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

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

4th meeting

Strasbourg, 20-24 February 2017

ABRIDGED MEETING REPORT

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Summary of Proceedings

4th Meeting of the Committee on Offences relating to cultural property (PC-IBC), Strasbourg, 20-24 February 2017

1. The Committee on Offences relating to cultural property (PC-IBC) held its 4th and last meeting in Strasbourg on 20 to 24 February with Mr Hans-Holger HERRNFELD (Germany) as its Chair.
2. The Committee took note of the opening words by Mr Philippe BOILLAT, Director General of Human Rights and Rule of Law, who underlined the importance of finalising the new draft Convention on Offences relating to Cultural Property. The Convention will empower states to fill the gaps in existing legislation in order to ensure that there are appropriate sanctions available for crimes relating to cultural property.
3. To underline the interest being shown in this topic, Mr Boillat mentioned the success of the Colloquium organised in the margins of the last PC-IBC meeting in January which was attended by several high-level participants including representatives from UNESCO, UNIDROIT and the International Criminal Court. He also spoke of the well-received seminar on protecting cultural property through criminal law, which took place in Lucca (Italy) on 3 and 4 February where the presence of the Italian Ministers of Culture and Justice, showed a strong interest and support for the new Convention.
4. Mr Boillat underlined that the new draft Convention is one of the priorities of the Cypriot Chairmanship of the Committee of Ministers and the final text will be presented to the Ministerial Session taking place on the 19 May in Nicosia.
5. Mr Boillat finally emphasised the criminal law nature of the new Convention, and how it would function in harmony with the existing legal instruments such as the 1970 UNESCO Convention and the 1995 UNIDROIT Convention.
6. Following Mr Boillat's intervention, Mr Herrnfeld, Chair of the meeting, reiterated the high expectations vested in the new Convention. The Chair reminded the Committee that both the draft Convention and its Explanatory Report should be finalised by the end of the current meeting, before being presented to the European Committee on Crime Problems (CDPC) at its meeting on 29-31 March.
7. The Committee then proceeded with its examination of the Convention article by article, beginning with the preamble.
8. Preamble: In the Preamble the words 'criminal organisations' was changed to 'criminal groups'. Moreover reference to the first Protocol of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 was added to the list of existing international instruments. The word 'significant' was deleted before

'source of financing' with more explanation on the level of financing of terrorist groups derived from the illicit trade in cultural property to be given in the Explanatory Report.

9. Articles 1, 2 and 3: The Committee was in agreement with the text of Articles 1, 2 and 3 without any amendments.
10. Article 4: In Article 4, paragraph 1, several delegations were of the opinion that the wording 'in violation of the law' was too broad. It was therefore agreed to change the wording to 'without the authorisation required by' with further clarification in the Explanatory Report as certain States have no defined authorisation process.
11. Once again the issue of non-criminal or administrative sanctions was raised. The Chair reminded that Committee that paragraph 2 gives States the right to provide for non-criminal sanctions, instead of criminal sanctions for the conduct described in paragraph 1.
12. Article 5: The words 'when committed intentionally' were added to Article 5, paragraph 1, in order to bring it in line with Articles 4 and 6.
13. In paragraph 1, b) it was agreed to delete 'in violation of....' and insert 'retained' with a reference back to Article 4 to make the article more consistent.
14. In paragraph 1, c) 'in violation of' would be left in the text with clarification in the Explanatory Report.
15. Moreover the insertion of 'or' after paragraph 1, b) ensured flexibility to apply a), b) or c) depending on what provisions the importing State has in its domestic law.
16. Article 6: The Committee discussed whether Article 6, paragraph 2, which concerns re-export, should be maintained in the text or whether this issue could simply be mentioned in the Explanatory Report.
17. In the light of the discussions, Article 6, paragraph 2 was reworded using the words 'shall consider', making it clear that States must consider taking the necessary measures to apply paragraph 1 also in respect of movable cultural property that had been illegally imported.
18. Articles 7, 8 and 9: Articles 7, 8 and 9 on acquisition, placing on the market and falsification of documents respectively were accepted by the Committee as they stood and left without amendment.
19. Article 10: Certain delegations were in favour of deleting this provision completely as being redundant in light of the preceding provisions. Others on the other hand insisted that it remain as offences relating to trafficking are at the heart of the matter, although many thought that the current wording does not deal with the real issue which is the chain of trafficking.

