

Speaking notes for Colloquium

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Distinguished guests, Excellencies, fellow speakers, thank you for inviting me to speak to you here today.

In particular, I would like to thank the Minister of Foreign Affairs of Cyprus for his support and initiative and the Permanent Representation of Cyprus for graciously helping to organise this event and for prioritising this subject during its Chairmanship of the Committee of Ministers.

As Chair of PC-IBC, I would like to begin by giving you a little bit of background on the new Council of Europe Convention on Offences relating to Cultural

Property, and also help you understand the current state of play of the negotiations.

In light of the grave acts committed by looters and traffickers at significant cultural centres in countries such as Syria, the international outcry was a powerful call to action.

Given their role in setting valuable standards, the criminal law experts at the Council of Europe undertook a substantive review of the legal standards and framework applicable to this area.

During the course of the review, the experts identified clear gaps in the existing Council of Europe Conventions.

However, the review determined that, among member States, there were few common standards, and no real international legal regime to criminalise these offences.

There are a number of activities and instruments that we have kept in mind during the process of negotiations.

The weaknesses of the old Council of Europe's Delphi Convention's have been well documented; the old Convention did not enter into force, and in the course of the negotiations on the new convention we tried to make sure that we will avoid a similar result.

We have been very fortunate to have UNESCO present in our negotiations; its presence helps ensure that we build meaningfully on its efforts.

In particular, our work also aims to complement and support the principles found in the 1970 UNESCO Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property.

Additionally, we are honoured to have UNIDROIT present, as we also aim to further the objectives of the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects.

We are also very conscious of the important work being done on the global level by the United Nations, particularly through the UN General

Assembly, such as the Resolutions on the Return and Restitution of Cultural Property to the countries of origin.

Much of this was discussed in depth during the initial review by criminal law experts here at the Council of Europe. However, in light of the notable absence of substantive criminal law provisions in the international legal framework, they determined that there is significant to strengthen activities in this area and that an international legal instrument specifically focused on criminalisation was the best approach.

The new Convention, therefore, is intended to fill an important criminal law gap in the international

framework, setting the common standards necessary to meet our shared objectives.

The new draft Convention is also expected to help member States address many of the contemporary concerns that my fellow speakers have brought up, including tackling transnational organised crime and the fight against terrorism, activities which form part of the core activities of the Council of Europe.

Evidently, as we can see here today, this Convention encourages the international community to co-ordinate activities and initiatives together, fostering crucial co-operation in the struggle against illicit trafficking in cultural property.

Beyond the political and legal imperatives, it is hoped that the new Convention will provide a means to help public actors and private parties with a vested interest in protecting cultural property to act transnationally within a more clearly defined legal framework.

To meet the objectives of the Convention, all relevant parties, from law enforcement entities and Culture ministries to museums and archaeologists, will need to be able to work together.

This new draft Convention is rather urgent; even as we speak, the absence of such a comprehensive international legal regime enables unscrupulous

black market actors to abuse the gaps in market regulations to buy and sell precious cultural goods with little accountability and, consequently, little deterrence.

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The legal response can perhaps better be understood by considering how black market dealers operate: they tend to transport stolen items to countries with limited law enforcement capacity and less stringent trading rules in order to maximise profits and reduce the risk of being caught.

Making matters worse, many of these goods are sourced from pillaged sites in places such as Syria, Iraq, or other zones of armed conflict, which benefits violent extremist groups and terrorist organisations while unjustly depriving local populations of their access to, and fruits of, their cultural heritage.

After these items are pillaged, plundered or looted from their country of origin, they are often distributed or smuggled via Turkey, Jordan or Lebanon for example and sold to dealers and other middlemen based in Europe and elsewhere.

Unfortunately, it is far from simple to determine the origin of goods and the licit and illicit trade in cultural goods (such as antiquities) is often connected, involving local, small-scale groups of looters and middlemen who have connections with dealers, auctioneers, museums and collectors.

Such activities should not be and are not seen as mere economic crime, but part of a wider system of activities that contribute to the destruction of cultural heritage.

On a small scale, such cultural crimes like trafficking in antiquities may seem minor; but, on a larger scale, this can be utterly devastating.

Not only are important cultural goods lost and unaccounted for, but the trafficking in stolen cultural goods can also be a lucrative source of ill-gotten income for notorious terrorist organisations.

Concerted actions to counter and suppress this market are imperative; it is unconscionable for such crimes to go unpunished.

As illicit activities in this area are often of a transnational nature, a transnational response is required; however, the legal regime is only as strong as its weakest link.

The substantive criminal law provisions of the draft Convention are constructed with the goal of facilitating effective implementation by all States Parties and ensure that resulting national criminal law provisions are sufficiently clear and precise.

The new Convention needs to cover the key behaviours of illicit trafficking that would help enable law enforcement officials to take the necessary steps against trafficking.

Naturally, to achieve these goals and to ensure the highest standards of law, the negotiations on the

Convention have not been simple; rather they have been challenging, with numerous complex problems to grasp and solve.

While the negotiations on the draft Convention are not concluded yet, allow me to point out a few key elements of the current draft Convention:

- What is the cultural property that this Convention intends to protect? It would have been in line with normal practice of international treaties that the State Parties commit to protect each others cultural property in addition to each of them protecting their own.

- The draft Convention intends to go a major step further: in terms of moveable cultural property, the Convention is supposed to apply not only to property that has been designated by a Party to this Convention but all property designated by any State that is party to the 1970 UNESCO Convention.
- The same applies in respect of immovable property to any property that has been listed in accordance with Article 1 and 11 of the 1972 Convention on the Protection of the World Cultural and Natural Heritage.
- Thus in both cases, the Convention will apply not only to cultural property that has

been designated by one of the state Parties, but – going quite beyond this – it will apply also to property designated by states that are not Party to this convention or – in the case of immovable property – protected under the 1972 World Heritage Convention.

- While the draft Council of Europe convention is designed so that also countries other than Council of Europe Member States may sign and ratify the convention, this broad concept of the scope of the Convention would be intended to help protect also cultural heritage of States that do not – and perhaps cannot – become Party to the Convention.

- There is another important and innovative element in the draft convention as it came out of the negotiations in the PC-IBC. This concerns another, related transnational aspect of the attempt to combat these crimes.
- While it creates no major difficulty to ensure that State Parties criminalize the theft (stealing) of cultural property, it was more difficult to agree on the proper wording of provisions that require States to criminalize the illegal importation and exportation of cultural property. The problem is that States Parties' administrative laws on importation and exportation differ and the present

convention would not be the proper place to attempt any harmonization thereof. Thus in a cross-border setting, the issue arises to whether and how States can criminalize e.g. the importation of cultural property that has been exported from another state after it had been illegally excavated from that state or the exportation took place in violation of the administrative laws on export.

- This question becomes even more complex where an illegally exported object travelled through several other states before it finally ends up on the market.

- After long discussions, I believe we have made considerable progress in effectively addressing these difficult questions related to transnational crimes.
- In addition to provisions on theft and on illegal importation and exportation, the draft conventions also contains provisions on unlawful excavation and removal of cultural property, on the placing on the market and acquisition as well as on damaging and destruction of cultural property.

## **State of play**

- [In conclusion], we are close to finalizing our work on the draft convention. And I hope we will be able to do so at a last meeting of the committee, scheduled to take place in February.
- There are a number of further steps required for different Council of Europe bodies to review and eventually approve a draft convention.
- But I am optimistic that we can provide the Committee of Ministers with a final draft text of the new Convention ready for adoption at Ministerial Session in May.
- Thank you