



United Nations  
Educational, Scientific and  
Cultural Organization



Convention for the fight  
against the illicit trafficking  
of cultural property

**5 MSP**

**C70/19/5.MSP/10**  
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**Meeting of States Parties to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris, 1970)**

**Fifth Meeting**  
**Paris, UNESCO Headquarters, Room XI**  
**20 and 21 May 2019**

**Item 10 of the Provisional Agenda:** Report on Recommendations for strengthening the implementation, efficiency and visibility of the 1970 Convention

Following Resolution [4.MSP.17](#), and Decision [6.SC.6](#), this document presents a set of recommendations based on discussions held during the Sixth Session of the Subsidiary Committee and responses to the questionnaire on strengthening the implementation, efficiency and visibility of the 1970 Convention as presented in document [C70/18/6.SC/INF.1](#)

**Draft Resolution: Paragraph 40**

## Background

1. During the Fourth Meeting of States Parties of the 1970 Convention (May 2017), States Parties expressed the need to reflect on the future of the Convention in anticipation of the celebration of its 50<sup>th</sup> Anniversary in 2020.
2. As a result, the Meeting of States Parties adopted Resolution [4 MSP 17](#), stressing the importance of an open and inclusive reflection of the Convention in order to identify potential measures to strengthen the implementation, efficiency and visibility of the Convention and to include the opportunity of establishing a List of Good Practices.
3. Consequently, the Fifth Session of the Subsidiary Committee (May 2017) examined Resolution [4 MSP 17](#), and adopted Decision [5.SC 6 bis](#), requesting the Secretariat to establish, in coordination with the Bureau of the Subsidiary Committee, a questionnaire to address potential measures to strengthen the implementation, efficiency and visibility of the Convention in all its aspects especially legal, political and structural, including the opportunity to establish a List of Good Practices. Furthermore, Decision [5.SC 6 bis](#) requested the Secretariat to consolidate the responses of the questionnaire and dedicate one-half day of exchanges to analyse the conclusions of the questionnaire.
4. The Secretariat transmitted the questionnaire to States Parties on 26 October 2017, and received 42 responses from States Parties. The [responses](#) are available on the 1970 Convention website. In addition, a [consolidated report](#) based on States Parties responses to the questionnaire was presented to the Sixth Session of the Subsidiary Committee (May 2018). A one half-day session was dedicated to exchanges on the results of the questionnaire prior to the opening of the Sixth Session of the Subsidiary Committee. As a result of the discussions, the Sixth Session of the Subsidiary Committee adopted Decision [6.SC 6](#) requesting the Secretariat to prepare a report including recommendations on the basis of States Parties responses to the questionnaire and on the discussions held during the half-day exchange session and during the Sixth Session of the Subsidiary Committee.
5. This report presents recommendations on: a) strengthening the implementation of the Convention, b) improving the efficiency of the Convention, and c) enhancing the visibility of the Convention.

## Strengthening the Implementation of the Convention

### *a) Strengthening Legal Frameworks*

6. States Parties responses to the questionnaire demonstrated that most States are implementing the Convention by strengthening legal frameworks, including updating their own national legislation to include relevant provisions from international legal instruments. States stressed the need to create and sustain synergies with other legal instruments in order to improve the protection of cultural property.
7. In many countries legal frameworks on the protection of cultural property including preventive measures are not harmonized. This leads to variations in the degree to which the Convention is implemented at national levels. In order to tackle this issue, one State Party<sup>1</sup> suggested that a model law on the prevention and fight against the illicit trafficking of cultural property is developed in order to facilitate the integration of the Conventions provisions into national law, particularly with regard to import, export and return of illegally

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<sup>1</sup> Germany

exported cultural property, due diligence and criminal sanctions. A few States Parties<sup>2</sup> also articulated a wish to introduce criminal sanctions within the text of the Convention.

8. In order to make a model law of this scale relevant and fit for purpose, the Secretariat proposes to bring together legal experts in the protection of cultural property from different regions in order to develop provisions to be included in the model law and ensure that it encompasses international best practices on the protection of cultural property. The model law should be developed in conformity with the key pillars of the 1970 Convention: prevention, return and restitution and international cooperation.

