



Economic and Social Council

Distr.: Limited
19 May 2010

Original: English

Commission on Crime Prevention and Criminal Justice

Nineteenth session

Vienna, 17-21 May 2010

Draft report

Rapporteur: Simona Manuela **Marin** (Romania)

Addendum

Thematic discussion on protection against illicit trafficking in cultural property

1. At its 3rd and 4th meetings, on 18 May 2010, the Commission considered agenda item 3, entitled “Thematic discussion on protection against illicit trafficking in cultural property”. The discussion was guided by the following subthemes:

(a) Applicable law and policies, from the perspective of crime prevention and criminal justice, to combat trafficking in cultural property, including issues of criminalization and implementation of judicial decisions, with emphasis on the links between such trafficking and transnational organized crime;

(b) Preventing trafficking in cultural property, in particular through:

(i) Awareness-raising, capacity-building, technical assistance and interdisciplinary coordination;

(ii) Criminalization in the context of prevention;

(iii) Measures designed to safeguard cultural property, including means for the identification of cultural property and physical protection measures;

(c) Emerging trends (such as use of the Internet, electronic commerce and auctions) and adequate responses;

(d) International, regional and bilateral cooperation, within the mandate of UNODC, in preventing and combating trafficking in cultural property, including through mutual legal assistance, private/public partnerships and mechanisms for the



restitution and return of such property, with due regard to the role of technical assistance.

2. For its consideration of item 3, the Commission had before it the following:

(a) Report of the Secretary-General on protection against trafficking in cultural property (E/CN.15/2010/4);

(b) Note by the Secretariat on the recommendations of the expert group on protection against trafficking in cultural property (E/CN.15/2010/5);

(c) Note by the Secretariat on the discussion guide for the thematic discussion on protection against trafficking in cultural property (E/CN.15/2010/6);

(d) 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);

(e) 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).

3. With the Chair presiding, the thematic discussion on item 3 was led by the following panellists: Boules Iskandar (Egypt), Jorge Costa Palacios (Ecuador), Francisco Javier Dorantes Díaz (Mexico), Laurence Massy (Belgium) and Giovanni Nistri (Italy), who spoke on subtheme (a); Paolo Giorgio Ferri (Italy), Gregory J. Borgstede (United States of America) and V. V. Petrakov (Russian Federation), who spoke on subtheme (b); Zhan Jianxin (China) who spoke on subthemes (c) and (d); Benno Widmer (Switzerland), who spoke on subtheme (c); and Adel Fahmy (Egypt), Ali Beizaei (Islamic Republic of Iran) and Michael Peay (United States of America), who spoke on subtheme (d).

4. The Chair made an introductory statement. An introductory statement was also made by the Officer-in-Charge of the Division for Treaty Affairs of UNODC. Statements were made by the representatives of the Sudan, Argentina, the Libyan Arab Jamahiriya, Canada, Algeria, Germany, the United Kingdom, Belarus, Austria, Iran (Islamic Republic of), the United States, Belgium, Turkey, Romania and India. Statements were also made by the observers for Italy, Ecuador, Iraq, France, Lebanon, Bolivia (Plurinational State of), Colombia, Greece, Bulgaria, Venezuela (Bolivarian Republic of), Peru and the Netherlands. The observer for Palestine made a statement. In addition, statements were made by the observers for INTERPOL, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Academic Council on the United Nations System.

A. Deliberations

5. The Chair reminded delegates of the arrangements that had been agreed upon for the thematic discussion and highlighted the critical importance of the emerging issue of trafficking in cultural property around the world.

6. In his introductory remarks, the Officer-in-Charge of the Division for Treaty Affairs noted that trafficking in cultural property was a prominent issue on the agenda of the United Nations. He referred to Economic and Social Council

resolutions 2004/34 and 2008/23, entitled “Protection against trafficking in cultural property”, in particular to the concern expressed by the Council on the growing involvement of organized criminal groups in all aspects of trafficking in cultural property, and the need for Member States to adopt several measures to promote protection of their cultural heritage. He also referred to the Council’s request in those resolutions that UNODC organize an expert group meeting in cooperation with UNESCO. He then referred to the existing international legal framework for the protection of cultural property and the added value that the Organized Crime Convention could bring to that regime.

