



United Nations
Educational, Scientific and
Cultural Organization



Convention for the fight
against the illicit trafficking
of cultural property

7 SC

C70/19/7.SC/8c
Paris, April 2019
Original: English

Limited distribution

**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
Paris, UNESCO Headquarters, Room XI
22 and 23 May 2019

Item 8c of the Provisional Agenda: Sensitization of the Judiciary

This document presents a study on the sensitization of the judiciary, one of the priority topics to be addressed at this session, following Decision [6.SC 10](#)

Draft Decision: Paragraph 21

Background

1. The Subsidiary Committee of the Meeting of States Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereafter the Subsidiary Committee) at its third session adopted Decision [3.SC 7](#). Paragraph 8 of this decision reads as follows:

The Subsidiary Committee of the Meeting of States Parties,
(...)
8. Decides to identify problem areas that need to be addressed and will be discussed at the next session of the Subsidiary Committee of the Meeting of States Parties, recommendations being then submitted to the Meeting of States Parties

Since the adoption of this decision, the Subsidiary Committee identifies a priority topic in order to ensure the use of limited capacities more effectively, the Secretariat prepares a working document to facilitate discussions for the next session of the Subsidiary Committee and the Committee adopts a decision regarding the priority topic. At its sixth session, the Subsidiary Committee adopted Decision [6.SC 10](#) which identified the “Sensitization of the Judiciary” as one of the priority topics to be addressed at its seventh session.

2. For the purposes of this document, the judiciary in addition to judges also includes prosecutors and others, depending on the justice system. This document explores possible methodologies concerning the sensitization of the judiciary on the fight against illicit trafficking. This document does not aim at providing substance for the sensitization projects as that must be customized to each State or geographical region depending on the corresponding needs.
3. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols of 1954 and 1999 as well as the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property are well-known tools to judicial professionals as they are widely ratified. The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Property is similarly familiar to the judicial sector considering that provisions of this Convention have become principles and are reflected in national or regional laws. In this regard, it is not wrong to argue that the justice sector has already acquired a solid memory as far as cultural property is concerned.
4. However, it is only in the last ten years that the number of States that ratified the 1970 Convention increased from 116¹ to 138² and the 1995 UNIDROIT Convention reached 45³ from 29⁴. The Sessions of Meeting of States Parties to the 1970 Convention started to be held regularly since 2012, while the Subsidiary Committee was established in 2013 and meets systematically. The operational guidelines of the 1970 UNESCO Convention were first adopted by the Committee in 2014 and subsequently by the Meeting of States Parties in 2015. The conflict situation in Syria broke out in 2011 and the UN Security Council adopted Resolutions 2199 (2015), 2253 (2015) and 2347 (2017), which include paragraphs relating to the illicit trafficking of Iraqi and Syrian originated artefacts. Several return and restitution cases took place between States or individuals, some of them as lawsuits that developed the case-law, such as the case of a Demeter Statue⁵. A new convention was

¹ https://unesdoc.unesco.org/ark:/48223/pf0000182210_eng/PDF/182210eng.pdf.multi

² <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha>

³ *Ibid.*

⁴ https://unesdoc.unesco.org/ark:/48223/pf0000182210_eng/PDF/182210eng.pdf.multi

⁵ Copy of the decision available at: <https://www.ial.uk.com/wp-content/uploads/2015/10/2015.Politics.Return.Libyan.statue.pdf>

adopted by the Council of Europe, the “European Convention on Offences relating to Cultural Property”⁶ and the European Union adopted [Directive 2014/60/EU of the European Parliament and of the Council on the return of cultural objects unlawfully removed from the territory of a Member State](#). The International Criminal Court Trial Chamber VIII [declared Ahmad Al Faqi Al Mahdi guilty](#) of attacking historic and religious buildings in Timbuktu and sentenced him to nine years’ imprisonment for this war crime. Further developments, improvements or changes concerning the members of the judiciary could be listed.

