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

**Fourth session
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26-28 September 2016**

Item 15 of the provisional agenda:

Standard Action Plan for return and restitution of cultural objects illegally on sale on the market

This document presents standard actions to facilitate the return and restitution of illegally trafficked cultural objects to their country of origin, when these have been found on sale on the art market.

Decision required: paragraph 21

Standard Action Plan for return and restitution of cultural objects

illegally on sale on the market¹

Rationale

1. Several UNESCO Member States regularly express their concern on the sale of stolen and illegally exported cultural objects, or objects that were not stolen but illegally exported out of the country, and that are for sale on the art market outside their own countries. While UNESCO does not have the mandate to intervene in the internal affairs of its Member States, it nevertheless provides Member States and art market stakeholders with tools, resources and proposes counter measures to better fight the illicit traffic of cultural property and facilitate its return and restitution to the country of origin (1970 Convention and its Operational Guidelines; Intergovernmental Committee for Promotion of the Return of Cultural Property; UNESCO National Cultural Heritage Law Database; Code of Ethics for Dealers in Cultural Property, etc.)².
2. In this light, the Subsidiary Committee, aware of the divergent rules in this matter, wishes to provide to Member States, whether Party or not to the UNESCO 1970 and UNIDROIT 1995³ Conventions, a Standard Action Plan to facilitate return and/or restitution of illegally trafficked cultural objects to their country of origin⁴ when these have been found on sale on the art market.
3. This Standard Action Plan, drafted in cooperation with experts and representatives from several national police corps⁵, should be understood as an indicative tool, at the disposal of States, and which does not replace any of the existing binding international and national rules, nor prevent State(s) or interested party(ies) from applying the provisions of 1970 and 1995 Conventions.

Background

4. Some States Parties to the 1970 Convention do not yet have specialised police corps or governmental bodies to fight efficiently against illicit trafficking in cultural property⁶.

¹ The UNESCO Secretariat wishes to thank Colonel Alberto Deregibus, Italian Carabinieri for the Protection of Cultural Heritage (TPC); Major Gianpietro Romano, expert at Carabinieri for the Protection of Cultural Heritage (TPC); Mr Corrado Catesi, coordinator of Works of Art Unit of INTERPOL General Secretariat; Ms Bonnie Magness-Gardiner, expert at FBI's Art Crime Programme as well as Mr Jean-Robert Gisler, expert at the Swiss Federal Department of Justice, for their valuable contributions to the drafting this document.

² See official 1970 UNESCO Convention web page:

<http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/legal-and-practical-instruments/> and the Legal and Practical Measures Against Illicit Trafficking in Cultural Property, UNESCO HANDBOOK: <http://unesdoc.unesco.org/images/0014/001461/146118e.pdf>

³ UNIDROIT Convention On Stolen Or Illegally Exported Cultural Objects: <http://www.unidroit.org/instruments/cultural-property/1995-convention>

⁴ The scope of the UNESCO 1970 Convention covers cultural objects owned by States, which means that a stolen cultural object should be returned to its country of origin. It may be the case that the rightful owner of a cultural object is not a State but a private individual. In this instance, the scope of the UNIDROIT 1995 Convention covers this scenario and the stolen cultural object should be returned to the rightful owner, regardless of whether they reside or not in the country of origin of the cultural object.

⁵ Participants to the expert meeting, UNESCO 11 February 2014: Mr A Deregibus (UNESCO); Mr F. Panone (INTERPOL); Mr M. El Haibe (Argentinian Federal Police); Ms N. Amy Ouedraogo (Judicial Police of Burkina Faso); Mr S Gauffeny and Mr J.L. Boyer (OCBC); Mr P. Salvatori (Carabinieri TPC); Mr J. Gálvez Pantoja (Guardia Civil) Mr J.R. Gisler (Swiss Federal Office of Police); Ms B. Magness-Gardiner and Mr E. Casey (FBI).

⁶ According to national reports sent by the States Parties to the Secretariat of 1970 Convention, 37 countries (out of 57 reports received) positively responded to this specific question.

This means that they do not dispose of appropriate technical measures or sufficient good practices to prevent the illicit sale and to recover these objects in a timely manner.

