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

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

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**1st meeting**

**Strasbourg, 31 May – 1 June 2016**

**FULL REPORT**

**Prepared by the Secretariat**

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## Summary of Proceedings

### **1st Meeting of the Committee on Offences relating to cultural property (PC-IBC), Strasbourg, 31 May – 1 June 2016**

1. The Committee on Offences relating to cultural property (PC-IBC) held its 1<sup>st</sup> meeting in Strasbourg on 31 May to 1 June 2016.
2. The meeting was opened by Mr Philippe BOILLAT, Director General of DG I, who in his remarks to the Committee underlined the importance of the work also in light of relevant terrorist activities in Iraq and Syria. Mr Boillat informed the meeting that the international community has been reacting to such terrorist activities with the UN Security Council recently adopting Resolutions No. 2199 and No. 2249 (February and November 2015) condemning the “barbaric acts of destruction and looting of cultural heritage in Iraq and Syria”.
3. Mr Boillat underlined that this new convention, updating the existing 1985 Convention, will criminalize the deliberate destruction and the illicit trafficking of cultural property. It could become the only international treaty focussing on criminal measures and sanctions on illicit activities carried out by organised criminal groups in the field of cultural heritage. Furthermore, he pointed out that such a convention would greatly contribute to the Council of Europe’s current efforts to play a major role on the international scene in the fight against transnational organised crime and terrorism in particular by enhancing international co-operation between not only its member States but also around the world.
4. Ms Claudia LUCIANI, Director of the Democratic Governance Directorate, gave further information on significance of the destruction of cultural property. She mentioned the 6th Council of Europe Conference of Ministers responsible for Cultural Heritage (Namur, April 2015), where the ministers expressed their alarm at the increasing number of acts of deliberate destruction of cultural heritage in the context of conflicts all over the world and adopted the Namur Call, thus deciding to initiate discussions in the Council of Europe to reinforce European cooperation, She also mentioned that in August last year, 83 ministers of culture gathered in Milano and adopted a declaration urging the international community to work towards the protection and recovery of Cultural heritage.
5. Ms Luciani emphasised the substantial legal framework that the Council of Europe has already laid down for work in this field and underlined the importance for this new convention to be approached from both the criminal law and cultural perspectives.
6. Following these opening remarks, the Committee adopted its agenda without further ado.

7. The Committee then proceeded to elect unanimously Mr Hans-Holger HERRNFELD (Germany) as its Chair, on the proposal of the delegation of Spain, supported by the delegations of Austria and Hungary.
8. Next, Mr Carlo CHIAROMONTE, Head of the Criminal Law Division, Secretary of the PC-IBC, provided some information on the working methods of the Committee.
9. He gave some background information, recalling that one of the outcomes of the review undertaken by the European Committee on Crime Problems (CDPC) to assess all Council of Europe conventions in criminal matters was that the 1985 Convention should be revised due to the importance of this topic. He invited the Committee to take due note of the terms of reference of the PC-IBC in particular that the deadline for completing the work is the end of 2017.
10. Mr Chiaromonte congratulated the scientific experts on their excellent background work carried out over the last year.
11. The Italian delegation underlined its support for the upcoming work and issued an invitation to hold the opening for signature ceremony for the new convention, once finalised, in Italy.
12. The Committee then undertook its main task which was the examination of and discussions on the main elements to be included in the new draft convention on the basis of the Discussion paper [PC-IBC (2016) 01 Fin] prepared by the experts and the secretariat. The Committee members examined the questions raised in the Discussion paper and gave their input question by question.
13. Beginning with Question 2, on how cultural property/objects should be defined, the Chair drew the following conclusions:
  - that the definition should be based on the list of categories set out in the Discussion paper;
  - that immoveable property should be included in the scope of the convention, either by extending the definition of 'cultural property' to include this, or by adding a specific article on offences in respect of immovable property;
  - that the possibilities of foreseeing a certain openness in the list of categories merited further consideration.
14. The question of whether the scope of the new convention should also include immoveable property provoked much debate. Two possibilities have been considered: to extend the definition of cultural property to include immoveable property, however this could be problematic in respect of certain types of criminal offences (e.g. theft, import) or add specific articles on offences in respect of immoveable property which then may also need to be defined in the context of these provisions.
15. Moreover the question of including ecclesiastical objects in the list of categories was raised. The Chair concluded that the experts should consider how these items could be added to the list.

16. Concerning Question 2A, on whether the definition should refer to designations made by the parties to the new convention (only), following discussions within the committee, the Chair concluded that there was a willingness of delegations to consider having the convention extended beyond the scope of protecting the cultural heritage of State parties to the new convention, in particular to extend the scope to include cultural objects designated by all parties to the 1970 UNESCO Convention. However, it was pointed out that this issue is closely related with the question of whether the new convention should be opened for signature or accession also by States from outside of the Council of Europe.
17. Concerning the application of the new convention to cultural heritage protected as UNESCO World Heritage there was some scepticism and the Chair concluded that this would require further consideration. In the discussion, some delegations pointed out that any such extension would have to be limited to certain types of World Heritage sites (not including, e.g., natural sites/landmarks)..
18. Concerning the cultural property of States that are party to neither the new Council of Europe convention nor the 1970 UNESCO Convention there was even more scepticism and serious concern was raised in view of a lack of legal certainty should such extension be considered.
19. With reference to Question 2B, on the term 'national treasure', after the committee had debated the issue, the Chair concluded that the term, although used in the EU Directive, should not be included in the definition of "cultural property/objects".
20. For Question 3, delegations examined the types of conduct listed in the Discussion Paper with a view to finding an agreement on the offences which should be covered by the draft convention.
21. The Chair concluded that the experts should be invited to draft substantive criminal law provisions on the offences described in sub-paragraphs a, b, c, d and j; in respect of sub-paragraph e., that the experts should be invited to also define the offence of placing cultural objects on the market (including on the Internet); in respect of sub-paragraph f. that the convention should include a provision on falsification of documents (only); in respect of sub-paragraphs g. and h., that the experts should be invited to further consider whether and to what extent there really is a need to include these as specific offences; in respect of sub-paragraph i. that the convention should not include this issue; in respect of sub-paragraph k., that the experts should be invited to draft an offence addressing the chain of the different types of conduct involved in the trafficking of cultural objects such as storage, transport etc.
22. For a) it was observed that the new convention should include as a criminal offence the theft of cultural property even though the offence of theft itself is obviously already criminalised in all States.
23. For b), delegations observed that the experts should be asked to draft language for this offence making it clear that the offence should apply irrespective of the ownership in

