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Educational, Scientific and  
Cultural Organization



Convention for the fight  
against the illicit trafficking  
of cultural property

1.SC

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

**First session**  
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**2 and 3 July 2013**

**Provisional agenda item 4:**

Consideration of the draft operational guidelines  
Study prepared by Professor Lyndel V. Prott

**Draft Operational Guidelines<sup>1</sup>**  
**for the better implementation of the**  
**Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and**  
**Transfer of Ownership of Cultural Property 1970**

Cultural property being one of the basic elements of civilization and the culture of peoples, it is important for States to find means of protecting the cultural heritage on their territories from the dangers arising from the illicit export of such property.

As this can be done only if there is close co-operation between States, prohibiting the illicit import of cultural property into a State is the unavoidable corollary of prohibiting its export. However, the illicit transfer of ownership should also be prohibited, as it helps to impoverish the cultural heritage of peoples by facilitating illicit exports.

There can be no question of forbidding the purchase and sale of works of art, of restricting the lawful exchange of cultural property; but all this must be controlled in such a way that exports, imports and transfers of cultural property in the interests of the great cause of international understanding do not lead to the disappearance of the cultural heritage of certain States.

(Preliminary Report of the Working Group, 1969 SHC/MD/3)

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<sup>1</sup> The author is responsible for the choice and the presentation of the facts contained in this article and for the opinions expressed therein, which are not necessarily those of UNESCO and do not commit the Organization.

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## ANNEXES

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Principles & Guidelines for the Protection of the Heritage of Indigenous People  
(drafted 1993 revised 2000) (extracts)
2. Ethical Codes (extracts)
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  - UNESCO Dealers code
  - ICOM code
  - ADAA code
3. ICOM publications
4. Object ID
5. UNESCO publications

## 49 STATES REFERRED TO IN GUIDELINES

### **Group I: Western European and North American States: 13**

Belgium  
Canada  
Cyprus  
Denmark  
Finland  
France  
Germany  
Greece  
Ireland  
Israel  
Italy  
Netherlands  
Norway  
Spain  
Sweden  
Switzerland  
United Kingdom  
United States

### **Group II: Eastern European States: 5**

Belarus (Byelorussia)  
Czech Republic (Czechoslovakia)  
Hungary  
Moldova  
Slovakia  
Ukraine

### **Group III: Latin-American and Caribbean States: 8**

Argentina  
Belize  
Brazil  
Colombia  
Cuba  
El Salvador  
Guatemala  
Honduras

Mexico  
Peru

### **Group IV: Asian and Pacific States: 12**

Afghanistan  
Australia  
Bhutan  
Cambodia  
China  
India  
Iran  
Japan  
New Zealand  
Pakistan  
Papua New Guinea  
Republic of Korea  
Thailand

### **Group V (a): African States: 6**

Angola  
Botswana  
Burkina Faso  
Cameroon  
Mali  
South Africa  
Zambia

### **Group V (b): Arab States: 5**

Egypt  
Jordan  
Iraq  
Kuwait  
Syria

## Introduction

1. The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 was a turning point for UNESCO. It took on a task which had been much discussed, and for which various drafts had been made since 1920, all of which had failed to be adopted. There were diametrically opposed points of view on the issue of protecting the movable cultural heritage of States. Some felt that a free interchange of cultural objects was to the long-term advantage of humanity; but others, faced with the continual erosion of their national cultural heritage by theft, clandestine excavation, illegal export and past colonial removal from the State of origin, felt that their citizens had in many cases been deprived of their own cultural traditions and had severely impoverished the education of their creative artists and children.

2. The adoption of the 1970 Convention by the 16<sup>th</sup> General Conference of UNESCO stimulated hopes that a solution, perhaps not perfect, but a very large step forward, had been found and that all States would then benefit. However, States with active art and antiquities markets were concerned that the new rules would interfere with collecting and trading art and antiquities in a way not previously seen. Many of them therefore were slow to ratify the Convention, some not until this century. The slow pace of ratification has concerned States which have previously had, and many of which are still having, major problems of loss of heritage and now wish to see improved implementation of the Convention.

3. The first Meeting of States Parties took place in 2003 and discussed a number of concerns (CLT-2003/CONF/207/5). In 2009 the Executive Board asked for a second Meeting of States Parties to be held on the 40<sup>th</sup> anniversary of the 1970 Convention to examine in depth the impact of measures taken by States Parties to the Convention to optimize its implementation, appraising its effectiveness with particular regard to new trends in trafficking in cultural property, and formulating strategies geared in particular to its efficient implementation (EX 187/43). Following that meeting in 2012 the Executive Board approved the holding of an Extraordinary Meeting of States Parties to be held in 2013, to initiate the the development and drafting of guidelines on the 1970 Convention and, more generally, to develop strategies to improve its application (190 EX 190/43).

## Purpose of these Guidelines

4. The purpose of these Guidelines is to clarify certain provisions by a summary of practice of States Parties to the Convention and to encourage more serious implementation of the Convention. The Convention has now been in force since 24 April 1972 and those 42 years of experience have changed approaches and attitudes to the Convention in many countries. It is hoped that this summary of subsequent practice will facilitate the work of States Parties to enhance the effectiveness of the Convention and harmonise steps taken by the administrative authorities in each country. It will also seek to point out steps that can be taken to maximise the goals of the Convention by indicating best practice.

5. In some areas there are divergencies of practice which represent divergencies of views among the States Parties. In such cases the Secretariat does not have authority to adopt a particular interpretation: it must be settled by the States Parties or referred to a judicial or arbitral tribunal. In interpreting a convention traditional practice in international law is to take into account the preparatory documents (*travaux préparatoires*). In the case of the 1970 Convention the following constitute the preparatory documents:

- Means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property: Preliminary report prepared in compliance with Article 10.1 of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution (SHC/MD/3) (“ 1969 report”);
- Means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property: Final report prepared in compliance with Article 10.1 of the Rules of Procedure concerning Recommendations to Member States and international Conventions covered by the terms of article IV, paragraph 4, of the Constitution (SHC /MD/5) (“Secretariat report” 1970);
- Draft Convention on the Means of Prohibiting and Preventing the illicit import, Export and Transfer of Ownership of Cultural Property (16 C/17) (“Final Report” of the Special Negotiating Committee, 1970)

The first two documents are of considerable help where the article in the final text has remained substantially the same as in the earlier two drafts. Where substantial changes were made within an article the rationale provided in the first two reports is clearly not applicable. In that case reliance must be placed on the commentary in the final report and on State practice.

### **Purpose of Convention**

6. The five member group of experts which prepared the preliminary draft in 1969 concluded that

The cultural heritage is a basic element of civilization and culture in all ages. States, individuals and legal entities legally in possession of elements thereof, however varied, should enjoy the right of effective reinforced international protection. This draft, which aims at regulating by way of a freely agreed convention the problem of illicit import, export and transfer of ownership of cultural property, lays down principles and determines measures which confirm this right.

The resultant reciprocal responsibilities and obligations will enable the international community to give concrete form to the idea of a world-wide cultural heritage belonging to all countries, to establish a moral and ethical code for the acquisition of cultural property, to abolish disputes and litigation, and thus to contribute towards international understanding. (1969 report, paras. 90, 91)

7. The Preamble to the Convention records that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man; enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations; that cultural property constitutes one of the basic elements of civilization and national culture and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting; that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export; that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations; that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles; that the illicit import, export and transfer of ownership of cultural property is an obstacle to that understanding between nations which is part of UNESCO's mission to promote

by recommending to interested States, international conventions to this end; and that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close co-operation.

The present Convention is essentially concerned with determining means to prohibit and prevent action which impoverishes that cultural heritage. (1969 report, para. 19)

## **Principal Duties of States Parties**

### ***Submission of the Convention to national authorities***

8. The Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution require Member States to submit all conventions without exception to the competent national authorities, even if measures of ratification or acceptance are not contemplated in a particular case (Art. 16). Their submission to the competent authorities does not imply that conventions should necessarily be ratified. Member States are also required to make the text of any convention known to the bodies, target groups and other entities interested in matters dealt with in the Convention (Art. 17). **States are encouraged to report on consultations with the relevant authorities in their countries in their periodic reports to UNESCO.**

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

9. Articles 2 & 3 state principles which are fundamental to the realisation of the Convention. The first is the recognition of “illicit import, export and transfer of ownership of cultural property” as “one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international cooperation constitutes one of the most efficient means of protecting each country’s cultural property” against these dangers. The second principle is a solemn undertaking by States Parties to fight these practices, in particular by putting a stop to current practices and by helping to make necessary reparations.

10. Although lobby groups may dispute the importance or the validity of these principles, becoming party to the Convention obligates States to recognise and apply them. Some of the practical means of fighting practices that have these serious results is to counter misinformation by lobby groups, to raise awareness of their consequences and to ensure that there are general educational programmes concerning these dangers for all age groups, so that there will be increased support for national administrations to carry these obligations into effect. **States are encouraged to promote and educate in the fundamental principles of the Convention.**

### **Items covered** (Article 1)

11. In explaining the text of Article 1, the 1969 group of experts found it “desirable for all States to apply a common definition, so as to facilitate the control of exports and imports of cultural property.” It should not be subjective, since items which were clearly regarded as cultural objects in one State might not be so regarded in another.

12. The current list of objects is broader than that originally suggested and would seem to cover all such objects. No particular problem seems to have arisen with this catalogue. However developments in the last 20 years have shown special concern for the return of objects from indigenous communities whose absence has deprived them of significant cultural items necessary for the continuance of their culture, education of their children and respect for their traditions. Items of spiritual importance in all cultures have also been the subject of increased concern. Some of these have been the object of special regulation in certain countries: Zambia, for example, includes in its heritage protection “any ethnographical material associated with traditional beliefs such as witchcraft, sorcery, exorcism, rituals or other rights” (National Heritage

Conservation Act 1989, s.2 (e)) and Guatemala includes “sacred art of a unique, significant character” (Act for the Protection of the Cultural Heritage of the Nation, Decree No. 26-97 amended by Decree No. 81-98, Art. 4 (c)).

Many indigenous communities also feel strongly about the return of human remains from their communities for traditional burial or other ceremonies in their home country. In recent years voluntary returns of human remains have been made to Australian aborigines, New Zealand Maori, to Botswana and to South Africa. These returns are not regarded as taking place in accordance with the 1970 Convention, since it uses the phrase “cultural property” and most indigenous communities do not accept that human remains can be regarded as “property”. However some legislation, such as the United States Native American Graves Protection and Repatriation Act, does provide for the return of grave goods associated with burials; and some human remains and grave goods have been returned to the relevant communities of Maori and Australian Aboriginals in accordance with the same principles. The development of this practice should now be adopted by other States in view of the anthropological knowledge about the importance of burial practices to such communities and to conform with the wishes of those communities in accordance with the principles of the United Nations Declaration on the Rights of Indigenous Peoples 2007 and the Principles & Guidelines for the Protection of the Heritage of Indigenous People (drafted 1993 revised 2000) (Annex 1). Guideline 19 states “Human remains and associated funerary objects and documentation must be returned to their descendants in a culturally appropriate manner, as determined by the indigenous peoples concerned.” **States are encouraged to follow the Principles & Guidelines for the Protection of the Heritage of Indigenous People.**

13. The words “specifically designated as being of importance by each State” has been interpreted differently in various States. Many States have classification systems which list individual cultural objects or specific cultural collections and can regard these lists as providing the “specific designation” required by Art. 1. However many States do not have such a system, and, indeed, in respect of archaeological finds clandestinely excavated, are unable to produce any record. In order to avoid the problem of specifying an object of archaeological significance, it is now considered good practice to make a clear assertion of State ownership of undiscovered antiquities, so that the State can sue for recovery in a suit for theft. Another approach has been taken by Australia and Canada both of which, in their heritage protection legislation, specify categories of objects which are subject to export control, and objects which are refused an export permit then have an individual designation which complies with the provision of Article 1. **States are encouraged to employ one of the methods already used by States Parties to designate cultural objects which are protected by their law and to keep the list under review.**

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

14. For a State to be able to claim a cultural object as its own cultural heritage, Article 4 (a) to (e) sets out clearly a number of links which make evident the ownership of the cultural item owned by the State or its citizens. States Parties to the Convention are required to recognise those links where the object concerned has been created by an individual or by the “collective genius” of nationals, foreign nationals or stateless persons resident within its territory; found within its national territory; acquired by archaeological, ethnological or natural science missions with the consent of the competent authorities of that country; the subject of a freely agreed exchange; or received as a gift or legally purchased with the consent of the competent authorities of that country.

15. This article nowhere states that objects recognised as cultural heritage have a link to only one State. Clearly more than one State may have a claim over the same item. There are many reasons why an object may be linked to more than one State. Examples are:

- an object has been dismembered and part of it legally acquired by a person or institution in another State;
- an archaeological object has been discovered in one State, is now located in another State, and is subject to differing legal principles established before the entry into force of the Convention (see paras. 91, 110 below);
  - migrants have taken to another country objects which they owned;
  - objects have been exchanged between States by agreement; or
  - have been the subject of a gift.

The Convention does not attempt to establish priorities where more than one State may regard a cultural object as part of its cultural heritage. **States are encouraged to cooperate to ensure that appropriate arrangements are established to allow the interested States, where this can be done without damage to the object, to realise their interests in a compatible way.**

16. Competing claims to such items, if this has cannot be settled by negotiations between the States or their institutions by special agreement (Art. 15 below), should be regulated by mediation (see 17 (5) below) or arbitration. There is no strong tradition for the judicial settlement of such differences in cultural matters. State practice prefers to use mechanisms which will allow for not only legal but also cultural, historical and other relevant factors.

#### **Duties of national authorities** (Article 5)

17. Article 5 requires each State, “as appropriate”, to establish a national service for the protection of its cultural heritage. Such an administrative unit should have qualified staff to contribute to

- the making of legislation (Art. 5 (a); paras. 19-23 below);
- establishing and updating a list of cultural property “whose export would constitute an appreciable impoverishment of the national cultural heritage” (Art. 5 (b); paras. 24-26 below);
- promoting the development of scientific and technical institutions required to ensure preservation and presentation of that heritage (Art. 5 (c); paras. 27-29 below);
- organization of archaeological excavations and preservation of protected areas (Art. 5 (d); paras. 30-31 below);
- establishing rules “in conformity with the ethical principles set forth in this Convention” (paras. 33-42) and taking steps to ensure their observance (Art. 5 (e));
- taking educational measures to develop respect for the cultural heritage of all States and knowledge of the principles of the Convention (Art. 5 (f); paras. 43, 105 below);
- arranging appropriate publicity for the disappearance of any item of cultural property (Art. 5 (g) paras. 43-46 below);
- preventing transfers of ownership of cultural property likely to promote the illicit import or export of such property (Art. 13 (a)); paras. 47-51 below) and, finally
- ensuring cooperation between their competent services to facilitate restitution of illicitly exported cultural property to its owner (Art. 13 (b); para. 110).

While many States do have services relating to cultural property, many of them do not meet all of these requirements. In particular, there seems to be in some States little or no effort to enforce rules concerning the ethical principles of the Convention.

18. Article 14 obligates each State Party “as far as it is able” to provide the national services responsible for the protection of cultural heritage with an adequate budget. If necessary a fund should be set up for this purpose. **States are encouraged to ensure that their national heritage services support adequately all of the functions given to them.**

**National legislation** (Article 5 (a))

19. Article 5 (a) requires States Parties to adopt appropriate legislation for the protection of the national heritage and may seek assistance or advice for the making of such legislation from UNESCO. **States parties are encouraged to review their legislation from time to time to ensure that it is incorporating best practice.**

It is important that this legislation be publicised so that collectors, dealers, museums and others concerned with the new movement of cultural objects are able to see what the precise national provisions are and cannot argue that information on this legislation was not available and that therefore they were not able to comply with it.

20. UNESCO has now established a database of national legislation protecting the cultural heritage. The term “national legislation” encompasses numerous types of standard-setting instrument (classifications also used in the database): certificate/licence; agreement; declaration; decision; criteria; by-law; resolution; recommendation; code; act-law; standard; instrument; measure; protocol; decree; application for authorization; convention; charter; ordinance/order; constitution; amendment; list; regulation; manual.

21. Every State Party to the Convention has currently lodged some legal instrument or instruments with the UNESCO database. However some have not lodged all the relevant legislation. An example is Australia, which has lodged 19 items but has not deposited its legislation on second-hand dealers which is dealt with by the constituent states of the Australian Commonwealth and not by the federal authorities: each of the six states has its own legislation on this subject which is crucial to the tracking of illicitly trafficked objects. Thailand has only a copy of its bilateral agreement with Cambodia but has not deposited its implementing legislation. Similarly, most States have not lodged relevant provisions of their Civil Code which may be crucial to assessing obligations of dealers (and perhaps also auctioneers) to keep full records of their transactions as required by Article 10 (a) of the Convention. As only the United States has declared that it does not follow this rule and no reservations have been made to Article 10 (a) by any other State Party, it must be assumed that they have such legislation in force, and it would be helpful to have the relevant legislation available on the UNESCO legislative database. 180 Member States of UNESCO have now placed on the database at least some of their legal provisions which deal with movable, immovable and intangible heritage whether on land or underwater. **States are encouraged to put all relevant legislation on the UNESCO legislative database and especially to keep it updated.**

22. **States are encouraged to also apply in their legislation the six principles on State ownership adopted by joint UNESCO/UNIDROIT Working Group** and approved by the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or Its Restitution in Case of Illicit Appropriation in 2010 and 2011. The six principles are as follows:

These principles are designed to ensure that foreign courts will be in no doubt of the legislative provisions in foreign national legislation and will apply those rules.

