



United Nations
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Apia Office
Office for the Pacific States



WORKSHOP
the **FIGHT**
on **AGAINST**
the **ILLICIT**
TRAFFICKING
of **CULTURAL**
PROPERTY
in **MELANESIA**

.....
(Port Vila, Vanuatu, 5 – 7 August 2015)



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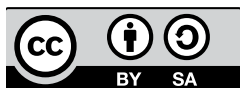
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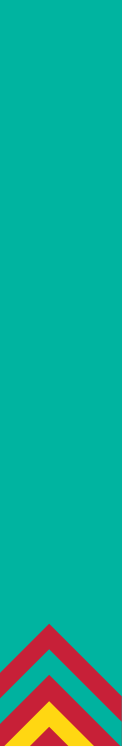
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CONTENT



| | |
|--|-----------|
| Acronyms | 6 |
| Introduction | 7 |
| Workshop Proceedings | 9 |
| Day 1 | 9 |
| Day 2 | 17 |
| Day 3 | 20 |
| Annexes | 21 |
| Annex I: Opening Remarks | 21 |
| Annex II: Keynote speechmarks | 23 |
| Annex III: Port Vila Declaration | 38 |
| Annex IV: Text of the 1970 Convention and List of States Parties | 40 |
| Annex V: Text of the 1995 UNIDROIT Convention and List of States Parties | 52 |
| Annex VI: List of Participants | 65 |
| Annex VII: Programme | 68 |



ACRONYMS

| | |
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| FLNKS | Front de Libération Nationale Kanak et Socialiste |
| INTERPOL | International Criminal Police Organization |
| MSG | Melanesian Spearhead Group |
| OCOS | Oceania Customs Organisation Secretariat |
| PHH | Pacific Heritage Hub |
| PIMA | Pacific Islands Museums Association |
| SIDS | Small Island Developing States |
| SINM | Solomon Islands National Museum |
| UNIDROIT | International Institute for the Unification of Private Law |
| USP | University of the South Pacific |
| VCC | Vanuatu Cultural Centre |



HERITAGE IS
IDENTITY,
DON'T STEAL IT

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INTRODUCTION

The Workshop on the Fight against the Illicit Trafficking of Cultural Property in Melanesia was held at the Vanuatu Cultural Centre (VCC) in Port Vila from 5 to 7 August 2015. It was convened by UNESCO in cooperation with the Ministry of Education and the Ministry of Internal Affairs of Vanuatu.

The workshop brought together representatives of five Melanesian countries and territories: Fiji, New Caledonia (France), Papua New Guinea (PNG), Solomon Islands and Vanuatu, along with representatives of UNESCO, the International Criminal Police Organization (INTERPOL), the Pacific Islands Museums Association (PIMA), the Oceania Customs Organisation Secretariat (OCOS), the Pacific Heritage Hub (PHH) at the University of the South Pacific (USP), the Melanesia Spearhead Group (MSG) Secretariat and participants from Australia and New Zealand.

The workshop served as a forum to discuss issues surrounding the fight against the illicit trafficking of cultural property in the Melanesian region. In particular, the participants discussed the related challenges

facing the Pacific Small Island Developing States (SIDS), including ocean border control, communal ownership of cultural heritage, cultural infrastructure development, resource constraints and lack of awareness of cultural property laws among visitors and the expatriate community. In addition, the workshop provided the participants from the museums, cultural institutions and customs and police services with opportunities to learn, via multi-stakeholder discussions, about the legal and administrative measures to fight against the illicit trafficking in cultural property.

Workshop speakers emphasized the importance of documentation and inventorying of cultural heritage with community participation, and encouraged ratification of the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) and the preparation of specific national legislation regarding cultural property or the alignment of existing legislation with the provisions of the 1970 convention.



On the final day of the workshop, the representatives of each participating country and territory prepared a draft action plan to identify priority actions based on what they had learned from the presentations. The workshop concluded in endorsing the 'Port Vila Declaration', which paves the way for enhanced cooperation in this area, in partnership with regional mechanisms such as the MSG Council of Arts and Culture and the MSG Ministers of Culture and Arts.



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WORKSHOP PROCEEDINGS

Day 1

Opening Session

The Hon. Hosea Nevu, Minister of Internal Affairs of Vanuatu, delivered the opening remarks. In his speech, the minister noted that cultural heritage is a foundation of identity and that Melanesia's cultural diversity was an asset for the people in the region. He observed that cultural objects in Melanesia were vulnerable to illegal sale and theft and urgent actions were needed to handle the growing threats. The minister concluded by saying he appreciated the opportunity provided by the workshop to address the specific issues and challenges faced in the region.

