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EUROPEAN COMMITTEE ON CRIME PROBLEMS

(CDPC)

DRAFT

Explanatory Report to the Council of Europe Convention on Offences relating to Cultural Property

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I. Introduction

a. Destruction of cultural heritage and trafficking in cultural property

1. Cultural property constitutes a unique and important testimony of the history and identity of different peoples and is a common asset that should be preserved in all circumstances. Throughout human history, cultural property has constituted one of the basic elements of local and national cultures, leading to the creation of a more peaceful, just and cohesive society. All human societies engage in creative and artistic pursuits, seeking diverse means of expression and the production of original artistic works to be shared and appreciated by their communities and beyond. These cultural properties are a unique resource, fragile and irreplaceable, and deserving of the highest standards of stewardship so that they can be enjoyed by present and future generations alike.

2. Tragically, cultural property is targeted with alarming frequency in both peace and wartime, often leading to the permanent loss of structures and objects important to cultural heritage and thereby impoverishing humanity as a whole. Cultural objects have been stolen and looted from amongst other places museums, galleries, public and private collections and religious buildings, while important archaeological sites and monuments have been illicitly excavated and destroyed.

3. The trafficking of cultural property is, by its nature, a transnational phenomenon with artefacts often being trafficked through organised crime networks. The black market trade in antiquities, art and artefacts by unscrupulous dealers who do not care about the illicit provenance of such cultural objects can end up funding corruption, terrorism, violence and other crimes. After arms and drugs trafficking, according to some estimates, the illicit trade in cultural objects is one of the most profitable forms of transnational organised crime.

4. In the run up to the drafting of the Convention, Western markets saw a major increase in the number of looted and stolen antiquities, most notably from important sites in Iraq and Syria in connection with the breakdown of law and order in these countries. Non-state armed groups and terrorist organisations were involved in the destruction and plundering of ancient sites in order to finance their belligerent operations.

5. Furthermore, the struggle against the trafficking of cultural property has changed. The black market is moving away from traditional means of trading, such as flea markets, to trading antiquities online through social media and the Deep Web. In response to these changing law enforcement challenges, international organisations and State entities, including police services,

customs, and border agencies, must be able to take the necessary actions to prevent and suppress this illicit trade in cultural property.

b. Action by the Council of Europe

6. The Council of Europe has been involved in efforts to protect and preserve cultural property and cultural heritage for decades. Pursuant to the European Cultural Convention of 1954 (ETS No. 18), "[e]ach Contracting Party shall regard the objects of European cultural value placed under its control as integral parts of the common cultural heritage of Europe, [and] shall take appropriate measures to safeguard them […]" (Article 5).

7. The Convention on Offences relating to Cultural Property (known as the "Delphi Convention") was opened for signature by Council of Europe member States on 23 June 1985 but never entered into force as only six States have signed it, and none have ratified it.

8. In April 2015 the ministers responsible for cultural heritage from the 50 States Parties to the European Cultural Convention adopted the "Namur Call". With this act, the ministers condemned 'the deliberate destruction of cultural heritage and the trafficking of cultural property' and decided to 'reinforce European cooperation' to prevent and punish such acts.

9. In order to ensure a proper follow-up to the relevant Committee of Ministers' decision [CM/Del/Dec (2013)1168/10.2] on the review of Council of Europe conventions by evaluating the possible added value of updating certain conventions under its responsibility, the European Committee on Crime Problems (CDPC) decided that the Council of Europe should prepare a criminal law convention to combat the trafficking of cultural property and fill the gaps in the existing international legal framework.

10. On 2 March 2016 the Committee of Ministers of the Council of Europe adopted the terms of reference for a Committee under the authority of the CDPC, the Committee on Offences Relating to Cultural Property (PC-IBC), in order to prepare a draft Convention which supersedes and replaces the Delphi Convention. The drafting committee for the Convention included participants from 47 member States with a range of expertise in either criminal justice or cultural property. Four experts were appointed in order to assist the PC-IBC: Alessandro Chechi (Ph.D. in Law, LL.M.; senior researcher at the University of Geneva); Marie Pfammatter (lawyer, Ph.D. in Law, LL.M.; lecturer at the University of Geneva); Jerome Fromageau (president of the Société internationale pour la recherche en droit du patrimoine culturel); and Cand. Polit. Sunneva Sætevik (senior adviser at the Norwegian Ministry of Culture, Department of the Arts and Museums). Representatives from several Council of Europe bodies were also in

attendance, including the Parliamentary Assembly (PACE), European Committee on Crime Problems (CDPC), the Steering Committee for Culture, Heritage and Landscape (CDCPP), the Committee of Experts on the evaluation of Anti-Money Laundering Measures and Financing of Terrorism (MONEYVAL), and the Committee of Experts on Terrorism (CODEXTER). Additionally the PC-IBC was attended by several Observer States and representatives from associated international organisations including the European Union, the International Criminal Police Organisation (INTERPOL), UN Educational, Scientific and Cultural Organisation (UNESCO), International Institute for the Unification of Private Law (UNIDROIT), UN Office on Drugs and Crime (UNODC), and the Organisation for Security and Co-Operation in Europe (OSCE).

11. The First Meeting of the PC-IBC took place on the 31st May – 1st June 2016 and unanimously elected Mr Hans-Holger Herrnfeld (Germany) as Chair of the Committee. Mr Carlo Chiaromonte, Head of the Criminal Law and Counter-Terrorism Divisions at the Council of Europe, was Secretary to the PC-IBC. The second, third and fourth meetings took place from the 7th-10th November 2016, 9th-12th January 2017, and 20th-24th February 2017, respectively. Following the completion of the text, the draft Convention was transmitted to the European Committee on Crime Problems for approval at an extraordinary session on the 29th-31st March 2017. The Convention text was then sent for agreement to a meeting of the Committee of Ministers Rapporteur Group on Legal Co-Operation (GR-J) and Rapporteur Group on Education, Culture, Sport, Youth and Environment (GR-C) before being sent to the Committee of Ministers for final adoption of the Convention at the Ministerial Session on the 19th May in Nicosia, Cyprus.

12. Based on over 50 years of experience facilitating and improving co-operation in criminal matters between Council of Europe member States, the Council of Europe Convention on Offences relating to Cultural Property is a criminal law convention to prevent and combat the intentional destruction of, damage to, and trafficking in cultural property by strengthening criminal justice responses while facilitating co-operation on an international level. Throughout their work, the drafters took into account the human rights and rule of law standards of the Council of Europe and the best practices of member States and other international organisations and initiatives. The Convention aims to build on instruments relating to cultural property such as the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects in order to make sure that Convention is highly compatible with relevant existing international and supranational legally binding standards. As none of these international instruments deal with criminal law issues, the Convention thereby enhances law enforcement capacity by requiring State Parties to implement several important

provisions concerning cultural property into their criminal law, further ensuring the ability to investigate, prosecute, sentence and/or extradite persons suspected or convicted of offences falling under the ambit of the Convention. Addressing these issues will ensure that the Convention will achieve its key objectives to enhance States Parties' capability to cooperate more efficiently on preventing and combatting serious crimes against cultural property.

13. Finally, it should be emphasised that the Convention was not only drafted with Council of Europe member States in mind, but was rather designed to be an open, globally-oriented Convention to protect the common cultural heritage of humanity. As the Convention was consciously drafted to operate in harmony with, and build upon, universal instruments, it is intended to further facilitate co-operation between all States willing and able to take concerted action to preserve precious art and antiquities for present and future generations.

II. Commentary on the Preamble and the provisions of the Convention

Preamble

14. The Preamble sets out that the basic aim of the Convention is to protect cultural property and to efficiently prevent and combat cultural property crimes. It expresses concern that offences related to cultural property are leading to the destruction of the world's cultural heritage. The drafters wished to emphasise the importance of concerted international action as key to addressing the recurrent problems posed by the violation of the national and international norms on the protection of cultural heritage.

