



United Nations  
Educational, Scientific and  
Cultural Organization



Convention for the fight  
against the illicit trafficking  
of cultural property

3 MSP

C70/15/3.MSP/11  
Paris, March 2015  
Original English

Limited distribution

**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)**

**Third Meeting  
Paris, UNESCO Headquarters, Room II  
18-20 May 2015**

**Provisional agenda point 11:** Discussions on possible adoption of the draft Operational Guidelines

This document contains the draft Operational Guidelines for the implementation of the 1970 Convention as approved by the Subsidiary Committee of the Meeting of States Parties to the 1970 Convention during its second session in July 2014.

**Decision required paragraph: 3**



1. The draft Operational Guidelines approved by the Subsidiary Committee during its second session (Decision 2.SC/5) are presented in the annex to this document for discussion and possible adoption by the Meeting of States Parties.

2. Additional inputs received from States Parties after the approval of the draft Operational Guidelines by the Subsidiary Committee are available in the original language (English or French) at the website of the Convention (<http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/meeting-of-states-parties/3rd-msp-2015/>)

3. The Meeting of States Parties may wish to adopt the following resolution:

### **DRAFT RESOLUTION 3.MSP/11**

*The Meeting of States Parties of the 1970 Convention,*

1. Having examined document C70/15/3.MSP/11,
2. Appreciates the efforts undertaken by the Subsidiary Committee in providing a consensual draft of the Operational Guidelines;
3. Decides to adopt the following Operational Guidelines for the Implementation of the 1970 Convention.

## ANNEX

### TABLE OF CONTENTS

<b>Chapter</b>	<b>Paragraph(s)</b>
Introduction	1-7
Purpose of these Guidelines	8
Purpose of the Convention	9-10
Definition of cultural property for the purposes of the Convention (Article 1)	11-12
Fundamental principles of the Convention (Articles 2; 3)	13-17
Link between heritage and State (Article 4)	18-19
National services for the protection of cultural heritage (Articles 5; 13(a, b); 14)	20-23
• Legislation (Article 5(a))	24-32
• Inventories, inalienability and State ownership (Article 5(b))	33-38
• Expert institutions (Article 5(c))	39-41
• Archeology and protected areas (Article 5(d))	42-48
• Rules in conformity with the ethical principles set forth in the Convention (Article 5(e))	49-51
• Education (Articles 5(f); 10)	52-53
• Publicizing the disappearance of cultural objects (Article 5(g))	54-55
Prohibition and prevention of illicit import, export, and transfer of ownership of cultural property (Articles 6; 7(a, b(i)); 8; 10(a); 13(a))	
• Export certificates (Article 6(a, b))	56-62
• Prohibition of importing stolen cultural property (Article 7(b)(i))	63
• Penalties and administrative sanctions (Articles 6(b), 7(b); 8))	64-67
• Sales on Internet	68-70
• Sales in auction	71

<ul style="list-style-type: none"> <li>• Preventing transfers of ownership likely to promote illicit import or export, controlling trade by registers, and establishment of rules in conformity with ethical principles (Articles 13(a); 10(a); 7(a); 5(e))</li> </ul>	72-81
Cooperation on recovery and return of cultural property (Articles 7(b)(ii); 13(b, c, d); 15)	82-85
<ul style="list-style-type: none"> <li>• Request of State Party (article 7(b)(ii))</li> </ul>	86
<ul style="list-style-type: none"> <li>• Evidence to establish a claim (article 7(b)(ii))</li> </ul>	87-92
<ul style="list-style-type: none"> <li>• Just compensation and due diligence (Article 7(b)(ii))</li> </ul>	93-94
<ul style="list-style-type: none"> <li>• Cooperation for earliest possible restitution (Article 13(b))</li> </ul>	95-98
<ul style="list-style-type: none"> <li>• Admission of legal actions for recovery of lost or stolen cultural property (Article 13(c))</li> </ul>	99
<ul style="list-style-type: none"> <li>• Non-retroactivity of the 1970 Convention, entry into force of the Convention and resolution of claims (Article 17)</li> </ul>	100-103
<ul style="list-style-type: none"> <li>• Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP)</li> </ul>	104-105
Pillage of archaeological and ethnological materials (Article 9)	106-110
Occupation (Article 11)	111-112
Special agreements (Article 15)	113-115
Reports by States Parties (Article 16)	116-120
Secretariat to the 1970 Convention and to the Subsidiary Committee (Article 17)	121-126
States Parties to the 1970 Convention (Articles 20; 24)	127-128
Reservations	129-130
Cooperating partners in the fight against illicit trafficking of cultural property	131-134
Conventions relating to the protection of cultural property	135-137

### **List of proposed annexes**

---

## Introduction

1. Cultural heritage is among the priceless and irreplaceable inheritance, not only of each nation, but also of humanity as a whole. The loss, through theft, damage, clandestine excavations, illicit transfer or trade, of its invaluable and exceptional contents constitutes an impoverishment of the cultural heritage of all nations and peoples of the world and infringes upon the fundamental human rights to culture and development.
2. To ensure, as far as possible, the protection of their cultural heritage against the illicit import, export and transfer of ownership, the Member States of UNESCO adopted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereafter referred to as the “1970 Convention” or the “Convention”) on 14 November 1970, at the 16th Session of the General Conference of UNESCO. The 1970 Convention constituted a step forward to stop and reverse the erosion of the cultural heritage by, inter-alia, damage, theft, clandestine excavation, and illicit transfer and trade. It raised hopes that cultural heritage and traditions would be duly protected for the benefit of all nations and peoples of the world and for the better education of all. However, the number of States Parties has increased slowly and its effective implementation has been lacking. Moreover, worrisome trends, such as the proliferation of pillage and clandestine excavations of archaeological and paleontological sites and related sales on Internet, are posing further challenges to the protection of cultural heritage. At the same time, during the last decades new approaches and attitudes for strengthened partnership to protect cultural heritage have evolved, creating the potential of higher forms of understanding and international cooperation to combat the illicit traffic of cultural property. To date, more than 125 UNESCO Member States have become Parties to the Convention and thus it can be considered as generally accepted by the international community. However, further efforts are needed to increase its acceptance as well as to strengthen its implementation by its States Parties.
3. The first Meeting of States Parties to the 1970 Convention took place in October 2003 in order to examine issues concerning the effective implementation of the Convention (CLT-2003/CONF/207/5). In accordance with 187 EX/Decision 43 and in consideration of the discussions held at the meeting held on the occasion of the 40<sup>th</sup> anniversary of the 1970 Convention, the Executive Board convened a second Meeting of States Parties to examine in depth the impact of measures taken by States Parties to the Convention to optimize its implementation, appraise its effectiveness with particular regard to new trends in trafficking in cultural property, and reflect on possible modalities for ensuring its effective and regular application and follow-up.
4. The Second Meeting of States Parties took place in June 2012. At that occasion, the Meeting of States Parties decided to convene its meetings every two years. The Meeting of States Parties adopted its own Rules of Procedure. The Meeting of States Parties also decided to establish a Subsidiary Committee of the Meeting of the States Parties of the Convention of 1970 to support the strengthening of the implementation of the Convention (hereafter referred to as the “Subsidiary Committee”), to be convened every year.
5. Following that Second Meeting of States Parties, UNESCO’s Executive Board approved the holding of an Extraordinary Meeting of States Parties in 2013, to proceed with the establishment of the Subsidiary Committee (190 EX 190/43). At the Extraordinary Meeting, held on 1 July 2013, the Subsidiary Committee was duly elected. The Subsidiary Committee held its First Meeting on 2-3 July 2013 and adopted its own Rules of Procedure.

