



# Conference of the Parties to the United Nations Convention against Transnational Organized Crime

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## Working Group of Government Experts on Technical Assistance

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Item 7 of the provisional agenda\*

**Application of the United Nations Convention  
against Transnational Organized Crime by States  
parties with respect to criminal offences against  
cultural property**

## Working Group on International Cooperation

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## **Application of the United Nations Convention against Transnational Organized Crime by States parties with respect to criminal offences against cultural property**

### **Report of the Secretariat**

#### **I. Introduction**

1. This report has been prepared pursuant to resolution 5/7, entitled “Combating transnational organized crime against cultural property”, adopted by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime at its fifth session. In that resolution, the Secretariat was requested to prepare an analytical report on the application of the Convention by States parties with respect to criminal offences against cultural property, for the consideration of the Working Group of Government Experts on Technical Assistance and the Working Group on International Cooperation.

2. In that resolution, the Conference also requested the Working Group on Technical Assistance and the Working Group on International Cooperation to make recommendations for consideration by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, in order to promote the practical application of the Convention, by considering the extent and adequacy of existing norms as well as other normative developments, with due attention to

\* CTOC/COP/WG.2/2012/1.

\*\* CTOC/COP/WG.3/2012/1.



aspects of criminalization, international cooperation including mutual legal assistance and extradition with regard to this matter.<sup>1</sup>

3. In its resolution 5/7, the Conference also urged States parties to provide the Secretariat with information for the present report. On 17 April 2012, the Secretariat circulated a note verbale, requesting States parties to transmit to the Secretariat by 25 May 2012 examples of the practical application, at the national level, of the United Nations Convention against Transnational Organized Crime with respect to criminal offences against cultural property, especially with regard to criminalization and international cooperation including mutual legal assistance and extradition. The present report contains a summary of the responses provided by States parties by 13 June 2012.

## II. Criminalization

4. The lack of harmonized criminal legislation has been identified by States as a major obstacle to the protection of cultural property. Many States indicated that they did not have specific criminal legislation to protect cultural property. Some countries prohibited and punished the theft of cultural property under the general criminal code, in the same way as the theft of any other object, without consideration for its particular nature and value. Many source countries, however, reported that they had put into place stringent and precise offences for trafficking in cultural property and related crimes, and imposed strict penalties.

### Algeria

5. Algeria reported that it had ratified the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the 1973 concerning the Protection of the World Cultural and Natural Heritage and that it had adopted national legislation in compliance with these instruments.

6. Algeria adopted law n°98-04 dated 15 June 1998, relating to the protection of cultural heritage, according to which offences against cultural property are punishable by a deprivation of liberty of six months to five years and a heavy fine. These offences included: theft or concealment of objects discovered during excavations or underwater research, objects registered in an inventory or objects, which are classified, and objects obtained after dismantling or parcelling of immovable cultural property. This law also prohibits the illicit export of movable cultural property whether or not classified, registered or in an inventory, as well as the illicit import of movable cultural property whose historical, artistically or archaeological value was recognized by the country of origin.

7. Furthermore, Algeria adopted law n°05-06 of 23 August 2005, relating to smuggling. Under this law, the smuggling of artefacts or objects of archaeological heritage is punishable by deprivation of liberty of one to five years and a fine equivalent to the value of the property. The sanctions are increased when, for example, the smuggling of cultural property is committed by three or more persons,

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<sup>1</sup> See also CTOC/COP/2010/12.

the goods are discovered in cavities or other places specially created for smuggling activities, or smuggling of cultural property is committed using transportation or firearms. The same law also imposes an obligation to report an offence. Where the perpetrator is a professional dealing with cultural property, the punishment is more severe. The law allows for a mitigation of penalty when the offender cooperates effectively with the law enforcement authorities and in the use of special investigative techniques.

### **Bulgaria**

8. Bulgaria responded that cases concerning the implementation of the Convention to criminal offences against cultural property, including criminalization and international cooperation, were dealt with by the General Directorate for Combating Organized Crime in the Ministry of Interior. Bulgaria also reported that the Customs Administration in the Ministry of Finance exercised mandates related to combating trafficking in cultural property and it cooperated with other law enforcement agencies in this regard. The Customs Administration also works with the Ministry of Culture to regulate the procedures and methods of carrying out joint investigations and to exchange information concerning the export and temporary export of cultural property. The Customs Administration and the Ministry of Interior interacted closely to prevent and detect violations of the currency, customs and excise legislation and border regime, in particular illegal transactions and international trafficking of cultural property, valuable historical artefacts, findings and works of art.

