

29. Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property*¹

The _____ and the _____

Conscious of the need to cooperate in the field of criminal justice,

Wishing to add to the effectiveness of the cooperation between their two countries in combating criminal activities which involve movable cultural property through the introduction of measures for impeding illicit transnational trafficking in movable cultural property whether or not it has been stolen, the imposition of appropriate and effective administrative and penal sanctions and the provision of a means for restitution,

Have agreed as follows:

Article 1

Scope of application and definition²

1. For the purposes of this treaty, movable cultural property³ shall be understood as referring to property which, on religious or secular grounds, is specifically designated by a State Party as being subject to export control by reason of its importance for archaeology, prehistory, history, literature, art or science, and as belonging to one or more of the following categories:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;

(b) Property relating to history, including the history of science and technology, military history, and the history of societies and religions, as well as to the lives of leaders, thinkers, scientists and artists and other national figures, and to events of national importance;

**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.

¹An alternative title could be "Model treaty concerning crimes relating to the restitution of movable cultural property".

²Suggested alternatives to article 1, paragraph 1, are: (i) "This treaty covers all items of movable cultural property specifically designated as such by a State Party, and subject to export control by that State Party."; or (ii) "This treaty covers those items of movable cultural property specifically agreed to between the States Parties as being subject to export control."

³The categories follow closely the list contained in article 1 of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, of 1970. However, this list may not be exhaustive, and States Parties may wish to add other categories.

- (c) Products of archaeological excavations or discoveries, including clandestine excavations or discoveries, whether on land or under water;
- (d) Elements of artistic or historical monuments or archaeological sites which have been dismantled;
- (e) Antiquities, including tools, ceramics, ornaments, musical instruments, pottery, inscriptions of all kinds, coins, engraved seals, jewels, weapons and funerary remains of any description;
- (f) Materials of anthropological, historical or ethnological interest;
- (g) Property of artistic interest, such as:
 - (i) Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) Original works of statuary art and sculpture in any material;
 - (iii) Original engravings, prints, lithographs and art photographs;
 - (iv) Original artistic assemblages and montages in any material;
- (h) Rare manuscripts and incunabula, old books, documents and publications of special historical, artistic, scientific, literary or other interest, singly or in collections;
- (i) Postage, revenue and similar stamps, either singly or in collections;
- (j) Archives, including phonographic, photographic and cinematographic archives;
- (k) Articles of furniture, furnishings and musical instruments of more than 100 years of age.

2. This treaty applies to movable cultural property stolen in or illicitly exported from the other State Party after the coming into force of the treaty.⁴

Article 2

General principles

4. Each State Party undertakes:

- (a) To take the necessary measures to prohibit the import and export of movable cultural property (i) which has been stolen in the other State Party or (ii) which has been illicitly exported from the other State Party;

⁴States Parties may wish to consider providing for a period of limitation after which the right to request recovery of stolen or illicitly exported movable cultural property will be extinguished.

(b) To take the necessary measures to prohibit the acquisition of, and dealing within its territory with, movable cultural property which has been imported contrary to the prohibitions resulting from the implementation of subparagraph (a) above;

(c) To legislate in order to prevent persons and institutions within its territory from entering into international conspiracies with respect to movable cultural property;

(d) To provide information concerning its stolen movable cultural property to an international database agreed upon between the States Parties;⁵

(e) To take the measures necessary to ensure that the purchaser of stolen movable cultural property which is listed on the international database is not considered to be a purchaser who has acquired such property in good faith;⁶

(f) To introduce a system whereby the export of movable cultural property is authorized by the issue of an export certificate;⁷

(g) To 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;⁸

(h) To use all the means at its disposal, including the fostering of public awareness, to combat the illicit import and export, theft, illicit excavation and illicit dealing in movable cultural property.

2. Each State Party undertakes to take the necessary measures to recover and return, at the request of the other State Party, any movable cultural property which is covered by subparagraph (a) above.

⁵Further developments in this field will provide the international community, particularly potential States Parties, with an opportunity to implement this method of crime prevention. (See *Eighth United Nations Congress* . . . , chap. I, sect. C.6.) The United Nations Congresses on the Prevention of Crime and the Treatment of Offenders may wish to develop initiatives in this direction.

⁶This provision is intended to supplement, and not be in substitution for, the normal rules relating to good faith acquisition.

⁷This procedure is consistent with the validation procedure described in article 6 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

⁸States Parties may wish to consider adding certain types of offences against movable cultural property to the list of extraditable offences covered by an extradition treaty. (See also General Assembly resolution 45/166, annex.)

Article 3 *Sanctions*⁸

Each State Party undertakes to impose sanctions⁹ upon:

- (a) Persons or institutions responsible for the illicit import or export of movable cultural property;
- (b) Persons or institutions that knowingly acquire or deal in stolen or illicitly imported movable cultural property;
- (c) Persons or institutions that enter into international conspiracies to obtain, export or import movable cultural property by illicit means.

Article 4 *Procedures*

1. Requests for recovery and return shall be made through diplomatic channels. The requesting State Party shall furnish, at its expense, the documentation and other evidence, including the date of export, necessary to establish its claim for recovery and return.

2. All expenses incidental to the return and delivery of the movable cultural property shall be borne by the requesting State Party,¹⁰ and no person or institution shall be entitled to claim any form of compensation from the State Party returning the property claimed. Neither shall the requesting State Party be required to compensate in any way such persons or institutions as may have participated in illegally sending abroad the property in question, although it must pay fair compensation¹⁰ to any person or institution that in good faith acquired or was in legal possession of the property.¹¹

3. Both parties agree not to levy any customs or other duties on such movable property as may be discovered and returned in accordance with the present treaty.

4. The States Parties agree to make available to each other such information as will assist in combating crimes against movable cultural property.¹²

⁹States Parties may wish to consider establishing minimum penalties for certain offences.

¹⁰States Parties may wish to consider whether the expenses and/or the expense of providing compensation should be shared between them.

¹¹States Parties may wish to consider the position of a blameless possessor who has inherited or otherwise gratuitously acquired a cultural object which had been previously dealt with in bad faith.

¹²Some States Parties may wish to preface article 4, paragraph 3, by the following: "Subject to domestic laws, particularly those concerning access to information and the protection of privacy, ...".

5. Each State Party shall provide information concerning laws which protect its movable cultural property to an international database agreed upon between the States Parties.¹³

Article 5
*Final provisions*¹⁴

1. This treaty is subject to (ratification, acceptance or approval). The instruments of (ratification, acceptance or approval) shall be exchanged as soon as possible, through diplomatic channels.

2. This treaty shall come into force on the thirtieth day after the day on which the instruments of (ratification, acceptance or approval) are exchanged.

3. Either State Party may denounce this treaty by giving notice in writing to the other State Party. Such denunciation shall take effect six months after the date on which such notice is received by the other State Party.

4. This treaty is intended to be complementary to, and does not in any way exclude, participation in other international arrangements.

In witness whereof the undersigned, being duly authorized thereto by their respective Governments, have signed this treaty.

Done at _____ on _____

in the _____ and _____ languages,
[both/all] texts being equally authentic.

¹³It should be noted that General Assembly resolution 44/18 of 6 November 1989 and quite a number of resolutions of the General Conference of UNESCO have invited member States to establish, with the assistance of UNESCO, national inventories of cultural property. At the date of the drafting of this treaty, national legislative texts on the protection of cultural movable property from 76 countries have been collected, published and disseminated by UNESCO.

¹⁴States Parties may wish to consider providing for a process for the resolution of disputes concerning the treaty.