5. In this regard, the Subsidiary Committee and the Secretariat encourage all States to give priority to the fight against the illicit trafficking on cultural property by establishing specialised police corps and/or governmental bodies or allocating more resources to already existing authorities, as stated by Article 14 of the 1970 Convention.
6. An expert meeting held on 11 February 2014 at UNESCO Headquarters, aimed at establishing guiding principles to officers of law enforcement agencies from all over the world. The outcome of the meeting was the drafting of a set of measures for police and cultural institutions responsible for keeping inventories of cultural objects, recommending the following:
 - establish an inventory of cultural objects protected within the national territory, with risk management planning integrated;
 - regularly update the INTERPOL Stolen Works of Art Database;
 - regularly update the UNESCO Cultural Heritage Laws Database;
 - prioritize INTERPOL as a channel to exchange police information;
 - deter the illicit trafficking in cultural property by publicizing successful investigations (according to national law);
 - obtain information from another country following the usual police procedures and common practices and within the spirit of the 2000 United Nations Convention against Transnational Organized Crime and its protocols⁷;
 - send requests as soon as possible, but avoid duplication and multiple requests to different authorities within the same destination country;
 - check whether any special agreement(s) exist between the two concerned countries;
 - inform INTERPOL if they plan to build a national stolen works of art database to be supported in this activity.
7. In 2015, pursuant to Decision 3.SC 4 of the Third Session of the Subsidiary Committee, the outcome of the 11 February meeting was revised by the Secretariat of

⁷"**Digest of cases of organized crime**", published in 2012 in New York by United Nations Office Against Drugs and Crime (UNODC). In Chapter III (**International Police Cooperation and judicial**) Paragraph F (**Mutual legal assistance and extradition**) it is stated, among others, that: "The Palermo Convention, like many other international criminal law instruments, generally does not precisely differentiate between "mutual legal assistance" and "law enforcement cooperation". Article 18 of the Convention, in describing the mutual legal assistance, adopts a general concept of assistance that covers not only judicial proceedings but also investigations and prosecutions. The unavoidable judicial nature of some of the activities needed to satisfy requests for mutual assistance is not a sufficient reason to believe that the term "judicial cooperation" would clarify the distinction. There are at least two reasons for this: one, there may be mutual assistance activities of a non-judicial nature; and two, although prosecution functions are involved in mutual assistance, prosecutors are not judicial authorities in most national systems. Therefore, for the purpose of interpreting and implementing the Palermo Convention, any specific definition of a substantive nature should be avoided and mutual legal assistance should be understood as those activities listed in article 18, paragraph 3 when the procedures established in the same article are applied. From the perspective of this non-definitional description, mutual legal assistance and law enforcement assistance are functionally combined and, within certain limited circumstances and up to the extent permitted by law, are both available. Some of the actions listed in article 18, paragraph 3 of the Convention can be validly implemented through informal direct contact between law enforcement agents under certain conditions and for certain procedural uses (see, for example, subparagraph (e): "Providing information ... and expert evaluations"). Moreover, this functional combination can avoid the formalities of mutual assistance for the immediate needs and purposes of the preliminary investigation stage, very useful to speed up the investigation; requesting and obtaining informal cooperation on the part of a body of the foreign police, via e-mail, fax or phone, before sending formal requests.

the 1970 Convention in collaboration with several law-enforcement officers as well as legal experts.

Procedures to be followed: basic steps

8. Immediately after the theft of a cultural object, the owner/holder⁸ should submit a formal report of the theft to the local country's police and/or governmental authority designated by national law:
 - a. the report should contain as much information as possible regarding the stolen object and the suspected thief⁹;
 - b. on the basis of the report, local police and governmental authorities may launch an investigation on the case¹⁰;
 - c. in order to register the object in INTERPOL's database¹¹, police authorities should send a full description (including pictures) of the suspected stolen object to the INTERPOL Headquarters via the INTERPOL National Central Bureau (NCB) as soon as possible¹².
9. Shortly after a stolen or illicit exported object has been located abroad, police, governmental authorities and prosecutors from the source country should check the following in their national legislation:
 - the statute of limitations¹³; and
 - access to foreign legal systems¹⁴.
10. For effective international legal assistance, it is necessary to start a legal procedure in the source country. In this framework, it is important that the source country establishes special legislation in order to criminalize offences against cultural property¹⁵.
11. This draft document proposes two different procedures to follow to return cultural object(s) located abroad of the country of origin:
 - procedure a) in cases of stolen cultural objects; and
 - procedure b) in cases of illegally exported objects (when they are not considered as stolen).