## **Model Provisions on State Ownership of Undiscovered Cultural Objects**

### **Provision 1 – General Duty**

**The State shall take all necessary and appropriate measures to protect undiscovered cultural objects and to preserve them for present and future generations.**

### **Provision 2 – Definition**

**Undiscovered cultural objects include objects which, consistently with national law, are of importance for archaeology, prehistory, history, literature, art or science and are located in the soil or underwater.**

### **Provision 3 – State Ownership**

**Undiscovered cultural objects are owned by the State, provided there is no prior existing ownership.**

### **Provision 4 – Illicit excavation or retention**

**Cultural objects excavated contrary to the law or licitly excavated but illicitly retained are deemed to be stolen objects.**

### **Provision 5 – Inalienability**

**The transfer of ownership of a cultural object deemed to be stolen under Provision 4 is null and void, unless it can be established that the transferor had a valid title to the object at the time of the transfer.**

### **Provision 6 – International enforcement**

**For the purposes of ensuring the return or the restitution to the enacting State of cultural objects excavated contrary to the law or licitly excavated but illicitly retained, such objects shall be deemed stolen objects.**

*These model provisions are recommended to States seeking to draft or strengthen their national legislation (16<sup>th</sup> and 17<sup>th</sup> sessions of the UNESCO Intergovernmental Committee for the Promotion of the Return of Cultural Property 2010 and 2011)*

23. **States are encouraged to also ratify the UNIDROIT Convention on Stolen or Illicitly Exported Cultural Objects 1995.** This Convention was developed by UNIDROIT at the request of UNESCO to improve on some of the provisions of the 1970 Convention which had been criticised and were examined by an expert committee in 1983. While 33 States Parties to the 1970 Convention have ratified the 1995 UNIDROIT Convention, others (for example, the Netherlands, Switzerland) have adopted certain of its principles in their national legislation, although they have not yet ratified the Convention as a whole. Significant provisions which improve on the 1970 Convention are a duty to return a stolen object (Article 3 (1)), a clear test for due diligence in checking provenance (Art. 3 (4)) and a specific provision for the return of illegally exported cultural objects (Arts. 5-7) which is much clearer than the provisions in the 1970 Convention (paras. 84-85, 123-125 below).

The specialized services should be authorized to submit to the other competent national authorities legal and administrative measures found to be essential to the effective protection of cultural property against all danger of impoverishment resulting from illicit dealings. (1969 Report, para. 50)

***Export prohibition List*** (Article 5 (b))

24. In order to facilitate the work of customs officers dealing with the importing of cultural objects, it is imperative that they have precise information about export bans in other States Parties. This can be done in various ways. Where a country uses a classification system, and classified cultural objects are prohibited exports, this list should be made easily available for the customs offices of other States Parties. Where a State Party uses a categorisation system, the list of categories, if necessary with a descriptive explanation, should be made available. For example, a category such as “ritual objects and *choezes*” (Bhutan, The Moveable Cultural Property Act of Bhutan, 2005 s. 59 (a) (iv)); “statues, statuettes, dolls” (Burkina Faso, Décret N° 85-493, regulating export of artistic objects, Art. 1); “drinking vessels, harnesses, textile-working implements” produced before 1600 (Sweden, Heritage Conservation Ordinance (1988:1188) Art. 24 (2) (m)) are all special categories for the heritage of those countries. It is important that the legislation is sufficiently clear for a foreign customs officer to be able to relate the object which he is examining to that description.

25. It is also important that the list be not only clear, but easily accessible. The UNESCO legislative database should be the first point of call for a customs service supervising imports because there will be found the legislation which provides the legal definition of what is a controlled export, what is an illegal export, and what needs to be discussed with the authorities of the country of export. It is therefore important to also have the legislation in an accessible language.

26. The State itself is required by the Convention to introduce an export certificate specifying that the export of the cultural heritage item is authorised (Art. 6 (a)). Clearly the appropriate body to issue or deny an export certificate should be the national heritage service. It will also need to verify certificates which have been produced to foreign border controls and police and are queried by them. This is a time-consuming task requiring expertise and, though the Convention does not mention the implications for the national heritage services, States need to take into account the necessary resources required to do this function properly. Some States will hold an item suspected of being an illegal export for a limited amount of time, such as three months or six months (after which the State may consider the delay an undue interference with the affairs of its citizen) and it is therefore important to reply quickly to any enquiry as to the validity of a document presented as an export certificate. **National heritage services should be encouraged to publicise their export control list nationally and to other States Parties to facilitate cooperation.**

**Promoting expert institutions** (Article 5 (c))

27. More detail concerning this obligation of the national heritage authorities can be gleaned from the statement of the 1969 commentary on the preliminary draft. Members of the group of experts commented that, in relation to promoting the development of scientific and technical institutions required to ensure preservation and presentation of the heritage (Art. 5 (c)) the national services for the protection of cultural property should establish specific

programmes of acquisition and scientific research with reference to archaeology, ethnology and the natural sciences. These programmes should be drawn up in the light of the state of the heritage and the need to enrich it and make it known. Such programmes should of course have educational and cultural objectives. (1969 report para. 44)

28. The working group also thought that, in archaeology, a vigilant control of archaeological sites and systematic excavation campaigns might discourage the clandestine excavations that lead to illicit exports. In ethnology, finds by authorised researchers, in rapidly developing countries particularly, might help render the activities of specialized gangs ineffective. Experience over the last 40 years suggests that this was perhaps too optimistic: however well countries with many very rich archaeological sites strive to follow this advice, they have found it impossible to exclude criminal activities and this is especially notable when there is conflict or natural disaster. The 1969 report also considered that special attention should be paid to the creation and organization of collections of cultural property: museums, archives, archaeological depositories and other such institutions, since the constitution of such collections would be likely to succeed in sheltering cultural property from the dangers with which it is threatened, particularly theft, which is often the prelude to illicit export. It also felt that all countries, especially those which recently became independent, scientists must be trained who can cope with all the obligations inherent in the protection of their cultural heritage. They should be trained in the light of scientific and technical developments in the various disciplines concerned with the conservation of cultural property (1969 report paras. 45-47). Much has been done in all of these areas but there remains a continued substantial problem of clandestine excavation.

29. There is a wide divergence between States Parties to the Convention in the establishment of such institutions. Some States have had such institutions established for two or three centuries; while others do not have the resources to set up additional institutions as suggested by the working group. In that case States Parties should seek to reach a collaborative programme with institutions well established in other States Parties who may be willing to accept persons wishing to achieve a high level of expertise in these areas (archaeology, ethnology, curatorship, conservation) or willing to establish training courses in the countries seeking to upgrade their services. **States Parties are encouraged to establish national specialist institutions where circumstances permit or to make arrangements for access to specialist institutions outside their own country where necessary.**

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

30. States are encouraged to delineate and protect by legislation important areas for archaeological research. A number of key activities should be established to protect the archaeological heritage. Many are described in the UNESCO Recommendation on International Principles Applicable to Archaeological Excavations 1956. However, archaeological practice has continued to develop over the last five decades and some of its provisions should be revised. Nonetheless the following principles of that Recommendation appear to be of essential importance in preventing clandestine excavation:

- The purpose of archaeological research lies in the public interest from the point of view of history or art or architecture. Excavation should not take place for other purposes, except in the case of the extraordinary circumstances described in the UNESCO Recommendation concerning the Preservation of Cultural Property Endangered by

Public or Private Works 1968 and subject to the preventive and corrective measures prescribed in para. 8 of that Recommendation.

- Protection should be extended to all objects belonging to a given period or of the minimum age fixed by law.
- Each State Party should make archaeological explorations and excavation subject to prior authorisation of the competent heritage authority.
- Authority to carry out excavations should be granted only to institutions represented by qualified archaeologists or to persons offering unimpeachable scientific, moral and financial guarantees that the excavations will be completed in accordance with the terms of the contract.
- The contract should include provision for guarding, maintenance, restoration and conservation of both the objects recovered and the site during and on completion of work.
- An excavator or finder should be required to declare any object of archaeological character whether movable or immovable.
- Objects recovered during the course of the work should be immediately registered and kept in a secure structure.

Experience with the protection of archaeological sites also indicates that an area rich in remains of archaeological significance should be delineated and protected by national legislation. It should be carefully guarded. Strong measures should be taken against unauthorised persons found on the site and against corrupt practices among the guardians. **States Parties are encouraged to take particular measures for the protection of sites of archaeological interest, including their movable items.**

#### Metal detectors

31. **States are also encouraged to make legislative provision about the use of metal detectors and other scientific methods of ground-penetrating analysis.** For example, Israel provides that “no person shall dig on any land, or otherwise search, for antiquities, including the use of a metal detector . . . unless he has obtained a licence to do so...” (s. 9 (a)) Antiquities Act 1978). An offender may be sentenced to three years imprisonment or a very substantial fine (s. 37 (b)). Furthermore, a person found on an antiquities site possessing or having in his close vicinity a metal detector, will be assumed to have “intended to discover antiquities, unless he proves the contrary”(s.38). The United Kingdom has had a system of “scheduling” in place since 1882 of monuments considered to be of national importance; and scheduling is the only legal protection specifically available for archaeological sites. The current legislation, the Ancient Monuments and Archaeological Areas Act 1979, places restrictions on the use of metal detectors on protected sites (s. 42) and disturbance or removal of an object may result in a fine. However, the Treasure Act 1996 does allow treasure-hunting on other sites, with the consent of the landowner and the relevant ministry has also promoted the Portable Antiquities Scheme (PAS) which allows for use of metal detectors and for awards when important finds have been made. Serious criticisms have been made of this scheme (see Bibliography, Gill) on the ground that it encourages disturbance of not yet scheduled archaeological areas, that there is clearly a considerable number of finds which are not declared and that find spots are falsely reported so that archaeologists are unable to properly research the area from which the find has been removed.

### **Objects of ethnological interest**

32. These are included in the definition of “cultural property” (Art. 1 (f)); are acknowledged as part of a State’s heritage through authorised scientific missions (4 (c)) and included among the objects protected by special arrangements to counter pillaging (Art. 9). Many States Parties have riches of ethnology which need to be protected, even more so when they have already lost a great deal of their ethnological heritage. As with archaeology there are a number of important steps which can be taken to improve protection of this category of heritage. In the first place States have an obligation to promote the development or the establishment of scientific and technical institutions required to ensure the preservation and presentation of cultural property. The following would appear to be important steps to ensure the survival of the significant works of communities.

- Specialist ethnologists should be supported by the State, whether within a university, museum or other appropriate institution, who can by fieldwork assess the importance of objects of ethnological significance, not only within the community where they are located but also for the national heritage in general. **States Parties are encouraged to establish such a team of anthropologists or ethnologists where such a group of experts does not already exist.**
- A careful inventory should be made of all such objects of community or national significance even if they are kept in their communities. This will be an enormous task for countries which have a great diversity of ethnicities on their territory such as Cameroon with around 250 ethnic groups in a population of 19.4 million; India with more than 300 officially “scheduled tribes” (1991 figures) making up about 8 percent (more than 65 million people) of India’s population; or Papua New Guinea with more than 1,000 different ethnic groups in a population of 6.5 million. While some States are already well advanced with a basis of earlier work, others do not at present have the resources for a comprehensive inventory of these riches. For this reason such **States are encouraged to use extensively the Object ID system. States Parties are invited to encourage community leaders and Elders to make comprehensive records.** Full use should also be made of records of anthropologists and ethnographers and museum and heritage administrators who can make such records when visiting distant communities. It is not essential that this list be published or lodged with a central administration (although this would of course be helpful) but the record should exist in duplicate. One copy could well be in the community itself in a safe place while another copy is lodged in the records of the heritage administration, or if this is not acceptable to the community concerned (for sacred or secret objects for example), be held by a trusted person or institution outside the community. In making such records it should be understood that “An object of no commercial value may, in fact, be immensely important for a people; relics or religious objects, objects intimately associated with a people’s history, with its great men, etc.” (1969 report para. 11).
- While objects treasured by communities may be regarded by them as of intense spiritual importance, even embodying ancestor spirits or having a special relationship of some other kind with that community, collectors outside that community may regard them as artistic or commercial objects.
- **States should encourage the utmost respect for beliefs and practices of the communities of origin noting that “Indigenous peoples should be recognized as the primary guardians and interpreters of their cultures, arts and sciences”** (Principle 3 of the Principles & Guidelines for the Protection of the Heritage of Indigenous People 2002, Annex 1).
- States Parties which have major dealers and collectors of ethnographic pieces are urged to apply meticulously the provisions of Article 10 (a) so that the source of such items can be traced and the legality of their leaving their community of origin or being illegally exported from that country can be properly monitored.

**Ethical codes** (Article 5 (e))

33. **States Parties and all Member States of UNESCO are encouraged to make use of codes of ethics to help break up routes for stolen and illegally exported cultural objects.** Such codes may be developed on a national, international, regional or professional level. Anthropologists, archaeologists, auctioneers, conservators, curators, dealers, restorers and all professional staff working with cultural objects should conform to ethical codes which refuse service for cultural objects whose provenance appears faulty or dubious.

34. The group of experts which drafted the preliminary draft convention in 1969 stated that States Parties to the convention must also undertake to establish rules in conformity with morality and ethics for the acquisition of cultural property. The specialized services, museums in particular and consequently their curators, should acquire only cultural property free from all national or international protest and claims. It thought it essential “that the new rules to be worked out for acquisitions shall place collectors and dealers on the same footing as curators; otherwise museums would be restrained for the sole benefit of illicit trade in cultural property” (1969 report, para. 49). The museum community, through ICOM or individual museums, has generated a substantial body of ethical rules for acquisition and checking provenance.

35. These rules have not yet been developed to the same extent by dealers and auctioneers, though one can observe some improvements over the last 30 years. In a substantial study of the modern dealer community by the Confédération Internationale des Négociants en Oeuvres d'Art (CINOA) the following comments were made:

Although there was a wide variation, some dealers complained that their associations were not adequately policed. There was a feeling in some associations that although membership criteria needed to be adhered to for entry, once enlisted, dealer behaviour and practices were not adequately monitored. Even for those with good monitoring, a common complaint was that the sanctions they imposed did not act as a significant enough deterrent . . . Dealers felt that the worst that could be done for serious breaches of conduct was to remove a member from the Association, but questioned if this really offered the public any real further confidence or whether it meant that much to anyone outside the Association. There were some examples of associations that fined dealers and forced conciliation procedures with buyers, which was seen as more punitive, but again could lead to the same conclusion should the dealer refuse to heed the penalty. (Bibliography, McAndrew, pages 59-60)

36. States Parties must have a national service capable of “establishing rules in conformity with the ethical principles set forth in this Convention” (Article 5 (e)). The rules may be either compulsory, as in legislation, or voluntary, such as codes of ethics. UNESCO has provided guidance with its International Code of Ethics for Dealers in Cultural Property, endorsed by the 30<sup>th</sup> General Conference of UNESCO in November 1999. It was not designed to be imposed on dealers, but States may decide to do so. Such an ethical code may have considerable educational value. If not compulsory, States may, however, offer incentives to those dealers who do undertake to abide by its provisions. For example, a tax concession or favourable publicity may provide encouragement.

37. In general, dealers have argued for a voluntary system. However several cases have emerged where a dealer or auctioneer has not followed the voluntary code of his or her organization and the body administering the ethical code has taken no action. More recently States have legislated rules for dealers and auctioneers, for example, Switzerland, Cultural Property Transfer Act 2003 (Art. 16), the Netherlands (para. 76) or used other provisions of legislation to the same effect. For example, the United Kingdom relies on its Sale of Goods Act

1994, the Value Added Tax Act 1994 which requires the keeping of records of transactions and the later adoption of the Dealing in Cultural Objects [Offences] Act 2003 (Bibliography, O’Keefe, pages 74-76).

38. There are numerous private bodies with their own codes of ethics. The most far-reaching so far is that of CINOA, an international federation of 32 associations of dealers in art and antiquities with member associations in 21 countries representing some 5,000 dealers. CINOA has a code of ethics adopted in 2005 replacing earlier versions of 1987 and 1998, though it seems unfortunate that the newest version does not specifically mention clandestine excavation, as the first version did, although it now specifically mentions the trade prohibitions of the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* 1973 (amended 1979). The CINOA code deals, in part, with bans on trafficking and illegal export of stolen antique objects and works of art with which all its members must comply (Annex 2). There are many national associations of dealers – such as the Syndicat Suisse des Antiquaires et Commerçants d’Art – with codes of ethics that include provisions on theft and/or illicit traffic in cultural heritage items. A group of dealers, auctioneers and others associated with the art trade in the United Kingdom agreed to comply with a “Code of Practice for the Control of International Trading in Works of Art” in 1985. The International Association of Dealers in Ancient Art has a Code of Ethics and Practice which requires members to “undertake not to purchase or sell objects until they have established to the best of their ability that such objects were not stolen from excavations, architectural monuments, public institutions or private property”.

