

Legislative and institutional measures to  
combat trafficking in cultural property in Arab States<sup>1</sup>

Background paper  
by  
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for participants in the

*Second Meeting of States Parties to the 1970 Convention*

UNESCO Headquarters, Paris, 20 and 21 June 2012

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<sup>1</sup> This study for the most part updates and supplements a synoptic report drafted for the regional workshop on the prevention of trafficking held in Beirut from 9 to 11 November 2009.

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## I. Introduction

Institutional and legislative commitment is required both nationally and internationally to combat trafficking in cultural property.

Nationally, the European importing countries above all have, paradoxically, done the most to strengthen their legislative arsenal against trafficking, either collectively under the auspices of the European Community or individually by acceding to the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereinafter referred to as the 1970 Convention) and by passing enabling legislation. This is the case in Switzerland, the Netherlands, the United Kingdom and Germany, for example. It is true however that importing countries, particularly in Europe, are reluctant to ratify the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

As to the Arab States, with a few rare exceptions, there has been no significant institutional or legislative reform in this field. Those countries that have amended their legislation or adopted new laws for the protection of cultural objects have generally merely broadened the scope of the concept of national cultural heritage or strengthened criminal penalties for theft, illegal excavations, trafficking or illegal export of cultural objects. The 17 Arab States included in this study<sup>3</sup> have enacted legislation that governs the protection of cultural heritage. In the two federal States, namely the United Arab Emirates and Iraq, legislative competence for the protection of cultural heritage is regulated differently from one State to the other. In the United Arab Emirates, the protection of cultural heritage is a matter for the Emirates rather than the Federal State.<sup>4</sup> Hence this study will refer for illustrative purposes to the legislation of the Emirate of Sharjah.<sup>5</sup> In Iraq, legislative competence is shared between the Federal State and the Federate States.<sup>6</sup>

Palestine also merits a special mention. As the Palestinian territories have been administered by the Ottoman Empire, Great Britain, Jordan, Egypt and Israel, it is difficult to identify the legislative acts that provide legal protection for the cultural heritage of Palestine. In 1994, Palestine's executive authorities declared that the legislative acts in force before 5 June 1967 were applicable in the occupied territories. However, the legal situation remains complex because the Gaza Strip and the West Bank were initially administered by Great Britain, and then by Egypt and Jordan respectively. This means that legal systems vary depending on the territory in question, hence British law No. 51 of 1929 on antiquities (British Mandatory Antiquities Law) governs the Gaza Strip, and the provisional Jordanian law No. 51 of 1966 on antiquities governs the West Bank.<sup>7</sup> A draft law on the protection of the cultural and natural heritage was drafted by the Palestinian authorities several years ago, but has not yet been approved by the legislative council owing to the political situation prevailing in the country.

International cooperation is crucially important in combating trafficking. Owing to conflicts of interest between countries importing and exporting cultural objects and the disparities between the

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<sup>3</sup> The legislation of Algeria, Saudi Arabia, Bahrain, the Comoros, Egypt, United Arab Emirates, Iraq, Jordan, Lebanon, Morocco, Mauritania, Oman, Palestine, the Syrian Arab Republic, Sudan, Tunisia and Yemen was examined for this study.

<sup>4</sup> See Article 116 and 122 of the Constitution of 1971. In point of fact, the Emirates exercise all competencies not attributed to the Federal State by these provisions. Nevertheless, the Federal State plans to adopt a federal law on the protection of antiquities. The most recent draft dates from 2010.

<sup>5</sup> Mention should also be made of law No. 8 of 1970 of the Emirate of Abu Dhabi on antiquities and excavations. A new draft law of broader material scope has been drawn up, covering the protection, management and promotion of the entire tangible and intangible cultural heritage. To my knowledge, the draft law has not yet been enacted.

<sup>6</sup> Article 113 of Iraq's Constitution of 2005 assigns competence to protect national treasures, namely antiquities, archaeological sites, historical monuments, manuscripts and ancient currencies to the Federal State. The Federal State is responsible for managing national treasures in collaboration with federated bodies. The federated bodies are responsible for the protection and management of cultural property that is not an integral part of the national treasure collection, in accordance with Article 115 of Iraq's Constitution.

<sup>7</sup> Jordan's earlier law on antiquities No. 33 of 1953 no longer applies, as it was rescinded by the law of 1966 (See Article 49). Nor is Jordan's provisional law on antiquities No. 12 of 1976 applicable in the Palestinian territories, as it was passed after 5 June 1967.

legal systems that govern the protection of the national cultural heritage, only cooperation among States can to some degree strengthen national legislative measures in this field. While this kind of international cooperation has been increased operationally under the aegis of international organizations such as UNESCO, the International Council on Monuments and Sites (ICOMOS), the International Council of Museums (ICOM), the International Criminal Police Organization (INTERPOL) and the World Customs Organization (WCO), it has stagnated on the legal front since the adoption in 1995 of the UNIDROIT Convention. No new multilateral and legally binding instrument has been adopted to strengthen the international framework of agreements and thus move positive international law forward in this area.<sup>8</sup> Moreover, we have not noted any significant change in this area at the regional level,<sup>9</sup> particularly among Arab States in the framework of the Arab League—or the Arab League Educational, Cultural and Scientific Organization (ALECSO). Emphasis has been laid to date on the development of standard texts for laws on the protection either of antiquities<sup>10</sup> or of the urban architectural heritage.<sup>11</sup> Bilaterally, however, there has been a very favourable development, namely the conclusion of several cooperation agreements between countries that export and import cultural objects. For example, agreements have been concluded by Switzerland with Italy, Greece and Peru on the import and return of cultural objects. Switzerland is negotiating other agreements with Mexico, Colombia and other countries that export cultural objects.

This study aims to give an overview of legislative and institutional measures taken to combat trafficking in cultural objects in a number of Arab States, the goal being to evaluate the legislative and institutional situation as it relates to the prevention of trafficking in cultural objects in the region.

## II. Accession to international conventions

Only accession to conventions that provide for the prevention and combating of trafficking in cultural objects is considered here. The conventions comprise the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two protocols (hereinafter referred to as The Hague Convention and Protocols I and II), the 1970 Convention and the UNIDROIT Convention.

Palestine merits a special mention in this context, too, because following its admission to UNESCO as its 195th Member State on 31 October 2011, the country deposited its instruments of accession to the 1954 Hague Convention and its two protocols and to the 1970 Convention<sup>12</sup> on 22 March 2012. However, Palestine has not acceded to the UNIDROIT Convention.

With regard to the other Arab States, the situation is as follows:<sup>13</sup>

- 15 States have acceded to the 1954 Hague Convention;<sup>14</sup>
- 12 States have acceded to Protocol I;<sup>15</sup>

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<sup>8</sup> Given the divergent interests of exporting and importing countries, changes to conventional law in this field is dependent on mutual concessions that neither side wishes to make, at least for the time being. This impasse is not unique to the international protection of cultural heritage and can be observed in other fields, such as the liberalization of world trade (law of the World Trade Organization (WTO)).

<sup>9</sup> See, however, the Council of Europe Framework Convention on the Value of Cultural Heritage for Society of 27 October 2005.

<sup>10</sup> See the draft uniform antiquities act adopted by the Arab ministers of culture at their congress on 5 November 1981 or the draft model law on antiquities adopted by a group of experts that met as part of the Cooperation Council for the Arab States of the Gulf on 13 and 14 September 2005.

<sup>11</sup> See the draft charter on the preservation and promotion of the architectural heritage in Arab States, drafted on the initiative of Saudi Arabia in December 2006.

<sup>12</sup> It has already acceded to the 1972 Convention for the Protection of the World Cultural and Natural Heritage, the 2001 Convention on the Protection of the Underwater Cultural Heritage, the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage and the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions.

<sup>13</sup> As at April 2012.

<sup>14</sup> In addition to Palestine, Saudi Arabia, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Oman, Qatar, the Syrian Arab Republic, Sudan, Tunisia and Yemen.

- 7 States have acceded to Protocol II;<sup>16</sup>
- 14 States have acceded to the 1970 Convention;<sup>17</sup>
- Algeria will shortly deposit its instrument of accession to the UNIDROIT Convention.<sup>18</sup>

Algeria will therefore be the first Arab State to accede to the UNIDROIT Convention, thereby quite rightly bringing to an end the common position of the Arab States, which have criticised the Convention for not having retroactive effect, for stipulating excessively short limitation periods and for time-barring compensation for good-faith acquisition. These States fear that accession to the UNIDROIT Convention might be interpreted as a legitimization of past pillages and spoiliations, or as a waiver of the right to claim cultural objects stolen or illegally exported before this Convention came into force. In point of fact, Article 10, paragraph 3, of the Convention explicitly provides:

*“This Convention does not in any way legitimize any illegal transaction of whatever nature which has taken place before the entry into force of this Convention or which is excluded under paragraphs (1) or (2) of this article, nor limit any right of a State or other person to make a claim under 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.”*

With regard to limitation periods, it should be noted that – bearing in mind the protection granted for good-faith purchases (that is, by *bona fide* purchasers) in several Western legal systems after a period rarely exceeding five years – limitation periods of 50 and 75 years, in some cases, already constitute a considerable advance and a compromise solution.

