Internet and organize training for personnel for this purpose. In particular, States shall make contact with websites to inform them of the need to practice due diligence and require Internet sellers, auction houses and private collectors to submit a list of past and present auctions of cultural objects and retain such lists for an adequate period of time before and after an auction. More generally, States members of the European Union shall try to increase efficiency of tracing or searching for missing objects with the development of advanced software for the purpose, to implement more systematic checks at customs and require copies of the export/or movement licences or certificates.

The Commission on Crime Prevention and Criminal Justice has underlined how the monitoring of auction markets and the dissemination of information through publicly accessible websites shall be further developed and become more widespread among States.⁹⁶

The report on the meeting of the expert group on protection against trafficking in cultural property listed the implementation of systematic checks of cultural property, as well as the strengthening of cooperation in monitoring the Internet (possibly with the assistance of ICOM), among the preventive measures recommended.⁹⁷

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 excavation and trafficking.

A significant proportion of the total value of the illicit trade in cultural properties results from the looting of archaeological sites. This implies the destruction of sites, the loss of information and material and the reduction of irreplaceable and finite resources. An archaeological good transcends its economic value. Its looting is particularly odious, as the full knowledge of the item is forever lost. People involved in the restitution process of archaeological items that have been illegally excavated have full knowledge of the fact that restitution is fundamental in restraining the market. Even if an item is returned, it is still damaged. For this reason, it is important to remember that stopping the looting and the destruction of archaeological sites in the first place is of the utmost importance.

One very difficult task is that of preventing the theft and introduction on the illicit market of cultural objects not yet inventoried or even discovered. This may often happen as a consequence of lootings or illicit excavations of archaeological sites, both when they have already been discovered but not yet fully studied or effectively monitored, and when the authorities

⁹⁶See E/2010/30-E/CN.15/2010/20.

⁹⁷UNODC/CCPCJ/EG.1/2009/2.

have never had any notice of them. Such issues relating to the monitoring of known and unknown archaeological sites are further exacerbated during exceptional events such as political change, war, natural disasters and so forth. It is also difficult to arrive at reliable estimates of the size of the illicit market.

According to article 5 (d) of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, States parties undertake to supervise archaeological excavations, ensure the preservation in situ of certain cultural property and protect designated areas reserved for future archaeological research. The rationale behind article 5 (d) is to mitigate illicit excavations and prevent smugglers from obtaining cultural property by looting archaeological sites.

In order to ensure the protection of archaeological sites, States could consider promoting and supporting programmes intended to research and map unknown archaeological sites through the use of adequate technologies, such as satellites and computer analysis of aerial images, metal detectors and so forth. For instance, the authors of a particular piece of research that used Google Earth imagery to investigate the looting of a site in Jordan concluded that the tool was well suited to the task.⁹⁸

States could also monitor (for example, by means of cameras and electronic surveillance, satellites and so forth) newly discovered virgin archaeological sites in order to detect attempts at illicit excavation or looting. Moreover, States could establish effective surveillance of in-progress excavations, as well as of archaeological parks and monuments open to the public, to ensure that competent institutions have at their disposal adequate means and personnel for detecting illicit excavation or looting.

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Case study: best practices to safeguard archaeological heritage in conflict zones

A first important measure in safeguarding archaeological heritage sites is the expansion and implementation of the role of military archaeologists/cultural heritage experts in preventing the inadvertent damage to or destruction of cultural heritage, as well as limiting the illicit traffic in antiquities. The role of these professionals in the military during the most recent conflicts in Afghanistan, Egypt, Iraq and Libya has proved to be successful for developing a no-strike list of risk sites.

Institutions such as the Legacy Resource Management Program⁹⁹ in the United States of America create instruments that help inexperienced soldiers to recognize cultural heritage that needs immediate protection. Scholars have also advocated for the use of the *Comando Carabinieri per la Tutela Patrimonio* (the Italian art squad), which has been sent into numerous conflict zones in order to train local leaders and military personnel in the protection of cultural sites and institutions, and which could serve as a model for other countries seeking to develop similar cultural heritage preservation efforts.¹⁰⁰

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⁹⁸See Daniel A. Contreras and Neil Brodie, “Shining light on looting: using Google Earth to quantify damage and raise public awareness”, *Society for American Archaeology*, vol. 10, No. 3 (2010), and “Quantifying destruction: an evaluation of the utility of public-available satellite imagery for investigating looting of archaeological sites in Jordan”, *Journal of Field Archaeology*, vol. 35, No. 1 (2010), pp. 101-114. For more information on the topic, see Sarah H. Parcak, *Satellite Remote Sensing for Archaeology* (London, Routledge, 2009), and David Kennedy and Robert Bewley, “Aerial archaeology in Jordan”, *Antiquity*, vol. 83, No. 319 (2009), pp. 69-81.

⁹⁹A programme under the Department of Defense of the United States that assists military personnel in protecting cultural heritage (among others) and enhancing resources while supporting military readiness.

¹⁰⁰Laurie Rush, “Accomplishments through partnership, the US DoD 2008-2010”, presentation at the international conference “Archaeology in conflict”, held in Vienna from 6 to 10 April 2010 (www.archaeologyinconflict.org).

To achieve these aims, States could encourage the direct involvement of local communities in the surveillance and preservation of archaeological sites and monuments, raising public awareness of their relevance and promoting neighbourhood watch programmes in respect of local cultural heritage (see also Guideline 12). Teaching the management of cultural sites as a community asset and emphasizing the rebuilding of tourist attractions might be critical to attracting local and international investment and attention. Such efforts can be spearheaded by partnerships between academic institutions and government organizations.¹⁰¹

States could consider promoting public-private partnerships in research and preservation programmes, involving public and private research centres, universities, museums and other cultural institutions, and encouraging private sponsorships.

States could cooperate with each other and with relevant international institutions in order to develop international programmes of research and monitoring of archaeological sites, especially for unknown sites, through the most modern and effective technologies, such as satellites and drones, as well as register the artefacts in State safeguarding lists.

In its 2009 report, the UNODC expert group on protection against trafficking in cultural property recommended that States extend, as much as possible and whenever appropriate, the registration, guarding, monitoring and policing of archaeological sites, including those in which illegal excavations could be conducted, preferably with the participation of local communities and the use of new technologies.¹⁰² Some States already possess monitoring programmes for archaeological sites, both on land and underwater.¹⁰³ Finally, in order to tackle these phenomena, the development of programmes of research, mapping and surveillance of archaeological sites is taken into account in many existing international conventions and other relevant documents.¹⁰⁴

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.

The protection of cultural property can be better achieved when local communities and the general public are involved in caring for their cultural heritage. A strong focus on public and media campaigns encourages increased public interest in the preservation of cultural heritage. The rationale of this Guideline follows the culture of compliance, which is addressed in Guideline 5. In addition, it can be linked to the perspective of empowering locals through information and appreciation of their cultural heritage (see Guideline 11).

¹⁰¹ Ibid.

¹⁰² See UNODC/CCPCJ/EG.1/2009/2.

¹⁰³ See E/CN.15/2010/4, E/CN.15/2010/6 and *Reports of Member States on Measures they have adopted to implement the Convention*.

¹⁰⁴ In the conclusions of the seventh International Symposium on the Theft of and Illicit Traffic in Works of Art, Cultural Property and Antiques, held in Lyon, France, from 17 to 19 June 2008, it was strongly recommended that member States monitor land and underwater archaeological sites; the Commission on Crime Prevention and Criminal Justice has underlined how the use of modern technology for the monitoring and protection of archaeological sites, such as metal detectors and space technology, shall be considered by member States (see E/2010/30-E/CN.15/2010/20 and CTOC/COP/2010/12); and policing and protecting archaeological sites is enlisted among the practical measures States shall implement in the *UNESCO Handbook*, part. II, section A.

Where public awareness is high, it will be easier to monitor and preserve archaeological sites, monuments and cultural institutions, as local communities may activate formal or informal neighbourhood watches to guard local cultural heritage.

At the same time, a more widespread basic knowledge of the arts and of national cultural heritage, its historical, artistic and economic value and its significance for the national and international community could contribute to a decrease in the number of offences against cultural property which are committed out of ignorant disregard, such as acts of vandalism, petty theft or looting of unregistered archaeological sites. The same basic knowledge could increase the number of reports by citizens of archaeological and artistic chance discoveries, as well as of suspected cases of trafficking in cultural property and related offences.

States could consider promoting and supporting a comprehensive programme to raise public awareness and support a general culture of care for cultural heritage. This could be achieved through such measures as sensitization programmes for children and juveniles at school, including through the study of arts in school; the facilitation of public access to relevant cultural institutions, monuments and events; the development of programmes aimed at enhancing citizens' knowledge of the cultural heritage of their neighbourhoods; and support for local museums and cultural institutions, including through promoting the development of networks of smaller institutions and launching media campaigns.

The central national authority and/or other authorities for the protection of cultural heritage could play a leading role in such programmes (see Guideline 4). States could also cultivate partnerships among public authorities, research institutions, cultural institutions (both public and private) and professional operators in the art and antiques market, to support and implement the sensitization programmes.

States could also promote international cultural exchange programmes for youths and, more generally, international cooperation in sensitization campaigns, including by availing themselves of the cooperation and expertise of international institutions such as UNESCO and ICOM.

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Case study: financing of terrorism via the trafficking of cultural property and international actions adopted for its prevention

The Director General of UNESCO explained in a forum in New York City on 25 September 2015 how the threat posed by Islamic State in Iraq and the Levant (ISIL) and other terrorist groups to cultural heritage in countries such as Iraq and the Syrian Arab Republic is a new phenomenon that is different from the damage inflicted to cultural property during armed conflicts. The words of the Foreign Minister of Egypt, Sameh Shoukry, regarding this phenomenon were especially relevant. He said that "terrorists use the destruction of cultural heritage as a tactic of war to terrify populations, to finance terrorist activities and to spread hatred... the responsibility to confront these terrorist criminal acts lies with the international community, including Governments, international and regional organizations, museums, the art market, archaeologists, media and all others who are interested in preserving this heritage for humanity". Acts of terror involving cultural heritage include, recently, the attacks by ISIL on the Assyrian cities of Nimrud and Khorsabad, the Parthian city of Hatra, the Mosul Museum and many Shi'a and Sunni shrines in Iraq and the destruction of several temples and important sites in Palmyra and other locations in the Syrian Arab Republic.

Such terrorist activities involve not only the destruction of cultural heritage, but also trafficking with the intention of funding further terrorist activities. Thus the debate on how to stop the looting and worldwide trafficking in illicit antiquities, the funding of terrorist activities and the annihilation of cultural heritage is of paramount importance and has been translated into several actions on the part

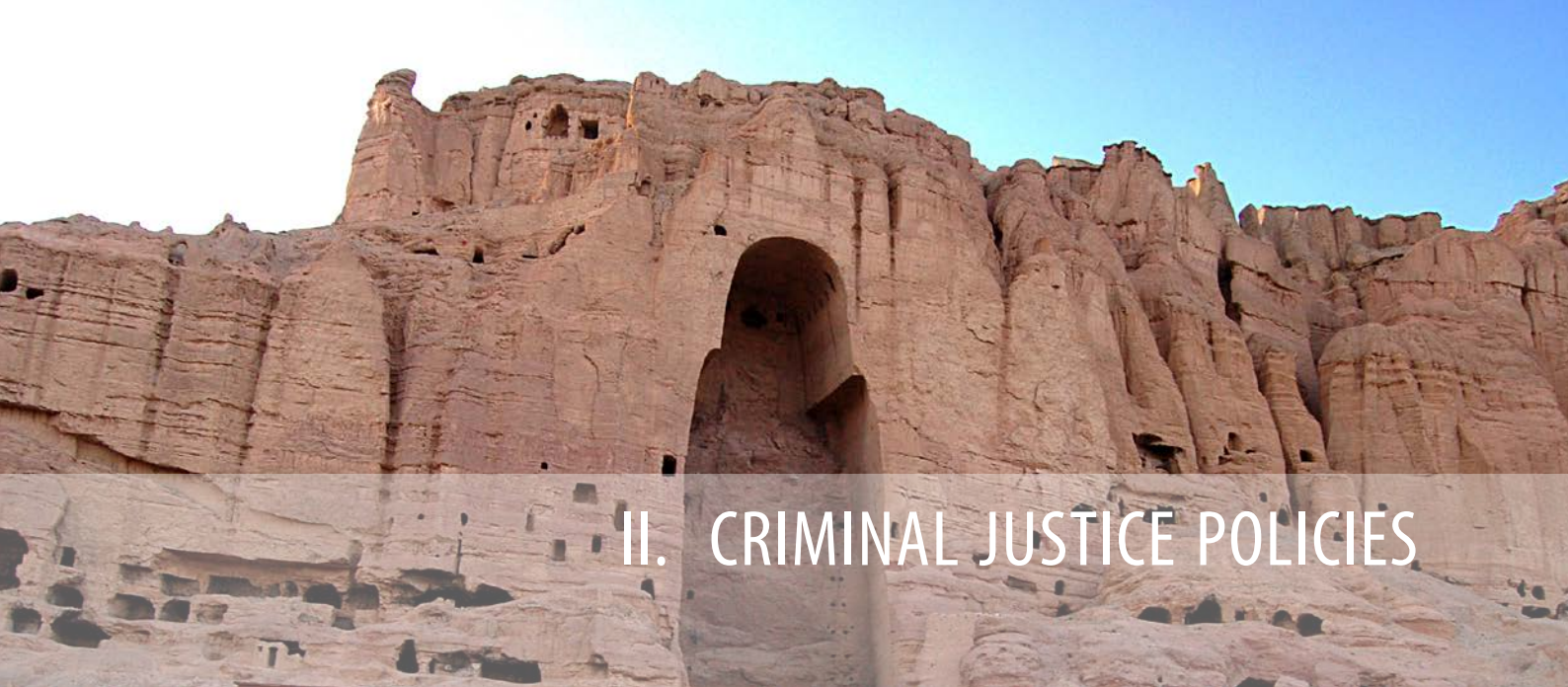
of international organizations, Governments and non-governmental organizations. A list of recent actions includes the following:

- Security Council resolution 2199 (2015), adopted on 12 February 2015, with the aim of disrupting the illicit funding of Al-Nusra Front and ISIL through oil exports, traffic in cultural heritage, ransom payments and external donations, condemning the destruction of religious sites and objects in Iraq and the Syrian Arab Republic and noting how those two terrorist groups generate income from engaging, either directly or indirectly, in the looting and smuggling of cultural heritage items. The resolution imposes a legal obligation on Member States to take steps to prevent the trade in Syrian cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance illegally removed from the Syrian Arab Republic since 15 March 2011. This is a legal obligation, which also applies to Iraq through Security Council resolution 1483 (2003), in which the Council imposed a similar ban. In addition, UNESCO and INTERPOL are called upon to assist in the prevention of the trade in Iraqi and Syrian cultural property.
- On 3 December 2014, UNESCO hosted an international conference on the theme “Heritage and cultural diversity at risk in Iraq and Syria” with the goal of raising awareness of the scale of devastation of cultural heritage in the region today and highlighting that the destruction of cultural heritage and the persecution of minorities are not merely a cultural emergency, but a political and security imperative for which adequate responses at the political and humanitarian levels are needed. Five policy proposals were enacted, consisting of an international ban on the trade in cultural objects from the Syrian Arab Republic; the creation of protected cultural zones around major heritage sites; stronger investment in access to quality education as the key to preventing further radicalization as well as to promoting respect for cultural diversity; wider ratification and stronger implementation of the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and the protocols additional thereto, as well as putting an end to impunity for deliberate attacks against cultural heritage (recognized as a war crime under the Rome Statute of the International Criminal Court); and an in-depth analysis of cultural cleansing as a process, including the relevance of its connection to the protection of human rights and the prevention of genocide.¹⁰⁵
- UNESCO has also created the Unite4Heritage campaign, launched in Baghdad on 28 March 2015, to build support for the protection of heritage in areas where it is threatened by extremists.¹⁰⁶
- On 14 May 2015, 10 Middle East and North African nations issued, jointly with the Director General of UNESCO, the Head of the Arab League, United Nations agencies, ambassadors and experts in counterterrorism, terrorist financing, foreign affairs, heritage law and archaeology, the Cairo Declaration¹⁰⁷ in a joint effort to stop terrorist funding and the destruction of cultural heritage, adopting the following steps: establishing a task force that will coordinate regional and international efforts against cultural racketeering; creating an international Advisory Council that will provide support to the Task Force; initiating negotiations for a regional cultural Memorandum of Understanding with demand countries; launching domestic and international campaigns against looting, trafficking and the black market trade; and establishing an independent centre to combat the laundering of antiquities.
- At the seventieth session of the General Assembly, the Antiquities Coalition, a non-profit organization, joined with UNESCO, INTERPOL, UNODC, Italy and Jordan in order to protect cultural heritage from terrorists and traffickers, aiming to fully implement United Nations resolutions and decisions to cut off extremist funding from cultural racketeering through the implementation of the following three aspects: preventing the destruction and illicit trafficking of cultural property; interdicting the transit and transfer of cultural property; and cutting off financing of organized crime and terrorism.

