

**COMMISSION ON CRIME
PREVENTION AND CRIMINAL JUSTICE**
BACKGROUND GUIDE

A world map in shades of blue and white, centered on the Atlantic Ocean. Overlaid on the map is the NHSMUN 2010 logo, which consists of the text "NHSMUN" and "2010" flanking a circular graphic of white squares arranged in concentric, slightly offset rings.

NHSMUN 2010



NATIONAL HIGH SCHOOL MODEL UNITED NATIONS

The 36th Annual Conference • March 17-20, 2010

October 2009

Lisa Cuesta
Secretary-General
University of Pennsylvania

Jerry Guo
Director-General
Dartmouth College

Ryan Burke
Conference Director
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Chris Talamo
Under-Secretary-General
Dartmouth College

Welcome to NHSMUN 2010!

My name is Luke Russell and I will be your Under-Secretary General for the Economic and Social Council Standing Committees and Functional Commissions, which I believe officially, gives me the longest title on staff. I've spent the past several months working closely with all of your Directors and Assistant Directors and am pleased to report that they are easily some of the most intelligent and savvy people whom I've every had the privilege of working with. With topics ranging from Nuclear Technology to Maternal Health, I've certainly had the opportunity to learn about a wide variety of amazingly interesting and pertinent subjects and am glad that we can now spread this opportunity and wealth of knowledge to you the delegates.

I am currently a Senior at the University of Connecticut, where I'm double majoring in Human Development and Family Studies, as well as Political Science, and additionally working on a minor in Sociology. I've spent my college career studying human's roles within various systems of organization, ranging from household family dynamics, to international relations and the role of the individual, and the collective in supranational organizations like the United Nations.

In the past at NHSMUN I've served as the Director of UNESCO and Assistant Director of the UNDP, though my general Model UN experience ranges throughout the Main's committees (most notably SOCHUM) to more specialized bodies such as the Commission on Narcotic Drugs. If nothing else, I urge each and every one of you to take advantage of the tremendous resources offered by NHSMUN and the incredibly well studied Directors and Assistant Directors of your various Committees. I additionally hope that each of you can truly engage with the topics set in front of you. The modern world is certainly an incredibly complex and diverse time to live in, and while not always possible to fully comprehend, simply attempting to is always a rewarding experience.

I highly anticipate watching you all as you work to tackle the issues set before you and wish each and every one of you the best of luck with your research, and all of your future endeavors.

Best,

Luke Russell

Under-Secretary General for the Economic and Social Council Standing Committees and Functional Commissions

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NHSMUN is a project of the International Model United Nations Association, Incorporated (IMUNA). IMUNA, a not-for-profit, all volunteer organization, is dedicated to furthering global issues education at the secondary school level.



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Dear Delegates,

Welcome to the Commission on Crime Prevention and Criminal Justice (CCPCJ)—one of the four fabulous committees representing the United Nations Standing Committees and Functional Commissions at NHSMUN 2010! My name is Sarah Costello and I'll be your Director. As the distinctiveness of each of this year's topics demonstrates, the CCPCJ is committed to improving a broad range of justice-related issues currently facing the international community.

A little bit about myself... I attended NHSMUN as a delegate for two years and served on the International Criminal Court (ICC) and the International Court of Justice (ICJ). Clearly, there has been a lot of Criminal Justice research going on in my life. I simply cannot get enough of subject, which is good considering I'm planning to pursue law school after completing my undergraduate studies at Tufts University, where I am currently a sophomore majoring in Architectural Studies with a Studio Art minor.

This past summer, I travelled to the Greek island of Thasos on an archaeological research expedition where I served as the artist for the project. It was an all around amazing experience and gave me the opportunity to consider our Trafficking in Stolen Cultural Property topic from a new perspective.

I hope that you're just as incredibly excited about our topics as I am! After researching them both extensively myself, I look forward to seeing how you approach them. Please feel free to contact me at any point in your research with questions, comments, concerns, complaints...funny stories about your own travels to Greece and elsewhere...whatever you've got—I would love to hear about it.

Good luck to you all and I'll see you in March!

Sincerely,

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A NOTE ON RESEARCH AND PREPARATION

Delegate preparation is paramount to a successful and exciting National High School Model United Nations 2010 Conference. We have provided this Background Guide to introduce the topics that will be discussed in your committee; these papers are designed to give you a description of the topics and the committee. They will not give you a complete description of the topic areas and they will not contain the most up-to-date information, particularly in regards to rapidly evolving issues. We encourage and expect each delegate to fully explore the topics and be able to identify and analyze the intricacies of the issues. Delegates must be prepared to intelligently utilize their newly acquired knowledge and apply it to their own countries' policy. You will find that your state has a unique position on the topics that cannot be substituted for or with the opinions of another state.

The task of preparing and researching for the conference is challenging, but it can be interesting and rewarding. We have provided each school with a copy of the **Delegation Preparation Guide**. The Guide contains detailed instructions on how to write a position paper and how to effectively participate in committee sessions. (**Note:** some position papers have unique guidelines that are detailed within respective committees' Background Guides.) The Guide also gives a synopsis of the types of research materials and resources available to you and where they can be found. A brief history of the United Nations and the NHSMUN conference are also included. The annotated rules of procedure complete the Delegate Preparation Guide.

An essential part of representing a nation in an international body is the ability to articulate that state's views in writing. Accordingly, it is the policy of NHSMUN to require each delegate (or double-delegation team) to write position papers. The position papers should clearly outline the country's policies on the topic areas to be discussed and what factors contribute to these policies. In addition, each paper *must* address the Research and Preparation questions at the end of the committee Background Guide. Most importantly, **the paper must be written from the point of view of the country you are representing at NHSMUN 2010** and should articulate the policies you will espouse at the conference. All papers should be typed and double-spaced. The papers will be read by the Director of each committee and returned at the start of the conference with brief comments and constructive advice.

You are responsible for sending a copy of your paper to the Director of your committee. Additionally, your delegation is responsible for bringing a bound copy of all of the position papers—one for each committee to which your school has been assigned—to **the conference** (to be submitted during registration). Specific requirements of the bound copy have been sent to the faculty advisor/club president. In addition to position papers, each delegation must prepare one brief summary statement on the basic economic, political, and social structures of its country, as well as on its foreign policy. Please mail country summary statements to the Director-General of NHSMUN 2010 at the address below. All copies should be **postmarked** no later than **February 16th** and mailed to:

Jerry Guo, Director-General
Hinman Box 658
Dartmouth College
Hanover, NH 03755

Sarah Costello, Director
260 Carmichael Hall
Tufts University
Medford, MA 02155

(Country Summaries)

(Individual papers)

Delegations are required to mail **hard copies** of papers to the Director-General and Directors.
NHSMUN Staff will not consider e-mail submissions as an adequate substitution.

Delegations that do not submit position papers to Directors or Summary Statements to the Director-General will be ineligible for awards.

COMMITTEE HISTORY

The Commission on Crime Prevention and Criminal Justice (CCPCJ) is a functional commission of the Economic and Social Council. Established in February 1992 by Resolution 1992/1 of the Economic and Social Council, the CCPCJ was created to address the United Nations' expanding interests in criminal justice policy. A second resolution by the Economic and Social Council, Resolution 1992/22, identified the four criminal justice related themes that are the focus of the work of the CCPCJ. These "mandated priority areas" consist of international action to combat national and transnational crime, including organized crime, economic crime and money laundering; promoting the role of criminal law in protecting the environment; crime prevention in urban areas, including juvenile crime and violence; and improving the efficiency and fairness of criminal justice administration systems.

The CCPCJ is the principal policymaking body of the United Nations for matters involving crime prevention and criminal justice. The commission convenes once a year, in Vienna. At each annual meeting, the forty members of the CCPCJ discuss topics related to the commission's four priority areas. Draft Resolutions by the CCPCJ often call upon the General Assembly, the Secretary General, or the Member States to financially support plans designed to streamline, update, and improve transnational cooperation to combat crime and promote justice.

Most recently, the 18th session of the CCPCJ was held 16-24 April 2009. Two themes were selected for the 18th session—"Economic fraud and identity-related crime" and "Penal reform and the reduction of prison overcrowding, including the provision of legal aid in criminal justice systems" (E/CN.15/2009/1 3). The draft resolutions produced during this session dealt with topics of economic fraud and identity-related crime, support for the United Nations Office on Drugs and Crime (UNODC), combating kidnapping, improving data collection techniques, and child justice reform (E/CN.15/2009/20 iii).

In addition to its policymaking role, the CCPCJ works in an administrative capacity with a number of related UN programs. The CCPCJ provides organizational and substantive support for the United Nations Congress on Crime Prevention and Criminal Justice (Congress). The Congress is an international convention held every five years that serves as a forum on criminal justice where state governments, non-governmental organizations, specialized agencies, and numerous other parties can work together. The CCPCJ also administrates and oversees the United Nations Crime Prevention and Criminal Fund (CPCF), which financially supports UN efforts to provide states with technical assistance for crime prevention.

The CCPCJ is also intended to serve as a coordinator to provide support to Member States and help facilitate regional and interregional events related to crime prevention and criminal justice (DPI/1642). As part of its role as a facilitator, the CCPCJ encourages states to share information on their experiences with various forms of crime. Draft resolutions by the CCPCJ often contain invitations and exhortations urging Member States to strengthen international cooperation by participating in the international dialogue on crime prevention and supporting conventions on transnational criminal justice.

SIMULATION

As members of the Commission on Crime Prevention and Criminal Justice at NHSMUN 2010, delegates will serve as expert legal advisors to the UN General Assembly and develop recommendations for the global community. The resolutions produced by this committee should reflect the core goals of the CCPCJ—reducing crime and improving criminal justice through international cooperation.

At the first session, delegates will be introduced to the members of the dais—the director and assistant director, who will assist delegates by providing procedural and directional guidance. The role of the dais is to facilitate the flow of debate by ensuring that delegates observe the rules of parliamentary procedure. Additionally, the director and assistant director will serve as “resident experts” on the committee topics and delegates are encouraged to approach the dais with any questions they may have. Following introductions, delegates will set the agenda for the remainder of the conference and then enter substantive debate on the topics, which will continue throughout the following sessions.

There are two formats for discussion during sessions—formal debate and caucusing. A motion for formal debate should specify a total length for the debate and the time limit for each speaker. Delegations wishing to speak during a formal debate will be added to the Speaker’s List and committee will move through this list until the time allotted for the debate expires or until the list has been exhausted. Formal debate usually provides the longest speaking time per delegation and is, therefore, a good time for delegates to explain the “big picture” of their country’s or group’s position, host a question and answer session, respectfully voice concerns about a topic, or raise a point that they feel has not yet been addressed by the committee. Delegates should use this form of debate as an opportunity to both express their own country’s position and to identify countries with similar philosophies that would make good partners in resolution development.

Caucus, the informal structure for debate, has two forms—moderated and un-moderated. A motion for moderated caucus should suggest a topic for the discussion in addition to specifying the length of the caucus and the speaking time. Moderated caucuses typically have shorter speaking times than formal debates and delegates volunteer to speak by raising their placards and being recognized by the dais. During periods of moderated caucuses, delegates have a specific area of focus, about which they can make brief arguments, pose questions to the group, clarify points of their working papers, etc. Un-moderated caucuses are sustained periods of free debate that allow delegates to move around the room, speak with other delegations, and work on writing working papers and draft resolutions. The less structured format of un-moderated caucus provides an opportunity to share ideas and combine similar proposals.

Cooperation is critical to the success of the CCPCJ. However, a delegate’s first responsibility is to the policies of their own country. While delegates should be open to compromise, they should not feel pressured to entirely sacrifice their country’s position. Rather, countries should work together to build a resolution that represents the best interests of the international community without conflicting with their own needs. Delegates should not be overly concerned with producing a single, unanimous resolution. Collaboration, not competition, should be the goal.