With regard to compensation for *bona fide* purchasers, it is worth noting that good-faith acquisition of stolen or illegally exported cultural goods has been made more difficult under the Convention, which reverses the burden of proof for the purchase of stolen cultural goods.<sup>19</sup> On the other hand, the principle of fair compensation allows for derogation from the *bona fide* purchaser's right of ownership without violating the constitutional guarantee of ownership. Moreover, the laws of some Arab States provide explicitly for the obligation to compensate the *bona fide* purchaser of cultural objects.<sup>20</sup> The legal rules on good-faith purchase are therefore not entirely alien to Arab legal traditions. States whose legal systems permit restitution without compensation of stolen or illegally exported cultural objects may apply their most favourable rule to restitution, pursuant to Article 9, paragraph 1, of the UNIDROIT Convention.

Cooperation with the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation can be qualified as inadequate. The Arab States of Iraq and Libya are two of the 22 Member States currently represented on the Committee. The Committee's task is to find ways and means of facilitating bilateral negotiations with a view to the restitution and return of cultural property to its countries of origin. Clearly, however, the Arab States do not make use of the Committee and draw scarcely any benefit from its role as facilitator,<sup>21</sup> all the while complaining that their requests for the restitution of cultural objects fall on deaf ears in the relevant States. It is interesting to note that, in accordance with the Committee's strategic objective of developing alternative means of resolving conflicts over

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<sup>15</sup> In addition to Palestine, Saudi Arabia, Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, the Syrian Arab Republic, Tunisia and Yemen.

<sup>16</sup> In addition to Palestine, Saudi Arabia, Bahrain, Egypt, Jordan, Libya, Oman and Qatar.

<sup>17</sup> In addition to Palestine, Algeria, Saudi Arabia, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Morocco, Mauritania, Oman, Qatar, the Syrian Arab Republic and Tunisia. The accession of Bahrain is currently being considered by the country's competent authorities.

<sup>18</sup> It seems that Saudi Arabia, too, intends to accede to this Convention.

<sup>19</sup> See Article 4, para. 1, of the UNIDROIT Convention.

<sup>20</sup> See, for example, Article 11 of Comoros's law No94-022/AF on protection of the national cultural heritage; Article 18(b) of Lebanon's law No. 37 of 2008 on cultural property and Article 91 of Mauritius's law No. 2005-46 of 25 July 2005 on the protection of the tangible cultural heritage.

<sup>21</sup> For the recommendations of the most recent session of the Committee, held in Paris from 30 June to 1 July 2011, see document UNESCO CLT-2011/CONF.208/COM.17/5 REV.

cultural property,<sup>22</sup> the Committee has adopted internal rules of procedure governing mediation and conciliation.<sup>23</sup> Those rules set out the key principles of mediation and conciliation procedures, the rights and obligations of parties, the obligations of mediators and conciliators, the closure of mediation and conciliation procedures and cost-sharing arrangements. It would be in the interests of Arab States to monitor progress in the work of the Committee closely and make better use of its methods and procedures, particularly mediation and conciliation procedures, with a view to upholding the right to the restitution or return of cultural objects stolen during foreign or colonial occupation or by any other illegal means of appropriation.

### **III. Implementation of international conventions**

With the exception of the UNIDROIT Convention, the international instruments mentioned above are not self-executing. In other words, they are not precise or detailed enough to form the legal basis for a specific and individual decision. They are intended for the Member States and their legislators and must therefore be enacted in domestic law.

There are examples of legislative acts being implemented, such as the Canadian Act of 19 June 1975 on the export and import of cultural objects, the Swiss federal law of 20 June 2003 on the international transfer of cultural objects, which gives effect to the UNESCO 1970 Convention, and the Swiss federal law of 6 October 1966 on the protection of cultural objects in the event of armed conflict, which gives effect to the Hague Convention. With the exception of Lebanon,<sup>24</sup> none of the Arab States has taken legislative steps to implement these non-self-executing international agreements.

Owing to the lack of legislative execution of those international agreements, the Arab States are not fully covered by the protection and cooperation remedies provided in those agreements and, above all, have no legislation that complies with international standards and makes provision for future challenges in protecting, managing and promoting of cultural heritage.

### **IV. Definition of the concept of cultural objects**

As to the material scope of the regulations concerned, only the Algerian and Lebanese<sup>25</sup> laws make use of the generally and internationally accepted concept of cultural property. The legislation of Bahrain, Egypt,<sup>26</sup> Jordan,<sup>27</sup> Palestine, the Emirate of Sharjah, Saudi Arabia, Sudan, Syria and Yemen still adheres to the classical and limited concept of antiquities (movable and immovable property). Whereas the laws of Comoros and Morocco refer to common concepts drawn from rights *in rem*, namely movable and immovable property, objects of a historical or cultural nature and so on, the Algerian and Tunisian legislation refers respectively to the concept of cultural heritage and the concept of archaeological, historical or traditional heritage. The Iraqi and Omani legislation refers to antiquities and cultural heritage or cultural objects. The Mauritanian legislation differs in that it refers explicitly to the tangible cultural heritage.

Terminology apart, the legislative technique of legal definition differs from one country to another. North African countries and the Comoros use general definitions based on the criterion of cultural, historical, artistic, traditional or aesthetic value,<sup>28</sup> while Middle Eastern countries usually apply a

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<sup>22</sup> See document UNESCO CLT-2009/CONF.212/COM.15/3REV, May 2009.

<sup>23</sup> See document UNESCO CLT-2010/CONF.203/COM.16/7.

<sup>24</sup> In 2008, Lebanon adopted law No. 37 on cultural property, enabling implementation of several provisions of the 1970 Convention.

<sup>25</sup> Law No. 166 of 1933 on antiquities constantly refers to the concept of antiquities. However, this law was supplemented in 2008 by law No. 37 on cultural property, which uses the terminology of the 1970 Convention.

<sup>26</sup> With regard to Egypt, it should be noted that law No. 117 of 1983 was amended by law No. 3 of 2010. The latter does not make any change to the terminology, however, or to the definition of the concept of antiquities in Article 1 of law No. 117.

<sup>27</sup> Jordan's law No. 5 of 2005 on the architectural heritage applies to categories of cultural objects other than antiquities.

<sup>28</sup> This also holds true for Lebanon's law No. 37 of 2008 on cultural property. See Article 1.

specific date<sup>29</sup> or the criterion of age<sup>30</sup> to define antiquities to be protected, while attributing to the competent authority the power to assimilate as antiquities property produced after the date set by law or not old enough to be covered by the law, while meeting other cultural, historical or aesthetic criteria.<sup>31</sup> Accordingly, the variety of these legal definitions – both in terms of terminology and content – arguably means that they cannot be matched with the definitions used in international conventions and can thus make international cooperation more difficult in preventing and combating trafficking.

It is noteworthy that Lebanon's new Law No. 37 of 16 October 2008 on cultural objects sets out criteria for the identification of objects constituting the national cultural heritage, in accordance with Article 4 of the 1970 Convention.<sup>32</sup> For their part, the laws of Algeria and Oman determine the content of the national cultural heritage without referring to the criteria of Article 4 of the 1970 Convention.<sup>33</sup>

## **V. Legal rules on the ownership and transfer of ownership of cultural objects**

If trafficking in cultural objects is to be effectively prevented, the law of ownership and transfer of ownership of cultural objects must be regulated in detail. The 17 countries legislation reviewed contains detailed provisions on the ownership and transfer of ownership of cultural objects.

Public ownership of movable cultural objects is generally assumed, except in the cases of property held in *waqfs* and property of which natural persons or private law corporations claim to be owners and can to prove their ownership rights.<sup>34</sup> With the exception of the Comorian<sup>35</sup> and Moroccan<sup>36</sup> legislation, the laws concerned do not specifically state the inalienability and non-applicability of limitation periods in respect of cultural objects that are publicly owned or held in public collections. Egyptian law, however, from the date on which it took effect, prohibits the possession of antiquities in a private capacity. Comorian law limits the transfer of ownership of listed cultural objects held by private individuals to the State or other legal persons in public law. The law thus implicitly prohibits the transfer of ownership of listed cultural objects between individuals. Some laws even provide for the possibility of the sale of some categories of cultural property owned by the State.<sup>37</sup>

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<sup>29</sup> The years 1780 and 600 for Bahrain (See Article 2 of the law on antiquities); the years 1750 and 600 for Jordan (See Article 2, Chapter 7, of law No. 21 of 1988 on antiquities, amended by law No. 23 of 2004 and art. 2 of law No. 5 of 2005 on the architectural heritage); the year 1700 for Lebanon (See Article 1 of law No. 166 LR of 1933 on antiquities), the West Bank (See Article 2, Section. 2, of Jordan's law No.51 of 1966 on antiquities) and Gaza (See Article 2(a), of the British law No. 51 of 1929 on antiquities); the year 1900 for the Emirate of Sharjah (See Article 2 of law No.1 of 1992).