6. In accordance with Article 14.6 of its Rules of Procedure, the functions of the Subsidiary Committee are:
- To promote the purposes of the Convention, as set forth in the Convention;
  - To review national reports presented to the General Conference by the States Parties to the Convention;
  - To exchange best practices, and prepare and submit to the Meeting of the States Parties recommendations and guidelines that may contribute to the implementation of the Convention;
  - To identify problem areas arising from the implementation of the Convention, including issues relating to the protection and return of cultural property;
  - To initiate and maintain co-ordination with the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (hereafter referred to as the "ICPRCP") in relation to capacity building measures combating illicit traffic in cultural property;
  - To report to the Meeting of States Parties on the activities it has carried out.
7. In accordance to its mandate, and with the commitment of fully supporting the achievement of higher forms of understanding and international cooperation to combat the illicit traffic of cultural property, the Subsidiary Committee submitted these Operational Guidelines for the implementation of the UNESCO 1970 Convention by States Parties, for their adoption at the Third Meeting of States Parties of the Convention in 2015. The present guidelines may be subsequently amended by the Meeting of States Parties either on the recommendation of the Subsidiary Committee or on its own initiative.

### **Purpose of these guidelines**

8. The Operational Guidelines of the UNESCO 1970 Convention (hereafter referred to as the Operational Guidelines) aim to strengthen and facilitate the implementation of the Convention to minimize risks related to disputes over the interpretation of the Convention as well as to litigation, and thus to contribute towards international understanding. The Convention was adopted by the General Conference on 14 November 1970. Building upon improved shared understandings and experience, the Operational Guidelines are intended to assist States Parties in implementing the provisions of the Convention, including by learning from the best practices of States Parties geared to enhance the effective implementation of the Convention, and also to identify ways and means to further the achievement of the goals of the Convention through strengthened international cooperation.

### **Purpose of the Convention**

9. The reciprocal responsibilities and obligations agreed in the Convention have the purpose of enabling the international community to protect cultural property against damage, theft, clandestine excavations, illicit import, export and transfer of ownership, trafficking, to implement preventive measures and raise awareness of the importance thereof, to establish a moral and ethical code for the acquisition of cultural property to provide a platform among State Parties to the Convention for facilitating the recovery and return of stolen, illicitly excavated or illicitly exported cultural property, and to promote international cooperation and assistance.

10. The Preamble to the Convention proclaims that the exchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of humanity; enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations; that cultural property constitutes one of the basic elements of civilization and national culture and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting; that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of damage, theft, clandestine excavation, and illicit export; that, to avert these dangers, it is essential for every State Party to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations; that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles; that the illicit import, export and transfer of ownership of cultural property is an obstacle to that understanding between nations which it is part of UNESCO's mission to promote by recommending to concerned States, international conventions to this end; and that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close cooperation. These agreed general principles should guide the interpretation of the provisions of the Convention.

### **Definition of cultural property for the purposes of the Convention (Article 1)**

11. In drafting the 1970 Convention, UNESCO Member States concluded that it was desirable for all States Parties to apply a common definition of cultural property for the purposes of the Convention, in order to adequately address the issue of exports and imports of such property. Thus, Article 1 states that, for the purposes of the Convention, the term "cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the categories identified in the same Article.
12. States Parties are encouraged to keep such designation up to date. Among the categories of cultural property, as enumerated in Article 1 of the Convention, three categories pose special challenges in terms of their specific designation, as follows:

Products of archaeological and paleontological clandestine excavations: Regarding archaeological and paleontological finds clandestinely excavated, States are unable to produce any specific inventories. To avoid the problem of specifically identifying an object of archaeological or paleontological significance, it has been demonstrated that one useful approach is to make a clear assertion of State ownership of undiscovered objects, so that the State Party can request its return under the provisions of the 1970 Convention and/or by recourse to any other relevant means. This is particularly important in the case of an undisturbed archaeological site that has not yet been looted: every object in that site, still to be found, is important for the preservation of cultural heritage and the understanding and knowledge of the archaeological site's full meaning and context. Consequently, States Parties are encouraged to follow best practice in designating the cultural property that is protected under their national law in accordance with these characteristics and all States Parties are encouraged to recognize this sovereign assertion for the purposes of the Convention.

Elements of artistic or historical monuments or archaeological sites which have been dismembered: The specific designation of objects severed or torn from artistic or historical monuments or archaeological sites which have not yet been inventoried

also pose a serious challenge. States Parties are invited to define these types of objects that are susceptible to pillage.

Objects of ethnological interest and items of indigenous communities: A special concern is posed by the increasing traffic of objects of ethnological interest that have special anthropological significance in festive or ritual customs and traditions, among others. State Parties are invited to draw and appropriately update lists by type of such significant objects in order to support the fight against their illicit traffic. Another important concern is the return of objects from indigenous communities whose absence has deprived them of significant cultural items necessary for the continuance of their culture, education of their children and respect for their traditions. Items of spiritual importance in all cultures have also been the subject of increased concern. For instance, while human remains are not necessarily covered under the 1970 Convention, many indigenous communities feel strongly about the return of human remains originating in their communities for traditional burial or other ceremonies in their home country. These returns are not regarded as taking place in accordance with the 1970 Convention, since it uses the phrase “cultural property” and most indigenous communities do not accept that human remains can be regarded as “property”. States Parties are encouraged to take this into full account and thus to establish legislation, where necessary, that provides for the return of grave objects associated with burials, in view of the anthropological knowledge on the importance of burial practices to such communities and to conform with the wishes of those communities in accordance with the principles of the United Nations Declaration on the Rights of Indigenous Peoples 2007 and the Principles & Guidelines for the Protection of the Heritage of Indigenous People (drafted 1993 and revised 2000).

### **Fundamental principles of the Convention (Articles 2; 3)**

13. Article 2 and 3 state the fundamental principles of the Convention. The first principle is the recognition of “illicit import, export and transfer of ownership of cultural property” as “one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international cooperation constitutes one of the most efficient means of protecting each country’s cultural property” against these dangers. The second principle is a solemn undertaking by States Parties to fight these practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices and by helping to make necessary reparations.
14. Trafficking of cultural property has many causes. Ignorance and poor ethics are at its very root and therefore the critical role of education and awareness raising must not be disregarded. Lack of capacity to protect cultural heritage is an important weakness in many countries, which also has to be remedied as much as possible, taking into account that in many instances it is materially impossible to adopt exhaustive measures of physical security and surveillance of all relevant cultural heritage, particularly regarding archaeological and paleontological sites. Moreover, the market has to be better regulated. Law enforcement and customs controls both at export and import points require to be strengthened with rigorous and efficient mechanisms, as well as educating and utilizing an active judiciary in order to confer effective protection to cultural heritage. Moreover, information on trade exchanges should be fully and readily available to States Parties concerned, to enabling them to better confront illicit trafficking. As long as demand remains high there will be an incentive to supply any goods. The trade of archaeological and paleontological objects not only trivializes the invaluable nature of such objects but also may create incentives for looting. In direct relation to the aforementioned, it should be further noticed that objects of

recent manufacture are regularly introduced into the market and sold at high prices as genuine archaeological artifacts. This circumstance may further incentivize pillaging and trafficking. Special attention is required in these regards.

15. Clandestine excavations of archaeological sites are among the most pernicious practices within the cycle of illicit trafficking. The damage caused by clandestine excavations of archaeological sites goes well beyond the theft of important archaeological pieces, as it destroys the unity of meaning of the whole archaeological monument and archaeological context of the site, depriving the nations and peoples of the world of the opportunity to understand and learn from their irreplaceable cultural heritage. This pernicious practice should be fully stopped.
16. The recovery and return of stolen, illicitly excavated and illicitly exported cultural property, to countries of origin remains a top priority. All efforts should be made to proceed with this required reparation in fairness to the affected nations and peoples of the world.
17. To advance on all these fronts, States Parties are encouraged to reinforce the promotion of the effective implementation of the fundamental principles of the Convention through appropriate legislation and their full enforcement, as well as through education and awareness raising, capacity building and a strengthened international cooperation.