15. Furthermore, the Preamble emphasises that the Convention sets out substantive criminal law provisions which are aimed at addressing the serious challenges posed by the involvement of organised crime and terrorist groups in the trafficking and destruction of cultural property. It also notes that the illicit trade in cultural property has been reported as a source of financing for terrorist groups, as indicated by, for instance, United Nations Security Council Resolutions referred to in the Preamble. While the drafters believed that it was not necessary to include express provisions relating to terrorism offences in the text of the Convention, there may be an important indirect role for the Convention in the fight against terrorism and terrorist financing. Though certain crimes relating to cultural property may involve, or be committed by, members of terrorist groups or carried out with the intent to finance terrorist operations, the drafters believed that in the vast majority of cases such offences would be investigated and prosecuted as terrorism offences rather than cultural property offences and that existing international and national counter-terrorism instruments were sufficient for law enforcement actions for that purpose.

16. The Preamble recalls the most important treaties which fall within the scope of the Convention: the European Cultural Convention (1954, ETS No. 18); the European Convention on the Protection of the Archaeological Heritage (1969, ETS No. 66; revised in 1992, ETS No. 143); the Convention for the Protection of the Architectural Heritage of Europe (1985, ETS No. 121); the Framework Convention on the Value of Cultural Heritage for Society (2005, CETS No. 199); the European Convention on Mutual Assistance in Criminal Matters (1959, ETS No. 30); and the European Convention on Extradition (1957, ETS No. 24).

17. The Preamble also indicates that the drafters bore in mind the following United Nations Security Council Resolutions calling on States to combat and prevent the trafficking in cultural property that benefits or may benefit terrorism and terrorist groups: Resolution 2199 of 12 February 2015 of the UN Security Council, particularly paragraphs 15, 16 and 17; Resolution 2253 of 17 December 2015 of the UN Security Council, in particular paragraphs 14 and 15; Resolution 2322 of 12 December 2016 of the UN Security Council, in particular paragraph 12; Resolution 2347 of 24 March 2017 of the UN Security Council.

18. The drafters also took into consideration the following international legal instruments: the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954, 249 UNTS 240), its First Protocol of 1954 and its Second Protocol of 1999; the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970, 823 UNTS 231) and its Operational Guideline adopted in 2015 by the third Meeting of States Parties; the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage (1972, 1037 UNTS 151); the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995, 34 ILM 1322 (1995)); the UNESCO Convention on the Protection of the Underwater Cultural Heritage (2001, 46 ILM 37 (2002)); the UN Convention against Transnational Organized Crime (2000, 2225 UNTS 209). The drafters also took note of Resolution 2057 on Cultural Heritage in Crisis and Post-Crisis Situations of the Standing Committee of the Parliamentary Assembly of the Council of Europe of 2015 and the UNODC International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and other Related Offences of 2014, which was approved by the General Assembly of the United Nations with Resolution 69/196 of 18 December 2014.

19. Furthermore, the drafters also took into account the following European Union instruments: Council Regulation (EC) 116/2009 of 12 December 2008 on the export of cultural goods, and EU Directive 2014/60/UE of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State.

Chapter I – Purpose, scope, use of terms

Article 1 – Purpose of the Convention

20. Paragraph 1 sets out the purpose of the Convention, namely to protect cultural property through the prevention of and the fight against criminal activity, and to strengthen international co-operation among States Parties.

21. Paragraph 2 provides for the establishment of a specific follow-up mechanism (Articles 22-24) in order to ensure an effective implementation of the Convention.

Article 2 – Scope and use of terms

22. The scope of the Convention is expressly limited to the prevention of and the fight against offences relating to tangible items of cultural heritage, either movable or immovable, that fall within the definition of cultural property set out in this article.

23. The second paragraph contains the definition of the term cultural property. This is structured in two parts in order to reflect the material scope of the Convention: the first part deals with movable cultural property (Article 2(2)(a)), the second part deals with immovable cultural property (Article 2 paragraph 2b)).

24. The definition of movable cultural property was mainly inspired by the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970, and also the EU Directive 2014/60 of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State. Accordingly, the Convention contains a definition of cultural property which has largely been accepted at a global level, including by all Council of Europe member States that have signed or ratified the UNESCO Convention of 1970, but also those that are bound by EU Directive 2014/60. The words "specifically designated" originate from the UNESCO definition, whereas "classified or defined" stems from the EU Directive.

25. This definition – together with the list of categories contained in Article 2 paragraph 2 a), which has been drawn from Article 1 of the UNESCO Convention of 1970 – not only covers movable objects that have been found in (or removed from) places located on land, but also cultural property found in (or removed from) underwater sites.

26. The definition of immovable cultural property under Article 2 paragraph 2 b) reproduces the classification contained in the UNESCO Convention concerning the Protection of the World

Cultural and Natural Heritage of 1972: monuments, group of buildings, and sites. The same definition based on these three component parts of immovable cultural heritage appears in the Convention for the Protection of the Architectural Heritage of Europe. This definition reflects a broad concept of "heritage", in that it not only covers secular structures situated on land and underwater, but also assets having a spiritual, religious significance to believers and communities.

27. The classification, definition or specific designation of cultural property by State authorities is one of the key aspects of the legal instruments that have been taken into account by the drafters. Although the quantitative and/or qualitative criteria vary from State to State, national legislation typically provides that the protection of cultural property is conditional on its importance on historical, archaeological, artistic, scientific, social or technical grounds.

28. The fact that the Convention will apply to cultural property that has been classified, defined or specifically designated either by any State Party to the Convention or by any State Party to the UNESCO Convention of 1970 is reflected in the Convention's objectives. Similarly, immovable property shall be protected not only if it has been defined or specifically designated by any of the State Parties to the new Convention but also if it has been listed in accordance with Article 1 and 11 of the 1972 UNESCO Convention on the Protection of the World Cultural and Natural Heritage. While the Convention was designed to allow signature and ratification by both Council of Europe member States and non-member States, this wide definition of cultural property further broadens the scope of the Convention to help protect the cultural heritage of States that do not (or cannot) become Party to the Convention.

Chapter II – Substantive criminal law

29. As is the case in other Council of Europe Conventions seeking to combat specific forms of transnational crime, Chapter II contains the essential substantive criminal law provisions of the Convention. The European Committee on Crime Problems (CDPC) conducted a comprehensive review on national legislation in force concerning offences relating to cultural property and determined that a number of gaps and issues were present. Therefore, it was considered necessary to draft substantive criminal law provisions to strengthen local, national and international efforts to protect cultural property. The drafters therefore concentrated on introducing common standards and legislative measures which address the most common and serious offences that may bring about the destruction, deterioration or loss of cultural property, including in the context of action against transnational organised crime and terrorism. As such,

Chapter II represents the core of the Convention and should be read in light of the object and purpose of the Convention as set out in the Preamble and Articles 1 and 2.

30. These measures are without prejudice to the obligations on States to protect the rights recognised by the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).

31. Articles 3 to **9** aim to ensure the criminalisation of the different components of the phenomenon known as the trafficking in cultural property. As such, these articles have been drafted to complement each other. This becomes clear considering the dynamics of the trafficking in cultural property stolen or illicitly excavated in peacetime or during armed conflicts. After their removal, these objects are usually transported abroad. The transnational nature of illicit activities is due to the fact that experienced thieves and smugglers are well aware of the legal differences between countries and seek to exploit gaps or weaknesses in the law to increase profits from their wrongdoing and lower their chances of being caught. This is demonstrated by the fact that stolen or illicitly excavated artefacts are frequently moved to countries where they can easily be concealed from customs and border officials, where tainted titles can be laundered (for instance, through norms protecting good faith purchasers or the expiry of limitation periods), and then sold, either to private individuals or institutional collectors, or to established art trade companies, such as art dealers or private galleries.