Etienne Clement, Director of the UNESCO Office for the Pacific States then delivered a speech (see Annex I) in which he expressed his appreciation to the Government of Vanuatu and the Vanuatu Cultural Centre (VCC) for hosting the workshop, and welcomed to the workshop the delegates and the representatives of regional and international organizations. He noted that

this workshop was a follow up to the UNESCO workshop held in Nadi in 2001 and to the Pacific Islands Museums Association (PIMA) workshop held in Port Moresby in 2014. In addition, he noted that the workshop, which aimed to strengthen cooperation in the area of illicit trafficking, was organized in response to a specific request made at the 3rd Ministers of Culture and Arts Meeting of the Melanesian Spearhead Group (MSG), held in Port Moresby in October 2013.

Session 1

In Session 1, Etienne Clement made a presentation introducing the topic of the workshop and describing some of the key normative instruments for cultural heritage protection, namely, the Convention for the Protection of Cultural Property in the Event of Armed Conflict (1954), the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), the International



Institute for the Unification of Private Law (UNIDROIT) Convention on Stolen or Illegally Exported Cultural Objects (1995) and the Convention for the Protection of Underwater Cultural Heritage (2001), as well as UNESCO's activities related to these conventions. He then outlined the structure of the workshop programme. He expressed his hope that the workshop would result in concrete outcomes that would guide national and regional actions in this area and contribute to increasing the ratification of the conventions.



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Session 2: Country Reports

Session 2 of the workshop was devoted to the presentation of country reports for Vanuatu, the Solomon Islands, Papua New Guinea (PNG), New Caledonia, Fiji, Australia and New Zealand.

Vanuatu

Richard Shing, of the VCC, presented the country report for Vanuatu. He provided information on advances in Vanuatu's related legislation, which began with an act, prepared in 1965 and reviewed in 2008, with a view to preserving cultural heritage sites

and artefacts of the country and prohibiting illicit trafficking of cultural objects. He then presented a case study on 200-year-old stone carvings made of coral and sandstone in Malekula, Vanuatu, to demonstrate the vulnerability of cultural objects in the outer islands that are the target of illegal trafficking. He also explained the complex and lengthy lawsuits that VCC has been involved in to recover such objects.

Solomon Islands



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Rita Pama Sahu from the Solomon Islands National Museum (SINM) and Fiona Fa'arondo from the Customs Service jointly presented the Solomon Islands country report. They explained that the country has various legislation and government policies for the security of cultural heritage, such as the Customs and Excise Act 1960, the Research Act 1982, and the Provincial Ordinances and Framework. Noting that many cultural objects had been exported without permits, especially during the Second World War, the presenters explained that the country's border control now ensures that export permits issued by the Ministry of Culture and Tourism are attached to the cultural objects that are leaving the country. The presenters also

provided information on the ongoing activities of the SINM in terms of providing training for new police and customs officers to enhance their awareness of the issue of illegal export of cultural heritage. The presenters emphasized the importance of more effective coordination and collaboration among stakeholders, including customs, police and museums.

Papua New Guinea

Gunu Gao from the PNG Customs Service presented the country report for PNG. She explained that the customs service in the northern part of the country, where she is stationed, is entirely dependent on documents provided by the PNG National Museum and Gallery for effective control over the movement of cultural objects. She also explained that there is an insufficient level of awareness of the importance of cultural heritage among customs officials, which has resulted in the removal of important cultural objects from PNG. She recommended that assistance be provided for stakeholders, including the National Museum and Gallery and the Customs Service, to enable them to jointly develop a strategic plan to fight the illicit trafficking of cultural property and to ensure law enforcement.

Q&A

Responding to the presentation, several participants underlined the importance of documentation as an essential protection tool, especially photographic evidence, as well as the inventorying of cultural objects across a country, with priority on those in the outer islands. Such documentation can be

helpful in providing proof of theft and loss of cultural objects and allows authorities to keep track of their movement. Concerns were expressed regarding the numerous yachts travelling around the Pacific waters that were evading ocean border control. One of the observers raised the issue of tension between heritage preservation and commercial activities, particularly in the tourism industry. UNESCO responded that that the related conventions seek a balance between heritage preservation and economic activities, under the overall goal of achieving sustainable development.

New Caledonia

Presenting New Caledonia's report, Regis Vendegou noted that a 1933 law forbids the exportation of cultural objects without agreement from museums and that the customs service of New Caledonia works in close collaboration with the museum to obtain confirmations on the authenticity of export permits. He shared with the participants the outcomes of a project carried out by the New Caledonia government in cooperation with some 20 volunteers and students to identify Kanak artefacts and cultural objects that had been exported to Europe. The project located over 10,000 cultural objects but it did not lead to the actual recovery of those objects due to the lack of knowledge of procedures to follow as well as an absence of proof of their ownership. He expressed his concern over the future of these objects, which are treasures of the Kanak people.