Subtheme (a)

Applicable laws and policies, from the perspective of crime prevention and criminal justice, to combat trafficking in cultural property, including issues of criminalization and implementation of judicial decisions, with emphasis on the links between such trafficking and transnational organized crime

7. The first panellist provided an overview of the most salient features of national legislation in the protection of cultural property. He also described the role and function in his country of the Council Committee, which was the sole body charged with oversight of cultural property and able to issue written authorization for the return of stolen property and compensation.

8. The second panellist indicated the serious threats posed by trafficking in cultural property and the importance of concerted action to preserve the identity of a people. As the recovery and return of cultural assets was one of the most difficult problems to solve, he emphasized the need for adherence to and compliance with international legal instruments in order to reduce the cost of legal proceedings and to secure the return of the goods to their legitimate owners. Support was expressed for the recommendations adopted by the expert group on protection against trafficking in cultural property and by the Twelfth United Nations Congress on Crime Prevention and Criminal Justice and for the use of the Organized Crime Convention as an effective instrument for international cooperation to combat crime against cultural heritage. The panellist suggested that the Conference of the States Parties to the United Nations Convention against Corruption and the Conference of the Parties to the United Nations Convention against Transnational Organized Crime consider strengthening the instrument by developing a protocol to the Organized Crime Convention.

9. The third panellist referred to the right of culture as a fundamental principle. Among the proposals submitted, the panellist stressed the importance of developing principles that go beyond the national dimension. He indicated that the protection of cultural property could not be limited to civil law principles and instruments, but needed to cover also relevant criminal law aspects.

10. The fourth panellist made a presentation on the complexities of dealing with the theft of cultural property in a federal State having different systems of protection of cultural property. In the absence of applicable criminal law, applying civil law principles allowed for some protection, but this was not sufficient. The return of stolen objects entailed lengthy bilateral negotiations and that required reciprocity. As the roles of actors (dealers, collectors etc.) were mixed, any rules developed

should apply to all. At the national level, work was done to harmonize the different sets of rules.

11. The fifth panellist provided examples of recent operations involving cultural property. Those operations revealed the involvement of several other offences, such as money-laundering, and the participation of criminal organizations. Member States could make use of the investigative techniques described in the Organized Crime Convention. Reference was made in particular to special techniques such as undercover operations, especially to fight crime committed through the Internet.

12. Most speakers welcomed the holding of the meeting of the expert group on protection against trafficking in cultural property, from 24 to 26 November 2009, and supported its recommendations for adoption by the Commission. Speakers also mentioned the adoption of the Salvador Declaration by the Twelfth United Nations Congress on Crime Prevention and Criminal Justice, which included specific guidance on the protection of cultural property.

13. Several speakers recognized the usefulness of the existing international legal framework for the protection of cultural property, namely, the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, of 1970, the Convention on Stolen or Illegally Exported Cultural Objects, adopted by the International Institute for the Unification of Private Law and UNESCO (UNIDROIT Convention), of 1995, and the Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention), of 1954. Some of the relevant provisions of the 1970 UNESCO Convention and the UNIDROIT Convention were reviewed, and some speakers emphasized the importance of their implementation. It was noted that although those instruments provided a broad framework for the regulation and prevention of trafficking in cultural property, there was a need to reinforce the criminal justice response.

14. Several speakers described their countries' legal frameworks and described concrete cases and experiences with regard to preventing and combating trafficking in cultural property, including the difficulties encountered with regard to the recovery and return of stolen items. It was noted that although many States were parties to the 1970 Convention, not all had incorporated the treaty provisions into their national legislation. Several States lacked the appropriate normative framework to protect cultural property from being trafficked. Most speakers therefore stressed the need to harmonize national laws to allow for international cooperation and impose sanctions commensurate with the severity of the crime.

15. With reference to criminalization, some speakers stated that their countries had introduced specific offences on trafficking in cultural property, while others were applying general offences, such as theft, to deal with such trafficking. Several speakers stressed the need to regulate the market, in particular auction houses and Internet platforms. Several speakers also expressed concern over the link between trafficking in cultural property and transnational organized crime, which required more effective international cooperation. It was noted that the art market was a transnational market and that trafficking in cultural property was becoming one of the most lucrative forms of crime, owing to the high prices of and increasing demand for cultural objects. It was also noted that trafficking in cultural property was linked to organized crime and to other crimes, such as corruption,

money-laundering and tax evasion, and that the criminalization of trafficking in cultural property would help to counter those other, related crimes, which are addressed in the Organized Crime Convention and the Convention against Corruption.