32. Offences that do not directly affect the integrity of cultural property are not included under Chapter II. This is the case of the making and/or selling of faked or forged art objects. The reason is that though this offence can disrupt the stability and security of the art market and commercial transactions, such activities do not have a direct impact on the preservation of cultural heritage items. On the other hand, the use of cultural property for the purposes of laundering the proceeds of crime and money laundering has not been included in the scope of these substantive criminal law provisions because there are other conventions dealing with these issues, such as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005, CETS No. 198), and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990, ETS No. 141).

33. The offences contained in Chapter II are only punishable when committed intentionally. For offences described in Articles 5 paragraph1, 7 paragraph 1 and 8 paragraph 1 on import, acquisition and placing on the market, respectively, there is an additional requirement which is that the offence is punishable when the offender knew of the unlawful provenance of the cultural property.

34. The interpretation of the intention of the offender(s) is left to domestic law, but the requirement for intentional conduct relates to all the elements of the offence. As always in criminal law conventions of the Council of Europe, this does not mean that Parties would not be allowed to go beyond this minimum requirement by also criminalising non-intentional acts.

35. The obligation to ensure that the act constitutes a "criminal offence" requires States that their respective domestic law provisions can be applied in the course of criminal procedures imposing criminal sanctions. The term "ensure" means that Parties may have to take legislative and/or other measures in order to fulfil this obligation. However, Parties may not need to take any such action provided that their domestic legislation is already in full compliance with the obligations under this Chapter. The Convention sets a minimum standard according to which the domestic legislation has to ensure that at least the conducts described in this Chapter constitutes a criminal offence. However, Parties may go beyond the definition of the offences provided for in this Chapter and may criminalise also other forms of conduct.

36. The obligation to ensure that the act constitutes a "criminal offence" does not preclude the possibility that member States, in accordance with their legislative practice may, in addition foresee administrative proceedings allowing to impose administrative or other non-criminal sanctions for cases that are considered to be of a less serious nature and thus do not warrant a criminal sanction.

Article 3 – Theft and other forms of unlawful appropriation

37. Article 3 obliges the States Parties to the Convention to ensure that the criminal offence of theft and the other forms of unlawful appropriation as set out in domestic criminal law apply to movable cultural property.

38. In accordance with the definition of cultural property outlined above, Article 3 could be applied not only to the theft of cultural property that is commonly defined as movable (such as paintings and vases), but also to the theft of dismembered elements (such as statues, frescos, mosaics and friezes) of immovable cultural property. It is immaterial whether the stolen property belongs to private persons, be they natural or legal persons (such as collectors or private galleries) or to States or State-controlled institutions (such as public museums or archives).

39. It is also worth noting that if an object is considered stolen, international judicial co-operation in criminal matters may enable its return to the country where it was discovered. Additionally, from a private international law perspective, a foreign court having to deal with a claim for restitution, seeing that the country where the object was discovered considers it as stolen on the basis of its patrimony law, will have little difficulty in returning it.

Article 4 – Unlawful excavation and removal

40. Article 4 obliges the States Parties to the Convention to ensure that their domestic law criminalises the excavation of movable cultural property and its unlawful retention. Under Article 4 paragraph 1 a), States are to ensure that it is a criminal offence to intentionally excavate on land or underwater in order to find and remove cultural property without the authorisation required by the law of the State where the excavation took place. Article 4 paragraph 1 b) requires States to ensure that any removal and retention of movable cultural property excavated without the authorisations required by the law of the State where the excavation took place is criminalised. Article 4 paragraph 1 c) requires States to ensure that the unlawful retention of movable cultural property excavated in compliance with authorisations required by the law of the State where the excavation took place is also criminalised.

41. The drafters considered that the term "without authorisation" may include the situation where the person has received an authorisation to perform an excavation, but where he or she does so in serious breach of the conditions stated in the authorisation, rendering it void in accordance with applicable domestic law of the State that had issued the authorisation.

42. Article 4 paragraph 1 a), focuses on unauthorised excavations carried out by clandestine diggers and treasure hunters either in recorded or undiscovered archaeological sites. Many art-rich countries have enacted laws that require archaeological excavations to be authorised in accordance with certain administrative processes. The primary function of these laws is to deter and prohibit the clandestine excavation of archaeological sites, the removal of antiquities, human remains and associated objects, on the one hand, and to prosecute and punish looters, on the other. The reason for criminal sanctions is that illegal excavations, particularly those carried out in protected or designated archaeological sites or without appropriate equipment and techniques, can cause the disappearance of art treasures and the destruction of objects that are regarded as not marketable by looters, but also result in incidental loss of historical, scientific and educational information that historians, archaeologists and anthropologists could collect through the scientific excavation and the physical preservation of the site where objects are found. Archaeology considers an object deprived of its context to be virtually useless.

43. Article 4 paragraph 1 b) addresses situations where persons remove and retain cultural property found during an excavation carried out without the authorisations required by the law of the State in which the excavation took place. Article 4 paragraph 1 c) addresses the situation whereby a cultural object has been excavated in compliance with required authorisations, but it has been retained in breach of relevant legislation. For the latter, the most common case relates to the situation whereby an antiquity is not delivered to the competent bodies by the archaeologist that found it.

44. Article 4 paragraph 2 provides for the possibility of any State to declare that it reserves the right not to provide for criminal sanctions for the offences described in Article 4 paragraph 1, as long as the non-criminal sanctions provided for are effective, proportionate and dissuasive. The intention of the drafters is to allow flexibility where the legal system of a State Party provides for non-criminal sanctions in relation to unlawful excavations and/or removal or retention of excavated objects that may be applied in the course of administrative or other non-criminal proceedings.

Article 5 – Illegal importation

45. Article 5 obliges the States Parties to the Convention to ensure that their domestic law criminalises the intentional importation of movable cultural property where that importation is prohibited under any of the conditions listed in Article 5.

46. The obligation to criminalise the import thus depends on whether such import is actually prohibited under the law on importation of the importing State. The provision of Article 5 presupposes that a Party has domestic legislation in place which prohibits the importation of cultural property into its territory that has been stolen or excavated or exported in violation of the export law of another State. Nevertheless this provision does not include the obligation to establish rules on importation since that it would go beyond the scope of this Convention.
The application of Article 5 further depends on whether the offender knew of the unlawful provenance of the cultural property. The drafters have chosen to limit the obligations under Article 5 to such cases bearing in mind that it may not always be possible for persons importing cultural property to know whether the property has been stolen, illegally excavated or exported in violation of the law of the State of export.

47. Article 5 paragraph 1 a) addresses the import of cultural property which has been stolen in another state. This provision applies irrespective of whether the theft occurred in the exporting State or had previously occurred in another State.

48. Article 5 paragraph 1 b) addresses the import of cultural property which has been excavated or retained under circumstances described in Article 4.

49. Article 5 paragraph 1 c) addresses the import of cultural property which has been unlawfully exported from a State that has classified, defined or specifically designated the object as cultural property in accordance with Article 2 of the Convention. The obligation to criminalise does not necessarily depend on whether the law of the State from which the property was imported prohibits the exportation of the movable object because that State may not consider it necessary to prohibit such exportation. The application of Article 5 paragraph 1 c) thus depends on whether the exportation took place in violation of the law of the State that considers the imported property as part of its own cultural heritage.

50. Article 5 paragraph 2 provides for the possibility of any State to declare that it reserves the right not to provide for criminal sanctions for the offences, as long as the non-criminal sanctions provided for are effective, proportionate and dissuasive. The intention of the drafters is to allow flexibility where the legal system of a State Party provides for non-criminal sanctions in relation to unlawful importation that may be applied in the course of administrative or other non-criminal proceedings.

Article 6 – Illegal exportation

51. Article 6 obliges the Parties to the Convention to ensure that their domestic law criminalises the intentional exportation of movable cultural property where that export is prohibited or carried out without the required authorisations.