<sup>30</sup> 200 years for the antiquities of Iraq (See Article 4, Chapters 7 and 8, law No. 55 of 2002 on antiquities), Saudi Arabia (See Article 5 of Royal Decree No. M/26), Syria (See Article 1 of law No. 222 of 1963 on antiquities) and Yemen (See Article 3 of law No. 21 of 1994 on antiquities, modified by law No. 8 of 1997); 100 years for the antiquities of Egypt (See Article 1 of law No. 117 of 1983 on antiquities) and Sudan (See Article 3 of the law of 1999 on the protection of antiquities) and 60 years for Oman's antiquities and cultural objects (See Article 2(c) and (d) of law No. 6 of 1980 on the protection of the national cultural heritage).

<sup>31</sup> See, for example, Article 2 of the Egyptian law and Article 1 and 2 of the Syrian law. The Yemeni law is different in that it authorizes such exceptions only for objects more than 50 years old, See Article 3.

<sup>32</sup> See Article 1 and 2 of law No. 37 of 2008 on cultural property.

<sup>33</sup> See Article 2 of the Algerian law No. 98-4 of 1998 on the protection of the cultural heritage; art. 2 of Comoros's law No. 94-022/AF on protection of the national heritage, and Article 4 of Oman's law of 1980 on protection of the national cultural heritage.

<sup>34</sup> See, for example, Article 6 of the Egyptian law; Article 5 para. 2 of the Lebanese law on antiquities; Article. 4 of the Syrian law; Article 1, paras. 2 and 73 of the Tunisian law No. 35 of 1994 on the protection of the archaeological and historical heritage and traditional arts.

<sup>35</sup> Listed objects are not subject to any statute of limitation, and listed objects belonging to the State are inalienable, See Article 7 and 8 of law No. 94-022/AF on the protection of the national cultural heritage.

<sup>36</sup> Listed immovable and movable objects, private territories and *habus* or bodies belonging to local or ethnic groups are inalienable and their ownership is not subject to any statute of limitation; See Article 26, 29 and 43 of law No. 22-80 on the conservation of historical monuments and sites, inscriptions, works of art and antiquities, modified by law No.19-05 of 15 June 2006.

<sup>37</sup> See, for example, Article 10 of the Egyptian law and Articles 30 and 31 of the Syrian law.

Private ownership of a plot of land does not confer ownership of objects located on or below the surface of the land.<sup>38</sup> Such objects, and objects found fortuitously, are State property.<sup>39</sup> Objects unearthed in archaeological excavations, whether legal or illegal, also belong to the State.<sup>40</sup> Some States, however, authorize the transfer of ownership of specific types of property to the entity authorized to conduct the excavations.<sup>41</sup> Article 10 of the Egyptian law authorizes, by decision of the President of the Republic, the exchange of antiquities with States, museums and other cultural institutions. By decision of the Council of Ministers, Article 35 of Yemen's law authorizes, for reasons of public interest and on an exceptional basis, the free transfer of inventoried antiquities that may be alienated by the State because they exist in multiple copies in public collections.<sup>42</sup>

The transfer of ownership titles of inventoried or listed movable cultural property is usually subject to an authorization<sup>43</sup> or to an obligation to inform.<sup>44</sup> The latter obligation thus enables the State to exercise its first-purchase right, where appropriate.<sup>45</sup> In Lebanon and Syria, even the transport of list movable antiquities requires authorization or must be reported to the competent authority.<sup>46</sup>

The above analysis shows that, in general, the legal system of ownership and transfer of ownership of movable cultural objects is sufficiently regulated in the countries considered here. However, the system does not suffice to produce the intended legal effects and thus contribute to the prevention or combating of trafficking, as the administrative bodies in charge of protecting and managing cultural objects do not have the necessary resources to ensure that the law is applied and enforced. Furthermore, a legal system of ownership and transfer of ownership, however detailed and comprehensive, does not suffice on its own to ensure that proof of ownership of the stolen or illegally exported property can always be produced in all cases – hence the importance of documentation methods such as inventories, classification procedures and comprehensive archaeological mapping showing all archaeological sites.

## **VI. Inventory of cultural objects**

The first point here is that the inventory of cultural objects may consist of a registration system for the purposes of identifying and managing the cultural heritage or of a legal procedure for the categorization and classification of cultural objects to be protected by law.

Most of the regulations of the 17 Arab States provide for an inventory<sup>47</sup> and/or classification procedure<sup>48</sup> for cultural objects, and stipulate the legal effects of both. However, owing their complexity and the lack of resources, the inventory and classification procedures are not often

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<sup>38</sup> See, for example, Article 3, para. 1, of the Bahraini law; Article 5(d) of the Jordanian law; Article 6 of law No. 1 of 1992 of the Emirate of Sharjah; Article 10 of the Saudi law; Article 6 of the Syrian law; Article 60, para. 1, of the Tunisian law and Article 7 of the Yemeni law.

<sup>39</sup> See, for example, Article 77 of the Algerian law; Article 23 of the Egyptian law; Article 15(a) of the Jordanian law; Article 10, para. 2, of the Lebanese law on antiquities; Article 48, para. 2, of the Moroccan law; Article 35 of the Syrian law.

<sup>40</sup> See, for example, Article 35 of the Egyptian law; Article 68 of the Lebanese law on antiquities; Article 49 of the Moroccan law; Article 52, para. 1 of the Syrian law; Article 34 of the law of the Emirate of Sharjah; Article 60 of the Tunisian law and Article 67 of the Yemeni law.

<sup>41</sup> See, for example, Article 38 of the Comorian law; Article 21(b) of the Jordanian law; Article 68 of the Lebanese law on antiquities; Article 22(b) of the Omani law; Article 28 of the Sudanese law and Article 52, para. 2, of the Syrian law.

<sup>42</sup> See, too, Article 80 of the Mauritanian law.

<sup>43</sup> See, for example, Article 60, para. 1 of the Algerian law; Article 32 of the Saudi law; Article 34 of the Syrian law.

<sup>44</sup> See, for example, Article 61 of the Algerian law; Article 25(b) of the Jordanian law; Article 44 of the Lebanese law on antiquities; Articles 61 and 87 of the Mauritanian law; Article 14 of the Omani law and Article 12 of the law of the Emirate of Sharjah.

<sup>45</sup> See Article 44 of the Lebanese law on antiquities; Article 39 and 40 of the Moroccan law; Article 6 of the Mauritanian law and Article 48 of the Saudi law.

<sup>46</sup> See Article 45 of the Lebanese law on antiquities; Article 38 of the Moroccan law and Article 40 of the Syrian law.

<sup>47</sup> See, for example, Article 5, para. 1 of the Bahraini law; Articles 5, 7, 16 of the Iraqi law; Article 3 of the Mauritanian law and Article 20 of the Yemeni law.

<sup>48</sup> See, for example, Articles 10 to 40 and 50 to 66 of the Algerian law; Articles 16 to 20 of the Saudi law; Articles 14 to 20 of the Comorian law; Articles 12 to 14 and 26 of the Egyptian law; Articles 20 to 46 of the Lebanese law on antiquities; Articles 3 to 36 of the Moroccan law and Articles 3 and 5 to 8 of the Omani law.

enforced, and when they are applied, this is frequently done occasionally and incompletely. Furthermore, inventories and classification procedures are rarely published and updated.

With regard to the inventory as a mechanism for identifying and managing cultural objects, it should be emphasized that precise conclusions cannot be drawn from the information gathered from the national reports about the situation in the 17 States. There are apparently no official, tentative or exhaustive lists of “national treasures”. Furthermore, it would seem that only Lebanon uses the “Object ID” standard.<sup>49</sup>

My personal experience in several of these States is that the situation in terms of cultural object inventories is quite serious. Moreover, many museums do not have reliable security systems, and libraries, archives and manuscript repositories are generally not equipped with anti-theft security systems. The importance of the inventory as a means of proving ownership of a stolen or illegally exported cultural object goes without saying: under Article 7(b) of the 1970 Convention, only cultural objects listed in an inventory can be seized and restituted to their country of origin. Admittedly, drawing up an inventory of the national cultural heritage is a huge task, and the human and financial resources of the services responsible for carrying it out are extremely modest. It has thus been observed in many of the countries visited that completion of this priority task is far behind schedule. Special care should be taken in compiling an inventory of objects in the repositories of museums, in repositories for the collection of objects found during archaeological excavations and of cultural objects found in private collections. Drawing up inventories of archaeological sites should be another priority task. The existence of an archaeological map or atlas would facilitate the surveillance of archaeological sites and help to combat illegal excavations. On occasion, it could even be used to identify the origin of archaeological property found during illegal excavations.<sup>50</sup>

## **VII. Archaeological excavations**

Illegal excavations are the main source of supply for the international market in archaeological objects. To prevent and combat illegal excavations, which cause irreversible damage to archaeological sites and considerably hinder scientific and historical research, Article 5 (d) of the 1970 Convention calls on that Member States to control archaeological excavations.

Archaeological excavations are regulated in all 17 States, without exception,<sup>51</sup> although the degree of detail in the regulations differs from one State to another. Excavations are subject to authorization. Only scientific institutions with the required skills and the necessary financial resources can obtain an excavation authorization. Depending on the legislation, excavations may be authorized by a unilateral decision of the competent administrative authority or under an agreement negotiated by the parties concerned. The conditions for granting an authorization, and the rights and obligations of the holder of an authorization are also laid down in the law, which also regulates the monitoring of excavations, the security measures to be implemented on sites during excavations, the conditions and procedure for revoking an authorization, ownership of the scientific results of the excavations and ownership of the objects unearthed during the excavations.