5. The recent developments cited above showcase the rapid evolution of the legal texts and initiatives. In order to ensure the effective implementation of relevant legal tools, national laws and regulations, the sensitization of the judiciary be it through awareness-raising activities or by increasing capacities is fundamental.

Examples of awareness-raising activities:

6. Developing technology offers new ways for sensitization of the general public or targeted groups. The use of social media, visual campaigns, television or radio programmes, online courses and workshops represent some of the tools for sensitization.
7. All awareness-raising campaigns, especially the ones targeting adults, would inevitably have an impact on the members of the judiciary. Additionally, it is always possible to arrange awareness-raising projects for the sensitization of the members of the judiciary with a relatively small budget. For example, declaring a week/month/year dedicated to cultural heritage and decorating the walls of the “Palace of Justice/Court House” with customized posters on the fight against illicit trafficking of cultural property or more basic posters with an image of a cultural object that might have been kept in the storage by the Ministry of Culture or by Museum X after a previous exhibition.
8. It may not be applicable in all States, but for the ones where it is possible, the professional associations for the members of the judiciary may decide to use the protection of cultural heritage as the main theme of the materials that they produce to disseminate among their members such as pens, notebooks, calendars, etc.

Why raise awareness?

9. Let us imagine a State that considers cultural property, including undiscovered objects, as the property of State. In accordance with this State’s law, land or underwater excavation aimed at finding and removing cultural property without the authorization of the State is a punishable crime. A group is seized while excavating illegally and a few coins are found in one of the perpetrators’ bags. This is thus a criminal case as they are suspected of violating criminal law and committing a public crime. Imagine that the prosecutor dealing with this case is so overwhelmed with other cases that are related to more “serious crimes” and s/he therefore does not have the time to thoroughly work on this excavation case. S/he thus prepares the bill of the indictment based on the illegal excavation and proposed confiscation of the coins. If s/he was aware that the illicit trafficking of cultural property is mostly committed as an organized crime and that this is a crime for which s/he can employ special investigative techniques, s/he would not let the perpetrators leave custody until trial before searching their premises or mobile phone devices to seek evidence. A notorious group of smugglers would not get away with light sentences given the amount of damage they have caused. When an organized crime group is well-known in the area and the public sees that nothing serious happens, even when one is caught committing a crime relating to cultural property, the importance granted by the authorities to the protection of cultural property immediately affects the understanding of the general public. It is therefore even

⁶ This Convention can be also ratified by non-Members of Council of Europe.
<https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/0900001680710435>

more important for the members of the judiciary because their daily work has an impact not only on the life of the perpetrator, but it also affects the perception of the general public.

Training Programmes

10. The awareness raising initiatives should be complemented by training. The training organized for the judiciary should contain the basic principles of adult learning (andragogy). When planning the programme, the organizers of the training should take into account that the participants will be active and responsible, and they should be given the opportunity to contribute to the training with their own experience and opinions. In pedagogy, the content is chosen by the lecturer whereas in adult learning the participant chooses the content. The methodology of teaching should be based on experience.
11. More specifically, the International Organization for Judicial Training⁷ adopted the [Declaration of Judicial Training Principles](#). According to these principles, judicial training is essential to ensure judicial independence; to preserve judicial independence the judiciary and judicial training institutions should be responsible for the design, content and delivery of judiciary training; it is the right and responsibility of all members of the judiciary to undertake training and each member should have time to be involved in training as part of their judicial work; all members of the judiciary should receive training before or upon their appointment, and should also receive regular training throughout their careers; training should be judge-led and delivered primarily by members of the judiciary who have been trained for this purpose, however, non-judicial experts may be also involved where appropriate; judicial training should reflect best practices in professional and adult training programme design and it should include up-to-date methodologies.
12. The existence of judicial training institutions in many States provides a valuable opportunity to ensure continuous training. In most of the States, the members of the judiciary receive training when first assigned. Considering that the illicit trafficking in cultural property mostly falls within the scope of criminal law and the return and restitution may be more related to ownership law, it would be beneficial for a module to include these two dimensions in the training curriculum of the new members in the judiciary. If the decision for such training was made and the initiative was not interrupted, after a reasonable time there would not be a single member of the judiciary unfamiliar with the topic, and they would certainly have the necessary framework to build upon.
13. For deeper knowledge and an update of the developments in the protection of cultural property domain, the judicial educational institutions may prepare training curricula based on a needs assessment inquiry. The curricula should of course include international legal tools such as: the 1954 Hague Convention and its two protocols, the UNESCO 1970 Convention and the 1995 UNIDROIT Convention; in addition to the European Convention on the Offences Relating to Cultural Property; the United Nations Security Council Resolutions 2199, 2253, 2347; the UN Convention against Transnational Organized Crime; and regional tools like the EU directives or regulations where appropriate, the use of

