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Educational, Scientific and  
Cultural Organization



Convention for the fight  
against the illicit trafficking  
of cultural property

**7 SC**

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**Subsidiary Committee of the 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)**

**Seventh Session**  
**UNESCO Headquarters, Room XI**  
**22 and 23 May 2019**

**Item 10 of the Provisional Agenda:** Return and Restitution in the framework of  
the 1970 Convention

This document provides an overview of the  
international legal framework concerning the  
return and restitution of cultural property.

**Draft Decision:** Paragraph 18

## Introduction

1. In accordance with Rule 8.2 of the [Rules of Procedure of the Subsidiary Committee](#) of the Meeting of States Parties to the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter referred to as “the 1970 Convention”), this item on return and restitution has been inscribed in the agenda of the Seventh Session of this Committee following a request made by some of its Members in consultation with the Secretariat.
2. The terms “return” and “restitution” have different connotations. The term “restitution” is mostly used for property pillage in terms of war or for properties stolen from the owner<sup>1</sup>. The term “return”, however, is preferred for property displaced for the benefit of the colonial power and restored to its country of origin, and also for cases of unlawful export. With unlawful exports, the property is returned to the state of origin without the question of ownership arising. Return depends more on the notion of territory, while restitution in the technical sense presupposes that there is an identified recipient. The notion of “repatriation”, also commonly used, refers to a specific form of restitution whose destination can vary; it can be either the country where the cultural property belongs to or the ethnic group that owns it<sup>2</sup>.
3. As the United Nations’ only agency with a specific mandate in the field of culture, UNESCO has a unique role to play in the return and restitution of cultural property. This has been reiterated numerous times by the international community, including the latest resolution issued by the United Nations General Assembly A/RES/73/130 on December 10<sup>th</sup>, 2018 which called upon the relevant bodies, agencies, funds and programmes of the United Nations system and other relevant intergovernmental organizations to work in coordination with UNESCO, within their mandates and in cooperation with Member States, in order to continue to address the issue of return or restitution of cultural property to the countries of origin and to provide appropriate support accordingly. This resolution highlighted the importance of the Subsidiary Committee of the Meeting of State Parties to the 1970 Convention, including its role identifying problems arising from the implementation of the Convention, while fostering exchanges of experiences and good practices.
4. The 1970 Convention was adopted in response to the growing concern of many States regarding the loss of their cultural heritage. Considered to be the most important multilateral treaty dealing with the return of cultural property, it establishes a set of fundamental principles concerning the return of cultural objects and comprises a definition for cultural property. Furthermore, article 4 of the Convention considers the culture proprieties as an integral part of the cultural heritage of each State. Since 2012, the 1970 Convention<sup>3</sup> has a new governing system, namely a biennial Meeting of State Parties and a Subsidiary Committee, which meets annually. The [Operational Guidelines of the 1970 Convention](#), adopted by the Third Meeting of States Parties in 2015, aim to strengthen and facilitate its implementation<sup>4</sup>.
5. Furthermore, the General Conference of UNESCO established at its twentieth Session in 1978 the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (ICPRCP), entrusted with the task of seeking ways and means of facilitating bilateral negotiations for the return

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<sup>1</sup> Please refer to Marie Cornu and Marc-André Renold, "New Developments in the Restitution of Cultural Property: Alternative Means of Dispute Resolution" (2010), International Journal of Cultural Property

<sup>2</sup> Ibid

<sup>3</sup> As of March 2019, 139 States have ratified the 1970 Convention

<sup>4</sup> Please refer to Chapter II for more detailed information on the dispositions relating to return and restitution

of cultural property to the countries having lost them as a result of colonial or foreign occupation or illicit appropriation. The ICPRCP was established to address cases where neither the 1970 UNESCO Convention nor any bilateral or multilateral agreement could be applied and the bilateral discussions had failed or were suspended. Furthermore, even if the ICPRCP was technically independent from the 1970 Convention, before 2012 it served as a de facto committee of the 1970 Convention due to the lack of any other body to fulfil this role.