Something that will aid in delegate preparation is a new program NHSMUN is starting this year: blogs. Each Director and Assistant Director will maintain a committee blog covering new developments and critical analysis of issues related to the topic. Delegates are encouraged to comment on the staff’s posts and ask questions; starting a dialogue before the conference will lead to more comprehensive and effective solutions. View the committee blog at:

<http://nhsmun2010ccpcj.wordpress.com>

The staff will update the blog at least three times a month. **Delegates are highly encouraged to stay updated on new posts and whatever information the dais provides.**

TRAFFICKING IN STOLEN CULTURAL PROPERTY

TOPIC A

INTRODUCTION

Trafficking in stolen cultural property is a category of transnational crime that covers a variety of activities. These activities can be grouped into three basic stages of trafficking; acquisition, transport, and transfer of ownership. Although this crime is considered highly prevalent in all regions of the world, the International Criminal Police Organization (INTERPOL) reports that, because many countries do not maintain or share satisfactory records of incidents related to trafficking in stolen cultural property, it is difficult to determine the real extent of the problem (“Stolen”). Trafficking threatens the cultural heritage of nations worldwide, as each step in the process takes a toll on the nation’s cultural history, financial climate, or international relationships. The international community must take action to prevent further losses by developing, implementing, and enforcing universal protective measures.

This crime is particularly difficult to combat because it affects virtually every country and because there are people of all ages and social classes involved at any given point in the process. One method of illegal acquisition practiced by persons of very diverse social and economic backgrounds is that of illicit excavation. In developing countries, poor villagers loot local archaeological sites and then sell the stolen items directly to tourists. At the opposite end of the socio-economic spectrum are commercial salvage companies, which undertake large-scale excavations of on-land and underwater sites. Trafficking in stolen cultural property can be an exceptionally lucrative crime and “treasure hunters” exist at virtually every level of funding. Illicit excavation does irreparable damage to the historical record and destroys valuable information about the past (Faro). These crimes deprive nations of their history, which the international community must take strive to protect for posterity.

The transport of cultural objects across national borders is subject to customs regulations, which vary greatly by state. The World Customs Organization (WCO) is an intergovernmental organization that works to streamline and simplify customs regulations (“Overview”). The porous nature of many states’ boundaries and the difficulty of establishing complete border security makes enforcing such regulations very difficult; however, delegates should consider how states can use existing structures, such as customs inspections, to reduce the illicit transport of artifacts. For the sake of preserving their cultural heritage, countries must support one another in their efforts to protect national borders from illegal imports and exports by standardizing their definitions and protective measures for cultural objects.

The highly profitable black market for cultural property provides the motivation for traffickers to engage in the crime. Complete elimination of trafficking would only be possible if the market for such goods is destroyed. The problem with attaining this goal is that the black market is a dynamic entity that operates in a number of forms and is supported by persons with various motivations. By identifying the goals of stakeholders and developing alternative means of meeting their needs through international cooperation, it is possible to reduce the demand for stolen art and antiquities. Trafficking in stolen cultural property is largely an opportunistic crime; traffickers take advantage of opportunities created by the inadequate provisions for detection, prevention, and punishment. Nations face an immediate need for fair and enforceable universal regulation of each of the three stages of the crime to protect the world’s cultural heritage from the destructive consequences of trafficking in stolen cultural property.

HISTORY AND DESCRIPTION OF THE ISSUE

Defining Cultural Property

The way that terms such as “cultural property” and “cultural heritage” are defined in legal instruments related to trafficking determines the scope of their application. Presently, laws, codes and conventions contain conflicting definitions of critical terms, which results in uncertainty about exactly what actions are considered

criminal—and therefore punishable—under international law. Many countries and individuals take advantage of this ambiguity by selectively recognizing laws so that they are protected from the legal consequences of trafficking. Because part of the role of the CCPCJ is to improve the fairness of the criminal justice system, it is both appropriate and necessary that this committee concern itself with the development of clear universal definitions that address trafficking in its various forms at each step in process. Important considerations for the development of this definition include ensuring its enforceability and weighing the advantages or disadvantages of broad definitions versus itemized descriptions. Examining how existing national and international documents define “cultural property” and the relative success of these policies will be helpful in determining the most effective elements for a universal definition.

The 1954 Convention on the Protection of Cultural Property In the Event of Armed Conflict (CPCP) offers a broad and comprehensive definition of “cultural property” by describing three categories of materials. The CPCP specifies that, regardless of the subject’s origin or ownership, the term “cultural property” covers (1) any movable or immovable property important to the cultural heritage of a people, (2) any building whose purpose is the housing of such property, and (3) any “centre containing monuments” (“Convention on the Protection”).” The CPCP’s provisions for the protection of all three of these forms of cultural property allowed the International Criminal Tribunal for the former Yugoslavia (ICTY) to apply the CPCP to the prosecution of attacks on the city of Dubrovnik, Croatia that had destroyed culturally significant buildings (“Director-General”).

The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property (CMPP) uses a more limited definition of cultural property that does not extend to buildings or real property. The CMPP operates with the following working definition of “cultural property”:

“...property, which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science...” (“Convention on the Means”)

Additionally, for the convention to apply, objects must fit one of the seven categories defined by the CMPP as specific types of materials that, due to their nature or origin, should be considered culturally significant (“Convention on the Means”). The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (CSIECO) also uses this definition (“UNIDROIT”). Because of how the categories are described, these two conventions only protect movable cultural property.

Unlike the CMPP and the CSIECO, the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (CCPWCNH) focuses on immovable cultural property. Although the CCPWCNH does not refer to “cultural property” specifically, it defines the term “cultural heritage” as including “monuments...groups of buildings...[and] sites...which are of outstanding universal value from the point of view of history, art or science” (“Convention Concerning”). These terms are very similar to those associated with “immovable cultural property” in the CPCP.

The primary obstacle to preventing trafficking, as well as to restoring stolen items to their country of ownership, is that not all countries recognize the same definition of “cultural property.” Similarly, a single state may be party to several international conventions, in addition to their own national policies, and therefore recognize multiple definitions. Countries may, then, serve their own national interests by applying one definition of “cultural property” to legislation related to imports and a different definition for exports (“Moveable”). For example, Canada is a State Party to the CMPP, and therefore recognizes its prohibition of importing objects of cultural property that have been illegally exported by another state party to the convention. However, Canadian export policies are based on Canada’s own Cultural Property Export and Import Act. This act requires export permits for articles of “controlled cultural property” and defines controlled items as objects that are over fifty years old and made by persons that are now deceased (“Moveable”). This definition is designed to benefit the Canadian economy by allowing open trade on cultural objects under 50 years old, but it can create a conflict for importing countries whose policies do not make

exemptions on the basis of an object's age. To protect cultural heritage, the international community must develop universal regulations for the import, export, transport, and sharing of culturally significant objects, including a clear standardized definition for "cultural property".

Components of the Crime

The first stage of trafficking is the initial acquisition of cultural property from its archeological source. During a sanctioned dig, archeologists take extreme caution to collect as much information as possible about the site, including details about the relative and exact positions of their finds through photographs, sketches, and written records. Illegal excavators and treasure hunters not only damage the archeological record with their careless practices, they also permanently erase valuable information about the artifacts and their historical context (E/CN.15/2004/10 83). Although the objects themselves can, in theory, be recovered and returned to their country of origin, information from the excavation process and details of the object's placement are lost forever. Because stolen movable cultural property often comes from sites that are unknown and therefore unprotected by officials, it is easy for illicit excavation teams to remove objects in secret and transport them across national boundaries without detection. There is simply too much area and too many unknown archaeological sites for customs officials and other law enforcement to be completely effective.

Preventing trafficking at this point of the process will likely only be accomplished by eliminating the incentive for would-be looters and illegal excavators to participate in criminal activity. Countries must, therefore, first identify the stakeholders at this stage of trafficking and understand their motivations. Two major motivations for illegal acquisition are the potential profit and the desire to retain national historical resources (Faro). Individuals responding to the first of these motivations, the potential profit, can be further subdivided based on their economic status. For instance, trafficking in stolen cultural property provides a relatively easy source of income for poor villagers in areas close to ancient ruins in Southeast Asia. Cultural objects are looted from the unprotected ruins and then sold as souvenirs. States are now attempting to combat this growing problem with education campaigns. In Cambodia, for instance, where Khmer artifacts were popular among illicitly exported objects, there are now community-led programs designed to educate villagers about the damaging effects and serious consequences of looting. Villagers are encouraged, instead, to produce their own crafts and build small businesses (Suselo). National education and career training initiatives are examples of steps that states can take to protect their cultural heritage by reducing the appeal of engaging in illicit excavation. However, these efforts would likely not have an effect on reducing other financially motivated methods of illegal acquisition, such as thefts from museums and private collections, which are generally committed by individuals of higher economic status. Likewise, "looting to order" is a high-profit crime, wherein a commercial treasure hunter steals or excavates a specific artifact requested by a private collector (Farrell). For professional treasure hunters, looting is a career, rather than a means of survival income, as in the case of poor local inhabitants. These two groups cater to different sectors of the black market; this demonstrates the need for a multi-pronged international action to discourage trafficking at this point in the process.

Aside from profit-related factors, looters are sometimes motivated by an erroneous fear of losing their national heritage. Foreign excavation teams often face resistance from local citizens, who may go as far as to raid excavation sites in the middle of the night in a misguided attempt to prevent foreign archeologists from extracting their country's property (Faro). These well-intentioned thieves do just as much damage to the site as other looters, and the objects that they "rescue" generally end up on the black market, though perhaps not for several generations. Most states limit the number of excavation projects that other countries can operate within their territory each year and require that the foreign teams be paired with national counterparts to ease relations with locals and ensure responsible practices during the excavation process (Faro). In addition to partnering with archeologists from the country that they are working in, foreign excavation teams could endeavor to increase transparency in the work. Public outreach and education initiatives that explain the work of foreign archeologists help to prevent locals from destroying archeological sites and contributing to the black market out of ignorance. Further research and development in these fields could be beneficial.

Following initial acquisition, the next step of trafficking in stolen cultural property is transport. Presently, most countries have legislation in place that requires excavation teams to report their finds and limits the

transportation of cultural property. Archeological teams must seek authorization from the national government and hold export certificates to remove artifacts from the country (“Convention on the Means”). Such legislation is supported and enforced by the World Customs Organization (also known as the Customs Cooperation Council) and by the International Criminal Police Organization (INTERPOL) (“Frequently”). The problem of detecting illegal transport is the primary obstacle to regulating the import and export of movable cultural property and remains a difficult area to address because of the extensive resources necessary. Patrolling borders, monitoring international mail, and screening travelers have all proven largely ineffective (Faro). Therefore, while it is important to understand how the various means of transport enable trafficking, there may be other avenues the CCPCJ should explore to prevent trafficking.

The final major component of trafficking is the transfer of stolen cultural property. This element of the crime may be repeated dozens of times as a single object changes hands. Transfers may be made within a single country or may involve further transnational exchanges. There is no clear division of responsibility between parties involved in the illicit import, export, and transfer of stolen cultural property. A great deal of pressure is placed on “importing” parties: countries that, by intention or by negligence, have allowed stolen cultural property to enter their borders. The focus on buyer responsibility is related to the legal rule of *caveat emptor*, meaning “let the buyer beware,” and this perspective is pervasive in the trafficking of cultural property, affecting the full spectrum of circumstances involving transfers of cultural property—from interactions between auction houses and private collectors, to political relationships between states (Roszkowski 354).

Auction houses generally attempt to provide the provenance, or history of origin and ownership, for antiquities and objects of art at the time of their sale, though this information is easily forged. Article 10a of the CMPP directs adhering states to ensure that antiquities dealers are required to maintain a register detailing all objects’ appearance, their origins, previous owner, and the selling price of the object (“Convention on the Means”). However, the requirements for provenance vary by state and are poorly enforced. Heritage Watch reports that 80% of the catalogues of international auction houses do not contain information on objects’ provenance (“Suselo”). Even large, well-respected auction houses like Sotheby, do not require sellers to do more than prove ownership of the goods presented; they do not look into the history of the items. In fact, Sotheby’s magazines carry a disclaimer warning that, “it’s the responsibility of the buyer to also do their own background check on any item.” (“Suselo”).

