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Meeting of the States Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris, 1970)

Second meeting
Paris, UNESCO Headquarters, Room II
20-21 June 2012

Final Report

1. The Second Meeting of the States Parties to the Convention of 1970 was held at the UNESCO Headquarters in Paris on 20 and 21 June 2012. The representatives of 85 States Parties to the Convention participated at the meeting, as well as the representatives of 10 States Members of UNESCO not parties to the Convention, seven intergovernmental organizations and a non-governmental organization. The session was held in the six working languages of the Meeting of the States Parties: English, Arabic, Chinese, Spanish, French and Russian.

[Wednesday 20 June 2012, Room II, 10 a.m.]

OPENING OF THE SECOND MEETING OF THE STATES PARTIES

2. The Second Meeting of the States Parties to the Convention of 1970 was officially opened by **Mr Francesco Bandarin, UNESCO Assistant Director-General for Culture and representative of the Director-General**, who emphasized the particular importance of this event given that only two meetings had been held in 42 years (the first was held in 2003).
3. A video message from the **Director-General of UNESCO, Mrs Irina Bokova** was presented, in which she thanked the States that were mobilizing in the fight against the illicit trafficking of cultural property, a crime against the identity of peoples. The Director-General affirmed that this Second Meeting of the States Parties was the occasion to enter a new phase in this fight and mentioned the challenges being faced by the States Parties; in particular, the new trends in trafficking, the boom in the art market and the development of Internet trading. Regarding the current critical situation in such countries as Egypt, Libya, Mali and the Syrian Arab Republic, she concluded her speech by calling for coordinated action from UNESCO States and partners, public awareness-raising and unity; each ratification being a first step towards stronger and more unified protection worldwide.
4. **Mrs Katalyn Bogyay, President of the UNESCO General Conference** then took the floor to affirm that sharing cultural assets helped to bring down the artificial barriers separating peoples, to celebrate difference on the basis of mutual respect and understanding and to promote cultural diversity, while at the same time specifying that these exchanges should take place in accordance with established standards. She set out the objectives of the meeting. These included examination of the measures implemented by the States Parties to optimize the implementation of the Convention of 1970, evaluation of its application and reinforcement of its effectiveness. Mrs Bogyay made it clear that for any international instrument, the mechanism for monitoring its implementation was of crucial importance, since the Convention did not have any specific monitoring bodies.
5. Finally, **Mr Francesco Bandarin** thanked the delegations from the Republic of Korea and Turkey for their financial support, which had been decisive for the organization of the meeting.

POINT 1 OF THE PROVISIONAL AGENDA: Election of the Chair, Vice-Chairs and Rapporteur of the Meeting of the States Parties

**Document C70/12/2.MSP/1
Resolution 2.MSP 1**

6. The Meeting of the States Parties proceeded to elect its Committee. The **Assistant Director-General for culture** reminded those present that it was necessary to elect members of the Committee with due regard for equitable geographical distribution.
7. On the proposal of the Mexican delegation, supported by Electoral Group III (Latin American and Caribbean States), Electoral Group V (b) (Arab States), Belgium, India, Portugal, Senegal, the Meeting of the States Parties appointed, by acclamation, **H.E. Mr Carlos de Icaza**, Ambassador and permanent Delegate of Mexico to UNESCO as Chairman.
8. The **Chairman** thanked the States Parties for his election to the chair of the Meeting of the States Parties to the Convention of 1970. In his speech, the Chairman reiterated the necessity of evaluating the mechanisms of this Convention in the light of new trends in the illicit trafficking of cultural property, taking into account the growing threats facing our archaeological and palaeontological heritage. The Chairman went on to remind those present that, during the celebration of the fortieth anniversary of the Convention of 1970, the States Parties had expressed their desire to see UNESCO strengthen its leadership role by implementing a more effective cooperation network and organising an awareness-raising campaign on the importance of ratifying the Convention. He went on to invite the States Parties to study the documents prepared by the Secretariat¹ and more particularly those aimed at establishing a monitoring and governance mechanism for the Convention.
9. The Meeting of the States Parties elected **Cambodia, Egypt, Greece and Senegal** as **Vice-Chairs**.
10. The Meeting of the States Parties elected **Dr Henrietta Galambos** (Hungary) to the post of **Rapporteur**.

POINT 2 OF THE PROVISIONAL AGENDA: Adoption of the agenda

Document C70/12/2.MSP/2
Resolution 2.MSP 2

11. **The Assistant Director-General for Culture** presented the points on the agenda with reference to the above document. Noting, however, that priority had to be given to discussions between the States Parties, Mr Bandarin proposed an amendment to the initial sequence so that point 10, entitled *Proposal for monitoring implementation of the Convention of 1970* might be discussed directly after point 5.
12. The agenda thus amended was adopted.

POINT 3 ON THE AGENDA: Adoption of the Rules of Procedure

Document C70/12/2.MSP/3
Document sent by the permanent Delegation of Peru to UNESCO – 3²
Resolution (see *Resolution 2.MSP 3 adopted in point 6*)

¹ The working and information documents are available on the website of the Organization via the following link: <http://www.unesco.org/new/fr/culture/themes/movable-heritage-and-museums/illicit-traffic-of-cultural-property/meetings/meetings-of-states-parties/#c342731>.

² Available on the UNESCO website at the above-mentioned link.

13. **The Chairman** opened discussions concerning adoption of the Rules of Procedure, mentioning the draft of the Delegation of Peru to amend the text proposed by the Secretariat and accordingly inviting it to take the floor to present the desired modifications.
14. **The representative for Peru** proposed that the States Parties reflect on the establishment of monitoring mechanisms for the Convention of 1970, such as those already in place for the five other Conventions of the Culture Sector. Peru thus submitted its draft Rules of Procedure for approval, defining the functions and responsibilities of the Meeting of the States Parties and proposing a frequency of two years for its ordinary sessions and the possibility of creating subsidiary bodies. **Argentina, Cuba, Ecuador, El Salvador, Guatemala, India, the Syrian Arab Republic and Turkey** supported the proposal of Peru.
15. **Belgium**, having noted that the proposal of Peru addressed a substantive issue, raised a point of order on the need for debate prior to the adoption of this text by the States Parties.
16. The **Assistant Director-General for Culture** reminded those present that point 3 on the agenda previously adopted by the States Parties referred to the Rules of Procedure for the meeting in progress. He noted the importance of the proposal of Peru, but confirmed that it was a substantive issue that deserved to be debated under point 10 *Proposal for monitoring of the implementation of the Convention of 1970*, which followed point 5 on the *Report by the Secretariat on its activities and on the implementation of the Convention by the States Parties*.
17. **Germany, Canada, Denmark, the United States of America, France, Greece, Italy, Japan, the Netherlands and the Republic of Korea** considered that the logical working sequence for the Meeting of the States Parties was, as Mr Bandarin had suggested, to discuss the proposal of Peru in the context of examination of point 10.
18. **Japan** indicated that unless rules of procedure were adopted covering the meeting in progress, the discussions to be held would have no legal basis.
19. **The Delegation of Peru** asked that its document be considered in its entirety and that consequently it be debated at this stage in the discussions. **China, Cuba and Mexico** voiced their agreement with Peru in this regard.
20. The Chairman asked the **Director of Legal Affairs, Mrs Maria Vicien-Milburn** for clarification regarding the procedure to be followed concerning adoption of the Rules of Procedure. Mrs Vicien-Milburn observed that the Meeting of the States Parties had still not adopted the Rules of Procedure and that it consequently seemed premature to debate an amendment, declaring herself to be in favour of the sequence proposed by Mr Bandarin
21. **Mexico** suggested that those elements of the Rules of Procedure proposed by the Secretariat covering the procedure for discussions be provisionally adopted, while leaving the substantive elements open to debate.
22. **The Chairman** indicated that, despite the importance of the modifications proposed by Peru concerning monitoring of the Convention of 1970, the Meeting of the States Parties could not proceed until it had adopted Rules of Procedure covering its conduct. Consequently, the Chairman invited the States Parties to provisionally adopt document C70/12/2.MSP/3, from paragraph 1 to paragraph 13.
23. Paragraphs 1 to 13 of the Rules of Procedure were provisionally adopted by the Meeting of the States Parties, by consensus.