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Fiji

Meretui Ratunabuabua, from the Fiji Museum, began by presenting background information on the museum, which was established in 1904 on the basis of two acts: Chapter 263 (1929), the Fiji Museum Act, and Chapter 264 (1940), the Preservation of Objects of Archaeological and Palaeontological Interest Act. She explained that the Fiji Museum had established a system to allow anyone who wants to do research on cultural objects at the museum to borrow the objects for a certain period of time for research purposes. She highlighted the current priority on strengthening the link between museums and education so that the general public, particularly young people, could gain greater recognition and appreciation of cultural objects, heritage sites and oral history. In concluding, Meretui Ratunabuabua expressed

Fiji's interest in organizing a national consultation on the 1970 convention.

Regarding the Customs Service in Fiji, Jale Samuwai explained that its role was to ensure compliance with the law and to prohibit the import and export of cultural items unless they are accompanied with the required documents. He presented a case involving Fiji's customs service wherein 'feather money' taken from the Solomon Islands was found by the customs service before it was transferred to Australia. He underlined the importance of cooperation among stakeholders (customs, police and museums) in the fight against the illicit trafficking of cultural objects.

Australia

The presentation by Duncan Chapell focused on the Australian national system, supported by the Protection of Moveable Cultural Heritage Act (1986), that facilitates the return

of objects that have been illegally exported or imported, and he also explained the border control of Australian protected objects, and the permission system on cultural objects leaving the country. In addition, he described the National Cultural Heritage Committee (NCHC), which is a panel of ten experts on various types of objects and artefacts that has the role of keeping track of anything related to cultural heritage leaving the country, illegally and legally, and which makes recommendations regarding what should or should not be exported in the form of cultural heritage. He emphasized the importance of the advisory role of NCHC in the fight against the illicit trafficking of cultural objects. He also presented the case of the Dancing Shiva from India that was linked with Subbash Kapoor, an illicit antiquities dealer arrested in 2011.

New Zealand

The New Zealand country report was presented in the form of a video prepared by the Te Papa Museum. In this presentation, Arapata Hakiwa from the museum talked about a case of an object that was illegally sold to George Ortiz from Switzerland in 1972 with a falsified bill of sale, and which was returned to New Zealand in 2015 after two-year negotiation with the Ortiz family. This was followed by a presentation by David Butts from the Te Papa Museum that described key legislation, including the Antiquities Act (1975), which aims to protect cultural property, and the Protected Objects Act (2007), which aims to identify and recognize the ownership of recently found taonga

(treasure). He underlined the importance of the role of public education and awareness in ensuring the best possible protection of cultural heritage, as well as daily monitoring of the art market, which allowed authorities to inform the appropriate groups of the Maori peoples when their artefacts come up for sale.

Q&A

In response to these presentations, some of the delegates from neighbouring countries, which are considered transit countries for cultural objects, offered their assistance in strengthening controls on the export and import of cultural objects. UNESCO recommended that countries redouble their efforts in preparing and upgrading their legislation on the movement of cultural objects, and ensuring enforcement of such legislation as a starting point for joining the 1970 convention.



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One of the meeting participants enquired about the risk of the non-return of cultural objects to the Fiji Museum by researchers. Meretui Ratunabuabua responded that the museum recognized that there was room for improvement in the current permission



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system. In response to a query regarding the organization of a national consultation, Meretui Ratunabuabua replied that this could be organized as soon as the required budget was allocated, and she requested UNESCO's technical assistance.

Session 3: Presentations by regional organizations

Session 3 was devoted to presentations by regional organizations.

Pacific Islands Museums Association

Meretui Ratunabuabua outlined the history, activities and future prospects of PIMA. Since its establishment in 1994, PIMA has actively engaged in museum development in Pacific

Island countries and territories through advocacy, information sharing, training and capacity building. Ms Ratunabuabua identified the various threats to traditional knowledge and cultural heritage in the Pacific region, including the speed of cultural change, the widening generation gap, forces of modernization and globalization, loss of vernacular languages, loss of biodiversity, and lack of human resources and government support. She confirmed PIMA's commitment to the fight against the illicit trafficking of cultural objects as demonstrated by PIMA workshop held in Port Moresby in 2014.