### **Germany**

9. Germany stated that, although the Organized Crime Convention did not explicitly mention the protection of cultural property, it applied to a wide range of crimes, including criminal offences against cultural property on a regular basis.

10. In Germany, criminal offences against cultural property are mostly dealt with as “Hehlerei” (dealing in stolen goods), “money laundering”, “Bannbruch” (illegal import/export/transfer of goods), “Steuerhehlerei” (dealing in goods with tax/customs implications), and crimes under the Fiscal Code of Germany. All of these offences are punishable by a maximum deprivation of liberty of at least four years, in other words fall under the definition of serious crime, as stipulated in article 2 (b) of the Organized Crime Convention.

11. Furthermore, Germany recognized that trafficking in cultural property involved different actors that tended to constitute an organized criminal group to which the Organized Crime Convention could apply. Mostly, offences against cultural property involved the pot-hunter, the owner, brokers, and auctioneers.

### **Greece**

12. Greece reported that, since the signing of the United Nations Convention against Transnational Organized Crime and its three Protocols in 2000, Greece had established an international legal framework to combat organized crime and had set out the definition of organized crime, as required by the Convention.

13. Greece has integrated the provisions of the Organized Crime Convention in its national legal framework with the legislation L. 3875/2010, entitled “Validation and

Implementation of the United Nations Convention against Transnational Organized Crime and its three Protocols and relevant provisions”. The requirements of the Convention were also integrated into the legislation L. 2928/2001 entitled “Modification of the provisions of Penal Code and Criminal Procedure Code and other provisions for the protection of citizen against criminal actions committed by criminal organizations”. The legislation L. 3875/2010 is supplementary to the provisions of the L. 2928/2001, and later modifications and amendments of other relevant laws, namely, (i) Law number L. 3568/2008, which added the offence of illegal transport of antiquities to the provisions relating to organized crime and removal of secrecy; (ii) Law number L 3691/2008 entitled “Prevention and suppression of money laundering and financing of terrorism and other provisions”, which broadened the meaning of the crimes (basic offences) of the main legislation to include criminal incomes derived from offences against cultural property and antiquities. These offences were also included in law number L 3028/2002, entitled “For the protection of antiquities and cultural heritage in general”.

14. Furthermore, article 253A of the Code of Criminal Procedure, entitled “Investigative techniques to combat criminal organizations” is particularly relevant in the fight against organized crime. The article allows for the use of special investigative techniques, such as undercover operations, controlled deliveries, removal of secrecy and use of personal data, under the preconditions that are explicitly described in the Organized Crime Convention, for the offence of illegal trafficking in antiquities and cultural property and other offences provided for in paragraphs 1 and 2 of the Greek Penal Code.

15. Greece outlined that the impact of the Convention, in relation to criminal offences against cultural property, was very important and that the legal tools given to the prosecution authorities to combat illegal traffic of cultural goods (special investigative techniques, removal of secrecy, and the provisions criminalizing organized crime) had played a crucial role in dealing with such cases.

16. Greece also provided an example of a case involving the dismantling of a criminal organization involved in trafficking in antiquities to illustrate the fact that the use of special investigative techniques foreseen in article 253 A of the Code of Criminal Procedure can be effective.

17. On 4 March 2012, a criminal organization consisting of several members who were involved in the smuggling of a large number of objects of cultural property in 13 districts of Greece was dismantled by the Police Directorate of Halkidiki. During the police operation, 44 Greek nationals were arrested and specifically the leader of the criminal organization as well as 43 main and peripheral members of the organization. The leader of the criminal organization had created the organized group to carry out activities of illicit trade of cultural property, mainly abroad. The objects were normally sourced by the members of the criminal organization from illicit excavations in various places in Greece, mainly in Macedonia, Thessalia and Sterea Ellada.