respect of the cultural heritage (“not a property crime, but a heritage crime”). It was also observed that the reference to armed conflicts should be removed and that this provision will apply primarily to immovable objects, however can also apply to moveable objects.

24. Concerning c), delegations observed that there should be a provision on criminalising the illegal export of cultural objects; however, experts should be invited to draft suitable wording which allows the State parties to apply administrative rather than criminal sanctions.
25. As for point d), the same observations were made as for point c).
26. Regarding point e), many delegations supported the proposal to extend this provision to the placing on the market (including on the Internet) of cultural objects in addition to the acquisition objects. The information provided showed that there is an urgent need to reflect the current climate where looted antiquities are marketed directly to potential buyers via social networks. Whereas auction houses and antiquities dealers worry about paperwork and provenance, the social marketplace reaches a class of potential buyers with less scrutiny and greater anonymity.
27. On the issue of whether or not gross negligence can be defined, discussions within the group brought the Chair to the conclusion that the experts should propose some wording, giving indications of what member States could consider as behaving in a grossly negligent manner. Also further consideration is needed on whether the concept of gross negligence should also be considered as an aggravating circumstance.
28. After discussions, the Chair concluded that the beginning of point f) concerning faked or forged cultural objects should most likely be deleted as it is outside the scope of the new convention. However the experts should still consider that this fake market is intertwined with the genuine market. The part on the fabrication of false documents should be retained as this is relevant to trafficking.
29. On point g), following the committee’s deliberations, the Chair invited the experts to further consider whether there is any need for such conduct to be described as a specific offence.
30. Following discussions on point h) the Chair also asked the experts to draft possible wording taking into account the remarks of some delegations concerning the protection of archaeological sites. He concluded that the need to include any or all of the points under h) should also be re-examined.
31. Following further debates, the Chair concluded that the issues under i) should not be included in the convention. Delegations had in particular observed that the conduct described under i) would partially be covered already under b). Other aspects (e.g. non-observance of administrative rules on requirements/procedures for making changes to protected buildings) should not fall within the scope of the convention.

32. After discussing point j), the Chair concluded that there should be consideration on whether the issues it covers are also included in a) or b) or the conduct of “placing on the market”.
33. Concerning point k), after some debate, the Chair concluded that there is a need to address this in a more specific way rather than just using the term “handling”. This provision should be drafted to cover the entire chain of different types of conduct that are part of a trafficking of cultural objects operation, such as storage, transport etc.
34. The Chair asked the experts to take into account the concerns of the committee regarding not going too far in the criminalisation when drafting k) and other points under this heading. He concluded that these provisions should be reconsidered so as to not lose the focus of the convention.
35. Other proposals for additional provisions to be included in the new convention were presented by some delegations: trafficking of cultural goods as an offence as such and the question of criminal liability of legal persons will all be reflected upon and considered by the experts.
36. Concerning Question 4 concerning whether the new convention should provide for an aggravating factor in the case where an offence is committed by art professionals, following discussions on this question, the Chair invited the experts to include language in respect of art professionals as well as officials whose function is to protect cultural heritage and to propose a definition of art professionals. Following up on proposals by delegations, he furthermore concluded that the aggravating effects of a theft such as damage could also be considered by the experts to be described in the draft convention as an aggravating circumstance. The same applies to terrorist intention and use of demolition of cultural sites as propaganda for terrorist purposes.
37. The Chair further concluded that the commission of an offence by an organised crime group or as a repeat offender could also be added to this list.
38. Going back to Question 1, on the title of the new convention, following debates on this issue the conclusion of the Chair was that the term ‘property’ should be used in the title and in its provisions. In the preamble there would be clarification that the aim of the convention is not to protect ownership as such it is to protect cultural heritage. The wording of certain provisions could be modified if necessary to give a broader aspect.
39. For Question 5, on other specific provisions to be included in the draft convention, the proposals made by delegations comprised the following:
  - investigative measures;
  - preventative measures (for example using identification methods such as specific forms and/or data bases to be used);
  - international co-operation.
40. On Question 6, on the opening for ratification of the new convention, the committee discussed the advisability of opening of the convention for ratification by third States and

the Chair concluded that the committee had expressed its support in principle. He concluded that the standards in the new convention are relevant and useful for countries outside Europe.

41. The Chair finally concluded that on the basis of these discussions and taking into account the CDPC model provisions for criminal law conventions, a preliminary draft convention will be prepared by the Secretariat and a group of experts and sent to delegations in due course for their consideration and possible comments before the next plenary meeting.
42. It was announced that the next plenary meeting of the PC-IBC will take place before the end of 2016, at a date to be confirmed, and last for 4 days.
43. It is hoped that the final draft convention will be presented to the CDPC at its December 2017 meeting.