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### Use and application of United Nations standards and norms in crime prevention and criminal justice

## Prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property

### Report of the Secretary-General\*\*

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\*\* The report was submitted after the deadline owing to late submission of replies from Governments.



## **I. Introduction**

1. In its resolution 2003/29 of 22 July 2003, entitled “Prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property”, the Economic and Social Council encouraged Member States to consider, where appropriate and in accordance with national law, when concluding relevant agreements with other States, the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property (hereinafter the “model treaty”), adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Havana from 27 August to 7 September 1990.<sup>1</sup> In the same resolution, the Council also called upon all Member States to continue to strengthen international cooperation and mutual assistance in the prevention and prosecution of crimes against movable property that formed part of the cultural heritage of peoples. The Council requested the Secretary-General to report to the Commission on Crime Prevention and Criminal Justice at its thirteenth session on the implementation of the resolution. Pursuant to that request, on 17 September 2003, the United Nations Office on Drugs and Crime sent a note verbale to Member States, seeking comments on the implementation of the resolution.

2. The present report provides a brief overview of the existing multilateral legal and institutional framework for the protection of cultural property, taking into account the model treaty, a short description of the involvement of organized criminal groups in trafficking in stolen cultural property and an analysis of the replies received from Member States.

## **II. Existing multilateral legal and institutional framework for the protection of cultural property**

### **A. International initiatives**

3. Looting of art treasures has long been a feature of warfare and conquest, but in recent years it has also become a prevalent and flourishing activity of illicit transnational commerce. There has been a vast increase in theft and trafficking in all types of art and antiquities with the potential for denuding entire cultures and nations of their cultural heritage.<sup>2</sup>

4. The international community has set up an extensive legal arsenal to fight trafficking in cultural property, in times of both war and peace. Whereas treaties make wanton destruction and pillaging occurring during times of war and belligerent occupation a war crime, the instruments that are generally applicable and not restricted to conflict situations aim essentially at promoting inter-State cooperation among domestic law enforcement and customs control agencies in order to facilitate the seizure, return and restitution of stolen and protected cultural property.<sup>3</sup>

#### **1. Protection against trafficking in cultural property in times of war**

5. The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereinafter the “1954 Convention”)<sup>4</sup> and the two Protocols thereto

of 1954 and 1999, have reinforced fundamental principles, already codified in similar terms by the Hague Conventions of 1899 and 1907.

6. Article 4, paragraph 3, of the 1954 Convention, which currently has 108 States parties, requires countries that are bound by the Convention to undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism against, cultural property. The first Protocol to the 1954 Convention, which currently has 87 States parties, obliges parties to (a) prevent the exportation of cultural property from a territory occupied by it during an armed conflict; (b) take into custody cultural property imported into its territory either directly or indirectly from any occupied territory; and (c) return, at the close of hostilities, to the competent authorities of the territory previously occupied, illicitly exported cultural property that was in its territory or had been placed in the territory of another State party in order to protect it from the dangers of an armed conflict. The first Protocol also codifies another fundamental principle, namely the prohibition of retaining cultural property as war reparations.

7. The destruction of cultural property during the conflicts in the territory of the Former Yugoslavia and the Caucasus at the end of the 1980s and the beginning of the 1990s, highlighted the need for a number of improvements in the implementation of the 1954 Convention. A review of the Convention was initiated in 1991, resulting in the adoption of the Second Protocol to the 1954 Convention in March 1999, which entered into force on 9 March 2004, three months after the deposit of the twentieth instrument of ratification, acceptance, approval or accession. The Second Protocol improves the safeguarding measures under the Convention by defining them and expands the provisions of the Convention relating to respect for cultural property and the conduct of hostilities, thereby providing greater protection. In addition, the Second Protocol creates a new category of enhanced protection for cultural heritage that meets three conditions: it must be of the greatest importance for humanity; be protected by legal and administrative measures at the national level; and not be used for military purposes. The Protocol further provides for specific sanctions for serious violations concerning cultural property and defines the conditions in which individual criminal responsibility shall apply. Finally, the Protocol establishes a 12-member Committee for the Protection of Cultural Property in the Event of Armed Conflict (article 24), which is mainly responsible for monitoring the implementation of the Convention and the Second Protocol. The Committee grants, suspends and cancels enhanced protection and considers requests for international assistance.

8. Reference should also be made to the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991<sup>5</sup> and the International Criminal Court, as their statutes include several provisions pertaining to the protection of cultural property that permit prosecution of severe violations pertaining to cultural property that constitute war crimes.