¹⁰⁵ See the report on the international conference “Heritage and cultural diversity at risk in Iraq and Syria”, held in Paris, at UNESCO headquarter, on 3 December 2014, available at www.unesco.org.

¹⁰⁶ See www.unite4heritage.org.

¹⁰⁷ www.mei.edu/sites/default/files/publications/CairoDeclaration.pdf.



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.

States should consider adopting, implementing and, when necessary, strengthening domestic criminal law responses to combat trafficking in cultural property and related offences. If international efforts are to be effective, a coordinated approach to counter this form of illicit traffic is needed. To that end, States should consider applying existing international legal instruments, which include provisions for the criminalization of trafficking in cultural property and other related offences. In doing so, they should also consider, in the review of their legislation, including the requirements for the full application of the United Nations Convention against Transnational Organized Crime (including the requirements dealt with under Guideline 21).

The adoption, implementation and strengthening of domestic criminal law responses to combat trafficking in cultural property and related offences should be respectful of the principle of legality, a paramount principle within criminal law. In order to safeguard this principle, States should consider adopting the following parameters:

- The adoption, implementation and strengthening of domestic criminal law responses should adhere to the general law-making processes of a given State.
- The adoption, implementation and strengthening of domestic criminal law responses should apply the principle of *lex stricta*, and as such, the legal text must be clear and concise.
- The adoption, implementation and strengthening of domestic criminal law responses should apply the principle of *lex previa* and be non-retroactive, and as such, the enactment of a new law criminalizing a new conduct cannot affect previous behaviours.
- The adoption, implementation and strengthening of domestic criminal law responses should respect the principle of *ne bis in idem*, and as such, no legal action can be instituted twice for the same criminal case.

- The adoption, implementation and strengthening of domestic criminal law responses should forbid analogies, and as such, the application of the law only can work for the cases it was created and not others, not exceeding the limits of the law.

The application of international legal instruments containing criminal law provisions, to which Guideline 33 encourages States to become parties, can bring several advantages. First, the introduction of criminal offences, with proportionate, dissuasive and effective sanctions, can enhance the prevention of trafficking in cultural property (see Guidelines 20-22). Second, it could contribute to public awareness of the relevant value of cultural heritage and of the harm caused by offences against it (see Guideline 12). Third, the application of existing international conventions to this effect could foster the harmonization of criminal law, which would facilitate investigative and judicial cooperation among States when dealing with trafficking in cultural property and related offences (on investigative and judicial cooperation, see Guidelines 33-35 and 41-45).

States parties to the instruments below should apply their relevant provisions, and States non-parties, in addition to considering becoming parties, could consider the provisions indicated in annex I to this document when considering adopting legislation criminalizing 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.¹⁰⁸

The model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property was adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of the Offenders, held in Havana in from 27 August to 7 September 1990. It considered, among other factors, the need for Member States to increase their activity at the international level, in order to combat organized crime and enter into bilateral assistance treaties, bearing mind that the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by UNESCO, established in its declarative section the duty of every State to protect the heritage represented by the cultural property located on its territory against the dangers of robbery, clandestine excavation and illicit export, as well as a commitment to combat these practices by every available means, particularly with respect to stopping them while in progress, eliminating their causes and providing the assistance required to secure the return of the property in question.

The resolution by which the Congress adopted the model treaty contained the recommendation that Member States consider the model treaty as a framework that may be of assistance to interested States in negotiating and drawing up bilateral agreements designed to improve cooperation in the area of crime prevention and criminal justice, and invited those Member States that had not yet established treaty relations with other States for the prevention of crimes that infringed on the cultural heritage of peoples, or that wished to modify these relations if they already existed, to bear in mind, when so doing, the draft model treaty.

¹⁰⁸ *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.

Some provisions of the model treaty are based or elaborate on provisions of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. For example, under its articles 2 (1) (e) and 2 (1) (g), contracting States would undertake to ensure that the purchaser of stolen movable cultural property not be considered to be a good faith purchaser, and “take the measures necessary to ensure that a purchaser of imported movable cultural property which is not accompanied by an export certificate issued by the other State Party and who did not acquire the movable cultural property prior to the entry into force of this treaty shall not be considered to be a person who has acquired the movable cultural property in good faith”. Article 3 endeavours to create mutual obligations of imposing sanctions on persons or institutions responsible for the illicit import or export of movable cultural property, persons or institutions that knowingly acquire or deal in stolen or illicitly imported movable cultural property and persons or institutions that enter into conspiracies to obtain, export or import illicitly movable cultural property.

Considering that bilateral agreements should not deviate from national laws and regulations, States that consider making use of the model treaty should also take its provisions into account in reviewing and strengthening national legislation and policies. For that purpose, the present tool also refers to some provisions of the model treaty within other related Guidelines.

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.

States should consider adopting a clear and precise definition of cultural property in order to satisfy the requirements of the principle of legality in criminal law, without which trafficking in cultural property and related offences could remain vague concepts. A definition of the object of criminal conduct is an essential part of national criminal legislation in this field.

Considering that protection by means of criminal law may be subsidiary to protection by other legal areas, it is recommendable, though not essential, that only one definition of (protected) cultural property be used consistently across all domestic laws and regulations, so that national counterparts responsible for protecting cultural property have a common understanding of the object and scope of protection.

Defining the concept of “cultural property” for the purposes of criminal law is relevant not only to enabling domestic investigations and prosecutions, but also to supporting transnational investigative and judicial cooperation in combating criminal offences against cultural property, including trafficking. In this sense, it may be useful to seek, to the extent possible, to follow a harmonized definition of cultural property at the international level, such as that established in the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, with the goal of facilitating the application of criminal law across multiple jurisdictions. As an essential element of the definition of criminal offences, great variations in defining “cultural property” could potentially lead to refusals of requests for extradition or, more generally, international cooperation in criminal matters, because of a lack of dual criminality. A common, or shared, definition of “cultural property” could also favour inter-State cooperation on a larger list of offences related to cultural property, as the characteristics of the protected object would be the same.

“Movable” and “immovable” are qualifications traditionally used to describe cultural property, and have been associated with different levels of protection. Immovable cultural property cannot be moved without partial or complete destruction or modification and, as such, is not subject to export or import. This may explain why those terms do not appear, for example, in the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Immovable property (or parts thereof) must be broken or disassembled in order to be trafficked, becoming, thus, movable property. States should consider ensuring that the definition of movable cultural property also covers parts that have been removed or dismembered from artistic, historical or religious monuments, archaeological sites and other immovable cultural property.

States should consider taking into consideration the definitions already existing at the international level, in particular those contained in the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Some definitions of “movable cultural property” are provided in several international instruments (see annex I).

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

- (a) Trafficking in cultural property;
- (b) Illicit export and illicit import of cultural property;
- (c) Theft of cultural property (or consider 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.

States should consider introducing dedicated criminal offences, harmonized to the extent possible with the national laws of different States, to prevent and sanction trafficking, illicit export and import, theft and looting of cultural property, as well as related conspiracy or participation in an organized criminal group and laundering of trafficked cultural property.¹⁰⁹

The reference to “serious offences” may be understood as a reference to the sanctions that would be associated with them. As per Guideline 20, States should also consider providing for proportionate, effective and dissuasive sanctions; and Guideline 16 appears to identify the core types of conduct that States should consider establishing as criminal offences. “Serious offences” could also be considered a reference to the term “serious crime” contained in the United Nations Convention against Transnational Organized Crime (see also Guideline 21). For the application of that Convention to offences other than those stipulated in the Convention and its Protocols, as recommended in Guideline 13, criminal offences should be punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.

¹⁰⁹In order to facilitate access to other States’ national laws and judicial decisions, on criminal justice aspects of trafficking in cultural property and related offences, UNODC has a dedicated thematic section in its Sharing Electronic Resources and Laws against Organized Crime (SHERLOC) knowledge management portal (www.sherloc.unodc.org). With the purpose of facilitating access to other States’ national laws and regulations on cultural heritage, including illicit traffic, UNESCO has made available its database of national cultural heritage laws (www.unesco.org/culture/natlaws). In paragraph 10 of General Assembly resolution 69/196, Member States are invited to make more use of the UNODC SHERLOC database.

The terms “inter alia” and “such as” express the non-exhaustive character of this Guideline. States may well decide that other conduct related to trafficking in cultural property should be established as criminal offences, and possibly conform to similar legal regime as that provided for the offences listed in Guideline 16.

It is noteworthy that General Assembly resolution 66/180 refers to theft, looting, damage, removal, pillage and destruction of cultural property as offences related to trafficking in cultural property; and General Assembly resolution 68/186 refers to stealing and looting at archaeological and other cultural sites as included in the concept of trafficking in cultural property. Such offences can be used to effectively combat illicit dealings in cultural property, by traditional organized criminal groups and others, including professional (individual or corporate) dealers in art and antiques, in cases in which licit and illicit transactions may be intentionally mingled.

At the same time, the criminalization measures mentioned in this guideline may strengthen public awareness of the relevant value of cultural heritage and of the harm caused by crimes against it, and facilitate investigative and judicial cooperation among States, including with a view to more effectively prosecuting and dismantling criminal networks involved in this illicit activity. In particular, these measures could assist in reducing the incidents of refusal of requests for extradition or, more generally, international cooperation, due to lack of dual criminality and discourage criminals from utilizing the territory of States with weaker legal frameworks.

Trafficking in cultural property

The introduction of the criminal offence of trafficking in cultural property may enhance the prevention of conduct harmful to cultural property, such as stealing, pillaging and the illicit export of cultural property, as well as illicit excavation and looting of archaeological sites, which are offences associated with the conduct of trafficking, as they are often intended to illicitly place cultural objects on the market.

The crime of trafficking—even if this terminology is usual in international legislation—seems to refer to a phenomenon rather than to a single event, conduct or offence. For the purpose of criminal law, it is therefore important that Member States clearly define conduct to be deemed as “trafficking in cultural property” and specify the consequences of such a definition. The act of trafficking is commonly associated with a broad range of conduct related to the illicit movement of goods or persons, which may be international or limited to the national territory.¹¹⁰

In the case of trafficking in cultural property, beyond the definition of cultural property for the purposes of criminal law (see Guideline 15), it is important that specific conduct considered as such should be clearly specified. Items (b) through (f) of Guideline 16 may be considered as included in such a concept (which may also comprehend other actions). States could consider providing for an autonomous offence, as the drafting of Guideline 16 possibly indicates, albeit related to other offences, which would take place prior to trafficking. If

¹¹⁰See for example, on the illicit trafficking in narcotic drugs and psychotropic substances contrary to previous drug control conventions, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988, especially its article 3 (1) (a) (i); and, on trafficking in persons, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in particular its article 3 (a).

trafficking in cultural property is deemed an autonomous offence, States could consider that it relates to cultural property illicitly acquired (by means of other autonomous offences).

Possible aggravating circumstances that could be considered could cover trafficking by an organized criminal group (see below for an autonomous offence of participation in an organized criminal group), damage to cultural property arising or related to the conduct of trafficking, and trafficking committed by professionals qualified to act in the licit art and antiquities trade, provided the harm of the trade in illicit antiquities has the greatest impact on archaeological sites. A primary impact of the demand for antiquities involves the destruction of major sites, especially when the plunder activities are on a large scale, rough, and devastating. A secondary impact occurs indirectly when the attempts to restrict trade by the source nations create widespread corruption of officials handling permits or in charge of checking exit points.¹¹¹

Statutes of limitation could be adapted to the specificities of this offence. States should consider either ensuring longer terms in their statute of limitations for trafficking, or providing that time limitations should begin to count only once the trafficked cultural property is discovered, as stated in Guideline 10.

Illicit export and illicit import of cultural property

States should also consider introducing in their legislation a criminal offence of illicit export and illicit import of cultural property, which could also comprehend the illicit transfer of ownership of cultural property, should States wish to also cover conduct of domestic transfer of ownership. The establishment of such a criminal offence could complement other administrative offences related to non-compliance with authorization or licensing procedures for the export or import of cultural property, such as export certificates, in particular where the intention or *dolus* to circumvent prohibitions or restrictions of export of cultural property in the country of origin may be established.

It is noteworthy that the parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property undertake to prohibit the exportation of cultural property from their territory unless accompanied by an appropriate certificate in which the State specifies that the export of the cultural property in question is authorized (article 6 (a) and (b)). Furthermore, they undertake to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State party to the Convention, provided that such property is documented as appertaining to the inventory of that institution (article 7 (b) (i)).

The introduction of such offences is necessary for several reasons. First, the illicit export of cultural property deprives States of important elements of their cultural heritage. Moreover, the illicit export or import of a piece of cultural property is often the first step towards illicitly introducing it on the market. The adoption of such an offence in a uniform manner among different national legal frameworks could facilitate international administrative and judicial cooperation (see Guideline 9), also with a view to seizing, confiscating, returning and the restitution of illicitly imported or exported cultural property. Finally, harmonized legislation to counter illicit import and export of cultural property could discourage “forum shopping” by operators in the art and antiquities market.

¹¹¹ Brodie, Doole and Watson, *Stealing History*.

Theft of cultural property or elevating the offence of ordinary theft to a serious offence when it involves cultural property

States should consider the particular harm of theft of cultural property, whether publicly or privately owned, and the risk that it entails to the preservation and protection of cultural property from trafficking, when deciding regarding making theft of cultural property a distinct and possibly more serious offence than ordinary theft. States could choose to establish the aggravating circumstances in which cultural property is the object of theft.

This offence should possibly encompass any illicit and intentional removal and appropriation of parts of immovable cultural properties or monuments, pillaging of cultural properties from museums, collections, libraries or other cultural institutions and from monuments or archaeological sites.