20. As the Committee was unable to come to agree on this provision, it was decided to leave the final decision on this article up to the CDPC at its March meeting when a new alternative text would be proposed. The text was therefore removed with the title of the article remaining in square brackets.
21. Article 11: Here the situation where an owner destroys his/her own cultural property was discussed and whether the word 'unlawful' in the text was sufficient to cover this situation. There may be cases where certain cultural property is not protected under national law and where the owner may be allowed to destroy his/her property. It was agreed that not every type of destruction or damaging should be criminalised.
22. Finally it was decided to add a reservation paragraph 2 which would give more flexibility to States on when to criminalise the destruction of cultural property by its owner and at the same time ensure that the right to property is not diminished. This new paragraph 2 would allow States Parties to adopt non-criminal sanctions.
23. With this additional paragraph, Article 11 was approved by the Committee.
24. Article 13: It was agreed to add 'under domestic law' to both paragraphs of this article for clarification purposes. The Committee furthermore agreed to except certain provisions from the application of paragraph 2. Furthermore it was decided to except Article 10 from the application of both paragraphs, pending further negotiations on a possible wording of Article 10.
25. Articles 14 and 15: The Chair underlined that these provisions are based on the model provisions adopted by the CDPC, and with this in mind they were agreed upon by the Committee without amendment.
26. Article 16: Several delegations suggested that the domestic law referred to in paragraph 4 of this article should be criminal domestic law. The Committee agreed upon a compromise solution by adding 'where appropriate' before inserting the reference to criminal law, which would allow a certain amount of flexibility.
27. Article 17: Here once again certain delegations brought up their wish that terrorist acts be included as an aggravating circumstance.
28. Other delegations had problems with the wording of paragraph a) of Article 17. Some needed some clarification on the word 'professionals', while others thought the wording was too limiting. The Chair reminded delegations that States Parties to the Convention can always have wider aggravating circumstances.
29. After further discussions it was agreed to clarify in the Explanatory Report that the definition of the term "professionals" should be left up to the domestic law of States Parties and leave the article without change.
30. Article 18: This article is taken directly from the model provisions adopted by the CDPC and was therefore left without any amendment.

31. Article 19: This is also a standard provision taken from the model provisions; however the Committee agreed to delete the last part concerning the withdrawal of a complaint, as in offences relating to cultural property the victim is not always a person.
32. Article 20: The wording for this provision is based on that of Article 34 of the Lanzarote Convention. Certain delegations found the language of this article, with the use of the words 'shall take', was too strong, and suggested replacing this with 'shall consider taking'.
33. The Committee considered a proposal from one delegation for the addition of a 2nd paragraph to Article 20 using wording based on Article 16, paragraph 2, of the Medicrime Convention (CETS No. 211) relating to a common investigative tool which in its opinion would make the article more precise.
34. Despite a certain amount of the support for the addition of a more precise 2nd paragraph, it was decided to simply change the wording to 'shall consider taking' and then explain in the Explanatory Report that it should be possible to mobilise specialised personnel or services for investigations into offences relating to cultural property, with the possible provision of specialised units or services.
35. Article 21: The Committee considered a proposal from one delegation to amend Article 21 in order to strengthen the mechanisms of international co-operation under this provision and introduce the concept of asset recovery.
36. Article 22: The Chair underlined that this draft Convention should not only facilitate the fight against crime, it should also ensure that crime doesn't happen and this should be borne in mind when discussing this article.
37. Moreover many of the provisions found under this article are also addressed in other international conventions. It was therefore agreed to alter the heading of this article to include obligations under applicable international treaties and that in the Explanatory Report States would be reminded of their existing obligations and commitments under other conventions.
38. For paragraph a) it was decided that reference to publicly accessible inventories would be removed as in certain cases this is not advisable for safety reasons.
39. For paragraph c) reference to due diligence provisions was introduced.
40. Upon a proposal from one delegation, it was agreed that the provision on the protection of cultural property in times of instability or conflict would be better placed under the international co-operation provision, following on from the co-operation measures for times of peace. It was therefore moved to Article 23 as paragraph c) with clarification in the Explanatory Report that this applies where cultural property is endangered in their own territory or abroad.
41. The majority of the Committee was in favour of the deletion of the provision on the improvement or introduction of statistics on offences relating to cultural property as this

measure would be more valuable and useful after the adoption of the draft Convention. It was therefore deleted.