Trafficking in stolen cultural property strains international relations and “can discourage foreign investment, thereby have affect entire national economies” (Calvani). States frequently disagree regarding the division of liability between importing and exporting states, as well as about what the degree to which an importing or exporting country is responsible and about the extent to which national governments should be responsible for recovering cultural property that has illegally entered their territory. *Caveat emptor* is an outdated concept in most modern legal codes because it tends to excuse the seller from responsibility, when, in fact, they often the better informed party. While it is important for buyers to exercise good judgment in their dealings and make all reasonable efforts to avoid supporting illegal trade, for the sake of promoting good will between states, the international community must develop universal policies on cultural property transfers that recognize modern legal trends.

Repatriation of Stolen Cultural Property

Repatriation is the process of returning an illegally exported cultural object to its country of origin. The process begins with discovery a theft. Identifying stolen objects may or may not be difficult, while thefts from museums are immediately detected, in cases of illicit excavation, lost objects may go unnoticed until they appear on the black market (“Stolen”). One of the primary responsibilities of the state suffering from theft of cultural property is to provide international notification of the loss. Article 3 of the CSIECO requires states to lodge claims for restitution within three years of discovering the location and possessor of the property (“UNIDROIT”). The CSIECO further specifies that a claim must be brought forth within 50 years of the crime.

Once an object has been identified as stolen, the next step is to determine its new location. A number of groups and resources exist to help with these early stages of retrieval. The recovery of stolen works of Art and Antiquities became an official focus area of the International Criminal Police Organization (INTERPOL) in 1947. The Organization publishes the bi-annual, “Interpol’s Most Wanted Works of Art.” This publication is reported to be responsible for the recovery of approximately four items of stolen cultural property annually. Interpol also maintains the Automated Search Facility Works of Art Database (ASFWAD), which contains searchable descriptions of all articles of movable cultural property reported to the Organization. Countries can add to this database by filing reports on illicit excavation and state police can use it to identify and locate trafficked goods (“Frequently”).

Similarly, the International Foundation for Art Research maintains a computerized database, The Art Loss Register (ALR), which allows police to make confidential searches of reports by police, private owners, museums, traders, and insurance companies. The ALR is based in London and serves a broader market than the ASFWAD; online reports of a theft can be made by anyone ranging from government officials, museums, auction houses, and even private individuals. Users are required to register with the site, which allows the ALR to track searches and provide information to international police agencies when items of interest are discovered stolen (“The Art”).

Repatriation is often a hostile process whereby a state demands that the citizens or government of another country provide restitution for thefts. However, even if an object is discovered missing, once an article of cultural property has been excavated and removed from its country of origin, it becomes almost impossible to establish if and when a theft took place (Faro). Possessors of reportedly stolen property may argue that they exercised “due diligence” in acquiring the property. This means, for instance, that the object in question was removed from the claimant country in a manner that satisfied legal requirements for export (“UNIDROIT”).

In cases where the possessor can prove that they exercised due diligence and that they would suffer a loss by returning the cultural object, the claimant may be required to provide financial compensation to the possessor. This arrangement is based off of the legal premise that, in cases where neither party is considered “guilty,” the goal of legal intervention is to satisfy both parties without unfairly enriching or penalizing either. Essentially, the claimant state is entitled to the return of its cultural property and the possessor receives compensation to prevent loss to a guiltless party (“Convention for the Protection”).

To further protect innocent parties, the CSIECO provides for cases wherein the current possessor of the property was not involved in the object’s removal from the claimant state’s possession, but rather, acquired it following illegal export by another party, the current possessor is likewise entitled to compensation for returning the object. Additionally, and unlike cases of due diligence in acquisition, Article 6 of the CSIECO allows that the current possessor may be entitled to remain in possession of the property, if they can prove that they neither knew, nor had reason to know, that the object was illegal trafficked cultural property (UNIDROIT).

Trafficking Associated with War and Conflict

One area of trafficking in cultural property that deserves special consideration is the threat to cultural property associated with war. During periods of conflict, the intentional destruction of an enemy nation’s cultural property is considered a war crime (Dormann 215). The strategy behind committing such a crime is to use the destruction of a nation’s heritage as psychological warfare. Cultural property is, essentially, a non-renewable resource and by damaging these objects, military forces give the impression of permanently destroying a piece of the people and their country. In addition to the intentional ruin of culturally significant sites and objects, the tradition of soldiers collecting “war trophies” is a dimension of trafficking unique to regions in conflict.

Extensive raiding and pillaging during World War II provided the impetus for the creation of the CPCP. The goal of the Convention was “to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any act of vandalism directed against, cultural property” (“Cultural”). The Art Loss

Register (ALR) reports that “many items that were looted during the Second World War have only recently surfaced on the international market.” (“The Art”).

Despite the measures inspired by World War II, recent events of the Iraq conflict demonstrate the need for further improvement. In 2003, the National Museum of Iraq, in Baghdad, had been open to the public only six months when extensive looting began during the troubled period accompanying early US occupation of the city. The US military was subject to heavy criticism for its alleged failure to protect the museum. Following the looting, UNESCO encouraged US and British troops to take action to protect museums and archeological sites from further destruction. It should be noted that the museum was not the only target of looting; according to the BBC, “Shops, government offices, presidential palaces and even hospitals have all been looted” (“Looters”). Although some of the stolen artifacts have been repatriated, many still remain missing.

Unlike other areas of trafficking, where justice is complicated by ambiguous or contradictory definitions of what constitutes a crime and who is responsible for its prevention, policies on the protection of cultural property during periods of conflict are very explicit. Article 147 of Geneva Convention IV clearly describes criminal destruction of cultural property as “extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly” (“Convention (IV)”). Despite the clarity of this document, the protection of cultural property continues to be neglected. This is a situation in which there are already widely recognized standards for action and the international community should focus on enforcing these existing policies.

CURRENT STATUS

The INTERPOL Expert Group (IEG) on Stolen Cultural Objects held its fifth meeting in March 2008. The IEG remarked upon a “recent increase of armed robberies from museums, churches, public and private collections of works of art” (“Recommendations” 1). The IEG’s recommendations to the international community reflect recent trends in trafficking, addressing in particular on the role of the internet in modern crime. Online auction sites, like eBay, have greatly expanded and the scopes of such sites allow traffickers to sell stolen cultural objects in relative anonymity. Unlike most traditional auction houses, which can require purveyors to provide at least a minimal degree of provenance for listed items, online auction sites, due to sheer volume, if not negligence, largely do not regulate offers. In 2008, Switzerland, which has a reputation as “one of the world’s top four trade hubs for art objects,” began a new initiative to prevent illegally trafficking of cultural property on the Swiss eBay site. This action was a powerful step in Switzerland’s recent efforts to eliminate trafficking in cultural property, a drive that began in 2005, when it put into force a ban on illegal trafficking of cultural property (Geiser). Other European countries are expected to follow suit in implementing firmer requirements for online trading in suspected cultural property (Geiser).

The 2008-2009 UNESCO “Programme for the protection of cultural property and the fight against illicit trafficking” continues to seek international implementation of the CMPP. As of April 2009, there are 117 states party to the Convention. Belgium ratified the CMPP on 31 March 2009; they were the first state to become party to the convention in 2009 (“Cultural”).

Other goals of the UNESCO Programme include developing a more comprehensive and complete “World Heritage List,” continuing education efforts to expand the “network of partners,” improving protection for cultural property located in regions of conflict, and encouraging “sustainable tourism” that keeps cultural property safe while providing positive economic effects for local communities (“UNESCO” 36). The Programme also seeks to promote the implementation of the 1995 UNIDROIT Convention and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (“UNESCO” 37). Although the 2008-2009 UNESCO Programme identifies a number of goals for improving the protection of Cultural Objects, it does not describe specific methods of achieving these aims. This document can therefore be extremely helpful to the CCPCJ, which has the capacity to promote practical measures for addressing the areas identified by UNESCO.

In April 2007, approximately 3,600 stolen artifacts were discovered in the home of a private individual in Berwyn, Illinois. Authorities believe that the objects were looted from private collections and shipped to the Berwyn resident from Italy by his father. On 8 June 2009, the US FBI released details of their investigation into the case. They reported that 1,600 pieces have been identified and returned to Italy, but officials have been unable to positively identify the origin of the more than 2,000 remaining items. The incredible volume of illegally imported/exported goods involved in this case, relative to the number of people involved in their trafficking, illustrates the complexity of preventing trafficking in movable cultural property (Rice).

In 2006, 2007, and 2008, INTERPOL received reports of armed thefts of cultural objects. This disturbing new trend in trafficking was also remarked upon by the INTERPOL Expert Group (IEP) on Stolen Cultural Property in the Recommendations they published following their fifth meeting in March 2008. The IEP suggested that the INTERPOL secretariat “closely monitor the increasing use of violence in art crime” and proposed that the subject be further examined and discussed at a later date (“Recommendations” 2)

BLOC POSITIONS

Illicit trade in cultural objects is recognized as a form of transnational criminal activity that is a problem for countries regardless of hemisphere or continent. Because a state’s cultural resources are largely unrelated to its geographic location, it will generally not be productive to consider traditional regional blocs. The effects of trafficking on a country’s economy strongly influences the state’s policies on trade and perspective on trafficking. For the purposes of this committee, blocs will likely emerge based on each state’s experiences with the primary elements of trafficking.

Source Countries

Some states are known as “source countries,” meaning that a significant amount of cultural property is exported from these states. Countries that are considered a part of the “ancient world,” such as Greece, are unsurprising members of this bloc (Faro). However, according to the International Council of Museums, “With 866 works of art under international search as of 2003, Turkey was among the States reporting most thefts of cultural objects” (“The Illicit”). “Source countries” are not exclusively European. Asian China and African Mali both experience trouble with the extensive illicit excavation and looting of burial sites. In Central America, looters often target Mayan and Aztec artifacts, which are in high demand on the black market (“The Illicit”).

Source countries have the legal priority when it comes to the repatriation of cultural property, in that they have a widely recognized right to the return of stolen items. However, the difficulty that these countries face is proving that an object was, in fact, stolen. Current legal conventions set forth parameters for classifying cultural goods as stolen; such limitations, in effect, describe the burden of proof that falls on source countries when they demand the return of cultural objects. For example, the US McClain doctrine, which is the legal precedent based on the National Stolen Property Act, specifies that:

...in order for cultural property to be considered stolen, the source country must have a clear law in place vesting ownership of undiscovered antiquities in the state government. The disputed antiquities must also have been found within the modern political boundaries of the nation after the effective date of the national ownership law (Crumpton).

The last line of this excerpt is often a stumbling block in repatriation cases because stolen artifacts frequently do not appear on the market until years or decades after their removal and the discovery of illegal excavations is often likewise delayed. It is, therefore, nearly impossible for the source country to prove that the necessary laws were in place at the time of the objects’ removal. To protect their ownership rights and reduce the theft of cultural objects, major source countries, such as Greece, endeavor to regulate and monitor excavation projects within their boundaries. Greece limits each country to three excavation projects per year, per country, including ongoing digs, unless the project is a Greek-foreign partnership, known as a “synergasia.”

By keeping track of the excavations and their finds, they can be certain of when objects were excavated, should an artifact later appear on the black market (Faro).

Source countries tend to support the concept of “cultural nationalism,” a principle that explains the importance of cultural objects as part of a state’s national identity (Hoffman 15). Therefore, they support international legislation that protects the ownership rights of the country of origin. Countries in this bloc also seek aggressive customs regulations and export requirements to protect their cultural heritage, and repatriation policies that make it easier for them to reclaim stolen objects.

Market Countries

According to INTERPOL, the “two countries most affected” by the theft of cultural objects are France and Italy (“Stolen”). Both of these countries are centers for trade in cultural objects. Countries that are centers for trade in art and antiquities may be disinclined to enforce strict import/export legislation that would limit the financial benefits of brisk trade. Likewise, strictly regulating the trade of cultural items is less of a national priority for these states, which often consider the associated administration and manpower to be unnecessary and prohibitively expensive. For instance, New York is one of the top markets in the world for Art and Antiquities. Although the US was the first “Major Art-Market Country” to agree to the CMPP, they have not adhered entirely; the US does not enforce Article 10a, which requires antiquities dealers to maintain records of all goods that pass through their possession (“Cultural”). Switzerland also has a reputation as a “major center for the trade of art and antiquities illegally exported from other countries.” However, in 2003, Switzerland ratified the CMPP and has been applauded for Parliament’s efforts to implement all articles of the Convention, including Article 10a (“Cultural”).