16. The Organized Crime Convention was recognized as a useful tool for international cooperation, including mutual legal assistance, special investigative techniques and the establishment of joint investigation units. One speaker emphasized the relevance of the offence of participation in a criminal group (art. 5), which facilitated not only the investigation and prosecution of groups participating directly in such criminal activities, but also outreach to those who were otherwise involved, and invited States to apply that article to the extent possible. The same speaker also provided information on some recent operations aimed at retrieving and recovering stolen or illicitly exported cultural property, in which the Organized Crime Convention had been successfully applied for the investigation of trafficking and money-laundering offences.

17. Some speakers proposed the adoption of a new protocol to the Organized Crime Convention dealing specifically with trafficking in cultural property, to provide States with an effective tool for cooperation in this area. Such a protocol would establish trafficking in cultural property as a serious offence and include provisions on criminalization, cooperation and the recovery of property that was not inventoried. Other speakers expressed the view that such a protocol was not an appropriate way to deal with the problem and that other aspects related to the protection of cultural property, such as databases, licensing of dealers, due diligence and awareness-raising, should not be part of a criminal law instrument. Some speakers suggested that the Commission should seek ways to enhance the implementation of existing instruments.

18. Some speakers highlighted the importance of improving the application of existing tools and exploring ways to interpret their provisions in a way that supported crime prevention before considering new instruments. Several speakers favoured the recommendations of the expert group and the Crime Congress to develop specific guidelines for the implementation of criminal provisions related to the protection of cultural property and, as appropriate, due diligence. Some speakers suggested the development of a model law that would facilitate the implementation of relevant provisions of the Organized Crime Convention and the Convention against Corruption.

19. Some speakers noted that the role of UNODC in the protection of cultural property should be to provide assistance and advice to other United Nations agencies in relation to crime prevention and criminal justice aspects, while UNESCO, with its expertise, had a major role in this area.

20. Speakers referred to the need for unity, traceability and rigour. Specifically, they mentioned the need to establish specialized units, inventories to allow the tracing of items and severe sanctions against offenders.

21. The concept of good faith was mentioned by some speakers as one that required further clarification and application. Some speakers noted that, while good faith might be an appropriate concept in the context of civil law compensation, it was less relevant to criminal codes, where the burden of proof should not be reversed.

22. There was general agreement among participants on the importance of awareness-raising, capacity-building and technical assistance, not only for judges and other decision-making officials, but for the public at large. Awareness-raising was also considered of great importance for the purpose of fostering the concept of due diligence. Some speakers stated that their countries were already providing technical assistance and advice to other countries and were willing to continue to do so.
23. It was noted that criminalization could be a major preventive measure, as it could have an important dissuasive effect on trafficking in cultural property. Laws on such offences had to reflect the serious nature of the crime and provide for sanctions that were strong enough to be dissuasive.
24. It was suggested that a multidisciplinary national committee be established in each country, composed of relevant institutions and field experts. Several speakers reported good results achieved in their countries through such interdisciplinary coordination.
25. It was noted that enhanced exchange of information, including spontaneous information, was one of the most relevant measures. Exchange of real-time information was deemed of vital importance. States were recommended to engage in informal consultations before submitting formal requests for assistance or information in order to ensure the completeness of their requests.
26. It was also noted that States should allow for universal admission of evidence, including evidence gathered by other States, in order to facilitate the investigation of transnational offences and promote international cooperation.
27. It was mentioned that other preventive measures could include training and capacity-building for the police and other institutions involved, as well as for the public at large, and the establishment of national inventories, lists of cultural objects, photographic archives of such objects and national databases, with the possibility of linking them to one another and to international databases. Other measures cited were the monitoring of auctions markets, including through publicly accessible websites, and the use of modern technology such as metal detectors and space technology for the monitoring and protection of archaeological sites.
28. It was stated that preventive measures should involve countries of origin, transit and destination and be tailored to their specific conditions.

Subtheme (b)

Preventing trafficking in cultural property, in particular through:

- (i) awareness-raising, capacity-building, technical assistance and interdisciplinary coordination; (ii) criminalization in the context of prevention; (iii) measures designed to safeguard cultural property, including means for the identification of cultural property and physical protection measures**

29. The first panellist described relevant features of preventive cooperation in the protection of cultural property, recalling that they were only rarely applied in practice. The panellist attached great importance to the spontaneous exchange of information as foreseen in the Organized Crime Convention and described other measures as well, such as the establishment of an interdisciplinary working group to enhance cooperation and monitor the art market. In addition, the expert suggested

adopting provisions as foreseen in the Convention, including the possibility of decreasing the penalties for those who collaborate with law enforcement agencies, as well as the use of special investigative techniques, such as simulated auctions.