## **2. Protection against trafficking in cultural property**

9. Concerned about the new phenomenon of trafficking in cultural property in times of peace, the international community, through the United Nations Educational, Scientific and Cultural Organization (UNESCO), adopted in 1970 the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export

and Transfer of Ownership of Cultural Property,<sup>6</sup> which currently has 103 States parties. The Convention obliges each party to prohibit (a) the exportation of cultural property from its territory unless accompanied by an export certificate (art. 6, subpara. (b)); (b) the acquisition and import of any cultural property stolen from a museum or a religious or secular monument or similar institution in another State party to the Convention, provided that such property is documented as appertaining to the inventory of that institution and illegally exported from that State (art. 7, subpara. (b)); and (c) the export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power (art. 11). A mechanism for restitution is provided through diplomatic offices, upon payment of fair compensation to the purchaser in good faith or the legal holder. The Convention further calls for a restitution mechanism with a more general scope within the framework of the legislation of each State party (art. 7). According to article 9, States parties whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials, may participate in a concerted international effort to carry out necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned, and shall, pending agreement, take provisional measures to prevent irreparable injury to the cultural heritage.<sup>7</sup>

10. The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation was created in 1978 within UNESCO as a permanent intergovernmental body with an advisory role. The Committee provides a framework for discussion and bilateral negotiations on the restitution and return of cultural property and encourages the countries concerned to reach agreements to that effect. The Committee has helped to resolve several important cases, including the return to the museum of Corinth of several hundred objects held in the United States of America and the return to Bolivia of ancient textiles that had been illicitly imported to Canada. The International Fund for the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation was created in 1999 and became operational in November 2000 to support Member States in their efforts to pursue the restitution of cultural property and effectively fight illegal trade in cultural property, in particular through the verification of cultural objects by experts. The Fund may also be used for transporting cultural objects, insurance costs, setting up of facilities to exhibit them in satisfactory conditions and training of museum professionals in the originating countries. The Committee further recommended the drafting of a code of ethics for dealers in cultural property. The International Code of Ethics for Dealers in Cultural Property,<sup>8</sup> which follows closely the model rule on the acquisitions policies of museums contained in the Code of Ethics for Museums of the International Council of Museums, was adopted by the General Conference of UNESCO on 16 November 1999.

11. UNESCO works closely with the World Customs Organization, also known as the Customs Cooperation Council, and the International Criminal Police Organization (Interpol), as well as with a number of other organizations that collect and disseminate information on stolen cultural objects.

12. At the request of UNESCO, the International Institute for the Unification of Private Law (Unidroit) prepared the Unidroit Convention on Stolen or Illegally Exported Cultural Objects, which was adopted in Rome on 24 June 1995,<sup>9</sup> and

currently has 21 States parties. The Unidroit Convention complements the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property<sup>6</sup> from the point of view of private law and establishes a body of uniform legal rules for the restitution and return of stolen or illicitly exported cultural goods. It enables both States and individual owners who wish to recover a stolen object to file a complaint before a foreign court. In cases of theft, the obligation of restitution is absolute and independent of the title of ownership that may be recognized by the law applicable to the transaction (art. 3). In cases of illicit exportation, the obligation to return is subject to certain conditions (art. 5). However, in both cases the third-party acquirer of the object is entitled to payment of fair compensation, subject to certain conditions of diligence at the moment of acquisition.

13. Because illicit traffic also affects underwater cultural property, States members of UNESCO adopted in 2001 the Convention on the Protection of the Underwater Cultural Heritage,<sup>10</sup> which obliges States parties to take measures to prevent the entry into their territory, dealing in, or possession of underwater cultural heritage illicitly exported and/or recovered, where recovery was contrary to the Convention (art. 14). The Convention will enter into force three months after the deposit of the twentieth instrument of ratification, acceptance, approval or accession.

## **B. Regional initiatives**

14. Examples of regional cooperation agreements among European States, among American States and among the States parties of the Commonwealth are presented below:

### **1. Europe**

15. Within the Council of Europe, the European Cultural Convention<sup>11</sup> of 1954 promotes cooperation to safeguard and protect the European cultural heritage. The European Convention on the Protection of the Archaeological Heritage<sup>12</sup> of 1969 prohibits unauthorized excavation of archaeological sites and provides for their demarcation, protection and supervision. The 1969 Convention has been revised and updated. The 1992 European Convention on the Protection of Archaeological Heritage (Revised)<sup>13</sup> also applies to underwater heritage and obligates parties to maintain inventories of property; create archaeological reserves; report discoveries to ensure scientifically sound archaeological activities; apply specific measures to physical protection; and take account of all environmental impact measures. The Convention further provides for public education, dissemination of scientific information, technical assistance and financing of archaeological research and conservation. European States have also negotiated the European Convention on Offences relating to Cultural Property,<sup>14</sup> in which they agreed to enhance public awareness of the need for protection and to cooperate in the prevention of offences relating to cultural property, acknowledged the seriousness of such offences and agreed to provide for adequate sanctions or measures in response to removal of cultural property. The Convention, however, has not yet received any ratifications.