39. Museums also have codes of ethics dealing with, among other things, theft and illicit traffic. The International Council of Museums (ICOM) in its Code of Ethics (Annex 2) states that member museums should acknowledge the major international conventions, including the 1970 UNESCO and the 1995 UNIDROIT Conventions, as a standard in interpreting the Code. The Code specifically provides that: “Members of the museum profession should not support the illicit traffic or market in natural or cultural property, directly or indirectly”. There are other provisions of the Code also dealing with the issue. Many individual museums also have acquisition policies such as that of the J. Paul Getty Museum containing detailed rules on provenance and title which museum administrators must observe in acquiring objects for the institution.

40. Conservators often play a key role in the trade in cultural objects, improving their condition to enable an extended life. In doing this they often have to investigate the origin of the object, its history and the treatment it has received. Consequently, they can come to know or suspect that an object has been smuggled or stolen. To provide guidance for a conservator faced with such issues, their associations often have codes of ethics. For example, the European Confederation of Conservator-Restorers’ Organisations states in its Professional Guidelines that the conservator/restorer must work actively to oppose the illicit trade in cultural heritage. Moreover, Involvement in the commerce of cultural property is not compatible with his or her activities.

41. **States are encouraged to collect and publicise codes of practice of the relevant professions, to encourage professionals to follow the code and to request information from the organizations which have developed them about their success or failure in restraining illicit trade.** There are two significant problems that affect the efficacy of codes of ethics in relation to illicit traffic and theft. Firstly, the wording may be so loose that there is really no restriction on what a member of the association may do. Usually this goes to the state of knowledge of the member. It is very difficult to prove that a person had actual knowledge of the fact that an object had been illegally exported if this is what the code requires before any action can be taken. Secondly, these codes are in principle intended to be for voluntary adoption by the dealer, museum/curator, conservator or other professional. Many associations of these professionals require that on becoming a member the person concerned agrees to abide by the

code. The ultimate sanction for non-observance is often expulsion from the organization but the efficacy of this depends on what value there is in membership. Naming and shaming is another way to deal with the problem.

42. To sum up, States are not only required to “establish rules in conformity with the ethical principles set forth in this Convention” but also to take steps to ensure the observance of those rules (Art. 5 (e)). Many States Parties do not appear to have taken these steps. **States Parties are strongly encouraged to take action to establish ethical rules and especially to ensure their observance.**

***Education*** (Articles 5 (f); 6 (c))

43. The national services for the protection of the cultural heritage are specifically tasked with stimulating and developing respect for the cultural heritage of all States and spreading knowledge of the provisions of this Convention. This obligation can be met in various ways:

- Ensuring, as a first priority, that all members of the heritage service and of other services which deal with cultural heritage items (customs officers, police, museums, including both central and regional administrative divisions ) are made aware of the provisions of the Convention, their significance for the national heritage and the importance of complying with its obligations;
- Coordinating with educational institutions at primary, secondary, tertiary and lifelong learning programmes appropriate information on their local and national heritage and the universal heritage made up of the world’s cultures;
- Publishing materials on heritage protection;
- Ensuring that diplomatic staff from other States are made aware of the importance attached to the national heritage by the receiving State, recalling their attention to the requirement of the Vienna Convention on Diplomatic Relations 1961 which, while granting certain privileges and immunities to diplomatic staff and their families, requires them to respect the laws and regulations of the receiving States (Art. 41 (i)) and reminding them that the personal baggage of a diplomatic agent is exempt from inspection, unless there are serious grounds for presuming that it contains articles the import or export of which is prohibited by the law (Art. 36 (2)); (1983 report; 1970 final report (para. 41 suggested “that an appeal should be addressed to all diplomatic personnel, inviting them to do their utmost to ensure that no cultural property left its state of origin without an export certificate from the state concerned”)).
- Demonstrating to the people of other States the importance of the national heritage to its people by publications, travelling exhibitions, exchange of museum staff and such other means as are appropriate to reach the citizens of other countries, especially those which collect items from its culture.

**States Parties are encouraged to strengthen educational measures within their countries, with the cooperating services and the public in other countries.**

***Publicity for missing objects*** (Article 5 (g))

44. In the last 40 years many advances have been made in rapid notification of loss. Since 1947 INTERPOL has publicised items of stolen art and is in active cooperation with UNESCO to make known stolen cultural objects. Access to INTERPOL’s stolen works of art database can be granted to officials and private individuals in order to query the database. This access is personal, secured by the attribution of a USER ID and a PASSWORD. An application form is available on INTERPOL’s public web site, <http://www.interpol.int/Forms/WorksOfArtDatabase>. This enables prospective buyers to search whether an object has been notified as stolen.

45. For submitting information to be included in the database, INTERPOL has very strict data processing rules. It will only integrate into the database information officially supplied by authorized entities. These authorized entities are the INTERPOL National Central Bureaus

(NCBs) which are installed in each of its 190 member States. In addition, under the terms of particular cooperation agreements, it is also authorized to include information sent in by UNESCO and ICOM. It is not entitled to include information in the database directly upon notification by a private person or an individual museum. INTERPOL notes that there are particular difficulties of cooperation with some countries. For example, in certain African countries and also in some Asian countries, there may be no specialized law enforcement unit for cultural property crime, and as a consequence there is no active collection of theft information and no reporting mechanism put in place on a national level. In many cases there is no reliable independent filing system nor any national database to ensure a consistent message flow and data storage. Another problem is a lack of regular contacts or established working relationships between cultural or religious institutions, museums, Ministry of Culture or customs authorities. A lack of inter-agency cooperation in general is a serious obstacle to transmission of information and thus prevents recovery.

46. Both UNESCO and ICOM began publishing notices of major thefts at the request of some of their members. ICOM currently publishes a series of booklets on thefts from particular regions. It also now publishes a guide to threatened categories of material in particular areas ( of that 3). A number of private ventures are also assisting in this task: IFAR (International Institute for Art Research) began publicising losses of artworks in the 1970s through its journal in the section "Stolen Art Alert". By the 1990s a number of bodies began to make use of electronic registers such as The Art Loss Register. Many States Parties to the UNESCO Convention do not take advantage of these services and are therefore not complying with this obligation to publicise missing cultural objects in the most efficient way. The 1969 report (para. 53 of that document) considered that publicity through mass communication might make an object unmarketable and might persuade its holder to surrender it without compensation. Since these avenues of publicity have become more widespread and more readily available in the last few decades, **States Parties are strongly encouraged to make use of the mass media to publicise lost and stolen objects.**

***Preventing transfers of ownership likely to promote illicit import or export*** (Article 13 (a))

47. Although this is a basic aim of the Convention described by the 1969 group of experts which stated that "the illicit transfer of ownership should also be prohibited, as it helps to impoverish the cultural heritage of peoples by facilitating illicit exports" and the States are obliged "to prevent . . . transfers of ownership of cultural property likely to promote the illicit import or export of such property", there is no information in the Convention itself as to which such transfers are likely to promote import or export. Commenting on the provision which subsequently became Article 13 (a) the 1969 report did, however, include the following statement:

To prevent or where necessary curb illicit transfers of cultural property, States should undertake to penalize specialists in the trade, in particular second-hand and antique-dealers whose proliferation constitutes a permanent encouragement to all kinds of traffic in cultural property, unless they keep a reference register listing the characteristics of each item of cultural property put on the market, its place of origin, the name and exact address of the supplier, the name of the purchaser, and the price paid. Control of such registers by the national services for the protection of cultural property would make it possible to follow up an item of cultural property and perhaps retrace an item which has disappeared after being lost or stolen. (para. 60)

48. This indicates that the 1969 group of experts thought that lack of information about the origin of the item, the names and addresses of the supplier, description and price of each item sold, as well as lack of information provided to the purchaser about an object's possible export prohibition, might well be a transaction likely to promote illegal export. The requirement of

dealers to supply this information is the substance of Article 10 (a) of the Convention. The United States when lodging its ratification accompanied it by the following statement “*The United States understands the words “as appropriate for each country” in Article 10 (a) as permitting each State Party to determine the extent of regulation, if any, of antique dealers and declares that in the United States that determination would be made by the appropriate authorities of state and municipal governments.*” It would be helpful if research could be undertaken to establish how far States Parties have implemented this key provision. In the case of federal States, information on what legislation implementing Article 10 (a) exists in their component entities, where such entities are responsible for regulating those transactions.

49. There are some other indications from State practice which suggest other transactions which are considered in the category of “transfers of ownership of cultural property likely to promote the illicit import or export of such property”. New Zealand, having lost important Maori cultural objects, protects from export *Taonga tuturu* (objects related to Maori culture, history, or society, made in New Zealand by Maori, or brought into New Zealand by Maori, or used by Maori and more than 50 years old) can only be transferred to a registered collector or to a public museum or through the offices of a licensed auctioneer or a licensed second hand dealer (ss. 13-15, *Protected Objects Act 1975* updated in 2006). Penalties will be applied to registered collectors and auctioneers who attempt to transfer to other persons. This is a particular application of Article 13 (a) to prevent transactions likely to lead to illegal export. Spain provides that objects declared to be of cultural interest which are in the possession of ecclesiastical institutions may not be transferred by purchase or assignment to private persons or businesses. Such objects may only be sold or assigned to the State, public entities or to other ecclesiastical institutions (Art. 28, *Law 16/1985 on the Spanish Historical Heritage*). **States Parties are encouraged to study cases of illegal export from their territory and to legislate appropriate protection for the particular conditions of their State.**

50. **States are also encouraged to educate and supervise their national institutions, where their contents are owned by the State, so that rules of inalienability are not broken by their staff,** for such actions would clearly facilitate improper transfers of ownership.

51. **States are further encouraged to make use of existing controls over markets and fairs where goods may be transferred and subsequently exported.**

***Ensuring cooperation on returns*** (Article 13 (b))

52. This section is not very clear and has been much discussed by legal experts. The words “rightful owner” is itself ambiguous, since it is not clear how to resolve a claim by a state or one of its citizens to be the rightful owner. There is also the phrase which applies to all these sections “consistent with the laws of each State “. There is already a requirement in Article 7 (b) (ii) for return in the case of theft. Therefore it would seem that this provision is directed in particular towards return in the case of illegal export. Recent practice has supported considerable co-operation between the customs authorities of different States Parties, in particular by the seizure or holding of items which appear to be suspect while the validity of an export certificate or the origin of a cultural object is checked with the country of origin. Police authorities also coordinate their work where they have seized an object which appears to be subject to return. For this reason **States Parties are encouraged to ensure close cross-border collaboration through customs and police, especially in areas where conflict or natural disaster has created conditions for multiple illegal transactions.**

**Export** (Prohibition of export and issue of certificate) (Article 6 (a) and (b))

53. The Convention (Art. 6 (a)) requires a State of export to introduce an export certificate which would specify that the export of a cultural heritage item in question is authorised and to

prohibit the exportation of cultural property from their territory unless accompanied by such a certificate. The report of the group of experts which prepared the Preliminary Draft of the Convention in 1969 regarded the development of an export permit as “one of the key pieces in the working of the Convention”.

54. In the first place, an appropriate export certificate should be introduced. This is an official instrument made out by the competent authority (national service for the protection of cultural property) of the exporting country certifying that it has authorized export of the cultural object described. This certificate is issued against payment. The document is essential for effective control, and implies co-operation between the service of cultural property and the Customs.

However, in practice some States Parties, particularly those with a very large trade in cultural objects, especially where an export certificate is not normally required in that State, have found this in practice to be a very burdensome obligation. Thus the United States has declared that it “reserves the right to determine whether or not to impose export controls over cultural property” (reservation lodged with ratification instrument 1983) and to date has not done so except in relation to archaeological resources removed from Indian (meaning native American) lands [Archaeological Resources Protection Act 1979 16 USC 470 ee (c)]. Certain other States ban the export of any archaeological or palaeontological objects (Argentina, Act No. 25743, Protection of the Archaeological and Paleontological Heritage (2003) Arts. 4, 49) or ban export of all antiquities except in very limited cases permitted by the Director of Antiquities (Pakistan, Antiquities Act, 1975 (as amended in 1992) s.26). Others control certain categories of exports which may or may not receive an export certificate (Ireland, Documents and Pictures (Regulation of Export) Act, No. 29 of 1945 s.3; India, Antiquities Treasures Act 1972 s.3), while others use their inventories of important national heritage objects to deny export (Japan, Law for the Protection of Cultural Properties 1950 amended 2007, s.44). However in 2007 Germany allowed permanent export to the United States of a 500 year old map on the list of specially protected German Cultural Treasures banned from export. It was believed to show the first use of the word “America”, and was permitted because of its special significance for that country. It can be seen that there is the widest variety of practice controlling export depending on the kind of cultural heritage that is seen as the most important in the State Party and how much trade in cultural objects that country wishes to encourage or discourage.

55. A great many countries now have special provisions for certificates or licences for temporary export (for example Brazil, Normative Instruction No. 40/99; Peru, in exceptional cases, Law N° 28296 General Law of the Cultural Heritage of the Nation Art. 34). Such temporary export permits may be issued for exhibitions and return, or for study by specialised research institutions (for example, radiocarbon dating or dendrochronology). Certificates for temporary or permanent export may be issued for agreed exchanges of cultural objects with other countries. UNESCO and the World Customs Organization (WCO) have cooperated to develop a general Model Export Certificate for Cultural Objects. The form of the model export certificate can be downloaded from [http://portal.unesco.org/culture/en/ev.php-URL\\_ID=27288&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/culture/en/ev.php-URL_ID=27288&URL_DO=DO_TOPIC&URL_SECTION=201.html).

**States Parties are encouraged to use or adapt the model export certificate and to consider whether a temporary export certificate would suit their protective scheme.**

56. In order to avoid forgery and corruption, a notation should be made in a bound register of the country of export noting the date of the export certificate, a description of the object and the name of the responsible officer who has issued the certificate. This record can be used if a customs officer in another country is concerned that an export certificate may have been forged. A copy of the full export certificate should also be retained in the country of export.

In administering an export certificate system, other national services will be required: Customs officers and police will be necessarily employed to check that an export certificate is present with the item being exported, they may need to verify its issue and either customs or police will need to be given authority to seize the object in case of doubt or clear breach of the law. For this reason it is essential that members of all these three branches of the Administration are trained in the business of export control for cultural heritage, have frequent coordination meetings so that they understand each of these services' processes, and have continual updating sessions to ensure that their duties of identification of cultural heritage and its proper control are seen as a major priority, since the rotation of officers in these services is often in three or five year cycles. Laws and regulations also change and need to be transmitted and discussed. **States Parties are encouraged to give particular attention to the issue, form and security of the export certificate and to ensure close liaison between the customs, heritage and police work in its control.**

### **Import** (Article 7 (b))

57. States Parties are required to "prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution provided that such property is documented as appertaining to the inventory of that institution" (Art. 7 (b)). This provision replaced the provision in the 1969 preliminary draft and the 1970 Secretariat draft, both of which had provided for the States Parties "to prohibit the import within their territory of cultural property originating in another State Party to this Convention", unless it was accompanied by such a certificate.

58. The effect of this change in the draft, which responded to comments from France, Sweden and the United States, resulted in a new formulation which required States:

- (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another state party to this Convention . . . provided that such property is documented as appertaining to the inventory of that institution";
- (ii) at the request of the state party of origin, to take appropriate steps to recover and return any such cultural property imported . . .

This provision has been widely criticised as excluding important elements of cultural heritage, in particular, cultural objects which have been clandestinely excavated and therefore have not been "documented as appertaining" to an inventory of any institution. For States whose chief cultural heritage is in archaeological remains, which in some countries is widely distributed and largely unexcavated by authorised expert bodies, this has been a major disappointment. However, without this key change to the text it is very unlikely that the United States, a major location in the trade of cultural objects, would have ratified the Convention.

59. The report of the Special Negotiating Committee (1970) on Article 7 made the following comments:

In view of the technical difficulties and the very onerous costs involved in operating systematic customs controls in order to prevent the illicit import of cultural property, and in view of the fact that the prime responsibility for guarding against the resulting operations should rest with museums and similar institutions, it was decided, in order to combat law evasion, to adopt the following measures.

Concerted international action with a view to taking appropriate practical measures, including controls of the export and import of, and international trade in, cultural property, could be initiated by the States concerned in response to appeals from a State whose Patrimony is in jeopardy from pillage of archaeological or ethnological material.

It was also agreed that the import of cultural property stolen from a Museum, public monument, or similar institution would be prohibited after the Convention came into force. Appropriate measures will be taken in order to recover and return such property at the request of the state of origin.

. . .

This article was adopted by a large majority.

One delegation wished to place on record its appreciation of the conciliatory spirit that had obtained . . . in taking into account the limitations existing under the laws of various States.

60. To compensate the States which had reluctantly agreed to that re-drafted provision in Article 7, a new Article was introduced as Article 9. This article provides that a State Party “whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call on other States Parties who are affected”. In these circumstances those **States Parties with endangered archaeological or ethnological heritage are encouraged to participate in a concerted international effort to carry out measures including the control of exports, imports and international commerce** (Article 9). Provisional measures, where feasible, may be taken pending an agreement.