POINT 4 ON THE AGENDA: Adoption of the final list of observers

Document C70/12/2.MSP/4
Resolution 2.MSP 4

24. **The Assistant Director-General for Culture** reminded the States Parties that, following Decision 43 of the Executive Board at its 187th session, the Director-General had been given authorization to address any invitation that she deemed useful to the work of the Meeting of the States Parties to the Convention of 1970, subject to the approval of the Executive Board. At the 189th session of the Executive Board, the Secretariat presented a list of observers to the Executive Board, which took note of it and recognized the need for States Members to have sufficient time to propose additional participants in the categories presented. The annex to document C70/12/2.MSP/4 submitted to the Meeting of the States Parties for approval includes the amended list presented to the Executive Board of the names of individual observers sent to the Secretariat by certain States. The Secretariat made one correction to the annex to the document so that Mr Jorge Sanchez-Cordero, officially registered in the Delegation of Mexico, was withdrawn therefrom.
25. The final list of observers, thus corrected, was adopted by the Meeting of the States Parties.

POINT 5 ON THE AGENDA: Report by the Secretariat on its activities and on the implementation of the Convention by the States Parties

Document C70/12/2.MSP/5
Resolution 2.MSP 5

26. In accordance with point 5 on the agenda, **the Secretariat** presented its report to the Meeting of the States Parties concerning its activities relating to the fight against the illicit trafficking of cultural property and implementation of the Convention of 1970 by the States Parties who joined since 2007.
27. Concerning the progress of ratifications of the Convention of 1970³, 12 States have become parties to the Convention since 2007, bringing the total number of States Parties to 122; the last ratifications were those of Kazakhstan in February 2012 and Palestine in March 2012.
28. In particular, this report covers the development of the legal instruments and practices established by the Secretariat, notably: the UNESCO Database of National Cultural Heritage Laws; Basic actions concerning cultural objects being offered for sale over the Internet; the publication *Witnesses to History – Documents and writings on the return of cultural objects* and the Model Provisions on State Ownership of Undiscovered Cultural Objects.
29. This report gives details of the various trainings⁴ organised by the Secretariat, the most recent of which took place in Africa (Namibia, in 2011), in the Arab states (Bahrain in 2010, Saudi Arabia and the Islamic Republic of Iran in 2012) and in South-east Europe (former Yugoslav Republic of Macedonia and Albania in 2011); as well as the emergency actions

³ For more information on the progress of ratifications, see doc. C70/012/2.MSP/INF.2.

⁴ For an overview of these trainings delivered between 2007 and 2011, please refer to the table presented in document C70/12/2.MSP/INF.2 (Annex II).

launched in Haiti (January 2010), in Egypt, in Tunisia and in Libya (Spring 2011), in Syria and in Mali (March 2012).

30. The Secretariat drew the attention of the States Parties to the work being undertaken by the United Nations Office on Drugs and Crime (UNODC) to adopt operational directives to prevent and address the illicit trafficking of cultural property. The Secretariat announced its participation in an intergovernmental meeting on illicit trafficking in cultural property, organised by UNODC, which was held in Vienna at the end of June 2012. The Secretariat also indicated that the Council of the European Union had in December 2011 adopted conclusions relating to the prevention of crime against cultural goods and the fight against this phenomenon.
31. Turkey and the Republic of Korea were thanked for their financial support, which had made it possible to organize the Meeting of the States Parties, as were Belgium, the United States of America, Italy, the Netherlands, the Principality of Monaco, the Czech Republic and Switzerland for their support concerning implementation of the activities of the Secretariat.
32. It was reiterated that the Secretariat of the Convention of 1970 had only one full-time professional post, in addition to which there were two professionals on temporary contracts, one temporary secretary and an expert posted by Italy since February 2012, for two years. In the face of this situation, the Secretariat alerted the States Parties to the necessity of making permanent three professional posts and a general service post. The Secretariat invited the States Parties to consider not only the creation of a mechanism that would enable a special fund to be established to finance these posts, but also the financing of two- or three-year temporary posts (such as associate expert posts or postings) for nationals of developing countries, with a view to building the capacities of these countries while consolidating the human resources of the Secretariat.
33. The report by the Secretariat also presents a summary of the statements submitted to the Secretariat, on 30 March 2012, by 45 States Parties⁶ to the Convention of 1970 and three States not parties⁷ to this instrument, on the most significant measures that they have adopted to implement the Convention of 1970, as well as on the actions undertaken to fight more effectively against the trafficking of cultural property. The Secretariat indicated that it had received the report from Nigeria some days previously, which brought the number of reports received by the States Parties to 46.
34. The Chairman opened the debate to interventions. **The Cypriot Delegation** called for the international training workshop 'Protecting the Cultural Heritage of Cyprus – Joining efforts in preventing illicit trafficking of cultural heritage', held in Cyprus on 15 October 2011, at which UNESCO participated, to be added to the list of trainings described in the report by the Secretariat⁸. The delegation asked that Cyprus appear in Part II.2 of the document

⁵ The Conclusions of the Council of the European Union relating to the prevention of criminality targeting cultural goods and the fight against this phenomenon, adopted on 13 and 14 December 2011, are available on the UNESCO website via the following link: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/fr/jha/126867.pdf.

⁶ Germany, Angola, Saudi Arabia, Argentina, Australia, Belgium, Bosnia-Herzegovina, Burkina Faso, Canada, China, Cyprus, Colombia, Costa Rica, Croatia, Cuba, Ecuador, Estonia, United the Russian Federation, Finland, France, Georgia, Greece, Hungary, Italy, Japan, Jordan, Lithuania, Mauritius, Mexico, Norway, the Netherlands, Peru, Poland, Portugal, Republic of Korea, Czech Republic, the United Republic of Tanzania, Romania, the United Kingdom, Sweden, Switzerland, Ukraine and Vietnam.

⁷ Botswana, Latvia and Monaco.

⁸ A press release in English is available via the following link: <http://www.cyprus.gov.cy/moi/pio/pio.nsf/1b5b3d6793906f5bc2257076004d02d8/e51ca1fd4d26627fc2257922002aa19d?OpenDocument>.

relating to the reports submitted by the States Parties on the implementation of the Convention of 1970 in domestic law and in the organization of services.

35. Concerning point 7 of draft resolution 2.MSP 5, presented in the Report by the Secretariat and creating a special fund intended exclusively for building the human capacities of the Secretariat, **the Netherlands** suggested that it be put in brackets to be adopted following the debate provided for in point 10 (but debated after point 5). **France and the Republic of Korea** supported the Netherlands, specifying that this was a substantive issue that called for prior discussion.
36. **Tanzania and Senegal** wondered about the opportuneness of creating a special fund intended exclusively for the Secretariat while the States Parties still needed their human capacities building.
37. **The Assistant Director-General for Culture** indicated to the States Parties that the Secretariat was inviting the States Parties to pay exclusively voluntary contributions into the fund and that its creation neither anticipated the content of the work of the Meeting of the States Parties nor excluded other voluntary contributions intended for activities that benefiting the States Parties to the Convention.
38. Concerning financial aid, **the Iranian** representative proposed an amendment to point 6 of draft resolution 2.MSP 5, so that other contributors such as the private sector, NGOs and IGOs would also be encouraged to support implementation of the Convention of 1970.
39. **Switzerland** wished to add a separate paragraph to the preamble to the resolution taking note of the resolution of the General Conference adopted at its thirty-sixth session⁹ to grant additional support to the Conventions of 1954 and 1970.
40. Resolution 2.MSP 5 presented in the Report by the Secretariat was adopted by the Meeting of the States Parties, as amended by the Meeting of the States Parties, as amended by the States Parties and with the exception of paragraph 7 thereof.

POINT 6 ON THE AGENDA: Proposals for monitoring the implementation of the Convention of 1970

Document C70/12/2.MSP/6

Document C70/12/2.MSP/3

Resolution 2.MSP 3

41. **The Secretariat** presented document C70/12/2.MSP/6, which examines the foreseeable options for strengthening monitoring of the implementation of the Convention of 1970. This document gives evidence of the legal implications of a partial or total revision of the Convention and proposes envisaging the possibility of establishing monitoring bodies such as those already in place for the other conventions in the culture sector of UNESCO.
42. The **Legal adviser, Mrs Maria Vicien-Milburn**, took the floor to analyse the different procedures in relation to the document. She emphasized the complications involved in revising or adopting an additional instrument in the international legal system and recommended the creation of monitoring bodies, for which the Meeting of the States Parties would have to establish the composition, mandate and frequency of

⁹ Resolution No 37, adopted at the thirty-sixth session of the General Conference, on the report of the Culture Commission at the seventeenth plenary meeting presented on 10 November 2011.

meetings/sessions and the manner of their convening, establish rules of procedure, and consider the financial implications and reporting system.