16. For trafficking in cultural property within the European Union, Council Regulation (EEC) No. 3911/92 of 9 December 1992 on the export of cultural

goods,<sup>15</sup> enforces source-nation export controls at the external borders of European States, while the 1993 Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State<sup>16</sup> controls the trade in cultural property within the European Union.

17. Reference can also be made to the Final Act of the Conference for Security and Cooperation in Europe, signed in Helsinki on 1 August 1975, which mentions the need to improve exchange of information in the various fields of culture, as well as the conservation and restoration of cultural property. During the International Workshop on the Protection of Artistic and Cultural Patrimony, held in Courmayeur, Italy, from 25 to 27 June 1992, in cooperation with UNESCO and the Crime Prevention and Criminal Justice Branch of the United Nations Secretariat, delegates were provided with evidence of the magnitude of international threats to cultural objects and adopted the Charter of Courmayeur, in which they agreed that Member States should be urged to initiate multilateral and bilateral negotiations aimed at concluding treaties for the protection of the cultural property of nations and to give top priority in their crime prevention programmes to the importance of protecting the cultural property of nations.

## **2. Organization of American States**

18. The 1976 Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations (Convention of San Salvador) provides (art. 3) that all import and export of regional cultural property is to be considered unlawful, except when the State owning it authorizes its exportation for purposes of promoting knowledge of national cultures. The Convention currently has 11 States parties.<sup>17</sup> According to article 7 of the Convention, regulations on ownership of cultural property are to be governed by domestic legislation. Other provisions of the Convention encourage inter-American cooperation and assistance in protecting the indigenous culture of the Americas. The Convention has been criticized as being too broad in its scope and rigid in its enforcement provisions. The United States has argued that, under the terms of the Convention, the importing State would be under the same obligation to use all legal means to obtain recovery whether an item was an insignificant piece purchased by an unwitting tourist or a stolen museum treasure. The United States stated that it did not believe that type of total prohibition to be either workable or wise and that it would impose an administrative burden on regional customs services that no State could be expected to accept and would also encourage the continued growth of a black market.<sup>18</sup>

## **3. Commonwealth**

19. The Law Ministers of the Commonwealth agreed in 1993 on the Mauritius Scheme for the Protection of the Material Cultural Heritage of Member States, which provides a framework for legal relations among members of the Commonwealth governing the return by one Commonwealth country of an item of cultural heritage found within its jurisdiction following illegal export from another Commonwealth State.

### III. Promoting bilateral cooperation

20. The Commission on Crime Prevention and Criminal Justice, at its twelfth session, in 2003, called attention to the need to establish common standards for the recovery and return of stolen assets that were part of the cultural heritage of peoples. States were exhorted to take into account the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.<sup>1</sup> The model treaty was adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders and welcomed by the General Assembly in its resolution 45/121 of 14 December 1990.

21. In adopting the model treaty, the Eighth United Nations Congress referred to the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property<sup>6</sup> and noted that the declarative section of that Convention established the duty of every State to protect the cultural property located in its territory from the dangers of robbery, clandestine excavation and illicit export, as well as a commitment to combat those practices by every available means, particularly with respect to stopping them while in progress, eliminating their causes and providing the assistance required to secure the return of the property in question. The Congress stressed that the best way of achieving those objectives was through international cooperation and mutual assistance and invited those Member States which had not yet established treaty relations with other States or which wished to modify existing relations, to bear in mind the model treaty.

22. It should be recalled that, when the model treaty was drafted, only 66 countries had ratified the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Accordingly, the model treaty was considered to be a useful tool to combat trafficking in movable cultural property, pending further universal implementation of the 1970 Convention.