61. On the basis of this provision the United States has established in its Convention on Cultural Property Implementation Act (19 U.S.C. §§ 2601-13) on the basis of agreements to be made at the request of other States Parties. It has to date entered agreements with 14 States Parties, 13 of which are currently in force. The procedure is for the requesting State to make a formal submission showing how pillage is placing its cultural heritage in jeopardy; indicating what steps it has taken to protect that heritage; spelling out how U.S. import restrictions would substantially deter the pillage and how they promote the interchange of cultural property among nations for scientific, cultural, and educational purposes. The submission is reviewed by the U.S. Cultural Property Advisory Committee. Public comment is sought and often there is an open session. This process requires an investment of time and effort by the requesting State which often has scarce resources to devote to negotiating another treaty when it has already agreed to the 1970 Convention. On the other hand, it does produce a more precise list of what cannot be imported into the United States and a more effective administrative procedure once in place.

62. In 2005 Switzerland introduced legislation to implement the 1970 Convention (Federal Act on the International Transfer of Cultural Property (Cultural Property Transfer Act, CPTA)). Article 7 authorizes the Swiss Federal Council to enter into bilateral agreements with the aim of protecting the cultural and foreign policy interests of Switzerland and to ensure the protection of cultural heritage in general. An agreement must deal with cultural property of significance importance to the heritage of the State requesting the agreement; the property in question must be subject to export controls and there must be reciprocity. Unlike the system in the United States where the government of that country will take action on behalf of the foreign State, the Swiss system provides only a method for foreign States to proceed in the Swiss courts. Moreover, the court can delay return if it considers that this would endanger the object. On the other hand, the importer of cultural property contrary to a bilateral agreement is liable to a fine or

imprisonment. Bilateral agreements have been reached with Italy (2008), Egypt, Greece and Colombia (all in 2011). Agreements have also been negotiated with Cyprus and Peru but these are not yet in force.

63. It can be argued that Article 9 of the Convention does not mention the making of individual bilateral agreements with countries and that the requirement to make one before any action will be taken by a State Party under Article 9 is in fact a substantial restriction of the intended reach of the Convention, refusing direct and immediate action on request under Article 9 to the great majority of States Parties (110 in the case of the United States to date and 117 to date in the case of Switzerland). On the other hand, the United States which has used this system since 1983, believes that it enables a fruitful relationship between the two States and enables better understanding of the claimant State's particular situation, and also allows enhanced collaboration to improve training and protection on site. Switzerland's legislation also provides for financial and other assistance to States Parties who have an agreement (CPTA, Arts. 14, 21-23). The undertaking to provide specific assistance to States with an agreement is an important precedent to all States with a strong trade in art and antiquities. However, if every State Party with a significant art and antiquities trade were to require the making of a bilateral agreement before it would act to return archaeological and ethnological resources, it would become very difficult to track the differing regimes in the many States Parties to the Convention. Since none of the other 121 States Parties to the Convention have taken this interpretation, **States Parties are encouraged to review the implementation of Article 9 carefully since a large majority of States Parties (all but two) either accept claims for any illegally exported cultural items protected by national legislation, or return categories of illicitly exported archaeological and ethnological objects without requiring a bilateral agreement.**

64. Although control of imports has been a primary aim in all drafts of the Convention there has been no enthusiasm for an import certificate. The 1969 report noted (at p.8) that requiring both an import and an export certificate, so that a vendor had to obtain not only an export certificate issued by the authorities of the exporting country, but also a second certificate had to be obtained by him from the authorities of the importing country, would be a very burdensome obligation. This disadvantage, the Report pointed out, is avoided if one and the same document is required from the competent authorities of the two countries concerned. Current practice among States Parties seems to be satisfied by the use of one certificate.

65. Japan requires that "Any person who intends to import specified foreign cultural property shall comply with the obligation to obtain import approval" (Art. 4 Act Concerning Controls on the Illicit Export and Import of Cultural Property 2002 amended 2004). **States Parties are encouraged not to require import certificates as it does not appear to be required by the Convention and is not consistent with current practice.**

66. To improve the implementation of import restrictions **States are encouraged to adopt the procedures of declaration and seizure** so as to

- (i) require persons entering a State to declare at Customs any cultural object which does not have an acceptable provenance;
- (ii) require persons to declare any cultural object from a State which has an agreement with the country of import for the protection of cultural objects;
- (iii) require persons to declare any cultural object which is accompanied by an export permit from a State Party to the Convention;
- (iv) seize at the Customs frontier any object which has been removed from territory occupied by another State (whether or not the occupied or occupying State is a State Party to the 1970 Convention) without approval of the competent authorities of the occupied territory.

Where any object listed in paragraphs (i) - (iv) is declared or is not declared but is suspected, the State of import should require its customs authorities to check the object in question and, if there is reason to suspect it is an illicit export from another State Party, to hold it for verification.

**67. States Parties are invited to establish appropriate procedures for their customs authorities to properly supervise these declarations and seizures, to collaborate with the customs authorities of other States Parties to the Convention and to diligently revise the regulations to ensure best practice for the protection of cultural heritage items.**

#### **Control of trade** (Article 10 (a))

68. The Convention requires States Parties to take certain measures to control trade in cultural objects by supervising the transactions of dealers and museums (Art. 10 (a)). The drafters of the preliminary version of the Convention text in 1969 pointed out (para. 49). "It is essential that the new rules to be worked out for acquisitions shall place collectors and dealers on the same footing as curators; otherwise museums would be restrained for the sole benefit of illicit trade in cultural property." States Parties to the Convention might carefully study this statement. In recent years there have been numerous returns of objects which were found to have dubious or no adequate provenance from museums to countries which had lost national heritage items substantial in number and importance, for example, returns from museums in France, Switzerland and the United States to countries such as Afghanistan, Cambodia and Italy. While museum curators feel constrained to respect the newly upgraded rules for acquisitions, there appears to be less movement among dealers to follow this practice, though some private collectors have returned looted items. The solution is for States Parties to ensure that equally constraining rules, whether legislative or ethical codes, include the same provisions for dealers to those being observed by museums.

69. States Parties are obliged to restrict movement of cultural property removed from any State Party and to oblige "antique dealers" (in the English this would have been better rendered as "dealers in antiquities") "to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject" (Art. 10 (a)). The United States declared that Federal government would leave regulation of this matter to the "appropriate authorities of state and municipal governments" (paras. 48, 116). In some cases courts have laid down rules on this issue: for example, an Indiana judge ruled against a dealer in that US state for the return of mosaics claimed by the Autocephalous Church of Cyprus, on the ground that she had not been diligent in researching title, using similar criteria to those of the UNIDROIT Convention (para. 88 below). Other federal States have been able to deal with this in legislation by the central authority, as has Switzerland. Where the federal government of a State is constrained by constitutional provisions from legislating regulation of dealers, it still is responsible for policies which would encourage the use of such registers. For example, it could give monetary rewards to dealers who keep such records or use other incentives such as listing on a website, for the benefit of collectors who wish to be assured of the provenance of their purchases, the names of dealers who do so, thus giving them a commercial advantage.

70. States Parties are responsible "to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported" and to inform the State of origin of an offer of such cultural property illegally removed (Article 7 (a)). States Parties are also required to establish ethical rules and supervise their use by curators, collectors and dealers (Art. 5 (e), paras. 33-42 above). Where museums are substantially independent of governments, policies should nonetheless be formulated and

incentives can be applied to help ensure the requirements of these provisions. **States Parties are reminded of their obligations under the Convention to supervise the activities of dealers and museums and to use appropriate means to control illicit transactions.**

### ***Sales on the internet***

71. While the drafters of the Convention in 1970 could not have foreseen the development of the Internet as a major channel for sales, the Report of the First Meeting of Parties in 2003 already expressed concern for increased use of the Internet to sell or traffic stolen or illegally exported objects. The exponential growth of this channel is causing serious concern to many countries. Few States are yet sufficiently organized to supervise and quickly follow-up offers on the Internet which appear to be advertising newly imported, excavated cultural property. Most cultural administrations do not have sufficient resources to continually check offers on the Internet. For that reason they are usually dependent on notification by members of the public of suspicious offers.

72. Since this is the case, **States are encouraged to promote supervision by the public, and especially by experts in particularly threatened categories of cultural heritage.** It may be that some States can organize a “watch” team of volunteers, possibly retirees, disabled people, specialists or others interested in particular cultures, to keep a watch on Internet offers, to inform the administration when it appears that an object of national heritage not previously known is being offered on a website or when an object of threatened foreign heritage is offered with a local address (this is particularly important when critical situations are known worldwide, such as the current problems in Mali and Syria). Such notifications need to be examined immediately by the cultural administration; if necessary, using experts (from universities, museums, libraries and other institutions) to verify the nature and importance of the item or items being offered. When the evidence justifies it, prosecutions should then be undertaken.

73. ICOM, INTERPOL and UNESCO have developed a list of “Basic Actions to counter the Increasing Illicit Sale of Cultural Objects through the Internet”. **States Parties are therefore encouraged to employ the following procedures:**

1. Strongly encourage Internet sales platforms to post the following disclaimer on all their cultural objects sales pages:

*“With regard to cultural objects proposed for sale, and before buying them, buyers are advised to:*

*i) check and request a verification of the licit provenance of the object, including documents providing evidence of legal export (and possibly import) of the object likely to have been imported;*

*ii) request evidence of the seller's legal title. In case of doubt, check primarily with the national authorities of the country of origin and INTERPOL, and possibly with UNESCO or ICOM.”*

2. Request Internet platforms to disclose relevant information to law enforcement agencies and to cooperate with them on investigations of suspicious sales offers of cultural objects;
3. Establish a central authority (within national police forces or other), which is also responsible for the protection of cultural properties, in charge of permanently checking and monitoring sales of cultural objects via the Internet;

4. Cooperate with national and foreign police forces and INTERPOL as well as the responsible authorities of other States concerned, in order to:
  - (a) Insure that any theft and/or any illegal appropriation of cultural objects be reported to the INTERPOL National Central Bureau, in order to enable relevant information to be posted on the INTERPOL Stolen Works of Art Database;
  - (b) Make information available about theft and/or any illegal appropriation of cultural objects, as well as about any subsequent sale of such cultural objects, from or to national territories, using the Internet;
  - (c) Facilitate rapid identification of cultural objects by:
    - i) ensuring updated inventories with photographs of cultural objects, or at least their description, for example through the Object ID;
    - ii) maintaining a list of recommended experts;
  - (d) Use all the tools at their disposal to conduct checks of suspicious cultural property, in particular the INTERPOL Stolen Works of Art Database and the corresponding INTERPOL DVD;
  - (e) Track and prosecute criminal activities related to the sale of cultural objects on the Internet and inform the INTERPOL General Secretariat of major investigations involving several countries.
5. Maintain statistics and register information on the checks conducted concerning the sale of cultural objects via the Internet, the vendors in question and the results obtained;
6. Establish legal measures to immediately seize cultural objects in case of a reasonable doubt concerning their licit provenance;
7. Assure the return of seized objects of illicit provenance to their rightful owners.

74. While the above-mentioned Basic Actions are neither "Recommendations", nor "Declarations, Charters and similar standard-setting instruments" adopted by the General Conference of UNESCO, nor "Resolutions" adopted by the General Assembly of INTERPOL, they represent "best practice" at this time. Hence **States Parties are encouraged to adopt the "Basic Actions to counter the Increasing Illicit Sale of Cultural Objects through the Internet" jointly recommended by ICOM, INTERPOL, and UNESCO.**

#### ***Market reduction***

75. As long as there is strong demand (most often from wealthy market countries) it will drive supply (especially from poorer, less developed countries). Control of illicit markets cannot be achieved solely by restriction of supply of any goods (alcohol, drugs, arms, antiquities) as long as demand remains high. How can "persuasion" be used to dampen the foreign market? One strategy is to use education in museums which are visited by foreign tourists to explain the importance of the damage done to the heritage by clandestine excavation, illicit export and theft.

Another track is to send travelling exhibitions to market countries to get these messages across. However, some States which have done so have found thefts and illicit export have subsequently increased, since it has enlarged the interest of existing collectors or widened it to inspire new ones. This then creates a valuable market supported by dealers and auctioneers in countries where their operations are not subject to policing. One possible track would be to ensure that any such exhibition is accompanied by a video, continually playing and showing damage done by dismemberment, removal from an indigenous community and possibly with graphics showing the degree of loss together with discussion by an archaeologist, ethnologist or other cultural expert on the irreparable damage done to cultural heritage at the scientific level.

76. Action within the major trading countries is likely to have greater impact on their markets than any educational activities from other countries. However a number of market States continue to treat the art market as a valuable asset which must be preserved and as having legitimacy. This view has continued to allow a thriving art market, despite many examples of items entering their markets following illicit export from the country of origin or insufficient provenance concealing clandestine excavation or theft. The transfer of ownership of valuable cultural items appears to be the only area of international trade where proof or chain of title is not required by purchasers. In view of the substantial numbers of wrongfully acquired cultural items detected by, for example, the Italian Carabinieri and by cases of conspiracy for theft in the United Kingdom and United States, **States Parties, particularly those with vigorous art and antiquities markets, are strongly encouraged to make trade in cultural objects subject to the same controls as major markets in other goods.** Two States of considerable importance in the art trade, Switzerland and The Netherlands, have taken this step (Switzerland, Cultural Property Transfer Act 2003, s.16; The Netherlands amending its Civil Code to do so, s.87a).

77. Some States suffering from illicit traffic of cultural objects have also strengthened their argument for stronger control by the market States by cancelling or refusing visiting exhibitions of their cultural heritage to States which they feel are not taking this problem sufficiently seriously. They may also make clear, in both bilateral and in multilateral fora, that this is for them a major political issue which influences their foreign relations.

#### **Theft** (Articles 7 (b); 13 (c))

78. Cultural property stolen from a museum or religious or secular public monument must be returned by a State Party (Art. 7 (b)). However this is subject to a number of conditions: it must be documented in the inventory of that institution; it must have been imported after the date on which both States became party to the Convention, requests for return are to be made through diplomatic channels, the requesting State would pay “just compensation to an innocent purchaser or to a person who has valid title to that property” and the requesting Party is to furnish the documentation necessary to establish its claim for recovery.

79. The detailed wording of this clause has limited the number of stolen cultural objects which are to be returned under the Convention. If a cultural object which has been stolen is not inventoried, there are still other avenues for recovery. If, for example, a State, whether or not it is a party to the 1970 Convention, can prove ownership of the cultural object in the State itself, it can sue the possessor in the holding country in a civil lawsuit. A suit by Iran against a London dealer in 2007 resulted in the return of 118 ancient artefacts. Where one of the State’s nationals (individual or institution) is the owner, that person can sue. In more than one case, the owner’s State has financed such a suit. The provision of the Convention requiring a State Party “to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners” (Art. 13 (c)) seems to do no more than describe the existing situation in all legal systems, since actions of this kind are a basic provision in any legal system. If there were no such action available in a State Party, this provision would require it to create one.

**States Parties are therefore encouraged to check that there exists, in their national system, a legal proceeding available to an owner of lost or stolen goods, and, if there is none, to institute one.**

80. Where a single culture now rests in several States (for example, Mayan remains in Belize, El Salvador, Guatemala, Honduras and Mexico) it may be difficult to prove the exact link between one of those countries and the finds which have been removed to another country. In such a case it may be beneficial for all sharing States to jointly sue for the return of these materials which will then enable them to be returned to the ascertained or agreed area of cultural origin. Its final place of return may take some research to establish while in the meantime a travelling exhibition may be beneficial. A specific foundation or NGO might also be used as the institution to hold the object on behalf of and with the authorisation of the other countries concerned. **States Parties sharing a particular culture with archaeological remains in more than one country are encouraged to consider joint actions for recovery.**

81. Some holding States are prepared to take criminal action for conspiracy to commit a crime: the United Kingdom and the United States prosecuted an English citizen and an American national respectively for conspiracy to steal and export Egyptian antiquities. Both were gaoled as a result and the head of Ahmenhotep III was returned to Egypt. Other States Parties to the Convention are prepared, on the receipt of information, to seize imported cultural objects under their powers to control through customs (United States) or police authorities (Canada) or their cultural heritage legislation (Australia) where ownership can be proved.

#### **Compensation** (Article 7 (b))

82. This word occurs only once (Art. 7 (b) (ii)) In the text of the Convention. It has had many predecessors: Article 8(1(a) of the 1939 draft prepared by the eminent Belgian international lawyer Charles de Visscher for the International Museums Office (OIM), Art. 7 (g) of the 1969 preliminary draft and Art. 10 (d) of the 1970 Secretariat draft. The provision was to meet the concerns of countries whose Civil Code protects the possessor in good faith after a certain lapse of time.

83. The question of compensation is one area where there has been a dramatic development of attitudes. The Draft International Convention for the Protection of National Collections of Art and History 1939 allowed for compensation to a good faith purchaser, to be paid by the claimant country (Arts. 5 and 6). The Preliminary draft of 1969 provided for compensation for good faith owners whose cultural property was restored to the State of origin, on the understanding that cases of compensation would be very rare if the export prohibition was brought “to the knowledge of all customs authorities concerned and of any person likely to import cultural property” (Art. 7 (d) and (g)) (1969 preliminary draft). However that approach disregarded the far greater number of States involved since 1939, as well as the difficulty for many of them to rapidly notify losses, at a time when communication was not as efficient as it is now. Whether compensation should be paid and who should pay it has continued to be a difficult issue. After much negotiation the 1970 Convention adopted the words (Art. 7 (b) (ii)) “that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property.”

84. Developments since that time have shown that many States understand that cultural objects that are irreplaceable need to be returned. They are also aware that States from which they have been stolen very much resent requirements to pay for objects that they regard as owned by them and that many of them are unable to pay large sums for their return. Furthermore States are now much more conscious of the importance of cultural matters in their foreign relations and that disputes about return of cultural objects can be a major problem.