43. In order to avoid a large general debate on all aspects of the document prepared by the Secretariat, **the Chairman** proposed that the discussions be split into two parts: the first aimed at considering the total or partial revision of the Convention of 1970 or the creation of an instrument additional to the Convention; the second centring around the third option, namely the creation of monitoring bodies.
44. **Ecuador** stated that the Convention of 1970 contained certain restrictions and limits, especially Article 7 b. (i) the obligation to be part of an inventory, which excludes archaeological objects found in illicit digs from the scope of this text. In this context, Ecuador launched an appeal to the Meeting of the States Parties, to declare itself in favour of the creation of an additional protocol strengthening the standards applicable to the protection of archaeological assets and to international legal and administrative cooperation.
45. The **Delegation of the United States of America** declared itself against the proposal of Ecuador. It reminded those present that, pursuant to Article 9 of the Convention of 1970, the States Parties must cooperate and take all measures necessary to prevent irreparable damage to the cultural heritage of another State Party.
46. In this context, **the Canadian delegation** reminded those present that the Convention of 1970 was interpreted broadly in Canada, making it possible in particular to prohibit the importation of cultural property illicitly exported from other Member States. Canada joined the United States of America in confirming the futility of revising the text of the Convention, while at the same time noting that its application should be discussed.
47. **Germany** took the side of the United States of America and Canada, while at the same time drawing the States' attention to the need to strengthen the implementation of the Convention and more particularly concerning the pillaging of archaeological sites.
48. Given the scale of the illicit traffic in archaeological, palaeontological and subaquatic assets, **the Guatemalan delegation** expressed a desire for these to be covered by specific provisions. For Guatemala, the acquisition of good faith must be called into question; proof of State ownership must no longer depend only on the creation of an inventory, but must be able to be demonstrated by means of scientific identification methods based on historical and cultural factors; finally, the rights of the country with ownership must not be applied to the detriment of the legislation of the country of origin, which establishes protective principles such as the inalienability and imprescriptibility of archaeological assets. Guatemala proposed drafting a Declaration of ethical principles on the protection of archaeological, palaeontological and subaquatic cultural heritage to guide the future of the Convention of 1970.
49. Before adjourning the meeting, **the Chairman** invited the States Parties to attend the informal meeting of friends of the Chairman, which would be taking place after the lunch break, the object of which would be to reflect on the work of the Meeting thus far.

[Wednesday 20 June 2012, Room II, 3.30 p.m.]

50. Given the long list of speakers, **the Chairman** of the Meeting of the States Parties suggested that the delegations' contributions should take into account all of the topics addressed by the Secretariat in document C70/12/2.MSP/6.

51. **Cuba** supported the proposal of Ecuador for a revision of the Convention of 1970 in order to open a debate on the shortcomings of the Convention of 1970; shortcomings which would not be eliminated by the creation of monitoring bodies. Cuba moreover supported Guatemala on the adoption of a Declaration of ethical principles, a political message addressed to the international community to strengthen cooperation between the States.
52. **The Turkish Delegation** identified two articles of the Convention of 1970 that posed problems: Article 7 b. (i), as indicated by Ecuador, and Article 6. b., which prohibits “*the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate*”, since the text of the Convention failed to state that wherever there was illicit exportation it followed that there was also illicit importation. A monitoring mechanism could enable the States Parties to discuss problems associated with the relevant articles and identify alternative solutions.
53. **Pakistan** aligned itself with the proposals of Cuba, Ecuador, Guatemala and Turkey concerning the shortcomings of the Convention of 1970 and declared itself strongly in favour of challenging the principle of good faith. The Pakistani Delegation, supported by the **Ecuadorian Delegation**, questioned the Meeting of the States Parties regarding the burden of proof, which was generally borne by the countries suffering pillaging. After going on to observe that revising the Convention would lead to difficulties concerning its ratification, Pakistan declared itself in favour of establishing monitoring mechanisms to ensure that it was strictly applied.
54. For the **representative of Croatia**, the UNESCO Convention of 1970, supplemented by the UNIDROIT Convention of 1995 on Stolen or Illegally Exported Cultural Objects, accompanied by a number of legal and practical instruments, represented an important instrument for international action and cooperation. Hence, Croatia was opposed to a total or partial revision and pronounced in favour of creating a specific body with a mandate to monitor the implementation of the UNESCO and UNIDROIT Conventions. Croatia expressed the desire that legal and practical instruments be created in order to address the problems associated with new practices in the illicit trafficking of cultural property. Following the *Model Provisions on State Ownership of Undiscovered Cultural Objects*, Croatia considered it necessary to improve the traceability mechanisms for cultural objects already on the market and to challenge the principle of good faith.
55. **France** called for prudence regarding the creation of a monitoring committee, which would have heavy financial and organizational implications. This question fell outside the remit of the Meeting of the States Parties and should be accepted within the General Conference. The French Delegation was in favour of more frequent meetings of the States Parties to the Convention of 1970, an instrument that needed to be strengthened in its application and its ratifications.
56. Concerned about the future of the Convention of 1970, **Senegal** thanked the Director-General for having brought the States Parties together. In the face of this emergency, Senegal mobilized the States Parties to see that a monitoring mechanism was created as of this meeting that would take into account the specificities of regions that were unequally equipped to fight the illicit trafficking of cultural property. It specified that it desired a consensus on this issue and not a solution adopted by vote.
57. **For Argentina**, it was imperative to equip the Convention of 1970 with a monitoring mechanism in order to analyse its effectiveness not only from the point of view of its content, but also from the point of view of its monitoring mechanisms. In contrast to the other conventions in the Culture Sector, this Convention had neither operational directives nor management mechanisms. The Argentinian Delegation reiterated its support for the

proposal of Peru and expressed its agreement with Cuba and Ecuador regarding the creation of an additional protocol.

58. After observing that the Convention should be studied in depth, **Nigeria** supported the creation of a monitoring body.
59. **The Egyptian Delegation** reminded the Meeting of the States Parties of the difficulties encountered in adopting the Second Protocol to the UNESCO Convention of 1954. It expressed the desire, on behalf of its country but also on behalf of Electoral Group V (b) (Arab States), that the Convention of 1970 be revised, amending the relevant articles, notably identified by Turkey. It encouraged the States Parties to reflect on new strategies such as inventorying objects particularly susceptible to illicit trafficking, creating a monitoring body, noting that not all of the States Parties to the UNESCO Convention of 1970 had ratified the UNIDROIT Convention of 1995, and more regular meetings of the States Parties.
60. For **Honduras**, respect for archaeological cultural heritage should take precedence over market law, which is increasingly supported by Mafia networks. Hence the reason that compensation for the 'good-faith purchaser' should be the subject of a new debate as proposed by Croatia, Ecuador, Guatemala, Mexico and Pakistan.
61. In response to the contribution of the United States of America, **the Delegation of Ecuador** explained that Article 9 of the Convention of 1970 does not give the States Parties the possibility of a legal channel through which to request the direct return of stolen assets from the country of destination. The use of inventories remains a precondition for this, which also features in Article 7 of the Convention. Furthermore, Article 1 of the Convention does not take into account assets that have not yet been discovered. Thus, in certain cases, the Convention of 1970 cannot be applied.
62. **The Mexican Delegation** observed that the illicit trafficking of movable cultural heritage is often associated with money laundering and that a new aspect to this trafficking had recently appeared on the markets, namely the counterfeiting of cultural objects. These problems illustrate the need to establish a monitoring body for the application of the Convention of 1970. For Mexico, the financial implications of this measure could not be invoked as an argument against it.
63. The representative of the **Delegation of the United States of America** said that she shared the desire of Mexico and Senegal to see the States Parties reach a consensus. She noted that this Convention had gained new energy since the celebration of its fortieth anniversary and that this was a reason to continue to encourage dialogue between the delegations by enabling meetings to be held more frequently.
64. **The Republic of Korea** presented certain measures that it had taken at national level to fight against the illicit trafficking of its cultural property, such as bestowing State ownership on objects not yet discovered and adopting an ethical code intended for professionals in the art market. Concerning the previous contributions, areas had been identified in which improvement seemed necessary and the Republic of Korea wished for these questions to be discussed on the basis of a consensus while taking into account the financial impacts.
65. **The German Delegation** reminded those present that the UNIDROIT Convention of 1995 had been drafted to mitigate the limitations of the Convention of 1970. Germany considered that the Convention of 1970, to which 122 were parties, should be preserved and its implementation strengthened at a national level. Finally, it had to thank the

Secretariat for document C70/12/2.MSP/ INF.2¹⁰, which reports on the operation of the Convention of 1970 in various countries.