30. The second panellist described the measures taken by his Government to prevent trafficking in cultural property. These included inventory and care of collections, scientific investigations and public education to foster active protection of sites. Bilateral and multilateral agreements had been signed in order to reduce the incentives for pillaging through such measures as the development of appropriate laws and policies, creation of inventories, formulation of management plans, training for museum professionals and for customs and law enforcement officers, public education programmes and increased international access to cultural property through exchanges of materials for scientific, cultural and educational purposes.

31. The third panellist referred to the measures listed in Economic and Social Council resolution 2008/23 and described their implementation by his Government. The regional agreement for cooperation between the Commonwealth of States could provide a good model for prevention through cooperation, as it required member States to exchange operational, forensic, statistical and other information, including intelligence on offences that were being planned or had been committed, and information on the organizations and individuals privy to those offences. The agreement also referred to the carrying out of operations and investigations; planning and implementation of coordinated prevention measures, operations and investigations; coordinated measures to prevent and suppress the use of open telecommunication networks for the sale of stolen cultural property; staff training and skills upgrading for specialists; new methods of marking cultural property; establishing and enforcing procedures for the import and export of cultural property; prevention of illicit archaeological excavations or the carrying out of other illicit transactions in respect of cultural property; ensuring that purchasers who knowingly acquired stolen or illicitly imported cultural property were recognized as having acted in bad faith; creating a photographic record of and applying a hidden mark to State-owned cultural property; and penalties for organizations and individuals who committed or were privy to offences involving the theft, acquisition, sale or illicit import or export of cultural property.

32. Some speakers expressed concern over the increasing use of modern technology, such as the Internet, electronic commerce and auctions, for the perpetration of trafficking offences, and noted that the relative impunity of such offences and their profitability made such crimes attractive to organized criminal groups. It was also noted that the market for such objects was growing and that the prices of stolen art objects were rising. The exploitation of information technology, in particular the Internet, for the trade of stolen property was similarly noted. One speaker suggested that any future convention against cybercrime should include a provision on trafficking in cultural property.

33. It was stated that the problem of investigating illicit sales on the Internet, where sites may appear for only a few days and then disappear, should be addressed. Some speakers suggested that the problem of looting also needed to be addressed; looting required creative solutions because inventories and exchange of information could not be used.

34. One speaker highlighted the efficiency of regulatory measures, such as requiring traders to have certain qualifications, reviewing their qualifications annually and disqualifying businesses that did not meet the requirements, and monitoring businesses involved in art sales, as well as certifying objects for auctions. The negligence of companies with regard to their obligations of due diligence could best be countered through appropriate penal provisions.

35. Some speakers encouraged the use of codes of conduct for professionals, such as those developed by UNESCO and the International Council of Museums, and stressed the need to develop economic incentives that targeted supply and demand.

Subtheme (c)

Emerging trends (such as use of the Internet, electronic commerce and auctions) and adequate responses

36. The first panellist made a presentation on emerging trends in trafficking in cultural property in his country and described the means used to address the related challenges. As the prices paid for stolen and looted art objects rose, the incentives for organized groups to take part in trafficking increased. The size of the country and its vast number of archaeological sites, combined with a renewed interest in its history, further complicated protection efforts. The Internet and new technologies were used to keep trafficking clandestine. To deal with these challenges, qualification requirements were implemented for dealers, auctions were subjected to approval by the authorities, business qualifications were inspected annually and those businesses not meeting the requirements were disqualified, and regular inspections were conducted in shops and at borders.

37. The second panellist referred to the specific challenges of the sale of illicitly acquired cultural property over the Internet and of the looting of objects from sites. In a country with over 1,000 museums, the annual trade in cultural property was worth over 1 billion euros, and the challenge was to identify which transactions were legitimate. To deal with the challenge posed by Internet sales, a new law was adopted that established the legal framework and offences. On the basis of the law, an agreement was signed with a major Internet-based auction firm to ensure the legitimate ownership of items sold. This agreement proved quite efficient and, as a consequence, the lists of stolen items appeared also on auction websites. To address looting, in addition to establishing the relevant offences in the law, bilateral agreements were signed that waived the inventory requirement and allowed for the protection of wider categories of objects.