*b) Strengthening Capacities*

9. Some States Parties<sup>3</sup> highlighted the need to improve the implementation of the Convention through strengthening cooperation and building capacities through the training of law enforcement personnel nationally and internationally, in addition to reinforcing and promoting bilateral, multilateral cooperation. In this regard, the questionnaire responses have indicated that several State Parties have acknowledged the positive impact of the capacity-building activities organized by the Secretariat. However, responses to the questionnaire also pointed out the need for better communication on capacity-building activities organized by the Secretariat and the necessity to ensure rigorous follow-up in order to better assess and enhance positive outcomes.
10. The Secretariat works closely with field offices in order to provide relevant trainings on both legal and operational matters concerning the fight against illicit trafficking. As demonstrated in the Report of the Secretariat (C70/19/5.MSP/6), capacity-building workshops have taken place within the last two years in all regions of the world, sensitizing hundreds of stakeholders including government authorities, police, customs, and museum professionals amongst others. This information is regularly updated in the "[Capacity-building](#)" tab on the website of the 1970 Convention. Nevertheless, in order to promote information sharing and ensure that capacity-building activities are better communicated, the Secretariat proposes to publish the final reports demonstrating the objectives and outcomes of each workshop.
11. Concerning the strengthening of capacities, the Secretariat submitted document [C70/15/3.SC/7](#) entitled "Proposals for the implementation of the Roadmap and recommendations by the UNESCO Internal Oversight Service (IOS)" to the Third Session of the Subsidiary Committee (September 2015). The document included a scheme to improve the capacity building and awareness raising efforts of the Secretariat. Amongst the suggested means to build capacities was the use of e-learning tools, which has been included for the first time as part of the UNESCO-EU projects for the benefit of the European art market and the European judiciary and law enforcement.
12. States Parties responses to the questionnaire underlined the need for regular updating of inventories, not only to digitize data but also to update national databases of cultural goods and stolen objects to enable efficient tracking and information sharing. In order to strengthen inventories, the Secretariat proposes to reinforce cooperation with the museum programme who have the expertise to guide and promote best practices regarding the creation and development of inventories. It is important to also recall the INTERPOL Database on Stolen Works of Art, for which States Parties can register stolen objects. This information will automatically become available to police corps all over the world and could lead to a quick recovery of such objects.

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<sup>2</sup> Azerbaijan, Ecuador, Egypt, Guinea, Italy and the United States of America

<sup>3</sup> Brazil, Chile, Guinea, Honduras, the Netherlands, Slovakia, South Africa and Spain

*c) Streamlining Procedures for Return and Restitution*

13. One State party<sup>4</sup> proposed that a document is prepared explaining the steps that need to be followed in order to seek the return of an object from another State Party, in order to help countries navigate the complex legal, practical and financial obstacles they face when requesting restitution of their cultural goods. In this regard, the Secretariat presented a document [C70/16/4.SC/15](#) on standard actions to facilitate the return and restitution of illegally trafficked cultural objects to their country of origin, during the Fourth Session of the Subsidiary Committee (September 2016). The above-mentioned document may be used as a basis for the creation of an explanatory document outlining the procedures to be followed for restitution of cultural property.
14. Two States Parties<sup>5</sup> suggested reviewing the text of the Convention pertaining to the repatriation of stolen artefacts to facilitate the procedure by reversing the burden of proof on the holder of the item. However, taking into consideration the difficulties of amending the text of the Convention, other States Parties<sup>6</sup> underlined the importance of the Operational Guidelines for the implementation of the 1970 Convention as a means to strengthen it. The operational guidelines are currently only available in English and French. The Secretariat is working on making the document available in all of the working languages of UNESCO.
15. The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Property includes comprehensive provisions for the return and restitution of cultural property whether stolen or illegally exported, whether part of a national inventory or not, thus applying to clandestinely excavated cultural objects. Furthermore, the Convention also includes criteria placing the burden of proof on the possessor of a cultural object. Additionally, the 1995 UNIDROIT Convention is a self-executing treaty. For this reason, States Parties to the 1970 Convention are encouraged to ratify the 1995 UNIDROIT Convention as it formulates minimal legal rules on the restitution and return of cultural objects.
16. Concerning return and restitution, one State Party<sup>7</sup> called for a broader dissemination of information pertaining to stolen cultural objects through an alert system. In this regard, the Secretariat makes public on its website information regarding [thefts](#) when informed while simultaneously informing partners at INTERPOL. However, the Secretariat receives very few of these requests.
17. Additionally, the Secretariat wishes to propose devising a guideline that can be used in the event of thefts of cultural property. This would reinforce cooperation with relevant partners including INTERPOL, WCO and UNIDROIT. The concerted action will ensure clarity and transparency in procedures as well as guarantee more effective cooperation.