66. **Angola** supported the initiative to create a monitoring body with a frequency of one or two years and was able to declare its position regarding the opportuneness of amending the Convention of 1970. The Angolan Delegation noted the financial implications of such monitoring, but considered them of lesser importance than the significance of cultural property to the history of a people. It recentred the debate on the operational aspect of the Convention and encouraged the strengthening of national legislation and cooperation between adjacent States.
67. **El Salvador** approved the declarations of the delegations of Electoral Group III (Latin American and Caribbean States), who presented a very detailed assessment of the critical situation currently facing the archaeological, palaeontological and subaquatic heritage of these countries. The delegation of El Salvador supported the proposal of Ecuador aimed at establishing an additional protocol to the Convention of 1970 and reaffirmed its support for the proposal of Peru. Furthermore, it asked that a detailed study be performed of the shortcomings of the Convention of 1970 and the solutions to be considered.
68. **Nicaragua** also manifested its agreement with the proposal of Ecuador to adopt an additional protocol and that of Peru to create a monitoring body; these actions would initiate global reflection on the operational nature and monitoring of the Convention of 1970.
69. After reiterating that revision of the Convention of 1970 would imply establishing two parallel legal systems and would hamper the efforts being made to obtain more ratifications, **the Chinese Delegation** indicated that it was in favour of adopting an additional protocol and creating a monitoring body.
70. **Algeria** approved the Guatemalan proposal to draft a Declaration of ethical principles enabling the principle of good faith to be addressed with due respect for property rights. To illustrate this idea, it informed the Meeting of the States Parties that Algerian legislation strictly prohibited the importation of archaeological property from countries in which the sale of these objects was prohibited. Finally, Algeria expressed its support for the establishment of debates, not only in the context of meetings of the States Parties, but also in the context of meetings of subsidiary bodies, in order to achieve the implementation of an additional protocol to the Convention.
71. **The Delegation of Peru** wished to clarify that the proposal of its country was aimed at providing the Meeting of the States Parties with an operational tool enabling it to improve its work and promote the application of the Convention of 1970. With this proposed amendment to the Rules of Procedure, Peru reminded those present that it had also submitted a draft text defining the operational procedures of this Committee for approval¹¹.
72. **Denmark** congratulated the States Parties for this debate on strengthening the implementation of the Convention of 1970, while at the same time deploring the current financial situation of UNESCO, which represented a significant obstacle. The budget allocated to capacity building was very limited and whether or not meetings of the States Parties could be held depended on extrabudgetary resources. For these reasons,

¹⁰ Document C70/12/2.MSP/ INF.2 prepared by the Secretariat covers *Proposals for strategies to improve the implementation of the 1970 Convention*.

¹¹ This was the document sent by the permanent Delegation of Peru to UNESCO – 4, available on the UNESCO website via the following link: <http://www.unesco.org/new/fr/culture/themes/movable-heritage-and-museums/illicit-traffic-of-cultural-property/meetings/meetings-of-states-parties/#c342731>.

Denmark said that it was concerned about the proposal submitted by Peru, but not however opposed to it.

73. **The Netherlands** declared that they were not in favour of revising the text of the Convention nor of creating an additional instrument. The third option proposed by the Secretariat in document C70/12/2.MSP/6, namely an assembly of the States Parties that would meet every four years, seemed to them to address the desire expressed by a number of States to strengthen the implementation of the Convention of 1970. However, the Netherlands supported the declarations of Denmark, France and the Republic of Korea on the need to take into account the financial implications of such a measure.
74. **Italy** affirmed that the Convention of 1970 was an instrument that fulfilled a legal and ethical role in the protection of cultural property. Although the text contained limitations, the UNIDROIT Convention of 1995 had remedied it, especially concerning the diligence required of the good-faith purchaser and requests for the return of objects originating in clandestine digs. Thus a broad ratification of this Convention would represent significant progress in international cooperation in this area. More frequent meetings of the States Parties and the establishment of a subsidiary monitoring body were desirable, provided that the financial resources necessary could be found in the Organization's budget.
75. After thanking the Secretariat and the United States of America for their cooperation in stopping the sale at Sotheby's of a Cambodian statue, a testimony to the art of the Koh-Ker site, **Cambodia** expressed the desire for a regular rhythm to meetings of the States Parties (a frequency of two or four years), as well as the creation of a monitoring body. Concerning the financial impacts, the Cambodian Delegation asked the Secretariat for an estimate of the cost of such meetings.
76. The representative for **Cambodia**, in their capacity of **vice-chairman**, provisionally replaced the Chairman and took over management of the debate on the proposals for monitoring the implementation of the Convention of 1970.
77. **Japan** wished to thank the Director-General for having convened the Meeting of the States Parties to the Convention of 1970 and indicated that it shared the concerns expressed by a number of delegations concerning the financial implications of creating a monitoring body. Japan indicated that it was reluctant concerning a revision or the drafting of an additional instrument but expressed its support for more frequent meetings of the States Parties.
78. **Cyprus** supported the proposal of Peru and called upon the States Parties henceforth to adopt a resolution so that a procedure could be launched that would enable an additional protocol to the Convention of 1970 to be drafted; the question of financial costs financiers need not be an obstacle to strengthening the implementation of the Convention of 1970.
79. **The Iranian Delegation** supported the proposal of Peru for a potential amendment to the Rules of Procedure and the creation of a monitoring body.
80. The representative of **Cambodia**, in their capacity as **Vice-Chairman**, closed the list of speakers and gave the floor to the Legal adviser as had been announced by the Chairman, H.E. Mr de Icaza.
81. In response to **Senegal**, which wished to know whether it was legally acceptable to settle the substantive issue raised by the proposal of Peru with a question of form by amending the Rules of Procedure, the **Legal adviser** clarified that it was legally possible to create a monitoring body for the Convention of 1970 by amending the Rules of Procedure, but its decisions would not be binding for the States Parties. For the decisions taken by this

monitoring body to be binding, it would be necessary to revise the text of the Convention of 1970 to expressly provide for this.

82. In order to equip the Convention of 1970 with the same monitoring mechanisms as the other Conventions in the Culture Sector, **Egypt** questioned the Legal adviser on the possibility of adopting a resolution on the creation of a subsidiary body and on the frequency of meetings. The **Legal adviser** confirmed that this was a possibility, while at the same time reiterating the points of clarification provided to Senegal.
83. **H.E. Mr Carlos de Icaza resumed his position as Chairman** of the Meeting of the States Parties. He called upon the States Parties to decide on the proposal formulated by the Delegation of Peru, whom he invited to present its text before opening the list of speakers.
84. For certain delegations (**Germany, Belgium, France and Japan**), the proposal of Peru had been submitted late (two days before, in the evening) thereby preventing them from consulting their supervisory authorities concerning its substantive provisions. On these grounds, **the Japanese Delegation** raised a point of order concerning examination of the proposal of Peru, reminding those present that the agenda adopted by the Meeting of the States Parties covered the sequence of the points of discussion without knowing the substantive issues of each point. **Germany** took the floor in support of this point of order.
85. **The Chairman** explained to the German and Japanese delegations that the Rules of Procedure, up to Article 13 inclusive thereof, had been provisionally adopted that morning. According to Articles 8.1 and 8.2 of these Rules of Procedure, "*During a discussion, any delegation may raise a point of order; such a point of order shall be immediately decided upon by the Chairperson. An appeal may be made against the ruling of the Chairperson. Such an appeal shall be put to the vote immediately and the Chairperson's ruling shall stand, unless overruled by a majority of the delegations present and voting*". In accordance with these two articles, the Chairman decided to put the point of order to a vote after **France** supported the contributions of Germany and Japan.
86. During the course of the vote, **22 States Parties** declared themselves **in favour of the point of order raised** by Japan, as against **46 who felt that the discussions** concerning the proposal of Peru **should be pursued**.
87. In accordance with the result of the vote, **Peru** went on to present its amendment to the Rules of Procedure, which conformed to the models of the five other Conventions in the culture sectors.
88. **The Chairman** proposed that the States Parties should consider adopting this text one paragraph at a time, in order to identify the ideas for which a consensus could be reached.
89. **The Netherlands** wished to make reference to the Rules of Procedure of the Second protocol to the Convention of 1954 in paragraph 2 of point 1 of the text proposed by Peru, which provides that "*the provisional Rules of Procedure proposed below were established on the model of the Rules of Procedure of the General Assembly of the States Parties to the Convention Concerning the Protection of the World Cultural and Natural Heritage (Paris, 1972), the Rules of Procedure of the Meeting of the States Parties to the Convention on the Protection of the Underwater Cultural Heritage (Paris, 2001) and the Rules of Procedure of the General Assembly of the States Parties to the Convention for the Safeguarding of the Intangible Cultural Heritage (Paris, 2003)*". However, the Delegation of the Netherlands concluded its contribution by indicating that, according to Article 11.2 of the Rules of Procedure provisionally adopted by the Meeting of the States Parties, "*As a general rule, no draft resolution or amendment shall be discussed or put to*

the vote unless it has been circulated reasonably in advance to all participants in the working languages of the Assembly”.