38. Some speakers emphasized the relevance of adhering to the existing international legal frameworks and incorporating them into national law, and of entering into bilateral agreements. It was noted that several countries had not criminalized both forms of transfer of cultural property (import and export).

39. It was stated that bilateral cooperation agreements had proved useful for some Member States. The usefulness of the Organized Crime Convention for promoting cooperation with third countries in other regions was stressed. Several speakers stated their Governments' readiness to use that Convention as the legal basis for international cooperation in the protection of cultural property.

40. One speaker analysed cases of successful cooperation and concluded that they involved sharing of information among all States involved and an active role for transit States. Another speaker mentioned the need for national laws to extend protection to the cultural heritage of other nations in order to allow effective cooperation. The importance of INTERPOL in facilitating cooperation between police forces was stressed, in particular through its digital database of stolen property and its communication system.

Subtheme (d)

International, regional and bilateral cooperation, within the mandate of the United Nations Office on Drugs and Crime, in preventing and combating trafficking in cultural property, including through mutual legal assistance, private/public partnerships and mechanisms for the restitution and return of such property, with due regard to the role of technical assistance

41. The first panellist identified and addressed the most relevant challenges and difficulties in effective international cooperation in criminal matters, such as unclear identification of the competent central authority and its role and mandates; the absence of a photographic archive of the stolen property; poor coordination at the national level with existing databases of stolen property; lack of harmonized laws and procedures; and, in some cases, lack of political will of the requested State to assist the requesting State.

42. The second panellist provided examples of successful cooperation, including the exchange of information among source, transit and destination countries and a proactive stance by transit countries in identifying and blocking suspicious deliveries. Some factors impeding cooperation were the resistance of some States to ratification of the UNIDROIT convention abuse of diplomatic immunity, and lengthy court proceedings.

43. The third panellist discussed the importance of adopting national laws that protected cultural property originating in other countries and not only in the national territory, in order to provide a legal basis for cooperation. Bilateral agreements should be used to extend cooperation and to cover illicit excavation. Destination countries could make additional efforts to prevent illicit sales in their territory and exchange information with source countries.

44. The fourth panellist presented his country's "toolkit to secure cooperation", which included more than 60 bilateral treaties for mutual legal assistance and could be applied to requests for the return of stolen cultural property. In order to obtain cooperation, concrete evidence needed to be submitted immediately, so that action could be taken before objects disappeared. Formal requests (including the use of letters rogatory) should be preceded by informal consultations and sharing of information on the investigation in order to ensure expeditious handling of requests. The Organized Crime Convention can also be a useful tool to promote cooperation, in particular its provisions on legal assistance (art. 18).

45. Speakers stressed the need for international, regional and bilateral cooperation in preventing and combating trafficking in cultural property, including public/private partnerships and a mechanism for the restitution and return of such property.

46. Reference was made to the Organized Crime Convention as a useful tool to promote effective cooperation, including in the form of mutual legal assistance, and to the role of international organizations such as UNESCO and UNODC in the delivery of technical assistance.

47. The observer for INTERPOL mentioned that agency's communication system and digital databases as important means for facilitating cooperation among police forces. The observer for UNESCO described that organization's annual training sessions for professionals, which promoted more effective cooperation among them.

48. At the end of the thematic discussion, the Chairperson summarized the salient points as follows:

Summary by the Chair*

General comments

(a) Protection of cultural property is essential for the heritage of humanity, and the right to culture recognized by several countries as a fundamental right. Despite this, it was felt that not enough has been done to ensure the adequate protection of cultural property.

(b) The Commission should consider adopting in its entirety the recommendations of the Expert Group Meeting in November 2009 and the Declaration of the Twelfth United Nations Congress, both of which include specific guidance on the protection of cultural property.;

Applicable laws and policies, from the perspective of crime prevention and criminal justice, to combat trafficking in cultural property, including issues of criminalization and implementation of judicial decisions, with emphasis on the links between such trafficking and transnational organized crime

(c) There is a need to reinforce the criminal justice response to the growing problem of trafficking in cultural property. Harmonization of national laws, criminalization of a specific offence of trafficking in cultural property, and appropriate sanctions that reflect the severity of the crime are some of the most salient aspects to consider. Similarly, national laws should also ensure at the regulation of the market, in particular auction houses and internet platforms. It was noted, that several countries have not criminalized both forms of transfers (import and export);

(d) States have not entirely implemented the existing international legal framework for the protection of cultural property, while additional measures were felt to be needed to reinforce the criminal prevention aspects of the protection of cultural property.