Recommendations adopted at PIMA Workshop on Fight against Illicit Trafficking of Cultural Objects (Port Moresby, PNG, 7 - 9 July 2014)

Conventions, legal/regulations/procedures/border control:

1. Reinforce local rules and regulations prohibiting the collection, possession and trade of cultural heritage.
2. Procedures and regulations should be in place for researchers in terms of access to collections.
3. Training for all stakeholders: museums, customs, police and museum security. Museums are encouraged to undertake inventory checks.
4. Improve police and customs officials' capacity/awareness; use DVDs for advocacy; use regional bodies, such as the Melanesia Spearhead Group (MSG), the Secretariat of the Pacific Community (SPC), police commissioners and the Oceania Customs Organisation Secretariat (OCOS).
5. All Melanesian countries to ratify the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property by 2017.

Capacity building, training and professional development:

1. Train all the stakeholders involved in the preservation of cultural heritage (customs officers, local authorities, elders and chiefs), organized by PIMA in collaboration with other heritage organizations.
2. Training to be provided through the PIMA and ICOM network.

Community outreach, advocacy and awareness:

1. Local communities, government, communities should be aware of illicit trafficking, customs, quarantine, declaration forms.
2. Outreach should encompass all levels, from the community level to the local, national, regional and international levels.
3. Information exchange – PIMA should take the lead, using its PIMA website and social networking sites such as Facebook, to advocate key messages.
4. Develop and raise awareness in the population and educate youth of the importance of protecting cultural heritage.
5. Lists of prohibited items should be listed through existing regional tourism organizations, such as the South Pacific Tourism Office (SPTO) and the Pacific Asia Travel Association (PATA); Lonely Planet and other guidebooks; major tour companies/operators, overseas agents, etc.
6. Cross-sector awareness across government sectors.
7. Use the media to spread the message.



Communication Strategy

Press Releases: Picked up by public relations.

Press Release by PIMA was sent out to regional and national media.

Television: Television New Zealand (TVNZ) and PNG Television conducted interviews with participants.

Online blogs: The workshop was highlighted online the week of the Melanesian Arts bloggers Festival.

Museum websites: Museums in Papua New Guinea National Museum promoted the workshop through its website.

Radio: Radio Australia and PNG National Radio aired interviews during and after the workshop.

Print media: Local newspapers mentioned the workshop prior, during and after the workshop.

Social Media (Facebook, Instagram, etc.): PIMA had a Facebook Page and Twitter was constantly updated, and were followed by updates from participants.

MSG Secretariat

Stanley Wapot provided an overview of the activities of the MSG Secretariat in the area of culture. He then provided information on progress in the development of a regional treaty that aims to protect traditional knowledge and expressions of culture, as well as their holders, against misappropriation, misuse and unlawful exploitation. He described the treaty, which was presented at the Melanesian Leaders Summit in 2011, and explained that it has been signed by Fiji, PNG, Front de Libération Nationale Kanak et Socialiste (FLNKS) and the Solomon Islands.



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Day 2

Session 4: Keynote speech on legal issues, conventions and national laws

Lyndel Prott, an international heritage expert, shared her knowledge on the topic of legal issues, conventions and national laws (see Annex II). Her presentation began with a discussion of the importance of solid national legislation, preferably built on the provisions of the 1970 convention. Following this, she explained the importance of ratifying the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property. She highlighted some of the key provisions of the 1970 convention, including Article 3, which indicates that unless you have adopted the provisions of the convention in your own national legislation, the convention cannot protect cultural objects or enable the identification of the rightful owners and the return ownership to them. She also emphasized the necessity of creating national inventories and regulating the export and import of cultural objects. Subsequently, Ms. Prott introduced the UNESCO Database of National Cultural Heritage Laws, which is a tool that not only assists countries in developing national legislation, but also alerts dealers of the penalties of illicit trafficking under existing national laws. Next, she outlined the objectives of UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995),

highlighting key provisions and explaining what this convention adds to the 1970 convention and why it is important to ratify the UNIDROIT convention. In relation to the Fiji country report presented on the previous day, she explained that, according to Article 4, it would be possible to lend a cultural object, provided that it is brought back on the due date and with proof of the research done on it, such as a study report. Her presentation concluded with a discussion of the action taken in ratifying conventions by countries of the Asia-Pacific region.

After her presentation, several delegates enquired about the content and process of establishing national legislation. Ms. Prott responded that legislation should address specific issues and be aligned with the provisions of the conventions, but said it could also be brief and simple. The participants also discussed workability and resources, taking into account the island-specific context. The participants shared their experiences of international and regional pressure prompting governments to move forward to join the 1970 convention. They noted the importance of having a spokesperson for culture, whether in the government or as a private citizen dedicated to the protection of cultural heritage. This person could make the difference in encouraging the government to make this issue one of its highest priorities.