#### **Link between heritage and State (Article 4)**

18. Article 4 (a) to (e) sets out categories of cultural property that can form part of the cultural heritage of a State, either owned by the State itself or a private individual. States Parties to the Convention are required to recognize a link between those categories and the relevant State where the object concerned has been created by an individual or by the “collective genius” of nationals, foreign nationals or stateless persons resident within its territory; found within its national territory; acquired by archaeological, ethnological or natural science missions with the consent of the competent authorities of that country; the subject of a freely agreed exchange; or received as a gift or legally purchased with the consent of the competent authorities of that country.
19. The Convention does not attempt to establish priorities where more than one State may regard a cultural object as part of its cultural heritage. Competing claims to such items, if they cannot be settled by negotiations between the States or their relevant institutions or by special agreement (see paras. 113-115 below), they should be regulated by out of court resolution mechanisms, such as mediation (see para. 104 below) or good offices, or by arbitration. There is no strong tradition for the judicial settlement of such differences in cultural matters. State practice would suggest a preference for mechanisms that allow consideration for legal, as well as cultural, historical and other relevant factors. States Parties are encouraged to exhaust all options provided by the Convention before entering into arbitration or litigation. States Parties are encouraged to cooperate to ensure that appropriate arrangements are established to allow the interested States to realize their interests in a compatible way through, *inter alia*, loans, temporary exchange of objects for scientific, cultural and educational purposes, temporary exhibitions, joint activities of research and restoration.

## National services for the protection of cultural heritage (Article 5, 13(a; b), 14)

20. To ensure the effective implementation of the Convention, Article 5 requires that States Parties undertake, as appropriate for each country, to set up one or more national services for the protection of cultural heritage, with sufficient staff and adequate budget to carry out the following functions:
  - Contributing to the drafting of legislation (Art. 5(a); paras. 24-32 below);
  - Establishing and updating a list of cultural property whose export would constitute an impoverishment of the cultural heritage of the country (Art. 5(b); paras. 33-38 below);
  - Promoting the development or the establishment of scientific and technical institutions required to ensure preservation and presentation of that cultural property (Art. 5(c); paras. 39-41 below);
  - Organizing the supervision of archaeological excavations and ensuring the preservation *in situ* of certain cultural property (Art. 5(d); paras. 42-48 below);
  - Establishing rules “in conformity with the ethical principles set forth in this Convention” and taking steps to ensure their observance (Art. 5(e), paras. 49-51);
  - Taking educational measures to develop respect for the cultural heritage of all States and spreading knowledge of the principles of the Convention (Art. 5(f); paras. 52-53 below);
  - Arranging appropriate publicity for the disappearance of any item of cultural property (Art. 5(g) paras. 54-55 below);
21. States Parties should also ensure that their national services support adequately other functions entrusted to them, such as the ones stipulated in Article 13(a; b):
  - Preventing transfers of ownership of cultural property likely to promote the illicit import or export of such property
  - Ensuring cooperation between their competent services to facilitate restitution of illicitly exported cultural property to its rightful owner.
22. In this context, since previous experiences have proven their efficacy, States Parties are also encouraged to create “specialized police and customs units” or “law enforcement agencies” such as a pool of prosecutors or experts specialized in art-crime investigations, dedicated to the protection of cultural property and the recovery of stolen cultural property under constant cooperation with all the relevant authorities from the different branches and levels of government of the States Parties. States Parties should promote cooperation between such units created in different States, as well as with UNODC, INTERPOL and WCO, and are encouraged to exchange good practice and if possible technical support on all the relevant means and methods used for the prohibition and prevention of the illicit import, export and transfer of cultural property, with special attention to the fight against clandestine excavations of archaeological sites. States Parties are encouraged to enhance police activities to prevent illicit excavations or research in archaeological, paleontological and underwater sites, adopting for their surveillance, in accordance with the particular situations, the appropriate physical and technological measures. States Parties should also promote the exchanges of police and law enforcement experiences, taking into account the relevant investigating experience by specialized units having multi-year practice in the specific sector.
23. Article 14 states that each State Party should, as far as it is able, provide the national services responsible for the protection of its cultural heritage with an adequate budget. If necessary a fund should be set up for this purpose. States Parties are encouraged to ensure that their national services support adequately all of the functions given to them.

States Parties are also encouraged to strengthen international cooperation in support of these national efforts.

### **Legislation (Article 5(a))**

24. Article 5(a) requires States Parties to adopt appropriate legislation for the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of cultural property. States Parties may seek assistance or advice for the making of such legislation from UNESCO. States Parties are encouraged to review their legislation periodically to ensure that it integrates the relevant international legal framework and best practice.
25. In fulfilling their duty to protect cultural heritage, several States have enacted explicit laws on State ownership of certain cultural property, even when it remains officially undiscovered or is otherwise unrecorded. State ownership laws constitute the first barrier against looting and should prevent laundering and international trade in undocumented cultural property.
26. State ownership laws cannot fulfill their protective purpose or facilitate the return of cultural property if the removal of the relevant cultural property from the territory of the concerned State without its express consent as rightful owner is not internationally regarded as theft of public property. Thus, when a State has declared ownership of certain cultural property, States Parties are, in the spirit of the Convention, encouraged to consider the illicit removal of that cultural property from the territory of the dispossessed State as theft of public property, where such demonstration of ownership is necessary in order to allow for its return.
27. In this context, it is important to recall that, following the UNESCO Recommendation on International Principles Applicable to Archaeological Excavations (1956) and the ECOSOC Resolution 2008/23 on the need for States to assert State ownership of the archaeological subsoil, and as requested by the ICPRCP at its 16<sup>th</sup> session in 2010, the UNESCO and UNIDROIT Secretariats convened a group of experts from all different regions of the world and mandated them to draft a text that would appropriately address the subject. The document was finalized and adopted at the ICPRCP at its 17<sup>th</sup> session in 2011.
28. These Model Provisions are intended to assist domestic legislative bodies in the establishment of a legislative framework for heritage protection, in States concerned, in order to adopt effective legislation for the establishment and recognition of the State's ownership of undiscovered cultural objects with a view to facilitating return in case of unlawful removal and to ensure that courts will have full knowledge of the relevant legal provisions abroad. The Model Provisions and their explanatory guidelines are included in Annex 1.
29. Consequently, States Parties may consider, as appropriate for each country, to apply in their legislation the six Model Provisions on State ownership drafted by the UNESCO/UNIDROIT Working Group and adopted by the UNESCO/ICPRCP in 2011.
30. States Parties are encouraged to also consider becoming Parties of the UNIDROIT Convention on Stolen or Illicitly Exported Cultural Objects 1995. Significant provisions which complement the 1970 Convention are among others a duty to return a stolen object, a clear test for due diligence in checking provenance and specific provisions for the return of illegally exported cultural objects.
31. It is important that all relevant national legislation be appropriately publicized so that collectors, dealers, museums and other concerned stakeholders with the movement of cultural objects are fully aware of the precise national provisions they should comply with. To ensure, as far as possible, this publicity and visibility of the laws/rules concerning the

protection of cultural property, UNESCO has established a Database of National Cultural Heritage Laws, a source of information easily and freely accessible (hereafter referred to as the "UNESCO Database"). The development of this innovative tool was approved by the UNESCO General Conference in 2003 and launched in 2005 by the 13<sup>th</sup> session of the ICPRCP.

32. The UNESCO database encompasses numerous types of national standard-setting instruments and related materials as well as information on the national authorities responsible for the protection of the cultural heritage and addresses of the official national websites dedicated to the protection of the cultural heritage. States Parties are encouraged to provide all relevant legislation, including their export and import laws and the legislation on criminal and administrative sanctions, to the UNESCO Secretariat translated into English or French which are the working languages of UNESCO, for inclusion on the UNESCO Database and especially to keep it updated.