Looting of archaeological and cultural sites, and/or illicit excavation

States should consider introducing in their criminal legislation an offence of looting of archaeological and cultural sites, as well as of illicit excavation, such as excavation that is conducted without the authorizations, permits or licences required by law.

This criminal offence should possibly encompass looting of archaeological or cultural sites, whether already studied and registered, or unknown and newly discovered.¹¹² “Looting” should be defined so as to include the pillage of cultural property found within a site. One example is defining looting as a “criminal action involving the illegal excavation of archaeological sites. The result, looted antiquities, are defined as those taken illicitly from the ground, or from their place as an integral part of, or attachment to, a temple or other ancient structure.”¹¹³ In considering this conduct, States may also wish to consider related conduct, such as the unjustified possession of metal detectors or their unauthorized use in archaeological sites, possibly by establishing administrative offences, where the requisites for establishing criminal offences are not met.

The introduction of specific offences related to the illicit exploitation and management of archaeological or cultural sites could address the considerable seriousness of crimes committed against cultural property, which has not been properly identified, thus rendering their tracking more challenging. In particular, it could help address the loss of archaeological, scientific and historical data, which can result from archaeological excavations not being carried out according to prescribed protocols. A primary impact of the demand for antiquities involves the destruction of major sites, especially when the plunder activities are carried out on a large scale and are rough and devastating. Other collateral damage caused by the looters refers to intentional harm in order to eliminate evidence of looting. A secondary impact implies the destruction of archaeological context and the loss of historical information and knowledge. It may also contribute to raising public awareness of the relevant value of cultural heritage and of the importance of properly exploring archaeological and cultural sites.

The introduction of such offences could facilitate investigative and judicial cooperation among States in combating trafficking in cultural property originating from illicit archaeological

¹¹²Sites in war-torn areas or in remote locations and/or near international borders are particularly vulnerable to looting.

¹¹³See Simon Mackenzie, *Going, Going, Gone: Regulating the Market in Illicit Antiquities*(Leicester, United Kingdom, Institute of Art and Law, 2005).

excavations and looting. In particular, if harmoniously defined, it may contribute to preventing refusals of requests for extradition or, more generally, cooperation, due to lack of the proportionality and dual criminality principles.

It is noteworthy that the Convention on Stolen or Illegally Exported Cultural Objects considers, for its purposes, that a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered as stolen, when consistent with the law of the State where the excavation took place.¹¹⁴ While this association appears in the Convention for purposes of private law ownership claims,¹¹⁵ it may be important to establish an autonomous offence of illicit excavation, or difficulties arising from the lack of knowledge of cultural objects in archaeological sites on the part of competent State authorities (thereby facilitating the concealment of the origin of cultural objects illicitly discovered), as well as the additional harm to the archaeological context in looted sites.

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Case study: archaeological looting in Italy

Italy is not unfamiliar with the problem of archaeological looting. Tomb-raiding is particularly intense in several well-known Greek and Etruscan necropolises in the provinces of Etruria, Lazio, Puglia, Campania, Calabria and Sicily. These regions abound in necropolises, such the one of Cerveteri, in the province of Lazio, near Rome. The rich heritage of the old *Caere*, underneath Cerveteri, makes this archaeological site a preferred place for *tombaroli*. Tomb raiders have worked here for centuries, which has greatly focused the attention of Italian officials both in the police and the Ministry of Culture.¹¹⁶ Archaeological sites such as Cerveteri are being destroyed at an alarming rate. As early as 1962, a survey of a single Etruscan cemetery there showed that 400 out of 550 tombs had been looted since the end of the Second World War.¹¹⁷ Between 1970 and 1996, the Italian police recovered more than 300,000 antiquities from clandestine excavations; these, however, are considered only a portion of the total.¹¹⁸

Given the vast proportion of cultural heritage in Italy, the specific harm of illicit archaeological diggings comes from the hastiness in retrieving the artefacts from the tombs, with complete disregard for the archaeological context or the conservation of the tomb or the goods within.¹¹⁹ Over the past century, *tombaroli* have destroyed part of the archaeological evidence of the Etruscan history.

The harm produced to archaeological heritage by *tombaroli* in Italy is a pervasive problem: as an example One piece of research stated how it is clear that several thousands, even tens of thousands, of ancient tombs have been plundered to obtain the more than 13,600 vases that exist throughout the world that were recovered in a non-archaeological manner.¹²⁰

The UNODC Sharing Electronic Resources and Laws on Crime (SHERLOC) knowledge management portal has compiled several up-to-date cases related to archaeological looting in Italy, with detailed police operations and their judicial outcomes, such as operation Ulysses, Boucher (highlighting the cooperation with other police forces) and Augusto Imperatore.

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¹¹⁴ See article 3 (2) of the Convention on Stolen or Illegally Exported Cultural Objects.

¹¹⁵ In a civil context, archaeological goods often come from an illicit act. They are the product of illicit conducts also causing damage to archaeological sites, which are often under State ownership. Transactions of these goods are, therefore, void and often infringe international regulation on this matter.

¹¹⁶ Vernon Silver, *The Lost Chalice: The Real-Life Chase for One of the World's Rarest Masterpieces — A Priceless 2,500-Year-Old Artifact Depicting the Fall of Troy* (New York, Harper Collins, 2009).

¹¹⁷ See Carlo M. Lericci, *Italia sepolta*, (Milan, Fondazione Lericci, 1962).

¹¹⁸ Fabio Isman, *I predatori dell'arte perduta: il saccheggio dell'archeologia in Italia* (Milano, Skira, 2009).

¹¹⁹ Vito A. Iannizzotto, *I beni culturale nell'ottica criminale* (Roma, Europolis Editing, 2006).

¹²⁰ Ricardo J. Elia, "Analysis of the looting, selling and collecting of Apulian red-figure vases: a quantitative approach", in *Trade in Illicit Antiquities: The Destruction of the World's Archaeological Heritage*, N. Brodie, J. Doole and C. Renfrew, eds. (Cambridge, University of Cambridge, MacDonald Institute for Archaeological Research, 2001).

Conspiracy or participation in an organized criminal group for trafficking in cultural property and related offences

The document entitled “Use of the UNTOC for protection against trafficking in cultural property”¹²¹ states, in paragraph 19, that the provisions of article 5 of the Organized Crime Convention are:

“...highly relevant to trafficking in cultural property, an activity that requires the support of many people and involves many transactions and interactions among thieves, mediators, shippers and drivers, customs officials, dealers, experts, restorers and auction house employees. In carrying out their activities, these people tend to create organized criminal groups or operate in structured groups (often in pyramidal structures) where tasks are clearly divided, for the purpose of committing one or more serious and often transnational crimes: from the illegal acquisition, export and import of that property to the laundering of the proceeds of those activities.”

States should consider adopting appropriate measures in order to ensure that any conspiracy or participation in an organized criminal group aiming at committing trafficking in cultural property or one of the related offences be deemed punishable. This may be done either by using existing norms applicable to any criminal conduct, by establishing autonomous offences or by establishing aggravating circumstances to existing offences.

The introduction of an offence of conspiracy to traffic cultural property and to commit related offences could assist in addressing the frequent involvement of organized criminal groups, or organized operators, in illicit trafficking in cultural property. Moreover, such a measure could facilitate investigative and judicial cooperation by enlarging the scope of criminal conduct requiring the gathering of criminal evidence. In particular, it could contribute to limiting refusals of requests for extradition or, more generally, international cooperation, due to a lack of the proportionality and dual criminality requirements. Lastly, it could benefit at the international level from the application of the Organized Crime Convention to the most serious criminal manifestations related to trafficking in cultural property.

Laundering, as referred to in article 6 of United Nations Convention against Transnational Organized Crime, of trafficked cultural property

States should consider introducing in their criminal legislation an offence of “laundering of trafficked cultural property”, as referred to in article 6 of Organized Crime Convention, or reviewing their national norms on money laundering to ensure that they apply to all proceeds of crime, including cultural property that was the object of trafficking and other related offences.

Trafficking in cultural property and related offences may be stimulated, or facilitated, by the potential use of the licit art and antiquities market to provide a legitimate appearance to cultural objects illicitly acquired or imported. “Laundering of trafficked cultural property” may refer to the laundering of proceeds of crime, as defined in article 6 of Convention, in different situations, including those in which:

¹²¹ CTOC/COP/2010/12, para.19.

- Trafficking in cultural property is the predicate offence of the conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions (paragraph 1 (a) (i)).
- Trafficked cultural property is the proceeds of other criminal offences (including of trafficking and related offences, such as pillaging or vandalism), and money-laundering consists in the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime (paragraph 1 (a) (ii)).
- Trafficked cultural property is acquired, detained or used, knowing, at the time of receipt, that such property is the proceeds of crime, subject to the basic concepts of the legal system (paragraph 1 (b) (i)).

In accordance with article 6 (b) (ii) of the Convention, participation in, association with, or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any money-laundering offence, subject to the basic concepts of the legal system.

The document entitled “Use of the UNTOC for protection against trafficking in cultural property” highlights, in paragraph 22, several examples of laundering or concealing cultural property, including the following:

- Illicit transportation of cultural objects to third countries with more permissive norms
- Fragmentation of illicitly excavated objects or its deliberate non-restoration as concealment techniques
- The recomposition of fragmented items after time has passed
- The introduction of illicitly excavated archaeological items directly into private collections
- The usage of simulated or fictitious auctions
- The loan of stolen objects until the statutes of limitation expires¹²²

Much like the effects of introducing the aforementioned offences, ensuring the criminalization of the laundering of trafficked cultural property could assist in addressing the frequent involvement of organized criminal groups, or organized operators, in illicit trafficking in cultural property. It could also address the reason for the illicit activity, which is profit-making. Moreover, such a measure could facilitate investigative and judicial cooperation in fighting the crime. In particular, it could contribute to limiting refusals of requests for extradition or, more generally, international cooperation, due to lack of the proportionality and dual criminality principles. Lastly, it could benefit at the international level from the application of the Convention to the most serious criminal manifestations related to trafficking in cultural property.

¹²² Ibid.

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Case study: the relationship between art and money-laundering

Research on this topic establishes that, like so many other businesses, art has been used by criminals to launder money and derive illegal income. The connections forged between criminals in the art world are not always motivated by monetary gain.¹²³ Art is one of the asset classes that, because of its value, lends itself to being used for money-laundering. As such, there is an urgency to make the art market less opaque and more transparent through proper regulation, in order to reduce its appeal for money-launderers.

There are no established estimates of the amounts of money laundered through the art market, although the general belief, according to the International Monetary Fund, is that the amount available for laundering through the financial system was worth 2.7 per cent of global gross domestic product in 2009, or \$1.6 trillion. Moreover, the relative ease of laundering illicit funds through art dealers and auction houses is thought to have contributed to the spectacular rise in the value of fine art in recent years.

There is a recent trend among States towards adopting anti-money-laundering laws in relation to the art market. As an example, starting in 2016 Switzerland will cap cash transactions in the art market at SwF 100,000 (\$135,000). Payments above that cash limit will have to be made by credit card, creating a paper trail, or the seller will have to carry out due diligence checks to ensure the legal origins of the funds. In conclusion, there is a correlation between lack of regulation and money-laundering.

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

States should consider introducing other criminal offences related to trafficking in cultural property. In particular, they should consider introducing specific offences for damaging or vandalizing cultural property and acquiring trafficked cultural property with conscious avoidance of the legal status. Depending on their legal system, States could also consider making part of such types of conduct aggravating circumstances of theft, or of trafficking in cultural property, as appropriate. The knowledge or intent may be inferred from objective factual circumstances (see Guideline 22).

Such additional criminal offences could complement trafficking in cultural property offences by emphasizing the gravity of the latter. The introduction of other criminal offences could also facilitate investigative and judicial cooperation among States, by enlarging the scope of criminal conduct requiring the gathering of criminal evidence. In particular, the adoption by all States of such criminal provisions could contribute to reducing incidents of refusal of requests for extradition or, more generally, international cooperation in criminal matters, due to lack of the proportionality and dual criminality principles.

States may wish to consider the possibility of making the most serious forms of damaging or vandalizing—carrying out acts which cause the loss of or irreparable damage to a work of art which is part of humankind’s cultural heritage, or the loss of or irreparable damage to a considerable part of a significant collection of cultural properties—into “serious crime” as defined in article 2 (b) of United Nations Convention against Transnational Organized Crime. Regarding international crimes, in its article 8, the Rome Statute of the International

¹²³F. Martin de Sanctis, *Money Laundering through Art: A Criminal Justice Perspective* (Cham, Switzerland, Springer International Publishing, 2013).

Criminal Court contemplates as war crimes attacks directed intentionally against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives.

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.

States should consider introducing obligations to report suspected cases of trafficking in cultural property and related offences and to report the discovery of archaeological sites, finds or objects of cultural interest. Such obligations should be accompanied by sanctions in case of violation.

The obligation to report suspected cases of trafficking in and related offences against cultural property should be addressed in particular to personnel of cultural institutions, professional dealers in art and antiquities and web-based auctioneers, among others, who for professional reasons should act in the sense of guaranteeing the licit character of transactions involving cultural property.

States should also consider introducing an obligation to report the discovery of sites or objects of relevant cultural interest, addressed to the general public, with a view to affording an enhanced protection to unknown or unregistered cultural sites or objects against looting, pillaging or any kind of misappropriation.

The introduction of such offences could have the following benefits:

- Enhance the effectiveness of the obligations that States may avail themselves of to report suspicious dealings in cultural property and to cooperate in preventing trafficking in cultural property, especially applicable to personnel of cultural institutions, professional dealers in art and antiquities and web-based auctioneers (see Guidelines 6 and 8).
- Foster caution on the part of professional operators in dealing with cultural property and so increase transparency in the acquisition policies of cultural institutions, as well as in the art and antiques market.¹²⁴
- Strengthen public awareness of the relevant value of cultural heritage and of the harm caused by offences against it.
- Foster an assumption of responsibility by operators and the general public in dealing with cultural sites or properties, especially in case of fortuitous discoveries, and enhance the prevention of trafficking and other related offences.
- Lastly, the adoption by States of harmonized legislation on criminal offences could facilitate investigative and judicial inter-State cooperation in trafficking and related offences against cultural property, if other requirements are in place. In particular, it could reduce incidents of refusal of requests for extradition or, more generally, international cooperation due to lack of dual criminality.

¹²⁴Many codes of conduct foresee this obligation to report, which may contribute to detect suspicious transactions as soon as possible, so to avoid acquisitions of cultural items made by good faith purchasers.

States could consider directly entrusting the central national authority foreseen in Guideline 4 with the task of compiling and analysing reports of suspicious activities and of newly found or unregistered archaeological sites or objects, as mentioned in the present Guideline.

It is advisable to punish the violation of such obligations with proportionate, effective and dissuasive sanctions. In particular, States should consider introducing criminal sanctions for violations of the obligation to report by public officials, civil servants or public employees and consider providing for sanctions in the form of professional disqualification for the violation of such obligations, whenever proportionate and feasible (see Guidelines 20-22). Administrative sanctions should be considered if criminal sanctions are not deemed to be proportionate or feasible in a specific national jurisdiction.

If the adopted sanction is (or is also) a pecuniary one, States should consider making it proportionate to the value of the cultural property involved and reflective of the economic capacity of the offender.

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 when the cultural property is registered as such in a publicly accessible database.