Session 5: Law enforcement (police and customs)

Clement Taipala - Oceania Custom Organization Secretariat

Clement Taipala, from the Oceania Customs Organisation Secretariat (OCOS), began his presentation with an overview of the history and activities of OCOS, noting that OCOS was established in 1986 and has 24 members and 20 staff. He then explained the aims of OCOS, including delivering efficient and effective services and strengthening border security by reforming and modernizing customs, with the goal of supporting economic prosperity. Having participated in the workshop on the previous day, Mr. Taipala mentioned the possibility of OCOS working with museums to develop clear mandates and guidelines for dealing with trafficking of cultural objects and helping to expand border security legislation to cultural heritage. He also identified several other opportunities that need to be considered, including strengthening border security and inviting UNESCO and other international organizations to give assistance and advice at OCOS meetings in the future.

In response to his presentation, participants recommended that the customs service and museums work together to establish a system to certify the authenticity of the objects and create a list of objects that look suspicious, thus improving border control of cultural objects.

Francoise Bartolotti - INTERPOL



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Francoise Bartolotti, from the World of Arts (WOA) Unit of INTERPOL in Lyon, provided an overview of the institutional aspects of INTERPOL and its activities, focusing on those relating to the illicit trafficking of cultural property. She described some of the increasing threats to cultural property, such as the destruction of monuments, considered a war crime; large-scale looting derived from illegal excavations on archaeological sites; and the online art market. She provided information about a computerized database managed by the WOA that contains information about over 46,000 stolen objects from 131 countries. This database has been accessible online by the public since 2009 through INTERPOL's secured website. She pointed out the need to enhance the quality of statistics on stolen objects in cooperation with the national statistics bureaus in member countries. According to data compiled by INTERPOL, 74 per cent of the registered stolen objects in the database are in Europe and 3 per cent are in the Asia-Pacific region. In her view, however, this does not reflect the reality, given the lack of information provided by

statistics bureaus outside of Europe. She also shared information on the Protection System for Cultural Heritage (PSCH) project led by Italy and funded mainly by the European Union.

Meeting participants responded to her presentation by identifying challenges facing Pacific SIDS, such as the limited number of national statistics bureaus and lack of regular communications between OCOS and regional police, such as the Pacific Transnational Crime Network (PTCN) based in Apia. The participants agreed on the need to enhance the capacity of museums to ensure documentation of cultural objects, to provide professional advice on the authenticity of stolen objects and to establish regular communication channels among customs, police and museums.

Session 6: Capacity building, education and awareness-raising

Meretui Ratunabuabua, a former Pacific Heritage Hub (PHH) manager, explained that the PHH is a regional project that was launched at the request of Pacific UNESCO Member States in 2012. It has the objective of promoting knowledge management, capacity building and partnerships, and seeks to ensure that cultural heritage is protected and to develop manuals that can be used to manage cultural objects. She provided an overview of PHH's activities and presented some of the outcomes of its capacity building activities for cultural heritage managers and custodians in the Pacific, enabling them to better preserve and protect their cultural heritage.

Session 7: Security of collections, museums and sites

This presentation by Marcelin Abong and Meretui Ratunabuabua, from the Pacific Islands Museums Association, focused on the security of collections, museums and sites. They explained that PIMA provides information and expertise on all types of cultural objects and it monitors the collections in member museums. They also described recent projects supported by PIMA, including audits of the collections of the VCC and the Museum of New Caledonia, carried out in partnership with New Zealand museums; and an internship programme implemented in partnership with museums in the Pacific and Caribbean SIDS. Meretui Ratunabuabua also described a recent initiative of the Fiji Museum that aims to enhance museum security against theft and fire by developing an emergency plan and conducting fire drills for museum staff.



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Day 3

Session 8: Preparing national action plans

The country groups used this session to discuss the issues and prepare action plans, with the assistance of the participating international experts.

Session 9: Presentation of the national action plans

In Session 9 representatives of each participating country presented their draft action plans. This was followed by discussions of the action plans.

Session 10: Presentation and discussion of a Melanesian action plan

The delegates discussed the draft Port Vila Declaration prepared by a drafting committee composed of representatives from Fiji and Vanuatu and, following a lively exchange of views, the participants adopted the declaration (see Annex III).

ANNEXES

Annex I: Opening Remarks

Etienne Clement, Director, UNESCO Office for the Pacific States



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Honourable representatives of governments,
Representatives of international and regional
organizations,

Distinguished delegates and experts,

It is a great pleasure for me to be here with
you today for this Workshop on the Fight
against the Illicit Trafficking of Cultural

Property, and to meet with representatives
of governments, museums, cultural centres,
police and customs in Melanesian countries
as well as with experts and representatives of
international organizations from the region
and beyond.

On behalf of UNESCO, I warmly congratulate
the Government of Vanuatu and, in particular,
the Vanuatu Cultural Centre, for inviting
UNESCO to join forces with them for this
important regional event.