52. Article 6 paragraph 1 applies to cultural property which is owned by either public entities or private persons. Under this article, the exportation is considered as a criminal offence where the law of the State which has classified, defined or specifically designated cultural property expressly establishes an absolute prohibition of exportation. The exportation is also considered as a criminal offense when the law of the State which has classified, defined or specifically designated cultural property conditions the exportation (definitive or temporary) to the issuance of an authorisation. The exportation shall therefore be considered as a criminal offence when carried out without the necessary authorisation.

53. Article 6 paragraph 2 obliges State Parties to consider taking the necessary measures to apply paragraph 1 also in respect of movable cultural property that had been illegally imported. The purpose of this paragraph is to reflect on prohibiting the onward export of movable cultural property which was illegally imported into the State, in accordance with relevant

domestic law regarding import offences. This provision has been crafted to reflect the need to address the transnational nature of trafficking in cultural property and for states to consider adopting means to ensure that cultural property trafficked or illegally imported into the country is prohibited from leaving the country, and to enact appropriate criminal sanctions in line with Article 6 paragraph 1.

Article 7 – Acquisition

54. Article 7 obliges the States Parties to the Convention to ensure that its domestic law criminalises the acquisition of cultural property which has been stolen in accordance with Article 3, or has been excavated, imported or exported under circumstances constituting a criminal offence in accordance with Articles 4, 5 or 6.

55. The term "acquisition" refers to all situations whereby the ownership title to a given cultural object is transferred from one subject to another. It should therefore be understood to cover a vast array of scenarios, either onerous or gratuitous, including sale, donation, and exchange. This includes acquisitions taking place through traditional channels such as flea markets, antique shops and auction houses, as well as through online markets and social networks.

56. Under Article 7 paragraph 1, State Parties are obliged to criminalise the acquisition of cultural property only where offenders, be they experienced collectors or ordinary citizens, know of the unlawful provenance of the cultural property at issue. The drafters considered this limitation to be important given that ordinary persons, who are not professionals, cannot necessarily be expected to know whether a cultural property that has been placed on the market might be of illegal provenance.

57. Under Article 7 paragraph 2, however, State Parties should consider whether to take measures in respect of certain persons, particularly professionals or collectors, who should have known of the unlawful provenance of the cultural property but failed to exercise an appropriate level of due care and attention.

58. State Parties generally have their own means to determine which professionals and other persons such standards and requirements can apply to and under which circumstances. Where appropriate, certain classes of persons may be required to abide by higher standards of conduct established by domestic statutory norms (if any), and/or by ethical guidelines adopted by the trade associations to which they belong (if any). For instance, professional art dealers and auctioneers are often required to establish the identity of the seller; obtain a written declaration

of the seller's legal title and on his/her right to dispose of the cultural property; inform customers on existing import and export regulations; and maintain an inventory for each transaction including records as to the description of the property, date of transfer of ownership, sale price or appraised value.

59. State Parties when considering measures under Article 7 paragraph 2 could take inspiration from Article 4, paragraph 4 of the 1995 UNIDROIT Convention and Article 10, paragraph 2 of EU Directive 2014/60.

Article 8 – Placing on the market

60. Article 8 obliges the States Parties to the Convention to criminalise the placing on the market of cultural property which has been stolen in accordance with Article 3 or has been excavated, imported or exported under circumstances constituting a criminal offence in accordance with Articles 4, 5 or 6. Similar to Article 7, State Parties are obliged to criminalise the placing on the market of cultural property by any person who knows of the unlawful provenance of the item, but should consider also whether to take measures in respect of criminalising conduct where the person should have known of the unlawful provenance of the item but failed to exercise an appropriate level of due care and attention. The detailed remarks in point 57 under Article 7 apply to Article 8 as well.

61. The term "placing on the market" should be understood to cover the acts of supplying illicitly traded cultural property as well as publicly offering such cultural property for sale.

62. The term "market" should also be understood to cover traditional channels such as flea markets, antique shops and auction houses, as well as online markets and social networks.

Article 9 – Falsification of documents

63. Article 9 aims to criminalise the falsification of and tampering with documents relating to the origin and ownership history of movable cultural property. Under Article 9, States Parties to the Convention should criminalise the act of making false documents relating to cultural property for the purpose of using such falsification in order to present the property as having a licit provenance. Additionally, States Parties should ensure that it is a criminal offence to alter or tamper with documents relating to cultural property, meaning acts of modifying, amending or defacing documents in order to present the property as having a licit provenance.

Article 10 – Destruction and damaging

64. Article 10 applies both to movable and immovable cultural property in accordance with Article 2. Article 10 paragraph 1 a) addresses the unlawful destruction or damaging of movable or immovable property, whereas Article 10 paragraph 1 b) addresses the removal of elements from such cultural property with a view to making certain illegal use of the removed elements.

65. The article has been drafted also mindful of the egregious demolitions at major cultural sites by terrorist groups such as those in Mali, Syria and Iraq.

66. Under Article 10 paragraph 1 a), the term "destruction" means the act or process of wrecking or tearing down an item of movable or immovable cultural property to the extent that it no longer exists or cannot be repaired. The term "damaging" means an act or process of changing or disfiguring the external physical integrity of cultural property without necessarily destroying it.

67. As the terms "destruction" and "damaging" used in this article may apply to a wide range of scenarios, Article 10 paragraph 1 a) refers to "unlawful" in order to limit the obligation to criminalise to acts of destruction or damage which are prohibited in accordance with applicable domestic law of that State.

68. Under Article 10 paragraph 1 b), States Parties should criminalise under their domestic law the removal, in whole or in part, of elements of movable or immovable cultural property, such as statues, frescoes, mosaics, with a view of exporting, importing or placing on the market such elements under circumstances described in Articles 5, 6 and 8 of the Convention. Again this obligation applies only when this removal is prohibited in accordance with domestic law.

69. Article 10 paragraph 2 reflects the right of states not to apply paragraph 1 or to apply it only in specific cases or conditions in cases where the cultural property has been destroyed or damaged by the owner of the cultural property or with the owner's consent. This reservation was inserted to reflect some concerns expressed that this article should not interfere with or weaken the right to property, as understood in their national law, and thus States retain flexibility to determine the precise circumstances and conditions under which destruction and damage of a person's own property would be criminalised in accordance with this article. This issue could emerge in situations where the owner of a cultural property destroys or damages it, where such cultural property is not granted specific protections under national legislation limiting the fundamental right of ownership. The same applies where the owner removes any element from movable or immovable cultural property under circumstances described in paragraph 1, b).

Article 11 – Aiding or abetting and attempt

70. Paragraph 1 requires Parties to ensure that an intentional act of aiding or abetting a criminal offence, as referred to in this Convention, that has been committed by another person, also constitutes a criminal offence under its domestic law. Thus Parties are only required to ensure criminal liability for aiding or abetting where the person who commits a crime is aided by another person who also intends the crime to be committed.

71. Paragraph 2 requires Parties to ensure that an attempt to commit the criminal offences referred to in this Convention, with exceptions provided for offences described in Article 4 paragraph 1 a) and Article 8, constitutes a criminal offence under its domestic law. The interpretation of the term "attempt" is left to domestic law. The principle of proportionality should be taken into account by Parties when distinguishing between the concept of attempt and mere preparatory acts which do not warrant criminalisation.

72. Article 11, paragraph 3 provides for the possibility of any State to declare that it reserves the right not to apply, or to apply only in specific cases or conditions, the provision of paragraph 1 of the present article in respect of offences defined in Article 4, paragraph 1, sub-paragraph a. The intention of the drafters is to allow State Parties to take due account of the specificities of their domestic legal system in differentiating between different levels of severity of offences also in respect of whether to criminalise the aiding and abetting of offences committed by another person.

Article 12 – Jurisdiction

73. This article lays down various requirements whereby Parties must establish jurisdiction over the offences referred to in this Convention.

74. The obligation in this respect is only to make the necessary provisions in their domestic law, which allow the exercise of jurisdiction in such cases. This article is not intended to require law enforcement authorities and/or courts to actually exercise statutory jurisdiction in a specific case, but is rather considered to set "minimum rules". Thus it only contains an obligation to "at least" criminalise offences and/or foresee a competence for their courts when the offence is committed under the circumstances described in that article on jurisdiction (c.f. paragraph 5).