States should consider empowering their courts, when appropriate, to infer knowledge of the fact that the cultural property had been illicitly obtained by a person in whose possession such cultural property is found based on objective factual circumstances. This would, for example, apply to instances where cultural property has been reported as trafficked, illicitly exported or imported, stolen, looted, illicitly excavated or illicitly traded in one or more publicly accessible databases. A "publicly accessible" database is one that is open to consultation by the public at large, or one that is accessible through a system of registrations or passwords in the case of professional operators of cultural institutions or dealers in the art and antiques market. The burden of proof on the public prosecutor will be simplified, without introducing a sometimes problematic strict liability. Moreover, professional operators' caution in dealing with cultural property will be fostered and transparency in the art and antiques market will be increased, enhancing prevention of conduct greatly harmful to cultural heritage.

States should consider implementing a system of national and international databases of trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property. Such databases should be publicly accessible, either by the general public or by functionaries and employees of cultural institutions, as well as auctioneers, dealers in art and antiques and other professional operators in the art and antiquities market, at least by a system of registrations or passwords. Where such a database exists (the INTERPOL stolen works of art database), States should consider ensuring a systematic information supply with a view to integrating data (see also Guidelines 1 and 3).

States could consider introducing in their criminal legislation a presumption of knowledge of the illicit origin of a cultural property when the same property has been registered as trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing in such a database (see Guideline 9).

C. Criminal and administrative sanctions

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

States should consider introducing penalties which are proportionate to the gravity of the offence of trafficking in cultural property or other related offences (for the offences, see Guidelines 16–18) provided for in their criminal legislation. States should consider making such criminal sanctions adequate in severity to act as a deterrent to potential offenders and to encourage compliance with norms and regulations. It is recommended that such sanctions take into account the harm caused to the protected cultural property and the degree of responsibility of the offender. The introduction of new specific criminal offences for combating trafficking in cultural property and related offences would be merely symbolic if not accompanied by proportionate, effective and dissuasive sanctions that States are ready to enforce.¹²⁵

It is recommended that States choose the less oppressive sanction, which may produce similar or added deterrence and be proportionate to the gravity of the offence and to the economic situation of the offender, while taking into account the cultural values involved. It is important to note that sanctions that are not proportionate to the gravity of the offence by being too lenient are likely to be ineffective in dissuading potential offenders. By the same token, sanctions that are excessively severe may be deemed as oppressive and counter-productive, not contributing to the credibility of the legal system.¹²⁶ Moreover, as part of comprehensive criminal justice policies, appropriate measures should be taken to promote the reintegration into society of persons convicted of an offence against cultural property.

Examples of criminal justice approaches to cultural heritage crime

In Switzerland, the Penal Code covers fraud, theft and receipt of stolen property. The Federal Act on the International Transfer of Cultural Property introduces additional fines and terms of imprisonment for individuals and businesses that violate its provisions.

In Greece, chapter 9 of Law 3028/2002 (articles 53–72) contains criminal provisions regarding the illicit traffic in cultural objects. According to article 63, whoever exports or attempts to export from Greece in violation of the law a monument or a cultural object may be sentenced to imprisonment of up to 10 years. In case the possession of the monument had been acquired illegally, this fact constitutes an aggravating circumstance, leading to a longer imprisonment.

Peru also provides for fines, expropriation or confiscation of the cultural property of another State from the possessor if it is brought into Peru without the appropriate export licence from the country of origin.

¹²⁵ See at regional level (European Commission), recommendation 26 of the Open Method of Coordination Expert Working Group on the Mobility of Collections, Final report and recommendations to the Cultural Affairs Committee on improving the means of increasing the mobility of collections, June 2010 (available at http://www.lending-for-europe.eu/fileadmin/CM/internal/OMC/OMC_Mobility_of_Collections_Report_Rome_7_July10.pdf; last visit on 12 August 2014). That recommendation reads as follows: “The sanctions imposed when a cultural heritage institution/collector/owner/dealer has acquired a tainted object have an effect on deterring illicit traffickers from depriving a country of origin from its cultural heritage. This effect should be studied in relation to the different legal systems in each Member State”.

¹²⁶ In particular, States should refrain from using penalties which by their nature may contravene international law, especially human rights law as set out in the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Those penalties, such as corporal punishment, forced labour and capital punishment could, furthermore, constitute obstacles to judicial international cooperation among many Member States.

In Turkey, civil and criminal sanctions, with fines and terms of imprisonment, are attached to individual and other legal persons violating the requirements of the law. Turkey itself has conceded that the penalties have done little to deter the illicit trade in cultural property. Other States parties share similar experiences.¹²⁷

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”.

States should consider adopting custodial sanctions as penalties for offences against cultural property. In particular, States may consider introducing a maximum deprivation of liberty of at least four years, or a more serious penalty, so as to meet the standard required by article 2 (b) of the United Nations Convention against Transnational Organized Crime for the most serious offences, such as trafficking in cultural property; the illicit export or import of cultural property; the theft of cultural property; the looting of archaeological or other cultural sites; and illicit excavation, laundering and the most serious forms of damage to monuments or cultural property.

Such a choice would provide adequate sanctions for the most serious offences against cultural property and lead to the enforceability of the Convention, by States parties, with regard to serious crimes against cultural property, where the offence is transnational in nature and involves an organized criminal group.

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

States should consider adopting, as criminal or administrative sanctions for offences against cultural property, not only deprivation of liberty and fines, but also bans or disqualifications, such as withdrawal/revocation of licences; suspensions or bans from holding public office or employment; suspensions or bans from holding the position of chief executive officer in a corporation; and/or other similar penalties. For this purpose, States should consider implementing a system of art dealer licensing, where they do not have one yet.

The use of bans, disqualifications and revocations as criminal or administrative sanctions for offences against cultural property could bring several advantages. First, as trafficking and related offences are often perpetrated by professionals who avail themselves of the same channels of trade for both licit and illicit dealing in cultural property, a professional disqualification may be a more dissuasive sanction than a fine or a short custodial sanction.

Moreover, as the position of the agent in a cultural institution, auction house or other firm operating in the art and antiquities market, and/or the possession of a licence or authorization is often instrumental in the perpetration of offences against cultural property, suspending or interdicting a person from such an office or position or withdrawing or denying such a licence or authorization could effectively prevent further offences by the same person.

States should consider adopting as criminal or administrative sanctions, alone or in addition to custodial or monetary sanctions, a prohibition on certain activities or the withdrawal of licences or authorizations for any operator in the art and antiquities market who commits a

¹²⁷ See Toggler and others, *Evaluation of UNESCO's Standard-setting Work of the Culture Sector*.

crime against cultural property, whenever the law requires a licence or authorization for his or her activity. Such a suspension or withdrawal may be temporary or, for more serious offences or for recidivists, permanent.

States should consider adopting as criminal or administrative sanctions the suspension or prohibition from holding public office or of employment where the offender is a public officer or employee (especially of a public cultural institution or agency charged with the protection of cultural heritage). Such a disqualification should normally be temporary, but could be permanent for more serious offences or for recidivists. States should also consider adopting as criminal or administrative sanctions the suspension or prohibition from further holding the position of chief executive officer in a corporation of any person who had used such position to commit a crime against cultural property.

States could choose to adopt disqualifications either as autonomous criminal sanctions or as additional ones, according to their national legislation, taking into account the issues of proportionality. States could consider adopting disqualifications both as criminal and as administrative sanctions, provided they are imposed after a trial by a court, when appropriate.

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.

Liability for corporations and other legal persons that in any way contribute to trafficking in cultural property and other related offences (for the offences, see Guidelines 16-18) should be considered. First, these offences often involve legal entities, either public, such as museums, libraries and other cultural institutions, or private, such as private foundations and cultural institutions, auction houses and other corporations operating in the art and antiques market. The same entity may operate both on the licit and on the illicit cultural property market, contributing to the opaqueness of the market itself. Moreover, individual agents often act under pressure from their organizations, which may be explicit (for example, orders, directions, rewards, sanctions) or implicit (for example, organizational culture). The introduction of liability of legal persons could therefore induce cultural institutions and corporations to assume responsibility and foster a culture of transparency and compliance with laws and regulations related to the protection of cultural property against its trafficking and other related offences.

States should consider introducing (or extending, where they already exist) corporate liability for trafficking in cultural property and other related offences, committed on behalf of or by a corporation or legal person. In addition, States should consider choosing among criminal, administrative and civil liability according to their legal principles, and imposing adequate sanctions for the corporation or legal person (including among those mentioned in Guideline 24).

Moreover, States should ensure that such liability of legal persons would be without prejudice to the criminal liability of the natural persons who committed the offence, and also that such liability of legal persons would arise even if the natural persons who actually carried out the act are not identified or cannot be punished, provided that the offence itself is ascertained as having been committed on behalf of the corporation or legal person.

States may wish, in the implementation of this Guideline, to consider providing for mitigation or exemption of liability when a legal person has actively and effectively cooperated with law enforcement agencies or has taken measures to prevent the future commission of the offences, such as adopting corporate guidelines, codes of conduct or auditing protocols. Mitigation or exemption of liability could also be subject to whether the cultural property, which was the object of the offence, was handed over to law enforcement agencies or returned to the legitimate owner.

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, revocation of licences and revocation of benefits, including tax exemptions or government subsidies, where possible.

States should consider introducing sanctions, which are proportionate to the seriousness of the offence of trafficking in cultural property and related offences, committed on behalf of the corporation or legal person. States should consider making such sanctions adequate in severity in order to dissuade potential corporate offenders and to encourage compliance. The introduction of liability of corporations and legal persons for such offences will be merely symbolic if it is not accompanied by proportionate, effective and dissuasive sanctions that the State is ready to enforce. In addition, States should take into account the peculiarities of the legal entities operating in the area of cultural property when shaping such sanctions. It is important to note that sanctions that are not proportionate to the gravity of the offence by being too lenient are likely to be ineffective in dissuading potential offenders. By the same token, sanctions which are excessively severe may be deemed as oppressive and counter-productive, in that they may result in creating an adversarial market subculture and could encourage non-compliance with and intolerance and rejection of rules.

States should consider introducing criminal, administrative or civil sanctions according to their legal principles. Such sanctions should be proportionate to the gravity of the offence committed on behalf of the legal person, considered both in relation to the harm caused to cultural heritage (or other values or rights involved), the “guilt” of the legal entity and the role played by the corporation or legal person in determining, facilitating or allowing the commission of the offence by natural persons.

States should also consider introducing sanctions adequate in severity, so as to ensure their effectiveness in dissuading potential corporate offenders. It is recommended that States choose the less oppressive sanction, which may produce similar or added deterrence and be proportionate to the gravity of the offence and to the economic situation of the guilty legal entity, while taking into account the cultural values involved. Moreover, States should consider adopting as sanctions for corporate offenders, whenever possible, banning or disqualifications from the exercise of activities, revocation of licences and benefits, including tax exemptions or government subsidies, either alone or in addition to monetary sanctions. The disqualification or withdrawal would ordinarily be temporary, but could be made permanent for more serious offences or for recidivist organizations.

States may wish, in the implementation of this Guideline, to consider providing for the mitigation of sanctions in instances when the corporation or legal person has actively and effectively cooperated with law enforcement agencies, or has taken measures to prevent the future commission of such offences, such as the adoption of corporate guidelines, codes of conduct or auditing protocols. The mitigation of sanctions could also be subject to whether the cultural property which was the object of the offence was handed over to law enforcement agencies or returned to the legitimate owner.

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.

States should consider necessary measures to enable criminal investigation and the search, seizure and confiscation of trafficked cultural property (see also Guidelines 39 and 40 on international cooperation for purposes of search and seizure). Confiscation shall be aimed, whenever possible, at the return and restitution of the cultural property (see Guidelines 46 and 47 on return and restitution).¹²⁸

Seizure and confiscation are necessary measures in combating trafficking in cultural property because of the impact these measures have on the profits and properties of suspects. Furthermore, these measures allow for the return of the property to the legitimate owners, where feasible, and the protection of cultural property from damages or from new illicit transfers, which could facilitate the commission of further offences.

The United Nations Convention against Transnational Organized Crime defines “confiscation” as the permanent deprivation of property by order of a court or other competent authority, and includes forfeiture. The terms “freezing” and “seizure” are defined as “temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority” (article 2 (*f*)).

In the field of cultural property, investigators or prosecutors should consider implementing preventive measures and financial investigations as an integral part of their actions, in addition to the requirements for the ascertainment of the criminal liability of offenders.

In addition, execution of seizure and confiscation orders should become a priority in international efforts against terrorism. In this regard, the Guidelines for national actions and reporting for effective implementation of paragraph 17 of Security Council resolution 2199 (2015)¹²⁹ state that national legislations should be reviewed “with the view to strengthened investigative and seizure procedures, including using emergency anti-terrorism laws and/or taking into consideration the European Convention on Mutual Assistance in Criminal Matters”.

States could choose between administrative, civil and criminal confiscation, according to their national legislation as well as to considerations of proportionality between the restrictive measure and its aims. States could also consider confiscation of the proceeds of crimes related to such trafficking.¹³⁰

Consistent with the Guidelines on the role of cultural institutions and the private sector (Guidelines 5-8) and Guideline 17, caution should be exercised in national legislation when providing for immunity from seizure or other criminal procedure measures in cases of

¹²⁸ See also Article 2 of the model treaty for the prevention of crimes that infringe on the cultural properties of peoples in the form of movable property (referred to in Guideline 14).

¹²⁹ Available at <http://unesdoc.unesco.org/images/0023/002329/232934e.pdf>.

¹³⁰ See UNODC, Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime (Vienna, 2012), available at: www.unodc.org/documents/organized-crime/Publications/Confiscation_Manual_Ebook_E.pdf.

international art loans, in order to avoid granting such a guarantee to cases concerning cultural property which may have been object of trafficking or other related offences.¹³¹

States should provide the necessary mechanisms for the conservation and proper care of cultural and artistic assets subject to confiscation, in coordination with specialized public or private entities.

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.

States should consider the possibility of requiring the holder of cultural property which may be liable to seizure or confiscation for alleged trafficking or related offences to demonstrate its lawful origin whenever a law enforcement agency so requires, to the extent that such a requirement is consistent with domestic fundamental principles. This requirement applies to the alleged offender, the owner (or the person who alleges to be the rightful owner) or the holder, if different. This formulation is broad enough to include any person who argues legitimate possession of cultural property which may have been the object of trafficking or other related offences.

Such a requirement may be desirable because it is often difficult to trace the precise origin of a cultural property, particularly if it is unregistered (see Guidelines 1 and 2), but it should be noted that it will not be possible or practical in every instance. This requirement would also encourage potential buyers and dealers to ascertain the legitimate origin of the cultural properties they intend to acquire or trade.

The requirement would also be a valuable tool for investigative officers and prosecutors, as it would shift the burden to prove the lawful origin of the cultural property to the alleged offender, owner or holder (if different). While some legal systems could apply this Guideline as a criminal law requirement, others may need to make it compatible with their legal principles, including the right to be presumed innocent until proved guilty under the law and the right of accused persons not to produce evidence incriminating themselves. The burden of proof in offences such as those described in Guidelines 16-18 would remain with the prosecution, as it would have to demonstrate the illicit conduct of the perpetrator and that the alleged offender knew or should have known that the cultural property was the object of trafficking in cultural property or other related offences (see also Guideline 19, on the possibility of inference of a perpetrator's knowledge on the basis of objective factual circumstances).