### **Inventories, inalienability and State ownership (Article 5(b))**

33. A key step in the protection of States Parties' cultural property against illicit import, export and transfer of ownership is establishing and keeping up to date, on the basis of a national inventory of protected cultural property, a list of important public and private cultural property whose export would constitute an impoverishment of the national cultural heritage.
34. These lists can include cultural property identified either by individual description or by category, considering that, in developing and recognizing inventories of such protected cultural property inventories, States Parties should bear in mind the specific characteristics of cultural property, as defined in Article 1, in particular regarding clandestinely excavated archaeological sites and other cultural property that poses special challenges in terms of their specific designation (see para. 12 above).
35. States Parties have the indefeasible right to classify and declare certain cultural property as inalienable and, to enact State ownership laws on cultural property. In the spirit of the Convention and unless evidence of the contrary, States Parties are encouraged, for restitution purposes after the entry into force of the Convention as appropriate, to consider cultural property forming part of the cultural heritage of a State as appertaining to the relevant official inventory of the owner State. There is a need to develop a common methodology based on existing methods and databases to ensure that such inventories are fully integrated into the international procedures now available for tracking lost and stolen cultural objects in support of full compliance with and enforcement of the Convention. This common methodology may allow for the granting of a unique identity number not only to every object found in archaeological and paleontological sites and displayed or stored in museums but also to categories of types of cultural objects claimed by a State Party to be deriving from clandestine excavations, which may be categorized by region and epoch or any other suitable archaeological or paleontological reference.
36. Regarding movable cultural property in museums and religious or secular public monuments or similar institutions, including legally excavated archaeological sites and objects of ethnological interest, the usage of the Object-ID Standard is recommended. The Object-ID Standard facilitates rapid transmission of basic information on lost and stolen cultural objects. The Standard provides for eight key identifying elements which, together with a photograph, make the identification of an object and its tracking much simpler. States Parties which do not have extensive inventories and need to elaborate them quickly to make use of the international procedures now available for tracking cultural objects are encouraged to use the Object-ID Standard. Other methods may be proposed, as appropriate, in order to facilitate the use of the international procedures now available for tracking lost and stolen cultural objects in support of full compliance with and enforcement of the Convention. States Parties which have communities which, on religious or other

grounds, are unwilling to photograph items used in sacred rituals are encouraged to discuss this issue with a view to improving the recovery of religious objects.

37. To facilitate the work of customs officers dealing with the import of cultural objects, it is imperative that they have precise information about protected cultural property and export bans in other States Parties. This can be done in two ways: either by means of an itemized list in case of documented protected cultural property or, in case of protected cultural property that cannot be itemized, by means of a list of categories with descriptive explanations with as much detail as possible. Such list(s) should be made readily available for the customs authorities of other States Parties and other relevant authorities and entities.
38. The UNESCO database should be the first point of call for a customs service supervising imports because it will provide them with the legislation on the definition of what is a controlled export, what is an illegal export, and what needs to be discussed with the authorities of the country of export. It is therefore important to also have the legislation in an accessible language. National heritage services should be encouraged to publicize their protected cultural property nationally as well as to other States Parties so as to facilitate cooperation.

#### **Expert institutions (Article 5(c))**

39. In accordance to Article 5(c), States Parties have undertaken to promote the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops, etc.) required to ensure the preservation and presentation of cultural property.
40. States Parties are encouraged to establish national specialized institutions where circumstances permit or to make arrangements for access to specialist institutions outside their own country where necessary. Such institutions should be well staffed, well funded and well provisioned with appropriate infrastructure, including security infrastructure.
41. States Parties are also encouraged to cooperate in the development or the establishment of scientific and technical institutions, including training workshops, capacity-building programs and infrastructure projects and share specialized scientific and technical expertise related to the protection of cultural property through methods such as trainings, internships and publication researches.

#### **Archaeology and protected areas (Article 5(d))**

42. States Parties are encouraged to protect by legislation and, if necessary, by other specific measures, sites of archaeological interest, including their movable items. Concerning the legislation, the relevant provisions of the section "Legislation" (see paras. 24-32 above) should be followed.
43. Specific activities should be established to protect the archaeological heritage in accordance with the principles contained in the UNESCO Recommendation on International Principles Applicable to Archaeological Excavations (1956), as appropriate. The following principles of that Recommendation are relevant to efforts to prevent clandestine excavation:
  - The purpose of archaeological research lies in the public interest from the point of view of history or art or science. Excavation should not take place for other purposes, except in the case of the extraordinary circumstances described in the UNESCO Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works (1968) and subject to the preventive and corrective measures prescribed in para. 8 of that Recommendation.

- Protection should be extended to all objects belonging to a given period or of the minimum age fixed by law.
  - Each State Party should make archaeological explorations and excavation subject to prior authorization of the competent heritage authority.
  - Authority to carry out excavations should be granted only to institutions represented by qualified archaeologists or to persons offering unimpeachable scientific, moral and financial guarantees that the excavations will be completed in accordance with the terms of the contract.
  - The contract should include provision for guarding, maintenance, restoration and conservation of both the objects recovered and the site during and on completion of work.
  - An excavator or finder and the subsequent holders should be required to declare any object of archaeological character whether movable or immovable.
  - Objects recovered during the course of the work should be immediately photographed, registered and kept in a secure structure.
44. State Parties are encouraged, within the framework of applicable rules and existing mechanisms, to conduct archaeological surface surveys for different purposes, including for preventive purposes, and to enhance the inventory of national archaeological sites.
45. States Parties are also encouraged to establish provisions on the use of methods of ground-penetrating analysis such as the use of metal detectors. States are encouraged to prohibit, as appropriate, unauthorized use of such equipment for purposes of undertaking clandestine excavations on archaeological sites.
46. States directly affected are also encouraged to carefully guard archaeological sites and all States Parties are encouraged to take sanctions against any person involved in theft and clandestine excavations of such sites.
47. States Parties should acknowledge that participation by individuals or groups of individuals belonging to local communities in unauthorized excavations and looting of sites cannot be considered in isolation from the larger socio-economic conditions that those communities find themselves in. In protecting known archaeological sites from unauthorised excavation and pillage, States Parties are invited to encourage local communities, as appropriate, to cooperate in the protection of cultural heritage. State Parties are encouraged to raise awareness among local communities of the importance of safeguarding the cultural heritage as well as emphasizing to those communities the potential long-term economic benefits of such preservation – through such means as cultural tourism – over the short-term, limited economic benefits of participating in unauthorised excavation activities.
48. States Parties are encouraged to establish specific means to protect underwater archaeological remains from looting and illicit traffic, including the reporting of discoveries to the competent authorities and the regulation of salvage and accidental finds. States Parties are encouraged to cooperate in providing technical capacity in this regard.

#### **Rules in conformity with the ethical principles set forth in the Convention (Article 5(e))**

49. In accordance with Article 5(e), States Parties have undertaken to set up national services which have as a function establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in the Convention; and taking steps to ensure the observance of those rules.
50. Such rules may be developed on a national, regional, international, or professional level. Anthropologists, archaeologists, auctioneers, conservators, curators, dealers, restorers and all professional staff working with cultural objects are obliged to conform to these rules based on ethical principles which refuse service for cultural objects whose provenance

appears faulty or dubious and should notify relevant authorities of this kind of artefacts when they have been asked to provide such service. The rules to be developed regarding acquisitions should be equally applied to collectors, dealers, curators, and others involved in the trade in cultural property so as not to disadvantage or exempt any single group. Also, such rules should be internationally standardized to ensure maximum effectiveness.

51. In this regard, States Parties are encouraged to use codes of ethics developed by national and international bodies. These include the International Code of Ethics for Dealers in Cultural Property adopted by the ICPRCP in 1999. This Code incorporates the principles developed in the 1970 Convention and subsequently in the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995). This Code also takes into account the experience of various national codes, the Code of the Confédération Internationale des Négociants d'Oeuvres d'Art (CINOA) as well as the Code of Professional Ethics of the International Council of Museums (ICOM). States Parties are encouraged to ensure that all dealers abide by this Code, both by imposing appropriate compulsory measures and by offering incentives to those dealers who do undertake to abide by its provisions, such as tax concessions. States Parties are encouraged to monitor the success of such efforts and to continue developing, strengthening and enforcing appropriate rules for the benefit of curators, collectors, antique dealers, and others concerned, in conformity with the ethical principles set forth in this Convention.