6. Additionally, the importance of the return and restitution of cultural objects to promote just, peaceful and inclusive societies is reflected in target 16.4 of the Sustainable Development Goals, which aims at “Significantly reduc[ing] illicit financial and arms flows, strengthen the recovery and return of stolen assets and combat all forms of organized crime”. In this regard, the Secretariat deploys its efforts to implement activities aimed at attaining this goal through capacity-building and technical meetings<sup>5</sup>.

### **Return and Restitution in the Framework of the 1970 Convention**

7. In accordance with [Article 7\(b\)\(ii\)](#), the States Parties to the 1970 Convention undertake, at the request of the State Party of origin, to take appropriate steps to recover and return any stolen cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property.
8. The issues of "good faith" acquisition and mandatory compensation were taken up by the International Institute for the Unification of Private Law (UNIDROIT) in its 1995 Convention on Stolen or Illegally Exported Cultural Objects, which was developed at the request of UNESCO. Article 4.1 of the 1995 UNIDROIT Convention<sup>6</sup> stipulates that the possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object. Furthermore, the 1995 UNIDROIT Convention also contains dispositions regarding time limitations and remedied a major problem in relation to claims or return of clandestinely excavated objects by its Article 3(2)<sup>7</sup>.
9. Also, in accordance with Article 13 (b,c,d) of the 1970 Convention, the States Parties undertake, consistent with laws of each State, to ensure that their competent services cooperate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner. States Parties also undertake to recognize the indefeasible right of each State Party to classify and declare certain cultural property as inalienable which should therefore not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.
10. Furthermore, Article 15 provides that nothing in this Convention shall prevent States Parties from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned. Indeed, many States Parties have concluded agreements regarding different aspects like impositions of import restrictions on certain categories of

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<sup>5</sup> For instance, the UNESCO Yaoundé office organized in 2018 a reflection workshop on the restitution and circulation of cultural objects. Please refer to Document C70/19/7.SC/5 for further information on the activities of the Secretariat in this regard

<sup>6</sup> Please refer to the text of the [1995 UNIDROIT Convention](#)

<sup>7</sup> In addition to this, the Model Provisions on State ownership of Undiscovered Cultural Objects were endorsed by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation in its Seventeenth session

cultural goods, regulations concerning the recovery of antiquities to their place of origin, or more generally on cooperation regarding the protection of cultural objects. (text deleted)

11. In accordance with the general rule of public international law embodied in Article 28 of the Vienna Convention on the Law of Treaties, the 1970 Convention is not retroactive. Article 7 provides that a State Party can seek the recovery and return of any illegally exported, illegally removed or stolen cultural property imported into another State Party only after the entry into force of this Convention in both States concerned. However, the Convention does not in any way legitimize any illicit transaction of whatever nature which has taken place before the entry into force of this Convention. For illegally removed or stolen cultural property imported into another State Party before the entry into force of the Convention for any of the States Parties concerned, States Parties are encouraged to find a mutually acceptable agreement which is in accordance with the spirit and the principles of the Convention. Furthermore, as stated above, the ICPRCP serves as a forum of discussions to address cases where neither the 1970 UNESCO Convention nor any bilateral or multilateral agreement could be applied and the bilateral discussions have failed. States Parties are encouraged to address the ICPRCP in order to facilitate discussions for eventual returns or restitutions. In this regard, particular attention should be paid to UNESCO's Rules of Procedure on Mediation and Conciliation.
12. Albeit its limitations, multiple cases of return or restitution of cultural objects have been solved under the 1970 Convention. In November 2018, [Switzerland returned 26 archaeological objects](#) dating between the third millennium BC and the fourth century BC to Egypt. In January 2018, [Venezuela returned 196 pre-Columbian artefacts](#) to Costa Rica after being decommissioned in Venezuela between 2010 and 2014. In April 2014, the Algerian and Tunisian authorities signed an [agreement for the restitution of the Mask of Gorgon](#), a rare archaeological object which was stolen from the site of Hippo Regius, Annaba (in Algeria) in 1996 and recovered in Tunisia.
13. Also, in July 2013, [France returned six objects to Nigeria](#), which partly came from the collection of the Esię Museum in Nigeria. Although not directly framed through the mechanism of the 1970 Convention, this case was solved in the spirit of it. Furthermore, while there have been returns of cultural property in conformity with the 1970 Convention, many of these have taken place without direct use of the mechanisms provided by the Convention, since in many cases the importer concedes the evidence and consents to the return of the object.