Recent practice suggests little use of the compensation provision of the Convention. The UNIDROIT Convention 1995 provides for compensation for the return of a stolen cultural objects only where the possessor “neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object” (Art. 4 (1)). It then gives (Art. 4 (4)) a list of the factors which constitute due diligence. This list is becoming the standard for international transactions and best practice: for example it has been adopted by the Netherlands Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970 . . . Act 2009.

This is a subject of particular importance to the Netherlands. It is one of the countries that goes to great lengths to protect innocent purchasers and it also has a relatively short period of prescription. However, as a transit country and market for arts and antiques the Netherlands is in a position where it is desirable to waive such rules in the interests of protecting cultural property by combating this illegal trade. (Explanatory Memorandum to the Act).

85. The provisions of the UNIDROIT Convention restrict compensation for stolen cultural objects to acquirers who have genuinely researched the title to the object. As there are now many tests to prevent fraudulent transactions it is far less likely that a stolen object will be in the hands of a good faith acquirer. **States Parties which seek compensation are encouraged to adopt recent best practice which makes compensation dependent on the UNIDROIT standard of due diligence.**

86. There is also now a number of cases where an individual, collector or dealer, has returned a stolen cultural object without claiming compensation. This has happened where an object was stolen before the coming into force of the Convention for both States Parties but the object was found in the hands of a purchaser after that date, such as a French collector returning a statue to Cambodia. More recently two Swiss dealers, in separate transactions, returned stolen items to the State which owned them the.

87. The issue of compensation is not mentioned in Article 9 of the 1970 Convention and in many States it has not been raised in the context of illegally imported cultural objects. However the Swiss Cultural Property Transfer Act 2003 does allow for compensation (Art. 9 (5) and (6)) as does the Netherlands amended Civil Code (Art. 86b (2)) in relation to illegally imported cultural objects.

**Good faith** (Articles 7 (b); 13 (c))

88. Article 7 (b) (ii) does not mention the word “good faith” or “*bona fides*” but uses the phrase “an innocent purchaser”, a term used in United States law equivalent to “a good faith purchaser”. It also uses the phrase “a person who has valid title . . .” which might include acquisition by lapse of time, gift or inheritance, depending on which system of national law applies. Assessing “good faith” historically depended entirely on the judges in the different jurisdictions and varied from an assumption of good faith (France), which had to be disproved, to requirements of certain basic cautions against acquiring stolen or illegally removed cultural objects (Switzerland). This made the application of good faith provisions very diverse, encouraging sophisticated traffickers to exploit the systems most advantageous to them. The UNIDROIT Convention 1995 introduced a carefully crafted standard of precautions to be taken when acquiring cultural objects (para. 23 above) which has been adopted by the States Parties to the UNIDROIT Convention and by others which are not parties to the UNIDROIT Convention. **States Parties are encouraged to use the criteria of “due diligence” in Article 4 (4) of the UNIDROIT Convention on stolen or illegally exported cultural objects 1995 in assessing “good faith” or “purchaser innocence”.**

## Time limitations on claims

89. There is no time limitation (also known as “prescription”) in the Convention on the bringing of claims. The preliminary 1969 draft of the Convention included a provision that actions for recovery of property against those possessing a lost, stolen or illicitly imported item would be barred by prescription 30 years from the date on which the cultural object was stolen, lost or illicitly imported. In their comments on the draft some States thought that there should be no prescription and others that there should be. The final text deleted that provision. As a result, States Parties have used their own prescription rules. These varied considerably, not only in their length (1, 3, 5, 10, 20, 30 years) but also distinguished between particular classes of taking or different cultural categories.

90. Major art trade States insisted on the importance of retaining these limitation periods until the 1990s. At that stage there was a major change in their approach to the return of cultural items wrongfully taken during and immediately after the Second World War. Some collecting institutions voluntarily returned materials which had been out of their owners’ hands for four or five decades. Some States legislated specially lengthened limitation periods or did away with them altogether for this kind of cultural property. This attitude has also influenced the return of other cultural objects: for example, returns to Cambodia of cultural objects which were taken during the period of the Khmer Rouge and its aftermath (1975 – 1991), voluntary returns of cultural objects to Italy which had been in United States museums for many years (Aphrodite statue in the Getty Museum 1988 – 2011, Euphronios krater in the Metropolitan Museum, New York, 1972 – 2008). This evidence suggests that there is now something of a consensus that wrongfully displaced cultural objects are a special category of movables which should be recoverable for much more substantial lengths of time than was previously the case. On this basis **States Parties are encouraged to accept claims for outstanding items of cultural heritage outside their own rules of limitation and, when necessary, to legislate to ensure that result.**

## Inalienability (Article 13 (d))

91. Article 13 (d) requires States Parties “to recognise the indefeasible right of each State Party . . . to classify and declare certain cultural property as inalienable”. An indefeasible right is one that cannot be lost or surrendered – it is a permanent, non-forfeitable right. Some States have declared certain items of cultural heritage to be “inalienable”. This means that their ownership is permanently vested, usually in the State or one of its agencies. As far as that State is concerned that ownership can never be lost. However, there can be a conflict of rules where such an inalienable object is found in another State where the possessor, by the law of that State, has a good title (for example, is recognised by its law to be a good faith purchaser and therefore its owner, or having possessed it for a prescribed length of time after which the long term possessor is recognised as owner). There seem to have been no cases between States Parties concerning cultural objects removed from their country of origin after the entry into force of the Convention for both the States concerned.

92. There appears to be no problem in a State declaring certain cultural items to be “inalienable” as this within the powers of a sovereign State. It is not clear how another State is to “recognize” this inalienability. There is so far no determination whether this means that the foreign State should declare, by legislation, court decision or otherwise, that it will return the inalienable cultural objects of another State or whether it simply acknowledges the existing system of inalienability in many States.

## **Pillage of archaeological and ethnological materials** (Article 9)

93. **States which have a serious problem with clandestine excavation are encouraged to make use of the provisions of Article 9.** This provision was not designed to cover minor losses but cases where sites of significant importance for archaeology, ethnology or history are being seriously damaged. The exact way in which a State receiving some of the cultural objects from such sites should be dealt with is not set out in detail in the Convention. As a result detailed information needs to be found in the legislation of the State or States in which the cultural objects are being received.

94. Two States which are major art trading States (United States since 1983; Switzerland since 2003) have used a system which establishes bilateral accords with claimant States. The United States has returned hundreds, possibly thousands of cultural objects in accordance with its implementing legislation and the relevant agreements. Japan, a State Party since 2002, appears not to have implemented Article 9 at all. Its legislation refers only to “specified foreign cultural property” which has been stolen from a museum or similar institution (specified in Article 7 (a) of the Convention). The Act concerning Controls of the Illicit Export and Import of Cultural Property 2000 amended 2004 makes no reference whatever to the archaeological and ethnological items dealt with in Article 9. Furthermore, Japan will only take action in respect of that extremely limited class of objects if it had been fully inventoried and its theft had been notified to Japan before it was imported into Japan. This is a substantial restriction on the working of the Convention which normally would require to have been the subject of a reservation to the Convention, but no reservation was lodged. No other State has taken this interpretation. For these reasons **States Parties are encouraged to give Article 9 its full interpretation and to implement it.**

95. Claimant States should note that, where their own national legislation makes them the owner of all undiscovered antiquities or those clandestinely excavated, whether or not they are recorded, they may be able to sue for stolen goods in the country where they are received without invoking the 1970 Convention. However it may not succeed unless the claimant State can bring very good evidence that the objects in question come from it and no other State (see para. 80 above).

## **Inventories** (Article 5 (b))

96. The making of inventories and lists is a key step in the protection of movable cultural heritage. For the purposes of controlling export, the list of important public and private cultural objects whose export would constitute an appreciable impoverishment of the national cultural heritage is a step foreseen by Article 5 (b). This may be based on the national inventory of cultural heritage from which selected objects may be listed as prohibited exports to prevent the “appreciable impoverishment”. Many inventories are divided into lists of greater and lesser importance. For example the Chinese system has divided movable cultural relics into “valuable” and “ordinary” cultural relics and the valuable cultural relics are subdivided into grade-one, grade-two and grade-three cultural relics (Law on the Protection of Cultural Relics 1982). Other States Parties list certain categories of movable cultural heritage which are subject to export control, and examine any object for which an export permit is required. If the permit is refused, it is clearly one of the objects whose loss would be irreparable.

97. Museums and other institutions need to have their items inventoried if they are to make claims for return on the basis of Article 7 (b) (i). It is also necessary to have detailed descriptions of objects if seeking the assistance of INTERPOL, foreign customs authorities or publicity through an electronic database or other media, such as the publications of ICOM, (International Foundation for Art Research), (UNESCO or professional journals of archaeologists,

anthropologists or other experts. **States Parties who do not have extensive inventories and need to generate them quickly in order to make use of the international procedures now available for tracking cultural objects are encouraged to use the Object-ID system**, an international standard for describing cultural objects.

98. Object ID is the result of years of research in collaboration with the museum community, police and customs agencies, the art trade, insurance industry, and valuers of art and antiques, UNESCO, INTERPOL and ICOM. Launched in 1997 it helps facilitates rapid transmission of basic information of lost and stolen cultural objects and promoted by major law enforcement agencies such as the FBI, Scotland Yard and other national police units. The standard records eight key identifying elements which, together with a photograph, make the identification of an object and its tracking much simpler. Since 2004 it is based in ICOM (Annex 4). Further information is available at <http://archives.icom.museum/object-id/index.html>.

99. States Parties who have lost inventories, for example, through natural disaster or conflict, can use this system to quickly reconstitute a record. States Parties who have large amounts of material which has never been fully inventoried such as, for example, newly found archaeological sites or ethnological materials, are able to generate an inventory rapidly. It is possible to transfer by Internet the information thus recorded and thus alert police and customs authorities, as well as collecting institutions, very quickly. Although the record can be created in a computerised database, in difficult situations the essential information can be recorded in pencil on cards by persons without specific professional skills and subsequently transferred to computer. Object ID will not, and is not intended to, replace the more detailed full museum inventories, but for the purpose of applying the provisions of the 1970 Convention it is an essential tool.

100. INTERPOL has observed that in some African countries there is reluctance (if not prohibition) about taking photographs of objects used in cult rituals since it may be considered, on religious grounds, to be desecration or profanation of the object. A photograph would in a certain sense protect the religious object and help retrieve it following a theft. Reporting art theft information to INTERPOL for data entry is therefore seriously hampered by a lack of inventories with photographic documentation. Handmade sketches drawn from memory have sometimes been received but this is not suitable for international searches. **States Parties which have communities which, on religious or other grounds, are unwilling to photograph items used in cult rituals are encouraged to discuss this issue with a view to improving the recovery of cult objects.**

#### **Penalties** (Article 8)

101. States are required by the Convention (Art. 8) to impose penalties or administrative sanctions on any person who exports a cultural object without an export certificate (Art. 6(b) or who imports such an object without an export permit (Art. 7(b)(ii)). Punishment for theft is set by legislative provisions in each country. Some States have provision for forfeiture of an object which has been wrongfully described in a customs declaration, for example, as “personal effects” when it is in fact a protected object covered by an export ban of another country (Canada, Cultural Property Export and Import Act s.51). If proof of ownership cannot be produced, such an item may then be retained by the custom service and returned to the State concerned. This mechanism has some deterrent effect since the importer loses whatever sum he has expended to acquire the object. The Convention does not specify what sort of penalties are to be applied. Consequently **States are encouraged to use civil, criminal or administrative penalties consistent with their national practice of sufficient severity to deter the practices dealt with in the Convention.**

## **Reports by States Parties, monitoring (Article 16)**

102. The Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution (Art. 16) require that Member States submit all recommendations and conventions without exception to the competent authorities, even if measures of ratification or acceptance are not contemplated in a particular case. The Rules of Procedure also require that Member States shall make the text of any convention known to the bodies, target groups and other entities interested in matters dealt with therein (Art. 17). The Convention obliges the Member States to submit, by the dates specified by the General Conference, reports on the measures that they have adopted in relation to each convention in force and each recommendation adopted (Art. 17). The General Conference may invite the Secretariat to assist the Member States in the implementation of the Convention and in the preparation and follow-up of such reports.

103. Consideration of reports on the application of the standard-setting instruments received from Member has been entrusted to the Committee on Conventions and Recommendations of the Executive Board. Such reports were tabled in 1970 (on the 1964 Recommendation as well as the Convention), and on six occasions since then, the last in 2011: seven reports within 41 years, an average of every six years. These reports are available at <http://www.unesco.org/new/en/culture/themes/movable-heritage-and-museums/illicit-traffic-of-cultural-property/1970-convention/examination-of-national-reports/#c280780>. In October 2003, 32C/Resolution 38 of the 32nd General Conference of UNESCO set the periodicity for reporting at four-year intervals.

104. The value of these reports lies in the exchange of information about how the different national systems are dealing with the complex problem of illicit traffic and thus assist other States Parties in implementing the provisions of the Convention. The Committee has asked that the content of the reports should be as detailed as possible to enable an accurate understanding and evaluation of the implementation of the 1970 Convention and it encourages States Parties to assess national measures taken to implement the Convention so that areas of weakness may be identified and appropriate adjustments or improvements made. It has also invited Member States and the Director-General to pursue activities aimed at strengthening regional and international cooperation, in particular by encouraging the introduction of an international system to facilitate the restitution of stolen or illicitly exported cultural property. Reports submitted in 2011 show new developments in national implementing laws such as the recognition of the State's ownership of cultural objects originating from archaeological excavations (e.g. Angola, Botswana, Burkina Faso and Germany), the elaboration of awareness-raising strategies (e.g. Canada) and better knowledge of codes of professional ethics even if they are not legally binding. The reports also show that further training of police or customs officers is needed in order to fight more efficiently against the illicit traffic in cultural property. **States are encouraged to contribute reports to UNESCO at the requested four yearly intervals.**

## **Education (Article 10 (a))**

105. There is an obligation established by Art. 10 (a) to restrict the wrongful movement of cultural objects by education, information and vigilance. Educational means should be used to help the public realise the value of cultural heritage and the threat to it from theft, clandestine excavations and illicit traffic.

106. This obligation can be met by serious information programmes, particularly about the national legislation on these subjects. At present there are many States who have legislation conforming to the requirements of the 1970 Convention but who do very little to ensure that the

general public knows of its provisions and of the Convention itself. **States Parties are encouraged**

- (i) **to engage the media (print, radio, television) by supplying material,**
- (ii) **to construct a website specifically on the subject and intervene in discussions on the subject of illicit traffic,**
- (iii) **to introduce the protection of cultural heritage into school curricula,**
- (iv) **to raise the awareness of all age-groups in the State to the significance of archaeological finds and art developed in the State for the history and culture of all its citizens and its place as part of the universal heritage of humanity, and**
- (v) **to popularise the protection of cultural heritage by awards for citizen and community work in this field.**

Such programmes should be notified to UNESCO so that they can be publicised and adapted by States which have not yet undertaken this work. While education is listed among the duties of the national heritage services (Art. 5 (f); para. 43 above), **States parties are further encouraged to work with educational authorities at primary, secondary and tertiary level to include teaching and research on cultural heritage issues in their own curricula and in other countries through museum, library, and other outreach programmes.**

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

107. It is contrary to international law to remove cultural objects from occupied foreign territory. This is now a principle of customary international law. It is also enshrined in Article 5 of The Hague Convention for the Protection of Cultural Property in the Event Of Armed Conflict 1954 and its First Protocol 1954 (Arts. 1-5) and Second Protocol (Arts. 9 and 21) 1999. It is notable that many States which are party to the Hague Convention 1954 have not adopted appropriate national legislation to embody its rules. It is also notable that some States which are party to the 1970 Convention have not yet ratified the 1954 Convention and others have ratified the Convention but not its Protocols of 1954 and 1999. There is an obligation to adopt appropriate legislation to realise these duties.

108. Whether or not the State is party to the Hague Convention 1954 it is obliged by Article 11 of the 1970 Convention to regard as illegal any export and transfer of ownership of cultural property under compulsion because of the occupation of a country by a foreign power. This should be made clear in its national legislation.

#### **Responsibility for territories** (Article 12)

109. There is an obligation for a State Party to respect the cultural heritage of territories for the international relations of which it is responsible (Art. 12). It is obliged to apply the Convention to non-metropolitan territories and has to consult, if necessary, the competent authorities of these territories (Art. 22). Denmark has extended the Convention to the Faroe Islands and Greenland, as has Sweden to 3 small dependencies, after the relevant consultations. New Zealand registered that it had not yet had the consent of Tokelau and had therefore not extended the reach of the Convention to it. UNESCO was in all three cases notified by Declaration.

## **Interstate cooperation** (Article 13 (b))

110. States Parties must ensure that their competent services cooperate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner (Art. 13 (b)). However this provision is qualified by the words “consistent with the laws of each State”. This makes it difficult to determine what is meant by the phrase “rightful owner”, since each of the States with an interest in this object may regard its own laws in determining who is the “rightful owner”. For example, a cultural object which has been stolen from its owner in one State may be held by the law of another State to be rightfully owned by a “good faith” purchaser.