75. Paragraph 1 a) is based on the territoriality principle. Each Party is required to punish the offences referred to in the Convention when they are committed on its territory.

76. Paragraph 1 b) and c) are based on a variant of the territoriality principle. These subparagraphs require each Party to establish jurisdiction over offences committed on ships flying its flag or aircraft registered under its laws. This obligation is already in force in the law of many countries, ships and aircraft being frequently under the jurisdiction of the State in which they are registered. This type of jurisdiction is useful when the ship or aircraft is not located in the country's territory at the time of commission of the crime, as a result of which paragraph 1, letter a. would not be available as a basis for asserting jurisdiction. In the case of a crime committed on a ship or aircraft outside the territory and on the high seas of the flag or registry Party, it might be that without this rule there would not be any country able to exercise jurisdiction. In addition, if a crime is committed on board a ship or aircraft, which is merely passing through the waters or airspace of another State, there may be significant practical impediments to the latter State's exercising its jurisdiction and it is therefore useful for the Registry State to also have jurisdiction.

77. Paragraph 1 d) is based on the nationality principle. The nationality theory is most frequently applied by countries with a civil-law tradition. Under that principle, nationals of a country are obliged to comply with its law even when they are outside its territory. Under sub-paragraph d, if one of its nationals commits an offence abroad, a Party is obliged to be able to prosecute him/her.

78. Paragraph 2 concerns the principle of aut dedere aut judicare (extradite or prosecute). Jurisdiction established on the basis of paragraph 2 is necessary to ensure that Parties that refuse to extradite a person have the legal ability to undertake investigations and proceedings domestically instead.

79. Paragraph 3 provides for a possibility for Parties to enter reservations on the application of the jurisdiction rules laid down in paragraph 1 d). A Party may determine that it reserves the right not to apply, or to apply only in specific cases or conditions paragraph 1 d). As an example a Party may declare that it reserves the right not to apply paragraph 1 d) of the present article in respect of offences defined in Article 4 paragraph 1 a).

80. In certain cases, it may happen that more than one Party has jurisdiction over some or all of the participants in an offence. For example, in order to avoid duplication of procedures and unnecessary inconvenience for suspects and witnesses or to facilitate the efficiency or fairness of proceedings, the affected Parties are required to consult in order to determine the proper venue for prosecution. In some cases it will be most effective for them to choose a single venue for prosecution. In some cases it may be best for one country to prosecute some alleged perpetrators, while one or more other countries prosecute others. Either method is permitted under paragraph 4. The obligation to consult is not absolute; consultation is to take place

"where appropriate". Thus, for example, if one of the Parties knows that consultation is not necessary (e.g. it has received confirmation that the other Party is not planning to take action), or if a Party is of the view that consultation may impair its investigation or proceeding, it may delay or decline consultation.

81. The bases of jurisdiction set out in paragraph 1 are not exclusive. Paragraph 5 of this article confirms that this Convention does not prevent Parties from establishing in its domestic law further reaching provisions on exercising extra-territorial jurisdiction such as, for example, in respect of offences committed by persons who are not nationals but habitual residence of that State.

Article 13 – Liability of legal persons

82. Article 13 is consistent with the current legal trend towards recognising a liability of legal persons for criminal offences committed by certain natural persons. The intention is to make commercial companies, associations and similar legal entities ("legal persons") liable for criminal actions performed for their benefit by anyone in a leading position in them. Article 13 also contemplates liability where someone in a leading position fails to supervise or check on an employee or agent of the entity, thus enabling them to commit any of the offences referred to in the Convention for the benefit of the entity.

83. Under paragraph 1, four conditions need to be met for liability to attach. First, one of the offences described in the Convention must have been committed. Second, the offence must have been committed for the entity's benefit. Third, a person in a leading position must have committed the offence. The term "person who has a leading position" refers to someone who is organisationally senior, such as a director. Fourth, the person in a leading position must have acted on the basis of one of his or her powers (whether to represent the entity or take decisions or perform supervision), demonstrating that that person acted under his or her authority to incur liability of the entity. In short, paragraph 1 requires Parties to be able to impose liability on legal entities solely for offences committed by such persons in leading positions.

84. In addition, paragraph 2 requires Parties to be able to impose liability on a legal entity ("legal person") where the crime is committed not by the leading person described in paragraph 1 but by another person acting on the entity's authority, i.e. one of its employees or agents acting within their powers. The conditions that must be fulfilled before liability can attach are: 1) the offence was committed by an employee or agent of the legal entity; 2) the offence was committed for the entity's benefit; and 3) commission of the offence was made possible by the leading person's failure to supervise the employee or agent. In this context failure to supervise

should be interpreted to include not taking appropriate and reasonable steps to prevent employees or agents from engaging in criminal activities on the entity's behalf. Such appropriate and reasonable steps could be determined by various factors, such as the type of business, its size, and the rules and good practices in force.

85. Liability under this article may be criminal, civil or administrative. It is open to each Party to provide, according to its legal principles, for any one or all of these forms of liability as long as the requirements of Article 14, paragraph 2 are met, namely that the sanction or measure be "effective, proportionate and dissuasive" and includes monetary sanctions.

86. Paragraph 4 makes it clear that corporate liability does not exclude individual liability. In particular, foreseeing a liability of the legal person should not be considered as an alternative to imposing a criminal sanction on the offender and vice versa.

Article 14 – Sanctions and measures

87. This article is closely linked to Articles 3 to **1**0 of this Convention, which define the various criminal offences that shall be punishable under domestic law. Paragraph 1 applies to natural persons and requires Parties to match their criminal law response to the seriousness of the offences and lay down sanctions which are "effective, proportionate and dissuasive" and which may include penalties involving deprivation of liberty and/or monetary sanctions. Except in the case of an offence in accordance with Article 4 paragraph 1 a) and Article 5 paragraph 1 b) and c), States Parties must provide for prison sanctions that can give rise to extradition. It should be noted that, under Article 2 of the European Convention on Extradition (ETS No. 24), extradition is to be granted in respect of offences punishable under the laws of the requesting and requested Parties by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty.

88. Paragraph 2 concerns the liability of legal persons in accordance with Article 14. In this case, the sanctions shall also be "effective, proportionate and dissuasive", but may be criminal or noncriminal monetary sanctions such as administrative sanctions or civil liability.

89. In addition, paragraph 2 gives examples of other measures which could be taken in respect of legal persons, with particular examples given: temporary or permanent disqualification from the practice of commercial activities; exclusion from entitlement to public benefits or aid; placing under judicial supervision; or a judicial winding-up order. The list of measures is not mandatory or exhaustive and Parties are free to apply none of these measures or envisage other measures.

90. Paragraph 3 requires Parties to ensure that measures concerning seizure and confiscation of the proceeds derived from criminal offences can be taken in accordance with domestic law. This paragraph should be read in the light of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) as well as the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198), which are based on the idea that confiscating the proceeds of crime is an effective anti-crime weapon.

91. Paragraph 3 a) provides for the seizure and confiscation of any instrumentalities, which have been used in the commission of any of the offences in accordance with this Convention. Paragraph 3 b), provides for the seizure and confiscation of proceeds of the offences, or property whose value corresponds to such proceeds.

