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**EUROPEAN COMMITTEE ON CRIME PROBLEMS  
(CDPC)**

**COMMITTEE ON OFFENCES RELATING TO  
CULTURAL PROPERTY  
(PC-IBC)**

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**3rd meeting**

**Strasbourg, 9-12 January 2017**

**ABRIDGED MEETING REPORT**

**Document prepared by the Secretariat**

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## Summary of Proceedings

### 3rd Meeting of the Committee on Offences relating to cultural property (PC-IBC), Strasbourg, 9-12 January 2017

1. The Committee on Offences relating to cultural property (PC-IBC) held its 3rd meeting in Strasbourg on 9 to 12 January 2017 with Mr Hans-Holger HERRNFELD (Germany) as its Chair.
2. To begin the meeting Mr Carlo CHIAROMONTE, Head of the Criminal Law Division, Secretary of the PC-IBC, provided some information on the work plan of the PC-IBC. The Convention on Offences relating to Cultural Property should be ready for adoption by the Ministers of Foreign Affairs at 127th Session of the Committee of Ministers in Nicosia on 19 May 2017.
3. He reminded the committee that it is essential to finish the work speedily with a high-quality text, underlining that the necessary internal procedures in order to prepare the draft Convention for adoption may take up to 2 months.
4. During this meeting, the committee should continue its examination of the remaining substantive criminal law provisions (Articles 7-18) of the draft Convention and then return to the articles already discussed for further examination and possible final approval.
5. Mr Chiaromonte informed the committee that an additional meeting would be needed in order to finalise the text and work on the draft Explanatory Report.
6. Mr Eladio FERNANDEZ GALIANO, the new Head of the Department of Culture, heritage and Landscape Department, introduced himself to the committee and underlined that his department stands ready to assist in this joint venture in any way possible.
7. Mr Herrnfeld presented the conclusions of the European Committee on Crime Problems (CDPC) at its 71<sup>st</sup> plenary session from 29 November to 1 December 2016 in relation to the work of the PC-IBC.
8. Regarding Article 3 on theft, the CDPC proposed the following wording: "Each Party shall ensure that the offences of theft and unlawful appropriation under their national law apply to movable cultural property".
9. Concerning the inclusion or not of administrative sanctions in the draft Convention, the CDPC had concluded that if State Parties, in respect of all or some of the criminal offences, wished to apply non-criminal sanctions in case of minor offences, it would be preferable to specifically foresee that possibility e.g. by amending the article entitled "Sanctions and measures" (currently Article 16 of the draft Convention).

10. The Chair once again reminded the participants that the draft Explanatory Report to the Convention was not up for discussion. It had been distributed to delegations with the sole intention of supporting the discussions.
11. Following these opening remarks, the Committee adopted its agenda without further ado.
12. Article 7: the article was clarified in order to make it clear what was being criminalised under this article by adding a reference back to each article concerned and therefore speaking of crimes as defined by the draft Convention. It was underlined that possession is a different issue and should not be confused with acquisition.
13. Moreover the knowledge aspect was added to the article. The article was divided into 2 parts, the first part referring to when the person concerned knows of the unlawful provenance and the second part when the person should have known of the unlawful provenance and did not exercise due care and attention. In this regard the phrase 'in a grossly negligent manner' was deleted.
14. Some delegations needed clarification that the phrase 'who should of known' refers to professionals for example art professionals. With this in mind, the article was agreed upon.
15. Article 8: it was agreed to word this article in the same way as Article 7 in order to ensure consistency. It was also agreed that the act of placing on the market should be described in the Explanatory Report. With this in mind, the article was agreed upon.
16. Article 9: here the question of whether or not false objects should be included was discussed. Certain delegations underlined that fake objects form a high percentage of the illicit market in cultural property. However the Chair concluded that this issue, although important, is outside the scope of the draft Convention and therefore should not be included.
17. The article was shortened, with the new wording of 'intended to present the property as having licit provenance' accepted by the group. With the above amendment the article was agreed upon.
18. Article 10: after much discussion and various proposals of wording for Article 10, a final text was on the table. This wording is close to that which is used in the Council of Europe Convention on the counterfeiting of medical products and similar crimes involving threats to public health (CETS No. 211). Once again this article refers back to the offences mentioned in the previous articles of the draft Convention.
19. In this regard, it was decided that the issues of the transposition of these provisions as separate criminal offences under domestic law and aiding or abetting or attempt would be expanded upon in the Explanatory Report.