90. **Belgium** suggested that point 2 of the text proposed by Peru, listing the titles of the six chapters of the text proposed by Peru, be placed in brackets to the extent that not all of the document had yet been adopted. This suggestion was followed by the Meeting of the States Parties.
91. **Japan** asked that the word “work” in Articles 1, 2.1 to 2.3 be crossed out. The Meeting of the States Parties approved this remark.
92. In the absence of any provisions on the subject in the text of the Convention of 1970, **Canada** indicated that it was perplexed at the interference of Article 3, *Functions and responsibilities of the Meeting of the States Parties* defining the mandate of this Meeting, particularly the creation and approval of operational guidelines and sought the opinion of the Legal adviser on this point.
93. **The Legal adviser** confirmed that the Meeting of the States Parties did not have the power to approve operational directives for the Convention of 1970, but could however discuss any operational guidelines that should be the subject of an amendment to the Convention or the subject of a protocol. In the light of this response, **Canada** suggested deleting Article 3. a) of the proposal of Peru, which made reference to the operational guidelines.
94. **Greece** proposed amendments to Article 3 of the text drafted by Peru so that the functions and responsibilities of the Meeting of the States Parties should be: “a) *to create, discuss and approve the model operational guidelines for the Convention; b) subject to Article 16 of the Convention of 1970, to receive and examine the reports of the States Parties to the Convention, as well as their requests for advice”.*
95. **Ecuador, supported by Argentina, Cuba, Peru and the Islamic Republic of Iran,** observed to the Meeting of the States Parties that, at their previous meeting (in 2003), the creation of operational guidelines had been entrusted to the Meeting of the States Parties. **The Ecuadorian Delegation** suggested that this mandate should be added to the text of the Convention of 1970.
96. For **the delegations of Germany, Belgium, the United States of America, France, Japan, the Netherlands and the Republic of Korea,** section II of the proposal of Peru, entitled *Organization of the Meeting of the States Parties*, addressed a substantive rather than a procedural issue, which was out of place in the rules of procedure. The whole of section II, comprising Articles 3, on the *Functions and responsibilities of the Meeting of the States Parties*, and 4, on *Subsidiary bodies*, should therefore be placed in brackets. For the **Netherlands**, it seemed preferable to adopt the frequency with which the Meeting of the States Parties should sit, before debating its mandate.
97. **Peru** reminded those present that the present meeting had been organised pursuant to Decision 187 EX/43 of the Executive Board, which had qualified it as a category II meeting of representative character, in accordance with the Regulations for the general classification of the various categories of meetings convened by UNESCO¹². In this sense, it therefore enjoyed a certain number of powers and prerogatives.

¹² According to the Regulations for the general classification of the various categories of meetings convened by UNESCO, adopted at the fourteenth session of the General Conference (Resolution 14 C/Res. 23), “*Meetings of a representative character shall be meetings at which either States or governments or*

98. **Germany and Belgium** wished for clarification regarding the status of the Rules of Procedure that were the subject of the debate.
99. Before giving the floor to the Legal adviser, **the Chairman** made reference to point 22 of document C70/12/2.MSP/6, which states that a monitoring body may be created either by
 - “i. *an amendment to the Rules of Procedure of the Meeting of States Parties to the 1970 Convention providing for the frequency of Meetings of the States Parties and the establishment of a subsidiary body (an Intergovernmental Committee)’ or by*
 - “ii. *alternatively, by drawing up a Protocol that would on the one hand supplement some provisions of the 1970 Convention and on the other, provide for the establishment of such bodies (a General Assembly and an Intergovernmental Committee). As mentioned in paragraph 9, the States Parties would in that case be required to convene a diplomatic conference to draft such a protocol’.*
100. The Rules of Procedure are not binding or enforceable for the States Parties, in contrast to the provisions of the Convention of 1970. Consequently, according to **the Legal adviser, Mr John W. Donaldson**, this solution could only be provisional and would apply for as long as the permanent options were still in force.
101. **Cuba** manifested its incomprehension at the contributions of the delegations who, although wishing to strengthen the application of the Convention of 1970, held back the discussions by putting section II in brackets and thereby obstructing the debate.
102. For the **Delegation of the Democratic People's Republic of Korea**, Article 4 relating to subsidiary bodies was essential. Echoing the last point of clarification from the Legal adviser, the **Democratic People's Republic of Korea** did not wish to see procedure prevail over substance and declared itself in favour of creating a protocol.
103. To advance the debate, **the Chairman** asked the delegations to decide on the substance of the proposal of Peru, namely more frequent meetings and the creation of subsidiary bodies.
104. **Peru**, after reiterating that the operational guidelines were not binding, asked for reasons why they might not be created by the Meeting of the States Parties itself.
105. **Belgium and the Netherlands** confirmed that they wished to establish a monitoring body. While not neglecting discussions relating to its composition, its mandate, its frequency and its manner of convening meetings/sessions, its financial implications, its establishment of rules of procedure and its reporting system; points proposed by the Secretariat in document C70/12/2.MSP/6.
106. **Costa Rica, Honduras and Mexico** supported the proposal of Peru.
107. **The German Delegation** noted that Article 3 b) of the proposal of Peru ran contrary to Article 16 of the Convention, as it gave the Meeting of the States Parties the mandate “*to receive and examine the reports of the States Parties to the Convention, as well as their requests for advice*” while Article 16 provided that these reports had to be presented to the General Conference.

intergovernmental or international nongovernmental organizations are represented as chief participants”. Category II refers to “Intergovernmental meetings other than international conferences of States”.

108. **Japan** felt bound to refer to the final report of the First Meeting of the States Parties to the Convention of 1970 which took place on 15 October 2003¹³ and more particularly to recommendation No 16, which invited “*UNESCO to propose, for examination and adoption at the next meeting of the States Parties to the Convention, directives aimed at ensuring the correct implementation of the Convention of 1970*” . The Japanese Delegation highlighted the difference between this wording and that proposed by Peru (“*Operational Guidelines*” with capital letters in English), which made reference to the World Heritage Convention and its binding guidelines.
109. To respond to this observation, **the Cypriot Delegation** proposed that Article 3 b) refer to the recommendation in 2003. This idea was pursued by **Peru**, who suggested that the wording of the recommendation be reproduced identically in Article 3 b).
110. Before closing the session, **the Chairman** noted that at the end of this first day of discussions no objection had been raised against more frequent meetings or the implementation of a monitoring mechanism. To discuss the procedure to be adopted, the Chairman decided to gather together the friends of the Chairman once more for a short informal meeting of around 30 minutes, as soon as the session had ended. These discussions enabled the Chairman, with the aid of the Secretariat, to create a text that was commented on at a third informal meeting of the friends of the Chairman, which took place before the start of the second day of the Meeting of the States Parties.

[Thursday 21 June 2012, Room II, 11.45 a.m.]