#### **Education (Articles 5(f); 10)**

52. In accordance with Article 10, States Parties should use all appropriate means to prevent the movement of cultural property illegally removed from any State Party through education, awareness rising, information and vigilance. In particular, educational means and awareness rising and should be used to help local communities and the public in general to appreciate the value of cultural heritage and the threat to it from theft, clandestine excavations and illicit trafficking as well as its relation to the cultural identity and history of the local communities and mankind.
53. In accordance with Article 5(f) the national services for the protection of the cultural heritage should take educational measures to stimulate and develop respect for the cultural heritage of all States and should also spread knowledge of the provisions of the Convention. In particular, States Parties are encouraged to strengthen educational measures within their countries, with the cooperating services and with the public in other countries This includes adequate coordination with educational institutions at primary, secondary, tertiary level and lifelong learning programs to include teaching and research on cultural heritage issues in their own curricula; through awareness-raising, capacity building and training programs targeted at judges, prosecutors, customs officers, police, museums, dealers and others concerned; and through mass-media, museum, library, and other outreach programs.

#### **Publicizing the disappearance of cultural objects (Article 5(g))**

54. In accordance with Article 5(g), the national services for the protection of the cultural heritage should see that appropriate publicity is given to the disappearance of cultural property. Publicity through mass communication can help investigation efforts, make an object untradeable, and can result directly in its recovery. Recognizing this situation, States Parties should publicize thefts and other forms of illegal conduct against cultural property and to make use of the mass media to publicize lost and stolen cultural objects.
55. States Parties are encouraged to support and use databases and other mechanisms that have been established to share information internationally about stolen works of art, including the INTERPOL Stolen Works of Art Database. States Parties are also encouraged to disseminate ICOM Red Lists to all stakeholders involved in the protection of cultural property, especially police and customs services.

## **Prohibition and Prevention of Illicit Import, Export, and Transfer of Ownership of Cultural Property (Articles 6, 7(a, b (i)), 8, 10(a); 13(a))**

### **Export certificates (Article 6(a, b))**

56. In accordance with Article 6(a), States Parties have undertaken to introduce an appropriate certificate in which the exporting State would specify that the export of an item of cultural property is authorized, which should accompany all items of cultural property exported in accordance with the relevant legislation. In accordance to Article 6(b), States Parties have also undertaken to prohibit the exportation of any cultural property from their territory unless accompanied by such a certificate. Customs authorities should check the export certificate both at the moment of export and import.
57. The certificate is an official document issued by the exporting country certifying that it has authorized the export of the cultural object. This document is essential for effective control, and implies cooperation between national services for the protection of cultural heritage and customs authorities of all countries involved in the movement of protected cultural property, including countries of transit. States Parties that apply import certificates should distribute such import certificates only for the cultural objects that have export certificates. Holding an import certificate without a corresponding export certificate should not be considered as a proof of good faith or title of ownership.
58. To ensure that such export certificates fulfill their intended purpose, in the spirit of the Convention State Parties should prohibit the entering into their territory of cultural property, to which the Convention applies, that are not accompanied by such export certificate. Consequently, the prohibition of the export of cultural property without its corresponding export certificate should make illicit the import of that cultural property into another State Party, as the cultural property has not been exported legally from the country affected.
59. Export certificates should carry at least the following information: the name of the owner if appropriate; photographs of the item; a description of the item; its dimensions; its characteristics; the validity period of the export certificate; the State of destination; and the signature of the competent authorities. States Parties issuing export certificates should maintain searchable records of such certificates, in the event that forgeries or unauthorized alterations are identified during import in a foreign State, and the issuing state is called upon to confirm whether the permit is genuine and accurate. In order to avoid forgeries States Parties are encouraged to make available model forms of their export certificates to the relevant authorities of other states as well as to send, whenever feasible, copies of the issued export certificates to the relevant authorities of other States Parties. The States concerned are encouraged to establish the appropriate channel of communication.
60. All cultural objects forming part of the cultural heritage of a State according to its legislation appearing in the art market of another State, exported from the territory of the former and imported into the territory of the latter after the entry into force of the Convention for both States, have to have an export certificate issued by the State of origin. In these cases, the exportation of said cultural objects without an export certificate will be considered illicit and as the basis for reporting to the competent authorities of the State of origin.
61. States Parties may also introduce special provisions for certificates for temporary export. Such temporary export certificates may be issued for exhibitions and return, for study by specialized research institutions or for any other reason such as conservation or restoration

purposes. An export in violation of the conditions provided in a temporary export certificate should be considered as an illicit export.

62. States Parties are encouraged to give particular attention to the issue, form and security of the export certificate and to ensure close liaison between the customs authorities, heritage managers and police officers for its control and reliability. The Model Export Certificate for Cultural Objects, developed jointly by the UNESCO and the WCO Secretariats, is a useful operational tool for the fight against illicit trafficking of cultural property (Annex 2). It has been specially adapted to the growing phenomenon of cross-border movements of cultural objects and is useful to the law enforcement agencies and customs services, enabling them to combat trafficking in cultural property more effectively. States Parties are encouraged to use or adapt the model export certificate and to consider whether a temporary export certificate would suit their protective scheme. The Model Export Certificate may be improved if need be.

### **Prohibition of importing stolen cultural property (Article 7(b)(i))**

63. In accordance with Article 7(b)(i), States Parties have undertaken to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution.

There are two important considerations to be made regarding this prohibition:

First, evidently, the implementation of this prohibition could be facilitated by making compulsory the requirement of an export certificate from the State of origin in order to make licit the import of any cultural property (see paras. 56-62 above). Moreover, States Parties are encouraged to collaborate, especially via their customs authorities, as required and to diligently revise all their relevant regulations in accordance with best practice to ensure effective import controls best practice at all entry points to protect cultural heritage items and prevent smuggling. Furthermore, to assist State Parties to effectively implement this prohibition, it is important that all known thefts and other forms of illegal conduct against cultural property are promptly publicized and reported to relevant law enforcement agencies as well as to INTERPOL.

Second, this prohibition should recall the specific characteristics of cultural property, as defined in Article 1, especially in regard to clandestinely excavated archaeological sites and other cultural property that poses special challenges in terms of their specific designation (see para. 12 above). In these cases, States Parties' right to classify and declare certain cultural property inalienable which should therefore not be exported (as stated in Article 13(d)), should be fully respected.

### **Penalties and administrative sanctions (Articles 6(b), 7(b); 8)**

64. In accordance with Article 8, States Parties undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under Articles 6(b) and 7(b) of the Convention. In any such case, if documentary proof of legal export cannot be provided to the competent authorities for cultural property to which the Convention applies, such a cultural property should be retained by such authorities and returned to the State Party concerned, according to the relevant national legal procedures.
65. As the Convention does not specify what sort of sanctions are to be applied, States Parties are encouraged to introduce in their national legislation, as appropriate, specific penal or administrative sanctions against all those who commit acts prohibited by the Convention. In addition, States Parties are encouraged to penalize offences against cultural property,

committed in violation of the Convention, by introducing penal sanctions against the perpetrators of such offences. The said national legislations should be included and timely updated in the UNESCO database.

66. States Parties to the 1970 Convention that are also States Parties to the UN Convention against Transnational Organized Crime (UNTOC) are encouraged to make offences related to trafficking in cultural property a serious crime, as defined in article 2 of the UNTOC, in particular with regard to the relevant penalties.
67. Due to their relevance for the development and strengthening of crime prevention and criminal justice policies, strategies, legislation and cooperation mechanisms to prevent and combat trafficking in cultural property and related offences in all situations, States Parties are encouraged to duly take into consideration, in implementing the 1970 Convention, the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences, as submitted to the United Nations General Assembly, following an intergovernmental process facilitated by the United Nations Office on Drugs and Crime (UNODC) in consultation with Member States and in close cooperation with UNESCO, UNIDROIT and other relevant international organizations.