The Pacific region, in particular the Melanesian
area, is well known to the world for its
wealth of cultural diversity. Colourful masks,
magnificent sculptures, precious objects
of important spiritual or archaeological
significance, these are some examples of the
diversity of so-called 'cultural' objects in the
region. Because of this richness, Melanesia
has increasingly become a target for illicit
trafficking in cultural objects. The market for



rare and costly objects, especially antiquities, is ever-increasing, as demonstrated by soaring market prices.

There are means of addressing this tragedy, essentially through international cooperation and through collaboration between various professions and stakeholders. Over the years, UNESCO has been promoting the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property through a broad range of activities, including conferences and training, often together with museums, police and customs organizations, such as the Pacific Islands Museum Association, INTERPOL and the Oceania Customs Organisation Secretariat, represented here today. The previous such UNESCO meeting in the Pacific was called 'No to Illicit Traffic in Cultural Property'. It was held in Nadi, Fiji, in June 2001.

But, more recently, the 3rd Melanesian Spearhead Group Ministers of Culture and Arts Meeting, held in Port Moresby in October 2013, made a specific request for strengthening cooperation between MSG and UNESCO in the area of illicit trafficking. Moreover, last year PIMA successfully organized a workshop on this topic, which provided an excellent opportunity to share information on the situation of museums in the Melanesian region in terms of their inventories, security and management, and to seek overall commitment to address this issue.

The workshop today is a continuation of the PIMA workshop. It will address issues such as regional cooperation, legislation, law enforcement, capacity building, education and awareness of stakeholders, security of museums and collections as well as archaeological sites. We will benefit from the participation of a wide diversity of expertise, from the Melanesian region, from the Pacific in general and beyond, as well as from representatives of regional and international organizations who are playing a key role in the protection of cultural property.

This time, we are suggesting that actions plans be prepared (taking the unique opportunity of the gathering of so many stakeholders) for each country or territory represented, as well as an overall action plan at the level of Melanesian countries. It is also hoped that the workshop will contribute to the increase in the ratifications of the UNESCO 1970 convention and of the UNIDROIT convention.

In concluding, I would like to thank again our host, the Government of Vanuatu, the VCC, and all the participants, and to wish to all of us fruitful discussions and successful outcomes.

Annex II: Keynote speechmarks

Protecting cultural heritage by national and international law

Lyndel V. Prott



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The Melanesian islands have a rich cultural heritage, distinct and distinctive. Too much has been taken or lost to other countries in the past and what is left of the old and what is newly made need to be carefully protected against the intentional or ignorant removal of heritage items from the communities which made them. There are several important steps which can be taken immediately to protect cultural heritage from trafficking.

1. The importance of solid national legislation, preferably built on the provisions of the 1970 convention.

The most important thing that any state can do to protect its movable cultural heritage is to have its own protective law in place. Without that, foreigners and tourists visiting a country may regard the removal

of all sorts of cultural heritage (antiquities, artwork, sculptures, craft work) as perfectly appropriate, there being no protective legislation in that country. They may not consider the ethics of depriving a community of its ownership of cultural heritage. Once the object is in another country, the strongest claim one can make against a possessor in the foreign legal system is that of ownership. To make such a claim, it must be clear in the legislation that there is an owner. It may be the State or a community or an institution, such as a museum or cultural centre, or it may be a private individual: the local law on ownership must be absolutely clear, if it is to succeed with a claim of ownership in a foreign court of law.

If a State does not either own or control the export of a cultural object, it is likely to be impossible for the country to recover the item, whether stolen, illegally excavated or illegally exported, when a heritage item is found in another country. This was made very clear when the State of Iran sued in an English court for the return of objects that had been removed and found in London. While Iran had protective legislation, nowhere did it say clearly that the State owned the antiquities concerned. In London, the lawyers for Iran spent two days convincing the judges that, although the Iranian legislation nowhere clearly stated Iran's ownership of that heritage, there were many ways in which

Iran controlled and looked after its cultural heritage so well that the sum total of those legislative provisions, spread across many different pieces of legislation, amounted to ownership. It is fortunate that the expert research into the whole sum of Iranian legislation was eventually successful in persuading the judges to accept this. This case, however, resulted in Iran having to pay very heavy legal costs, which could have been avoided altogether if it had simply stated somewhere in its protective legislation that Iran owned its cultural heritage (judgment of Court of Appeal reported in *Republic of Iran v. Barakat Galleries [2007] EWCA Civ 1374*). So this is the number one requirement to protect your national cultural heritage: your heritage legislation should state this clearly. Otherwise the case may be lost or, even if successful, very expensive. Experts in this field of law have now drafted model principles (*UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects*) which are simple and easy to deal with, to ensure that such a provision is included in the legislation.