⁸ Several cultural objects are property of the State but placed in custody of private persons. In this instance, the holder shall report the theft to the police and to the designated governmental authority.

⁹ Any doubt on the ownership status of such objects in the legislation of the country of origin may result in the destination country failing to recognize the object as stolen. It is important to remember that, for an object to be considered stolen; the owner of the object must be clearly identified. In this regard, the UNESCO-UNIDROIT Model Legislative Provisions on State Ownership of Undiscovered Cultural Objects (2011) can be considered as relevant and helpful:

<http://www.unesco.org/new/en/culture/themes/restitution-of-cultural-property/standards-for-ownership/#c317252>

¹⁰ In some legal systems police and/or governmental authorities may start to investigate and collect information without a formal complaint from the owner of the suspected stolen object(s).

¹¹ After a stolen cultural object is located abroad of the source country it is no longer possible to register it on the INTERPOL database. The registration has to be done before.

¹² A NCB concerned by an important theft can ask INTERPOL General Secretariat to send a special alert to all NCBs, requesting them to inform also the Customs, or to publish a special poster about the theft.

¹³ A limited period of time for bringing legal procedures before the Court.

¹⁴ Check national legislation for provisions concerning interaction with foreign legal systems.

¹⁵ Taking into account any limitations imposed by national legislation as well as any correlation of proportionality and reciprocity between crimes i.e. the double incrimination principle as required by different legal systems.

12. In both cases it is possible to take the matter before the Court (judicial proceedings) or to explore diplomatic or administrative channels (extra-judicial proceedings).

a) Procedures for stolen objects located abroad:

13. Step 1: Information and evidence gathering:

- a. Ensure that police and governmental authorities collect key documents that might prove useful towards identifying the object (police reports, inventory records, object ID, photographs, expertise documents, etc.)¹⁶ and prosecuting those responsible for stealing the object either through criminal or civil measures¹⁷;
- b. Involve all local and national offices/authorities which can provide valid information and technical expertise;
- c. Collect as much information as possible by checking all available archives (online databases, paper files, local documents).

14. Step 2: International cooperation during the investigation process:

- a. Police and governmental authorities may request INTERPOL National Central Bureaus or other intergovernmental organisations¹⁸ to support the investigation and collect relevant documents outside the source country's territory and prevent the object from disappearing, in accordance with the national law of the transit/destination country;
- b. The request should contain all the information already collected by police and/or governmental authorities¹⁹.

15. Step 3: Judicial proceedings:

- a. If the police or governmental authorities collected enough information to support charges of theft or any other crime related to that (as instance receiving, concealing or laundering), they should request the relevant juridical authority to begin legal proceedings²⁰;
- b. The seized judicial authority²¹ may ask the police or governmental authorities to collect further information/documentation, from both national and international sources.
- c. The seized judicial authority may request the juridical authority of the transit/destination country to provide, on its territory, some procedural documents/acts (international rogatory letters)²²;
 - if the judicial procedure is successful, the seized judicial authority may wish to send out an international arrest and restitution warrant²³;

¹⁶ Any additional information concerning people involved in the crime could be useful to identify also the stolen object.

¹⁷ All information and evidence collected by police and/or governmental officers should be archived to be used in forthcoming investigations.

¹⁸ For instance, World Customs Organization (WCO).

¹⁹ It could be useful to recall that often it is not possible to ask for generic information when the object is put on sale by an auction house, the so-called "fishing expedition". For instance, it will not be possible to obtain the name of the seller of the object, without providing evidence that it has been stolen or illegally exported.