23. The model treaty is applicable to property that, 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 has been stolen or illicitly exported from another State party after the coming into force of an instrument based on the model treaty. States parties to an instrument based on the model treaty would undertake to take necessary measures to prohibit the import and export of such property as well as the acquisition of and dealing in such property within their territory. The parties would also agree to introduce a system whereby the licit export of movable cultural property would be authorized by issuance of an export certificate. States parties would agree to further legislate in order to prevent persons and institutions within their territory from entering into international conspiracies with respect to movable cultural property by sanctioning all persons or institutions responsible for the illicit import or export of movable cultural property, those who knowingly acquire or deal in stolen or illicitly imported movable cultural property and those who enter into international conspiracies to obtain, export or import movable cultural property by illicit means. In addition, an instrument based on the model treaty would require States parties to provide information concerning stolen movable cultural property to an international database and to ensure that purchasers of stolen movable cultural property listed on that database would not be considered to have purchased such property in good faith. All means, including the fostering of public awareness, should, moreover, be

used to combat the illicit import and export, theft, illicit excavation and illicit dealing in movable cultural property.

24. Under an instrument based on the model treaty, each State would undertake to take the necessary measures to recover and return, at the request of the other State party, any movable cultural property covered under the instrument. The model treaty further defines that requests for recovery and return should be made through diplomatic channels. All expenses incidental to the return and delivery of the movable cultural property would be borne by the requesting State party and no person or institution would be entitled to claim any form of compensation from the State party returning the property claimed. Neither would the requesting State party be required to compensate in any way such persons or institutions as might have participated in illegally sending abroad the property in question, although it must pay fair compensation to any person or institution that in good faith acquired or was in legal possession of the property. The model treaty also stipulates that both parties should agree not to levy any customs or other duties on such movable property as may be discovered and returned accordingly.

25. Since September 1990, 37 additional States have ratified or accepted the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which demonstrates the growing interest and commitment of the international community. However, almost half of the States members of the United Nations have not ratified the 1970 Convention. Accordingly, the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property can still be considered as a useful tool for bilateral cooperation to combat trafficking in movable cultural property.

#### **IV. Analysis of replies received from Governments**

26. Comments on the implementation of Economic and Social Council resolution 2003/29 were received from nine Governments.

27. Austria reported that cases of theft and fraud or forgery related to cultural objects are dealt with by the Unit for Cultural Crimes within the Federal Bureau of Criminal Investigation (Bundeskriminalamt). Illegal excavations did not constitute a criminal offence but fell within the competence of the Federal Office for the Preservation of Monuments (Bundesdenkmalamt).

28. Austria also stated that international cooperation was needed to tackle crimes related to cultural objects and referred to the important role played by Interpol and the European Police Office (Europol). Austria stressed the importance of standardized inventories, which had been set up around the world and were also used by the Austrian authorities. Austria had not yet signed the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

29. Colombia noted that its 1991 Political Constitution obliged the State and individuals to protect the country's cultural and natural assets. The Constitution moreover required the legislature to establish a machinery for the reacquisition of cultural assets that were in private possession. It also regulated special rights



enjoyed by ethnic groups living in territories rich in archaeological objects. The constitutional provisions had been strengthened by legislation (Act No. 397 of 1997), which prohibited exports of cultural movable property without the prior authorization of the Ministry of Culture and required the Ministry, as well as other public institutions, to repatriate illegally imported property of cultural interest. Severe penalties were applicable under the Colombian Penal Code for theft, if the objects formed part of the cultural heritage of the nation as well as for damage to property in cases involving objects of scientific, historical, welfare, educational, cultural or artistic interest, property in public use or of social utility or property forming part of the cultural heritage of the nation. The Colombian civil code defined the notion of unowned property, for example, archaeological objects found in excavations, as belonging to the municipality within which they were found and therefore were to be declared. The Government of Colombia moreover proposed to classify as a new offence the acquisition, trade in and illegal export of archaeological objects, covering the illegal excavation, extraction, sale and export of such objects.

30. The 2002 inter-institutional agreement on cooperation promoted the organization of a national campaign to combat trafficking in cultural property, with the participation of institutions and individuals and promoted effective cooperation among cultural and non-cultural institutions, with a view to reducing the dangers of theft, clandestine excavations and illegal trading in Colombia's cultural heritage. The agreement further called for the creation and strengthening of educational programmes, strict legislation and an inventory (and subsequent item-by-item registration) of items forming part of the heritage of the nation.

31. Colombia further reported that it was party to the 1972 Convention for the Protection of the World Cultural and Natural Heritage,<sup>19</sup> the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1992 Inter-American Convention on Mutual Assistance in Criminal Matters and the 1993 Optional Protocol to that Convention. At the bilateral level, Colombia had signed an agreement with Peru concerning the protection, preservation and recovery of archaeological, historical and cultural property.