111. The **Chairman** opened the second day of discussions. The debate that had been opened the previous day on the amendment submitted by the Delegation of Peru was suspended and, following the work of the informal meeting of the friends of the Chairman, a text was presented to the States Parties by the **Secretariat** in order that it might be submitted for examination.
112. Consensus was reached regarding paragraphs 1, 2, 3, 4, 5 and 7 of the Chairman's proposal, which aimed to convene the Meeting of the States Parties every two years; to establish a subsidiary Committee that would be convened by the Secretariat each year; which would define its composition and provide for the adoption of its Rules of procedure.
113. Paragraph 6 meanwhile presented the functions of the Committee. Consensus was reached on certain points, such as promotion of the goals of the Convention; examination of the national reports presented to the General Conference by the States Parties; preparation of the recommendations and guidelines able to contribute to the implementation of the Convention; identification of problem situations resulting from the implementation of the Convention and the report on the activities implemented.
114. Others were subject to a debate; thus coordination with the intergovernmental Committee for promotion of the return of cultural property to its country of origin or its return in the case of illegal appropriation (ICPRCP); the verb “improve” was replaced by “establish and maintain” under the initiative of the delegations of **Cyprus, Côte d’Ivoire, Croatia,**

¹³ CLT-2003/CONF/207/5.

France, Switzerland and Tanzania, since the newly-created subsidiary Committee had not yet established any kind of coordination.

115. Following the remark articulated by **Cambodia and Iraq** on the need to establish and maintain coordination with other intergovernmental or non-intergovernmental organizations, such as UNIDROIT, **the Chairman** felt bound to indicate that Article 9 of his proposal encompassed this idea. **Argentina, Belgium, Egypt, Ecuador, Greece, Guatemala, Honduras, Salvador Morocco** lent their support to the Chairman's contribution.
116. **For the Delegation of Afghanistan**, the mandate of the intergovernmental Committee (ICPRCP) and that of the subsidiary Committee, which was the subject of the Chairman's proposal, seemed identical, which called into question the opportuneness of creating such a subsidiary body. **The representative of France** supported the contribution of her Afghan counterpart, stating that monitoring of the Convention of 1970 had been addressed during sessions of the Intergovernmental Committee (ICPRCP).
117. **The UNESCO Assistant Director-General for Culture** clarified these two mandates, indicating that the main function of the Intergovernmental Committee (ICPRCP) was to handle cases of return or restitution not covered by the International Conventions. The mandate of this Committee should not be confused with that of the subsidiary Committee responsible for implementing the Convention of 1970; action supported by the **Delegation of Peru**.
118. The possibility of temporarily establishing any consultative body deemed necessary was not adopted by the States Parties for inclusion among the prerogatives granted to the subsidiary Committee.
119. Following amendments made by **Germany, Angola, the United States of America, Greece and the Netherlands**, and following a suggestion made by **Austria** as an observer State, the States Parties adopted paragraph 8 of the Chairman's proposal, which authorised the States Parties to the Convention that were not members of the Committee, and the other members of UNESCO, to participate in meetings of the Committee as observers.
120. **Germany, China, Greece and Italy** proposed changes to the new wording of paragraph 9 so that "*any person or entity, including international governmental or non-governmental organizations, with recognized competence in the areas of the protection of cultural heritage and the fight against the illicit trafficking of cultural property, in order that they might be consulted on particular subjects*" could be invited by the subsidiary Committee. **Argentina, Belgium, Guatemala, Honduras, the United Kingdom of Great Britain and Northern Ireland** approved this wording.
121. **The Chairman** noted that the States Parties had reached a consensus on the substance of his proposal, but it remained to be determined whether this decision would be integrated into the Rules of Procedure as provided for in point 10 of the proposed text, or whether it would be the subject of a separate recommendation.
122. Following a question from **Norway** on the legal implications of integrating this decision into the Rules of Procedure, the **Legal adviser, Mrs Maria Vicien-Milburn**, reiterated that this decision adopted by the States Parties was not binding, whether or not it was included in the Rules of Procedure of the Meeting of the States Parties.

123. For **Argentina, Belgium, Canada, China, Columbia, Costa Rica, Cuba, El Salvador, Ecuador, Guatemala, Honduras, India, Iran, Italy, Mexico, Nicaragua, Peru and Uruguay**, the Chairman's proposal satisfied the aspirations of all the States Parties and should therefore be included in the Rules of Procedure of the Meeting of the States Parties, which could endow it with legal security and long-term sustainability.
124. In order to distinguish the decision, which related to substantive issues, from the Rules of Procedure, which reflected procedural issues, certain delegations were of the opinion that this resolution should be the subject of a resolution (**Afghanistan**), or at least an annex to the Rules of Procedure (**Cyprus, the United States of America, France, Greece, Pakistan on a proposal submitted by Switzerland**). However, in order to arrive at a consensus, **Switzerland** withdrew its proposal and the delegations rallied around the preference expressed by a majority of delegations to integrate the creation of the subsidiary Committee into the Rules of Procedure.
125. By consensus, the decision adopted was therefore integrated into the Rules of Procedure of the Meeting of the States Parties and it was to applause and congratulations that **the Chairman** closed the session.

[Wednesday 21 June 2012, Room II, 3 p.m.]

126. Due to the late hour, **the Chairman** advanced point 7 on the agenda to enable **Dr Fraoua** to take the floor before leaving the UNESCO headquarters.

POINT 7 ON THE AGENDA: Regional reports on the implementation of the Convention of 1970 and the development of the art market at a regional level

127. The Meeting of the States Parties was an occasion to examine in depth the impact of the measures taken in order to apply the Convention of 1970 at national and regional level, and to evaluate its effectiveness, especially regarding new trends in the illicit trafficking of cultural property. It was in this context that the Secretariat wished to invite independent experts, in order that they might present the States Parties and observers with a current assessment of the implementation of the Convention and the development of the art market in various regions¹⁴.

➤ *Dr Ridha Fraoua, Doctor of Law, independent expert in cultural heritage legislation*

128. **Dr Fraoua** presented his evaluation of the legislative and institutional measures taken in the fight against the illicit trafficking of cultural property in 17 Arab countries, identifying the causes exacerbating the situation in this regard.
129. He began by emphasizing the institutional weakness of the authority responsible for the fight against the illicit trafficking of cultural property and the lack of awareness of this issue in Arab countries. There was effectively no serious study into the scale of this phenomenon, nor any investigation into the routes and supply lines used in the illicit trafficking of cultural property. There were rarely legal instruments and tools in place with which to effectively fight this scourge and the authorities concerned did not have sufficient financial and human resources to perform their duties. The fight against this trafficking was ad hoc work, on a case-by-case basis, according to the efforts of various parties. In

¹⁴ The articles of these experts have been published on the UNESCO website on the following link:
<http://www.unesco.org/new/fr/culture/themes/movable-heritage-and-museums/illicit-traffic-of-cultural-property/meetings/meetings-of-states-parties/#c342731>.

addition, there was a lack of institutional memory because the archives of the competent authorities were taken away by people leaving the department.

130. The priority for the Arab countries was thus to identify the outlines of the issue, so that the fight against the illicit trafficking of cultural property could be concretely defined: knowing the routes used and the parties responsible for this traffic and, above all, referencing stolen or illicitly exported property in order to establish a database. For Dr Fraoua, strategies needed to be established at a regional level in order to fight this problem effectively, with goals to be achieved and legislative coordination.

RETURN TO POINT 6 ON THE AGENDA: Proposals for monitoring the implementation of the Convention of 1970

Document C70/12/2.MSP/6

Document C70/12/2.MSP/3

Resolution 2.MSP 3

131. **The Chairman** indicated that the decision adopted in the morning would be integrated into the Rules of Procedure of the Meeting of the States Parties, of which Articles 1 to 13 had been provisionally approved. Thus, the Chairman opened discussions on Article 14, relating to adoption of the Rules of Procedure and Article 15, which describes the procedure for amending them.
132. Despite the adoption of the Chairman's proposal, certain delegations wished that there might be further debate on the integration of the decision into the Rules of Procedure of the Meeting of the States Parties, considering that the discussion had been closed prematurely. **France** took the floor to state its position in favour of introducing this text in an annex, thereby enabling it to be treated separately from the Rules of Procedure, which covered questions of form, and thus strengthened. **Greece**, for its part, proposed new wording for paragraph 10 of the Chairman's proposal, so that the provisions of this decision would appear in an annex to the Rules of Procedure as an integral part of the latter. The compromise proposed by Greece was supported by **Germany, Japan, the Netherlands and Switzerland**.
133. **Peru** reiterated that the decision creating the subsidiary Committee in the Rules of Procedure of the Meeting of the States Parties had been decided in the morning by consensus and in all good faith. Now, it was necessary to determine the form that this integration would take. **Argentina, China, Egypt, Ecuador, Gabon, Guatemala, Honduras, Italy, Pakistan and Salvador** expressed their support for this contribution.
134. **The Chairman** asked the Legal adviser once more to clarify the legal scope of integrating the decision into the body of the Rules of Procedure, as opposed to into an annex thereto.
135. **The Legal adviser** confirmed that the two procedures had the same legal value and that consequently the same procedure would apply if any amendment were considered. She suggested that the newly adopted decision be integrated following chapter IV, entitled *Secretariat of the Meeting of the States Parties*, in a new chapter entitled *Meeting of the States Parties*; or that it be annexed to the Rules of Procedure, specifying in the body of the annex that the latter was an integral part of the Rules of procedure (as proposed by **Switzerland**).