Legislation should also control the export and import of cultural heritage (Articles 6 and 7 of the UNESCO convention). This is best done by acquiring export certificates to be presented to customs when leaving the country. It is important that sellers of cultural objects know that some of these objects are clearly prohibited from export. If there is any doubt, they should be referred to the Ministry of Culture, or the Cultural Centre or whatever national administration is responsible for the protection of movable cultural heritage.

There is a model export certificate prepared by the International Customs Organization (ICO) and UNESCO specially designed for the needs of cultural objects. <http://unesdoc.unesco.org/images/0013/001396/139620E.pdf>. This document also includes explanatory notes on the provisions. The model can, of course, be varied to be appropriate for the nation concerned.

It is also advisable to provide for sanctions, such as fines, for those who do not follow the provisions of the national legislation – indeed the States that have ratified the 1970 convention have undertaken to ‘impose penalties or administrative sanctions on any person responsible for infringing the prohibitions’ (Article 8).

The national legislation does not need to be extremely complex. Indeed, for small Pacific island countries complexity is often undesirable: it is important that everybody understands the basic principles. There is no need for a very complex administrative system. UNESCO now has a *Legislative Database of National Cultural Heritage Laws*, which includes 2756 laws from 188 Member States. http://www.unesco.org/new/en/media-services/single-view/news/unesco_database_of_national_cultural_heritage_laws_updated/#.VhifZG6JtGg

This provides quite useful precedents for States developing their legislation. For the Pacific Island States, when they make their legislation on the subject, it might, indeed, be useful to study the legislation of the Small Island States in the Caribbean, a number of

which have already adopted appropriate legislation. For example, Barbados (2 laws) and the Bahamas (*Antiquities, Monuments and Museums Act 1998*) have their legislation in the UNESCO legislative database.

It is of course very important for the community and cultural experts to decide what are the most important cultural items that should be protected. Article 1 of the 1970 convention includes a useful list. Some States make lists of the most important items (such as a full inventory of each of the most important cultural items in that country individually) and some simply amplify some of the categories. For example, Article 1(g)(i) specifies ‘pictures, paintings and drawings’, which are detailed on the Australian list as ‘watercolours, pastels, drawings, sketches and similar works’. It is also important, especially for Pacific Island States, to be sure that legislation covers underwater cultural heritage: shipwrecks, submerged remains of human activities and, in some cases, sacred areas where items might have been votive offerings.

2. Ratifying the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property

This convention is one of the most important international agreements of the twentieth century. For the first time, there was agreement that illicit trafficking of cultural heritage should be prohibited. For decades there had been clear disagreement between States. Some had lost considerable amounts of their heritage to more powerful countries.

The States that had major museums and collections considered material that had its origin in other countries was, after its acquisition, best curated permanently in their museums. The 1970 convention set out the basic principles that have changed many attitudes over the last 45 years.

Article 3 is the shortest article in the convention (other than the formal articles 18–26), yet it is the most important. It states that ‘the import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit’. Simply put, the convention will not work for you unless you have adopted the provisions of the convention in your own national legislation. It is also the major principle supporting the whole convention.

Article 7 is also very important. Article 7(a) requires that steps be taken to prevent museums acquiring cultural property from other countries contrary to their legislation. Regrettably, some States have been reluctant to take such steps by legislation. However, recently there have been many voluntary returns of wrongfully-acquired items by museums, either through negotiations between the two countries concerned or because of ethical considerations. Article 7 (b)(i) deals with illegal import, but only for items that are taken from a museum, religious or secular monument or institution and are documented in that institution’s inventory. This is seen by many as too restrictive, since clandestinely-excavated objects can,



obviously, not be found in an inventory. It does, however, ensure that inventoried items from museums, religious institutions or libraries will be returned.

Article 9 is one of the most controversial provisions in the convention. This article was intended to deal with cases such as clandestinely-excavated cultural objects, where an inventory clearly cannot be made by the national authorities. This clause has been interpreted differently by several States. The United States, for example, negotiates bilateral arrangements with countries with serious problems of looting and both States will establish lists of seriously diminishing categories of important cultural objects and in some cases (for example, Cambodia) will 'use its best efforts to facilitate technical assistance in cultural resource management and security'. The United States has made agreements or MoUs (Memoranda of Understanding) with 15 other States. There are 129 States party to the 1970 convention. Almost all the other States which have ratified have not required any other agreement in addition to the provisions of the convention.

Article 10(a) is also an essential element to include in national legislation, obliging dealers 'subject to penal or administrative sanctions, 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 requiring dealers to inform the purchaser of a cultural item if there is any export prohibition applying to that object. This requirement is

particularly important in helping to trace the sources and destinations of cultural objects that have been stolen or illegally exported.