32. Colombia called for increased international cooperation and technical assistance, based on the United Nations Convention against Transnational Organized Crime,<sup>20</sup> as well as for the creation and/or strengthening of units and personnel specialized in cultural heritage within domestic institutions, such as the Office of the Procurator General, the Administrative Security Department and the national police, as well as for an optimization of information flows at the national and international level. Colombia moreover stressed the need for specialized training for officials working in governmental or private agencies as well as for campaigns to raise awareness and for research related to legislation on cultural heritage and inventories of movable property and emphasized the need for technical and financial assistance in that regard.

33. Finland mentioned that existing national and European Union legislation on trafficking in movable cultural property, such as Statute No. 115/1999 and the National Act on the Restitution of Objects of Cultural Value Unlawfully Exported from a State in the European Economic Area (1276/1994), had traditionally been rigorously applied and that the Ministry of Education had not reported any

particular problems in that regard. Finland also made reference to the National Board of Antiquities and Historical Monuments as its competent authority for such issues.

34. Finland further noted that it had ratified the 1970 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 (both ratified on 14 June 1999), and the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (ratified on 16 September 1994).

35. Germany indicated that most of the provisions established in the model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property were either already part of current German law or, as was the case with the import bans (called for in art. 2, para. 1 (a) of the model treaty), were going to be introduced in Germany through the forthcoming implementation of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Germany referred to the fact that the model treaty was not at variance with the restrictive registration policy in Germany. Germany further stated that exchange of information concerning stolen cultural property through international databases (art. 2, para. 1 (d) of the model treaty), such as the Art Loss Register, was already standard practice and that the question of bad faith reflected one of the fundamental principles of German civil law.

36. Germany moreover mentioned that the return of property, according to article 2, paragraph 2 of the model treaty, was guaranteed by article 2 of the European Union Council Directive 93/7/EEG of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State and by section 5 of the national Act on the Return of Cultural Property (the "KGRueckG") and that there were also some other European Union provisions in force on sanctions and procedures (as provided for in arts. 3 and 4 of the model treaty), which would be strengthened in Germany in the light of the envisaged implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The implementation would also strengthen international cooperation, already called for at the European Union level by Council Directive 93/7/EEG.

37. Mauritius reported that a new National Heritage Fund Bill had been passed by Parliament, which provided for a prohibition on exports of national heritage without prior approval of the Board and punished persons who unlawfully altered, damaged, destroyed, dug up, moved, changed, covered, concealed or in any way disfigured an item of national heritage or removed any part of an item of national heritage, with fines up to 100,000 rupees and up to two years of imprisonment, on conviction. The Bill further included provisions for the restitution and return of stolen or illicitly exported movable property and provided that the Board should work in collaboration with the international community to trace and recover any national heritage that might be outside the territory of Mauritius, as well as to restore foreign heritage and to manage shared heritage jointly.

38. Slovakia expressed its willingness to accept a model agreement for the prevention of crimes infringing on the cultural heritage of peoples in the form of

property, in case any initiatives were taken in that regard, whether on the part of Slovakia or other States. It was further mentioned that Slovakia actively cooperated in the protection of cultural heritage with neighbouring countries, in particular with Austria, the Czech Republic, Hungary and Poland and permanently strengthened that cooperation, in particular regarding documentation of crimes against movable property and exchange of knowledge and experience in that area (paintings, national treasures in churches, etc.).

39. Switzerland emphasized its strong willingness to combat trafficking in cultural property and to support the international community in such an important task. In June 2003, the federal parliament adopted a new federal law on trafficking in cultural property with a view to preparing for the ratification in October 2003 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The law provided for improved regulation of importation and transfer of cultural goods and for the restitution of illegally imported items and also obliged art traders to register their acquisitions. The law further enabled the Confederation financially to support projects aiming at the conservation of endangered cultural objects. According to the new law, the statute of limitations had changed and traffickers risked punishment of up to more than one year's imprisonment or fines up to Sw F 100,000.

40. In May 2003, the Federal Council had facilitated the restitution of Iraqi cultural items, in line with Security Council resolution 1483 (2003) of 22 May 2003, by prohibiting the importation, transit, exportation, sale, commercialization, distribution, acquisition or transfer of Iraqi cultural goods that had been illegally exported since 2 August 1990, including those obtained through illegal excavations.

41. Switzerland furthermore noted that, while the theft of cultural property fell under the competence of the regional authorities (*autorités cantonales*), the Federal Judicial Police and its art experts ensured coordination and communication between the regions and foreign authorities.