18. The illicitly excavated artefacts were sent abroad by the leader of the criminal organization for sale through a network that he had established. The leader used to travel abroad to take the objects or send them via couriers in special envelopes and in small quantities to avoid detection. The investigation uncovered frequent travels of the leader to Bulgaria, Germany, Switzerland and the United Kingdom, as well as

several money remittances from abroad to the leader. Multiple searches by the Greek law enforcement authorities of houses of the arrested people and other premises in several regions of the country yielded thousands of coins (over 8,000) dating from the sixth century B.C to the Byzantine years. Numerous pieces of other cultural property, metal detectors, guns, books, material to identify ancient coins and money were also found and confiscated.

### **Portugal**

19. Portugal reported that its Constitution contained different articles related to the protection of cultural property. Article 73-3, according to which the Government shall promote the democratization of culture by fostering and ensuring access by all its citizens to its cultural heritage, was mentioned in particular.

20. Portugal indicated that the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 was the legal instrument directly underpinning the offences of displacement (article 101 of the Penal Code of Portugal), illicit export (article 102 of the Penal Code), destruction of traces (Act No.107/2001 of 8 September 2001 and section 204, 2 d) of the Penal Code). Moreover, the Penal Code also contained the offence of aggravated theft, where the stolen movable property had an important scientific, artistic or historical value and was part of a public or accessible to a public collection or exhibition.

21. Portugal also provided statistics, showing that in 2010 and 2011, the number of thefts of cultural property decreased and that the number of solved cases increased.

22. Portugal indicated that a legislative framework to tackle trafficking in cultural property was in place, without specifying whether the framework also included the requirements of the Organized Crime Convention or if it had already applied the Convention to court cases or international cooperation requests related to trafficking in cultural property.

### **Madagascar**

23. Madagascar reported concrete examples of initiatives to combat trafficking in cultural property more effectively, such as, for example, the establishment of a special police unit against piracy, theft and looting of cultural heritage according to decree N° 2012-135 of 31 January 2012.

24. Madagascar also indicated the reinforcement of the security of sites and museums in close cooperation with law enforcement authorities, the strengthening of communication and exchange of information with the networks of museums and organizations dealing with the protection of cultural and natural heritage such as UNESCO and Interpol. Madagascar also mentioned its awareness-raising campaign to protect cultural heritage.

25. Madagascar did not indicate whether the requirements of Organized Crime Convention had been included in national legislation on trafficking in cultural property.

#### **Norway**

26. Norway reported that the Ministry of Justice and Public Security had not applied the Organized Crime Convention in cases relating to criminal offences against cultural property. The Interpol National Central Bureau in Oslo and the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime also indicated that they had never applied the Convention in such cases.

27. Nevertheless, Norway noted that that it continued to consider the Convention to be a useful tool in combating crimes against cultural property and that the Convention was increasingly relevant in this regard.

28. Norway indicated also that it had some experience in using the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970.

#### **United States of America**

29. The United States reported that it had strong and tested legal mechanisms that could protect the United States cultural property from looting and trafficking. The Archaeological Resources Protection Act defined federal archaeological cultural property in the United States, provided mechanisms for its protection, and defined criminal penalties for violations, including for looting and trafficking.

30. In addition, the United States law enforcement utilizes numerous civil, criminal, and smuggling statutes to investigate and prosecute civil and criminal violations against international cultural property, including the National Stolen Property Act and the Convention on Cultural Property Implementation Act (CPIA). The National Stolen Property Act allowed for criminal prosecution of stolen cultural property.

### **III. International cooperation, including mutual legal assistance and extradition**

31. According to article 1 of the Organized Crime Convention, the purpose of the Convention is to promote cooperation to prevent and combat transnational organized crime more effectively. The Organized Crime Convention offers a broad framework for international cooperation in the prevention, investigation and prosecution of organized criminal activity. With 170 Parties, the Convention establishes a nearly universal basis on which States can cooperate to facilitate criminal investigations on all forms of serious crimes, including trafficking in cultural property.

32. The responses of States parties regarding the utilization of the Organised Crime Convention for purposes of international cooperation show that many countries do not generally apply it to cases involving trafficking in cultural property.

#### **Algeria**

33. Algeria indicated that Law n°05-06 of 23 August 2005 on the smuggling of goods included provisions on mutual legal assistance in cases of smuggling of

cultural property in order to prevent, investigate and combat these offences more effectively.

34. Algeria specified that mutual legal assistance was granted on the basis of a treaty, reciprocity or national legislation and if it was received in writing by post or electronic means with all the relevant information.