The scattered distribution of “source” and “market countries” contributes to the current problem of preventing illegal imports and exports. In situations where a “source country” shares a border with a “market country,” conflicting economic and social priorities often lead to strained relations between the two states. The policies and recommendations produced by this committee must do more than protect cultural property; to ensure universal implementation, they must also balance the needs of these two blocs.

COMMITTEE MISSION

Trafficking in stolen cultural property is a crime affecting virtually every country in the world. The CCPWCNH identifies the need for “an effective system of collective protection of the cultural and natural heritage of outstanding universal value, organized on a permanent basis and in accordance with modern scientific methods.” (“Convention Concerning” 1). Despite common recognition of the universal scope of the problem, and the need for coordinated action, the international community has yet to establish universally recognized standards for defining and combating this form of illegal trade.

The role of legal advisor to the UN General Assembly vests this committee with a unique opportunity to influence the way that the countries of the world view their responsibilities as players in the international marketplace. The CCPCJ can promote international cooperation and ease tension among states by crafting a definitive framework the legal transfer of cultural property. As a policymaking body, this committee, acting with concern for international justice and in accordance with its mission to prevent transnational crime, faces the challenging task of streamlining existing conventions to produce a comprehensive plan for addressing the threat to cultural objects at each stage of the trafficking process. A likely starting point for the committee is developing an appropriate legal definition of protected cultural objects and clarifying the extent of national liability for illegally imported and exported goods.

Implementing and maintaining a comprehensive system for preventing trafficking in stolen cultural property is a project of tremendous magnitude. While primary focus of this committee is establishing fair and effective conventions aimed at reducing trafficking, destroying the black market for stolen cultural objects, and alleviating existing damages by the return of exported cultural property to its country of origin, delegates must consider the practical aspects of implementing their ideas.

WITNESS PROTECTION FOR CASES INVOLVING WAR CRIMES

TOPIC B

INTRODUCTION

Witness testimony is vital to ensuring justice. In cases involving war crimes, the secretive nature of the military groups committing the crimes makes witness testimony all the more important to the prosecution of individual offenders. Cases involving war crimes rely on the vital testimony of witnesses who have first-hand experience with the policies, practices, and command structures of groups that condone and encourage criminal actions. Unfortunately, witnesses are often extremely hesitant to volunteer information because they fear retribution. The past 20 years have seen rapid development in the area of witness protection as countries continue to establish and expand national programs. Witness protection programs provide safety and support for witnesses so they can participate fully and honestly in legal proceedings.

However, an astonishing number of states still do not offer any formal or dependable protection to witnesses. The cost of implementing and managing an effective program is a major obstacle for many countries. One of the oldest, largest, and most well-respected national witness protection programs is the United States Marshals Witness Security Program (WITSEC), which was established in the 1970s and which requires approximately \$50 million a year to sustain (Goodman 2). In addition to extensive funding, developing a national witness protection program requires specialized knowledge and technology that is not accessible to all countries. The problems associated with witness protection are compounded, for cases involving war crimes, by the commonly transnational nature of the crimes, and the need for international communication to organize safe haven. The intrinsic complexity of maintaining this type of program continues to discourage not only poor developing countries, but also developed countries such as Japan and Switzerland, both of which have yet to establish comprehensive national witness protection programs (“Reports” 132).

Witnesses and their families are subject to mental and physical dangers. Psychological attacks and intimidation in the form of threats directed to witnesses or their families are common and often prompt individuals to seek protection. Physical attacks may follow these threats, which often do not end with the conclusion of a trial. Countries must do more than provide short-term protection to witnesses during a trial. A comprehensive witness protection program needs to manage the multidimensional concerns of witnesses at each stage in the pre-trial and trial proceedings, as well as following the trial’s resolution. In cases specifically involving war crimes, witness protection can be most effectively addressed through international cooperation, but sustained transnational communication is difficult and often subject to shifts in the political relationships among countries. States have the ability to support one another in a variety of ways, ranging from providing witnesses with refuge outside their country of origin, to serving as advisors to countries that are in the process of developing their own national witness protection program.

Because witness protection is a relatively new concept in criminal justice, the CCPCJ has a unique opportunity to pursue its mission of “improving the efficiency and fairness of criminal justice administration systems” in an area of international cooperation that is still in the early stages of its development. The recommendations of the CCPCJ have the potential to be translated into immediate action that will establish the precedent for worldwide collaboration on witness protection. It is, therefore, critical that the resolutions produced by this committee reflect balanced concern for the safety of witnesses, the fair treatment of the accused, and the rights of the public.

HISTORY AND DESCRIPTION OF THE ISSUE

Witness Concerns

Witnesses to war crimes are threatened by the same dangers as witnesses involved in any criminal case. However, the complex nature of war crime trials demands a unique approach to addressing the concerns of witnesses, whose circumstances may be vastly different from those of witnesses to domestic crimes and those

unrelated to conflict. Universally, witnesses are often reluctant to volunteer their testimony, out of fear that by revealing what they know, they will put themselves and their loved ones at risk. In their *Consolidated Response, on Witness Protection in Countries Emerging from Conflict*, the International Network to Promote the Rule of Law (INTERPROL) identified three general categories of witness concerns—concern for loss of life, loss of livelihood, and loss of social standing (Toomey 1). Witness protection policies must, therefore, be designed to address the physical, financial, and social concerns of witnesses. The most immediate concern is for physical safety. One of the most common elements of any witness protection program is relocation; the witness is moved to a safe and secret location so that hostile parties cannot reach them. In cases involving war crimes, relocation must often take place on a much larger scale. Witnesses offering testimony against ex-military leaders can become the target of entire military forces that have remained openly or secretly active, despite the detention of their leader. Because these groups can cover a vast amount of territory, with operatives spread out across entire countries and regions, it is often necessary for war crime witnesses and their families to flee their home country and remain abroad in the time leading up to the trial. This is particularly true of geographically small countries where there simply is not sufficient territory to ensure witness safety (“Witness Protection in Small”).

With regard to physical safety, witnesses tend to be equally, if not more, concerned about the wellbeing of family members. Concern for their family’s safety not only increases witnesses’ reluctance to step forward initially, it is also a leading reason why witnesses may later refuse to go through with their testimony. For example, in the war crimes case of the Bosnian Serb military commander, General Ratko Mladic, a key witness for the prosecution threatened to repeal his offer to testify after his family was placed in a refugee compound without sufficient protection from the Bosnian government and without intervention by the UN (O’Conner). The challenge in providing relocation and protection for a witness’s family, is determining a reasonable limit both for the services and the number of people covered. While the US, with its highly developed program and large budget, reports having accepted responsibility for as many as 20 family members of a single witness, this is outside the range of financial possibility for most states (Goodman).

In addition to fears about the safety of family members, witnesses face related concerns about how to financially provide for their families while they are in hiding. There is no way to predict how long a witness will need to remain in hiding, and depending on the design of the program, this may mean that the witness will be unable to hold down a job for an indefinite period of time. Support for witnesses’ families is critical to securing witness cooperation and should be a standard feature in all witness protection programs. One program that has taken steps to address this need is the Witness and Victims Support Section (WVSS) of the International Criminal Tribunal for Rwanda (ICTR), which aims to “develop short and long term plans for the protection of witnesses who have testified before the Tribunal and who fear a threat to their life, property or family...” (“Witness Support”). Additionally, the WVSS specifically identifies certain services for family members, including the provision of “childcare during the absence of the witness from the country of residence” and the “hiring of guards for security and maintenance of the witnesses’ farms” (“Witness Support”). The ICTR is a valuable example for the CCPCJ to consider as it works to identify universal trends in the needs of witnesses and develop recommendations on how the global community can consistently meet these needs through international cooperation.

Witness concerns about losing social status are particularly salient for cases involving war crimes. In some cases, it is a matter of fear; members of their community may reject witnesses out of concern that they will suffer for their association with the witness. However, in other situations, the community has come to genuinely support the dangerous and corrupt government or military officials on trial. In these cases, stepping forward as a witness is seen as a betrayal of the state (“Witness Protection Big?”). Because of the social stigma that this mentality attaches to serving as a witness in a war crimes case, witnesses may be at risk of retribution, not only from residual military groups, but also from the population at large.

Securing Witnesses

The immediate concern when organizing witness testimony is ensuring that the individuals will be protected from hostile parties while simultaneously remaining available for the trial and any pretrial proceedings.

Because witness protection is new to international criminal justice, it was not a consideration while countries were developing regulations affecting the movement of individuals residing outside of their country of origin. Attempting to work around existing policies slows the process of securing witnesses and can lead to the ultimate failure of witness protection efforts. Immigration laws, in particular, tend to complicate this process; there is often a danger that potential witnesses will be deported before they have the opportunity to testify (Verveulen 27). Similarly, when attempting to secure criminals that have fled to a foreign country, the extradition policies of that country may make it difficult for prosecutors to gain access to the potential witnesses, particularly in the case of criminal witnesses. The “regional aspect” of cases involving war crimes makes international communication and information sharing vital in these types of cases (“National” 29). The term “regional aspect” refers to how witnesses, suspects, evidence, and the sites where the crimes were committed tend to be spread across several states. International cooperation and clear policies on the transport and exchange of witnesses need to be established to prevent the loss of valuable witnesses.

In situations where the accused is not a citizen of the country in which their alleged crimes were committed, or if they hold dual citizenship with another country, the prosecution of the case may be transferred to the defendant’s country of origin. (“National” 30). The positive effect of this practice is that it reduces the volume of war crimes cases waiting on the courts of a recovering country. However, the procedure can also complicate witness testimony and make it difficult to provide reliable security. Regional judicial communication is critical during transfers and must continue following the initial transfer to promote continuity of protection and allow updates on the discovery of new evidence and witnesses. Maintaining unbroken support for witnesses is a definite concern when cases are transferred between countries. The more frequently that sensitive information about witnesses’ lives and identities is transferred, the greater the possibility that dangerous persons will gain access to it. The risk of protected personal information being wrongly disclosed increases in situations where witnesses are to provide testimony for multiple cases (“National” 32). From a safety perspective, allowing witnesses to testify via “technical means for transferring image and sound” is vastly superior to physically transporting witnesses across international boundaries when the location of the trial is transferred to another country (“Law” 2). However, technology-aided testimony can create new security problems, particularly when courts lack the knowledge and resources necessary to manage its use. Machinery malfunctions and operator errors can result in recorded testimony, intended only for the judge and the defense, to be accidentally broadcast to the public gallery. Even the International Criminal Court (ICC), with to the full facilities of The Hague at its disposal, has had multiple instances of technological error during the recent war crime trial of Thomas Lubanga Dyllo (Easterday).

The structure of the judicial and law enforcement systems within a state is a major deciding factor in the success or failure of witness protection efforts. Most witness protection programs are under the jurisdiction of the country’s national government. However, in some countries, lower courts also provide for witness protection. In the US, for example, numerous states have their own provisions for witness protection, which supplement the national Witness Security Program (“USA”). Although the multi-tiered witness protection program has been highly effective in the US, judicial systems involving multiple courts, such as the many courts of Bosnia and Herzegovina, can be problematic when not all of the courts offer witness support. Additionally, insufficient funding, inadequate technology, and a lack of specialized knowledge can contribute to the failure or neglect of witness protection procedures, particularly in smaller, district or local courts (Easterday).

Because many cases involving war crimes come from regions where the judicial system is temporary and run by a provisional or transitional government or is in the process of being rebuilt, the amount of time before a case goes to trial can be troublingly long. War crimes tribunals are forced to prioritize among the prodigious number of cases have a nature to be very lengthy and cases may remain unresolved for over a decade. In Bosnia and Herzegovina for example, the 2008 War Crimes Strategy sets goals of prosecuting “the most complex and top priority war crimes cases” within seven years and all other war crimes cases within 15 years (“War Crimes Strategy”). The extreme length of the pre-trial period and the extended duration of war crime tribunals, themselves, make witness protection difficult to maintain.