For the purposes of civil claims, article 4 (1) of the Convention on Stolen or Illegally Exported Cultural Objects makes the payment of compensation to the possessor of a stolen cultural object who is required to return it subject to the condition that "...the possessor neither knew nor ought reasonably to have known that the object was stolen and [that he] can prove that it exercised due diligence when acquiring the object". It should be noted that the requirements for criminal liability are often higher than that for civil liability. Nevertheless, for purposes of criminal liability, the *mens rea* (subjective element) should be attached to the

¹³¹ See at the regional level (European Commission), recommendation 15 of the Open Method of Coordination Expert Working Group on the Mobility of Collections, Final report and recommendations to the Cultural Affairs Committee on improving the means of increasing the mobility of collections.

actus reus (objective element) of the offence for the perpetrator to be responsible for a given criminal conduct. Proving that due diligence was exercised at the moment of acquisition could serve, in many legal systems, to separate the *mens rea* of the alleged perpetrator from the illicit conduct determining the illicit origin of the cultural property.

In the context of combating the financing of terrorism, the UNESCO Guidelines for National Action and Reporting by Member States and Observers suggest “a process of due diligence and checking of provenance in the acquisitions of cultural property, taking into consideration the principles of the Convention on Stolen or Illegally Exported Cultural Objects. A process of due diligence with reversal of the burden of proof on the possessor, when the acquisition is made by cultural institutions, public and private museums, art dealers or art experts is [also] recommended”.

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

Beyond the confiscation of trafficked cultural property, discussed under Guideline 25, States should also consider introducing in their legislation confiscation of the proceeds of the offence, in order to deprive the offender of profits deriving from trafficking in cultural property or other related offences. Such punitive confiscation, also referred to as forfeiture in some legal systems, may include equivalent sums or assets.

The provision for comprehensive confiscation of any proceeds of crime, direct or indirect, including of benefits that the offender may have gained as a consequence of the trafficking in cultural property or other related offence, may also be considered as a preventive tool, in that it also removes the means by which the offender could engage in further offences.

Cultural goods can be considered by confiscation orders if they are: (a) direct profit of trafficking crimes and other related offences; (b) properties into which the illicit assets have been converted or transformed; (c) illicit assets that are intermingled with licit ones; and (d) the manifestation of illicit enrichment by criminals.

States should consider taking all appropriate measures to confiscate any property, equipment or instrument used in or destined for use in trafficking in cultural property and other related offences and to confiscate all proceeds of trafficking in cultural property and other related offences. If the proceeds of crime have been fully or partially transformed or converted into other assets or properties, States could consider confiscating the latter. If the previous forms of confiscation are not possible, States could consider confiscating the properties of the offender in a value corresponding to that of the proceeds themselves. If the proceeds of crime have been intermingled with property lawfully acquired, States could consider confiscating such property up to the assessed value of the intermingled proceeds. Finally, States could consider also confiscating income or other benefits derived from the proceeds of crimes or from properties or assets into which proceeds of crimes have been transformed or converted.

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

After having taken into account the interests of the victim, States may consider assigning at least a percentage of the confiscated proceeds of crime (consisting of money or economic assets other than the cultural property) deriving from trafficking in cultural property or other

related offences, or from laundering of the proceeds of such offences, to cover the expenses of recovery and other measures to prevent and combat trafficking in cultural property and related offences.

The introduction of legal provisions aimed at assigning some of the confiscated economic assets to a reinvestment in preventive measures could contribute to the much needed funds for the most costly policies, such as implementation of digital inventories and databases, programmes of market monitoring, specialized training for law enforcement agents and cultural institutions' personnel, sensitization programmes and campaigns, mentioned in *inter alia*, Guidelines 1, 3, 9-12 and 29.

Some States already allocate at least part of confiscated proceeds of crime to finance crime prevention measures. At the international level, the following precedents may be found in articles 30 (2) of the United Nations Convention against Transnational Organized Crime and 62 (2) of the United Nations Convention against Corruption, which encourage States parties to contribute "... a percentage of the money or of the corresponding value of proceeds of crime or property confiscated" to an account specifically designated by the United Nations to provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of those Conventions. The account in question is currently the United Nations Crime Prevention and Criminal Justice Fund.

F. Investigations

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

States should consider creating law enforcement bodies or units specialized in investigating trafficking in cultural property and related offences. Consideration should also be given to training such investigative bodies or units for this purpose. The establishment and training of specialized units for preventing and combating trafficking in cultural property and related offences is desirable because of the complexity of related offences and the advantages that it offers to understanding the way the legal and illegal art and antiquities markets operate. In addition, the peculiar nature of the objects involved makes basic competences in art and antiques highly desirable. The frequently transnational character of such offences requires a good knowledge of foreign legislation and applicable international agreements, as well as the ability to coordinate and cooperate with other national law enforcement agencies and international organizations. Finally, the training of specialized investigative units should be a step towards enhancing the efficacy of investigations on trafficking and related offences and increasing the probability of recovering cultural property that has been the object of trafficking or other related offences, including theft, looting and illicit excavations.¹³²

States should consider establishing or making operational specialized law enforcement bodies or units, which could be composed of prosecutors, investigating magistrates, investigative police, customs and border police, and other personnel charged with the prevention, detection

¹³²For further information on the importance of specialized training for police and customs agents, see *Legal and Practical Measures: UNESCO Handbook*, p.14.

and control of offences related to cultural property. States should provide such bodies or units with adequate training on the legal and illegal art and antiquities markets, as well as on national and international law on import and export of cultural property and related matters. For such specialized units to be effective, they should be allocated with adequate funding, personnel and equipment. States could further consider providing foreign language training to their officers and agents.

The special entities involved in fighting trafficking in cultural items could pursue: (a) facilitation of gathering, management and effective use of knowledge on the art criminal phenomena; (b) development of specific expertise in art criminal policies and related methods; (c) creation of a higher capability in the application of specialized investigative and prosecutorial legal tools; (d) coordination or unification of investigations and prosecutions, so to avoid possible clashing of initiatives and maximise the results of prosecutorial efforts against art criminal groups or networks.

The UNESCO Operational Guidelines have underlined the importance of educating and using an active judiciary in order to confer effective protection to cultural heritage (para. 14). They have also encouraged States parties to create specialized police and customs units or law enforcement agencies such as a pool of prosecutors or experts specialized in art-crime investigations in order to promote exchanges of police and law enforcement experiences, taking into account the relevant investigating experience by specialized units having multi-year practice in the specific sector (para. 22). Capacity-building and training programmes targeted at judges, prosecutors, customs officers, police and others concerned should raise awareness of cultural heritage issues (para. 53).

Some examples of specialized investigative units are the Argentine National Centre for the Protection of Cultural Property, the Command for the Protection of Cultural Property of the *Arma dei Carabinieri* of Italy and the Central Office for the Fight against Illicit Traffic in Cultural Goods of France, as stated in several guidelines of this instrument.

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.

States should consider enhancing coordination among the different specialized law enforcement bodies and units, where available, as well as among the latter and other relevant agencies, such as border police and customs offices or other police forces. Such coordination could contribute to improving the probability of discovering, recognizing and recovering cultural property which was the object of trafficking or other related offences. It can lead to a swifter and more effective communication of relevant information among law enforcement agencies and facilitate joint actions aimed at combating trafficking in cultural property and related offences, including through, for example, joint investigative bodies. Enhanced coordination could also improve the efficacy of investigations on offences against cultural property as well as improve prevention strategies (see also Guidelines 31, 42 and 43).

States should consider establishing (or strengthening, where they already exist) adequate and swift channels of communication for reports and relevant information among the different specialized investigative units and between such specialized investigative units and other law enforcement agencies. In addition, States should consider establishing liaison officers or agents within different agencies responsible for ensuring access for law enforcement agencies to databases on cultural property which was the object of trafficking or other related offences,

including the INTERPOL database on stolen works of art. In this context, States could consider providing for direct channels of communication and stable information exchange between law enforcement agencies and the central national authority responsible for the protection of cultural property (see also Guideline 4, on central national authorities).

If the establishment of joint investigative teams is not possible, countries should consider establishing procedures, including de facto procedures, for the continuous coordination of their investigations. They should use autonomous but parallel prosecutions to mutually increase the effectiveness of the investigations and expand the range of objectives to target. When establishing coordination mechanism, countries should consider the characteristics of the case and give favourable consideration to the participation of prosecutorial and judicial authorities and of national experts, as permitted by the laws, to strengthen the operative capacity of the coordinated entities involved.

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 allowing for the admissibility in court of evidence derived therefrom.

States may consider allowing the use of the same special investigative techniques that are successfully used in investigating complex types of crime in order to investigate the most serious offences against cultural property, especially those related to organized crime. The use of special investigative techniques in investigating trafficking and related offences against cultural property should be considered by States because of the level of complexity of such offences, which are often transnational and involve organized criminal groups or a plurality of agents.

Furthermore, given the complexity and exclusivity of the art and antiquities market, licit and illicit dealings are often intermingled and, because there is a high number of unreported offences, especially involving unregistered cultural property, the use of special investigative techniques may be the most appropriate means of obtaining valid evidence. The document entitled “Use of the UNTOC for protection against trafficking in cultural property” states, in paragraph 44, that both Internet and auctions are forms of transferring illicitly obtained cultural property, and highlights how, in consequence, proactive investigations are required to monitor the art markets and detect illegal trade. Undercover and controlled delivery operations (included simulated auctions) have given good results in the investigation of trafficking in cultural property.¹³³ These techniques may thus contribute to the efficacy of investigations and increase the probability of discovering, tracing and recovering trafficked cultural property, as well as of arresting and prosecuting offenders.

States may consider allowing law enforcement agencies to use special investigative techniques, such as electronic or other forms of remote surveillance, and undercover operations, as mentioned in article 20 (1) of the United Nations Convention against Transnational Organized Crime Convention, which have proved to be very effective in combating organized crime. Specific legislation should be in place, including provisions safeguarding the rights of the suspect. States may also consider using controlled deliveries, allowing illicit or suspect consignments of cultural property to pass out of, through or into the territory of one or more States, under the covert supervision of law enforcement agencies in order to identify offenders

¹³³CTOC/COP/2010/12.

and collect intelligence. In considering the use of the technique of controlled deliveries, it is advisable that relevant national authorities ensure that cultural properties involved are not exposed to irreparable damage and that applicable rights of suspects are guaranteed.

State authorities might also consider the need to provide for protective measures for witnesses and whistle-blowers, as well as informants, to ensure that there exists a supply of information deriving from these sources, which may be useful during investigations and prosecutions.¹³⁴

¹³⁴For more information, see *Good practices in the protection of witnesses in criminal proceedings involving organized crime*, published by UNODC in 2008, available at www.unodc.org/documents/organized-crime/Witness-protection-manual-Feb08.pdf.



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 non-intervention in the domestic affairs of other States, as enshrined in the Charter of the United Nations and the Organized Crime Convention.

Each State should consider establishing its jurisdiction over the aforementioned criminal offences against cultural property when the offence is committed within the territory of the State itself—that is, when all or part of the conduct, or the event which is caused by the conduct, or the conduct of one of the persons concurring in the offence, is committed or happens in its territory, including its internal and territorial waters and its airspace.

States should also consider establishing their jurisdiction when the offence is committed on board a vessel that is flying its flag or an aircraft that is registered under its laws.

States should also consider establishing their jurisdiction when a stateless person who has his or her habitual residence in its territory commits the offence inside that territory.

In addition, each State should consider establishing its jurisdiction over the aforementioned criminal offences against cultural property when the offence is committed outside its territory by one of its nationals. This type of jurisdiction would take into consideration the transnational nature of the art and antiquities market and the frequent circulation of movable cultural property.

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.

While many modes of formal and informal cooperation between States exist, the fact that judicial cooperation in criminal matters requires the consent of States means that it is often grounded in formal treaty relations. There are several advantages to using existing international law instruments, in particular the United Nations Convention against Transnational Organized Crime, as a basis for international cooperation in criminal matters. For instance, the use of conventional provisions within those instruments can enhance the efficacy of investigations, prosecutions and proceedings of offences against cultural property, which also improves the prevention of trafficking in cultural property and related offences.

The following types of instruments on international cooperation have been used when dealing with transnational crime, including illicit trafficking in cultural property: treaties on extradition; treaties on mutual legal assistance; treaties related to transfer of proceedings; treaties related to the recognition of a judgment; and treaties related to the transfer of convicted persons.

The application of existing international law instruments for international cooperation in criminal matters may be easier and swifter than other strategies, such as adopting bilateral treaties on mutual legal assistance. This is particularly relevant with regard to the Organized Crime Convention, which encourages States parties to use the Convention as the legal basis for judicial cooperation where no other arrangements already exist (article 18). This means that States can rely on the Convention to request and offer judicial cooperation for the most serious offences against cultural property, where the crime is transnational in nature and involves an organized criminal group. The Convention thus offers a way of filling a possible legal gap where no bilateral or multilateral agreement exists between countries seeking to cooperate.

The Convention provides States parties with the opportunity to seek the cooperation of a large number of States parties to the Convention. The flexible definitions, as contained in the Convention, of what makes an offence transnational and of what constitutes an organized criminal group, in conjunction with a broad definition of what constitutes serious crime, ensure that the scope of the Convention is wide enough to encompass traditional, emerging and future forms of crime and that international law enforcement and judicial cooperation efforts can be triggered in relevant investigations and prosecutions.

States that have not yet done so should consider becoming parties to the Convention and other relevant international law instruments. States could also consider adopting ad hoc arrangements and bilateral or multilateral agreements in order to implement conventional provisions on international cooperation in criminal matters (for guidance on bilateral and multilateral agreements for investigative cooperation, see Guideline 43).

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.

The strengthening of mutual legal assistance in criminal matters between and among States for investigations, prosecutions and other proceedings relating to offences against cultural property is an important aspect of States' efforts to protect cultural property and prevent trafficking in cultural property and related offences. By having the widest mutual

legal assistance available in each case of cultural property crime, States will be able to streamline requests and formulate more efficient criminal justice responses to combat these offences.¹³⁵

As has been stated in the present Guidelines, factors such as the increase in international travel and the improvement in technology, especially in communications, facilitate the commission of transnational crimes. As such, the need for international cooperation grows stronger. Nevertheless, it is the opinion of scholars that international cooperation has not evolved at the same pace as the illicit activities of criminal organizations that are making profits from trafficking in cultural heritage, among other illicit goods. There was a shift in trends after 1945, when international cooperation was expanded and deepened, while it increased again after the 1990s.¹³⁶ Currently, particular gaps in the processes of international cooperation in criminal matters still need to be addressed, including:

- Lack of extradition agreements between States
- Lack of unity in the definitions of crimes among different countries
- Lack of symmetry in the professionalization of several law enforcement agencies

Other factors that may contribute to lower levels of international cooperation include corruption and a lack of political will at both the international and domestic levels.¹³⁷

States should therefore consider assisting each other to the widest extent possible with respect to investigations, prosecutions and judicial proceedings for any criminal offence against cultural property. In particular, States should consider cooperating in the following areas:

- Collecting evidence or statements from persons
- Effecting service of judicial documents
- Executing search and seizure or freezing orders
- Examining objects and sites
- Providing information, evidentiary items and expert evaluations

Moreover, States should consider cooperating in providing original or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; identifying or tracing illegal cultural properties, as well as any related proceeds of crime, instrumentalities or other things, for evidentiary purposes; facilitating the voluntary appearance of witnesses in the requesting State; identifying, tracing and seizing illegal exported/imported cultural properties, as well as any related proceeds of crime for return and restitution purpose; granting return and restitution of the cultural properties, as well as of any related proceeds of crime; and any other type of direct assistance that is not contrary to the domestic law of the requested State.