#### **Germany**

35. Germany reported that a special implementation of the Organized Crime Convention was not necessary regarding the mutual legal assistance and extradition requests regarding the protection of cultural property. These requests were dealt with under the Act on International Cooperation in Criminal Matters (AICCM).

36. Germany reported that it rarely received any requests for extradition, execution of foreign decisions or mutual legal assistance under the Organized Crime Convention. Usually the requests were made on the basis of other applicable international agreements or the AICCM.

#### **Spain**

37. Spain, in its response, indicated that it had never applied the Organized Crime Convention to cases of trafficking in cultural property. In dealing with cases involving cultural property, Spain reported that it had used police to police cooperation with other countries effectively.

#### **Switzerland**

38. Switzerland reported that, under its Federal Act on International Mutual Legal Assistance in Criminal Matters, international cooperation was possible for crimes involving cultural goods, even in the absence of a bilateral or multilateral agreement. Although there are no exact figures, Switzerland has, in the recent past, been engaged in the provision of mutual legal assistance, extradition, accessory assistance and transfer of proceedings with countries, which are members of the Council of Europe.

39. Switzerland's law on the Transfer of Cultural Property is based on the 1970 UNESCO Convention, which was ratified in 2003. The law on the transfer of cultural property and the Ordinance on the transfer of cultural property form the legal basis that regulates the importation, transit, exportation and return of cultural property. Switzerland also stated that the majority of mutual legal assistance requests relating to cultural property matters were received from Italy, Greece, Turkey and Peru.

40. Switzerland provides international cooperation to these States on the basis of conventions or national laws on mutual legal assistance in criminal matters. These legal texts include in particular, the Law on International Assistance (EIMP), the European Convention on Mutual Legal Assistance (CEEJ) and bilateral agreements with Italy, Peru and Egypt. Furthermore, the provisions of the Federal Act on International Mutual Legal Assistance in Criminal Matters (LTBC) especially, articles 24 and 25, as well as the bilateral agreements on the import and return of cultural property that Switzerland concluded with Egypt, Greece, Italy, Colombia and Peru, provided an additional legal basis for international cooperation.

41. In light of the aforementioned legal basis for mutual legal assistance, Switzerland indicated that it provided international cooperation in trafficking in cultural property matters without de facto applying the Organized Crime Convention. Therefore, Switzerland did not have any practical examples of the application of the Convention to trafficking in cultural property cases.

#### **Turkmenistan**

42. Turkmenistan stated that it did not have any examples of the use of the Organized Crime Convention to cases of trafficking in cultural property.

#### **United States of America**

43. The United States of America reported that, under its National Stolen Property Act and the Convention on Cultural Property Implementation Act, it had concluded 13 bilateral agreements with countries to impose import restrictions on illicitly trafficked cultural property. Accordingly, they can seize and repatriate upon importation stolen objects documented as appertaining to the inventory of a museum or religious or secular public monument or similar institution of any State party to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The United States also has formal Customs Mutual Assistance Agreements (CMAAs) with 65 countries that allow for joint investigations.

44. The United States expressed the view that the 1970 UNESCO Convention was the most effective and the most widely accepted normative tool for international cooperation in combating trafficking in cultural property. According to the United States of America, if the UNESCO Convention is implemented in a way that addressed archaeological looting and trafficking of looted objects, it provided for a broad international cooperative framework. In the last 10 years, 29 new States have joined the 1970 Convention, including major “market” countries, and these States require time to implement the Convention in a way that addresses archaeological looting and trafficking of looted objects.

45. The United States of America also highlighted that the United Nations Convention against Transnational Organized Crime had great potential as a vehicle for international cooperation in cultural property cases, given that, in most cases, an organized criminal group as defined in the Convention, was involved. It noted that informal consultation as a prelude to the submission of a mutual legal assistance request to the United States would also greatly enhance the prospect of achieving more positive collaboration between countries.

46. The United States reported several examples of cases in which its Department of Justice, as the United States Central Authority for mutual legal assistance purposes, handled mutual legal assistance requests related to antiquities and cultural property.