Witnesses Involved in Crime

In a large percentage of criminal cases, witnesses may have been involved in the commission of crimes but then made the decision to cooperate with law enforcement and provide testimony for the prosecution. This trend is particularly common in war crimes trials, which often involve witnesses who are ex-soldiers and ex-child soldiers (Vermeulen 254). Witnesses may not want to openly admit to their participation in the crime and therefore may be afraid to come forward for fear of revealing their involvement in the crimes of the case. Similarly, witnesses may have been involved in criminal activities that are unrelated to the case at hand but that they fear will be revealed in the course of examination. The testimony of these witnesses can be just as valuable to the prosecution's case; hence, it is vital that they be protected from their former associates in crime and that they be encouraged to fully disclose what they know without censoring any information.

Another problem with criminal witnesses is that they are prone to continued criminal behavior, even while they are in hiding and receiving protective services. The US Marshals Witness Security Program reports that "nearly one in five protected witnesses have been charged with new crimes" (Goodman 2). This phenomenon can hinder efforts to relocate witnesses because countries are hesitant to accept the risks and responsibilities associated with welcoming ex-criminals into their territory.

International Cooperation

The transnational nature of war crimes and the common need for a multinational approach to witness protection make international cooperation vital. Some countries have been highly effective in organizing cooperative agreements with other countries regarding witness protection. Australia is a good example of how an individual country can support the global community in witness protection efforts. The Australian witness protection program is notoriously receptive to international witnesses seeking protection within their borders. Other countries have set up regional arrangements with nearby countries to provide protection for one another's witnesses. Lithuania was the first European country to build a multilateral treaty on witness protection (Vermeulen 15). The treaty was established in 1995 among the Baltic republics of Lithuania, Latvia, and Estonia as part of a regional response to the rise in human trafficking and growing sex industry. This agreement to accept one another's witnesses helps prevent re-victimization by allowing threatened persons to be relocated outside of their country of origin ("Witness Protection in Small").

In addition to providing physical protection and safe refuge for foreign witnesses, countries can contribute to international witness protection by sharing funds and information, as the two commonly cited reasons for why not all states have national witness protection programs are a shortage of funding and a lack of technical knowledge. Financial difficulty can cause witness protection programs to break down, leaving witnesses with unreliable protection. For example, in 1998, Honduras suspended its existing witness protection program due to a "lack of financial resources." Although the Honduran government enacted legislation to provide temporary protection to witnesses, these measures were largely ineffective ("USA"). The international community must be sensitive to changes in a country's need for support; a situation like that of Honduras would be an ideal time for other countries to offer aid. Providing assistance to countries with failing witness protection systems is not only a moral or humane act of goodwill, it is a necessary element of protecting one's own territory. When the witness protection program of one country fails, witnesses who were previously under program's protection may attempt to flee to neighboring countries in violation of immigration and other policies.

One-on-one information sharing can be an opportunity for mutual benefit as countries share and exchange their expertise on different areas of law enforcement and criminal justice. For example, Israel has been gathering information about witness protection programs since 2002 when an establishment committee was formed to develop plans for an Israeli witness protection program. In 2003, Israel approached Latvia for consultation and the guidance that Latvia provided helped the Israeli establishment committee put together its 2004 report ("The Israel"). In exchange, the Israeli police shared information with the Latvia's interior ministry about how Israel investigates bombings, which is ordinarily heavily protected by Israeli intelligence to preserve domestic security ("Witness Protection in Small"). Slightly larger forums, such as regional gathering

are also good opportunities for countries to share ideas and information about witness protection. At the 138th International Senior Seminar of the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), representatives from Japan, Georgia, Nepal, and Hong Kong shared information about their respective countries' witness protection programs. The report on this seminar also contains a compilation of the recommendations of the UNAFEI on how to improve witness protection, reduce corruption, and increase international cooperation ("Reports" 132). Suggestions from the discussion group on corruption and witness protection included (1) encouraging witnesses to come forward by allowing them immunity from prosecution, (2) accepting anonymous reports, and (3) implementing public education initiatives to teach potential witnesses how they can contact law enforcement ("Reports" 131).

Countries Emerging from Conflict

Beyond the obstacles that all countries face as they design a national witness protection program, countries just emerging from conflict are faced with additional challenges to establishing a witness protection program. These are also the countries that are most likely to be dealing with numerous cases of alleged war crimes. A persistent and fundamental problem in recovering regions is the general lack of centralized administrative power (Toomey). It may be a long time before a stable national government can be established, though countries emerging from conflict often receive support international support in the form of peacekeeping or rule of law missions.

The United Nations Interim Administration Mission in Kosovo (UNMIK), implemented in June 1999, was established to help govern the region during recovery and after an initially strong presence, UNMIK moved into more of an advisory role as Kosovo's Provisional Institutions of Self Government took over. Although UNMIK was instrumental in building the capacity of a new Kosovo government, the mission was criticized for how it handled cases of suspected war crimes (Vucheva). Until 2008, witness protection was initially a seriously neglected and underfunded area of law enforcement in Kosovo. On 9 December 2008, the European Union Rule of Law Mission in Kosovo (EULEX) replaced the UNMIK. As part of the transition from the law enforcement programs of UNMIK to those of EULEX, the EULEX Witness Security Program replaced the UNMIK Witness Protection Program. EULEX inherited files on over 1,187 "acts of suspected war crimes" that the UNMIK considered impossible to prosecute due to a lack of evidence. Witness protection for Kosovo is complicated by their unique legal status. Because the region is not considered an official state, most countries are reluctant to accept responsibility for witnesses from a region with such legal ambiguity ("Kosovo"). Collaboration with regions of uncertain political standing is a subject for this committee to consider in its recommendations to the General Assembly.

Missions like UNMIK and EULEX are temporary, and countries emerging from conflict should be working continuously on building their own law enforcement and judicial systems. Once these structures are in place, the challenge for recovering countries then becomes the acute wariness of witnesses, who will be unlikely to come forward until the newly established government and legal systems gain the trust and respect of the public. Building the necessary relationship with the country's population is particularly difficult in cases of domestic conflicts because members of different factions, having just concluded warring with one another, are unlikely to be trusting. A related concern is that judges, officers, or prosecutors will be biased in favor of one side of the conflict (Toomey 1). In order to protect justice, it is best that a third party step in to monitor proceedings. Other measures that may help the process include rebuilding facilities including jails and courthouses, and implementing "anti-corruption strategies" to protect the reputation of officials handling public funds (Toomey 1).

Balancing Witness Protection with the Rights of the Defendant, the Public, and the Press

In cases involving war crimes, witnesses may represent a much larger civilian population that suffered from the crimes of the accused. The public is, therefore, very interested in the progress of such trials, which can lead to extensive press coverage of the proceedings. Additionally, Article 64 of the Rome Statute, a comprehensive document that is the current international standard for legal proceedings, requires that all trials "shall be held in public" (A/CONF.183/9). Unfortunately, extensive public exposure can make it

difficult to protect witnesses, who may become more of a target when their image, testimony, and identity are broadcast. However, disguising witnesses during a trial has the potential to compromise the rights of the defendant or otherwise bias the case.

To protect the identity of witnesses, their names, images, and voices are often obscured or withheld from the public through the use of pseudonyms and video recorded testimony. Witnesses who testify in the courtroom may be obstructed from public view by a witness box (“Witness Support”). These measures prevent the press from broadcasting information about witnesses that could make them easier targets for the defendant’s supporters. However, a defendant has the right to know the case against them and the identities of their accusers. This means that, while it is sometimes acceptable to restrict the public’s access to sensitive information, the defense must be provided with a complete and undisguised list of witnesses. Despite protective measures, witness identities are occasionally leaked to the public through press coverage. For example, during the trial of Slobodan Milosevic, a Serbian newspaper published the identity of “K5,” a protected witness for the prosecution. Interestingly, the newspaper that reported the witness’s name admitted that it was aware, prior to publication that the information was restricted and potentially damaging if released. The International Tribunal for the Protection of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991 called for the author of the article and officials of the newspaper, who refused to reveal their source for the information, to be held in contempt of court (IT 02-54-T).

The public’s “right to know” is a complex principle that can serve a valuable role in ensuring good government—particularly in regions emerging from conflict, where re-establishing governmental and judicial structures also means rebuilding the public’s trust (“The Public” 6). However, the reverse is also true; when the public or the defense perceives that their right to a public trial is being violated by the excessive restriction of witness information, trust rapidly breaks down. For example, the defendant’s right to a public trial has become a point of contention in the trial of Thomas Lubanga Dyilo (Lubanga). The defense is frustrated with the number of protected witnesses whose identities are concealed from the public; the trial does, in fact, have a higher proportion of anonymous witnesses than past tribunals. However, the prosecution has argued that concealing witnesses’ names is not obstructive to justice because their testimony is still available for public review. The Lubanga trial has also allowed the use of “closed sessions,” during which, the court adjourns to a private room to avoid public audience (Easterday). During periods of closed testimony, press coverage is completely interrupted, much to the frustration of Congolese citizens, who are, understandably, deeply interested in the development and outcome of the case. Judges can order that transcripts of these sessions later be made accessible to the public but the testimony may contain redactions to prevent the distribution of personally identifying information about witnesses (“In the Trial”).

Ultimately, most elements of witness protection during a trial are at the discretion of the court. The prosecution submits their requests for protective measures to the judge, who must balance concern for the safety of witnesses with respect for the rights of the defendant and consideration for the needs. They must also respect the dictates of applicable legal doctrines, such as the Rome Statute.

CURRENT STATUS

Lubanga Trial

The trial of Thomas Lubanga Dyilo, before the International Criminal Court (ICC), opened 26 January 2009. This is a landmark ICC case for a number of reasons and the way that the court handles considerations like witness protection will set a powerful legal precedent. Lubanga’s case is the “first test of formal victim participation in an international criminal trial” and, already, recent developments in the trial proceedings raise a number of issues related to witness protection (“Coalition”). The first issue relates to the nature of the crime for which Lubanga is under investigation. Lubanga is charged with the war crimes of conscripting and enlisting children under the age of 15; this means that many of the witnesses are from among the ranks of these child soldiers. Children can be extremely sensitive to the influence of authority figures and highly responsive to suggestion—a disposition was part of what made them ideal targets for military recruitment and

continues to put them at risk as witnesses (E/CN.15/2004/16 23). The unique protection-related needs of child witnesses were made apparent by an incident involving the first witness for the prosecution. Within hours of bearing evidence, the first witness in the Lubanga trial, a former child soldier, retracted his statements announcing that a humanitarian aid group had coached his testimony (Bouwknegt).

Bosnia and Herzegovina

The situation in Bosnia and Herzegovina (BiH) demonstrates how the organizational framework of a state's legal system affects the efficiency and effectiveness of witness protection efforts. The BiH Ministry of Justice is supported by a complicated court system; in addition to the national Court of Bosnia and Herzegovina, there are also regional and cantonal courts, which operate largely independent of the primary Court. In an effort to improve efficiency and shorten waiting periods, cases are often transferred from national jurisdiction to one of the regional courts. Unfortunately, the lack of communication and cooperation among the regions can result in serious oversights that put witnesses in danger. This risk is elevated by the fact that despite the regional courts' independence from the national court, the Witness Support Section (WSS) of the national court is virtually the only source of witness protection in the justice system; regional and cantonal courts do not have legal provisions or specialized police to ensure witness protection ("National" 32). Although the WSS handles security for witnesses at the state level, when a case is transferred to one of the other courts, witnesses may lose this protection. In July 2008, the Law on Witness Protection Program was proposed. This law proposes a number of improvements to witness protection in BiH, including the establishment of regional offices to support witnesses and victims ("National" 34).

Cooperation in Witness Protection

On 30 October 2008, the 3rd International Witness Protection Symposium opened in Lyon, France. The theme for the symposium was cooperation between judicial authorities and law enforcement agents (Noble). In his opening speech, INTERPOL Secretary General, Ronald K. Noble, stressed the importance of communication between national police forces and noted the value of information sharing between countries.