42. At the international level, Switzerland provided information to the Interpol database and also participated in the group of experts established by the General Secretariat of Interpol to revise the structure of the database on art items. Switzerland was furthermore represented in international conferences and workshops organized by UNESCO, Interpol and the International Council of Museums for countries whose cultural patrimony was particularly endangered.

43. Turkey noted that its Law on the Protection of Cultural and Natural Property (Law No. 2863) placed movable and immovable cultural and natural property in need of protection under State ownership, punished the exportation of such items out of the country (with the exception of exportation for the purpose of exhibitions, which required authorization in advance) and provided for the supervision of the activities of collectors and antique dealers. Turkey also referred to its Law on Prevention of Money-Laundering (Law No. 4208), which established that criminal acts covered by the Law on the Protection of Cultural and Natural Property were considered as a predicate offence for money-laundering activities.

44. Turkey further stressed its close coordination with Interpol in the fight against trafficking in works of art. The data provided on CD-ROM produced by Interpol were compared with works of art seized in Turkey that were suspected of having been illicitly acquired and were also conveyed to the office of the Prime Minister

and the Ministry of Culture and Tourism in order to alert the Coast Guard Command, the General Directorate of Customs Enforcement and other relevant units, who could prevent stolen works of art from entering into Turkey. Turkey also mentioned that inventory cards with photographs of art that had been illicitly removed from Turkey, as well as the Crigen Art Forms were sent to the General Secretariat of Interpol, in order to be entered into the Automated Search Facility Works of Art Database. With 866 works of art under international search as of 2003, Turkey was among the States reporting most thefts of cultural objects. Turkey further explained that an inventory was also sent to public and private museums and auction houses as well as to curators, collectors and antique dealers, and that related authorities were warned of thefts to help prevent the cultural property from being taken out of the country.

45. Turkey moreover mentioned that it was party to the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and stated that it also made use of bilateral instruments governing the issue as well as the ones governing extradition and mutual legal assistance.

46. Turkey finally referred to training activities, seminars and conferences on the prevention of trafficking in cultural property that had been conducted by the Ministry of Culture and Tourism of Turkey.

47. Zambia reported that the fight against crime of cultural heritage would be intensified. It explained that, as cultural and historical properties had in the past often been exported with the help of local people, it was the duty of all law enforcement agencies to assist in public-awareness activities.

## **V. Involvement of organized crime in trafficking in stolen cultural property**

48. The international trade in looted, stolen or smuggled art is estimated at \$4.5 billion to \$6 billion per year. Trafficking in cultural property has become not only a lucrative business for certain traders, but also an extremely tempting source of additional income for populations living in poverty, above all in the countries of origin of the cultural goods. Moreover, the growing interest in art objects belonging to other cultures has led to a significant increase in demand and trade in such objects, in particular in the Western world. Throughout the economic turmoil of recent years and especially in the current depressed financial market, cultural property has proved to be a good investment.

49. Such crimes have several analytically distinct but closely related components:

(a) Illegal excavation of antiquities, many of which are subsequently exported;

(b) Illicit export of art and antiquities, where statutes intended to preserve the national cultural heritage by prohibiting such exports exist;

(c) Theft of antiquities from historical sites, museums, antique businesses and galleries;

(d) Theft of art from museums and private collections.

50. Numerous cases of archaeological sites being looted have been reported in both the southern and northern hemispheres. In West Africa, illicit excavations on the Thial site in Mali are only one example on the continent. In Europe, Italy with its great archaeological heritage, is one of the worst affected countries as far as illicit excavation is concerned. In Asia, apart from the horrendous looting of Khmer artworks from Angkor in Cambodia, about 40,000 ancient tombs in China have been excavated illicitly. In Latin America, the remains of the Maya civilization have fallen prey to treasure hunters. In Colombia, according to reports from the national police and Interpol and to information processed by the Colombian Institute for Anthropology and History, 10,000 archaeological items have been illegally exported from the country. At the same time, the theft of artwork from museums is a worldwide phenomenon. The recent theft of thousands of items from Iraqi museums is only one concrete example.