Where cooperating States are not bound by a treaty of mutual legal assistance which states otherwise, States should consider allowing to be transmitted by the competent authority of

¹³⁵For more detailed guidance on mutual legal assistance, see the Manual on Mutual Legal Assistance and Extradition (Vienna, 2012), available at www.unodc.org/documents/organized-crime/Publications/Mutual_Legal_Assistance_Ebook_E.pdf.

¹³⁶Matti Joutsen, "International instruments on cooperation responding to transnational crime", in *Handbook of Transnational Crime and Justice*, P. Reichel, ed. (Thousand Oaks, California, Sage Publications, 2005).

¹³⁷William F. Macdonald, "When States do not extradite: gaps in the global web of formal social control", in *International Handbook of Penology and Criminal Justice*, S. Shoham, O. Beck and M. Kett, eds. (Boca Raton, Florida, CRC Press, 2008).

the issuing State directly to the authority of the executing State which is competent to execute it, by any means capable of producing a written record, such as e-mail or fax, but allowing the executing State to establish authenticity through the same or similar manner. The original of the request shall be transmitted to the executing State if it so requires. All official communications should be made directly between the said competent authorities. The swift dispatch of rogatory letters—especially when search, seizure and/or confiscation orders are requested—avoids difficulties and restraints that occur when the cultural object is known to have disappeared (see also Guideline 25).

States that have not already done so should designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. States could also consider providing for direct channels of cooperation whenever feasible, without the need to use diplomatic channels.¹³⁸ States may wish to take into account Guideline 4 when coordinating, at the national level, the execution of requests for mutual legal assistance.

Without prejudice to domestic law, the competent authorities of a State may, without prior request, transmit information relating to criminal matters to a competent authority in another State where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings, or could result in a request formulated by the requesting State in relation to proceedings for trafficking in cultural property or other related offences.

States may wish to consider not declining to render mutual legal assistance on the grounds of bank secrecy or because the alleged offence is considered to involve fiscal matters. States may wish to consider granting mutual legal assistance, where possible, without the condition of dual criminality, and where it is impossible to do so, consider providing assistance to the extent possible.

Mutual legal assistance may be postponed by the requested State on the grounds that it interferes with an ongoing investigation, prosecution or judicial proceeding. Before refusing a request or postponing its execution, the requested State should consult with the requesting State to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. In any event, States should give reasons for refusing mutual legal assistance requests. The requested State should execute the request for mutual legal assistance as soon as possible and should comply as best as possible with any deadlines suggested by the requesting State and for which reasons are given, preferably in the request itself.

Guideline 35. States should contribute to and regularly update the United Nations Educational, Scientific and Cultural Organization Database of National Cultural Heritage Laws and any other relevant database.

States should contribute to and regularly update the UNESCO database on national cultural heritage law in order to facilitate international investigative and judicial cooperation by making immediately available all relevant national legislations to investigators, prosecutors, judges and members of competent authorities. States could also consider contributing to other specific databases relevant for preventing and combating the offence of trafficking in cultural property and the other related offences (see also Guideline 3 related to information and data

¹³⁸In this sense, legal attachés at consulates or embassies may play a positive role in supporting international cooperation, as providers of open source information on illegal trafficking in cultural goods and return issues.

collection). States should provide all the national laws and regulations related to the prevention and combating of trafficking in cultural property and related offences; national rules which are currently applicable should be included, as well as a history of past legislation and regulations.

The UNESCO Operational Guidelines¹³⁹ invite States parties “to provide all relevant legislation, including their export and import laws and the legislation on criminal and administrative sanctions, to the UNESCO Secretariat translated into English or French [...] for inclusion on the UNESCO Database and especially to keep it updated” (para. 32). “It is important that all relevant national legislation be appropriately publicized so that collectors, dealers, museums and other concerned stakeholders with the movement of cultural objects are fully aware of the precise national provisions they should comply with” (para. 31).

States should make use of the UNODC SHERLOC portal and submit legislation on cultural property protection not yet contained in it, as well as periodically review the laws already registered to ensure that the entries are updated. In particular, States should consider providing domestic criminal legislation, national laws and regulation referring to judicial cooperation in criminal matters, as well as cases and best practices on cultural property protection and any practical guidelines addressed to law enforcement agencies. States should also consider keeping such legislative databases up to date by regularly providing new and amended legislation on cultural property protection. Such databases could be linked to the UNESCO draft database on the return of cultural property.¹⁴⁰

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.

The inclusion of offences against cultural property among extraditable offences is desirable in order to ensure the efficacy of national criminal law provisions even when the alleged offender is in the territory of another State. It is also desirable in order to reduce the opportunity for offenders or potential offenders to seek refuge abroad or to commit offences against cultural property in countries of which they are not nationals or habitual residents.

States should consider taking all necessary measures to include the crimes enumerated in Guideline 16 against cultural property among extraditable offences within their national law. States should also consider linking the extradition of an offender with the return and restitution of the cultural property which is the subject matter of the offence committed, whenever possible (see also Guidelines 46 and 47 on recovery and restitution). In particular, States should consider including such offences among extraditable offences in any extradition treaty existing or to be subsequently concluded by them.

¹³⁹Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

¹⁴⁰The UNESCO draft database on the return of cultural property, currently under discussion, is intended to provide creative solutions and alternative methods to resolve restitution claims.

States should also consider becoming parties to, and implementing, any applicable international law instrument that facilitates extradition. Whenever necessary, States should consider integrating existing international conventions with bilateral or multilateral agreements on extradition for offences against cultural property. The United Nations Convention against Transnational Organized Crime contains a number of provisions related to the legal basis of judicial cooperation:

- Article 16, paragraph 4, for example, provides that, where a State party makes extradition conditional on the existence of a treaty, the Convention itself may be considered a legal basis for extradition in respect of an extradition request concerning an offence covered by the Convention received from another State party with which the requested State has no extradition treaty.
- Under article 16, paragraph 5, of the Convention, States parties that make extradition conditional on the existence of a treaty, but that do not recognize the Convention as a legal basis for cooperation on extradition, must seek to conclude treaties with other States parties.
- States parties are also obliged, in general, by article 16, paragraph 17, to seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition. In so doing, States parties undertake to include offences covered by the Convention as extraditable offences in every one of their concluded extradition treaties (article 16 (3)).
- Article 16, paragraph 3, also provides that each of the offences covered by the Convention shall be deemed to be included as an extraditable offence in any extradition treaty existing between States parties.

Even without or before joining existing international conventions, States should consider concluding bilateral or multilateral agreements on extradition for offences against cultural property (see Guideline 33 on bilateral and multilateral agreements).

States could require, according to their national legislation, that the offence for which extradition is required also be punished under their domestic law (dual criminality requirement). In addition, States could introduce, according to their national legislation, conditions in relation to a minimum penalty requirement for extradition. Where extradition is granted based on a minimum penalty requirement, States should consider criminalizing, as serious offences, offences against cultural property (see Guideline 16).

States that do not extradite alleged offenders solely on the ground that he or she is one of its nationals, should submit the case to its competent authorities for the purpose of prosecution (see Guidelines 37 and 38).

States should not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters. States should consider providing, in such bilateral or multilateral agreements, for the concomitant restitution (whenever possible) of the cultural property which is the subject matter of the offence, even in case of impossibility or refusal to extradite. Finally, States should consider the recommendations compiled in the UNODC Manual on Mutual Legal Assistance and Extradition, specifically those set out in chapter 6.

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.

States should consider taking necessary measures in order to enhance the effectiveness and speed of extradition for offences against cultural property and consider ensuring that the offender is either extradited or prosecuted. The aim of these measures is to reduce the opportunity for offenders or potential offenders to seek refuge abroad or to commit offences against cultural property in other countries.

States should also consider taking all necessary measures to ensure the effective and swift execution of extradition for offences against cultural property, as well as the respect of the *aut dedere, aut iudicare* principle (namely, to either extradite or prosecute the alleged offender). Where a State's law does not allow for nationals to be extradited, it should consider ensuring that the person sought is prosecuted at home for the offences for which extradition was sought (see also Guideline 38).

States should consider acceding to and implementing any applicable international law instruments, such as the United Nations Convention against Transnational Organized Crime. Whenever necessary, States should consider concluding bilateral and multilateral agreements or arrangements to enable effective extradition. States should, according to their domestic law, endeavour to expedite extradition procedures and to simplify related evidentiary requirements and take all reasonable measures to effect extradition requests relating to offences against cultural property.

Subject to the provisions of its domestic law and its extradition treaties, a State may consider, upon being satisfied that the circumstances so warrant and are urgent and at the request of another State, taking a person whose extradition is sought and who is present in its territory into custody or taking other appropriate measures to ensure his or her presence at extradition proceedings. If the request for extradition relates to the service of sentence imposed by a requesting State, the requested State, in the case that it cannot extradite, should have measures in place to ensure that the sentence is served in its territory, in conformity with its domestic laws. Before refusing extradition, a State should consult with the requesting State to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

The central authorities mentioned in Guidelines 4 and 34 should serve to enhance the effectiveness and speed of extradition for trafficking in cultural property and related offences. Subject to domestic legislation and administrative measures, States could also consider providing for direct channels of cooperation whenever feasible, without the need to use diplomatic channels. Finally, States should consider the recommendations compiled in the UNODC Manual on International Cooperation for the Purposes of Confiscation of Proceeds of Crime.

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

To extradite or prosecute is an essential principle of international cooperation in combating transnational organized crime. Given to the nature of transnational organized crime, there is a particularly high risk of perpetrators fleeing a country to avoid prosecution and seeking safe haven in another State, beyond the reach of the prosecuting State. Thus, extradition or prosecution is desirable for any effective system of international cooperation in combating offences against cultural property.

Existing provisions in international instruments such as in the United Nations Convention against Transnational Organized Crime reinforce the aim of denying safe haven in foreign jurisdictions for alleged perpetrators of serious crimes, even in cases where States reserve their right not to extradite on the ground that the person is a national of the State from which extradition is requested. In the interest of international cooperation related to offences against cultural property, States should consider submitting the case, when requested by the State that had sought extradition, to the competent authority in order to consider prosecution of the alleged offender in the case of refusal of extradition only on the basis of nationality.

States could also consider allowing for conditional extradition, for instance in cases where a State is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought. The requested and requesting States could also agree on this option and other terms that they deem appropriate, as an alternative to prosecuting instead of extraditing.

In addition, if extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State, the requested State should consider, if its domestic law so permits and in conformity with the requirements of such law, the enforcement of the sentence that has been imposed under the domestic law of the requesting State or the remainder thereof.

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, illicitly excavated, illicitly traded or missing cultural property.

International cooperation in identifying and tracing trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property, as well as in executing searches, seizures, freezing or confiscations, can be particularly relevant in order to enable return and restitution to its legitimate owner to reintegrate the national cultural heritage harmed by the offence.

Each State should consider adopting all necessary measures to ensure the expeditious execution of requests, by other States, to identify and/or trace, seize and confiscate trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural properties. Seizure and confiscation measures by States could also cover proceeds derived from such illicit activities. In addition, property, equipment or other instrumentalities used in or destined for use in offences against cultural property should be subject to such measures.

States should also consider improving cooperation for purposes of confiscation and restitution of cultural property, where needed, through bilateral or multilateral specific agreements or arrangements (see also Guideline 33 on bilateral and multilateral agreements). Such agreements could address cooperation in carrying out searches, electronic surveillance or special

investigative techniques for seizure and confiscation, and would minimize the need for considering requests on a case-by-case basis (see also Guideline 34).

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Case study: the Girolamini Library case. The Italian experience in international cooperation for purposes of seizure, confiscation and return of cultural property

The case refers to the investigations carried out in 2008 by the Public Prosecutor's Office in Naples on the massive dispossession, systematic damaging and exploitation of the library annexed to the Girolamini national monument, one of the most important and original collections of ancient books in Italy, and a relevant piece of the historical-artistic heritage of the country.

The misappropriation, by the person who had been appointed as Director, Massimo Marino De Caro, of approximately 4,000 ancient books and manuscripts belonging to the library was discovered through investigations.

The offender established a large network of national and international accomplices consisting of dealers in antiquities. Thanks to the experience in antique books of his accomplices and their expertise in "placing" in a quick and safe manner the precious and famous volumes stolen from the library, Mr. De Caro was able to gradually dispossess the Library of more than 600 books and manuscripts. A number of volumes and manuscripts were sold to third parties, collectors or brokers, in Italy and abroad, as well as auctioned by the Zisska and Schauer auction house in Munich.

At present, a final conviction has been issued against Mr. De Caro and some of his accomplices in relation to the crime of embezzlement in relation to the books that were recovered within the Italian territory at the beginning of the investigations. A criminal conviction confirmed by the Court of Appeal in Naples has also been issued against Herbert Schauer, holder of the Zisska and Schauer auction house.

Mr. Schauer was arrested in Germany in execution of an European arrest warrant, issued at the request of the Public Prosecutor's Office in Naples, in relation to the crimes of embezzlement and illegal export of cultural property. Around 500 ancient volumes were also found and returned to Italy as a result of a specific request for international cooperation between the two countries.

It must be highlighted that, during the investigation on the Girolamini Library case, successful international cooperation was also rendered to the Italian judicial authorities by Argentina, France, Spain and Switzerland.

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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.

The contribution of some part of confiscated financial assets (different from cultural property) related to offences against cultural property to international or intergovernmental bodies specialized in the fight against trafficking could provide for at least a portion of the funds needed for sustainable international cooperation. It could also contribute towards covering the most costly preventive measures, such as international digital inventories and databases, specialized training, sensitization programmes and campaigns, among others. This would, in turn, also contribute to the improved protection of cultural heritage.

States may consider adopting measures at the national level that would enable them to contribute confiscated financial assets to international or intergovernmental bodies concerned

with the fight against transnational organized crime, including trafficking in cultural property or related offences. Such measures could be part of national laws and regulations relating to forfeiture, return and disposal of assets. States may also consider concluding agreements or arrangements in order to assign confiscated assets to international or intergovernmental bodies specialized in the fight against organized crime, including trafficking in cultural property and related offences. In this regard, such assets could be contributed towards the Fund established under Article 30 of the United Nations Convention against Transnational Organized Crime.

The contribution of some part of confiscated financial assets to international or intergovernmental bodies concerned with the fight against transnational organized crime could be considered irrespective of the use of another part of such assets for tackling trafficking in cultural property and related offences at the national level.

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, illicitly excavated, illicitly traded or missing cultural property, and/or contributing to international ones.

There are various advantages to 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, illicitly excavated, illicitly traded or missing cultural property, and/or contributing to international ones. For instance, art and antiquities dealers, as well as museums and other professionals, can consult the databases before dealing in any cultural object; police and custom authorities can use the databases to identify illegally acquired cultural objects when, for example, they are sent across borders with false documents, presented in online auctions or appearing in a collection.¹⁴¹ They could be also used to corroborate evidence gathered on the illicit origin of cultural property.

To this end, States should consider sharing or interconnecting their national databases on trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property. In addition, States should consider contributing to the INTERPOL Stolen works of art database, which is currently the only existing public international database dedicated to this matter. The inclusion of such information in the INTERPOL database can assist police and customs authorities worldwide in quickly identifying illegally obtained cultural property at border posts, at online auctions or in collections. It can also facilitate the exchange of information and international cooperation among law enforcement agencies of different countries, as well as between such agencies and international law enforcement organizations such as INTERPOL.