On 3 April 2008, the Israeli legislature approved the first reading of a bill designed to establish a more comprehensive witness protection program. The development of this new system has been a model example of the types of cooperation advocated by Secretary General Noble. On the national level, designing the proposed Israel Witness Protection Authority (IWPA) has been a collaborative project involving the participation of the Ministry of Public Security, the State Prosecutor's Office, the Israel Police and the Ministry of Finance ("The Israel"). Each of these contributors plays an important role in ensuring that the program is both effective and realistic. Israel's work on this program has also taken advantage of the knowledge and experiences of other countries. Members of the IWPA establishing committee have met with representatives from a number of countries, including the US and Latvia, to discuss witness protection services and have incorporated elements of these countries' programs into the plan for the IWPA. The CCPCJ should examine Israel's progress, which confirms the importance of cooperation on both the national and global levels, and consider means for encouraging its continuation.

BLOC POSITIONS

The European Union

Member States of the European Union (EU) have existing agreements on many of the topics affecting witness relocation, such as extradition and immigration, which helps streamline witness protection among these countries. The EU integrated border management strategy is designed to help regulate shared international borders and prevent illegal immigration and trafficking. The increased border surveillance resulting from this initiative also makes it more difficult for witnesses to flee to other countries without government knowledge (Carrera 6). However, Member States of the EU are generally very receptive to providing protection for witnesses of fellow member states and the 2007 meeting of the EU European Police Office (EUROPOL) conference on witness protection focused on the international relocation of protected

witnesses (“International Cooperation”). The EU also supports the work of other countries in the area of witness protection through capacity-building projects. For example, the EU co-funded a series of specialized training courses for the Victim and Witness Protection program in Cambodia (“Press Release”).

The US and Canada

Insufficient funding for manpower and resources continues to be a universal threat to national witness protection programs. Even the United States, with one of the most extensive national witness protection programs in the world, is experiencing concern about the declines in funding and marshal appointments for its WITSEC program (Goodman 2). The budget shortages of one country’s witness protection system can result in dangerous repercussions for other countries’ programs. In addition to the obvious and serious concern that declining programs can result in neglected witnesses who may then cause problems for other countries, funding shortages may reduce a state’s ability to participate in international cooperative conferences, etc., which means that other countries will lose access to their knowledge and experience. The US has, historically, been highly involved in aiding the development of other countries’ witness protection programs. Representatives of the US Marshals Witness Security Program are present at virtually every international meeting on witness protection. The US was a pioneer in witness protection and has strongly influenced numerous countries that now have strong national systems, such as Canada and Australia.

South America

A major obstacle to effective witness protection efforts in South American countries is the frequent granting of “blanket amnesties.” These mass pardons are meant to smooth national recovery from conflicts but they are widely opposed by the international community because they effectively waive responsibility for perpetrators of war crimes (Esposito). By declaring human rights offenders “not-guilty,” this practice limits victim and witness access to justice and protection.

Asia

The current trend in witness protection in Asia is a focus on witness protection programs to support anti-corruption efforts. Many Asian countries lack both national and local witness protection programs. Japan, for instance, reports that there is “no legal provision for a witness protection programme.” Persons who choose to testify do so largely at their own risk, though the court can order that their identity be kept confidential. China has recently addressed witness protection; on 9 February 2000, China enacted the Witness Protection Act, which protects testifying witnesses to crime and persons in danger due to the witness’s testimony.

Africa

Africa is currently faced with a serious problem with internally displaced persons (IDPs), the vast majority of which are victims of war crimes and human rights violations. This situation is primarily a result of the numerous recent and ongoing civil wars in African states. The efforts of national governments to provide support and protection for IDPs have been largely ineffective. Chad, for instance, implemented a national committee in 2007 dedicated to aiding IDPs; however, the program was underfunded, understaffed, and largely ineffective, leading to UN intervention in 2008 (“Internal” 39). Despite return and reintegration programs, internally displaced persons tend to be highly distrusting of new governments and courts. In Rwanda, many refugees are concerned with the fairness of the Rwandan Gacaca courts. However, Rwanda’s efforts to encourage the return of refugees then support and protect them as a “vulnerable group” have produced very promising results (“Internal” 50).

Middle East

Witness protection programs in Middle Eastern countries are among the most recent developments in the field. Countries, which through the turn of the century were still without any form of witness protection structure, have made substantial progress toward developing these necessary systems. For example, as of June

2001, the Iraq National Congress confirmed that there were no national witness protection programs in existence (“Iraq”). Then, in 2007, with support from the US Army Corps of Engineers, Iraq undertook the construction of a courthouse and witness protection annex in Basrah, Iraq (Al Bahrani 1). However, some countries are hesitant to be overconfident or raise false hopes; despite rumors in March 2009 that international agreements related to witness protection were imminent, representatives of the Special Tribunal for Lebanon (STL) have continued to be intentionally vague regarding their progress on developing a witness protection program for the court (“Tribunal”).

COMMITTEE MISSION

Among the goals of the CCPCJ is “improving the efficiency and fairness of the criminal justice administration systems.” Witness protection programs are critical to the success of this mission for a number of reasons. First, witness testimony is an essential component of the prosecution’s case; it is critical that witnesses must feel safe enough to disclose all that they know. Furthermore, the CCPCJ’s devotion to fairness and justice applies to both victims and defendants; the committee is, therefore, interested in ensuring that international policies balance protective measures for witnesses with the rights of the accused. Ultimately, the goal of the CCPCJ is to develop strategies for improving international criminal justice, including the treatment of witnesses, through greater international cooperation. Because witness protection is still a new and rapidly growing field, this committee is currently met with an immediate opportunity to shape the future of international criminal justice.

Witness protection is often hindered by conflicting national policies. Immigration and deportation laws in particular have the potential to put witnesses at risk. Countries need to recognize the unique situation of witnesses, whose illegal residence within their boundaries may be made necessary by circumstances in their country of origin. The international community needs to develop standardized procedures on granting exceptions to these individuals that will allow them to both stay safe and to participate in the trial and any necessary pre-trial activities. These procedures must be designed to address the physical, emotional, and financial concerns of the witnesses and those close to them.

War crimes trials are most prevalent in countries just emerging from conflict. These countries need the support of the international community as they rebuild, particularly as they re-establish legal systems. The committee should, therefore, also consider establishing a convention on best practices for providing support to recovering countries as they address cases involving war crimes.

Witness protection is a multi-faceted legal issue that is particularly complicated in cases involving war crimes. National witness protection programs have a number of basic requirements, including sufficient funding, competent administration, and sufficient territory in which to operate. These needs can be wholly met through international collaboration. The CCPCJ as a facilitator of international cooperation, should seek ways to encourage states to support one another in their witness protection efforts. As this committee develops recommendations that address the many necessary components of global witness protection and incorporates these suggestions into workable resolutions, delegates must remain cognizant of the diverse needs and limitations of countries with different social and financial climates.

RESEARCH AND PREPARATION QUESTIONS

As mentioned in the Note on Research and Preparation, it is imperative that delegates answer each of these questions in their position papers.

TOPIC A

1. How effective are existing conventions on the prevention of trafficking in stolen cultural property in your country? How could they be altered to be more appealing/applicable?
2. How should responsibility be divided between importing and exporting parties? What are reasonable repercussions for each side of the transfer?
3. What can be done to encourage the responsible and sustainable tourism of regions that have cultural and archaeological significance?
4. How can the CCPCJ encourage and facilitate the restoration of trafficked cultural objects to their country of origin?
5. What more can be done to educate the public about the importance of protecting cultural property? Who should be responsible for efforts?
6. How can countries be convinced to keep more accurate records of trafficking in cultural property? What is the benefit of tracking incidents of this crime? How should the information be used?
7. How aggressively must a national government work to recover cultural objects reportedly imported by its citizens?

TOPIC B

1. How should international policies on immigration be adjusted to accommodate witnesses seeking safe haven in foreign countries?
2. What can be done to encourage international cooperation and information sharing regarding witness protection?
3. What is the proper role of the international community in the judicial systems of post-conflict regions? How involved should other countries become in these regions' witness protection efforts?
4. What regional groups exist to support one another's witness protection programs and how effective are they?
5. How should witness protection be organized on the national level? Should there be a single national system, or should regional courts also maintain witness protection programs?
6. How can states ensure that the rights of defendants are not jeopardized by witness protection measures?
7. What are the unique components of witness protection for cases involving war crimes? What makes it different from witness protection for other transgressions?

IMPORTANT DOCUMENTS

The following documents have been hand-selected by Directors to further aid in delegate preparation. Please make a concerted effort to read and analyze these documents prior to the conference.

TOPIC A

“Convention Concerning the Protection of the World Cultural and Natural Heritage.” 16 Nov. 1972.
<<http://law-ref.org/HERITAGE/preamble1.html>>.

While the majority of legislation related to trafficking in cultural property focuses on movable cultural property, this Convention deals primarily with immovable cultural property. Article 5 identifies five measures that every nation should take to protect its cultural heritage and Article 6 defines the responsibilities of the member states to one another. Articles 8-11 are helpful for understanding the intended role and operating procedures of the World Heritage Committee.

“Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.” 14 Nov. 2009. <http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html>.

The list of “Declarations and Reservations” by States Parties, located at the end of this document, will be a particularly helpful resource for understanding individual countries’ positions. The comments often cite specific national policies that would be in conflict with the Convention, and may suggest the country’s general attitude and level of responsiveness toward trafficking of cultural property.

“Convention on the Protection of Cultural Property in the Event of Armed Conflict.” 14 May 1954.
<<http://culturalheritage.state.gov/hague.html>>.

The introduction to this Convention, addressed to “The High Contracting Parties,” concisely explains the importance of protecting cultural property. Article five addresses the obligation of an occupying force to protect cultural property during times of conflict. This article is, therefore, helpful for understanding situations such as the recent lootings of the Iraqi museums.

“UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.” 24 June 1995.
<<http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.htm>>.

The goal of this agreement is to facilitate the return of illegally exported cultural objects. The Article four explains procedures for the return of cultural objects and article five deals with illegally exported cultural objects. Other articles clarify the rights and responsibilities of both the possessor state and the state of rightful ownership.

TOPIC B

E/CN.15/2004/16. Commission on Crime Prevention and Criminal Justice: Report on the Thirteenth Session. 11-20 May 2004.

Draft Resolution IV of this report is the CCPCJ’s “Guidelines for child victims and witnesses of crime.” This draft resolution identifies the special needs of child witnesses, references a number of other documents related to their unique role, and advises of the need to develop guidelines on their treatment/protection.

“National War Crimes Strategy.” Rule of Law in Armed Conflicts Project. 18 December 2008. 20 July 2009.
<<http://74.125.93.132/search?q=cache:FygmhTP2vXYJ:www.adh-geneva.ch/RULAC/news/War-Crimes-Strategy-f-18-12-08.pdf+regional+witness+protection+war+crime&cd=4&hl=en&ct=clnk&gl=us&client=firefox-a>>.

This document provides an extensive report on the witness protection structures in Bosnia and Herzegovina. It identifies the many shortcomings of the current program and proposes solutions for them. Delegates will find this document extremely helpful as they consider what should be included in the committee’s recommendations to the General Assembly.

“Witness Protection (Western Australia) Act 1996.” Western Australian Consolidated Acts. 28 June 1996. 19

July 2009. <http://bar.austlii.edu.au/au/legis/wa/consol_act/wpaa1996438/>.
This act provides for the Australian witness protection program. The document explains details of the benefits for participants in the program and defines the criteria for involvement. The Australian witness protection program is notable for its acceptance of non-citizens.

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COMMITTEE HISTORY

“The Commission on Crime Prevention and Criminal Justice.” United Nations Office on Drugs and Crime. 4 July 2009. <<http://www.unodc.org/unodc/en/commissions/CCPCJ/index.html>>.

This website describes the history and role of the CCPCJ. It explains the relationship between the CCPCJ and a number of smaller bodies/programs such as the CPCJPN.

E/CN.15/2009/1. “Provisional agenda, annotations and proposed organization of work.” 2 March 2009.

This document was prepared before the 18th session of the CCPCJ. It was designed for perusal by national representatives prior to the opening of the session as a brief taste of what to expect.