## **Improving the efficiency of the Convention**

*a) The Convention's Governing Bodies*

18. Regarding Governing Bodies, States Parties responses to the questionnaire underlined the importance of close monitoring and follow-up of the implementation of decisions. Responses also showed the importance of better dissemination of the governing bodies' decisions and recommendations at the national level to increase efficiency in the implementation of the Convention.

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<sup>4</sup> Canada

<sup>5</sup> Ecuador and Egypt

<sup>6</sup> Sweden and Turkey

<sup>7</sup> Republic of Korea

19. Between 2016 and 2018, it was particularly difficult to implement decisions to their full potential due to prevailing budget constraints. In the case of the Subsidiary Committee, the short amount of time between sessions (less than 1 year) posed difficulties in implementing larger projects. Finally, many projects require the availability of voluntary contributions for implementation.
20. States Parties suggested that more emphasis should be given by governing bodies to analysis and discussions concerning periodic reports and that States Parties should be encouraged to submit their national reports on a regular basis<sup>8</sup> in order to effectively assess the efficiency of the Convention and track the implementation of the Convention nationally, which is crucial to identify trends and good practices. This year, for the first time, the periodic reporting exercise was conducted electronically. Despite some technical challenges, the Secretariat received 68 reporting forms, which is a record-breaking number of reports received from this exercise. A review of the national reports will be presented to the Seventh Session of the Subsidiary Committee through document C70/19/7.SC/6. This will pave the way for further discussions on strengthening the implementation of the Convention nationally.

*b) Tools produced by the Secretariat*

21. There was a consensus that the tools produced by the Secretariat were useful and efficient, including the UNESCO Database of National Cultural Heritage legislation and the Model Expert Certificate, but could be improved to take into account new challenges such as online trafficking. There was a proposition to have summaries of each national law provided by States Parties to be included in the UNESCO Database on National Heritage Laws, in order to have an overview of their domestic legal frameworks.
22. The database contains documents, some of which are scanned pages from legislation dating back to the 1900's, making it impossible to search for keywords. Furthermore, English or French translation is not available for all documents. Nevertheless, in order to obtain a higher level of sophistication, it is necessary to develop the entire system, which will be a long, expensive and time-consuming project.
23. Decision [5.SC 4B](#) of the Subsidiary Committee requested the Secretariat to send information electronically to all States parties to the 1970 Convention, within two months after the closure of the session, on the necessary updates for the UNESCO Database of National Cultural Heritage Laws including information on the required budget. Information regarding the [project proposal](#) was communicated to all States Parties on 2 August 2017, and was also posted on the page of the Fifth Session of the Subsidiary Committee. At the end of 2018, the Secretariat received a contribution of 97,500 USD from the Swiss Federal Office for Culture, and 88,000 USD from the Government of Sweden to go forward with this project during the year 2019. Thanks to this generous contribution, the Secretariat is currently beginning the first phase of the development of the database.
24. Concerning other tools, there were recurrent requests to make the tools available in as many languages as possible, to disseminate them more widely. The Secretariat deploys its efforts in translating the relevant tools into the 6 working languages of the Organization as much as the financial resources permit. Moreover, the Secretariat would like to invite States to contribute with translating into their mother language.