(e) There is a need to ensure the return of illicitly trafficked cultural assets to their legitimate owners, in compliance with the relevant international legal instruments. Difficulties and challenges had been encountered with regard to the recovery and return of stolen items. Better international cooperation mechanisms

* The following summary by the Chair is reproduced in the form in which it was submitted.

and adequate tools were required in order to facilitate and accelerate the procedures for the restitution of stolen cultural property.

(f) Transnational organized criminal groups have a growing involvement in the illicit trafficking in cultural property and it was also recognized that the art market has substantially a transnational nature. Its high profits make trafficking in cultural property one of the most emerging crimes in recent time, stimulating the demand for these objects and encouraging the commission of crimes. Trafficking in cultural property is linked to other crimes, such as organized crime, corruption, money laundering, tax evasion – offences that can be addressed in the framework of existing crime treaties, such as UNTOC and UNCAC.

(g) The UN Convention against Organized Crime is a useful tool for international cooperation, establishing measures such as the use of special investigative techniques, the establishment of joint investigation units, etc. The definition of a structured group and the offence of participation in a criminal group further help countries in tackling this emerging crime. Those countries who are already using UNTOC for the protection of cultural property have stressed the usefulness and added value of this instrument.

(h) A possible new protocol to UNTOC was considered as a possible option to help States deal in a more specific way with illicit trafficking in cultural property. Such a Protocol would consider trafficking in cultural property a serious offence and develop inter alia provisions on criminalization, cooperation, recovery of property where no inventories have been established. Such proposal, however, was not entirely supported by all speakers, several of which considered that a protocol was not the appropriate way to deal with the problem. They considered that regulatory aspects related to the protection of cultural property, such as databases, licensing of dealers, due diligence and awareness raising, should not be part of a criminal law instrument. Instead, the Commission should seek ways to enhance the implementation of already existing instruments and make their implementation more effective, before considering new instruments.

(i) Many countries felt the need for specific guidelines for the implementation of criminal provisions related to the protection of cultural property and, as appropriate, the criteria of due diligence. Additional guidance could be provided to States through the development of a model law for the implementation of relevant criminal provisions, including relevant UNTOC and UNCAC provisions.

(j) UNODC's role in assisting states in such protection of cultural property was discussed. Some countries considered that it was limited to providing assistance and advice to other UN agencies on crime prevention and criminal justice aspects, whereas UNESCO had the leading role in the overall protection of cultural property.

(k) Several speakers felt that the concept of "good faith" requires further clarification and application. Some speakers noted that it is less relevant to criminal codes, where the burden of proof should not be reversed. It may be appropriate in the context of civil law compensation to good faith holders. UNIDROIT convention could be a useful basis in this respect;

Preventing trafficking in cultural property, in particular through:

(a) awareness-raising, capacity-building, technical assistance and inter-disciplinary coordination; (b) criminalization in the context of prevention; (c) measures designed to safeguard cultural property, including means for the identification of cultural property and physical protection measures

(l) Preventive measures are required to protect cultural property, in various fields: awareness raising, capacity building and technical assistance should be provided not only to judges and other decision making officials, but to the general public at large. This would also contribute to foster the concept of due diligence. States who were already providing technical assistance and advice to other countries should continue to do so.

(m) Criminalization can also have preventive nature, due to the dissuasive effect it can have on illicit trafficking in cultural property. To this end, it is important that the offences reflect the serious nature of the crime and foresee dissuasive sanctions.

(n) The establishment of a multi-disciplinary national committee in each country with relevant institutions and field experts, and a focal point to liaise with other countries, has been considered another meaningful and effective way to protect cultural property and prevent its illicit trafficking. Such bodies have given good results in several countries and helped achieving greater inter-institutional coordination.

(o) Enhanced exchange of information was considered as one of the most relevant measures, including spontaneous information. Exchange of real time information, and the practice of having informal consultations before submitting formal requests for assistance or information, have also proven to give good results. Establishing a framework of bilateral agreements facilitates such exchange and strengthens cooperation for the purpose of prevention.

(p) The admission of evidence gathered by other countries is recognized as an important factor to facilitate investigation of transnational offences and promote international cooperation.