92. The Convention does not contain definitions of the terms "confiscation", "instrumentalities", "proceeds" and "property". However, Article 1 of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198) provides definitions for these terms, which may be used for the purposes of this Convention. The term "seizure" means temporarily prohibiting the transfer, destruction, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority. "Confiscation" refers to a penalty or measure, ordered by a court following proceedings in relation to a criminal offence or criminal offences, resulting in final deprivation of property. "Instrumentalities" means any property used or intended to be used, in any manner, wholly or in part, to commit a criminal offence or criminal offences. "Proceeds" means any economic advantage, derived from or obtained, directly or indirectly, from criminal offences. It may consist of any "property" as defined below. The wording of paragraph 3 takes into account that there may be differences of domestic law as regards the type of property, which can be confiscated after an offence. It can be possible to confiscate items which are (direct) proceeds of the offence or other property of the offender which, though not directly acquired through the offence, is equivalent in value to its direct proceeds ("substitute assets"). "Property" includes property of any description, whether corporeal or incorporeal, movable or immovable, and legal documents or instruments evidencing title to or interest in such property.

93. The purpose and scope of the Convention is not to regulate any obligations of State Parties to hand over any seized property to a State that e.g. has requested to return stolen or illegally excavated cultural property. However, in Article 14 paragraph 4, the drafters considered it appropriate to call upon State Parties to apply, where appropriate, its criminal procedural law, other domestic law, or any relevant international treaties when deciding to hand-over of

cultural property that has been seized for the purpose of criminal proceedings but is no longer needed for that purpose.

Article 15 – Aggravating circumstances

94. Article 15 provides a list of circumstances (mentioned in paragraph 2 from a) to d)) that States Parties may take into consideration under their domestic law in the determination of the sanction for the offences established in this Convention. The obligation to take account of these circumstances does not apply where they already form part of the constituent elements of the offence under the law of the State Party.

95. The objective of the first aggravating circumstance (paragraph 2 a) is where the offence was committed by persons abusing the trust placed in them in their capacity as professionals. Such persons will generally be the experts and specialists working in the art and cultural environment, such as restorers, conservators, curators, auctioneers and dealers. The drafters were of the opinion that the definition of the term "professionals" addressed by Article 15 paragraph 2 a) should be left to the domestic law of States Parties.

96. The second aggravating circumstance (paragraph 2 b) is where the offence was committed by public officials, tasked with the conservation or the protection of movable or immovable cultural property, such as the personnel of public museums, monuments or archaeological sites. Where such conduct is not already covered under separate offences such as corruption, this aggravating circumstance may be triggered when a public official, or other person entrusted with official duties, abuses his or her position and refrains from performing his or her duties with a view to obtaining an undue advantage or a prospect thereof.

97. Under the third aggravating circumstance (paragraph 2 c), the commission of a criminal offence in the framework of a criminal organisation should be considered as an aggravating circumstance. The Convention does not define the term "criminal organisation". States Parties may refer to other international instruments which define the concept, such as the United Nations Convention against Transnational Organized Crime.

98. The last aggravating circumstance (paragraph 2 d) indicates that recidivism – that is, the fact that the perpetrator has previously been convicted of offences referred to in the Convention – should be considered as an aggravating circumstance by the State Parties under their domestic law.

Article 16 – Previous sentences passed by another Party

99. At domestic level, many legal systems provide for harsher penalties where someone has been previous convicted for a similar offence. Traditionally, previous convictions by foreign courts were not taken into account on the grounds that criminal law is a national matter and that there can be differences of domestic law, and because of a degree of suspicion of decisions by foreign courts.

100. Such arguments have less force today in that internationalisation of criminal law standards is tending to harmonise different countries' law.

101. The fact remains that at international level there is no standard concept of recidivism and the law of some countries does not have the concept at all. The fact that foreign convictions are not always brought to the courts' notice for sentencing purposes is an additional practical difficulty. However, in the framework of the European Union, Article 3 of the Council Framework Decision 2008/675/JHA of 24 July 2008 on taking account of convictions in the member States of the European Union in the course of criminal proceedings has established in a general way – without limitation to specific offences – the obligation of taking into account a previous conviction handed down in another (EU member) State.

102. Article 16 provides for the possibility to take into account final sentences passed by another Party in assessing a sentence. To comply with the provision Parties may provide in their domestic law that previous convictions by foreign courts may, to the same extent as previous convictions by domestic courts would do so, result in a harsher penalty. They may also provide that, under their general powers to assess the individual's circumstances in setting the sentence, courts should take those convictions into account. This possibility should also include the principle that the offender should not be treated less favourably than he would have been treated if the previous conviction had been a national conviction.

103. Under Article 22 of the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30) a Party shall inform any other Party of all criminal convictions and subsequent measures in respect of nationals of the latter Party, entered in the judicial records. Furthermore, under Article 13 of that Convention, a Party's judicial authorities may request from another Party extracts from and information relating to judicial records, if needed in a criminal matter. In the framework of the European Union, the issues related to a systematic exchange of criminal records on EU nationals between member States are regulated by the Council Framework Decision 2009/315/JHA of 26 February 2009 on the organisation and content of the exchange of information extracted from the criminal record between member States. However, Article 16

does not place any positive obligation on courts or prosecution services to take steps to find out whether persons being prosecuted have received final sentences from another Party's courts.

Chapter III – Investigation, prosecution and procedural law

Article 17 – Initiation of proceedings

104. Article 17 is designed to enable the public authorities to prosecute criminal offences referred to in this Convention ex officio, without a victim having to file a complaint.

Article 18 – Investigations

105. The main purpose of this article is to invite States to take measures that professionals responsible for criminal proceedings concerning offences relating to cultural property should be trained or have access to experts in this area.

Article 19 – International co-operation in criminal matters

106. The article sets out the general principles that should govern international co-operation in criminal matters.

107. Paragraph 1 obliges Parties to co-operate, on the basis of relevant international and national law, to the widest extent possible for the purpose of investigations or proceedings of crimes referred to in this Convention, including for the purpose of carrying out seizure and confiscation measures. In this context, particular reference is made to the European Convention on Extradition (ETS No. 24), the European Convention on Mutual Assistance in Criminal Matters (ETS No. 30), the Convention on the Transfer of Sentenced Persons (ETS No. 112), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and the Council of Europe Convention Laundering, Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism (CETS No.198) but also to the United Nations Convention of 15 November 2000 against Transnational Organized Crime (UNTOC, Palermo Convention).

108. Referring to the requirement to "co-operate with each other to the largest extent possible" the drafters agreed that mutual legal assistance should be possible for the offences covered by this Convention, including where Parties make use of the possibility, foreseen in paragraph 2 of Articles 4 and 5 to impose non-criminal sanctions such as administrative sanctions. With regard to the double criminality requirement that Parties may attach to the execution of letters rogatory

for search or seizure of property, in conformity with Article 5 of the European Convention on Mutual Assistance in Criminal Matters, Parties are encouraged, subject to their national law, to consider this requirement as satisfied when it covers one of the offences falling within the scope of the Convention, regardless whether the applicable sanction is criminal or administrative.

109. Paragraph 2 invites a Party that makes mutual assistance in criminal matters or extradition conditional on the existence of a treaty to consider the Convention as the legal basis for judicial co-operation with a Party with which it does not have a treaty relationship referred to in paragraph 1. This provision is of interest because of the possibility provided to third States to sign the Convention. The requested Party will act on such a request in accordance with the relevant provisions of its domestic law which may provide for conditions or grounds for refusal. The additional reference here to Articles 16 and 18 of the UNTOC Convention are intended to refer Parties to the possibility to apply in this context also these provisions even where the UNTOC Convention as such cannot be applied as the particular type of crime falls outside of its scope of application. Any action taken under this paragraph shall be in full compliance with the Party obligations under international law, including obligations under international human rights instruments.

Chapter IV – Measures for prevention and other administrative measures

110. It is standard for recent criminal law conventions of the Council of Europe to contain provisions aiming at the prevention of criminal activity. The present Convention is no exception, and the drafters found that such preventive measures should be implemented at both domestic and international levels in order to have effect.

Article 20 – Measures at domestic level

111. Article 20 provides that States Parties should consider adopting legislative and other necessary measures in view of achieving the purposes of the Convention. Essentially, States Parties are recommended to address these measures for preventive purposes, in order to reduce the likelihood of offences containing within this Convention from occurring, since the use of criminal sanctions, in line with the principle of ultima ratio, is understood as a means of last resort. As several of these provisions are reflective of measures contained within other international instruments, such as the 1970 and 1972 UNESCO Conventions and 1995 UNIDROIT Convention, States may have already implemented the following measures in this

Convention in light of their obligations and commitments under those conventions, where appropriate.