Despite their often detailed regulations, the 17 States concerned are plagued by illegal excavations for many reasons. In addition to the inadequacy of control mechanisms, other causes include the insufficient number of guards on the sites, poverty and unemployment among local people living

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<sup>49</sup> The “Object ID” standard is an inventory procedure for cultural or natural objects. In other words, it is a method for the uniform description of cultural or natural objects that facilitates searches for the objects in the event of theft, loss or illegal export and enables the reconstruction of property in the event of partial destruction or damage.

<sup>50</sup> Article 13, para. 2 of the Sudanese law provides explicitly for such a map.

<sup>51</sup> See Articles 70 to 76 of the Algerian law; Articles 54 to 66 of the Saudi law; Articles 13 to 18 of the Bahraini law; Articles 30 to 38 of the Comorian law; Articles. 31 to 38 of the Egyptian law; Articles 25 to 38 of the law of the Emirate of Sharjah; Articles 29 to 36 of the Iraqi law; Articles 16 to 22 of the Jordanian law; Articles 56 to 72 of the Lebanese law on antiquities; Articles 45 to 50 of the Moroccan law; Articles 65 to 80 of the Mauritanian law; Articles 20 to 26 of the Omani law; Articles 41 to 55 of the Syrian law; Articles 22 to 29 of the Sudanese law; Articles 60 to 75 of the Tunisian law and Articles 23 to 28 of the Yemeni law.

near the archaeological sites, the rise in the world prices of archaeological objects, the people's low educational attainment and lack of awareness, and the lack of law enforcement. Some illegal excavations are carried out following fortuitous discoveries, or even to fulfil specific orders.

In point of fact, the competent authorities in most of the 17 States do not to date have any archaeological map of the country or exhaustive and documented inventory of archaeological sites. Admittedly, they may have access to a not inconsiderable source of technical and scientific information in their archives, but such information must still to be recorded in an inventory and computerized, so that it can be updated and made more accessible. These instruments, however efficient they may be, will not be of any great use unless the authorities are provided with a fully staffed and qualified team of technicians and administrators capable of managing archaeological excavations. By this we mean personnel who are capable, in particular, of assessing whether the excavation requests rest on scientifically and legally sound reasons, of setting specific conditions and charges for excavation authorizations, of monitoring the underground or underwater excavation process, of deciding on possible measures to consolidate or conserve the immovable or movable vestiges discovered, of recognizing the scientific, historical and archaeological importance of excavation finds, of evaluating the final excavation report and of ensuring surveillance of excavated archaeological sites. At present, the competent authorities do not have at their disposal a sufficient number of qualified employees capable of carrying out these tasks in accordance with international standards throughout the national territory. Owing to the serious lack of such qualified personnel, a single person must in many instances perform several tasks to ensure that the services provided are of good quality and to prevent problems. As a result, strict application of legal provisions relating to excavations remains uncertain. Emergency excavations, moreover, raise a serious problem, because the competent authorities are often overwhelmed by the scale of the task on account of the increasing number of public- and private-sector construction projects and the implementation of major infrastructure projects mean that. The problem is not only linked to current conditions, but is also structural, in that political, economic, administrative and financial constraints prevent the authorities from acting with the necessary speed, diligence and efficiency in order to safeguard historical information and preserve and document as many archaeological sites as possible. Furthermore, the large number of annual authorizations for excavations is often disproportionate to the financial and human resources of the authorities responsible for monitoring and overseeing the sites.<sup>52</sup> Furthermore, from a methodological viewpoint, it is important not to confine archaeology to habitual research tasks and to ensure that it focuses more closely on matters of public interest such as the protection of archaeological remains against real-estate speculation and inappropriate development for tourism purposes, the prevention of trafficking and illegal excavations, and the dissemination of information to raise public awareness. Lastly, from a strategic viewpoint, archaeological excavations that could lead to the discovery of a large site of considerable historical, artistic and cultural importance should not be carried out unless the site's long-term protection, conservation and development can be ensured. Underground archaeological sites are already naturally protected and should not be unearthed unless all conditions necessary for their preservation can be met. A change in paradigm and a new archaeological-excavation management strategy are necessary if the management of excavation operations is to contribute to the prevention and control of trafficking in cultural objects.

### **VIII. Trade in cultural objects**

In order to prevent trafficked products from being sold on the legal market and to monitor transfer of ownership of cultural objects more effectively, Member States are requested in Article 10 (a) of the 1970 Convention to regulate the trade in cultural objects.

While trade in antiquities is prohibited in Egypt,<sup>53</sup> Jordan,<sup>54</sup> Iraq,<sup>55</sup> Palestine,<sup>56</sup> Syria<sup>57</sup> and Yemen,<sup>58</sup> it is authorized in Algeria,<sup>59</sup> Saudi Arabia,<sup>60</sup> the Emirate of Sharjah,<sup>61</sup> Mauritania,<sup>62</sup> Tunisia<sup>63</sup> and

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<sup>52</sup> Jordan, for example, grants up to 80 excavation authorizations yearly.

<sup>53</sup> See Article 8 of the law on antiquities.

<sup>54</sup> See Article 23 of the law on antiquities.

<sup>55</sup> See Article 22, para. 3, of the law on antiquities and heritage.

Sudan.<sup>64</sup> Bahraini, Comorian and Moroccan legislation is silent on the question of the legality and illegality of trade in cultural objects. In Lebanon, the situation is quite specific. The legal rules governing the trade in antiquities, set out in the highly detailed law on antiquities,<sup>65</sup> were suspended by Order No. 8 of the Ministry of Tourism of 27 February 1990. Under Article 1 of that order, the granting of authorizations by the Directorate-General of Antiquities (DGA) for trading in antiquities was suspended. The grounds for this decision, as set out in the preamble to the order, are the country's security problems, illegal exports, pillage during the civil war and the need to protect the national cultural heritage. Without questioning the legitimacy of this measure, in view of the extraordinary circumstances prevailing in the country found at the end of the conflict, questions may be raised about the legality of a ministerial order that derogates from the law on antiquities. The principles of the hierarchy of rules and the parallelism of forms would seem to require, almost 20 years after the adoption of this order, that its content be incorporated in the law on antiquities. It is however interesting to note that the State Council found in favour of this decision by the Minister of Tourism when examining an appeal by a trader whose authorization request had been rejected by the DGA on the basis of the aforementioned order.<sup>66</sup> In the grounds for its judgment, the State Council expressed the view that the administration in principle had discretionary power over granting of authorizations, unless the law explicitly stipulated otherwise. Article 81 of the law on antiquities does not grant, according to the Council of State, a subjective right to grant authorization when the legal requirements have been met. It seems that, despite the order of the Ministry of Tourism and the decision of the State Council, traders still engage in their activity publicly without being troubled by the competent authorities. This situation is problematic from a legal viewpoint, as freezing the granting of authorizations to trade in antiquities effectively also suspends the application of the relevant provisions relating to controlling this trade; this means that commercial transactions involving movable antiquities are in fact taking place, but outside the substantive legal system, and with no control or surveillance being exercised by the DGA. It goes without saying that such a *laissez-faire* approach is damaging to the national cultural heritage. In the Sultanate of Oman, the legal situation is similarly specific, as the law authorizes trade in cultural objects, but the provisions governing such trade<sup>67</sup> do not appear to have been implemented. In point of fact, Article 41 of the law delegates to the Ministry of Culture and National Heritage the authority to implement the provisions governing trade in cultural objects, which the Ministry does not seem to have done to date.

The question of the legalization of trade in cultural objects is highly controversial, particularly in countries whose legislation currently prohibits such trade. However, in countries such as Jordan,

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<sup>56</sup> This prohibition is controversial, as it does not stem from the Jordanian law No. 51 of 1966, or from the British law No. 51 of 1929, both of which allow trade in cultural objects, subject to the granting of an authorization. In practice, the Palestinian Antiquities Department manages to prohibit the trade in antiquities *de facto* by refusing to extend the period of validity of authorizations granted before 1967.

<sup>57</sup> In this country, the prohibition does not stem explicitly from the law on antiquities, but implicitly from one of its penal provisions, namely Article 57(c).

<sup>58</sup> See Article 29 on the law on antiquities. Initially, trade in antiquities was authorized, but was prohibited by law No. 8 of 1997 amending law No. 21 of 1994 on antiquities.

<sup>59</sup> See Article 63 of the law on the protection of the cultural heritage, which authorizes trade in unprotected cultural objects but prohibits trade in archaeological objects within the national domain. See also the Executive Order No. 06-155 of 11 May 2006 setting out the terms and conditions of exercise of the trade in moveable cultural property that is not protected, identified or non-identified by natural persons or corporate bodies.

<sup>60</sup> See Articles 38 to 45 on the law of antiquities.

<sup>61</sup> See Article 11 of the law on antiquities. The authorization of trade in cultural objects, however, can only be attributed to the United Arab Emirates. Aside from the discriminatory nature of this provision, its constitutionality is questionable in view of article 121 of the Federal Constitution of the United Arab Emirates of 1971, attributes regulation of trade to the Federal State.

<sup>62</sup> See Articles 63 and 64 of the law on the protection of the tangible cultural heritage.