E/CN.15/2009/20. “Report of the Commission on Crime Prevention and Criminal Justice on its eighteenth session.” 16-24 April 2009.

This is the official report on the 18th annual meeting of the CCPCJ. The document contains copies of the draft resolutions produced by the meeting.

DPI/1642. “The United Nations Crime Prevention and Criminal Justice Programme” April 1995.

<<http://www.un.org/ecosocdev/geninfo/crime/dpi1642e.htm>>.

Published by the United Nations Department of Public Information, this website summarizes the establishment of the CCPCJ. It also explains the Crime Prevention and Criminal Justice.

TOPIC A

UN Sources

E/CN.15/2004/10. “Report of the Secretary-General on prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property.” 17 Mar. 2004.

This report lists a number of documents and conventions related to trafficking in cultural property. It also explains some of the negative effects of the crime.

E/CN.15/2008/22. “Commission on Crime Prevention and Criminal Justice: Report on the Seventeenth Session.” 14-18 Apr. 2008.

A report on the seventeenth session of the CCPCJ. This document contains a copy of “Draft resolution I: Protection against trafficking in cultural property.” Within the resolution, the CCPCJ explains the importance of preventing trafficking, summarizes recent efforts, and urges Member States to “continue to strengthen international cooperation” to reduce trade in stolen and illegally exported cultural objects.

E/CN.15/2004/16. “Commission on Crime Prevention and Criminal Justice: Report on the Thirteenth Session.” 11-20 May 2004.

A report on the thirteenth session of the CCPCJ. The report praises education initiatives, requests further discussion of trafficking at the fifteenth session, and urges states to ratify the CMPP.

Calvani, Sandro. “Communication and Crime Prevention.” Master in Communication for International Relations. University of Languages and Communication, Milan. 25 Mar. 2009. Speech.

“Convention (IV) relative to the Protection of Civilian Persons in Time of War.” 12 August 1949.

<<http://www.unhcr.ch/html/menu3/b/92.htm>>.

This document relates not only to the physical protection of civilians but also to the protection of civilian and national property, including cultural property. Article 147 of this document defines circumstances in which the destruction or theft of property constitutes a war crime.

“Convention Concerning the Protection of the World Cultural and Natural Heritage.” 16 Nov. 1972.
<<http://law-ref.org/HERITAGE/preamble1.html>>.

While the majority of legislation related to trafficking in cultural property focuses on movable cultural property, this Convention deals primarily with immovable cultural property. Article 5 identifies five measures that every nation should take to protect its cultural heritage and Article 6 defines the responsibilities of the member states to one another. Articles 8-11 are helpful for understanding the intended role and operating procedures of the World Heritage Committee.

“Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property.” 14 Nov. 2009. <http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html>.

The list of “Declarations and Reservations” by States Parties, located at the end of this document, will be a particularly helpful resource for understanding individual countries’ positions. The comments often cite specific national policies that would be in conflict with the Convention, and may suggest the country’s general attitude and level of responsiveness toward trafficking of cultural property.

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The introduction to this Convention, addressed to “The High Contracting Parties,” concisely explains the importance of protecting cultural property. Article five addresses the obligation of an occupying force to protect cultural property during times of conflict. This article is, therefore, helpful for understanding situations such as the recent lootings of the Iraqi museums.

“The Commission on Crime Prevention and Criminal Justice.” UNODC: United Nations Office on Drugs and Crime. 4 July 2009. <<http://www.unodc.org/unodc/en/commissions/CCPCJ/index.html>>.

This website explains the history and mission of the CCPCJ. A basic understanding of the CCPCJ’s mandated priority areas and role within the international community is essential.

UNESCO 34 C/5. “2008-2009 UNESCO Programme for the protection of cultural property and the fight against illicit trafficking.” 3 February 2008.

This document describes the annual targets and abilities of UNESCO as they relate to cultural property protection. This document deals largely with goals rather than plans; delegates should consider how to achieve some of the aims it identifies.

“UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.” 24 June 1995.

<<http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-e.htm>>.

The goal of this agreement is to facilitate the return of illegally exported cultural objects. The Article four explains procedures for the return of cultural objects and article five deals with illegally exported cultural objects. Other articles clarify the rights and responsibilities of both the possessor state and the state of rightful ownership.

Non-UN Sources

Abtahi, Hirad. “The Protection of Cultural Property in Times of Armed Conflict: The Practice of the International Criminal Tribunal for the Former Yugoslavia.” *Harvard Human Rights Journal*. Vol. 14. Spring, 2001. Harvard College. 5 July 2009.

<http://www.law.harvard.edu/students/orgs/hrj/iss14/abtahi_old.shtml>.

This case study of war crimes involving cultural property in the former Yugoslavia explains the role of destroying national cultural property as a war strategy. The document also extensively explains the legal precedents related to this case and how various international conventions can be related to the destruction in the former Yugoslavia.

Crumpton, Nora. “Cultural property law theory and United States v. Schultz.” SAFE: Saving Antiquities for Everyone. 4 July 2009. <http://www.savingantiquities.org/feature_page.php?featureID=13#top>.

An explanation of US standards for defining stolen cultural property. This paper explains the recognized legal precedents for establishing guilt in cases of importing cultural property and focuses on their application to the United States v. Schultz.

“Cultural Heritage in Danger: Treaties and Legislation.” SAFE/Saving Antiquities For Everyone. 28 June 2009. <<http://www.savingantiquities.org/heritagetreaties.php>>.

This website is maintained by a non-governmental organization founded in response to the looting of the Iraqi museums. The site identifies the major international conventions and US statutes related to the protection of cultural property. There are brief summaries of each convention's content and links to the full text of each document.

Faro, Elissa. Personal interview. 23 July 2009.

Elissa Faro is a Classics professor from Dartmouth. During the 2009 Spring term, she co-led an Archaeology Foreign Study Program (FSP) to Greece and during the Fall term, she will be teaching a course that she designed entitled “Archeological Ethics: Who Owns the Past?” Faro's own research has included work on archeological digs in Greece and Armenia.

Farrell, Stephen. “Officials convinced museum was looted to order.” The Times Online. 26 April 2003. 26 July 2009. <<http://www.timesonline.co.uk/tol/news/world/iraq/article868210.ece>>.

This article is an update on the looting of Iraqi museums and includes details on evidence that sheds light on the thieves' possible motivations. It also explains the concept of “looting to order” and how illegal acquisitions are made.

Geiser, Urs. “Swiss Target Online Sales of Treasures.” SwissInfo: Swiss News, World Wide. 19 June 2008. 29 June 2009.

<http://www.swissinfo.ch/eng/swiss_news/Swiss_target_illicit_online_sales_of_treasures.html?siteSect=201&sid=9239735&ty=st&rs=yes>.

Although trafficking in cultural property is an ancient problem, new technologies have contributed to its expansion in recent history. This article discusses the role of online markets and auction houses in modern trafficking.

Hoffman, Barbara T. Art and Cultural Heritage: Law, Policy, and Practice. New York: Cambridge University Press, 2006. 9 August 2009.

<http://books.google.com/books?id=yvXTcGC5CwQC&printsec=frontcover&source=gbs_v2_summary_r&cad=0#v=onepage&q=&f=false>.

This book discusses cultural property from a legal perspective. It explains the differing motivations of source and market countries, and how their perspectives affect their legal doctrines. This is a very helpful source for understanding blocs for this topic, as they are approached in this background guide.

“Looters Ransack Baghdad Museum.” BBC News. 12 Apr. 2003. 29 June 2009.

<http://news.bbc.co.uk/2/hi/middle_east/2942449.stm>.

This article describes the looting of the Iraqi National Museum. This was a highly publicized incident of looting during occupation by a foreign military.

“Movable Cultural Property Program.” Canadian Heritage. 9 Apr. 2009. 3 July 2009.

<<http://www.pch.gc.ca/pgm/bcm-mcp/index-eng.cfm>>.

A website explaining Canada's policies on cultural property import and export. Like many countries, Canada does not adhere exclusively or entirely to international conventions; this website summarizes their practices related conventions they are party to as well as national legislation.

Noble, Ronald K. “INTERPOL Meeting on Cultural Property Looting in Iraq.” International Criminal Police Organization. Lyon, France. 6 May 2003.

In this speech, the Secretary General of INTERPOL, provides a brief update on INTERPOL's response to the reported looting in Baghdad. He also describes INTERPOL's past involvement in cases related to protecting cultural property in regions experiencing military conflict.

“Overview: What is Customs Procedures and Facilitation?” World Customs Organization. 18 September 2009. <http://www.wcoomd.org/home_wco_topics_pfoverviewboxes_pfoverview.htm>.

The World Customs Organization works to standardize international policies on the import and export of goods. They are also involved with enforcing agreements and facilitating compliance.

“Recommendations.” 5th Meeting of the INTERPOL Expert Group (IEG) on Stolen Cultural Property. Lyon, France. 4-5 Mar. 2008. 4 July 2009.

<<http://www.interpol.int/Public/WorkOfArt/Conferences/20080304/recommendations.pdf>>

This report serves as an update on INTERPOL’s thoughts on the status of trafficking in stolen cultural property. It touches upon recent trends in execution of the crime and notes areas of weakness in efforts to combat trafficking.

Rice, Ross. “Stolen Cultural Artifacts Found in Berwyn Residence Returned to Italian Authorities.” Federal Bureau of Investigation Chicago. 8 June 2009. 4 July 2009.

<<http://chicago.fbi.gov/pressrel/2009/cg060809.htm>>.

This press release describes an FBI investigation into a case of private individuals successfully importing thousands of items of looted cultural property into the US. This case presents a number of problems authorities face in attempting to regulate and protect the transport of cultural property.

Roszkowski, Mark E. Business Law: Principles, Cases, and Policy. Addison Wesley Longman, Inc., 1997.

Delegates will find it helpful to have a basic understanding of the legal concepts and precedents that are the basis for international law. This textbook on business law also includes coverage of trade and economic related topics.

“Stolen Works of Art.” INTERPOL. 9 September 2009. 18 September 2009.

<<http://www.interpol.int/Public/WorkofArt/Default.asp>>.

As this page explains, one of the goals of INTERPOL is to increase international awareness of stolen cultural property. This site also explains some of the obstacles to tracking and preventing further theft.

Suselo, Frances. “Cambodia’s Heritage Going Cheap.” Asia Times Online. 5 Oct. 2005. 28 June 2009.

<http://www.atimes.com/atimes/Southeast_Asia/GJ05Ae01.html>.

Although this article focuses on Cambodia, it discusses issues facing many “source countries.” It explains how individuals in developing countries contribute to trafficking by looting local archeological sites and monuments.

“The Art Loss Register.” 29 June 2009. <<https://www.artloss.com/content/services>>.

The Art Loss Register is operated by a London-based company. Their website explains their goals, the services they offer, and allows registered users to report thefts online.

“The Illicit Traffic of Cultural Property Throughout the World.” The International Council of Museums. 27 July 2009. <<http://icom.museum/traffic.html>>.

This website is maintained by the International Council of Museums and explains the seriousness and scale of trafficking worldwide. Its brief comments on how trafficking is presently affecting select countries demonstrate both the scope and complexity of the crime.

“National Heritage Policies.” The European Heritage Network. 4 July 2009. <http://www.european-heritage.net/sdx/herein/national_heritage/select_country.xsp>.

The European Heritage Network provides a searchable online database of national policies related to cultural heritage and its protection. The site has information on 28 European countries.

TOPIC B

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A/CONF.183/9. “Rome Statute of the International Criminal Court.” 12 September 2003.

<<http://untreaty.un.org/cod/icc/statute/romefra.htm>>.

This document establishes the International Criminal Court. It is also the most widely respected source for best practices regarding legal matters and the responsibilities of the court.

E/CN.15/2004/16. Commission on Crime Prevention and Criminal Justice: Report on the Thirteenth Session. 11-20 May 2004.

Draft Resolution IV of this report is the CCPCJ’s “Guidelines for child victims and witnesses of crime.” This draft resolution

identifies the special needs of child witnesses, references a number of other documents related to their unique role, and advises of the need to develop guidelines on their treatment/protection.