⁷ “The International Organization for Judicial Training (IOJT) was established in 2002 in order to promote the rule of law by supporting the work of judicial education institutions around the world. The mission of the IOJT is realized through international and regional conferences and other exchanges that provide opportunities for judges and judicial educators to discuss strategies for establishing and developing training centers, designing effective curricula, developing faculty capacity, and improving teaching methodology.

The IOJT is a volunteer, non-profit organization and relies upon the efforts and good will of its members.” For more information please visit: <http://www.iojt.org/About-Us.aspx>

practical tools provided by international organizations as well as Customary law and relevant national legislation of cultural property.

14. Additionally, the direct impact of the training would be more observable if the national legislation formed the core of the training. The reference made to national legislation should not only be limited to legislation related to cultural property. The members of the judiciary should remember to also think about other laws since it is very often the case that a perpetrator simultaneously commits another crime while committing the crime primarily intended. For example, if the perpetrator damages a public space that requires repair from the public budget, there may be a legal provision which prohibits and sanctions damages to public buildings and in a completely separate law there may be another provision which puts the monetary burden on the perpetrator as far as repairing the area is concerned. Therefore, knowledge of both laws would allow for justice to be served completely as the criminal would be punished for his/her offences relating to cultural heritage as well as for his/her other actions whether criminally or administratively sanctioned in another legislation.
15. Another variation of this example could be produced for private law cases. Consider a State that has several amendments in its cultural property law. The version of the legislation that should apply to a case must be well understood by the judge as any change in the ownership-related paragraphs may lead to a different decision and outcome. If the State is a party to the UNIDROIT 1995 Convention, the burden of proving goodwill on the acquisition of the artefact is placed on the possessor. Indeed, even if the State is not a party to the UNIDROIT Convention, it may have transposed the principles of the Convention into its national legislation as endorsing its provisions is a very common practice amongst states⁸. Thus, the curriculum of such training should include the application of due diligence to cultural property related matters and it should also contribute to increasing the competency of the judges as far as deciding whether the person acted in good faith or not⁹.
16. As far as training for different laws is concerned, special investigative techniques could also be included in a complementary lecture. These techniques could be very useful to law enforcement authorities investigating organized crime cases of illicit trafficking of cultural property, and the techniques that have provided successful results in other types of crimes may also be applied to cultural property-related crimes. However, there are some points that must be acknowledged for efficient cooperation when a State requires assistance from another State concerning the use of special investigative techniques. Another problem with the use of special investigative techniques is the low level of awareness on their applicability to cultural property related cases. All these points could be addressed during training¹⁰.
17. Mutual legal assistance (MLA) is another issue that may also be addressed in training relating to cultural property. There are several international or regional legal tools that could apply to cultural property related cases and address mutual legal assistance matters¹¹. If

⁸ For more information: S. Delepierre and M. Schneider, 2015, Ratification and implementation of international conventions to fight illicit trafficking in cultural property, in: F. Desmarais (ed.), *Countering Illicit Traffic in Cultural Goods: The Global Challenge of Protecting the World's Heritage*, Paris

⁹ For more information and examples please see "Fighting the Illicit Trafficking of Cultural Property: A toolkit for European Judiciary and Law Enforcement"

<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/movable/pdf/Toolkit.pdf>

¹⁰ibid

¹¹For example: the UN Convention against Transnational Organized Crime 2000 (UNTOC); the UN Convention against Corruption 2003 (UNCAC); the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990; the Council of Europe Convention

these tools were properly studied by the judiciary, the time required for MLA could be greatly shortened. This would also increase the efficiency of the court or the office of the prosecutor.