<sup>63</sup> See Article 56, paras. 1 and 58, of the law on the protection of the archaeological and historical heritage and traditional arts.

<sup>64</sup> See Article 31, para. 1, of the law on the protection of antiquities.

<sup>65</sup> See Articles 73 to 95.

<sup>66</sup> Decision of the Council of State No. 23/1999 – 2000, of 14 October 1999.

<sup>67</sup> See Articles 37 to 40 of the law on the protection of the national heritage.

Lebanon, Palestine, Syria and Yemen, commercial activity of this type exists *de facto* and is tolerated or simply ignored by the authorities. The discrepancy between reality and the legislative texts is hardly conducive to the prevention and combating of trafficking – in fact the reverse is true. In my view, prohibition is an easy option that does not prevent trade from taking place at all. This has been demonstrated by experiments in States whose legislation authorizes trade in cultural objects: if they are carried out within the limits of the law and under the surveillance of the competent authorities, commercial transactions involving cultural objects do not necessarily lead to an increase in illegal trade and are therefore not damaging to the national cultural heritage. Indeed, in some cases, such transactions can help to preserve and raise awareness of the value of cultural objects. Furthermore, owing to the rise of sales of cultural objects on the Internet, prohibitions of trade in cultural objects can be circumvented. It is therefore important to draw up national regulations governing trade in cultural objects, and requiring authorization to be granted for the exercise of this activity, prohibiting trade in some categories of cultural object – such as archaeological objects, sacred objects and ethnological objects – and imposing strict obligations on dealers. Furthermore, in order to enable the competent authorities to track cultural objects involved in commercial transactions, it is important to control transfers of ownership and ensure that illegally excavated items are not sold on the legal market for cultural objects. National regulations should also restrict commercial transactions to registered cultural objects, require dealers to keep a register containing a complete inventory of the cultural objects in their possession and provide the competent authority with the control and monitoring instruments needed to implement this system. Finally, it is important to keep trade regulations up to date by adopting specific standards applicable to commercial transactions through the Internet. At the moment, such transactions are taking place in a legal vacuum that must be filled as soon as possible in order to control this booming activity and thus prevent the Internet from becoming a platform for the sale of items procured through illegal excavations, thefts or illegal exports of cultural objects. The laws considered above do not provide for measures specific to this market or specific monitoring measures. In some States, transactions of cultural objects over the Internet are monitored by the cybercrime unit of the judicial police. Such monitoring measures are inadequate, however, and legislative measures governing this type of transaction or self-regulatory measures that can be applied by professional Internet traders must be put in place.<sup>68</sup> For example, on 20 October 2009, the Swiss Federal Office of Culture signed a memorandum of understanding with eBay, a company, in order to promote “the responsible treatment of archaeological objects”<sup>69</sup> and prevent trafficking in archaeological objects. The memorandum follows a pilot project implemented for three months in 2008 that produced excellent results. In the memorandum, eBay undertook to reduce the number of archaeological objects that it offered for sale. In signing the memorandum of understanding, eBay stated that it authorized for sale in Switzerland only cultural objects accompanied by a certificate issued by the competent authorities in Switzerland or abroad. This limitation applies in particular to categories of cultural objects at risk, such as those included in the ICOM Red Lists and those set out in bilateral agreements concluded by Switzerland with States Parties to the 1970 Convention. Compliance with this limitation of eBay transactions will moreover be monitored, and will be backed up by more intensive dissemination of information to prevent trade in illegally excavated archaeological items. The results of the three-month pilot project, implemented in collaboration with the Swiss Federal Office of Police and the Swiss Association of Cantonal Archaeologists, included a sharp decline in trade in archaeological objects of doubtful origin during the period.

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<sup>68</sup> For an outline of these measures, see the UNESCO document entitled: “Basic actions concerning Cultural Objects being offered for Sale over the Internet”, which can be perused on the UNESCO website. See also Guido Lassau, *Die Bekämpfung des illegalen Handels mit archäologischen Kulturgütern auf Online-Auktionsplattformen*, in *La Convention de l’UNESCO de 1970 et sa mise en application: Etat des lieux et perspectives*, *Schriften zum Kunst- und Kulturrecht*, Vol. 14, Zurich, Saint-Gall, 2011, p. 107-110.

<sup>69</sup> “*Memorandum of Understanding zwischen eBay International AG (eBay) und dem Schweizerischen Bundesamt für Kultur (BAK) im Hinblick auf einen verantwortungsvollen Umgang mit Kulturgütern im Sinne der UNESCO Konvention von 1970 über die Einfuhr und die Rückführung von Kulturgut.*”

## **IX Controls on the export and import of cultural objects**

Traffickers in cultural property are shrewd operators and often try to sell the items obtained through their illicit activities abroad. This enables them to cover their tracks and, most often, to obtain better prices and evade the regulations in force in the country of origin of the exported cultural objects. For this reason, controls on the import and export of cultural objects are extremely important.

Member States are requested in Article 6 of the 1970 Convention to regulate the export of cultural goods, for example by instituting a certificate of legal export for the cultural objects in question and by prohibiting the export from their territory of cultural objects unless accompanied by the export certificate. Member States are requested in Article 7 (b) (i) of the Convention to prohibit the import into their territory of cultural objects stolen from a museum or similar institution.

As far as controls on the export of cultural objects are concerned, the normative density of the relevant rules varies greatly from country to country. In Algeria, Saudi Arabia, Bahrain, Comoros, Egypt, Iraq, Jordan, Morocco, Mauritania, the Sultanate of Oman, the Emirate of Sharjah, Sudan, Tunisia and Yemen export control standards exist but are limited in scope. For example, these countries prohibit the export of some categories of cultural objects which are protected by law, while authorizing temporary exports for purposes of exhibitions, studies or research and requiring the competent administrative authority to ensure that illegally exported antiquities and other cultural objects are recovered.<sup>70</sup> The laws of Saudi Arabia, Lebanon and Syria on the control of the export of antiquities are very broad in scope and very similar in content.

In Saudi Arabia, the export of antiquities is subject to authorization, which may be refused if it is likely that export will diminish the country's ancient or artistic heritage.<sup>71</sup> The contract for the transfer of ownership of an antiquity to a foreign national who wishes to export the item abroad can only be concluded if the foreign national first obtains the export authorization.<sup>72</sup> Depending on the financial value of the antiquity to be exported, competence to issue the export authorization lies with the department of antiquities, the Superior Council of Antiquities or the supervisory minister.<sup>73</sup> It is for the department of antiquities to determine the financial value of the antiquities to be exported. The export request must contain specific information, including the name of the port, station or border point of export, the destination, the foreign addressee, the provenance of the antiquity, a description of the item and a statement of its financial value.<sup>74</sup> The antiquity to be exported must be submitted to the department of antiquities, which examines it and decides to authorize or refuse export or to purchase the object at the price shown in the export request, provided that it has not been overvalued.<sup>75</sup> Export is subject to a tax of 15% to 25% of the financial value of the antiquity.<sup>76</sup> However, the export of antiquities sold by the department of antiquities to private individuals or institutions, exchanged with museums and foreign scientific institutions or granted to scientific missions are exempt from tax.<sup>77</sup> The export costs are borne by the holder of the export authorization.<sup>78</sup> The export authorization must be presented whenever required by customs, postal or police officials, who are competent to seize antiquities that are not accompanied by an export authorization.<sup>79</sup> The department of antiquities is also responsible for recovering, in

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<sup>70</sup> See Article 62, para. 1 of the Algerian law; Articles 19 to 21 of the Bahraini law; Articles 27 to 29 of the Comorian law; Articles 8 and 10 of the Egyptian law; Article 21, para. 1 and Articles 2, 22, para. 3, and Article 37 of the Iraqi law; Article 24 of the Jordanian law; Article 32, para. 3, Articles 44 and 58 of the Moroccan law; Articles 85 to 88 and Article 92 of the Mauritanian law; Articles 28, 30 and 33 of the Omani law; Article 15 of the law of the Emirate of Sharjah; Articles 15 and 31, para. 1, of the Sudanese law; Articles 57, para. 1, and 91 of the Tunisian law and Articles 33 to 35 of the Yemeni law.

<sup>71</sup> See Article 46 of the law on antiquities.

<sup>72</sup> See Article 32 of the law on antiquities.

<sup>73</sup> See Article 49 of the law on antiquities.

<sup>74</sup> See Article 47 of the law on antiquities.

<sup>75</sup> See Article 48 of the law on antiquities.

<sup>76</sup> See Article 50 of the law on antiquities.

<sup>77</sup> See Article 51 of the law on antiquities.

<sup>78</sup> See Article 52 of the law on antiquities.