47. In 2011, Peru sought the assistance of the United States Department of Justice in repatriating a gold monkey head that had been in the custody of the New Mexico Palace of Governor’s Museum. The gold monkey head, which had been traced to the ancient Moche culture of Peru that existed in 300 AD, was believed to have been looted from an archaeological site that Peru claimed as part of its national cultural heritage. In 1999, the State of New Mexico denied Peru’s original repatriation

request on the grounds that Peru had failed to provide sufficient evidence of the monkey head's provenance. Peru later submitted additional information, which corroborated the artefact's Peruvian origin. Thereafter, U.S. authorities, in coordination with the Government of Peru, drafted a Memorandum of Understanding between the Republic of Peru and the New Mexico History Museum, in which the Museum agreed to return the artefact, which it did in a ceremony on December 8, 2011. Peru did not send a formal mutual legal assistance request in 2011, although Peru had initially submitted a prior mutual legal assistance request, which was unsuccessful.

48. Furthermore, in 2006, Brazil requested assistance in repatriating two paintings from the Cid Collection. The works in the Cid Collection, which include sculptures, historical documents, maps, and photographs, were acquired by Brazilian Edemar Cid Ferreira, the former owner of Brazilian bank Banco Santos, S.A., with the proceeds of bank fraud and money-laundering crimes. "Modern Painting with Yellow Interweave" by Roy Lichtenstein and "Figures dans une structure" by Joaquin Torres-Garcia were among 29 valuable artworks accumulated by Ferreira. The canvases, valued at more than \$4 million, were seized by the United States federal authorities after being smuggled into the United States as part of Ferreira's money laundering scheme. On September 21, 2010, the painting was handed over to Brazilian authorities at a ceremony in New York, following a request made pursuant to a bilateral mutual legal assistance treaty.

49. In 2010, Romania requested assistance in an investigation into a large group of defendants suspected of stealing a number of gold coins and spiral-shaped bracelets from the Sarmizegetusa Regia archaeological site. Among the stolen items were Dacian Koson type silver coins, dating back to the second half of the 1st century B.C. The request sought interviews of individuals with knowledge of the stolen antiquities and documents regarding the importation of the stolen antiquities into the United States. The request also sought assistance in locating, identifying, seizing, and repatriating the items back to the Romanian Government. To date, the United States authorities have identified 45 coins and a Greek silver phiale bowl in the United States. That request was made pursuant to a bilateral mutual legal assistance treaty and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

50. Moreover, in 2008, Italian authorities were investigating the illegal excavation and exportation of cultural artefacts, including an Etruscan vase from 800 B.C. worth approximately 10,000 Euros, from an ancient Etruscan tomb near Caserta, Italy. The investigation revealed that the artefacts had been exported to the United States of America. Italy requested assistance in locating, seizing, and repatriating the antiquities. United States authorities, working in close collaboration with Italian authorities, were able to obtain search warrants for the homes of three suspects living in the New Haven, Connecticut area and seized 22 Italian artefacts. Italian authorities travelled to the United States to consult in the preparation of the search warrant affidavits; participated in the consensual interviews; and were available for on-site consultation while United States agents executed the search warrants. That request was made pursuant to a bilateral mutual legal assistance treaty and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

51. In addition, the United States of America reported recent examples of repatriation of cultural property by the Government, recovered through means other than the mutual legal assistance process, such as customs law, the CPIA/bilateral agreements, and the National Stolen Property Act.

#### **IV. Conclusions and recommendations**

52. A review of the responses received from States parties to the United Nations Convention against Transnational Organized Crime, indicates that the Convention is not widely applied to cases involving trafficking in cultural property.

53. Some States parties reported some legislative developments, which criminalized acts that may involve offences against cultural property or allow, for example, for the use of special investigative techniques. However, the information provided did not clearly specify whether all the requirements of the Organized Crime Convention had been included in their domestic legislation.

54. A number of States parties indicated that they applied primarily the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970 for the protection of cultural property. It appears that the UNESCO Convention is used by some countries to facilitate the return and repatriation of cultural property.

55. The Conference may wish to request UNODC to continue to promote the use of Organized Crime Convention to combat trafficking in cultural property. In this regard, UNODC could, upon request, provide technical assistance to apply in particular the international cooperation provisions of the Organized Crime Convention to the trafficking of cultural property.

56. The Conference may also wish to encourage States parties to implement the Convention in respect of trafficking in cultural property, including the international cooperation provisions.