51. Trafficking in cultural property provides criminals with an opportunity to deal with a high value commodity that is often poorly protected, difficult to identify and easy to transport across boundaries to discreditable buyers and more eager unsuspecting members of the trade. Moreover, the markets in arts and antiquities are truly international and deal in large amounts of money making them vulnerable to involvement in money-laundering. The illicit market is populated by a mixture of sophisticated criminal organizations, individual thieves, small-time dealers and unscrupulous collectors. Unfortunately, however, the trade also depends to a great extent on the tacit connivance of apparently legitimate individuals and institutions, such as auction houses and antique dealers. The illicit trade in stolen and illegally exported cultural objects depends for its success on close links between the black market and the licit sector. Transnational organized crime is deeply involved in the business. Transnational trafficking networks have grown vertically, involving links between the local population in areas where antiquities have been discovered and dealers who violate national legislation prohibiting their illegal export, to the smugglers and dealers, who sell them at great profit to private collectors. The well-organized nature of the illicit market for art and antiquities is perhaps most strikingly demonstrated by the fact that only around 5 per cent of all stolen art objects are ever recovered.

52. Many excavations are undertaken by individuals, working in secret and without approval. If they find movable archaeological items, they do not declare them to the appropriate authorities and subsequently sell them abroad without the country of origin even having any knowledge of them, until they are discovered outside the country. This is one more reason why the United Nations Convention against Transnational Organized Crime, to which there are currently 61 States parties, can be considered to be an important instrument for international cooperation and technical assistance in the issue.

53. The law enforcement community has recognized illicit trade in cultural objects as a major category of international crime, which can only be combated through international collaboration.

54. Interpol is working as a clearing house for information using a network of reciprocal links among its 176 member States. It circulates information about cultural objects that have been reported to member police forces as stolen or as property found in suspicious circumstances, using a standard form called the Crigen Art Form. The Interpol database on art items is available to the member States,

making information on a stolen work of art available worldwide just 24 hours after being entered into the database. In order to provide information to the private sector, Interpol has produced a CD-ROM on stolen works of art, which is updated every two months. Interpol further publishes twice a year posters showing the “Most wanted works of art”.

55. Interpol and UNESCO signed on 8 July 2003 an amendment to their 1999 Cooperation Agreement, in order to define their respective responsibilities in the effort to recover stolen Iraqi works of art. UNESCO’s role is to gather information on the disappeared artefacts so that Interpol can include them in its stolen works of art database. Interpol has taken several steps in the effort to recover art objects stolen in Iraq; it requested its member States to strengthen border controls, hired specialized personnel, organized an international conference on the issue, distributed related information on its web site and its experts participated in UNESCO’s second mission to Iraq. In accordance with a recommendation adopted at the International Conference on Cultural Property Stolen in Iraq, held in May 2003, Interpol has created a Tracking Task Force to Fight Illicit Trafficking in Cultural Property Stolen in Iraq. The Task Force includes representatives of specialist operational law enforcement units from France, Iraq, Italy, Jordan, United Kingdom of Great Britain and Northern Ireland and the United States and is conceived as the primary platform for the coordination of international exchange of law enforcement information on Iraqi stolen cultural property and on the criminal networks involved in its trafficking.

56. A number of other organizations also collect and disseminate information about stolen cultural objects, including the International Council of Museums, the International Foundation for Art Research, Trace and the International Art Loss Register. UNESCO publishes notices of missing cultural objects and the International Council of Museums has produced two books (*Looting in Angkor* (1993) and *Looting in Africa* (1994)), which have been distributed to museum professionals, police, customs, antique dealers and auction houses. The International Foundation for Art Research, founded in 1969, collects reports on stolen art for a central registry and publishes a newsletter that provides information about art recently reported as stolen and carries articles on art theft and authentication. *Trace* magazine was established in 1988 and is distributed to readers in 172 countries and provides information about stolen art and antiques and articles on art theft. The Art Loss Register, created in 1991, began operating a computerized database of stolen art and antiques with records licensed from the International Foundation for Art Research and is funded through subscription fees paid by the insurance industry. The Art Lost Register contains more than 130,000 uniquely identifiable items (including paintings, sculptures, ceramics, Asian art items and icons), based on information received from law enforcement agencies, private owners, insurance companies, traders, museums and galleries. All staff of the Art Loss Register are qualified art historians and they assist law enforcement agencies by providing them with details of all stolen items, expert advice and confidential intelligence research.

57. The entry into force of the United Nations Convention against Transnational Organized Crime was a milestone in the efforts of the international community to counter and curb transnational organized crime. The application of the new instrument is expected to bring about significant changes in national legal systems and to create a new impetus in international cooperation, which will in turn lead to

innovative and broader perceptions on how to deal with the various manifestations of transnational organized crime, including trafficking in movable cultural property.