E/CN.15/2008/11. "Implementation of the Guidelines on Justice in Matters Involving Child Victims and Witnesses of Crime." 29 Jan. 2008.

This document is a report on the implementation of policies regarding the specific needs of child witnesses. Delegates may find their own state referenced in Section II: Measures taken by Member States.

"Iraq: Witness protection programs or policies, particularly with regard to witnesses in murder trials." Immigration and Refugee Board of Canada. 29 June 2001. 23 August 2009.

<<http://www.unhcr.org/refworld/docid/3df4be4b28.html>>.

The Immigration and Refugee Board of Canada collected this brief response through a call to the Operations Officer of the Iraqi National Congress. It established that, as of June 2001, Iraq did not have any active witness protection programs in place. Iraq is one of the Middle Eastern countries that, in the past decade, has made rapid progress toward developing a support system for witnesses.

"Reports of the Seminar: Group 1 - Identifying and Punishing Corrupt Offenders." Resource Material Series No. 77. UNAFEI. March 2009. <<http://www.unafei.or.jp/english/pages/PublicationsRMS.htm>>.

This publication by the United Nations Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI) contains the reports of their 138th International Senior Seminar. The report of the focus group on corruption includes recommendations on witness protection that, although they are aimed toward encouraging witnesses to report corrupt government, are equally applicable to the needs of any witness protection program.

"U.N. Tribunal Orders Witness Protection Measures; More." U.N. Wire. 21 June 2002. 30 May 2009.

<http://www.unwire.org/unwire/20020621/27200_story.asp>.

A brief update on the International Criminal Tribunal for the former Yugoslavia, this news blurb touches upon the difficulty of balancing witness protection with the rights of the accused and the rights of the press.

"USA: Recourse for witnesses of crime or corruption by government officials at the national and state level, in particular, in the state of Washington." Immigration and Refugee Board of Canada. 7 October 2008. 21 July 2009. <<http://www.unhcr.org/refworld/docid/49b92b1dc.html>>.

The US witness protection program is one of the most well established and well respected in the world. This summary explains the organizational structure of the US National Witness Security Program (WITSEC).

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Al Bahrani, A. "Courthouse and witness protection facility source of pride, showpiece for Basrah provincial government" U.S. Army Corps of Engineers. 5 December 2007. 23 August 2009.

<www.grd.usace.army.mil/news/releases/NR07-12-05.pdf>.

In this 2007 press release, the U.S. Army Corps of Engineers reports on the continuing progress of legal development in Iraq. The construction of a new courthouse and witness protection facilities is an important step toward an Iraqi national witness protection program.

Carrera, Sergio. "The EU Border Management Strategy." CEPS Working Document No. 261. March 2007. 2 August 2009.

<<http://docs.google.com/gview?a=v&q=cache:9MrC6FNaMzwJ:shop.ceps.eu/download.php%3Fit%3D1482+EU+integrated+border+management+strategy&hl=en&gl=us>>.

This document explains the purpose and design of the EU's Integrated and Global Strategy on Borders and Migration. It also provides updates on the implementation status of various countries. Border control programs like that of the EU affect the ability of witnesses to seek safety outside of their country of origin.

Easterday, Jennifer. "Witness Protection: Successes and Challenges in the Lubanga Trial." Lubanga Trial at the International Criminal Court. Open Society Justice Initiative. 26 June 2009. 9 July 2009.

<<http://www.lubangatrial.org/2009/06/26/witness-protection-successes-and-challenges-in-the-lubanga-trial/>>.

The Lubanga trial is one of the most recent and widely publicized cases before the International Criminal Court that deals with war crimes. This case has received attention due to concerns about witness privacy policies. It is of further interest to this committee because a number of the witnesses are children and the CCPCJ has a particular concern for juvenile justice.

Goodman, Brian M. "An Inside Look At Witness Protection." CBS News. 18 July 2006. 10 July 2009.

<<http://www.cbsnews.com/stories/2006/07/18/national/main1815356.shtml?tag=contentMain;contentBody>>.

The US Witness Security Program (WITSEC) is highly developed, and the US has an arguably unparalleled success rate. This article discusses the history, success, cost, and concerns of the program, as laid out in a presentation by the Marshals in 2006.

Hughes, Gary. "Twilight Life." The Australian. 8 February 2007. 2 August 2009.

<<http://www.theaustralian.news.com.au/story/0,20867,21188173-28737,00.html>>.

This article explains the history and design of the Australian witness protection system. As the article notes, the system is based on that of the US but lacks the strong federal program that characterizes the US WITSEC program.

Ilan, Shahar. "Witness Protection Program Bill Passes First Knesset Reading." Haaretz Daily Newspaper. 4

April 2009. 19 July 2009. <<http://www.haaretz.com/hasen/spages/971795.html>>.

This article reports on Israel's recent changes to their witness protection program. The bill it discusses will expand the program to provide continuing protection for witnesses and their families after the conclusion of the trial.

"Internal Displacement in Africa." Global Overview 2008. Internal Displacement Monitoring Center. 21

August 2009. <[http://www.internal-displacement.org/8025708F004CE90B/\(httpRegionPages\)/B3BA6119B705C145802570A600546F85?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpRegionPages)/B3BA6119B705C145802570A600546F85?OpenDocument)>.

The numerous civil conflicts in Africa have resulted in a surge of internationally displaced persons (IDPs) that are victims or witnesses of war crimes. These people need the support of witness protection programs, in addition to reintegration projects, to feel safe returning to their homes.

"Law on the Protection of Witnesses Under Threat and Vulnerable Witnesses." Official Gazette of Bosnia and Herzegovina, 21/03. 27 June 2003.

Passed by the Parliamentary Assembly of Bosnia and Herzegovina, this law officially defines responsibilities and procedures for the Court of Bosnia and Herzegovina. It contains descriptions of witness protection measures that could be applicable for virtually any country.

"National War Crimes Strategy." Rule of Law in Armed Conflicts Project. 18 December 2008. 20 July 2009.

<<http://74.125.93.132/search?q=cache:FygmhTP2vXYJ:www.adh-geneva.ch/RULAC/news/War-Crimes-Strategy-f-18-12-08.pdf+regional+witness+protection+war+crime&cd=4&hl=en&ct=clnk&gl=us&client=firefox-a>>.

This document provides an extensive report on the witness protection structures in Bosnia and Herzegovina. It identifies the many shortcomings of the current program and proposes solutions for them. Delegates will find this document extremely helpful as they consider what should be included in the committee's recommendations to the General Assembly.

Noble, Ronald K. "3rd International Witness Protection Symposium: Witness Protection/Security a Key Partner in the Judicial Process." INTERPOL. Lyon, France. 30 Oct. 2008. 9 July 2009.

<<http://www.interpol.com/Public/ICPO/speeches/2008/SGUSMarshals20081030.asp>>.

This speech explains the role of INTERPOL in the protection of witnesses to international criminal cases. It also identifies goals for the international community's improvement of worldwide witness protection.

O'Connor, Mike. "War Crimes Witness May Refuse to Testify." The New York Times on the Web. 30 May 1996. 9 July 2009. <<http://www.nytimes.com/specials/bosnia/context/0530yugo-warcrimes.html>>.

Post-conflict Bosnia-Herzegovina had to deal with a flood of war crimes cases. This article focuses on one particular witness that

brought the UN's attention to the lack of suitable witness protection being provided by the Bosnian police. Situations like that of the witness in this article are why post-conflict countries need monitoring and support from other states to ensure justice and good practices in witness protection.

“Rule of Law/Human Rights.” OSCE Mission to Serbia. The Organization for Security and Co-operation in Europe (OSCE). 10 July 2009. <<http://www.osce.org/serbia/13161.html>>.

This update on the OSCE Mission to Serbia describes the Mission's work in a number of justice-related areas. The Mission works to provide complete and comprehensive support to Serbia; delegates may benefit from studying their programs as an example of international cooperative recovery efforts.

“Rule of Law and Human Rights Department Fact-Sheet.” The Organization for Security and Co-operation in Europe: Mission to Serbia. 10 July 2009.

<http://www.osce.org/documents/html/pdf/html/18191_en.pdf.html>.

A summary of the Mission's efforts in each target area. This sheet briefly lists the Mission's 2008 goals for each program.

“Stronger Witness Protection Needed to Ensure Accountability for War Crimes.” Amnesty International. 4 July 2008. 30 May. 2009. <<http://www.amnesty.org/en/news-and-updates/news/stronger-witness-protection-needed-ensure-accountability-war-crimes-20080704>>.

Amnesty International voices a number of valid concerns about witness protection in this article. Points of tension are centered on concerns that the investigation into Vinayagamoorthi Muralitharan (Karuna) will collapse now that he has been deported for immigration violations. As the article explains, the potential collapse of this investigation is worrisome because witness protection for this case is already lacking.

Toomey, Leigh. “Witness Protection in Countries Emerging from Conflict.” International Network to Promote the Rule of Law (INPROL) Consolidated Response. December 2007. 10 July 2009.

<<http://www.glin.gov/view.action?glinID=204754>>.

INTERPOL's Consolidated Response on post-conflict countries identifies obstacles unique to witness protection in countries emerging from conflict. This source is also a helpful summary on the components necessary for any witness protection program to be successful.

“Tribunal Registrar Denies Media Reports on Witness Protection Program.” The Daily Star. 21 March 2009. 23 August 2009.

<http://www.zawya.com/Story.cfm/sidDS210309_dsart14/Tribunal%20registrar%20denies%20media%20reports%20on%20witness%20protection%20program/>.

As this article explains, contrary to prior media reports, the Special Tribunal for Lebanon (STL) has not announced any definitive updates on the development of a witness protection program. A speaker for the STL voiced his hope that he would be able to make a clear statement soon, but firmly denied rumors of signed international agreements.

Vermulen, Gert. “EU Standards in Witness Protection and Collaboration with Justice.” Institute for International Research on Criminal Policy. Ghent University.

This booklet contains proposals for EU Framework Decisions on various points of witness protection law. It provides a helpful history of EU member states' past efforts at cooperative witness protection that delegates may find helpful to understanding their country's policies and attitudes.

Vucheva, Elitsa. “EU Urged to Assist Serbia and Kosovo in Dealing with War Crimes.” EUobserver. 10 June 2009. 10 July 2009. <<http://euobserver.com/15/28275>>.

The EU rule of law mission to Kosovo is an interesting case study on the abilities of a foreign power to improve the legal programs of a post-conflict region. This article discusses the failures of past UN efforts to govern Kosovo and the weaker areas (including witness protection) of the current EU force.

Wald, Patricia M. “Dealing with Witnesses in War Crime Trials: Lessons from the Yugoslave Tribunal.” Yale Human Rights and Development Law Journal. 1 Jan. 2002.

This article explains why witness testimony and, correspondingly, witness protection are so important to cases involving war crimes. It makes a case study of the Yugoslave Tribunal, which deals particularly with witnesses who were also victims of crime.

“Witness Protection Big Problem in Kosovo.” B92. 28 Apr. 2007. 9 July 2009.

<http://www.b92.net/eng/news/crimes-article.php?yyyy=2007&mm=04&dd=28&nav_id=40954>.

Although this article deals specifically with the “non-country” of Kosovo, many of the issues it discusses also applies to geographically small countries. These problems include the need to relocate witnesses outside of the immediate territory, the burden of relocating entire families, and the social pressures discouraging witnesses from testifying.

“Witness Protection in Small Countries.” Organized Crime and Corruption Reporting Project. 4 Sep. 2008. 9 July 2009.

<http://reportingproject.net/prosecution/index.php?option=com_content&task=view&id=7&Itemid=1>.

This article discusses the obstacles faced by geographically small countries and countries with limited resources. It also provides information on the US Marshals Witness Security Program and examines the unique success of the Baltic region in cooperative witness protection.

“Witness Protection (Western Australia) Act 1996.” Western Australian Consolidated Acts. 28 June 1996. 19 July 2009. <http://bar.austlii.edu.au/au/legis/wa/consol_act/wpaa1996438/>.

This act provides for the Australian witness protection program. The document explains details of the benefits for participants in the program and defines the criteria for involvement. The Australian witness protection program is notable for its acceptance of non-citizens.