<sup>79</sup> See Article 53 of the law on antiquities.

accordance with international conventions and recommendations, any antiquities illegally exported from Saudi territory.<sup>80</sup>

In Lebanon, the export of all antiquities is subject to authorization by the Director of the DGA,<sup>81</sup> except in the case of listed antiquities, whose export is prohibited.<sup>82</sup> The authorization request must state the border post through which the antiquities will be exported, their destination and the addressee, a descriptive list of the antiquities and other information depending on the category of antiquities to be exported.<sup>83</sup> One of the particularities of the Lebanese law on antiquities is that it establishes a subjective right<sup>84</sup> in regard to the obtaining of the export authorization in the case of antiquities that:

- have been disposed of or exchanged by the State, in accordance with article 77 of the law,<sup>85</sup>
- originate from authorized excavations, attributed by the State to a scientific mission under Article 68 of the law;<sup>86</sup>
- have been imported into Lebanon in accordance with Articles 99 and 100 of the law.<sup>87</sup>

Export of the aforementioned categories of antiquities is tax exempt.<sup>88</sup> For other antiquities, authorization may be granted only if the Director of the DGA or the curator of the National Museum waives their acquisition right<sup>89</sup> and upon payment of a tax proportional in amount to the value of the object as estimated by the applicant.<sup>90</sup> The authorized export of antiquities must be issued in accordance with the administrative and customs formalities stipulated by the law and under the surveillance of an officer of the DGA.<sup>91</sup> Fraudulent exports are punishable by fines, with the antiquities being confiscated for the benefit of the National Museum.<sup>92</sup> As in the case of trade, the legal system governing the control of exports of antiquities was also suspended under Article 2 of Order No. 8 of 27 February 1990 by the Ministry of Tourism.<sup>93</sup>

In Syria, authorization is required to export antiquities. The Antiquities and Museums Directorate (DGAM) is even required by law to grant an export licence in the event of exchanges or donations of antiquities to foreign scientific institutions.<sup>94</sup> The law even exempts such exports from customs

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<sup>80</sup> See Article 15 of the law on antiquities.

<sup>81</sup> See Articles 97 and 107 of the law on antiquities.

<sup>82</sup> See Article 42, para. 4, of the law on antiquities.

<sup>83</sup> See Article 101, para. 1, Chapters 2 to 6 of the law on antiquities.

<sup>84</sup> This should be understood in the sense of a legal or contractual claim of a legal person in relation to another legal person, which in this case is the State, which can be sued to ensure that the claim is respected.

<sup>85</sup> See Article 98, para. 1, Chapter 1, of the law on antiquities.

<sup>86</sup> See Article 98, para. 1, Chapter 2, of the law on antiquities.

<sup>87</sup> See Article 98, para. 1, Chapter 3, of the law on antiquities.

<sup>88</sup> See Article 103 of the law on antiquities.

<sup>89</sup> See Article 104, paras. 1 and 3, of the law on antiquities. In the event of acquisition by the State, the purchase price is equal to the value attributed to the object by the claimant in his declaration (See Article 104, para. 2, of the law on antiquities).

<sup>90</sup> The tax rate varies according to the monetary value of the antiquity (See Article 104, para. 4 and 5, of the law on antiquities).

<sup>91</sup> See Articles 102, 105 and 106 of the law on antiquities.

<sup>92</sup> See Article 107 of the law on antiquities.

<sup>93</sup> The export of antiquities had already been prohibited once by an order of the Minister of Tourism, No. 8 of 6 February 1988. This order was amended one month later by order of the Minister of Tourism No. 14 of 8 March 1988, which again authorized export, while delegating to a committee – composed of four persons and chaired by the Director of the DGA – competence to examine export requests. Export is authorized only if it is approved by all members of the committee and confirmed by the Minister of Tourism. To my knowledge, the prohibition on exports was not lifted even after the entry into force of law No 37 of 2008 on cultural objects, which does not govern export, see however Article 12 of this law.

<sup>94</sup> See Article 69, para. 1, of the law on antiquities.

duties.<sup>95</sup> In the event of illicit exports, DGAM is, moreover, required to take all necessary steps to obtain the restitution of the antiquities in question.<sup>96</sup>

In Palestine, the export-control rules stipulated in the British law of 1929<sup>97</sup> and in the Jordanian law of 1966<sup>98</sup> have no legal effect, as the borders of Palestine have not yet been definitively established and the Palestinian authorities do not control the current provisional borders.

There are even fewer normative rules regulating the import of cultural objects in the countries covered by this study. The laws of Algeria, Comoros, Egypt, Morocco, Oman, Sudan and Tunisia contain no provisions on import controls. In other words, these countries neither prohibit nor control the import of cultural objects into their territory.<sup>99</sup> The legislation of Saudi Arabia and Yemen merely provides that the department of antiquities should contribute, subject to reciprocity, to the restitution of antiquities exported illegally from their country of origin.<sup>100</sup> Jordan's legislation only stipulates that the importer of antiquities intended for export must provide proof of legal possession.<sup>101</sup>

The laws of Bahrain, the Emirate of Sharjah, Iraq, Lebanon, Mauritania, Palestine and Syria contain specific rules on imports. For example, in Bahrain and the Emirate of Sharjah, antiquities may be imported, provided that a certificate issued by the exporting country is produced. Antiquities exported without such a certificate are seized and returned to the country from which they were exported.<sup>102</sup> In Iraq, imports of cultural objects are subject to a customs declaration and registration with the competent authority for the protection of antiquities within 30 days of import. Customs authorities report such imports to the competent authority for the protection of antiquities within 48 hours of the declaration of import. Cultural objects exported illegally are seized and returned to the country of origin, on condition of reciprocity.<sup>103</sup> In Lebanon, the law stipulates that a customs declaration is mandatory and required that receipt issued to the holder by the customs authorities be produced if imported antiquities are to be re-exported from or sold in Lebanon of.<sup>104</sup> Law No. 37 of 2008 on cultural objects prohibits the import from a State with which Lebanon has diplomatic relations of listed cultural objects that are not part of the Lebanese cultural heritage, without the express agreement of the State in question. Such objects are seized and returned to their original owner, provided that the requesting State:

- pays fair compensation to the good-faith purchaser or legitimate owner;
- provides, at its own cost, relevant proof and documentation justifying its request for seizure and restitution;
- bears all costs relating to the restitution of the cultural objects (transport, insurance and delivery costs); and
- agrees to apply the rule of reciprocity.<sup>105</sup>

In Mauritania, regulations governing the import of cultural objects are distinguished by particular rules which are found only occasionally in other legislation of Arab States and which implement several provisions of the 1970 Convention. For example, legally imported cultural objects must be

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<sup>95</sup> See Article 69, para. 2, of the law on antiquities.

<sup>96</sup> See Article 12 of the law on antiquities.

<sup>97</sup> See Articles 12, 13, 16, 27 and 28 of this law.

<sup>98</sup> See Article 17 and 31 to 35 of this law.

<sup>99</sup> In Tunisia, the law does permit, however, the possession of and trade in legally exported cultural property, See Article 95.

<sup>100</sup> See Article 15, *in fine*, of the Saudi law on antiquities and Article 34, *in fine*, of the Yemeni law on antiquities.

<sup>101</sup> See Article 5(g), of the law on antiquities.

<sup>102</sup> See Article 22 of the law on antiquities of Bahrain and Articles 16 and 17 of the law on antiquities of the Emirate of Sharjah.

<sup>103</sup> See Article 20 of the law on antiquities and heritage.

<sup>104</sup> See Article 99 of the law on antiquities.

<sup>105</sup> See Article 17 and 18 of the law on cultural property.

declared to customs officers. A receipt must be issued to the possessor by the customs authorities. The receipt constitutes proof in the event of re-export. The possession of and trade in movable archaeological objects is permitted, provided that the objects are presented to the competent division of the Ministry of Culture as soon as they arrive in Mauritania or are declared to the division within one year from the date of publication of the law on the protection of the tangible cultural heritage, that is, 15 August 2005. Illegally imported cultural objects are seized and placed under the protection of the State; on condition of reciprocity they are returned to their countries of origin in accordance with international agreements. The requesting State must bear the cost of restitution. Moreover, under Mauritanian law, the export and transfer of ownership of cultural objects originating from a country occupied by a foreign power are considered to be illegal.<sup>106</sup> The legitimate owner of a lost or stolen cultural object may file a claim for restitution of the object.<sup>107</sup> The good-faith purchaser of a cultural object exported illegally from its country of origin is, however, entitled to claim damages and interest or fair compensation<sup>108</sup>. Even though the Palestinian authorities do not have the control of their borders, it is interesting to note in connection with Palestine that under the British law of 1929, which is applicable in Gaza, authorization is required for the import of antiquities from bordering countries, if the legislation of the country concerned requires an authorization for the export of antiquities.<sup>109</sup> Antiquities imported without authorization are restituted. This is an *avant-garde* rule in that it strengthens the public law of the bordering countries. In fact it is still very difficult to gain acceptance for such a rule as a generally acknowledged principle of international cooperation in the protection of cultural objects. Suffice it merely to recall the lengthy and difficult negotiations required for the adoption of the UNIDROIT Convention. For its part, the Jordanian law of 1966, which is applicable in the West Bank, totally prohibits the import of antiquities.<sup>110</sup> In Syria, the law on antiquities does not prohibit the import of antiquities, and merely requires customs authorities to present the property to the DGAM so that the most important items can be registered. It does, however, require the DGAM to cooperate with foreign competent authorities in order to contribute, subject to reciprocity, to the restitution of antiquities exported illegally from their country of origin.<sup>111</sup>

If the above rules established to control the export and import cultural objects are compared with the obligations under Articles 6 and 7 of the 1970 UNESCO Convention or with the rules adopted by other countries such as Canada,<sup>112</sup> the clear conclusion is that the former are rudimentary and insufficient to fulfil the international obligations placed on the countries concerned. The scope of the export prohibition is not always clearly defined, the rights and obligations of the exporter are not stipulated, and the export and control procedures are not spelt out. The same conclusion applies to import control regulations in respect of cultural objects, which, if they exist at all, are limited to the principle of prohibition and generally do not stipulate any specific control procedure or impose an obligation to make a general customs declaration.