## VI. Concluding remarks

58. In its resolution 58/17 of 3 December 2003, entitled “Return or restitution of cultural property to the countries of origin”, the General Assembly called upon all relevant bodies, agencies, funds and programmes of the United Nations system and other relevant intergovernmental organizations to work in coordination with UNESCO, within their mandates and in cooperation with Member States, in order to continue to address the issue of return or restitution of cultural property to the countries of origin and to provide appropriate support accordingly.

59. The Cairo Declaration on the Protection of Cultural Property, agreed upon at the International Conference celebrating the fiftieth anniversary of the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, held in Cairo, from 14 to 16 February 2004, referred to the model treaty as being a useful tool for preventing robbery, clandestine excavation and illicit export of cultural property and for guaranteeing the restitution of illegally transferred property. The Conference urged the Commission on Crime Prevention and Criminal Justice to accord special attention to the protection of cultural property by encouraging States to conclude bilateral agreements based on the model treaty and to establish legal and technical mechanisms for that purpose, as well as to promote international cooperation to combat acts of robbery or illicit archaeological search, traffic, import or export of cultural property. The Conference also proposed that the Commission recommend that special attention be accorded to the subject during the deliberations of the Eleventh United Nations Congress on Crime Prevention and Criminal Justice, especially under the theme of organized crime. The Eleventh United Nations Congress could facilitate the discussion of problems relating to trafficking in cultural property and may wish to examine measures and initiatives geared towards preventing and controlling the problem. In that connection, the promotion of mechanisms for recovery and return of stolen movable cultural property could be discussed, as well as the need for a comprehensive approach that builds on areas of success, remedies deficiencies and weaknesses in laws and in enforcement efforts, goes beyond law enforcement to include educational campaigns and awareness-raising and stresses the importance of partnerships with the private sector.

### Notes

- <sup>1</sup> See *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, para. 2.
- <sup>2</sup> G.W.O. Mueller, “Transnational crime: an experience in uncertainties”, *Uncertainty Scenarios*, 1998.
- <sup>3</sup> M. Cherif Bassiouni and James Nafziger, “Protection of cultural property”, *International Criminal Law*, 2nd ed., M. Cherif Bassiouni et al., eds., vol. I, p. 949.
- <sup>4</sup> United Nations, *Treaty Series*, vol. 249, No. 3511.
- <sup>5</sup> While the Statute for the International Tribunal for the Former Yugoslavia contains specific provisions applicable to the protection of cultural property, the Statute for the International

Tribunal for Rwanda does not. Article 4 of the Statute for the Rwanda Tribunal, however, gives that Tribunal the power to prosecute violations of common article 3 to the Geneva Conventions and Protocol II. The article's list of enumerated offences contains only one provision that is applicable to the protection of cultural property, namely pillaging. The article also states that article 4 violations "shall not be limited to" the eight enumerated offences, presumably including any violation encompassed by common article 3 and Protocol II. M. Cherif Bassiouni and James Nafziger, "Protection of cultural property", *International Criminal Law*, 2nd ed., M. Cherif Bassiouni et al., eds., vol. I, p. 961.

<sup>6</sup> Ibid., vol. 823, No. 11806.

<sup>7</sup> See, for example, memorandums of understanding and agreements signed by the United States of America with the following countries: Bolivia, Cambodia, Canada, Cyprus, El Salvador, Guatemala, Italy, Mali, Nicaragua and Peru.

<sup>8</sup> See United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Thirtieth Session, Paris, 26 October-17 November 1999*, vol. 1: *Resolutions*.

<sup>9</sup> See [www.unidroit.org](http://www.unidroit.org).

<sup>10</sup> See United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Thirty-first Session, Paris, 15 October-3 November 2001*, vol. 1: *Resolutions*.

<sup>11</sup> United Nations, *Treaty Series*, vol. 218, No. 2955.

<sup>12</sup> Ibid., vol. 788, No. 11212.

<sup>13</sup> Council of Europe, *European Treaty Series*, No. 143.

<sup>14</sup> Ibid., No. 119.

<sup>15</sup> *Official Journal of the European Communities*, No. L 395, 31 December 1992.

<sup>16</sup> *Official Journal of the European Communities*, No. L 74, 27 March 1993.

<sup>17</sup> Argentina, Bolivia, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama and Peru.

<sup>18</sup> Note from Terrence A. Todman, Assistant Secretary for Inter-American Affairs, Department of State, to Ambassador Rodolfo Silva, Chairman of the Permanent Council of the Organization of American States, 26 August 1977.

<sup>19</sup> United Nations, *Treaty Series*, vol. 1037, No. 15511.

<sup>20</sup> General Assembly resolution 55/25, annex I.