Criminal justice responses
in the field of anti-corruption
in countering trafficking in cultural property

Side event
6th session of the Conference of the States Parties to the
United Nations Convention against Corruption

St Petersburg, Russian Federation, 5 November 2015
Illegal excavations in Apamea, Syria

Destruction of Palmyra’s Temple of Bel, Syria
Satellite images of el Lisht, Egypt, 2010 and 2013 (National Geographic)
Context

• Growing interest in art objects from other cultures has fuelled an increase in the demand for and trade in cultural property

• Economical cause of both licit and illicit traffic in cultural property: demand exceeds supply in market countries / supply is abundant in source countries

• Proceeds of transnational crime related to art and cultural property $\approx 0.8\%$ of all illicit financial flows $\approx 3.4$ and $6.3$ billion dollars

• Recognition of trafficking in cultural property as a **criminal** phenomenon!
Reference to penal sanctions

- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 1970 [see Arts. 6(b), 7(b), 8 and 10(a)]
- Convention on Stolen or Illegally Exported Cultural Objects, 1995
- Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, 1999 [see esp. Arts. 15(1)(c) and (d), 18, 19]
- United Nations Convention against Corruption, 2003
- Since 2004, resolutions of ECOSOC and GA: Alarmed at growing involvement of organized criminal groups in trafficking in cultural property and calls for international cooperation in criminal matters
- GA resolution 69/196 - International Guidelines
1970 UNESCO Convention

- Requires States Parties to take action in the following fields:
  
  (a) Preventive measures in terms of export certificates, monitoring trade, imposition of penal or administrative sanctions, etc.

  (b) Restitution provisions

  - Per Art. 7 (b) (ii) of the Convention, at the request of the State Party “of origin”, State Parties undertake to take appropriate steps to recover and return any such cultural property.

  - Art. 13 of the Convention contains provisions on restitution and cooperation, consistent with the laws of each State.

  (c) International cooperation framework to strengthen cooperation among and between States Parties.
United Nations Convention against Transnational Organized Crime

- Negotiations → list approach included the illicit traffic in and theft of cultural objects
- Final, more flexible approach
- Preamble to GA res. 55/25: “Strongly convinced that the United Nations Convention against Transnational Organized Crime will constitute an effective tool and the necessary legal framework for international cooperation in combating, inter alia, such criminal activities as money-laundering, corruption, ... offences against cultural heritage...”
United Nations Convention against Transnational Organized Crime

- 185 Parties
- Scope of application:
  - (a) participation in an organized criminal group
  - (b) corruption
  - (c) money-laundering
  - (d) obstruction of justice and
  - (e) serious crime

which is transnational and involves an organized criminal group
United Nations Convention against Corruption

- 177 Parties
- Scope of application:
- Prevention, investigation and prosecution of, inter alia:
  - Active and passive bribery (national and foreign public officials, and in the private sector)
  - Trading in influence, abuse of functions, illicit enrichment
- Freezing, seizure, confiscation and return of the proceeds of corruption offences
International cooperation

• Challenge of harmonization of criminal offences, especially to enable extradition

• Use of the Organized Crime Convention and Convention against Corruption for law enforcement cooperation, joint investigation teams and international judicial cooperation (extradition, mutual legal assistance, including for the purpose of confiscation), and asset recovery

• See Art. 14 (2) UNTOC, on disposal of confiscated proceeds of crime or property, and Chapter V of UNCAC, on asset recovery
International Guidelines for Crime Prevention and Criminal Justice Responses with respect to Trafficking in Cultural Property and Other Related Offences - GA resolution 69 / 196

• The Guidelines focus on:
  (a) crime prevention strategies,
  (b) criminal justice policies;
  (c) related law enforcement and judicial cooperation.

• Non-binding guidelines available to Member States for their consideration in the development and strengthening of crime prevention and criminal justice policies, strategies, legislation and cooperation mechanisms to prevent and combat trafficking in cultural property and related offences.

SC Resolution 1483 (2003), para 7:

• States to facilitate return of Iraqi cultural property illegally removed from Iraq since the adoption of resolution 661 (1990) of 6 August 1990.
• States to establish prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed.

SC Resolution 2199 (2015), para. 17:

• States to prevent the trade in Iraqi and Syrian cultural property illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011 to allow for safe return to Iraqi and Syrian people.
Need for a comprehensive approach

- Use of the licit market by criminal groups (need for preventive administrative regulations)
- Importance of closer cooperation with civil society, including promoting responsible trade, codes of conducts, awareness-raising, establishing higher levels of due diligence
- Review and strengthening of legislation (civil, administrative and penal measures complement each other)
- Law enforcement and prosecution services may benefit from exchange of information about modus operandi and from strengthening international cooperation mechanisms
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**CULTURAL ARTIFACTS**

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Make sure that the souvenirs you take home have a documented and legal history, aren’t stolen and can be exported. Ask about the origin of what you are buying and always keep in mind your own country’s rich history and heritage and how you would feel if this was taken away from you.

![Image of an artifact with a "Price Stolen" tag]

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**ARTEFACTOS CULTURALES**

bearesponsibletraveller.org

Asegúrate de que los souvenirs que te lleves a casa tengan un historial documentado y legal, que no sean objetos robados y que tengan permiso de exportación. Pregunta por el origen de lo que estás comprando y piensa siempre en la riqueza de la historia y el patrimonio de tu propio país y en cómo te sentirías si te lo arrebataran.

![Image of a mask with a "Price Stolen" tag]
Protecting Cultural Heritage: An Imperative for Humanity

Acting together against the destruction and trafficking of cultural property by terrorist and organized crime groups

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Thank you for your attention

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