(q) Other preventive measures include the provision of training and capacity building for police and other institutions involved including the public at large, as well as the establishment of national inventories, lists of cultural objects, and if possible, a photographic archive of such objects, the establishment of a national database, with the possibility of linking the national databases to each other and to existing international databases, in particular the INTERPOL database.

(r) Ways to foster preventive cooperation need to be further developed and disseminated among States, including the monitoring of auctions markets, and the dissemination of information through publicly accessible websites. The use of modern technology for the monitoring and protection of archaeological sites, such as metal detectors, space technology etc. was also considered.

(s) Preventive measures should in any case target countries of origin, transit and destination and be tailored to their specific conditions.

(t) The use of codes of conduct for professionals, such as the ones developed by UNESCO and ICOM is an important preventive measure.

(u) Measures that target the supply and demand, using economic incentives, should be further developed.

Emerging trends (such as use of the Internet, electronic commerce and auctions) and adequate responses;

(v) The growing market and prices of stolen art objects, and the exploitation of IT technology (in particular the internet) for the trade of stolen property, has led to an increase in demand and supply of those items, which encourages the commission of crimes. Investigation of illicit sales on the internet is challenging due to the volatility of the information, which can quickly disappear, phone numbers may no longer be active.

(w) Looting needs to be addressed separately in order to take into account the lack of inventories. The exchange of information requires creative solutions.

(x) Regulatory measures such as demanding traders to meet certain qualifications, reviewing these annually and disqualifying business that do not meet them, and monitoring stores involved in art selling; including certifying objects for sale at auctions, could be possible responses. The negligence of companies with regard to their obligations to adopt due diligence, can best be enforced through appropriate penal provisions when actors do not apply their obligations.

(y) Illicit sale through the internet could be addressed in a possible future international instrument on cybercrime

International, regional and bilateral cooperation, within the mandate of the United Nations Office on Drugs and Crime, in preventing and combating trafficking in cultural property, including through mutual legal assistance, private/public partnerships and mechanism for the restitution and return of such property, with due regard to the role of technical assistance

(z) Challenges with regard to international cooperation in criminal matters needed to be addressed and solved, such as the lack of clarity about the competent central authority; the absence of a photographic archive of the stolen property in some countries; the lack of proper coordination at national level; the lack of harmonized laws and procedures and the lack of political will to assist a requesting state. Adherence to international treaties poses the basis for such cooperation. However, they need sometimes to be translated into domestic laws, or be reflected in bilateral agreements;

(aa) The use of bilateral cooperation agreements as a complement to international agreements has proven quite useful for some Member States. The usefulness of UNTOC to promote especially cooperation with third countries from other regions was equally stressed. Several countries indicated their readiness to use UNTOC as legal basis for international cooperation in the protection of cultural property.

(bb) Interpol can facilitate cooperation between police forces, in particular through its digital database of stolen property and communication systems; UNESCO's work on awareness raising and training was helping to create a cadre of trained professionals. UNODC should cooperate and coordinate action with other organizations in particular UNESCO, Interpol etc. and join in these activities where appropriate.

B. Workshop on protection against trafficking in cultural property

49. A workshop on the theme “Protection against trafficking in cultural property” was organized by the institutes of the United Nations crime prevention and criminal justice programme network. The workshop was chaired by the First Vice-Chair of the Commission and moderated by the Scientific Coordinator of the International Scientific and Professional Advisory Council.

50. Reference was made to the panel discussion on trafficking in antiquities, which was held at the 2008 meeting of the International Scientific and Professional Advisory Council in Courmayeur, Italy, and the related papers published by that institute of the programme network. The presenters summarized the various legal frameworks that criminalize trafficking in cultural property, while articulating the difficulty of determining the licit provenance of specific articles. Themes that permeated all presentations were the transnational nature of this crime, that it was on the rise and that, increasingly, organized criminal groups were involved. Consequently, cooperation and coordination among countries were imperative in order to successfully address this issue. Of particular relevance was the use of the Organized Crime Convention by Italian authorities in conducting *Operazione Metallica* in 2009.

51. A representative of the Secretariat gave a presentation on the relevance of the Organized Crime Convention in the fight against trafficking in cultural property. The speaker referred to other existing international legal frameworks, such as the 1970 UNESCO Convention, the UNIDROIT Convention and the 1954 Hague Convention and the two Protocols thereto of 14 May 1954 and 26 March 1999. It was noted that the Organized Crime Convention, as well as the Protocols thereto, was applicable to this crime, since it contained a definition of organized crime. Furthermore, the Convention’s provisions on international cooperation, including international legal cooperation, were key to the investigation and prosecution of crimes related to trafficking in cultural property.