### **Sales on internet**

68. At the time of the drafting of the 1970 Convention, Internet was not a channel for sales. The exponential growth of the use of the Internet to sell or traffic cultural objects which are stolen, clandestinely excavated from archaeological sites, or illegally exported or imported cultural objects, is a matter of serious concern and constitutes a major threat to cultural heritage.
69. Some States Parties are not sufficiently organized to supervise and quickly follow-up offers on the Internet that appear to be advertising protected cultural property. Most national cultural administrations do not have sufficient resources to continually check offers on the Internet. Further, such websites advertise cultural property for a limited time, sometimes only a few hours, hence hindering the ability of the owner States to track such cultural property and to take the necessary actions. In addition, some websites play the role of intermediary in selling cultural property and consequently, they are not in possession of the cultural property offered for sale and cannot verify the validity of the documentation envisaged under the Convention for such cultural property. There is a need to explore ways and means to thoroughly screen all websites throughout the world to determine where offers of cultural property falling under the scope of the protection of the 1970 Convention are made and create an alert method of notifying the relevant State Parties on a daily basis. National authorities are encouraged to marshal the support of all Internet providers and promote the supervision by the public (specialists or other individuals interested in particular cultures) to be vigilant concerning Internet offers and to inform the administration when it appears that an object of national heritage not previously known is being offered on a website or when an object of foreign heritage origin is offered with a local address. Such notifications should be examined immediately by the cultural administration; if necessary, using experts (from universities, museums, libraries and other institutions) to verify the nature and importance of the item(s) being offered. In all the above-mentioned efforts, special attention should be given to the screening of Internet auctions. When the evidence justifies it, the national authorities should undertake prosecutions and enforce all appropriate provisions of the 1970 Convention and national legislation.
70. Following a recommendation adopted by the third annual meeting of the INTERPOL Expert Group on Stolen Cultural Property (7-8 March 2006, INTERPOL General Secretariat), INTERPOL, UNESCO and ICOM have developed a list of Basic Actions to counter the Increasing Illicit Sale of Cultural Objects through the Internet. States Parties are encouraged to incorporate the Basic Actions as a tool within their national context. The Basic Actions

currently developed are presented in Annex 3. There is a need to consider ways and means to keep improving the Basic Actions, in order to ensure the effective implementation of the Convention, in coordination with the ICPRCP, or exploring other ways to contribute to countering the illicit sale of cultural property through the Internet.

### **Sales in auctions**

71. Sales in auctions of cultural property claimed to have been subject to illicit trafficking have greatly affected the cultural heritage of many countries whose requests for return have not been met and have sometimes been used as a means to launder cultural property of illicit provenance. States where auctions are held are encouraged to give special attention to such sales, including by introducing national legislation, where appropriate, to ensure that the cultural property involved has been licitly imported, as documented by a legally issued export certificate, to inform the State of origin of the properties of any doubts in this regard, and to put in place the appropriate interim measures. In addition, on the petition of affected States, when an auction of protected cultural property is intended to take place, the Director General of UNESCO is invited to consider issuing a public statement concerning such commercial activity, highlighting the negative effects of such practices for the protection of world cultural heritage.

### **Preventing transfers of ownership likely to promote illicit import or export, controlling trade by registers, and establishment of rules in conformity with ethical principles (Articles 13(a); 10(a); 7(a); 5(e))**

72. Although this is a basic aim of the Convention described by the 1969 Preliminary Report on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership (SCH/MD/3), there is no information in the Convention itself as to which such transfers are likely to promote illicit import or export of cultural property. However, it is illuminating to recall that the 1969 Report indicated that lack of information about the origin of the item, the names and addresses of the supplier, description and price of each item sold, as well as lack of information provided to the purchaser about an object's possible export prohibition, might well be a transaction likely to promote illicit trafficking of cultural property. In accordance with Article 10(a), the States Parties to this Convention undertake, as appropriate for each country, to oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording such essential information. Control of such registers by the national services for the protection of cultural heritage would make it possible to follow up an item of cultural property and perhaps retrace an item that has disappeared after being lost or stolen.
73. The drafters of the preliminary version of the Convention text in 1969 also pointed out: "It is essential that the new rules to be worked out for acquisitions shall place collectors and dealers on the same footing as curators; otherwise museums would be restrained for the sole benefit of illicit trade in cultural property." States Parties are encouraged to ensure that equally constraining rules, whether legislative or ethical, include the same provisions for collectors and dealers as those being observed by museums or other similar institutions, particularly those concerning the provenance of the cultural property.
74. In accordance with Article 7(a), States Parties undertake to take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after the entry into force of the Convention in the States concerned and, whenever possible, to inform the State of origin Party to the Convention of an offer of such cultural property illegally removed from that State after the entry into force of the Convention in both States.

75. States Parties establishing tax incentive regimes, benefits or government subsidies to encourage the acquisition of cultural property by public institutions should take appropriate steps to ensure that such measures do not inadvertently facilitate the private collection, and subsequent acquisition by institutions, of material that has been the subject of illicit activity as defined by the provisions of the Convention.
76. In accordance with Article 5(e), States Parties are also required to establish ethical rules and ensure their observance by curators, collectors, dealers and other similar actors.
77. Consequently, States Parties are encouraged to strengthen the supervision of the activities of dealers and museums through effective policies and regulations and to use all appropriate means to prevent illicit transactions.
78. States Parties are encouraged to explore further possible avenues for preventing transfers of ownership likely to promote illicit import or export. For instance, specific regulations can be enacted to ensure that cultural property such as archaeological objects that are claimed by the States of origin or that are subject to inalienability laws may not be transferred by purchase or assignment from public museums and institutions to private collectors, museums, institutions or businesses.
79. States Parties are also encouraged to undertake studies on the size and nature of illicit activities in the field of cultural property, and establish risk analysis with customs to prevent the illicit import and export of cultural property, as well as exchange information and best practices among each other.
80. States are encouraged as well to make further use of all existing controls over markets and fairs where items of cultural property may be transferred and subsequently exported and to strengthen such controls as necessary to ensure the fulfilment of the purposes of the Convention.
81. The true value of cultural property remains to some degree unrecognized. This fact, added to dissociation from the cause- effect relationship between an ever-increasing demand for numerous types of cultural property and its trafficking, as well as lack of knowledge of the adverse effects of trafficking, hampers protective efforts. Therefore, different educational strategies may also be put in use to diminish the looting, trafficking and the demand for archaeological and paleontological objects, such as education in museums and exhibitions to explain the importance of the damage done to the heritage by clandestine excavation, illicit trade and theft. With a view towards restitution, the States Parties are encouraged to adopt appropriate national legal and policy frameworks to ensure that museums and other cultural institutions, whether public or private, do not exhibit or keep for other purposes imported cultural property that do not have a clear provenance and place of origin. The stylistic or aesthetic qualities of a cultural property can never compensate the loss of its context.

**Cooperation on recovery and return of cultural property (Articles 7(b)(ii); 13(b, c, d); 15)**

82. In accordance with Article 7(b)(ii), the States Parties have undertaken, 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. Requests for recovery and return shall be made through diplomatic offices and shall be furnished, at the expense of the

requesting Party, with the documentation and other evidence necessary to establish the corresponding claim.

83. Also, in accordance with Article 13 (b,c,d), the States Parties have undertaken, 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; to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners; and to recognize the indefeasible right of each State Party to this Convention 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.
84. Furthermore, Article 15 provides that nothing in this Convention shall prevent States Parties thereto 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.
85. The above-referred provisions indicate the actions that States Parties should pursue for the restitution, recovery and return after an illicit import, export or transfer of ownership has taken place in spite of prohibition and prevention efforts. A number of issues should be clarified:
  - Request of State Party
  - Evidence to establish a claim
  - Just compensation and due diligence
  - Cooperation for earliest possible restitution
  - Admission of legal actions for recovery of lost or stolen cultural property
  - Non-retroactivity of the 1970 Convention, entry into force of the Convention, and resolution of claims
  - Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP)

#### **Request of State Party (Article 7(b)(ii))**

86. In accordance with Article 7(b)(ii), the request of a State Party to recover cultural property and have it returned under the provisions of the 1970 Convention shall be made through diplomatic offices. This is without prejudice to any other recourse that may contribute to the recovery or return under other relevant legal instruments or any other procedures for international legal assistance, which may be used in the course of criminal law proceedings. In this regard, States Parties should consider providing each other with the widest possible legal assistance in investigations, prosecutions and judicial proceedings in relation to cultural property offences, also in order to ensure effectiveness and speediness in the procedures. The provision of spontaneous information between the competent authorities should be encouraged.