It is clear that the total prohibition of the export of cultural objects has not put an end to trafficking in antiquities. Cultural objects, regarded as a hedge investment – particularly during financial crises – are now being sold on the international art market in which conditions are more profitable than on the local market. As there are no appropriate control measures (particularly at border posts), police and customs officer training, public awareness and education, illicit transfers abroad will continue and will cause an irremediable impoverishment of the national cultural heritage. Furthermore, the current lack of reliable and comprehensive inventories of public and private cultural objects and of archaeological sites limits the likelihood of a successful outcome to any restitution requests, owing to the lack of proof. These are the main reasons for the continuation and increase in illicit exports of cultural objects from the countries covered by this study, which cannot rely solely on the good intentions of importing countries and the vigilance of customs and police services to protect their

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<sup>106</sup> See Article 11 of the 1970 Convention.

<sup>107</sup> See Article 13(c) of the 1970 Convention.

<sup>108</sup> See Articles 89 to 91 and 116 of the law on the protection of the tangible cultural heritage.

<sup>109</sup> See Article 28.

<sup>110</sup> See Article 36.

<sup>111</sup> See Article 12, *in fine*, and 33 of the law on antiquities.

<sup>112</sup> See the law of 19 June 1975 on the export and import of cultural property.

cultural heritage. Clearly, international cooperation is vital in this field in order to eradicate the scourge of cultural-property trafficking. Effective international cooperation can only be achieved, however, through the ratification of the relevant international instruments in this field and, above all, their implementation nationally.

Many of the countries covered by this report have fallen victim to the illicit export of cultural objects, although the seriousness of the phenomenon varies from one country to another. None of these countries however has considered it necessary to take urgent administrative and legal measures to prevent trafficking. This *laissez-faire* approach probably reflects a lack of political will and the existence of other quite legitimate priorities. Moreover, the authorities in charge of protecting and managing the cultural heritage do not seem to have any statistics on thefts or illicit exports of cultural objects and thus cannot accurately assess the seriousness of trafficking in cultural objects. Furthermore, they complain that they face a number of obstacles when requesting the restitution of cultural objects exported illegally from their country. There are many obstacles such as the difficulty of proving the origin and ownership of the property because of the shortcomings of inventories and because objects have been excavated illegally, the laws of the importing countries that do not recognise the illegality of the export and protect the good-faith purchaser, the financial costs of judicial proceedings, the complex nature of administrative and judicial procedures and a lack of knowledge about the international art market. There are other obstacles which have not been highlighted in the national reports, such as lack of awareness of the importing countries' legislation and of general mechanisms for mutual international administrative and judicial assistance and restitution conditions formulated in the 1970 Convention and in bilateral agreements. It is important, moreover, to bear in mind that the economic interests of importing countries that have a flourishing art market and large private collections of cultural objects that are ultimately donated to public museums do not encourage them to be altruistic and to strengthen foreign public law.

## **X. Institutional aspects**

States Parties have undertaken under Articles 5 and 14 of the 1970 Convention to set up one or more national services for the protection of the cultural heritage, with qualified staff and an adequate budget.

To my knowledge, all of the States considered in this analysis have established an administrative service for the protection and management of cultural heritage. The status, administrative organization, mode of operation and degree of administrative and financial autonomy of the service varies from one country to another. By contrast, it is rare to find an Arab country with an administrative structure dedicated exclusively to combating trafficking in cultural property.

Algeria has established a specialized service to prevent and combat trafficking. It is known as the Sub-Directorate for Cultural Property Security and it forms part of the Directorate for the Legal Protection of Cultural Property. Algeria also has a central squad for the protection of the national cultural heritage, attached to the National Security Directorate. This squad is responsible, in particular, for operational investigations into various acts against the national cultural heritage, the theft of and trafficking in archaeological objects, antiquities and works of art, damage to and looting of archaeological sites, and artistic forgeries. It directs investigations conducted by other judicial police departments and formulates strategies to combat cultural-property trafficking. It acts in close cooperation with the Division for the Protection of Cultural Property, the Cultural Property Management and Exploitation Office, the National Archaeology Centre and museum curators. The national *gendarmerie* command, too, has established eight cultural heritage protection units.

Egypt has set up an "antiquities police" squad.<sup>113</sup>

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<sup>113</sup> See Article 17 of the Egyptian law on the protection of antiquities.

Jordan has set up a special division within its narcotics squad to seize illicitly trafficked antiquities and prevent trafficking. Iraq, too, has set up an “antiquities police” squad that operates in every province in the country and is attached to the Ministry of Home Affairs.

After the workshop on measures to combat trafficking in cultural objects, held in February 2002 in Beirut and attended by the Arab Member States of UNESCO, the Lebanese Government decided to establish a national committee to combat trafficking in cultural property.<sup>114</sup> The committee comprises representatives of the Ministry of Culture, including the Director of the DGA and the Director of the Directorate-General for Culture, and representatives of the ministries of justice, home affairs and municipalities, foreign affairs and finance.<sup>115</sup> It was tasked with monitoring trafficking in cultural property nationally and internationally and with submitting administrative and legislative proposals to the competent authorities.<sup>116</sup> Unfortunately, this decision has never been implemented and, to my knowledge, the committee has never met.

In each prefecture and province, Morocco has set up a commission to monitor compliance with the provisions of its legislation relating to the conservation of historical monuments and sites, inscriptions, works of art and antiquities. The commission comprises experts and at least one officer of the judicial police.<sup>117</sup>

Palestine, too, has set up a special police unit for the protection of archaeological sites. This unit has regional offices in West Bank and Gaza various districts. The unit cannot, however, carry out its task, as it is underequipped and severely undermanned. Furthermore, its personnel are not sufficiently qualified.

Tunisia has set up a body that is responsible for identifying objects seized during illegal excavations or customs searches. These two administrative bodies coordinate their activities with the police, the *gendarmérie* and the customs authorities. Tunisia has also set up a “heritage squad” to identify cultural objects that have been illegally removed and monitor traffickers.

In other countries, trafficking is prevented and combated by the administrative body tasked with protecting and managing cultural property in collaboration with security agencies (police, border police, *gendarmérie*, narcotics squad, etc.) and customs authorities. Moreover, judicial-police functions are vested under most of the countries’ laws considered in this study to duly sworn officers from the administrative body in charge of protecting and managing cultural heritage and to provincial and municipal officers so that they may document any breaking of the law.<sup>118</sup>

The brief analysis above shows that a much remains to be done institutionally and that the authorities in charge of protecting, managing and promoting the cultural heritage must yet establish specialized bodies and release adequate financial and personnel resources in order to deal effectively with cultural-property trafficking and, above all, engage in international cooperation which is essential in this area.<sup>119</sup> A genuine institution-building effort must now be made in most of the Arab States covered by this overview.

## **XI. Bilateral agreements**

Article 9 of the 1970 Convention calls on Member States to participate in international operations to safeguard the cultural heritage of any Member State that falls victim to archaeological or ethnological pillage and suggests that they conclude bilateral agreements to protect cultural

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<sup>114</sup> See Decree No. 70/2002 of the President of the Council of Ministers on the establishment of a national committee for the prevention of trafficking in cultural property.

<sup>115</sup> See Article 1 of Decree No. 70/2002.

<sup>116</sup> See Article 2 of Decree No.70/2002.

<sup>117</sup> See Article 51 of law No22-80, modified by law No.10-05.

<sup>118</sup> See, for example, Article 92 of the Algerian law; Article 105 of the Mauritanian law; Article 34, para. 1, of the Sudanese law; Article 70 of the Syrian law; Article 86 of the Tunisian law and Article 43 of the Yemeni law.

<sup>119</sup> Article 2 of the 1970 Convention stresses the importance of international cooperation as “one of the most efficient means” of protecting the cultural heritage.

objects that face a particular threat from trafficking, such as archaeological objects. Some countries that import cultural objects, such as the United States of America and Switzerland, are particularly active in this field and have already concluded several bilateral agreements with exporting countries that fall victim to trafficking.

Of the 17 Arab States considered here, only Algeria and Egypt seem to have already used a bilateral treaty to protect their cultural heritage against trafficking. Algeria has signed a specific agreement with Argentina for the reciprocal protection of cultural property in the event of trafficking and is considering concluding two similar bilateral agreements with China and Peru. Egypt has already signed several bilateral agreements in this field, notably with Italy, Greece and Denmark, and it is currently negotiating a major agreement with the United States of America.

The other Arab States considered in this analysis, which have no specific bilateral agreements, have signed cultural cooperation treaties that cover in general terms cooperation and mutual assistance to safeguard the cultural heritage or agreements to combat international crime, including cultural-property trafficking.<sup>120</sup> Otherwise, international cooperation is conducted informally and occasionally, mainly between the police and customs authorities.