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<sup>8</sup> <https://unesdoc.unesco.org/ark:/48223/pf0000133171.page=72>

25. One State Party<sup>9</sup> cited some useful tools that can improve the Convention's efficiency, namely: guidelines for teachers incorporating issues on cultural heritage protection in terms of education, practical tips for the monitoring of online auctions, guidelines for the adoption of practices of metal detectors and scanning devices and guidelines to States for the training of experts.
- c) *Interaction between the Subsidiary Committee and the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP)*
26. States Parties responses to the questionnaire also revealed the need for a clearer understanding of the definition, composition, function and mandate of the different governing bodies and the tools set up for the implementation of the Convention. This was identified as necessary to better comprehend how the bodies interact with one another. In order to clarify the roles of each governing body the Secretariat will prepare awareness-raising materials for this purpose.
27. Concerning interaction between the two bodies, some States Parties wished to maintain a clear distinction between the two organs; conversely, others appeared to be in favour of synergies and better cooperation. States also commented on the overlap in the agendas of the Subsidiary Committee and the ICPRCP, and stated that each body should deal with the mandate for which it was established. During discussions, States Parties agreed on the importance of reinforcing synergies and cooperation between the ICPRCP and the 1970 Convention, and noted the importance of the Subsidiary Committee's support the ICPRCP's role as a dispute resolution body through the development of a reporting mechanism on important matters regarding return and restitution cases brought to the Committee's attention.
28. It is important to recall that prior to 2012, the Meeting of States Parties had only met twice, in 2011 for the 40<sup>th</sup> Anniversary of the 1970 Convention, and in 2003 because of a specific decision taken by the UNESCO Executive Board. Furthermore, the first session of the Subsidiary Committee took place in 2013. Thus, the only monitoring mechanism tracking the illicit traffic of cultural property that existed prior to the regulation of the Meeting of States Parties and the Subsidiary Committee was the ICPRCP, which has met regularly since 1978.
29. Today, the Secretariat of the 1970 Convention also functions as the Secretariat of the ICPRCP. However, the Meeting of States Parties and the Subsidiary Committee are the monitoring bodies established to govern the programme on illicit trafficking of cultural property within the framework of the 1970 Convention, while the ICPRCP focuses on return and restitution and acts as a forum of dialogue on related issues. The Secretariat would like to highlight the necessity to make the distinction between the functions of the two bodies while allowing for crossover of certain good practices and themes in relation to return and restitution. For this reason, the agenda of the Seventh Session of the Subsidiary Committee includes a segment on return and restitution, and a document on return and restitution within the framework of the 1970 Convention (C70/19/7.SC/10). This should encourage information sharing and promote synergies between the two Committees.
30. Moreover, a few States Parties<sup>10</sup> expressed interest in making it possible to apply the Rules of Procedure for Mediation and Conciliation to cases falling within the framework of the 1970 Convention. It should be noted that Member States, Parties or not to the 1970 Convention may utilise the intervention of the ICPRCP. The General Conference adopted

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<sup>9</sup> Greece

<sup>10</sup> Azerbaijan, Ecuador, Greece, Turkey

during its 33<sup>rd</sup> session a resolution that articulates the mediatory and conciliatory functions of the Committee, which are supposed to be complementary to the work of the ICPRCP. Nevertheless, the Secretariat considers that the Rules of Procedure for Mediation and Conciliation could be extended to States Parties to the 1970 Convention who do not have legal capacities to follow through with a case for return and restitution. On the other hand, it is possible to discuss this concept further and opt to make an amendment to the rules of procedure of the Subsidiary Committee articulating the use of mediation and conciliation for cases falling within the framework of the 1970 Convention.

## **Enhancing the Visibility of the Convention**

31. States Parties agreed that the assessment of the visibility of the Convention depends on the communication of the activities. In order to enhance visibility, some States Parties proposed to publish relevant information on their national websites. Other suggestions included an overall increase in presence on social media, engaging in additional video productions and the promotion of educational materials and further awareness raising campaigns targeting youth and tourists in particular.

### *a) The Convention's webpage*

32. States Parties responses to the questionnaire agreed on the usefulness of the Convention's webpage. However, States Parties noted that translation of articles and information published is necessary to increase visibility and wide use. In order to make the webpage more user-friendly, it will be necessary to update the technology; this is currently in the pipelines for the 1970, 1954 and 2001 Conventions. Nevertheless, it would be possible to redesign the website, such as changing the layout of the pages without any additional costs but would require a consultant to work on the webpage full time.
33. Concerning the transmission of information, the Secretariat would require a full time communication officer. Tasks would consist of creating news and awareness raising materials regularly for the Convention webpage and for social media, updating information regarding thefts, successful cases of return and restitution and all activities of the Secretariat including information on capacity-building workshops in the Convention website. Furthermore, a newsletter can be produced four times a year to illustrate all the latest developments in the field of illicit trafficking of cultural property.