18. States may consider organizing these components of training through the production of online materials such as online training programmes. As for a regional example, UNESCO and the EU jointly organized a training aimed at European judicial and law-enforcement officials in the fight against the illicit trafficking of cultural property both within and beyond their borders. This training was supported by a [publication](#). Furthermore, online training materials are currently under preparation including basic information on the most relevant international legal tools, practical tools and case studies. On a different note, UNESCO undertook a successful initiative with the support of Sweden for a project entitled “School for Judges”. While this project is related to freedom of expression, it could be used as a well-designed model for a more customized international or regional study by UNESCO for preventing the illicit trafficking of cultural property.

International Tools for the Members of the Judiciary

19. There are several international tools that may be helpful for different actors taking part in the fight against illicit trafficking such as:

- [UNESCO awareness-raising campaigns: films, video clips and publications](#)
- [UNESCO Mediation and Conciliation Rules on conflicts related to cultural property](#)
- [UNESCO-INTERPOL-ICOM Basic actions concerning cultural objects being offered for sale over the internet](#)
- [UNESCO code of Ethics for Dealers in Cultural Property](#)
- [UNESCO-WCO Model export certificate](#)
- [UNESCO Database of national cultural heritage laws](#)
- [UNESCO-UNIDROIT Model provisions on State ownership of undiscovered cultural heritage](#)
- [UNIDROIT Convention Academic Project](#)
- [INTERPOL Database for Stolen works of art](#)
- [INTERPOL Posters](#)
- [INTERPOL Purple Notice](#)
- [WCO's ARCHEO Communication and Information Platform](#)
- [ICOM Red Lists](#)
- [ICOM Code of Ethics for Museums](#)
- [UNODC Sherlock Knowledge Sharing Platform](#)
- [ArThemis Case Notes Database of University of Geneva, Art-Law Centre](#)

20. All of these and more can be only effective if they are widely known by the respective authorities. In addition to the national and international legal materials, it is also important that the members of the judiciary know about the existing practical tools.

21. The Subsidiary Committee may wish to consider adopting the following decision:

on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism 2005; the Council of Europe Criminal Law Convention on Corruption 1999; the European Convention on Mutual Assistance in Criminal Matters 1959.

DRAFT DECISION 7.SC 8c

The Subsidiary Committee,

1. Having examined document C70/19/7.SC/8c,
2. Reminds States Parties that the actions and decisions by the members of the judiciary have a strong effect on shaping the understanding of the general public on any matter;
3. Requests States Parties to consider sensitization of the members of the judiciary regarding the offences relating to cultural property as well as on return and restitution cases as a priority;
4. Encourages States Parties to strengthen the cooperation between the members of the judiciary and the cultural heritage professionals in order to increase the experience exchange;
5. Invites States Parties to consider developing awareness-raising activities as well as *capacity*-building initiatives also in coordination with the professional associations and the training centres for the members of the judiciary, where appropriate;
6. Invites the Secretariat to produce a model awareness-raising and capacity-building strategy document customized for the members of the judiciary in order to inspire the initiatives to be taken by the States Parties at the national level, and launch it by 31 October 2019;
7. Welcomes the adoption of the “Declaration of Judicial Training Principles” by the International Organization for Judicial Training Centres;
8. Requests the Secretariat to explore ways to cooperate with the International Organization for Judicial Training Centre for further discussions on possible future joint projects;
9. Also encourages States Parties to include modules on preventing illicit trafficking of cultural property as well as the return and restitution of cultural objects to the training of newly appointed members of the judiciary;
10. Invites State Parties to establish a training curriculum for special training courses for the members of the judiciary in order to contribute to the competency of the justice system regarding the offences relating to cultural property as well as the return and restitution of cultural objects.