The inescapable conclusion is that bilateral cooperation among the 17 Arab States, in particular between countries with a common border, is not institutionalized and remains inadequate to ensure concerted efforts to prevent and combat trafficking.<sup>121</sup> It seems that the cooperation mechanism enshrined in Article 9 of the 1970 Convention is not well known; it should be used more often, as it permits targeted and thus effective protection against theft and illicit transfers of cultural property to specific countries.

## **XII. International cooperation in police and customs matters**

Many Arab States work closely with INTERPOL.<sup>122</sup> In the event of theft or illicit export, the services in charge protecting and managing cultural property routinely inform the national police, which transmit the information to INTERPOL through the national INTERPOL office. This type of police collaboration must be strengthened all of the countries concerned. This should be achieved by making national police services aware of INTERPOL cooperation mechanisms and by increasing collaboration between services responsible for protecting and managing cultural objects and national police services or police services specialized in preventing trafficking.

With regard to consultation of the INTERPOL database on stolen objects and transmission to INTERPOL of information on people involved in the theft of cultural objects, it must be admitted that the database is known to but rarely used by the competent services.<sup>123</sup> Targeted information must be sent to all services concerned in order to raise awareness of the database and ensure that it is checked more systematically. It is regrettable that such an effective working instrument is not used or supplied regularly with data by Arab States that fall victim to trafficking.

Moreover, better international cooperation in police matters requires the training of heritage police personnel or other competent police services. Such training, where provided, is usually carried out by heritage services and must be strengthened and integrated into the training programme of

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<sup>120</sup> See, for example, the Agreement of 30 May 2000 between Morocco and France on cooperation in the field of security, in particular Articles 1 and 4.

<sup>121</sup> Such cooperation often relies on the good will of importing countries. Arab exporting countries are not, however, completely without leverage to make importing countries comply. To take but one example, Arab States on the southern Mediterranean rim could make their cooperation on illegal immigration conditional on closer collaboration with importing countries on the northern Mediterranean rim in combating cultural-property trafficking.

<sup>122</sup> For an overview of INTERPOL's activities in combating trafficking, see Karl-Heinz Kind, *L'action d'INTERPOL dans la lutte contre le transfert illicite des biens culturels*, in *La Convention de l'UNESCO de 1970 et sa mise en application : Etat des lieux et perspectives*, *Schriften zum Kunst- und Kulturrecht*, Vol. 14, Zurich, Saint-Gall, 2011, p.135-144.

<sup>123</sup> This conclusion rests on my own observations in many Arab States and on statements by many representatives of Arab States delivered during the regional workshop held in Beirut from 9-11 November 2009 on the prevention of trafficking in cultural property.

police academies. There is also the possibility of drawing up regular training modules for police officers.

Cooperation by the countries covered in this report with WCO does not seem to be as close as with INTERPOL. National customs administrations and the WCO do cooperate, but national customs administrations are unaware or barely aware of WCO's activities geared to preventing illicit imports and exports of cultural property, and no information on the subject is forwarded to cultural heritage protection and management services. Customs services routinely contact the heritage service to obtain information on the value and origin of seized cultural property. Cooperation between customs and heritage services and coordination of their activities should be institutionalized under a common strategy to prevent and combat trafficking. One-off cooperation is simply not enough. Furthermore, in view of the specific nature of the cultural heritage and of cultural property trafficking, it would be prudent to consider the advisability of established customs services specialized in preventing illicit international transfers of cultural property and of formulating a training programme for customs officers in countries that have no such programmes.

Furthermore, the UNESCO-WCO export certificate for cultural objects does not seem to be used by the States in question. This model certificate has been designed to reflect the distinctive features of cultural objects so they can be identified and traced. In adopting that model, UNESCO and the WCO sought to standardize export certificates worldwide and thus facilitate the task of police and customs services. It is in the interest of countries that export cultural objects to use this model as the national export certificate for cultural objects. Its worldwide use would permit more rapid identification of illicit exports and indeed facilitate the legal movement of cultural property.

### **XIII. General information and public awareness**

Under Article 10 of the 1970 Convention States Parties are required to undertake to restrict, by information in particular, the movement of cultural objects illegally removed from any State Party and to endeavour “to develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports”.

With regard to public information, it seems that the countries concerned do not have any specific information policy or strategy relating to trafficking in cultural property. Yet regular and objective information about trafficking and its effects on the national cultural heritage can help to prevent trafficking and mobilize all sectors of civil society to combat this scourge.

As to raising awareness of the importance of the cultural heritage and of the need to prevent trafficking, campaigns are held frequently in all of the countries considered and take variety forms: heritage days; heritage months; awareness-raising days; open days in museums in conjunction with police and customs services; information days about preventing and combating trafficking by the police and customs services; poster campaigns and the distribution of leaflets in tourist sites, archaeological sites and airports; travelling exhibitions in schools and other public venues; lectures on the cultural heritage to pupils in primary and secondary schools, students and local communities; encouraging the efforts of non-governmental organizations in the cultural heritage field; and inclusion of cultural-heritage courses in school curricula. In view of the variety and scale of the awareness-raising campaigns in most of the countries that fall victim to cultural-property trafficking, I think the time has come to ensure that greater emphasis is laid in future on the quality of awareness-raising efforts, by improving the message conveyed and targeting audiences more effectively. Furthermore, it is important to conduct studies regularly to evaluate the impact of awareness-raising campaigns and make corrections or adjustments where necessary.

### **XIV. Ethical standards**

People are aware of ethical standards, as set out in the ICOM code of ethics and in UNESCO's international code of ethics for dealers in cultural property, but the dissemination of these standards outside professional circles is limited. Furthermore, compliance with these standards by

museums, antiquarians, art dealers and collectors is not monitored. Cultural institutions in Arab States have, to date at least, failed to take steps to formulate their own ethical standards for the purchase and disposal of cultural objects.

ICOM's Red Lists of categories and types of cultural objects seriously at risk of being trafficked are less well known and less widely disseminated than the "100 missing objects" collection.

In this context, further efforts must be made to improve dissemination and raise awareness of ICOM's and UNESCO's ethical standards and to encourage public and private museums, administrative services tasked with protecting and managing cultural heritage and other relevant cultural institutions to draw up ethical rules that lay down minimum standards, particularly with regard to the purchase and sale of cultural objects. Such standards may prove beneficial, given the current proliferation of private museums and other cultural institutions in many Arab States.

## **XV. Conclusions**

The above analysis of the legislation of 17 Arab States shows that much remains to be done legislatively, institutionally, administratively and internationally level to ensure optimal implementation of the 1970 Convention and to combat trafficking in cultural property effectively.

From a legislative viewpoint, it is clear that most of the laws analysed in this study must be revised or supplemented by legislative decrees. The material scope of several States' legislation should, moreover, be extended to cover the tangible cultural heritage in its entirety and to modern measures for managing and promoting the cultural heritage. Their laws should also contain measures for implementing the 1970 Convention.

Institutionally, the point must be made that national cultural-heritage protection services generally seem to have inadequate administrative structures and lack the requisite financial and human resources for the performance of out their work.<sup>124</sup> Moreover, they very rarely have the necessary financial and administrative authority to fulfil their mandate in the best possible manner. Institutional reform is therefore necessary in most of the States in question. The administrative units responsible for the protection, management and promotion of cultural heritage must have the financial and human resources to pursue the agreed strategy and objectives for preventing and combating trafficking. A special unit tasked with preventing and combating trafficking and ensuring coordinated action, particularly between the police and customs services and appropriate international organizations (UNESCO, ICOM, INTERPOL, WCO, etc.) should be established within the national cultural-heritage protection service.

Administratively, it is clear that the legislation of many of the States in this study has not been enforced and contains several gaps that must be closed, particularly in regard to the prevention of trafficking in cultural property. These States do not have a strategy for preventing and combating trafficking, nor do they have a detailed analysis of the causes and scope of trafficking in their countries' archaeological objects (owing to the dearth of statistical data on thefts, exports and illicit imports of cultural property and the lack of any local, national and international market analysis). Where they exist, inventories of public and private cultural objects and of archaeological sites are incomplete and are not updated regularly. Archaeological excavations are often authorized even when the available financial and human resources are insufficient to ensure the management, control, security and monitoring of the sites.

Legislative and institutional reforms and administrative measures alone cannot prevent trafficking in cultural objects and must be strengthened by further international measures. Arab States should make greater use of bilateral and regional cooperation by signing regional or bilateral agreements for the reciprocal protection of cultural objects against trafficking. Furthermore, they should strengthen their cooperation with the Intergovernmental Committee for Promoting the Return of

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<sup>124</sup> This is so despite the commitment made by States Parties to the 1970 Convention to equip their national cultural heritage protection services with qualified staff in sufficient numbers. See Article 5.

Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation by taking every opportunity to consult the Committee for assistance in securing the restitution or return of stolen and/or illicitly exported cultural property. Lastly, they should institutionalize their cooperation with INTERPOL and WCO.

In the face of such challenges and the ever-present threats to the cultural heritage, the strategic priority for the Arab States cannot be the drafting of a hypothetical amendment to the 1970 Convention, but rather the strengthening of the implementation of the UNESCO Convention and accession to the UNIDROIT Convention.

April 2012