States could also consider concluding agreements in order to create a unified international inventory of cultural property for the purpose of protection against its trafficking (see also

¹⁴¹ See also article 5 (g) of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Guidelines 1 and 3). Such an inventory could facilitate the identification of cultural objects, both by national authorities and by bona fide dealers or purchasers worldwide. Moreover, it could support police and other control agencies in monitoring the international art market, especially in the tracing of trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural objects, in particular when a cross-check with the aforementioned databases is provided (see also Guideline 30 on coordination among law enforcement bodies). In addition, the inventory could contribute towards providing a sound basis for claims for return and restitution (see also Guidelines 46 and 47 on return and restitution).

The following are some examples of such exchanges of information at the international level:

- INTERPOL maintains the stolen works of art database, which is accessible to all INTERPOL member countries;¹⁴² until 2009, INTERPOL also periodically issued a widely available *Stolen Works of Art CD-ROM*, as well as posters showing the most sought-after stolen works of art.
- Under the codename PSYCHE (Protection System for Cultural Heritage), the Italian *Carabinieri* specialized unit for the protection of cultural heritage has led a project in close cooperation with INTERPOL aimed at modernizing the INTERPOL database. Its objectives are the enhancement and improvement of the exchange of information on stolen works of art at the global level by modernizing the INTERPOL database. PSYCHE will provide tools and services to accelerate the circulation of information and intelligence at the global level on stolen works of art. It will facilitate direct data insertion into the INTERPOL database as well as enable direct data transfer from the world's most important database on stolen works of art (the state-of-the-art national Leonardo database) into the INTERPOL database. It will also aim at simplifying the queries made against the database through the addition of image comparison software enabling faster cross-checking of works of art and enhancing the potential recovery of stolen objects. Moreover, the project will aim to provide training sessions and materials to law enforcement agencies in order to enhance their capacities to curb the illicit trafficking of cultural heritage.
- In the past, ICOM provided the One-Hundred Missing Objects Series,¹⁴³ which listed objects that had been stolen and whose disappearance had been reported to the police. It also integrated the Red List, which more generally classifies the endangered categories of archaeological objects or works of art in the most vulnerable areas of the world in order to prevent them from being sold or illegally exported.

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 relating to trafficking in cultural property and related offences.

The exchange of information among national law enforcement agencies in relation to previous convictions and ongoing investigations for trafficking or related offences against cultural property can facilitate investigations on offences against cultural property. It could also provide information on patterns of activity of offenders, including of those being tried in another State. Such exchanges could also provide useful information to authorities when considering

¹⁴² See www.interpol.int/Public/WorkOfArt/Default.asp.

¹⁴³ See <http://icom.museum/what-we-do/programmes/fighting-illicit-traffic.html>.

the granting of licences or other authorization for archaeological excavations, dealings in art and antiques, auctions of cultural property or other similar activities.

States should consider using existing international instruments in order to facilitate the exchange of information in relation to previous convictions for offences against cultural property and ongoing investigations, whenever possible.¹⁴⁴ States should also consider concluding bilateral or multilateral agreements in order to allow such exchanges on a regular basis and, where possible, establish direct channels of communication among national law enforcement agencies for that purpose.

Example of enhanced international judicial cooperation related to trafficking in cultural property and related offences

European Council resolution 14232/12, of 4 October 2012, created an informal network of law enforcement authorities with expertise in the field of cultural goods. The main objective of the network is to improve the exchange of information related to the prevention of the illicit trade in cultural goods and to identify and share information on criminal networks suspected of being involved in illicit trade. In its preamble, the resolution considers that crimes “against cultural goods in general, and illicit trafficking of stolen cultural goods in particular, are serious offences because of the threat they pose to civilization and because of their international and cross-border nature”. It also underlines “that the European Union is an important region of origin, transit and destination for cultural goods”.

The network seeks to identify and share information (including information from auction houses and websites used for trading cultural heritage objects), on criminal networks suspected of being involved in the illicit trafficking of stolen cultural goods in order to determine the links between such networks and other forms of crime. It also seeks to identify routes, destinations, modus operandi, and trends and types of criminal activities in close cooperation with the different national and international stakeholders. The network has been tasked by European Parliament resolution 2015/2649(RSP), of 27 April 2015, with creating an additional instrument to control the import into the European Union of cultural goods unlawfully removed from the Syrian Arab Republic and Iraq.

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.

Given the often transnational nature of the art and antiques market, the creation of joint investigative teams by States investigating offences against cultural property can be particularly useful. Such teams can also contribute to the exchange of best practices and investigative techniques among law enforcement agencies of different States. The creation of joint investigative teams can also facilitate information exchange among law enforcement agencies of different States and increase the efficiency of prevention strategies.¹⁴⁵

States should therefore consider taking necessary measures, including entering into specific bilateral or multilateral agreements, in order to establish joint investigative teams to investigate

¹⁴⁴The exchange of personal data, intelligence or findings of investigations should only take place if allowed by national or international laws and through the existing and secured official information exchange channels.

¹⁴⁵In investigations relating to art crimes, the participation in joint investigating teams of art/cultural property experts is also highly recommended, as their expertise could favor prompt and in-depth analyses both of the cultural items as soon as they are recovered. More information on joint investigative teams can also be found on the websites of Eurojust (www.eurojust.europa.eu) and Europol (www.europol.europa.eu).

transnational offences against cultural property, including the undertaking of special investigative techniques. In addition, States could consider facilitating effective coordination among their law enforcement agencies through the exchange of personnel and other experts, including, where feasible, the posting of liaisons officers.¹⁴⁶ States could also create direct communication channels between the joint investigative teams and international organizations charged with cultural property protection, such as INTERPOL, UNESCO and UNIDROIT (see also Guidelines 3, 7, 30, 33, 34, 39 and 44 on international cooperation). In the absence of such agreements or arrangements, States should consider undertaking such joint investigations on a case-by-case basis.

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

States should consider assisting each other in planning and implementing specialized training programmes for law enforcement personnel because of the complexity of offences against cultural property and the particular nature of the objects involved, which require a specialized knowledge of the international art and antiquities market on the part of the investigators. States should also consider assisting each other with specialized training programmes on foreign and international laws and the sharing of best practices so as to facilitate cooperation among law enforcement agencies and improve the efficiency of investigations and prosecutions of offences against cultural property. Examples such as the one examined under Guideline 7 (cooperation between Italy and Iraq) also highlight the importance of this Guideline.

States could consider concluding bilateral or multilateral agreements or arrangements in order to provide for the organization and implementation of shared specialized training programmes on a regular basis, and in order to maximize training activities delivered by international and regional organizations. Specialized training programmes should be provided for police, including customs and border police, as well as for public prosecutors and judges. Training could include case analysis, to examine information on the type of offenders involved, their modus operandi, routes, means of transport, methods of concealment used and their links to other criminal activities and networks.

States should also consider assisting each other in planning and implementing specialized training programmes for law enforcement personnel in war-torn areas and adjacent countries.

States could also consider concluding bilateral or multilateral agreements or arrangements in order to promote the regular organization of regional or international conferences or seminars for law enforcement personnel and experts on offences against cultural property. Such programmes could also promote the international exchange of experts and law enforcement personnel, in order to share investigative techniques and best practices (see also Guidelines 7 and 29).¹⁴⁷

¹⁴⁶For States that have homogenous/similar problems in combatting illicit trafficking in cultural property because they share a common cultural area or have shared borders, co-management of entire investigative and prosecutorial activities could be considered.

¹⁴⁷The INTERPOL Expert Group on Stolen Cultural Property has also in the past dealt with this topic. In the conclusions of the 2010 meeting, the Expert Group invited INTERPOL and its member countries to provide training opportunities on the fight against illicit trafficking in cultural property for law enforcement, judicial and other competent authorities. See the conclusions of the seventh meeting of the INTERPOL Expert Group on Stolen Cultural Property, held in Lyon on 23 and 24 February 2010.

International organizations may also assist in planning and implementing specialized training programmes for law enforcement personnel. For instance, UNESCO supports its member States by organizing regular training courses with a view to strengthening institutional capacities in the fight against illicit trafficking in cultural property, which consistently involve law enforcement stakeholders from all regions. Between June 2014 and July 2015, 16 training sessions were organized involving 60 countries and 580 participants.¹⁴⁸

States should consider coordinating these efforts through an existing central national authority tasked with combating offences against cultural property or by creating a central national authority (see Guideline 4 on central national authorities).

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

The presence of swift and steady communication channels among law enforcement agencies charged with the investigation and prosecution of offences against cultural property can be very useful. This is due to the fact that such offences are often transnational in nature and the art and antiques market is generally opaque, thereby making investigations and prosecutions by a single State very challenging. The existence of such communication channels can therefore facilitate the work of investigators and prosecutors from different States to prevent and combat trafficking in cultural property and related offences.

States should consider taking all necessary measures (including bilateral or multilateral arrangements or agreements) in order to enhance and, where necessary, establish direct channels of communication between their national competent authorities, agencies and services so as to facilitate the secure and rapid exchange of information concerning all aspects of offences against cultural property. States should also consider taking necessary measures in order to allow their national competent authorities to transmit information relating to offences against cultural property to a competent authority of another State, even without a prior request from the interested State or its authorities, in cases where they believe that such information can assist that authority in undertaking or successfully concluding investigations and criminal proceedings or can lead to the recovery of trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property (see Guideline 4 for more on central national authorities).

States should also consider taking all necessary measures to improve the international exchange of information on trends in crimes against cultural property, as well as on circumstances, means and methods, technologies, persons and organizations involved in such offences (see Guidelines 1, 3 and 35 on data collection and dissemination).

Some relevant examples of channels of communication include the INTERPOL I-24/7 system¹⁴⁹ and the ARCHEO network of the WCO Regional Intelligence Liaison Offices for Western Europe¹⁵⁰ for communication among national custom authorities.

¹⁴⁸ See the report of the secretariat on its activities between June 2014 and September 2015, document C70/15/3.SC/4

¹⁴⁹ See www.interpol.int/INTERPOL-expertise/Data-exchange.

¹⁵⁰ See www.wcoomd.org/en/topics/enforcement-and-compliance/activities-and-programmes/trafficking-of-cultural-objects.aspx.

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, illicitly excavated or illicitly traded cultural property for the purpose of their return, restitution or repatriation.

The return and restitution of trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property is the ultimate aim of any measure—either legislative or regulatory, administrative, investigative or judicial—intended to combat trafficking in cultural property and related offences and to ensure the return to the original status quo, as far as possible, of cultural heritage harmed by such offences.

States should consider acceding to (where they are not yet parties) and/or implementing the aforementioned international conventions, including the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the Convention on Stolen or Illegally Exported Cultural Objects. States should also consider concluding any further bilateral or multilateral agreements or arrangements in order to grant, in the framework of criminal proceedings, the return or restitution of a trafficked, illicitly exported or imported, stolen, looted or illicitly excavated, illicitly traded or missing cultural property to its rightful owner, with the greatest effectiveness and within the shortest possible time. The requesting State should furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. States should also consider taking all necessary measures to ensure that their domestic legislation conforms to the aforementioned purpose. In particular, States should consider providing for exemption of customs duties or other charges upon cultural property returned to the requesting State.

States should consider providing for the payment of just compensation to any innocent purchaser who exercised due diligence or to any person who has valid title to the cultural property that has to be returned.

It must also be noted that the recovery and restitution of stolen, looted or illicitly exported cultural property is a central issue in many international conventions and other relevant documents.¹⁵¹ In particular, taking into account that the commission of many offences pertaining to trafficking in cultural property is facilitated by bribery, falsification of documents, abuse of functions and other corrupt practices, the United Nations Convention against Corruption may provide for an effective mechanism for recovery of cultural property.¹⁵² Chapter V of the Convention provides for important provisions for direct recovery of property through civil action by another State party, for mandatory and discretionary return of property. For example, in the case of the embezzlement of cultural property by a public official or laundering of the embezzled property, on the basis of a judgment of the requesting State party and when the cultural property is confiscated on the basis of the request of the requesting State party, the requested State party must return the confiscated property to the requesting

¹⁵¹For instance, the UNODC expert group on protection against trafficking in cultural property expressly recommended that “States should consider including, in their cooperation agreements on protection against trafficking in cultural property, specific provisions for [...] the return or, as appropriate, the restitution of stolen cultural property to its rightful owner” (see UNODC/CCPCJ/EG.1/2009/2). In this regard, also relevant are General Assembly resolutions 48/15 of 2 November 1993, 58/17 of 3 December 2003, 61/52 of 4 December 2006, 64/78 of 7 December 2009 and 66/180 of 19 December 2011 on the return and restitution of cultural property.

¹⁵²For the United Nations Convention against Corruption to be applicable to cases of trafficking of cultural property or related offences, the cultural property must be obtained through or involved in the commission of any of the offences enumerated in that Convention.

State party. Article 57 of the Convention also provides for other grounds for mandatory or discretionary return of the property.

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.

In accordance with their duty to protect cultural property as part of the common heritage of humankind, several States have enacted laws on national or State ownership of certain cultural property, which would consider such cultural property to be public property of the State. Laws on national or State ownership include ownership of archaeological artefacts and historical objects, regardless of prior exercise of physical control over them, and thus including when such artefacts and objects remain officially undiscovered or otherwise uncatalogued.

When a State which has enacted such laws on national or State ownership seeks restitution of relevant cultural property, requested States should resort to all appropriate means at their disposal in order to cooperate to the greatest extent possible with the requesting State. Such cooperation would include taking into account the requesting State's national or State ownership laws in order to expeditiously grant requests for restitution of public property.



IV. SCOPE OF APPLICATION

Guideline 48. States should consider applying the Guidelines in any situations, 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.

The significance of cultural property as part of the common heritage of humankind and as a unique and important testimony of the culture and identity of peoples prompts the formulation of policies aimed at strengthening international cooperation in preventing, prosecuting and punishing all aspects of its trafficking. Therefore, States should consider applying the Guidelines to the maximum extent possible in any situation and making efforts to overcome practical difficulties in their implementation.

Applying the present Guidelines in any situation, including exceptional circumstances, that foster trafficking in cultural property and related offences may be of relevance to the protection of cultural property in such circumstances. Exceptional circumstances may include armed conflict and natural disasters, among others.

Applying the International Guidelines consistently in any situation could:

- Enhance the effectiveness of State actions in preventing, investigating and prosecuting trafficking in cultural property and related offences that are greatly harmful to cultural heritage.
- Allow for the consistent protection of national cultural property, while promoting international cooperation.
- Encourage due diligence from professional operators when dealing with cultural property and increase transparency in cultural institutions' acquisition policies, as well as in the art and antiques markets.
- Strengthen public awareness of the relevant value of cultural heritage and of the harm caused by crimes against it.
- Foster an assumption of responsibility by operators and the general public when dealing with cultural sites or properties, especially in case of chance discoveries.

During crisis situations, such as manmade and natural disasters, trafficking in cultural property can generate a lucrative underground market within and among States. States should therefore consider creating specific arrangements and implementing interim measures for

enhancing cooperation to combat trafficking in cultural property and related offences in such scenarios.

States should also consider applying the International Guidelines to new challenging phenomena, such as those relating to “cultural cleansing”¹⁵³ and the funding of terrorism through the trafficking in cultural property and related offences.

¹⁵³See, for instance, United Nations News Centre, “General Assembly calls for an immediate halt to ‘wanton’ destruction of Iraq’s cultural heritage”, 28 May 2015. Available at www.un.org.