42. For paragraph g) the Committee decided that an explanation on how the monitoring would take place and who would do it would be given in the Explanatory Report.
43. Under paragraph k) when providing for compliance and reporting for museum and similar institutions, it was decided to soften the wording with the use of the word 'encourage' instead of 'ensure through legislative or other measures', in order to make the provision more usable.
44. The Committee considered a proposal for a new paragraph under preventive measures regarding the dissemination of information relating to illicitly removed cultural property to customs officials and police forces. This proposal was supported by the Committee as the effective sharing of information is indeed an important preventive measure and a new paragraph on improving the dissemination of information was introduced.
45. The Committee also considered another proposal for a paragraph on seizure and confiscation of fake cultural artefacts. After some discussion the Committee decided that that fake objects do not fall under the remit of this draft Convention and therefore this proposal would not be taken up.
46. Article 23: In addition to the new paragraph c) of Article 23, it was agreed to amend it in light of the new paragraph in Article 22 and add that 'has been the subject of an offence in accordance with this Convention'.
47. Article 24: The Chair reminded the Committee that this article is taken for the model provisions adopted by the CDPC. Certain delegations raised questions on the frequency of the meetings of the proposed Committee of Parties and how this would be organised.
48. A proposal for a more developed monitoring body was presented to the Committee by one delegation. This would entail the creation of a European Observatory reflecting wishes expressed at the Lucca Seminar and modelled on the SATURN centre for judicial time management which has been set up by the European Commission for the Efficiency of Justice (CEPEJ). This permanent body would support the activities of the Committee of Parties, with meetings of a small group representing the Parties to the Convention taking place regularly.
49. This proposal provoked much debate among the Committee. Although some delegations pronounced their support, others expressed their reticence in the face of the possible budgetary implications and increased work-load this Observatory might create.
50. It was decided to leave the proposal in the text in square brackets and bring the issue to the attention of the CDPC for its opinion.
51. The draft Explanatory Report was modified to bring it into line with the revised draft Convention.

52. In the Commentary on the Preamble and the provisions of the Convention of the Draft Explanatory Report the link between the illicit trade in cultural property and the financing of terrorist groups is underlined, with the Committee agreeing to add an explanation on why terrorist acts are not included in a specific provision of the draft Convention.
53. Conclusion: The Chair announced that the work of the PC-IBC was now completed. The revised draft Convention and its draft Explanatory Report will be sent to CDPC delegations forthwith and be presented to the CDPC at its special meeting on 29 to 31 March for examination and approval.
54. Concerning Article 10 – Other offences related to the trafficking in cultural property, the Chair stated that there is at present no text as the Committee was unable to agree on whether to keep this provision or not, and what the wording of this provision would be. This situation would be explained to the CDPC. Moreover, the Chair invited delegations to consider this article further and possibly come up with proposals for a revised text.
55. The CDPC will also be invited to consider a proposal on Article 21 – International co-operation in criminal matters, which would strengthen the mechanisms of international co-operation under this article while adding the notion of asset recovery thus far absent from the draft text.
56. For Article 24 – Committee of the Parties, a new proposal would be prepared for presentation to the CDPC, taking full account of the previous debates on this provision.
57. It is hoped that the CDPC will reach an agreement on these outstanding issues and the final draft Convention (and Explanatory Report) will be ready for presentation and adoption at the Ministerial session in Nicosia in May.
58. Chair reaffirmed that this new Convention will contain common legal standards that will certainly enhance States' co-operation in preventing and combatting the illegal trafficking of cultural property. He also expressed his opinion on the importance, novelty and added value of this new Council of Europe Convention in protecting more efficiently European and World cultural heritage.
59. To conclude, the Chair thanked the participants, experts and the Secretariat for their hard work and commitment to the task at hand.