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

111. States Parties are able to conclude special agreements among themselves on illicit traffic or to continue others already established before the Convention was adopted (Art. 15). Examples are the bilateral agreement signed in 2000 between Cambodia and Thailand to combat illicit traffic of cultural property and the Pan American Treaty on the Protection of Movable Property of Historical Value 1935. In 1990 a “Model treaty for the prevention of crimes that infringe on the cultural heritage of peoples in the form of movable property”, designed principally to assist States seeking bilateral or regional agreements, was adopted by the Eighth UN Congress on the Prevention of Crime and Treatment of Offenders. It is currently being studied by UNODC (para. 126 below) to take account of recent developments in conventions and practice.

112. For the most part the existing bilateral, regional and model agreements do not include all the preventive provisions of the 1970 Convention or the 1995 UNIDROIT Convention. For this reason **States Parties are encouraged to incorporate into such bilateral or regional agreements the highest level of protection developed in the 1970 and 1995 international instruments so as to ensure that such agreements embody the best protection for their cultural objects.**

## **Technical assistance** (Article 17)

113. On request UNESCO has provided assistance with drafting legislation (Art. 17). It has on its own initiative published a number of documents to facilitate the work of States Parties in implementing the Convention (listed in Annex 5). UNESCO has also held numerous meetings for States Parties to assist in training of customs, police, curators, and administrators.

## **Languages**

114. The official text of the Convention exists in English, French, Russian and Spanish, all four texts being equally authoritative (Art. 18). No single text prevails over the other three texts. Equally authoritative texts may be used to clarify the meaning where the phrasing in one version seems not to be exactly parallel to the other three versions. Where ambiguity occurs recourse may be had to the other texts to assist in its resolution. An Arabic text is available on the UNESCO website the text has also been translated into Chinese.

## **Reservations**

115. A “reservation” means a unilateral statement, however phrased or named, made by a State when signing, ratifying, formally confirming, accepting, approving or acceding to a treaty, intended to exclude or modify the legal effect of certain provisions of the treaty in their application to that State (Vienna Convention on Treaties 1986 (Art. 2 (d))). The 1970 Convention does not mention reservations; however, they are permitted by general international law, in

principle and practice, unless there is an express provision in the treaty itself prohibiting reservations, such as is found in the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995 and the UNESCO Convention on the Protection of the Underwater Cultural Heritage 2001. Reservations affect the actual operation of a convention. A declaration is often used by States to clarify their approach to a Convention by a declaration as to how they understand the text.

116. A number of reservations have been made to the 1970 Convention by various States.

**Australia** made a reservation to Article 10 (d) because two states of its federation were reconsidering their legislation on dealers. This review has now been long since resolved and the reservation should be withdrawn.

**Guatemala** made an express reservation to Article 7 (b) (ii) to the effect that it does not consider itself obliged to pay any compensation to any person or persons holding cultural property that has been looted or stolen in Guatemala or exported illicitly to another State Party and that, at the request of the Government of Guatemala, has been the subject of appropriate steps for its confiscation and/or restitution by that other State Party. It does not consider that the purchase of property forming part of its cultural wealth is in good faith solely through having been made in ignorance of the law.

Some States Parties have restricted “cultural property” to the categories used in the European Union Regulation 1992 and Directive 1993 (**Belgium, France, United Kingdom**). It is sometimes hard to determine whether such statements are reservations or only declarations. Denmark and Sweden both listed their own definitions of protected Danish and Swedish cultural property respectively.

**Finland** declared that it would implement the provisions of Article 7 (b) (ii) of the Convention in accordance with its obligations under the UNIDROIT Convention 1995. This is a useful clarification and **other States Parties are encouraged to adopt this approach**.

Certain other States have made declarations relating to particular political concerns: provisions on territories (Art. 22) are declared to be contrary to the United Nations Declaration on Granting of Independence to Colonial Countries and Peoples 1960 (**Byelorussian Russian SSR [now Belarus], Cuba, Czechoslovakia, Hungary, Ukrainian SSR, USSR**). Major changes in international politics, indicated by many changes of name, and the evolution of almost all dependent territories to independence or autonomous status, have made these statements less relevant today. **Moldova** made an express declaration relating to its territorial integrity and application of the Convention “only on the territory controlled effectively by the authorities of the Republic of Moldova.”

The **United Kingdom** declared that it interprets Article 7 (b) (ii) to the effect that it “may continue to apply its existing rules on limitation to claims made under this Article for the recovery and return of cultural objects”.

The **United States** lodged one reservation whereby it reserved “the right to determine whether or not to impose export controls over cultural property” Art. 6 (b). It also declared seven “understandings”. These were:

- that the provisions of the Convention are neither self-executing nor retroactive;
- that Article 3 does not modify property interests in cultural property under the laws of the States Parties;

- that Article 7 (a) applies to institutions whose acquisition policy is subject to national control under existing domestic legislation and does not require the enactment of new legislation to establish national control over other institutions;
- that Article 7 (b) is without prejudice to other remedies, civil or penal, available under the laws of the States Parties for the recovery of stolen cultural property to the rightful owner without payment of compensation;
- that the United States was prepared to take the additional steps contemplated by Article 7 (b) (ii) for the return of covered stolen cultural property without payment of compensation, except to the extent required by the Constitution of the United States, for those States Parties that agree to do the same for the United States institutions;
- that the words “as appropriate for each country” in Article 10 (a) permits each State Party to determine the extent of regulation, if any, of antique dealers and that in the United States that determination would be made by the appropriate authorities of state and municipal governments;
- and that Article 13 (d) applied to objects removed from the country of origin after the entry into force of the Convention for the States concerned, that the means of recovery of cultural property are the judicial actions referred to in of Article 13 (c), and that such actions are controlled by the law of the requested State, the requesting State having to submit necessary proofs.

**Mexico**, on receipt of a copy of the United States instrument, stated that it had studied the text of the comments and and reservations on the Convention and had reached the conclusion that these comments and reservations were not compatible with the purposes and aims of the Convention, and that their application would have the regrettable result of permitting the import into the United States of cultural property and its re-export to other countries, with the possibility that the cultural heritage of Mexico might be affected.

It is evident that many of these reservations and declarations have served their purpose and might now be withdrawn, thus contributing to a better level of understanding between the States Parties. **States Parties are encouraged to review their reservations and declarations and withdraw any that are no longer serving a useful purpose.**

#### **Revision** (Article 25)

117. Article 25 provides for revision of the Convention. However such a process is long, slow, and expensive and can sometimes result in complex reciprocal relationships where some States Parties adopt the revised convention and others do not. Moreover a number of expert studies have shown that much more could be done to improve the implementation of the Convention in its present form. To realise this improvement, **States Parties are encouraged to develop “best practice” as indicated in these Guidelines.**

#### **Secretariat** (Article 17)

118. The Director-General is responsible for a number of important functions set out in the Convention such as providing technical assistance at the request of States Parties through information and education, consultation and expert advice as well as co-ordination and good offices (Article 17). The Secretariat of the 1970 Convention is provided by the Cultural Heritage Protection Treaties Section of the Culture Sector. It administers the legislative database which includes the relevant national legislation of the States Parties. Another task is to prepare the questionnaire sent to States Parties and assemble a report for the Committee on Conventions and Recommendations every four years as part of the monitoring process (para. 8 above). It also organizes regional meetings on problems of illicit traffic and maintains contact with the cooperating Organizations. In emergency situations caused by natural disasters or conflict it

organizes expert missions to assist in the preservation of movable cultural heritage. It also publicises such catastrophic losses and destruction through the media in order to forestall further massive losses through illegal export. **States Parties are encouraged to seek advice and assistance from the Secretariat in the implementation of the Convention.**

## Cooperating organizations

### ICOM

119. The International Council of Museums (ICOM) took over in 1946 the work of the International Museums Office (IMO) which had been created by the International Commission for Intellectual Cooperation (CICI), League of Nations, in July 1926. Thus ICOM renewed the existing close co-operation between interstate organs and non-governmental international bodies dealing with museums and other collections. This long and close association has led to vast experience and ICOM has been a major partner of UNESCO in supporting museums and fighting illicit traffic. It gives advice to UNESCO on museum matters, it publicises stolen and endangered heritage and it participates in expert studies and regional meetings organized by UNESCO.

120. ICOM, fully supporting the philosophy of the 1970 Convention (protecting national heritage and heritage of universal significance), issued its first document on Ethics of Acquisition in 1970 and a full Code of Professional Ethics in 1986. The current version was issued in 2006 (Annex 2). Many of its principles have been adopted or adjusted at a national level or independently by the museums themselves. The Code has special provisions on acquisition (Arts. 2.2 – 2.9). The Ethics Committee monitors the application of the *ICOM Code of Ethics for Museums*, informs the Executive Council of serious violations of the Code, and may eventually request that certain recommendations be published in ICOM News.

121. ICOM currently has a membership of 20,000 museums and 30,000 experts. There are 117 national committees and 31 technical committees. It thus has a worldwide network and is one of the best educational means to convey to the public the importance of cultural heritage and its protection from theft and illicit traffic. Much of this work can be done by recurring functions such as the annual “Museums Day” which in recent years has reached an extraordinary degree of attracting people of all ages and different interests. Furthermore museums have developed outreach programmes for isolated communities, disabled people, the very young as well as socially isolated groups such as prisoners. Because of this extraordinary reach, ICOM and its national groups are probably the best avenues for conveying the important principles of the 1970 Convention. ICOM is based in Paris. Its informative website is [icom.museum](http://icom.museum).

### INTERPOL

122. The first INTERPOL Notice on stolen works of art was issued in 1947. Since then, it has developed a highly efficient system for circulating information in the form of a database accessible not only to law enforcement agencies but also to members of the public who have been provided with specific access rights. In addition, certain types of data can be accessed openly by the general public: its website <http://www.interpol.int/Crime-areas/Works-of-art/Works-of-art> makes available information on the most recent stolen works of art reported to INTERPOL, recovered works of art and works of art that have been recovered but remain unclaimed by their owners. It has alerted its 190 member countries for increased vigilance to the risk of illicit trafficking in cultural goods from Mali and neighbouring countries. Relevant national authorities, including border police and customs services, are invited to include this consideration in their risk assessment when conducting import control operations.

123. UNESCO works closely with INTERPOL which often participates in UNESCO regional meetings on illicit traffic so as to give those taking part clear information about how to use the INTERPOL services. INTERPOL promotes the use of OBJECT ID because of its ability to transmit information about stolen cultural objects by the Internet thus making the seizure of the object being sought much more likely. It works to raise awareness of the problem among the relevant organizations and the general public. It encourages not only police, but also dealers in art and antiquities and owners of works of art, to play an active role in the exchange of information to strengthen efforts to curb the erosion of cultural heritage. INTERPOL is based in Lyon, France. Its website is <http://www.interpol.int/>.

#### **UNIDROIT**

124. The International Institute for the Unification of Private Law (UNIDROIT), based in Rome, has had an intensive working relationship with UNESCO since 1983. In that year a working group of experts met at UNESCO to examine the progress of the 1970 Convention. One of its recommendations was that an organization specialised in the work of private law should collaborate with UNESCO to find a solution to some of the problems of private law which were interfering with the implementation of the provisions of the 1970 Convention. This included problems of extreme diversity in national rules on the protection of a good faith purchaser, on periods of limitation and on recognition of export controls.

125. Two specialised studies by an expert appointed by UNIDROIT were made in 1986 and 1988 on the impact of these issues on the international trade in cultural objects and four sessions of an expert study group representing a wide range of legal systems and regions were held to devise a preliminary draft of a UNIDROIT Convention on the subject. That draft was submitted to four sessions (1991 - 1993) of a committee of experts nominated by 50 States with 25 Observer State representatives and 12 international organizations. The final text was negotiated by 78 States and adopted in June 1995. The Convention came into force in 1998.

126. This exhaustive process in three stages over 12 years thoroughly examined the problems and every conceivable solution. Ultimately the Convention represents a middle road between diametrically opposed positions: one favouring maximum freedom of trade and the other the protection of national heritage. In respect of export controls there is clearly a compromise, but the Convention also settles some serious problems which could not be dealt with in the 1970 Convention. It provides that undiscovered antiquities should be treated as stolen, where the State of origin has claimed ownership in its legislation (Art. 4 (2)); it gives a clear test of "due diligence", thus establishing a standard test for good faith (Art. 4 (4)), and it has complex special provisions on time limitations for claims (Arts. 3 (3-5) and 5 (5)). UNESCO now promotes this Convention as complementary to the 1970 Convention and works closely with UNIDROIT in its promotion and training work.

#### **UNODC**

127. The United Nations Economic and Social Council, in its Resolution 2004/34, entitled "Protection against trafficking in cultural property", requested that UNODC, in close cooperation with UNESCO, convene an intergovernmental expert group meeting to submit relevant recommendations on protection against trafficking in cultural property. This was reaffirmed by its resolution 2008/23 since the meeting had to be postponed because of budgetary restraints. The Economic and Social Council invited comments from Member States on the Model Treaty for the Prevention of Crimes that Infringe on the Cultural Heritage of Peoples in the Form of Movable Property 1990 (Resolution para. 11), including views on its potential utility and on whether any improvements to it should be considered at the next meeting of experts. That meeting, held in 2009, explored the development of specific guidelines for crime prevention with respect to trafficking in cultural property including, among other matters, the criteria of due diligence when

acquiring a cultural object. One of its recommendations was to examine ways of improving the model treaty.

128. The twenty-first session of the United Nations Commission on Crime Prevention and Criminal Justice (2011, 2012) prepared a draft resolution for ECOSOC urging

Member States to consider, among other effective measures, within the framework of their national legal systems, to criminalize activities related to all forms and aspects of trafficking in cultural property and related offences by using a broad definition that can be applied to all stolen, looted, unlawfully excavated and illicitly exported or imported cultural property and to apply the relevant provisions of the United Nations Convention against Transnational Organized Crime to foster international cooperation in order to address such criminal activities, including by applying judicial and law enforcement cooperation mechanisms at their disposal. (E/2012/30, E/CN.15/2012/24 Draft resolution II para. 8)

129. A second meeting of the UNODC expert group held in 2012 paid due attention to aspects of criminalization and international cooperation, including mutual legal assistance. Seventeen States made comments on the 1990 model treaty (para. 111). The group also considered draft Guidelines on crime prevention and criminal justice responses with respect to trafficking in cultural property. The Economic and Social Council has requested UNODC to convene at least one additional meeting.

## **WCO**

130. The World Customs Organization (WCO), established in 1952 as the Customs Cooperation Council (CCC) is an independent intergovernmental body whose mission is to enhance the effectiveness and efficiency of Customs administrations. Based in Brussels, it now represents 179 Customs administrations across the globe that collectively process approximately 98% of world trade. The WCO is the only international organization with competence in Customs matters and represents the international Customs community, advising Customs administrations worldwide on management practices, tools and techniques to enhance their capacity to implement efficient and effective cross-border controls along with standardized and harmonized procedures to facilitate legitimate trade and travel and to interdict illicit transactions and activities.

131. Border control, which often incorporates plant and health quarantine and immigration checks), is also the front line defence against illicit traffic of arms, drugs, currency and cultural heritage. The role of customs officials in identifying and holding cultural objects which are falsely declared or identifiable as a result of looting can be preserved by alert customs officials. Notorious examples are artefacts looted from the national museums of Afghanistan and Iraq and now precious documents, some of which have been inventoried, from Timbuktu in Mali).

132. The general form of export certificate used by many countries was difficult to apply to give adequate description of cultural items. UNESCO therefore approached the WCO to help provide a model export certificate specifically for Cultural Objects designed to accommodate the specific nature and needs of such objects for their protection in cross border movements. The model Export Certificate for Cultural Objects was jointly prepared by UNESCO and the WCO to combat illicit trafficking in cultural property. Developed in 2005, UNESCO and WCO recommend that their respective Members adopt, in its entirety or in part, this Model Export Certificate as their national export certificate for such specific objects. This standard, rigorous yet practical, is specific for cultural items and facilitates the work of States, police and customs officials.

## United Nations Security Council

133. **Security Council Resolution 1483 of 22 May 2003 on the situation in Iraq and Kuwait** made a historic step in adopting the following paragraph 7 of this lengthy resolution:

*Decides* that all Member States shall take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of Resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed, and *calls upon* the United Nations Educational, Scientific, and Cultural Organization, INTERPOL, and other international organizations, as appropriate, to assist in the implementation of this paragraph.

## Logo

134. The logo of the 1970 Convention was prepared by the Secretariat on the occasion of the 40<sup>th</sup> anniversary commemorative meeting of the 1970 Convention which was held at UNESCO, Paris, in March 2011. The logo was presented in the documents (such as the agenda) and is described in the Information Kit. This logo has not been formally adopted by the State Parties (by a specific recommendation, resolution or decision) but a large number of States Parties expressed their appreciation of creation of the logo.

135. The logo consists of two simple silhouettes: the palm of a hand is superimposed on a vase without handles. The logo aims to convey the importance of stopping (indicated by the hand in the halt position) and the illicit trafficking of cultural property, symbolized by the vase (archaeological object found in the sub-soil or already belonging to a collection) in conformity with the principles of the 1970 Convention. The pictogram symbolizes also the action of looting, which deprives an individual or a community of its cultural heritage and, therefore, of its identity. The clear outline set off against a white background contributes to making the logo easily legible and universally understood.

136. Copyright in the logo for the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property is vested in UNESCO. Control of its use rests with the Director-General of UNESCO.