ANNEX I. TREATIES, CONVENTIONS AND OTHER OFFICIAL DOCUMENTS, WITH SELECTED SECTIONS RELATING TO THE PROTECTION AND RETURN OF CULTURAL PROPERTY, APPLICABLE TO CERTAIN GUIDELINES

GUIDELINE 1

<i>Legal texts</i>	<i>Article/s</i>
Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1999)	5, 33
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	5, 7
Operational Guidelines for the implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (2013)	Paras. 12; 33 to 38
Convention on Stolen or Illegally Exported Cultural Objects (1995)	3, 4 (4)
European Convention on the Protection of the Archaeological Heritage (1992)	4

GUIDELINE 2

<i>Legal texts</i>	<i>Article/s</i>
Operational Guidelines for the implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (2013)	Paras. 25, 33, 34, 35 and 87

GUIDELINE 3

<i>Legal texts</i>	<i>Article/s</i>
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	5 (g), 16
Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property (1990)	2 (b), 4
Convention on the Protection of the Underwater Cultural Heritage (2001)	19.4

GUIDELINE 4

<i>Legal texts</i>	<i>Article/s</i>
Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1999)	5
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	5, 14
Convention on the Protection of the Underwater Cultural Heritage (2001)	22
Council Directive 93/7/EEC of 15 March 1993	3
Security Council resolution 2199 (2015)	Para. 17

GUIDELINE 5

<i>Legal texts</i>	<i>Article/s</i>
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	5 (e)
Operational Guidelines for the implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (2013)	Paras. 49 to 51 and 71
United Nations Convention against Transnational Organized Crime (2000)	31.2.b, 31, §1
United Nations Convention against Corruption (2003)	8

GUIDELINE 6

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000)	7
United Nations Convention against Corruption (2003)	8, 13, 31, 34

GUIDELINE 7

<i>Legal texts</i>	<i>Article/s</i>
Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict	25
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	5, 6
Operational Guidelines for the implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (2013)	Paras. 72 to 80
United Nations Convention against Transnational Organized Crime (2000)	30, §2, d
UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001)	21
United Nations Convention against Corruption (2003)	7
European Convention on the Protection of the Archaeological Heritage (1992)	6

GUIDELINE 9

<i>Legal texts</i>	<i>Article/s</i>
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	6, 7
Operational Guidelines for the implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (2013)	Paras. 68 to 70
Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property (1990)	2 (f) and (g)
Convention on Stolen or Illegally Exported Cultural Objects (1995)	6
Council Regulation (EC) n. 116/2009 of 18 December 2008 on the export of cultural goods (Codified version)	2, 3, 4

GUIDELINE 11

<i>Legal texts</i>	<i>Article/s</i>
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	5
Rules concerning activities directed at underwater cultural heritage, annexed to the Convention on the Protection of the Underwater Cultural Heritage (2001)	Rule 1-8, 25
European Convention on the Protection of the Archaeological Heritage (1992)	2, 3

GUIDELINE 12

<i>Legal texts</i>	<i>Article/s</i>
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	5, 10
Operational Guidelines for the implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (2013)	Paras. 52, 53 and 81
Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property (1990)	2 (h)
Convention on the Protection of the Underwater Cultural Heritage (2001)	2, 20
Framework Convention on the Value of Cultural Heritage for Society (2005)	

GUIDELINE 13

<i>Legal texts</i>	<i>Article/s</i>
Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict	I.a., 28
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	I.a., 6 (b), 7 (b), 8 and 10
Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Additional Protocol I) (1977)	I.a., 53 and 85
Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1999)	I.a., 15
United Nations Convention against Transnational Organized Crime (2000)	I.a. 2 (b) and 3 (see also the last preambular paragraph of General Assembly resolution 55/25)
Convention on the Protection of the Underwater Cultural Heritage (2001) ^a	I.a., 17
United Nations Convention against Corruption (2003) ^b	
European Convention on Offences relating to Cultural Property (1985) ^c — has not entered into force	I.a., 3 and 12 and appendix III

GUIDELINE 15

<i>Legal texts</i>	<i>Article</i>
Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1954)	1
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) ^d	2
Convention on Stolen or Illegally Exported Cultural Objects (1995) ^e	2 and annex
Convention on the Protection of the Underwater Cultural Heritage (2001) ^f	1
European Convention on Offences relating to Cultural Property (1985) — has not entered into force	2 and appendix II
European Convention on the Protection of the Archaeological Heritage (Revised) (1992) ^g	1
Council Regulation (EC) No. 116/2009 on the export of cultural goods (Codified version) (2008)	1 and annex I
EC Directive 93/7/EEC of 1993 on the return of cultural objects unlawfully removed from the territory of a Member State	1 and annex

^aUnited Nations, *Treaty Series*, vol. 2562, No. 45694.

^bUnited Nations, *Treaty Series*, vol. 2349, No. 42146.

^cCouncil of Europe, *European Treaty Series*, No. 119.

^dUnited Nations, *Treaty Series*, vol. 823, No. 11806.

^eUnited Nations, *Treaty Series*, vol. 2421, No. 43718.

^fUnited Nations, *Treaty Series*, vol. 2562, No. 45694.

^gUnited Nations, *Treaty Series*, vol. 1966, No. 33612.

GUIDELINE 16

<i>Legal texts</i>	<i>Article/s</i>
Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict and its Second Protocol	4 and 28 of the Convention; 15 of the Second Protocol
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	I.a., 6 (b), 7 (b), 8
United Nations Convention against Transnational Organized Crime (2000)	I.a., 5, 6
United Nations Convention against Corruption (2003)	14 and 23
Convention on the Protection of the Underwater Cultural Heritage (2001)	I.a., 14, 17
General Assembly resolution 66/180 (2011)	Para. 6
General Assembly resolution 68/186 (2013)	Para. 3
Resolution 5/7 of 22 October 2010, entitled "Combating transnational organized crime against cultural property", adopted by the of 2010 of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime	
European Convention on Offences relating to Cultural Property (1985) — has not entered into force	1, 3, 12, appendix II
European Union directive 2005/60/EC on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing	7, 9, 17

GUIDELINE 17

<i>Legal texts</i>	<i>Article/s</i>
Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict and its Second Protocol	Convention: 4, 28, Protocol: 15
Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property (1990)	3 (b)
Convention on the Protection of the Underwater Cultural Heritage (2001)	10 and 17
European Convention on Offences relating to Cultural Property (1985) — has not entered into force	

GUIDELINE 18

<i>Legal texts</i>	<i>Article/s</i>
Convention on the Protection of the Underwater Cultural Heritage (2001)	9, 11, 17
European Convention on Offences relating to Cultural Property (1985) — has not entered into force	1, 3, 12 and appendix III
European Convention on the Protection of the Archaeological Heritage (Revised) (1992)	2

GUIDELINE 19

<i>Legal texts</i>	<i>Article</i>
Model Treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property (1990) ^h	2
Convention on Stolen or Illegally Exported Cultural Objects (1995) ⁱ	4.4
Convention on Stolen or Illegally Exported Cultural Objects (1995)	6
UNESCO International Code of Ethics for Dealers in Cultural Property (1999)	

GUIDELINE 20

<i>Legal texts</i>	<i>Article/s</i>
Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1954)	28
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	6 (b), 7 (b), 8, 10
Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1999)	15 (2)
United Nations Convention against Transnational Organized Crime (2000)	11
Convention on the Protection of the Underwater Cultural Heritage (2001)	17
United Nations Convention against Corruption (2003)	30
Salvador Declaration on Comprehensive Strategies for Global Challenges: Crime Prevention and Criminal Justice Systems and Their Development in a Changing World ^j (2010)	12
European Convention on Offences relating to Cultural Property (1985) — has not entered into force	12

GUIDELINE 22

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000) ^k	31
United Nations Convention against Corruption (2003) ^l	30, 34

GUIDELINE 23

<i>Legal texts</i>	<i>Article</i>
United Nations Convention against Transnational Organized Crime (2000)	10
United Nations Convention against Corruption (2003)	26

^h*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.

ⁱUnited Nations, *Treaty Series*, vol. 2421, No. 43718.

^jGeneral Assembly resolution 65/230, annex.

^kUnited Nations, *Treaty Series*, vol. 2225, No. 39574.

^lUnited Nations, *Treaty Series*, vol. 2349, No. 42146.

GUIDELINE 24

<i>Legal texts</i>	<i>Article</i>
United Nations Convention against Transnational Organized Crime (2000)	10
United Nations Convention against Corruption (2003)	26

GUIDELINE 25

<i>Legal texts</i>	<i>Article</i>
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	7 (ii)
Convention on Stolen or Illegally Exported Cultural Objects (1995)	8 (3)
United Nations Convention against Transnational Organized Crime (2000) ^m	12 (1) and (2)
Convention on the Protection of the Underwater Cultural Heritage (2001) ⁿ	18

GUIDELINE 26

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000)	12 (7)
United Nations Convention against Corruption (2003)	31 (8)
Operational Guidelines for the implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (2013)	Para. 87; and 93 to 96

GUIDELINE 27

<i>Legal texts</i>	<i>Article</i>
United Nations Convention against Transnational Organized Crime (2000)	12
Convention on the Protection of the Underwater Cultural Heritage (2001)	17
United Nations Convention against Corruption (2003)	31

GUIDELINE 29

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000)	29
United Nations Convention against Corruption (2003)	36 and 60

GUIDELINE 30

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000)	27
United Nations Convention against Corruption (2003)	38 and 48

^mUnited Nations, *Treaty Series*, vol. 2225, No. 39574.

ⁿUnited Nations, *Treaty Series*, vol. 2562, No. 45694.

GUIDELINE 31

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000)	20, 24 and 26
United Nations Convention against Corruption (2003)	32, 33, 38, 48 and 50

GUIDELINE 32

<i>Legal texts</i>	<i>Article/s</i>
Charter of the United Nations (1945)	2
Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict	28
Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict (1999)	16
United Nations Convention against Transnational Organized Crime (2000)	4, 15
United Nations Convention against Corruption (2003)	42
European Convention on Offences relating to Cultural Property (1985) — has not entered into force	13

GUIDELINE 33

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000) ^o	18
United Nations Convention against Transnational Organized Crime (2000)	Various
United Nations Convention against Corruption (2003)	43, 46
European Convention on Offences relating to Cultural Property (1985) — has not entered into force	5 and following

GUIDELINE 34

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000)	18
United Nations Convention against Corruption (2003)	43, 46
European Convention on Offences relating to Cultural Property (1985) — has not entered into force	5 and following

GUIDELINE 36

<i>Legal texts</i>	<i>Article</i>
Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict	18
Additional Protocols of 1977 to the Geneva Conventions of 1949	88
United Nations Convention against Transnational Organized Crime (2000)	16
United Nations Convention against Corruption (2003)	44

^oUnited Nations, *Treaty Series*, vol. 2225, No. 39574.

GUIDELINE 37

<i>Legal texts</i>	<i>Article</i>
United Nations Convention against Transnational Organized Crime (2000)	16
United Nations Convention against Corruption (2003)	44

GUIDELINE 38

<i>Legal texts</i>	<i>Article</i>
United Nations Convention against Transnational Organized Crime (2000)	16, para. 10
United Nations Convention against Corruption (2003)	44, para. 11

GUIDELINE 39

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000)	12, 13
United Nations Convention against Corruption (2003)	52, 54, 55, 57

GUIDELINE 40

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000)	14, 30
United Nations Convention against Corruption (2003)	62

GUIDELINE 42

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000)	18, 22
United Nations Convention against Corruption (2003)	41

GUIDELINE 43

<i>Legal texts</i>	<i>Article/s</i>
United Nations Convention against Transnational Organized Crime (2000)	19
United Nations Convention against Corruption (2003)	48, 49

GUIDELINE 44

<i>Legal texts</i>	<i>Article</i>
United Nations Convention against Transnational Organized Crime (2000)	29
United Nations Convention against Corruption (2003)	60
"Charter of Courmayeur" (adopted at the workshop organized by the Crime Prevention and Criminal Justice Branch at the United Nations Office at Vienna, its International Scientific and Professional Advisory Council and UNESCO)	

GUIDELINE 45

<i>Legal texts</i>	<i>Article/s</i>
Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property (1990)	4
United Nations Convention against Transnational Organized Crime (2000)	18, 27, 28
Convention on the Protection of the Underwater Cultural Heritage (2001)	19
United Nations Convention against Corruption (2003)	46, 48
Economic and Social Council Resolution 2008/23	
Conference of the Parties to the United Nations Convention against Transnational Organized Crime	Resolution 5/7, of 2010
European Convention on the Protection of the Archaeological Heritage (Revised) (1992)	10
European Convention on Offences relating to Cultural Property (1985) — has not entered into force	7

GUIDELINE 46

<i>Legal texts</i>	<i>Article/s</i>
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	7, 13
Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property (1990)	4
Convention on Stolen or Illegally Exported Cultural Objects (1995)	
United Nations Convention against Transnational Organized Crime (2000)	14, 25
United Nations Convention against Corruption (2003)	Chap. V, 51, 57
European Convention on Offences relating to Cultural Property (1992)	6, 11
Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State	

GUIDELINE 47

<i>Legal texts</i>	<i>Article/s</i>
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)	2
Operational Guidelines for the implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (2013)	Paras. 25, 26, 86, 90, 91 and 95 to 97
Convention on Stolen or Illegally Exported Cultural Objects (1995)	3
UNESCO–UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects (2011)	Various provisions



ANNEX II. GLOSSARY

The definitions set out below are designed to clarify the meaning of certain terms.

Due diligence

The term “due diligence” refers to two actions in the art world: first, the buyer’s investigation of possible suspicious circumstances surrounding the item; and second, the victim’s search for the stolen property. As such, due diligence does not imply only avoiding the acquisition of objects looted, stolen, lost against the will of the proprietor and subsequently illicitly exported out of its country of origin; it is also necessary to be able to prove it through authentic documents that demonstrate the legal origins of the piece.

Good faith defence

A legal doctrine allowing the transfer of good title, even when the piece is stolen, to a good faith purchaser, who, accordingly, must have considered all the circumstances of the transaction, including the current situation and problematic of stolen and looted cultural items present in the art market. As such, in particular countries, it is possible for a buyer who has been diligent in investigating suspicious circumstances relating to the seller’s title to purchase and keep a stolen object unless the true owner locates the object and sues to recover it within the statutory time or shows that he has been duly diligent in investigating its whereabouts.

Grey market

The term refers to the existence of a pocket between the markets offered by the licit “upper-world” and the illicit underworld: a grey market is neither definitively “black” nor definitively “white” in terms of legality. The antiquities trade represents a complex example of a transnational grey market with indistinguishable licit and illicit dynamics.

Laundering of cultural property

The process of creating a veneer of legitimacy for an object that was exported illegally. After the illegal export of the object from its source country, it is exhibited publicly, published in

catalogues and provided with a new provenance: after this process of laundering, the piece appears to be of legitimate origin and thus it can be exported abroad once again.

Looting

The unauthorized, unrecorded and unpublished excavation of archaeological sites with the goal of obtaining antiquities for commercial profit. Looted antiquities can be also taken from other places if these are an integral part or attachments to an ancient structure.

Provenance

The term refers to the history of ownership, custody or location of an object. Lacking this history, an antiquity is deemed “unprovenanced”. This term should not be confused with “provenience”, or the factual information of a particular object’s find-spot.





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