112. The objective of Article 20 sub-paragraph a) is to ensure that all States Parties have an inventory concerning the cultural property classified, defined or specifically designated pursuant to Article 2 of the Convention in order for such property to be easily identified. Such inventories may include safeguards, such as withholding information on the location of the cultural property, or other measures to limit accessibility for certain lists, as appropriate.

113. Article 20 sub-paragraph b) indicates that the issue of export and import certificates by the competent State authorities is very important in the fight against trafficking as it simplifies the work of custom officers in determining whether cultural property is legally exported and/or imported.

114. Under Article 20 sub-paragraph c), States Parties should consider introducing due diligence provisions for dealers, auction houses and other persons involved in the trade of cultural property and obliging them to establish and maintain records of all transactions. This requirement is important in order to record the ownership history of cultural property and to fight against the trafficking in cultural property. States Parties should also adopt measures to make sure that such records are available, under certain conditions defined by their domestic law, to competent authorities.

115. Article 20 sub-paragraph d) encourages States Parties, with a view to developing or increasing effective cooperation between national authorities, to establish a central national authority, or empower existing authorities, in order to, for instance, exchange information about criminal offences relating to cultural property.

116. Article 20 sub-paragraph e) encourages States Parties to enable law enforcement, or other national authorities charged with cultural property protection, to take all appropriate and proportional measures to monitor existing internet platforms for suspicious activities relating to the trade in cultural property. Additionally, States should consider establishing effective reporting mechanisms in order to facilitate reporting by private citizens to the relevant law enforcement authorities.

117. Article 20 sub-paragraph f) encourages States Parties to make it mandatory for finders to report and deliver to the competent authorities the cultural property found by chance (for instance, during the course of agricultural and building activities).

118. Under Article 20 sub-paragraph g), each State Party should promote awareness-rising campaigns addressed to the general public regarding the importance of cultural property as a

component of the national heritage, of the European cultural heritage and of the common heritage of humankind. Moreover, the public should be informed of the serious nature of crimes committed against cultural property and the criminal sanctions which could be imposed as a result of the committing any of the offences set out in the present Convention.

119. Article 20 sub-paragraph h) focuses on State-controlled museums, archives and similar institutions. Each State Party should adopt measures to ensure that these collecting institutions do not acquire cultural property that has been the object of a criminal offence under the present Convention. Moreover, this article encourages States Parties to provide information and training to the personnel of such institutions on the prevention and fight against criminal offences related to cultural property.

120. Article 20 sub-paragraph i) focuses on private entities, such as museums, galleries, dealers, auction houses and other similar institutions. Each State Party should adopt measures to ensure that these entities comply with existing ethical rules and do not acquire cultural property that has been the object of a criminal offence under the present Convention. In addition, States Parties should adopt measures to subject these private entities to an obligation to report suspicious cases of illicitly traded cultural property.

121. The purpose of Article 20 sub-paragraph j) is to ensure that internet providers, internet platform and all actors involved in on line sales take proactive measures in the fight against criminal offences relating to cultural property, for example by posting disclaimers advising prospective buyers to check and request a verification of the licit provenance of the cultural property they are interested in, or establishing self-regulation policies.

122. Article 20 sub-paragraph k) focuses on the role of free ports in the trafficking of cultural property. As seen in available practice, free ports have been often used by art dealers and collectors to store illicitly traded artworks. Under this article, States Parties should adopt measures to ensure that free ports are not used to store cultural property, which has been stolen (or otherwise unlawfully appropriated) in accordance with Article 3, or which has been excavated, imported or exported in circumstances described by Articles 4, 5 or 6, either by adopting legislative measures or by encouraging free port authorities to establish and implement internal norms. For instance, as a result of a 2015 regulation adopted by the Swiss Parliament, the managers of free ports now must keep a list of the tenants of the areas of the free port as well as of the "sensitive goods" present in the free port. The notion of "sensitive goods" includes items of cultural property, which should be inventoried with all information concerning their value, their certificate of origin and the identity of the person entitled to dispose of them. These lists must be presented to the customs authorities, who may request access to free ports and conduct controls at any time.

123. Article 20 sub-paragraph l) focuses on enhancing the exchange of information in order to raise an alert concerning a particular cultural property at risk of being subject to trafficking. As such, it asks national authorities and where appropriate private entities to improve the dissemination at domestic level of information on cultural property that has been the subject of an offence covered by the Convention to customs and police authorities in order to take more effective preventive measures.

Article 21 – Measures at international level

124. Article 21 provides that States Parties should co-operate, to the widest extent possible, with the aim of preventing and combatting the intentional destruction of, damage to, and trafficking of cultural property. In particular, Article 21 sub-paragraph a) recommends States Parties to co-operate with a view to facilitating consultation and the exchange of information pertaining to cultural property that has been the subject of an offence in accordance with the Convention where such property is recovered within their respective jurisdictions.

125. Moreover, under Article 21 sub-paragraph b), States Parties should ensure collaboration with regard to data collection or connecting national inventories on cultural property that has been the subject of an offence in accordance with the Convention. This provision aims to enhance information sharing between States Parties and avoid the situation whereby the inventories or databases on illicitly traded cultural property that have been created by State bodies function independently from one another. As such, States Parties should enter into a dialogue not only to link these national databases, but also to link them to international ones, such as the INTERPOL database on stolen works of art or the International Council of Museums (ICOM) Red List on endangered cultural properties.

126. Article 21 sub-paragraph c) asks States to consider facilitating co-operation for the protection of cultural property, particularly in times of instability or conflict where cultural property is endangered in their own territory or abroad. This provision should be understood broadly in that it relates to facilitating co-operation between States as well as co-operation between States and private entities and private entities in different States. One example is the establishment of refuges (or "safe havens"), domestically or abroad, whereby foreign movable cultural property endangered by such situations of instability or conflict can be safely stored, conserved and protected.

Chapter V – Follow-up mechanism

127. Chapter V of the Convention contains provisions which aim at ensuring the effective implementation of the Convention by the Parties. The follow-up system foreseen by the Convention is based essentially on a body, the Committee of the Parties, composed of representatives of the Parties to the Convention.

Article 22 – Committee of the Parties

128. Article 22 provides for the setting-up of a committee under the Convention, the Committee of the Parties, which is a body with the composition described above, responsible for a number of Convention-based follow-up tasks.

129. The Committee of the Parties will be convened the first time by the Secretary General of the Council of Europe, within a year of the entry into force of the Convention by virtue of the 10th ratification. It will then meet at the request of a third of the Parties or of the Secretary General of the Council of Europe.

130. It should be stressed that the drafters sought to allow the Convention to come into force quickly while deferring the introduction of the monitoring mechanism until such time as the Convention was ratified by a sufficient number of States for it to operate under satisfactory conditions, with a sufficient number of representative States Parties to ensure its credibility.

131. The setting up of this body will ensure equal participation of all the Parties in the decision-making process and in the Convention monitoring procedure and will also strengthen co-operation between the Parties to ensure proper and effective implementation of the Convention.

132. The Committee of the Parties must adopt rules of procedure establishing the manner in which the monitoring system with regard to the effective implementation of the Convention operates.

133. The drafters discussed the feasibility of establishing a light structure, composed primarily of experts, to support the Committee of the Parties with the collection, analysis and sharing of information, experiences and good practices between the Parties with regard to this Convention in order to improve their policies in preventing and combating offences relating to cultural property, using a multi-sectorial and multidisciplinary approach.