### *b) Good Practices*

34. A majority of States Parties reported that they do not maintain a list of good practices. Nevertheless, many were in favour of creating an international list of good practices of return and restitution cases, while several others reported concern on drawing such a list due to difficulty in applying such practices considering each country's specificities.
35. Nevertheless, during discussions many States Parties agreed that sharing experiences<sup>11</sup>, whether good or bad was positive and promoted knowledge sharing and cooperation between States Parties. Taking this into consideration the Secretariat included a segment on good practices in this session of the Fifth Meeting of States Parties, for which States Parties can share their experiences regarding the implementation of the Convention.
36. Furthermore, document C70/19/7.SC/10 of the forthcoming Seventh Session of the Subsidiary Committee presents proposals to strengthen the role of the Subsidiary Committee in the return and restitution of cultural property through good practices.

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<sup>11</sup> Albania, Benin, Canada, Ecuador, Italy, Norway and Zambia

## Conclusion

37. Overall, discussions on the means of strengthening the implementation, efficiency and visibility of the Convention were successful, despite the low participation of States Parties in the questionnaire. Deliberations clarified areas of weakness and allowed for open and inclusive discussions on ways to improve the implementation of the Convention in all its aspects.
38. Ultimately, all proposals included in this document will depend of the availability of financial resources.
39. The year 2020 will mark the 50<sup>th</sup> anniversary of the 1970 Convention. This celebration will be a unique opportunity to highlight the achievements of this recognized international treaty, pursue the discussion on how to improve its implementation, efficiency and visibility and bring the focus of the global community on the importance of fighting against the illicit trafficking of cultural property.
40. The Meeting of States Parties may wish to adopt the following Resolution:

### DRAFT RESOLUTION 5.MSP 10

*The Fifth Meeting of States Parties,*

1. Having examined document C70/19/5.MSP/10;
2. Recalling the consolidated report of States Parties responses to the questionnaire on the means of strengthening the implementation, efficiency and visibility of the 1970 Convention ([C70/18/6.SC/INF.1](#));
3. Takes note of the Secretariat's proposals to strengthen means for the implementation, efficiency and visibility of the 1970 Convention;
4. Welcomes the inclusion of an item on return and restitution in the agenda of the forthcoming Seventh Session of the Subsidiary Committee, in line with article 8.2 of the Rules of Procedure of the Subsidiary Committee and in accordance with the function of the Committee to identify problem areas arising from the implementation of the Convention, including issues relating to the protection and return of cultural property.
5. Requests the Secretariat to:
  - a. Convey an expert meeting with a view to draft a model law on the prevention and fight against the illicit trafficking of cultural property before the Sixth Session of the Meeting of States Parties (2021);
  - b. Improve communication regarding the results of capacity building activities and ensure rigorous follow-up in order to better assess and enhance positive outcomes, through making final reports available on the Convention's website;
  - c. Reinforce cooperation with the Museum programme in order to promote good practices regarding the creation and development of inventories;
  - d. Produce an explanatory document outlining the procedures to be followed for restitution of cultural property and present it to the 6<sup>th</sup> Session of the Meeting of States Parties (2021);

- e. Organize a meeting, in collaboration with the relevant international partners in the field, in order to discuss the development of a guideline to be followed in the event of theft of cultural property, to be held in 2019;
  - f. Translate the operational Guidelines into all official languages of the Organization and make them available on the 1970 Convention webpage by the end of 2019;
  - g. Prepare an awareness-raising publication in order to clarify the role of the 1970 Convention and the role of the ICPRCP, to be presented to the 22<sup>nd</sup> Session of the ICPRCP (2020), and to the Sixth Meeting of States Parties (2021).
  - h. Also prepare a report on the results of the discussions on return and restitution held during the Seventh Session of the Subsidiary Committee, to be presented to the 6<sup>th</sup> Meeting of States Parties (2021).
6. Encourages States Parties to consider providing the Secretariat with financial support to implement the abovementioned proposals.