20. There was discussion on the issue of preparatory acts. Finally it was agreed not to mention this issue which is implicitly covered by the current article and the article was agreed upon as it stands.
21. Article 11: it was agreed that the illegality aspect is missing here, so the word 'unlawful' was inserted. Also the word 'disfigurement' was replaced with 'damage' which is slightly more wide-reaching. The Explanatory Report would mention that damage includes disfigurement.
22. The question of inventories was also raised. It was decided that this falls under archives and is therefore covered by the text. This could be further explained in the Explanatory Report. The article was therefore agreed upon.
23. Article 12: the Chair asked if a specific provision on terrorism was needed here. Delegations agreed that this provision is not necessary as terrorist acts are already covered both in national and international law. It is outside the scope of the draft Convention and does not bring any added value. The provision was therefore deleted.
24. Article 13: this article was left as it is without any changes as it is standard language used in CoE conventions and it was agreed upon by the committee.
25. Article 14: the issue of adding residents or foreigners living in the country to this article was raised by some delegations. It was finally decided not to make reference to this here. Once again this is standard language and the article was agreed upon without changes.
26. Article 15: the Chair explained that this is usual language for conventions and the wording has been taken from the model provisions for Council of Europe criminal law conventions adopted by the CDPC. The article was left unchanged and agreed upon by the committee.
27. Article 16: this article is also a standard provision. Some delegations wished to add the possibility of non-criminal sanctions with regard to certain articles, while others believed this would water down the essence of the convention. Finally paragraph 1 of the article was altered to include the possibility of Parties introducing non-criminal sanctions for offences included in certain preceding articles.
28. Moreover an additional paragraph was added to cover the restitution of property seized during criminal proceedings once again with a reference to the State that had specifically designated, classified or defined the item in question as cultural property. With these changes the article was agreed upon by the committee, with one delegation still having certain reservations.
29. Article 17: after a lot of debate on what exactly constitutes aggravating circumstances the wording was left without change however the 2 indents relating to terrorism were removed. Firstly this was because terrorism is largely covered under c) in the framework of criminal organisations. Secondly member States all have existing legislation relating to terrorist activities which would be applied in this case.

30. In this regard, more mention of terrorist acts could be made in the preamble while further explanations on the terrorist links to the offences could be made in the Explanatory Report.
31. Furthermore the Chair underlined that this is not a closed list and States could add other aggravating circumstances not mentioned in this article.
32. Moving back to Article 2: while certain delegations questioned the use of the categories of the 1970 UNESCO Conventions, most agreed that these categories are widely accepted throughout the world. This article was agreed upon as it stands.
33. Article 3: three alternative wordings were proposed to the committee, the third by the CDPC. The majority of delegations preferred the new CDPC wording with some slight amendments. After some debate on the inclusion of the word 'movable', it was decided to keep it in the article..
34. Moreover the committee agreed that a possibility for non-criminal sanctions is not necessary in this article. This article was therefore accepted.
35. Article 4: for this article it was noted that certain delegations had difficulties with its territorial application.
36. The addition of a second paragraph giving Parties the option of providing for non-criminal sanctions where criminal sanctions are deemed too severe was agreed upon. With this addition, the article was then accepted by the committee.
37. Article 5: here new wording was proposed by the Chair. On the whole this wording was agreed upon by the committee. However some delegations spoke of difficulties in knowing the provenance of the property in question and which law to apply, speaking of the chain of countries that could be involved. For this reason the words 'law of the State that has classified, defined or specifically designated such cultural property in accordance with Article 2' was added under c) of this article.
38. Other delegations raised doubts on how to prove that the offender knew the property had been stolen. However this question is an issue for each individual State to resolve under its domestic law.
39. It was decided to move the second paragraph of Article 5 concerning exportation to Article 6 as its second paragraph.
40. As some delegations raised the issue of applying non-criminal sanctions under their domestic law, a new second paragraph allowing for reservations was added in line with that of Article 4. The article was then accepted by the committee.
41. Article 6: this article now includes a second paragraph moved from Article 5 and referring back to Article 5. Here it was agreed that the possible need for non-criminal

sanctions in case of less serious cases could be clarified in the Explanatory Report. The article was agreed upon.

42. Preamble: certain delegations wished to use the term cultural heritage towards the end of the preamble. However as the term heritage had already been used earlier in the preamble and as the body of the draft Convention refers to cultural property it was decided not to take up this proposal.
43. The possibility of adding further UN resolutions and the operational guidelines adopted with UNESCO was discussed. While certain delegations supported this, others questioned extending the list of instruments beyond those that are directly relevant. With this in mind these instruments were added in square brackets for the time being.
44. The Chair confirmed that the next meeting of the PC-IBC will take place in Strasbourg from 20 to 24 February 2017. On the first day the committee will take one last look at Articles 1-18, and on the second day it would continue with Articles 19-23 which are more standard criminal law provisions in accordance with the CDPC's model provisions.
45. During the next two days the draft Explanatory Report will be under discussion. The final day would be devoted to the final adoption/approval by the PC-IBC of the draft Convention.
46. The Secretariat announced that following this 4<sup>th</sup> and final PC-IBC meeting an extraordinary meeting of the CDPC will be held at the end of March 2017 in order to adopt the draft Convention. This will avoid any need for the CDPC to be consulted by a written procedure.
47. The Secretariat also gave information on an upcoming international seminar entitled 'a new perspective on the protection of cultural property through criminal law' which is being organised by the IMT School for Advanced Studies in co-operation with the Council of Europe in Lucca (Italy) on 3 and 4 February 2017 and to which all PC-IBC members are invited.
48. This meeting was followed, on the morning of 13 January, by a Colloquium on "Initiatives to strengthen international capacities for the protection of cultural property and the prevention of illicit trafficking in cultural goods – the Council of Europe Convention on Offences relating to Cultural Property" organised under the Cypriot Chairmanship of the Committee of Ministers of the Council of Europe