## Conclusion

14. Return and restitution issues are seen as a priority by States Parties to the 1970 Convention, as shown during the discussions held during the Sixth Session of the Subsidiary Committee and the responses to the questionnaire on strengthening the implementation, efficiency and visibility of the 1970 Convention<sup>8</sup>. States Parties<sup>9</sup> suggested to further clarify the steps that need to be followed in order to seek the return of an object from another State Party, and called for a broader dissemination of information pertaining to stolen cultural objects through an alert system. In this sense, the Secretariat aims at producing an explanatory document<sup>10</sup> outlining the procedures to be followed for

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<sup>8</sup> Document C70/19/5.MSP/10 of the 5<sup>th</sup> Meeting of States Parties presents a set of recommendations based on discussions held during the Sixth Session of the Subsidiary Committee and the 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](#)

<sup>9</sup> Please refer to document C70/19/5.MSP/10 for more information on the States which made this suggestion.

<sup>10</sup> During the Fourth Session of the Subsidiary Committee (September 2016), the Secretariat presented document [C70/16/4.SC/15](#) on standard actions to facilitate the return and restitution of

restitution of cultural property under the 1970 Convention, as well as at developing draft guidelines, for approval by the Committee, to be followed in the event of theft of cultural property.<sup>11</sup>

15. Also in the context of the aforementioned questionnaire and the discussions in the framework of the Sixth Session of the Subsidiary Committee, some States Parties<sup>12</sup> mentioned the possibility of creating an international list on best practices<sup>13</sup> of return and restitution cases, while several others<sup>14</sup> reported concern on drawing such a list considering each country's specificities.
16. As mentioned above, the practical implementation of the 1970 Convention as regards return and restitution testified of several challenges, including the issue of "good faith" acquirers, time limitation of suits and claims for return of clandestinely excavated objects.
17. As stated in Resolutions [2.MSP 5](#) and [4.MSP 7](#) of the Meeting of States Parties and Decisions [4.SC 15](#), [5 SC 4.B](#) and [6.SC 5](#) of the Subsidiary Committee, it is of outmost importance that both instruments are fully adopted and implemented in order to the better cover claims of stolen or illegally exported cultural property.
18. The Subsidiary Committee may wish to adopt the following decision:

#### **DRAFT DECISION 7.SC 10**

*The Subsidiary Committee,*

1. *Having examined* document C70/19/7.SC/10;
2. *Recalling* Articles 7, 13 and 15 of the 1970 Convention concerning the cooperation in this regard;
3. *Also recalling* paragraphs 82 to 99 of the Operational Guidelines for the Implementation of 1970 Convention which contain useful guidance for the effective application of the above-mentioned Articles;
4. *Encourages* all States Parties to take the following measures in accordance with Art. 7, 13 and 15 of the 1970 Convention:
  - a. ensure that the respective competent services of the concerned State Parties cooperate in facilitating the restitution of illicitly exported cultural property to its rightful owner;
  - b. make a legal proceeding available to owners of lost or stolen items of cultural property;
  - c. conclude agreements among States Parties regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States Parties concerned;

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illegally trafficked cultural objects to their country of origin, which might serve as a basis for such explanatory document.

<sup>11</sup> Please refer to Document C70/19/5.MSP/10 and its Decision .

<sup>12</sup> Please refer to document C70/19/5.MSP/10 for more information on the States which made this proposal.

<sup>13</sup> Please refer to Document C70/19/5.MSP/10 and its Decision.

<sup>14</sup> Ibid

5. Requests the Secretariat to conduct capacity-building activities with a special focus on return and restitution procedures;
6. Also requests the Secretariat to strengthen cooperation with museums in the framework of global efforts to promote the return and restitution of cultural objects;
7. Call for a reinforced cooperation with the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation, as set forth in the functions of the Committee.