#### **Evidence to establish a claim (Article 7(b)(ii))**

87. Also in accordance with Article 7(b)(ii), requests for recovery and return shall be furnished, at the expense of the requesting State Party, with the documentation and other evidence necessary to establish the corresponding claim. In this regard, States Parties should bear in mind the specific characteristics of cultural property protected by the requesting State, as defined in Article 1, in particular regarding clandestinely excavated archaeological and paleontological sites and other cultural property that poses special challenges in terms of their specific designation and their implications in terms of inventories (see paras. 12; 24-30; 33-35; 37; 100-103; 108).

88. The considerations made regarding the prohibition of importing stolen cultural property stipulated in Article 7(b)(i) and in the spirit of Article 2 are also fully relevant for the request of State Parties for recovery and return (see para. 63 above).
89. States Parties should bear in mind the implications of the prohibition of the export of a cultural property without its corresponding export certificate. The import of that object should be considered illicit, as it has not been exported legally from the country affected. Consequently, a State Party should be able to introduce a request for items of cultural property that have been clandestinely excavated from archaeological and paleontological sites or which pose special challenges in terms of their specific designation where the possessor or holder does not provide the necessary export certificate of the cultural objects exported after the entry into force of the Convention for both States concerned.
90. When a State has enacted laws on State ownership of certain cultural property in the spirit of the Convention, States Parties are, for recovery and restitution purposes, encouraged to duly take into account these laws.
91. States Parties may support their requests for the recovery and return of cultural property which is unlawfully excavated or lawfully excavated but unlawfully retained in another State Party to the Convention, with reasonable scientific reports, results of scientific analysis or experts' evaluations on provenance of the unlawfully excavated property. Considering the difficulties of conducting research for retrospective evidence, States Parties are strongly encouraged to consider accredited scientific studies and analysis as evidence.
92. Furthermore, States Parties sharing a particular culture with archaeological remains in more than one country are encouraged to consider joint actions for recovery. All States Parties are encouraged to consider such cooperative efforts positively. Requesting States sharing a particular culture are encouraged to reach appropriate agreements on the cultural property recovered, considering solutions such as loans, exchanges of properties, etc.

### **Just compensation and due diligence (Article 7(b)(ii))**

93. The question of compensation is one area where there has been a significant development of approaches. The 1970 Convention stipulates (Art. 7 (b) (ii)) "that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property." Developments since then have demonstrated that many States appreciate further the relevance of returning cultural property. They are also aware that States of origin very much resent requirements to pay for objects that they regard as owned by them and that many of them are unable to pay large sums for their return. In addition, States are now much more aware of the importance of cultural matters in their foreign relations. Recent practice suggests little use of the compensation provision of the Convention. Some States Parties have made reservations which, among others, exempt other States Parties from having to pay just compensation. It is also important to note that the issue of compensation is not mentioned in Article 9 of the 1970 Convention and in many States it has not been raised in the context of illegally imported cultural objects.
94. In the spirit of the Convention, States Parties should use the criteria of due diligence in assessing purchaser innocence and validity of titles. In this regard, States Parties which seek compensation are encouraged to adopt recent best practice which can include the UNIDROIT standard of due diligence. Article 4.1 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 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.

### **Cooperation for earliest possible restitution (Article 13(b))**

95. In accordance with Article 13(b), States Parties have undertaken, 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.
96. In this context, and also considering the provision contained in Article 13(d), when a State Party, including those that have enacted laws on State ownership, is dispossessed of cultural property and seeks to recover it, States Parties are encouraged to resort to and to exhaust all means at their disposal to provide the fullest cooperation. In order to expeditiously grant requests for the restitution of stolen public property to its rightful owner, such cooperation should include pondering, as appropriate, the requesting State's ownership laws. Moreover, due to the clandestine nature of the pillage of cultural property, States Parties are encouraged to take into consideration that it may be materially impossible for dispossessed States to offer concrete data concerning thefts of State-owned cultural property. Therefore, State Parties are encouraged to attempt as far as possible to facilitate restitutions of State-owned cultural property even when the plundered sites remain unknown.
97. When it is impossible to furnish documentation and evidence concerning theft of State-owned cultural property, and without prejudice to the considerations presented above, State Parties are encouraged to explore the possibility of reaching an agreement by diplomatic channels concerning the expeditious admissibility and processing of the relevant restitution requests.
98. If the States concerned by the recovery have a specialized law enforcement unit in charge of the protection of cultural heritage, this unit should play an essential role in international cooperation, in particular through the National Central Bureaux of INTERPOL.

### **Admission of legal actions for recovery of lost or stolen cultural property (Article 13 (c))**

99. In accordance with Article 13(c), consistent with the laws of each State, the States Parties are required to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owner(s). If no such action is available in a State Party, this Article requires it to create one. States Parties are therefore encouraged to check that there exists, in their national system, a legal proceeding available to an owner of lost or stolen items of cultural property, and, if there is none, to institute one. The relevant information should be incorporated in a timely manner and kept updated in the UNESCO database.

### **Non-retroactivity of the 1970 Convention, entry into force of the Convention and resolution of claims (Article 21)**

100. The general rule of public international law embodied in Article 28 of the Vienna Convention on the Law of Treaties does not provide for retroactive application of treaties. The provisions of the 1970 Convention entered into force on 24 April 1972, three months after the date of deposit of the third instrument of ratification, acceptance or accession. For the other Signatory States, the Convention entered into force three months after the deposit of the instrument of ratification, acceptance or accession.
101. In accordance with the provisions of the 1970 Convention, especially Article 7, 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.

102. 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 nor limit any right of a State or other person to make a claim under specific procedures or legal remedies available outside the framework of this Convention for the restitution or return of a cultural object stolen or illegally exported before the entry into force of this Convention.
103. For items of illegally exported, 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, taking into account all the relevant circumstances. States Parties may also call on the technical assistance of the Secretariat, particularly good offices, to help reaching a solution mutually acceptable by them.

### **Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP)**

104. In cases where neither the 1970 UNESCO Convention nor any bilateral or multilateral agreement can be applied and the bilateral discussions have failed or are suspended, UNESCO Member States may submit a request to the ICPRCP for the return or restitution of cultural property of “fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State or Associate Member of UNESCO and which has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation” (ICPRCP Statute Article 3(2)), that they consider as having been wrongfully taken. In order to resolve disputes on cultural property, States may also use the Rules of Procedure for Mediation and Conciliation procedure adopted by the ICPRCP at its 16<sup>th</sup> session in 2010.

### **Pillage of Archaeological and Ethnological materials (Article 9)**

105. In accordance with Article 9, any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State. UNESCO and all relevant cooperating partners may also contribute, upon same request, to such a concerted international effort.
106. It is important to note that the conclusion of a bilateral or multilateral agreement is not required for a State Party to call upon another State Party for assistance. Such special agreements are not in any way a precondition for the fulfillment of the obligations arising under the Convention but may be entered into following a request for assistance under Article 9. States Parties, UNESCO and all relevant cooperating partners are encouraged to respond expeditiously, with all possible means, to the call of the requesting State Party whose cultural property is in jeopardy. In particular, States Parties shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State. This obligation should be adequately incorporated into national laws and best practices. The relevant information should be incorporated into the UNESCO database.

