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## **Expert group on protection against trafficking in cultural property**

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Item 3 of the provisional agenda\*

**Consideration of the practical proposals for implementing  
the recommendations made by the expert group on  
protection against trafficking in cultural property at its  
first meeting, in 2009, with due attention to aspects of  
criminalization and international cooperation, including  
mutual legal assistance**

### **Practical proposals for implementing the recommendations made by the expert group on protection against trafficking in cultural property at its first meeting, in 2009**

#### **Discussion paper**

#### **I. Introduction**

1. At its first session, held in 2009, the expert group on protection against trafficking in cultural property made a number of recommendations regarding protection against trafficking in cultural property. Those recommendations were grouped in the following clusters: (a) preventive measures, (b) criminalization, (c) cooperation, (d) awareness-raising, (e) capacity-building and technical assistance, and (f) other aspects, including the use of new technologies.

2. The recommendations were presented to the Commission on Crime Prevention and Criminal Justice for consideration at its nineteenth session in 2010.<sup>1</sup> In its resolution 2010/19, the Economic and Social Council welcomed the report of the meeting of the expert group on protection against trafficking in cultural property containing the recommendations and invited Member States to provide adequate follow-up to its recommendations on prevention, criminalization, cooperation and

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\* UNODC/CCPCJ/EG.1/2012/1.

<sup>1</sup> E/CN.15/2010/5.



awareness-raising, capacity-building and technical assistance, as well as use of new technologies.

3. In that resolution, the Council also requested the United Nations Office on Drugs and Crime (UNODC) to convene a second meeting of the expert group and to submit to the Crime Commission, at its twenty-second session, practical proposals for implementing, where appropriate, those recommendations, giving due attention to aspects of criminalization, international cooperation and mutual legal assistance.

4. The present note has been prepared to aid the discussions of the expert group at its second session. The chapters on criminalization and international cooperation contain summaries of the recommendations adopted at the first session of the expert group as well as proposals for the practical implementation of those recommendations for consideration by the second session of the expert group meeting.

## **II. Criminalization**

5. A summary of the recommendations adopted at the first session of the expert group in the area of criminalization is provided below.

(a) Adoption of appropriate legislation that criminalizes trafficking in cultural property and that takes into account the specificities of such property;

(b) Criminalization of activities related to trafficking in cultural property using a wide definition that is applicable to all stolen and illicitly exported cultural property;

(c) Criminalization of the import, export or transfer of cultural property in accordance with article 3 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;

(d) Making the trafficking in cultural property, including the stealing and looting at archaeological sites, a serious crime in accordance with article 2 of the United Nations Convention against Transnational Organized Crime;

(e) Allowing cultural property to be seized when those in possession of the property cannot prove the licit provenance of the objects or that they have a reasonable belief in the licit provenance of the objects;

(f) Confiscation of the proceeds of crime, using the United Nations Convention against Transnational Organized Crime as a useful basis;

(g) Adoption of measures to discourage the demand for stolen or trafficked cultural property.

6. The expert group may consider making proposals for the effective realization of this cluster of recommendations including the following:

(a) UNODC should develop a model framework legislation on trafficking in cultural property. Such legislation should include, at a minimum, all the recommendations contained in this cluster. The criminalization provisions should allow for the imposition of adequate sanctions. Such comprehensive legislation

should also include measures intended to discourage the demand for stolen or trafficked cultural property. This model framework legislation should then be made available to States to adapt and adopt, as necessary.

(b) UNODC should provide, upon request, technical assistance to States in adapting the legislation according to their national requirements. Such assistance may also include the review of existing legislation to ensure harmonization.

(c) Alternatively, States may wish to amend their existing criminal laws to include the criminalization of illicit dealing in cultural property, as foreseen in the recommendations adopted by the expert group at its first session. UNODC should be requested to offer assistance upon request for such legislative amendments. Such assistance may consist of review of legislation, making proposals on possible amendments and providing actual legislative drafting assistance.

(d) States may wish to provide training to and raise awareness of investigators, prosecutors and judicial officers on the law and or amendments, in order to encourage effective administration of the law. States may also request that UNODC assist through the provision of technical assistance in this regard.

### **III. International cooperation**

7. A summary of the recommendations adopted at the first session of the expert group in the area of international cooperation is provided below.

(a) States should consider including in their cooperation agreements on protection against trafficking in cultural property, specific provisions for information exchange, a coordinated follow-up of the flow of cultural objects, whenever feasible and the return or as appropriate, the restitution of stolen cultural property to its rightful owner.

(b) States should allocate adequate resources to establish or develop central authorities focused on the protection of cultural property, including cultural heritage, which would cooperate with each other in inter alia checking the market (including Internet auctions). States may also wish to consider informing competent international authorities of such national central authorities.

(c) States should promote inter-agency cooperation for purposes of strengthening mechanisms for protection against trafficking in cultural property.

(d) States should provide the widest possible mutual legal assistance in the protection of cultural property, including with regard to investigation, prosecution and confiscation, using the relevant international instruments including the United Nations Convention against Transnational Organized Crime. The Conference of the Parties to the Convention were also invited to explore ways of using the provisions of the Convention as a legal basis for international cooperation.

(e) States should enter into bilateral agreements for protection against trafficking in cultural property, in order to complement existing multilateral agreements.

8. The expert group may wish to consider making proposals for the effective realization of this cluster of recommendations on international cooperation, including the following:

(a) States that have not yet done so should consider establishing central national authorities, where feasible. Such authorities should, *inter alia*, have powers to coordinate the internal regulation of matters related to the protection of cultural property and to monitor the market in arts and antiques including Internet auctions. The central national authority will also cooperate with central national authorities of other States, including in the dissemination of information on the protection of cultural property, sharing information, alerts on stolen or missing cultural property and engaging in international efforts to stem the tide of trafficking in cultural property.

(b) Alternatively, States may expand the responsibilities of their existing central national authorities to include cooperation for purposes of protection against trafficking in cultural property.

(c) States may wish to recommend to the Conference of the Parties to the Organized Crime Convention that it requests UNODC to update the existing directory of central national authorities to include those dealing with the protection of cultural property, with the view to facilitating cooperation between central national authorities.

(d) States may wish to consider making better use of the following mechanisms and modalities to promote greater cooperation between law enforcement and other relevant agencies engaged in the investigation of trafficking in cultural property or detection of illicit movement of cultural property or in stopping the illicit trade in cultural property: (i) Joint Investigation Teams (JITs); (ii) Special Investigation Techniques (SITs); (iii) channels of communication for more efficient exchanges of information; (iv) modalities for sharing of experiences between law enforcement agencies; and (v) modalities for interconnecting inventories and databases of cultural property.

(e) States may wish to consider practical ways of ensuring the optimum use of the mutual legal assistance process for the protection of cultural property, including through (i) informal contacts and consultations among national competent authorities; (ii) making use of the UNODC Mutual Legal Assistance Request Writer Tool and the Directory of National Competent Authorities; (iii) providing training for practitioners in this field, including through the provision of technical assistance by UNODC.

(f) States may wish to consider entering into bilateral agreements for protection against trafficking in cultural property. The expert group may consider proposing practical ways of simplifying the process of entering into bilateral agreements such as (i) making use of the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property; and (ii) using the Organized Crime Convention as a legal basis for cooperation, for protection against trafficking in cultural property, whenever feasible.