## **ANNEX 1**

### **United Nations Declaration on the Rights of Indigenous Peoples 2007**

#### **EXTRACTS**

1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.

#### **Article 12**

1. Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
2. States shall seek to enable the access and/or repatriation of ceremonial objects and human remains in their possession through fair, transparent and effective mechanisms developed in conjunction with indigenous peoples concerned.

# Draft Principles and Guidelines for the Protection of the Heritage Of Indigenous People

## EXTRACTS

Full text available at [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

Elaborated by the Special Rapporteur, Mrs. Erica-Irene Daes, in conformity with resolution 1993/44 and decision 1994/105 of the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the Commission on Human Rights, Economic and Social Council, United Nations (E/CN.4/Sub.2/1995/26, GE. 95-12808 (E), 21 June 1995) and revised 2000

## PRINCIPLES

1 The effective protection of the heritage of the indigenous peoples of the world benefits all humanity. Its diversity is essential to the adaptability, sustainability and creativity of the human species as a whole.

...

5. Indigenous peoples' ownership and custody of their heritage should be collective, permanent and inalienable, or as prescribed by the customs, rules and practices of each people.

## GUIDELINES

### Definitions

...

13. The heritage of indigenous peoples includes all moveable cultural property as defined by the relevant conventions of UNESCO; all kinds of literary and artistic creation such as music, dance, song, ceremonies, symbols and designs, narratives and poetry and all forms of documentation of and by indigenous peoples; all kinds of scientific, agricultural, technical, medicinal, biodiversity-related and ecological knowledge, including innovations based upon that knowledge, cultigens, remedies, medicines and the use of flora and fauna; human remains; immovable cultural property such as sacred sites of cultural, natural and historical significance and burials.

14. Every element of an indigenous peoples' heritage has owners, which may be the whole people, a particular family or clan, an association or community, or individuals, who have been specially taught or initiated to be such custodians. The owners of heritage must be determined in accordance with indigenous peoples' own customs, laws and practices.

### Recovery and restitution of heritage

...

17. Governments, international organizations and private institutions should assist indigenous peoples and communities in recovering control and possession of their moveable cultural property and other heritage, including from across international borders, through adequate agreements and/or appropriate domestic governmental action including if necessary the creation of adequate institutions and mechanisms.

18. In cooperation with indigenous peoples, UNESCO should facilitate the mediation of the recovery of moveable cultural property from across international borders, at the request of the traditional owners of the property concerned.

19. Human remains and associated funerary objects and documentation must be returned to their descendants in a culturally appropriate manner, as determined by the indigenous peoples concerned. Documentation may be retained, or otherwise used only in such form and manner as may be agreed upon with the peoples concerned.

20. Moveable cultural property should be returned wherever possible to its traditional owners, particularly if shown to be of significant cultural, religious or historical value to them. Moveable cultural property should only be retained by universities, museums, private institutions or individuals in accordance with the terms of a recorded agreement with the traditional owners for the sharing of the custody and interpretation of the property.

21. Under no circumstances should human remains or any other sacred elements of an indigenous peoples' heritage be publicly displayed, except in a manner deemed appropriate by the peoples concerned.

22. In the case of objects or other elements of heritage which were removed or recorded in the past, the traditional owners of which can no longer be identified precisely, the traditional owners are presumed to be the indigenous people associated with the territory from which these objects were removed or recordings were made.

27. All researchers and scholarly institutions within their competences should take steps to provide indigenous peoples and communities with comprehensive inventories of the cultural property, and documentation of indigenous peoples' heritage, which they may have in their custody.

28. Researchers and scholarly institutions should return all elements of indigenous peoples' heritage to the traditional owners upon demand, or obtain formal agreements with the traditional owners for the shared custody, use and interpretation of their heritage.

29. Researchers and scholarly institutions should decline any offers for the donation or sale of elements of indigenous peoples' heritage, without first contacting the peoples or communities directly concerned and ascertaining the wishes of the traditional owners.

#### International organizations

...

48. The Secretary-General and the governing bodies of the competent specialized agencies should ensure that the task of coordinating international cooperation in this field is entrusted to appropriate organs and specialized agencies of the United Nations, with adequate means of implementation.

49. In cooperation with indigenous peoples, the United Nations should bring these principles and guidelines to the attention of all Member States through, inter alia, international, regional and national seminars and publications, with a view to promoting the strengthening of national legislation and international conventions in this field.

...

52. In collaboration with indigenous peoples and Governments concerned, the United Nations should develop a confidential list of sacred and ceremonial sites that require special measures for their protection and conservation, and provide financial and technical assistance to indigenous peoples for these purposes.

53. In collaboration with indigenous peoples and Governments concerned, the United Nations should establish a trust fund with a mandate to act as a global agent for the recovery of compensation for the unconsented or inappropriate use of indigenous peoples' heritage, and to assist indigenous peoples in developing the institutional capacity to defend their own heritage.

54. United Nations operational agencies, as well as the international financial institutions and regional and bilateral development assistance programmes, should give priority to providing financial and technical support to indigenous communities for capacity-building and exchanges of experience focused on local control of research and education.

...

## ANNEX 2

### Code of CINOA (Confédération Internationale des Négociants en Œuvres d'Art)

#### Code of Ethics

All CINOA member association must commit themselves to comply with or make its own members comply with the clear and respectable lines of conduct below.

It is more specifically as a reaction to the global will to face trafficking that is inherent to art objects and other illegal exports, that CINOA wishes to underscore and recommend to its member associations the following lines of conduct:

- In view of the worldwide concern regarding trafficking and illegal export of stolen antique objects and works of art CINOA wishes that the profession of antique dealers and traders in works of art would be governed by the following principles:
- The affiliated members of CINOA who happen to possess an object about which there are serious suspicions that it was illegally imported and of which the country of origin demands that it is returned within a reasonable amount of time, shall have to do everything that is possible to them according to the current laws to cooperate in returning the object to its country of origin. In the case of a purchase in good faith by the antique dealer, an amicable refund may be agreed to.
- The affiliated members of CINOA agree to comply with the laws on the protection of endangered species. They therefore agree not to trade in objects manufactured from materials that are protected under the Convention on International Trade in Endangered Species.
- The members will have to take all the necessary measures to detect stolen objects and refer, among others, to registers that are published to this effect and to use these judiciously.
- The members cannot under any circumstance participate in transactions which to the best of their knowledge can result in money-laundering operations.
- It is the duty of each one of the members to check the authenticity of the objects they possess.



The present code of ethics shall apply to all objects that are negotiated on the market of antique objects and art objects.

Resolved at the General Meeting in Florence in 1987, amended in Stockholm on 26 June 1998 and in New York on 11 May 2005.

## UNESCO International Code of Ethics for Dealers in Cultural Property

Members of the trade in cultural property recognize the key role that trade has traditionally played in the dissemination of culture and in the distribution to museums and private collectors of foreign cultural property for the education and inspiration of all peoples.

They acknowledge the world wide concern over the traffic in stolen, illegally alienated, clandestinely excavated and illegally exported cultural property and accept as binding the following principles of professional practice intended to distinguish cultural property being illicitly traded from that in licit trade and they will seek to eliminate the former from their professional activities.

**ARTICLE 1** Professional traders in cultural property will not import, export or transfer the ownership of this property when they have reasonable cause to believe it has been stolen, illegally alienated, clandestinely excavated or illegally exported.

**ARTICLE 2** A trader who is acting as agent for the seller is not deemed to guarantee title to the property, provided that he makes known to the buyer the full name and address of the seller. A trader who is himself the seller is deemed to guarantee to the buyer the title to the goods.

**ARTICLE 3** A trader who has reasonable cause to believe that an object has been the product of a clandestine excavation, or has been acquired illegally or dishonestly from an official excavation site or monument will not assist in any further transaction with that object, except with the agreement of the country where the site or monument exists. A trader who is in possession of the object, where that country seeks its return within a reasonable period of time, will take all legally permissible steps to co-operate in the return of that object to the country of origin.

**ARTICLE 4** A trader who has reasonable cause to believe that an item of cultural property has been illegally exported will not assist in any further transaction with that item, except with the agreement of the country of export. A trader who is in possession of the item, where the country of export seeks its return within a reasonable period of time, will take all legally permissible steps to co-operate in the return of that object to the country of export.

**ARTICLE 5** Traders in cultural property will not exhibit, describe, attribute, appraise or retain any item of cultural property with the intention of promoting or failing to prevent its illicit transfer or export. Traders will not refer the seller or other person offering the item to those who may perform such services.

**ARTICLE 6** Traders in cultural property will not dismember or sell separately parts of one complete item of cultural property.

**ARTICLE 7** Traders in cultural property undertake to the best of their ability to keep together items of cultural heritage that were originally meant to be kept together.

**ARTICLE 8** Violations of this Code of Ethics will be rigorously investigated by *(a body to be nominated by participating dealers)*. A person aggrieved by the failure of a trader to adhere to the principles of this Code of Ethics may lay a complaint before that body, which shall investigate that complaint. Results of the complaint and the principles applied will be made public.

*Adopted by the UNESCO intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its Tenth Session, January 1999 and endorsed by the 30<sup>th</sup> General Conference of UNESCO, November 1999.*

## ICOM Code of ethics for museums

### EXTRACTS

Full text available at

[http://127.0.0.1:4664/search?q=icom+code&flags=68&num=10&start=20&s=xKrBtiX\\_8XfwbVQPtU1zfmMs6cw](http://127.0.0.1:4664/search?q=icom+code&flags=68&num=10&start=20&s=xKrBtiX_8XfwbVQPtU1zfmMs6cw)

The *ICOM Code of Professional Ethics* was adopted unanimously by the 15<sup>th</sup> General Assembly of ICOM in Buenos Aires (Argentina) on 4 November 1986. It was amended by the 20th General Assembly in Barcelona (Spain) on 6 July 2001, retitled *ICOM Code of Ethics for Museums*, and revised by the 21st General Assembly in Seoul (Republic of Korea) on 8 October 2004.

The cornerstone of ICOM is the *ICOM Code of Ethics for Museums*. It sets minimum standards of professional practice and performance for museums and their staff. In joining the organisation, ICOM members undertake to abide by this Code.

Ethical issues that require the attention and/or consideration of the ICOM Ethics Committee may be addressed to its Chair by e-mail: [ethics@icom.museum](mailto:ethics@icom.museum).

### Preamble

1. Museums preserve, interpret and promote the natural and cultural inheritance of humanity.
  - Institutional standing
  - Physical resources
  - Financial resources
  - Personnel
2. Museums that maintain collections hold them in trust for the benefit of society and its development.
  - Acquiring collections
  - Removing collections
  - Care of collections
3. Museums hold primary evidence for establishing and furthering knowledge.
  - Primary evidence
  - Museum collecting & research
4. Museums provide opportunities for the appreciation, understanding and management of the natural and cultural heritage.
  - Display and exhibition
  - Other resources
5. Museums hold resources that provide opportunities for other public services and benefits.
  - Identification services
6. Museums work in close collaboration with the communities from which their collections originate as well as those they serve.
  - Origin of collections
  - Respect for communities served

7. Museums operate in a legal manner.
  - Legal framework
8. Museums operate in a professional manner.
  - Professional conduct
  - Conflicts of interest

## **PREAMBLE**

### **Status of the ICOM Code of Ethics for Museums**

The *ICOM Code of Ethics for Museums* has been prepared by the International Council of Museums. It is the statement of ethics for museums referred to in the ICOM Statutes. The Code reflects principles generally accepted by the international museum community. Membership in ICOM and the payment of the annual subscription to ICOM are an affirmation of the *ICOM Code of Ethics for Museums*.

### **A Minimum Standard for Museums**

The ICOM Code represents a minimum standard for museums. It is presented as a series of principles supported by guidelines for desirable professional practice. In some countries, certain minimum standards are defined by law or government regulation. In others, guidance on and assessment of minimum professional standards may be available in the form of 'Accreditation', 'Registration', or similar evaluative schemes.

Where such standards are not defined, guidance can be obtained through the ICOM Secretariat, a relevant National Committee of ICOM, or the appropriate International Committee of ICOM. It is also intended that individual nations and the specialised subject organisations connected with museums should use this Code as a basis for developing additional standards.

### **Translations of the ICOM Code of Ethics for Museums**

The *ICOM Code of Ethics for Museums* is published in the three official languages of the organisation: English, French and Spanish. ICOM welcomes the translation of the Code into other languages. However, a translation will be regarded as "official" only if it is endorsed by at least one National Committee of a country in which the language is spoken, normally as the first language. Where the language is spoken in more than one country, it is preferable that the National Committees of these countries also be consulted. Attention is drawn to the need for linguistic as well as professional museum expertise in providing official translations. The language version used for a translation and the names of the National Committees involved should be indicated. These conditions do not restrict translations of the Code, or parts of it, for use in educational work or for study purposes.

Museums are responsible for the tangible and intangible natural and cultural heritage. Governing bodies and those concerned with the strategic direction and oversight of museums have a primary responsibility to protect and promote this heritage as well as the human, physical and financial resources made available for that purpose.

**1. Museums preserve, interpret and promote the natural and cultural inheritance of humanity.**

**Principle**

Museums are responsible for the tangible and intangible natural and cultural heritage. Governing bodies and those concerned with the strategic direction and oversight of museums have a primary responsibility to protect and promote this heritage as well as the human, physical and financial resources made available for that purpose.

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**2. Museums that maintain collections hold them in trust for the benefit of society and its development.**

**Principle**

Museums have the duty to acquire, preserve and promote their collections as a contribution to safeguarding the natural, cultural and scientific heritage. Their collections are a significant public inheritance, have a special position in law and are protected by international legislation. Inherent in this public trust is the notion of stewardship that includes rightful ownership, permanence, documentation, accessibility and responsible disposal.

**2.1 Collections policy**

The governing body for each museum should adopt and publish a written collections policy that addresses the acquisition, care and use of collections. The policy should clarify the position of any material that will not be catalogued, conserved, or exhibited. (See 2. 7; 2. 8)

**2. 2 Valid Title**

No object or specimen should be acquired by purchase, gift, loan, bequest, or exchange unless the acquiring museum is satisfied that a valid title is held. Evidence of lawful ownership in a country is not necessarily valid title.

**2. 3 Provenance and Due Diligence**

Every effort must be made before acquisition to ensure that any object or specimen offered for purchase, gift, loan, bequest, or exchange has not been illegally obtained in, or exported from its country of origin or any intermediate country in which it might have been owned legally (including the museum's own country). Due diligence in this regard should establish the full history of the item since discovery or production.

**2.4 Objects and Specimens from Unauthorised or Unscientific Fieldwork**

Museums should not acquire objects where there is reasonable cause to believe their recovery involved unauthorised or unscientific fieldwork, or intentional destruction or damage of monuments, archaeological or geological sites, or of species and natural habitats. In the same way, acquisition should not occur if there has been a failure to disclose the finds to the owner or occupier of the land, or to the proper legal or governmental authorities.

**2.5 Culturally Sensitive Material**

Collections of human remains and material of sacred significance should be acquired only if they can be housed securely and cared for respectfully. This must be accomplished in a manner

consistent with professional standards and the interests and beliefs of members of the community, ethnic or religious groups from which the objects originated, where these are known. (See also 3.7; 4.3)

## 2.6 Protected Biological or Geological Specimens

Museums should not acquire biological or geological specimens that have been collected, sold, or otherwise transferred in contravention of local, national, regional or international law or treaty relating to wildlife protection or natural history conservation.

## 2.7 Living Collections

When the collections include live botanical or zoological specimens, special consideration should be given to the natural and social environment from which they are derived as well as any local, national, regional or international law or treaty relating to wildlife protection or natural history conservation.

## 2.8 Working Collections

The collections policy may include special considerations for certain types of working collections where the emphasis is on preserving cultural, scientific, or technical process rather than the object, or where objects or specimens are assembled for regular handling and teaching purposes. (See also 2.1)

## 2.9 Acquisition Outside Collections Policy

The acquisition of objects or specimens outside the museum's stated policy should only be made in exceptional circumstances. The governing body should consider the professional opinion available to it and the views of all interested parties. Consideration will include the significance of the object or specimen, including its context in the cultural or natural heritage, and the special interests of other museums collecting such material. However, even in these circumstances, objects without a valid title should not be acquired. (See also 3.4)

## 2.10 Acquisitions Offered by Members of the Governing Body or Museum Personnel

Special care is required in considering any item, whether for sale, as a donation, or as a tax-benefit gift, from members of governing bodies, museum personnel, or the families and close associates of these persons.

## 2.11 Repositories of Last Resort

Nothing in this Code of Ethics should prevent a museum from acting as an authorised repository for unprovenanced, illicitly collected or recovered specimens or objects from the territory over which it has lawful responsibility.

## REMOVING COLLECTIONS

### 2.12 Legal or Other Powers of Disposal

Where the museum has legal powers permitting disposals, or has acquired objects subject to conditions of disposal, the legal or other requirements and procedures must be complied with fully. Where the original acquisition was subject to mandatory or other restrictions these

conditions must be observed, unless it can be shown clearly that adherence to such restrictions is impossible or substantially detrimental to the institution and, if appropriate, relief may be sought through legal procedures.

### 2.13 Deaccessioning from Museum Collections

The removal of an object or specimen from a museum collection must only be undertaken with a full understanding of the significance of the item, its character (whether renewable or non-renewable) legal standing, and any loss of public trust that might result from such action.