108. In applying Article 9, State Parties should consider, as appropriate, categorical lists as representing the protected cultural patrimony of another State Party. A categorical or representative list describes general types of cultural patrimony rather than specific objects. Categorical lists are particularly useful for describing types of objects that are typically found in clandestine excavation, trafficked, and therefore not documented in their country of origin.
109. As a complementary measure and without prejudice to the above, bilateral or multilateral agreements may be reached to stimulate more effective and broad collaborative responses based on a better understanding of the pillaged States Parties' particular situation, as well as to enhance support and financial and technical assistance to improve capacity-building, training and protection on site. There is a need to explore ways and means to strengthen international cooperation in the implementation of Article 9.
110. States Parties are encouraged to make full use of the provisions of Article 9 in addressing the challenges posed by clandestine excavations of their archaeological sites or in cases of natural disasters or conflict.

### **Occupation (Article 11)**

111. Article 11 of the Convention specifies that the export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit. States Parties must apply this principle when implementing provisions of the Convention and if required under their respective system of national laws, States Parties should make this obligation clear in their legislation. The relevant information should be incorporated in the UNESCO Database.
112. As appropriate, synergies should be explored with the efforts undertaken under the Hague Convention of 1954, its First and Second Protocols and by the Committee established by the Second Protocol.

### **Special agreements (Article 15)**

113. In accordance with Article 15, nothing in the 1970 Convention prevents States from concluding special agreements among themselves on the restitution of cultural property removed, for whatever the reason, or from continuing implementing agreements already established before the Convention was adopted. The increasing globalization of offences that affect cultural heritage calls for a stronger and more systematic regional and interregional cooperation.
114. States Parties are encouraged to incorporate into bilateral or regional agreements the highest level of protection developed in the 1970 UNESCO Convention, the 1995 UNIDROIT Convention, the 2001 Convention on the Protection of the Underwater Cultural Heritage and in the 2000 UN Convention against Transnational Organized Crime so as to ensure that such agreements embody the best protection for their cultural objects.
115. As indicated in para. 101 above, bilateral or multilateral agreements may be reached to achieve strengthened international cooperation in the implementation of Article 9.

## Reports by States Parties (Article 16)

116. States Parties are required to submit reports to the UNESCO General Conference on the legislative and administrative provisions they have adopted and other action they have taken for the application of the Convention, including the details of the experience acquired in this field.
117. Periodic reporting is valuable for the exchange of information on the manner in which different national systems are dealing with the question of illicit traffic and can assist other States Parties in implementing the provisions of the Convention. Periodic reporting also serves the important function of strengthening the credibility of the implementation of the Convention.
118. Reports on the implementation of the 1970 Convention must be submitted every four years. To assist the national authorities, a simplified and practical questionnaire is at the disposal of the UNESCO Member States to ensure that their reports contain sufficiently precise information on the ratification process and legal and operational implementation of the 1970 Convention.
119. In order to facilitate assessment of information, States Parties shall submit reports in English or French. States parties are encouraged, whenever possible, to submit their reports in both languages. These reports have to be sent in electronic as well as in printed form to:

Secretariat of the 1970 Convention  
7, place de Fontenoy  
75352 Paris 07 SP  
France  
E-mail: [convention1970@unesco.org](mailto:convention1970@unesco.org)

## Secretariat to the 1970 Convention and to the Subsidiary Committee (Article 17)

120. The Secretariat of the 1970 Convention is appointed by the Director-General of UNESCO and is provided by the Organization's Culture Sector. The Secretariat assists and collaborates with the States Parties, the Meeting of States Parties and the Subsidiary Committee to the Meeting of States Parties. The Secretariat works in close cooperation with other Sectors and Field Offices of UNESCO, as well as with other international partners in the fight against the illicit traffic of cultural and archaeological property.
121. States Parties are encouraged to seek advice and assistance from the Secretariat in the implementation of the Convention, particularly with regard to information and training; consultation and expert advice; coordination and good offices.
122. Among other contributions, the Secretariat may assist the State Parties by creating standard procedures to be followed when informed about clandestine excavations, illicit import, export and transfer of cultural property. These standard procedures may include the immediate publication of the incident and the cultural property involved on UNESCO's website. The Secretariat may also assist the State Parties by creating mechanisms of direct communication with the art market in order to prevent trafficking of cultural property (e.g. auction houses, e-commerce). If necessary, States Parties may call for the technical

assistance of the Secretariat to support the presentation of requests for recovery and restitution of cultural property.

123. At the request of at least two States Parties that are engaged in a dispute over the implementation of the Convention, the Secretariat may extend its good offices to reach a settlement between them. Such good offices may include technical assistance, negotiations, checking due diligence, etc. In the case in which it is only one of the States which asks for support, the Secretariat will offer its assistance to that State and may send a written request to the other State party to ask for its acquiescence or refusal for the Secretariat to exercise good offices for the settlement of the dispute. The good offices of the Secretariat also may be brought to bear in disputes over the implementation of the Convention with auction houses and e-commerce sponsors. It may also seek to enhance dialogue and cooperation with the art market in the fight against the illicit traffic of all kinds of cultural property, with special concern for objects of archaeological and ethnological significance.

124. The Secretariat's main tasks are:

- Organizing of the statutory meetings;
- Providing legal and technical assistance to States Parties in the implementation of the 1970 Convention;
- Promoting the 1970 Convention through advocacy and good offices, the organization of policy and prospective dialogues and forums, the dissemination of information to States Parties, the specialized public and the general public, and through the organization of capacity-building programs (regional or national);
- Cooperating with partner Organizations; and,
- Assisting in the preservation of movable cultural heritage in case of emergency situations caused by natural disaster or conflict, upon the request of the concerned State(s).

125. The Secretariat may, on its own initiative or on the initiative of the Committee:

- Conduct research and publish studies on matters relevant to the illicit traffic of cultural property;
- Call on the cooperation of any competent, and recognized by UNESCO and State Parties, non-governmental organization; and,
- Make proposals to States Parties for the implementation of the Convention.

### **States Parties to the 1970 Convention (Articles 20 and 24)**

126. UNESCO Member States are encouraged to become Parties to the Convention. Model instruments for ratification/acceptance and accession are included as Annex 4. The original signed version of the instrument shall be deposited with to the Director-General of UNESCO.

127. The Director General is invited to highlight the information about new ratifications/acceptances and accessions and to actively promote the broadest participation in the Convention.

## Reservations

128. A “reservation” means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State (Vienna Convention on the Law of Treaties-1969 (Art. 2 (d))).
129. States Parties which have lodged reservations to the Convention are encouraged to withdraw any kind of reservations.

## Cooperating partners in the fight against illicit trafficking of cultural property

130. Partners for the fight against illicit trafficking of cultural property may be intergovernmental or non-governmental organizations which have an interest, involvement and appropriate competence and expertise in the protection of cultural objects and are formally recognized by UNESCO as having specialized appropriate skills and proven track records. These partners include INTERPOL, UNIDROIT, UNODC, WCO and ICOM. Relevant information on each of these five cooperating partners and its specific links to the 1970 Convention is provided in Annex 5.
131. States Parties are invited to make use of the tools offered by all international partners, as possible, in the implementation of the 1970 Convention in the fight against the illicit traffic of cultural and archaeological property and against the clandestine excavations of archaeological sites.
134. Other partners may include local, regional or international organizations such as ICOMOS, ICCROM, Europol and national specialized police and customs bodies.

## Conventions relating to the protection of cultural property

135. The 1970 Convention has important complementary relationship with other UNESCO Culture Conventions, as well as to the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the United Nations Convention against Transnational Organized Crime. Relevant information on each of these Conventions and its specific links to the 1970 Convention is provided in Annex 6.
136. States Parties are encouraged to actively strengthen the synergies of these instruments in support of the fight against the illicit traffic of cultural property and against the clandestine excavations of archaeological and paleontological sites.

## List of proposed annexes

- |         |  |
|---------|--|
| Annex 1 | Model Provisions on State Ownership of Undiscovered Cultural Objects |
| Annex 2 | UNESCO/WCO Model Export Certificate for Cultural Objects             |

- Annex 3 Basic Actions concerning Cultural Objects being offered for Sale over the Internet
- Annex 4 Model instruments for ratification/acceptance and accession to the Convention
- Annex 5 Cooperating partners for the fight against illicit trafficking of cultural property
- Annex 6 Links of other Conventions to the 1970 Convention