²⁰ According to Article 3 of the 1995 UNIDROIT Convention, every stolen cultural object must be returned to the country of origin.

²¹ The "seized judicial authority" is the judicial authority before which the matter has been brought.

²² If States have subscribed a mutual legal assistance agreement/treaty they are obliged to collaborate and provide any information/documentation required. If States are not bound with such an agreement their responding to any request is not mandatory, but it does not hinder them from cooperating.

- if the judicial procedure fails, it is still possible to pursue “extra-judicial” proceedings.

16. Step 4: “Extra-judicial” proceedings:

- If it is decided to proceed directly in this way or the judicial proceeding failed²⁴, the disposed owners or his/her authorities may initiate an “extra-judicial” proceeding with the direct involvement of the designated governmental authority and any other non-governmental organization to find a diplomatic solution to the case;
- Source country’s relevant administrative authorities should prepare a dossier with all the gathered evidence and expertise²⁵;
- Source country’s relevant authority (or non-governmental organizations), through its delegation in the transit/destination country, may ask the local government (or directly to the auction house or to the possessor of the object) the restitution of the stolen object;
- If the object left the country before the entry into force of the UNESCO 1970 Convention and/or UNIDROIT 1995 Convention, and if the judicial procedure or bilateral discussions failed, the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation (ICPRCP) may be used to facilitate discussions for eventual restitutions. In this regard, a particular attention should be paid to the use of the rules of Procedure on Mediation and Conciliation²⁶.

b) Procedures for illegally exported objects located abroad

17. All cases of illegal exportation of cultural objects fall under this procedure, when those objects have not been stolen.

For instance, whether the rightful owner of a cultural object exports it from the source country without any valid export certification.

Illegal exportation of unexcavated archaeological objects falls under this procedure in the case where national legislation of the source country does not consider them as state property.

However, if the national legislation of the source country considers undiscovered archaeological objects state property, their illegal excavation constitutes a theft offence, that falls under procedure a).

18. In these cases, it is possible to follow the procedures (either judicial or extra-judicial proceedings) established for cases involving stolen objects (see above), by changing the offence from theft to illegal exportation and paying particular attention to the specific laws and regulations, to the validity (or invalidity) of export permits

²³ For the international warrant it is necessary that the theft is considered as a crime in both source and transit/destination countries. Furthermore these countries must have ratified an international or bilateral agreement on mutual legal assistance.

²⁴ It could be the case even when police or governmental authorities do not collect sufficient information to support charges of theft in the frame of a judicial proceeding.

²⁵ Containing the same information, to the extent possible, prepared by legal authorities during judicial proceedings.

²⁶ <http://unesdoc.unesco.org/images/0019/001925/192534E.pdf>

/authorisations and to the evaluation document detailing the provenance of the object²⁷.

19. In order to speed up the procedure, a statement signed by the designated governmental authority of the source country declaring that the object has been exported without valid authorisation may be useful.
20. When specific import and/or export restrictions on cultural objects are not available, then exploring a missing declaration about the monetary value of the object may also be considered as a crime under customs law. In this regard, it is anyway important to closely collaborate with the custom officers of source and transit/destination countries.
21. The Subsidiary Committee of the Meeting of States Parties may wish to adopt the following decision:

DRAFT DECISION 4.SC/15

The Subsidiary Committee,

1. Having examined document C70/16/4.SC/15;
2. Thanks the Secretariat and the experts for their inputs in the drafting of this document;
3. Adopts the Standard Action Plan for return and restitution of cultural objects illegally on sale on the market;
4. Requests the Secretariat to update the document in accordance with the most recent developments when needed, and present these updates to the Committee;
5. Invites States Parties to take into account the indicative steps formulated in the document while requesting the return of a cultural object;
6. Reminds the States Parties that a better standard could be set by a ratification of the 1995 UNIDROIT Convention and a better implementation of the 1970 UNESCO Convention as well as of its Operational Guidelines.

²⁷ Any export authorization can be altered by adding or modifying certain details and/or adding multiple panels, as sometimes happens for paintings, which makes it difficult to trace back its origin. In this instance, it will be useful to revoke the export authorization stating that import/export officers have been deceived by criminals.