52. The observer for UNESCO showed a video on UNESCO activities in the fight against trafficking in cultural heritage, which outlined the impact of trafficking in cultural property and the activities of some partnerships in such cases. The video outlined the main measures contained in the UNESCO Convention, namely, the major efforts for creating inventories, education and certification. The Convention called for each country to set up a specialized unit trained in this type of trafficking. Reference was also made to codes of conduct for art dealers and self-monitoring, on the basis of ethics, and it was noted that traffickers were well informed about ways to circumvent laws restricting their activities.

53. The observer for the University of Glasgow, United Kingdom, discussed his research in trafficking in cultural property in a presentation entitled “Crime prevention perspectives on trafficking in cultural property and the intergovernmental expert working group recommendations”. He presented three theoretical frameworks for changing the behaviour of traffickers, from the legal, situational and social perspectives. Each theory proposes changes to the legal, physical and social environments, which, in turn, modify choices, opportunities and motivations. All theories were presented in the context of supply and demand. The research resulted in a series of thematic recommendations regarding, *inter alia*,

international instruments, prevention, criminalization, cooperation, awareness-raising, capacity-building and technical assistance, and use of new technologies. Three specific recommendations were discussed in detail, emphasizing that (a) prevention efforts should include increased regulation and supervision of dealers in cultural property by keeping a registry of all transactions; (b) Governments should criminalize the illicit import, export or transfer of cultural property; and (c) cultural property should be seized by the authorities if licit provenance could not be established.

54. The observer for the Department for the Protection of Cultural Heritage of Italy referred to the role of the carabinieri in combating trafficking in cultural property and provided an overview of the Italian experience in countering such trafficking. For example, from 1970 to 2009, 410,203 cultural objects and 899,512 archaeological items were recovered, 254,456 fake and counterfeited artefacts were seized, and 27,171 individuals were indicted. A database of over 400,000 stolen works of art was created. The criminal groups involved, although bearing some resemblance to Mafia-type structures, were also different, thus changing the focus for law enforcement. The presenter provided examples of several operations that had resulted in indictments. For example, Operazione Metallica had led to the indictment of 53 persons for money-laundering; the Organized Crime Convention had thus been used for the first time in dismantling a major organized criminal group.

55. The observer for the Basel Institute on Governance made a presentation on the need for industry standards in the art market. The speaker drew attention to the need to further develop industry standards and noted that existing international codes of ethics did not provide for the redress or control of violations of the codes. He also noted that there was mixed interest among art dealers with regard to working on industry standards. Three goals were emphasized: (a) cooperative use of databases, (b) development of industry standards and (c) development of a pool of experts to resolve conflicts.

56. Another observer for the Basel Institute on Governance spoke about the recovery of stolen assets and money-laundering measures in the context of cultural property, discussing the step-by-step process involved in recovering assets. The observer presented an overview of how to initiate cases, how and where to find assets, how to trace and freeze them, the steps required of the requesting and requested States and how to determine the return of proceeds. The principal challenges to overcome were the lack of communication at all stages and the securing and managing of cultural property during the process.

57. Following the presentations, there was an open discussion. The observer for Italy reported on the successful use of the Organized Crime Convention in tackling trafficking in cultural property. The observer for Sweden made a presentation on preventing trafficking in cultural property. In Sweden, an electronic system had been developed to track archaeological sites and monuments, and awareness-raising and education for target audiences had been implemented.

58. The observer for Greece discussed his country's prevention efforts, including through education. He noted the importance of addressing the practices of auction houses, since the Government was not always informed about the items sold by auction houses and their provenance. The representative of Turkey commented on

the need for letters of agreement among neighbouring countries in order to curtail trafficking in cultural property, and the observer for Greece noted that the Prime Ministers of the two countries had recently signed a memorandum of understanding on this issue.

59. The observers for the International Scientific and Professional Advisory Council and for the University of Naples II of Italy summarized the proceedings of the workshop and commented that trafficking in cultural property was increasingly sophisticated and organized. It was also noted that there was a need for a common definition of crimes relating to trafficking in cultural property, in addition to the information provided by UNESCO, and that the level of sanctions should be discussed.

60. Other topics discussed included burden of proof, cultural property during times of war, privately owned artefacts, the oversight of dealers, harm-reduction criteria and lack of awareness.