136. **Guatemala** indicated that annexing the decision to the Rules of Procedure would open a second debate on the legal regime of an annex, their use and would thus hold up the creation of the subsidiary Committee. **Argentina** supported the Guatemalan delegation.
137. **For Peru**, modifying such a decision required an amendment to be presented. **Italy and Argentina** indicated that in the absence of a consensus regarding modification of the decision adopted in the morning, the decision should be applied unchanged.
138. **The Chairman** suspended the debate for the duration of the coffee break, during which the delegations reached agreement. The Chairman thanked **the French delegation**, which had finally joined the majority of the delegations.
139. As indicated in resolution 2.MSP 3, the decision adopted was integrated into document C70/12/2.MSP/3 establishing the Rules of Procedure of the Meeting of the States Parties in Articles 14.1 to 14.9. Article 15 of document C70/12/2.MSP/3 of the Secretariat, concerning the procedure for amending the Rules of Procedure, was adopted unchanged.
140. **Ecuador** noted that, during examination of point 6, the States Parties had striven to have a constructive debate on the need to strengthen monitoring mechanisms. It also reminded those present that its Delegation had proposed creating an additional protocol to the Convention of 1970, which proposal had been supported by a number of delegations. Ecuador thus expressly requested of the Secretariat that the whole debate be reflected in the minutes of the Meeting of the States Parties.

RETURN TO POINT 7 ON THE AGENDA: Regional reports on the implementation of the Convention of 1970 and the development of the art market at a regional level

➤ *Prof. Folarin Shyllon, Honorary Professor and Vice-Chairman of Olabisi Onabanjo University, Nigeria*

141. **Professor Shyllon** presented his evaluation of the implementation of the UNESCO Convention of 1970, which he qualified as “a decisive step that the African States had not known how to take”. In fact, few African States were parties to the Convention of 1970: only 22 out of 47 were parties to the Convention of 1970¹⁵.
142. He informed the Meeting of the States Parties that a training workshop was held in Windhoek (Namibia) on 14 and 15 September 2011, on the themes of preventing and fighting the illicit trafficking of cultural property in the south-African region. The purpose of this workshop had been to take stock of the current situation and define the possibilities for strengthening cooperation at national and regional levels on the basis of the UNESCO Convention of 1970, as well as on the UNIDROIT Convention of 1995. It had thus been possible to identify the problems to be resolved as a priority in order to be able to put an end to the growing illicit trafficking of African cultural property.
143. Appropriate solid legislation needed to be established in Africa, such as the *Model Provisions on State Ownership of Undiscovered Cultural Objects*; public management and

¹⁵ Information document C70/12/2.MSP/INF.2, prepared by the Secretariat, containing proposals for strategies to improve the implementation of the 1970 Convention, presented the ratifications within each electoral group. For Group V(a), only 22 out of 47 States were parties to the Convention of 1970: South Africa, Angola, Burkina Faso, Cameroon, Côte d'Ivoire, Gabon, Guinea, Equatorial Guinea, Madagascar, Mali, Mauritius, Niger, Nigeria, Central African Republic, the Democratic Republic of Congo, the United Republic of Tanzania, Rwanda, Senegal, Seychelles, Chad, Zambia and Zimbabwe.

control of the art market and a database inventorying African cultural property (only 38,000 African cultural objects were listed, or barely 0.5 per cent of their total number), based on the Object ID international standard for describing cultural objects. Museum security also needed to be improved, as did the capacities and training of professionals in the museum environment and law enforcement; public awareness-raising needed to continue in cooperation with UNESCO.

144. Professor Shyllon renewed his call, first made in an article published in 2000 in the UNIDROIT *Uniform Law Review*¹⁶, for African States to sign up en masse to the UNESCO Convention of 1970 and the UNIDROIT Convention of 1995 (to which only two countries are parties), which would send out a strong message to the international Community concerning the situation of African heritage¹⁷.

➤ Mr Kevin Farmer, Deputy Director of the Barbados Museum & Historical Society

145. **Mr Farmer** indicated to the Meeting of the States Parties that the Caribbean region was under-represented in the Convention of 1970¹⁸. This region was however extremely vulnerable to the illicit trafficking of cultural property: to its geographical situation could be added a growing demand for scrap iron and copper, which had led to massive pillaging and the destruction of industrial heritage dating from the eighteenth and nineteenth centuries. It was therefore necessary to increase the number of ratifications and, to this end, a regional study should be conducted to identify the obstacles and shortcomings preventing this ratification. The principles and objectives that this represented, as well as past initiatives, needed to be adapted and revised with regard to the new challenges presented by the illicit trafficking of cultural property.

146. The Caribbean region was characterized by its being made up of a multitude of cultures and a diversity of political systems, which in turn implies a wide range of legal codes which were the legacy of a colonial past. Institutional, technical and university support was necessary in order to effectively combat this scourge. Echoing the recommendations of Professor Shyllon, the real challenges for the Caribbean region were: capacity building for heritage managers, lawyers, police forces and customs authorities; raising civil society awareness of the concept of protection of cultural heritage; the creation of a database inventorying the archaeological, palaeontological and subaquatic assets of this region.

➤ Doctor Cecilia Bákula, director of the Museum of the Central Reserve Bank of Peru

147. **Dr Bákula** warned the Meeting of the States Parties about the shortcomings of the Convention of 1970, which seemed to have reached maturity and needed to be reviewed in the light of current needs expressed by a number of the States Parties and taking into account developments in the practices employed in the illicit trafficking of cultural property.

¹⁶ This was an article published in the *Uniform Law Review* entitled The Recovery of Cultural Objects by African States through the UNESCO and UNIDROIT Conventions and the Role of Arbitration: <http://www.unidroit.org/English/publications/review/articles/2000-2-shyllon-e.pdf>. A condensed French version of this article is presented in the UNESCO publication *Témoins de l'Histoire*.

¹⁷ Prof. Shyllon cited the example of the return of the Indian *Shiva Nataraja* statue, covered in detail in his article published in the *Uniform Law Review*.

¹⁸ In the Caribbean, the following were parties to the Convention of 1970: the Bahamas, Barbados, Belize, Cuba, Grenada, Haiti and the Dominican Republic. The following were not parties to the Convention of 1970: Antigua and Barbuda, Dominica, Guyana, Jamaica, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinity and Tobago.

148. Dr Bákula said that she was honoured to speak on behalf of Latin America and to deliver the message that many countries in the region wished to transmit: their rejection of the expressions “exporter countries”, to qualify countries creating culture, and “importer countries” in reference to countries that live by supporting illicit trafficking, thereby legitimising the illicit trafficking of cultural property.
149. She continued her contribution by congratulating the Secretariat of the Convention of 1970 for its work and involvement. However, she wondered about the insufficiency of its financial and human resources, which seemed to be indicative of a willingness to let the Convention disappear.
150. Dr Bákula emphasized Articles 5 and 6 of the Convention of 1970, which excluded cultural property originating in clandestine digs, palaeontological assets and non-inventoried assets. Due to this shortcoming, assets fundamental to the cultural identities of Latin American countries were being left without protection. Cultural assets were being discovered on a daily basis, but the countries from which they are being extracted were not finding out until after they had left their territory and turned up in the museums or auction houses of other countries that were signatories to the Convention of 1970, with notes concerning their provenance even though this was illegal.
151. The Latin American countries that created this archaeological, palaeontological and underwater heritage would like to retain ownership of their cultural property and would like to remain in control of its circulation and distribution. Dr Bákula concluded her contribution by launching an appeal to the entire international community to find the moral courage to speak with one voice and fight the illicit trafficking of cultural property effectively.
- *Prof. Patty Gerstenblith, Director of the Center for Art, Museum and Cultural Heritage Law at DePaul University and Chair of the United States Cultural Property Advisory Committee*
152. **Professor Gerstenblith** wished to express herself in her capacity as a lawyer and archaeologist concerning assets that were non-inventoried, unlisted and discovered during clandestine digs, reiterating that archaeological assets were a testament to cultural identity and the history of a civilization, and that pillaging was seriously compromising their interpretation.
153. For Professor Gerstenblith, the Convention of 1970 served to put an end to this phenomenon; by way of illustration, she cited the legislation of Canada and the United States of America, which had a mechanism protecting non-inventoried materials: Canada imposed import restrictions on any material illicitly exported from its country of origin (through the application of these principles, close to 21,000 non-inventoried archaeological objects were returned to Bulgaria by the Canadian authorities); based on Article 9 of the Convention of 1970, the United States of America had a bilateral agreement system, by virtue of which archaeological and ethnological assets were protected without any requirement for listing, the burden of proof regarding the legality of the exportation and importation being the responsibility of the importer. To date, the United States of America had export restrictions in place with 14 other States Parties, seven of which were countries in Latin America.
154. For Professor Gerstenblith, what was necessary was more efficient implementation of the Convention of 1970 under the aegis of the Secretariat of UNESCO and the newly-created subsidiary Committee.