134. A delegation proposed to host this structure, putting at the disposal of the Parties to this Convention appropriate permanent premises. Nevertheless, as such a structure would have

broader organisational and budgetary implications, the drafters agreed that its setting up will be a matter for a decision by the Committee of Ministers. The Committee of Ministers will also decide, upon the proposal of the Committee of the Parties, on the tasks, composition and budget of the aforesaid structure. The delegation referred to above confirmed its interest and availability to host the structure were it to be established, following such a decision of the Committee of Ministers.

Article 23 – Other representatives

135. Article 23 contains an important message concerning the participation of bodies other than the Parties themselves in the Convention follow-up mechanism in order to ensure a genuinely multisectoral and multidisciplinary approach. It refers, firstly, to the Parliamentary Assembly and the CDPC, and the CDCPP, secondly, more unspecified, to other relevant intergovernmental or scientific committees of the Council of Europe which, by virtue of their responsibilities would definitely make a worthwhile contribution by taking part in the follow-up of the work on the Convention.

136. The importance afforded to involving representatives of relevant international bodies and of relevant official bodies of the Parties, as well as representatives of civil society, in the work of the Committee of the Parties is undoubtedly one of the main strengths of the follow-up system provided for by the drafters. The wording "relevant international bodies" in paragraph 3, is to be understood as inter-governmental bodies active in the field covered by the Convention. The wording "relevant official bodies" in paragraph 4, refers to officially recognised national or international bodies of experts working in an advisory capacity for Parties to the Convention in the field covered by the Convention.

137. The possibility of admitting representatives of inter-governmental, governmental and non-governmental organisations and other bodies actively involved in preventing and combating offences relating to cultural property as observers was considered to be an important issue, if the follow-up of the application of the Convention was to be truly effective.

138. Paragraph 6 prescribes that when appointing representatives as observers under paragraphs 2 to 5 (Council of Europe bodies, international bodies, official bodies of the Parties and representatives of non-governmental organisations), a balanced representation of the different sectors and disciplines involved (the law enforcement authorities, the judiciary, the cultural authorities, as well as civil society interest groups) shall be ensured.

Article 24 – Functions of the Committee of the Parties

139. When drafting this provision, the drafters wanted to base itself on the similar provision of the Council of Europe Convention against Trafficking in Human Organs (CETS No. 216), creating as simple and flexible a mechanism as possible, centred on a Committee of the Parties with a broader role in the Council of Europe's legal work on combating offences relating to cultural property. The Committee of the Parties is thus destined to serve as a centre for the collection, analysis and sharing of information, experiences and good practice between Parties to improve their policies in this field using a multisectoral and multidisciplinary approach.

140. With respect to the Convention, the Committee of the Parties has the traditional follow up competencies and:

- plays a role in the effective implementation of the Convention, by making proposals to facilitate or improve the effective use and implementation of the Convention;
- plays a general advisory role in respect of the Convention by expressing an opinion on any question concerning the application of the Convention, including by making specific recommendations to Parties in this respect;
- serves as a clearing house and facilitates the exchange of information on significant legal, policy or technological developments in relation to the application of the provisions of the Convention. In this context, the Committee of the Parties may avail itself of the expertise of relevant committees and other bodies of the Council of Europe.

141. Paragraph 4 states that the CDPC and the CDCPP will be kept periodically informed of the activities mentioned in paragraphs 1, 2 and 3 of Article 24.

Chapter VI – Relationship with other international instruments

Article 25 – Relationship with other international instruments

142. Article 25 deals with the relationship between the Convention and other international instruments.

143. In accordance with the 1969 Vienna Convention on the Law of Treaties, Article 25 seeks to ensure that the Convention harmoniously coexists with other treaties – whether multilateral or bilateral – or instruments dealing with matters which the Convention also covers. Article 25, paragraph 1 aims at ensuring that this Convention does not prejudice the rights and obligations derived from other international instruments to which the Parties to this Convention are also

Parties or will become Parties, and which contain provisions on matters governed by this Convention.

144. Article 25, paragraph 2 states positively that Parties may conclude bilateral or multi-lateral agreements – or any other legal instrument – relating to the matters which the Convention governs. However, the wording makes clear that Parties are not allowed to conclude any agreement which derogates from this Convention.

Chapter VII – Amendments to the Convention

Article 26 – Amendments to the Convention

145. Amendments to the provisions of the Convention may be proposed by the Parties. They must be communicated to all Council of Europe member States, to the non-member States which have participated in its elaboration and to any State invited to sign the Convention.

146. The CDPC will prepare opinions on the proposed amendment, which will be submitted to the Committee of the Parties. After considering the proposed amendment and the opinion submitted by the Committee of the Parties, the Committee of Ministers may adopt the amendment by the majority provided for in Article 20.d of the Statute of the Council of Europe.

147. Before deciding on the amendment, the Committee of Ministers shall consult and obtain the unanimous consent of all Parties. Such a requirement recognises that all Parties to the Convention should be able to participate in the decision-making process concerning amendments and are on an equal footing.

Chapter VIII – Final clauses

148. With some exceptions, Articles 27 to 32 are essentially based on the Model Final Clauses for Conventions and Agreements concluded within the Council of Europe, which the Committee of Ministers approved at the Deputies' 315th meeting, in February 1980.

Article 27 – Signature and entry into force

149. The Convention is open for signature by Council of Europe member States and non-member States which have participated in its elaboration.

150. Once the Convention enters into force, in accordance with paragraph 3, other non-member States may be invited to accede to the Convention in accordance with Article 30, paragraph 1.

151. Article 27, paragraph 3 sets the number of ratifications, acceptances or approvals required for the Convention's entry into force at five. This number is not very high in order not to delay unnecessarily the entry into force of the Convention, but reflects nevertheless the belief that a minimum group of Parties is needed to successfully set about addressing the major challenge of combating trafficking in cultural property. Of the five Parties which will make the Convention enter into force, at least three must be Council of Europe members.

Article 28 – Accession to the Convention

152. After consulting the Parties and obtaining their unanimous consent, the Committee of Ministers may invite any State not a Council of Europe member which did not participate in drawing up the Convention to accede to it. This decision requires the two-thirds majority provided for in Article 20.d of the Statute of the Council of Europe and the unanimous vote of the Parties to the Convention having the right to sit on the Committee of Ministers.

Article 29 – Territorial application

153. Article 29, paragraph 1 specifies the territories to which the Convention applies. Here it should be pointed out that it would be incompatible with the object and purpose of the Convention for States Parties to exclude parts of their territory from application of the Convention without valid reason such as the existence of different legal systems applying in matters dealt with in the Convention.

154. Article 29, paragraph 2 is concerned with extension of application of the Convention to territories for whose international relations the Parties are responsible or on whose behalf they are authorised to give undertakings.

Article 30 – Reservations

155. The reservations listed in paragraph 1 of this article have been introduced in the Convention with regard to Articles for which unanimous agreement was not reached among the drafters, despite the efforts achieved in favour of compromise. These reservations aim at

enabling the largest possible ratification of the Convention, whilst permitting Parties to preserve some of their fundamental legal concepts.

156. Paragraph 1 specifies that no other reservations may be made to the provisions of this Convention, with the exception of those provided for in this paragraph.

157. Paragraph 2, by making it possible to withdraw reservations at any time, aims at reducing in the future divergences between legislations which have incorporated the provisions of this Convention.

Article 31 – Denunciation

158. This provision aims at allowing any Party to denounce this Convention. The sole requirement is that the denunciation be notified to the Secretary General of the Council, in his or her role as depository of the Convention.

159. This denunciation takes effect six months after it has been received, that is, as from the reception of the notification by the Secretary General.

Article 32 – Notifications

160. Article 32 lists the notifications that, as the depositary of the Convention, the Secretary General of the Council of Europe is required to make, and designates the recipients of these notifications.

161. This provision, which is a standard final clause in Council of Europe treaties, concerns notifications to Parties. The Secretary General must inform Parties also of any other acts, notifications and communications, within the meaning of Article 77 of the Vienna Convention on the Law of Treaties, relating to the Convention and not expressly provided for by this article.