### 2.14 Responsibility for Deaccessioning

The decision to deaccession should be the responsibility of the governing body acting in conjunction with the director of the museum and the curator of the collection concerned. Special arrangements may apply to working collections. (See 2.7; 2.8).

### 2.15 Disposal of Objects Removed from the Collections

Each museum should have a policy defining authorised methods for permanently removing an object from the collections through donation, transfer, exchange, sale, repatriation, or destruction, and that allows the transfer of unrestricted title to any receiving agency.

Complete records must be kept of all deaccessioning decisions, the objects involved, and the disposal of the object.

There will be a strong presumption that a deaccessioned item should first be offered to another museum.

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### 2.21 Protection Against Disasters

Careful attention should be given to the development of policies to protect the collections during armed conflict and other human-made or natural disasters.

### 2.22 Security of Collection and Associated Data

The museum should exercise control to avoid disclosing sensitive personal or related information and other confidential matters when collection data is made available to the public.

### 2.23 Preventive Conservation

Preventive conservation is an important element of museum policy and collections care. It is an essential responsibility of members of the museum profession to create and maintain a protective environment for the collections in their care, whether in store, on display, or in transit.

### 2.24 Collection Conservation and Restoration

The museum should carefully monitor the condition of collections to determine when an object or specimen may require conservation-restoration work and the services of a qualified conservator-restorer.

The principal goal should be the stabilisation of the object or specimen. All conservation procedures should be documented and as reversible as possible, and all alterations should be clearly distinguishable from the original object or specimen.

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## **5. Museums hold resources that provide opportunities for other public services and benefits.**

### **Principle**

Museums utilise a wide variety of specialisms, skills and physical resources that have a far broader application than in the museum. This may lead to shared resources or the provision of services as an extension of the museum's activities. These should be organised in such a way that they do not compromise the museum's stated mission.

## IDENTIFICATION SERVICES

### 5.1 Identification of Illegally or Illicitly Acquired Objects

Where museums provide an identification service, they should not act in any way that could be regarded as benefiting from such activity, directly or indirectly. The identification and authentication of objects that are believed or suspected to have been illegally or illicitly acquired, transferred, imported or exported, should not be made public until the appropriate authorities have been notified.

### 5.2 Authentication and Valuation (Appraisal)

Valuations may be made for the purposes of insurance of museum collections. Opinions on the monetary value of other objects should only be given on official request from other museums or competent legal, governmental or other responsible public authorities. However, when the museum itself may be the beneficiary, appraisal of an object or specimen must be undertaken independently.

## **Museums work in close collaboration with the communities from which their collections originate as well as those they serve.**

### **Principle**

Museum collections reflect the cultural and natural heritage of the communities from which they have been derived. As such, they have a character beyond that of ordinary property, which may include strong affinities with national, regional, local, ethnic, religious or political identity. It is important therefore that museum policy is responsive to this situation.

## ORIGIN OF COLLECTIONS

### 6.1 Co-operation

Museums should promote the sharing of knowledge, documentation and collections with museums and cultural organisations in the countries and communities of origin. The possibility of developing partnerships with museums in countries or areas that have lost a significant part of their heritage should be explored.

## 6.2 Return of Cultural Property

Museums should be prepared to initiate dialogues for the return of cultural property to a country or people of origin. This should be undertaken in an impartial manner, based on scientific, professional and humanitarian principles as well as applicable local, national and international legislation, in preference to action at a governmental or political level.

## 6.3 Restitution of Cultural Property

When a country or people of origin seeks the restitution of an object or specimen that can be demonstrated to have been exported or otherwise transferred in violation of the principles of international and national conventions, and shown to be part of that country's or people's cultural or natural heritage, the museum concerned should, if legally free to do so, take prompt and responsible steps to co-operate in its return.

## 6.4 Cultural Objects From an Occupied Country

Museums should abstain from purchasing or acquiring cultural objects from an occupied territory and respect fully all laws and conventions that regulate the import, export and transfer of cultural or natural materials.

## RESPECT FOR COMMUNITIES SERVED

### 6.5 Contemporary Communities

Where museum activities involve a contemporary community or its heritage, acquisitions should only be made based on informed and mutual consent without exploitation of the owner or informants. Respect for the wishes of the community involved should be paramount.

### 6.6 Funding of Community Activities

When seeking funds for activities involving contemporary communities, their interests should not be compromised. (See 1.10)

### 6.7 Use of Collections from Contemporary Communities

Museum usage of collections from contemporary communities requires respect for human dignity and the traditions and cultures that use such material. Such collections should be used to promote human well-being, social development, tolerance, and respect by advocating multisocial, multicultural and multilingual expression. (See 4.3)

### 6.8 Supporting Organisations in the Community

Museums should create a favourable environment for community support (e.g., Friends of Museums and other supporting organisations), recognise their contribution and promote a harmonious relationship between the community and museum personnel.

## **7. Museums operate in a legal manner.**

### **Principle**

Museums must conform fully to international, regional, national and local legislation and treaty obligations. In addition, the governing body should comply with any legally binding trusts or conditions relating to any aspect of the museum, its collections and operations

### LEGAL FRAMEWORK

#### 7.1 National and Local Legislation

Museums should conform to all national and local laws and respect the legislation of other states as they affect their operation.

#### 7.2 International Legislation

Museum policy should acknowledge the following international legislation that is taken as a standard in interpreting the ICOM Code of Ethics for Museums:

- Convention for the Protection of Cultural Property in the Event of Armed Conflict (“The Hague Convention” First Protocol, 1954, and Second Protocol, 1999);
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, 1970);
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 1973);
- Convention on Biological Diversity (UN, 1992);
- Convention on Stolen and Illicitly Exported Cultural Objects (UNIDROIT, 1995);
- Convention on the Protection of the Underwater Cultural Heritage (UNESCO, 2001);
- Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO, 2003).

## **8. Museums operate in a professional manner.**

### **Principle**

Members of the museum profession should observe accepted standards and laws and uphold the dignity and honour of their profession. They should safeguard the public against illegal or unethical professional conduct. Every opportunity should be used to inform and educate the public about the aims, purposes, and aspirations of the profession to develop a better public understanding of the contributions of museums to society.

### PROFESSIONAL CONDUCT

#### 8.1 Familiarity with Relevant Legislation

Every member of the museum profession should be conversant with relevant international, national and local legislation and the conditions of their employment. They should avoid situations that could be construed as improper conduct.

#### 8.2 Professional Responsibility

Members of the museum profession have an obligation to follow the policies and procedures of their employing institution. However, they may properly object to practices that are perceived to be damaging to a museum, to the profession, or to matters of professional ethics.

### 8.3 Professional Conduct

Loyalty to colleagues and to the employing museum is an important professional responsibility and must be based on allegiance to fundamental ethical principles applicable to the profession as a whole. These principles should comply with the terms of the ICOM Code of Ethics for Museums and be aware of any other codes or policies relevant to museum work.

### 8.4 Academic and Scientific Responsibilities

Members of the museum profession should promote the investigation, preservation, and use of information inherent in collections. They should, therefore, refrain from any activity or circumstance that might result in the loss of such academic and scientific data.

### 8.5 The Illicit Market

Members of the museum profession should not support the illicit traffic or market in natural or cultural property, directly or indirectly.

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### 8.6 Confidentiality

Members of the museum profession must protect confidential information obtained during their work. In addition, information about items brought to the museum for identification is confidential and should not be published or passed to any other institution or person without specific authorisation from the owner.

### 8.7 Museum and Collection Security

Information about the security of the museum or of private collections and locations visited during official duties must be held in strict confidence by museum personnel.

### 8.8 Exception to the Obligation for Confidentiality

Confidentiality is subject to a legal obligation to assist the police or other proper authorities in investigating possible stolen, illicitly acquired, or illegally transferred property.

### 8.9 Dealing in Natural or Cultural Heritage

Members of the museum profession should not participate directly or indirectly in dealing (buying or selling for profit) in the natural or cultural heritage.

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### 8.15 Interaction with Dealers

Museum professionals should not accept any gift, hospitality, or any form of reward from a dealer, auctioneer, or other person as an inducement to purchase or dispose of museum items, or to take or refrain from taking official action. Furthermore, a museum professional should not recommend a particular dealer, auctioneer, or appraiser to a member of the public.

## **ADAA Code of Ethics and Professional Practices**

The Art Dealers Association of America, (“ADAA”) was founded in 1962 with the stated purpose of promoting the highest standards of connoisseurship, scholarship and ethical practices within the art dealing profession. Recognizing that furtherance of these goals is the responsibility of each individual member, businesses are conducted by them in compliance with federal, state and local laws and regulations. Beyond this minimum standard they conduct their business professionally, fairly, with integrity and with the courtesy and respect due to artists, clients, colleagues and the general public. Members treat their staffs with courtesy and respect and do not discriminate in their hiring or promotion practices based on race, gender, sexual orientation, or place of origin.

ADAA members have acknowledged in writing their acceptance of, and compliance with, the following code of ethical and professional practices which they observe in their relations with clients, artists, other dealers and auctions.

### **I. Clients**

#### *A. Buyers*

(1) ADAA members (hereafter “Members”) accurately describe all objects offered by them for sale. A written invoice containing that description, which includes the identity of the artist, where known, the dimensions and medium of the work, and other relevant information is provided to a buyer. A Member’s invoice is a warranty that the work is the authentic work of the artist named in the invoice and that clear and unencumbered title is passed to the buyer. Members exercise due diligence in verifying the accuracy of information supplied to a buyer but cannot guaranty the accuracy of certain information such as the date of a work, its provenance, exhibition history and publication record.

(2) Members do not knowingly buy, sell or exhibit stolen works of art, and cooperate with law enforcement authorities in their efforts to identify, locate and recover stolen works.

(3) Members specify in writing significant known defects and restorations of works or art that they offer for sale.

#### *B. Consignors*

(1) A Member will enter into a written consignment agreement that contains a description of each work consigned (artist, title, medium, dimensions), the term of the consignment, the commission to the dealer or the net price to be paid to the consignor, and any sharing of expenses. The consignor is expected to warrant that the work is the genuine work of the artist identified in the agreement and that clear and unencumbered title will pass when the work is sold by the member. It also is expected that the consignor will indemnify the member against any claim of breach of any express or implied warranty made by the consignor.

(2) A Member provides a consignor with a good faith estimate of the current fair market value of all consigned works.

(3) Payment to a consignor is made by a Member in a timely fashion, as agreed.

## **II. Artists**

A Member representing an artist has responsibilities to the artist extending beyond selling the artist's works. Those responsibilities may be divided into the (A) advisory, custodial and archival, and (B) financial.

### *A. Advisory, Custodial and Archival*

(1) A Member acts as an advisor to an artist represented by the Member. The Member seeks to enhance the artist's reputation through exhibitions, publications, and by acting as an advocate for, and fostering scholarship regarding, the artist's work. The Member sells the artist's work responsibly and seeks when possible to place the work in important public and private collections.

(2) A Member exhibits the artist's work in such a manner, acceptable to the artist, as shows the work to best advantage.

(3) A Member acts responsibly in the handling, packing, shipping and storage of the artist's work.

(4) A Member maintains appropriate records of the artist's works in the dealer's custody and control and maintains proper photographic archives and other documentation of those works.

### *B. Financial*

(1) A Member and an artist agree on the terms of the representation, including such expenses as shipments, insurance, photography, storage, framing and restoration. Under no circumstances is an artist charged for the use of a member's gallery space.

(2) A Member and an artist mutually agree on prices for the artist's work as well as the percentage of proceeds to be paid to the Member as compensation.

(3) The Member and the artist also agree on when and how the Member should account to and pay the artist after a sale is made and payment is received by the dealer.

(4) A Member acts in a trustworthy manner in dealing with an artist and the works consigned by the artist.

## **III. Artists' Estates**

A Member has the same responsibilities to the estate of an artist as to a living artist. This includes the advisory, custodial and financial responsibilities listed above. Members are mindful that the artist no longer can be his or her advocate and work actively to develop and foster the market for the artist's works.

## **IV. Auctions**

A. A Member having an ownership interest in a work does not consign that work for auction with the intention of acquiring the work at the auction at a publicly enhanced price.

B. A Member who owns or guarantees a work consigned to auction discloses that fact to potential bidders advised by the Member.

C. A Member does not bid, or agree with others to refrain from bidding on a work, solely for the purpose of enhancing or depressing the price.

## **V. Dealers**

A. Members seek to further mutual respect and enhance the public's trust in dealers. To that end, Members exercise care in making negative comments about their colleagues and do not denigrate the reputation of another dealer.

B. When a work is jointly owned with another dealer, a clear agreement is made concerning the price to be obtained, the terms of sale, insurance, and the sharing of costs.

C. When a work is consigned by one dealer to another, there is a written agreement of the material terms of the consignment.

## **VI. Enforcement**

Claims that a Member has acted in violation of these guidelines should be made in writing to ADAA, which will investigate all such claims and, where appropriate, hold hearings under such rules as have been adopted by the Board of Directors. Violation of any provision of this Code may be grounds for censure, suspension or expulsion from ADAA.

## **ANNEX 3**

### **ICOM Publications Relating to Illicit Traffic**

#### **100 missing objects**

This series presents a selection of objects that have been stolen and whose disappearance has been reported to the police. Each object is registered in the INTERPOL database.

As of now, ICOM has published in this collection:

- Looting in Angkor (1993, 2nd edition in 1997)
- Looting in Africa (1994, 2nd edition in 1997)
- Looting in Latin America (1997)
- Looting in Europe (2001)

#### **Red List series**

The Red Lists classify the endangered categories of archaeological objects or works of art in the most vulnerable areas of the world, in order to prevent them being sold or illegally exported.

The Red Lists therefore contribute to the protection of cultural heritage in the relevant countries.

ICOM has already published Red Lists for many different countries and regions:

- Red List of African Archaeological Objects, 2000
- Red List of Latin American Cultural Objects at Risk 2003
- Emergency Red List of Iraqi Antiquities at Risk, 2003
- Red List of Afghanistan Antiquities at Risk, 2006
- Red List of Peruvian Antiquities at Risk, 2007
- Red List of Cambodian Antiquities at Risk, 2009
- Red List of Endangered Cultural Objects of Central America and Mexico, 2009
- Emergency Red List of Haitian Cultural Objects at Risk, 2010
- Red List of Chinese Cultural Objects at Risk, 2010
- Red List of Colombian Cultural Objects at Risk, 2010
- Emergency Red List of Egyptian Cultural Objects at Risk, 2011

There are a great many other documents in digital form which related to illicit traffic. They can be found at [icom.museum](http://icom.museum).

## ANNEX 4

OBJECT ID: <http://archives.icom.museum/object-id/>



### OBJECT ID CHECKLIST

#### TAKE PHOTOGRAPHS

Photographs are of vital importance in identifying and recovering stolen objects. In addition to overall views, take close-ups of inscriptions, markings, and any damage or repairs. If possible, include a scale or object of known size in the image.

#### ANSWER THESE QUESTIONS:

##### **Type of Object**

What kind of object is it (e.g., painting, sculpture, clock, mask)?

##### **Materials & Techniques**

What materials is the object made of (e.g., brass, wood, oil on canvas)?  
How was it made (e.g., carved, cast, etched)?

##### **Measurements**

What is the size and/or weight of the object? Specify which unit of measurement is being used (e.g., cm., in.) and to which dimension the measurement refers (e.g., height, width, depth).

##### **Inscriptions & Markings**

Are there any identifying markings, numbers, or inscriptions on the object (e.g., a signature, dedication, title, maker's marks, purity marks, property marks)?

##### **Distinguishing Features**

Does the object have any physical characteristics that could help to identify it (e.g., damage, repairs, or manufacturing defects)?

##### **Title**

Does the object have a title by which it is known and might be identified (e.g., *The Scream*)?

##### **Subject**

What is pictured or represented (e.g., landscape, battle, woman holding child)?

##### **Date or Period**

When was the object made (e.g., 1893, early 17th century, Late Bronze Age)?

##### **Maker**

Do you know who made the object? This may be the name of a known individual (e.g., Thomas Tompion), a company (e.g., Tiffany), or a cultural group (e.g., Hopi).

#### WRITE A SHORT DESCRIPTION

This can also include any additional information which helps to identify the object (e.g., color and shape of the object, where it was made).

#### KEEP IT SECURE

Having documented the object, keep this information in a secure place.

## **ANNEX 5**

### **UNESCO Publications**

- Securing heritage of religious interest, 6th volume of the Cultural Heritage Protection Handbooks Series, 2012
- Information kit (PDF) published on the occasion of the 40th anniversary of the 1970 Convention, UNESCO, 2011
- Cultural Heritage Conventions and Other Instruments: A Compendium with Commentaries, P.J. O'Keefe & L.V. Prott, 2011
- ICPRCP Expert Meeting and Extraordinary Session in Celebration of its 30th Anniversary: Its Past and Future, Cultural Heritage Administration of the Republic of Korea, 2008 Witnesses to History - Documents and writings on the return of cultural objects, L.V. Prott, 2009
- Museum international - Return of Cultural Objects: The Athens Conference, N°241-2
- UNESCO, Commentary on the 1970 UNESCO Convention, P.J. O'Keefe, 2007
- Legal and Practical Measures Against Illicit Trafficking in Cultural Property, UNESCO Handbook, 2006