➤ Prof. Keun-Gwan Lee, Professor of the National University School of Law, Republic of Korea

155. **Professor Lee** presented to the Meeting of the States Parties his study into the implementation of the Convention of 1970 by Asian countries and the increasingly important position of China in the art market.
156. Based on the classification system used by the United Nations¹⁹, Prof. Lee indicated that 33 of the 48 Asian countries were parties to the Convention of 1970. However, there was a strong disparity within the five groups identified, as South Asia and South-East Asia were very poorly represented. UNESCO should therefore encourage these regions to sign up to the Convention of 1970 in cooperation with the Asian-Pacific region.
157. Professor Lee reported on the spectacular growth of the art market in Asia and more specifically in China, based on data from the information company Artprice²⁰. However, he drew the attention of the States Parties to the darker side of this rise in power by confirming an increase in the number of clandestine digs in tombs and at historic sites, as the Delegation of China had previously indicated at the seventeenth session of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution (30 June – 1 July 2011).
158. Concerning implementation of the Convention of 1970, the countries in the Asian region had different grasps of their obligations under the Convention and this ambiguity was reflected in the different national legislation. Thus, Professor Lee affirmed that legislative coordination and active cooperation between the competent authorities were necessary at a regional level in order to be able to fight effectively against the illicit trafficking of cultural property.
159. Professor Lee wished to conclude his contribution by congratulating the States Parties for creating the subsidiary Committee responsible for monitoring the Convention of 1970, an instrument that sent out a strong signal to traffickers of cultural property.

➤ Mrs Marie Cornu, Director of research at the Centre for Studies on International Legal Cooperation (CECOJI) and the National Centre for Scientific Research (CNRS), France

160. **Mrs Cornu** addressed the question of applying the Convention of 1970 within the European Union, a particular legal space which brought into tension the rationale of the marketplace supported by the principle of the free movement of goods, and the rationale of protecting public and private European cultural heritage, which is among the objectives of the Union. However, the intervention of the European Union in the fight against the illicit trafficking of cultural property could only be considered in close cooperation with the existing institutions at international level and with the legal instruments, such as the

¹⁹ The United Nations system, including the distribution of the 48 Asian States into five regions:
- **Central Asia:** Kazakhstan, Kyrgyzstan, Uzbekistan, Tajikistan and Turkmenistan,
- **East Asia:** China, Japan, Mongolia, the Republic of Korea and the Democratic People's Republic of Korea,
- **South Asia:** Afghanistan, Bangladesh, Bhutan, India, Iran (Islamic Republic of), Maldives, Nepal, Pakistan and Sri Lanka),
- **South-East Asia:** Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, the Philippines, the Lao People's Democratic Republic, Singapore, Thailand, Timor-Leste and Vietnam,
- **Western Asia:** Saudi Arabia, Armenia, Azerbaijan, Bahrain, Cyprus, the United Arab Emirates, Georgia, Iraq, Israel, Jordan, Kuwait, Lebanon, Oman, Palestine, Qatar, the Syrian Arab Republic, Turkey and Yemen.

²⁰ The Artprice publication *Art Market Trends 2011 Tendances du Marché de l'art* informs us that "China has in fact established itself, for the first time in history and the second year running, in first place in the world market for the sale of art works (...)", http://imgpublic.artprice.com/pdf/trends2011_fr.pdf.

UNESCO Convention of 1970 and the UNIDROIT Convention of 1995. The Conclusions of the Council relating to the prevention of criminality targeting cultural property and the fight against this phenomenon (13 and 14 December 2011) included certain working guidelines, including the need to ratify these two conventions.

161. Of the 27 States Members, 22 had ratified the UNESCO Convention of 1970 and 12 had ratified the UNIDROIT Convention of 1995. Concerning the process of integrating the Convention of 1970 into national law, not all Member States had followed the same method. The first was to adopt a law integrating the main rules and main objectives contained in the text; unfortunately, fairly few States had committed to this undertaking, which appeared to be the most efficient; fewer than a dozen States and according to different procedures. The second position consisted in further amending national law to bring it into line with the principles of the Convention of 1970. Finally, certain States members were content to ratify purely and simply without being aware of its legal implications for national law and the need to develop their legislation in order to meet the obligations imposed by the Convention.
162. In order to constitute both a lever and an agent in preventing and fighting the illicit trafficking of cultural property, the European Union needed to reflect upon the development of effective mechanisms at European level²¹.

ORAL REPORT BY THE RAPPORTEUR²²

163. **Dr Henrietta Galambos** took the floor in her capacity as **Rapporteur** to present her oral report on the progress of the Second Meeting of the States Parties to the Convention of 1970, from the opening of the session: election of the Chairman, the Vice-Chairmen and the rapporteur of the Meeting of the States parties; adoption of the agenda and Rules of Procedure; approval of the final list of observers; presentation of the Report of the Secretariat on its activities and on the implementation of the Convention of 1970 by the States Parties and finally proposals for monitoring the implementation of the Convention of 1970. Emphasis was placed on this last point, in order that it might reflect the rich debate that it had raised between the parties. The Rapporteur thanked the Meeting Committee, the States Parties and observers, the experts and the Secretariat for their dedication and their efforts.
164. **France** stated that, contrary to what had been mentioned in the Rapporteur's rapport, certain delegations had expressed their preference to distinguish the text of the decision creating the subsidiary Committee from the text of the Rules of Procedure of the Meeting of the States Parties, prior to adoption of the said decision.
165. **The Chairman** expressed his disagreement with the French delegation and upheld the wording expressed in the Oral report of the Rapporteur. However, the President invited the French delegate to come up with new wording and present it to the Secretariat.

²¹ It was in this context that the study entrusted to the Centre for Studies on International Legal Cooperation (CECOJI) by the European Commission was carried out, the report for which, released in October 2011, could be consulted online via the following link: http://www.uehha.org/images/cont/87_73798_file.pdf.

²² The oral report by the Rapporteur of the second Meeting of the States Parties to the Convention of 1970 is available on the UNESCO website at the following link: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/1970_2AGEP_oral_report_fr.pdf.

CLOSE OF THE SECOND MEETING OF THE STATES PARTIES TO THE CONVENTION OF 1970

166. **The Chairman of the Meeting, H.E. Mr Carlos de Icaza** closed the second Meeting of the States Parties to the Convention of 1970, thanking the Director-General of UNESCO, the UNESCO Assistant Director-General for Culture, the programme Specialist Mr Edouard Planche and his team, the interpreters and all of the delegations for their constructive spirit.
167. **Peru** congratulated the Chairman for his chairmanship and thanked the UNESCO Assistant Director-General for Culture, the Legal adviser and especially the programme Specialist for his extraordinary involvement in implementing the Convention of 1970, which had benefited from very few resources for a number of years. The delegation requested that this recognition on the part of Peru for the work of the programme Specialist and his team be entered in the minutes of the Meeting.
168. With this recognition of the programme Specialist, **the Chairman** felt bound to congratulate Mr Jan Hladík, Head of the Cultural Heritage Protection Treaties Section, and the Legal advisor, Mrs Maria Vicien-Milburn and her office, for their valuable assistance.