3. What the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995 adds and why it is important to join it

It was during the 1980s that experts met to see how they could make the 1970 convention work better, because most of its provisions, except for Articles 7 and 9, were general principles, and States were therefore able to implement its provisions in diverse ways. It seemed desirable, also, to have a more precise legal instrument. UNESCO asked UNIDROIT (the International Institute for the Unification of Private Law, in Rome) to work with it to improve the clarity of provisions dealing with illicit trafficking and to deal with some of the issues that many States found inadequate in the 1970 text. A lot of work went into making the UNIDROIT convention, which was finally adopted in 1995 after eight years of research and negotiation.

Article 3(1) is absolutely clear: 'the possessor of a cultural object which has been stolen shall return it'. Article 3(2) provides that 'a cultural object which has been unlawfully excavated ... shall be considered stolen, when consistent with the law of the State where the excavation took place'. These two provisions greatly improve on Articles 7 and 9 of the 1970 UNESCO Convention.

However, this and other provisions of the UNIDROIT convention require more of States

than the 1970 convention and there are still States that are reluctant to ratify it. The reason for this is that to get this kind of clarity, it was necessary to have a fair compromise of the diverse interests of States. Some states allowed a 'good faith' purchaser to retain a stolen object after a relatively short period (for example, three years in the case of many European legal systems) or, if it had to be returned within those three years, the purchaser could claim compensation from the original owner. In some jurisdictions, 'good faith' was presumed, which made it very difficult for the original owner to have his object returned. Article 4 of this 1995 convention makes it absolutely clear that there is an international standard for 'good faith'. To receive compensation, the possessor must be able to prove that he had exercised due diligence and that is tested by seven reasonable steps. The possessor must have checked:

- All the circumstances of the acquisition
- The character of the parties
- The price paid
- Any reasonably-accessible register of stolen cultural objects (such as INTERPOL's database of stolen works of art and The Art Loss Register)
- Any other relevant information and documentation which it could reasonably have obtained
- Accessible agencies (such as INTERPOL and IFAR [international Foundation for Art Research])

Or have taken any other step that a reasonable person would take in the circumstances, such as checking any book, news or advertisement on the object.

Articles 5 and 6 deal with illegal export and import. They define more narrowly the categories of cultural objects subject to return by their significance, and not every cultural object (as is the case of stolen cultural objects in Articles 3 and 4, which cover all cultural objects, not just the most important ones). Nonetheless, important cultural heritage items now have the protection of the export certificate. If the national legislation prohibits the export of a significant heritage object and the possessor cannot produce a genuine export certificate, it must be returned.

There are time limitations for claims in the UNIDROIT convention in Article 3 (sections 3, 4 and 5) and Article 7. While some States were disappointed that the convention was not retroactive, it should be noted that the provisions for time limitations on claims were extremely difficult because some States had very short limitation periods and at least one State had no limitations at all. In any event, it is a step forward from the lack of any definition on time limitations in the 1970 convention. And, finally, to ensure that there should be no argument that these provisions would somehow be seen as the only process available, Article 10(3) specifically states that 'this Convention does not in any way legitimise any illegal transaction of whatever nature which has taken place before the entry into force of this convention ...'



4. Action in countries of the Asia-Pacific region

Australia passed legislation to implement the 1970 convention in 1986 and ratified the convention in 1989. It introduced some innovative elements not reflected in other legislation. For example, its current legislation provides for the return of cultural heritage objects to any country, whether or not that country is party to the 1970 convention, and to return any heritage item protected by national cultural legislation at the time of its export (that is, even before 1970). There is currently a move to make significant changes to the 1986 legislation and some of the proposals could weaken these provisions. As of 2015, the discussion can be found at <http://arts.gov.au/sites/default/files/about/PMCH-Review-Position-Paper.PDF>.

Australia is an important transit State for Papua New Guinea and other Pacific islands. Australia made a reservation to Article 10 because two states of the Commonwealth were reviewing their legislation about second-hand dealers which had been the intended basis of implementing Article 10 (a) of the Convention. This reservation needs to be withdrawn and new appropriate clauses in the *Protection of Movable Cultural Heritage Act* should be adopted. New Zealand ratified both the conventions (1995 and 1970) in 2007. The legislation of both countries is available in the UNESCO legislative database.

Australia and New Zealand appear to be the only Pacific countries that have ratified the 1970 convention. Australia is considering

ratification of the 1995 UNIDROIT convention. New Caledonia has, however, received the French legislation and is included in the ratification.

In the Asian region, Bangladesh, Bhutan, Cambodia, China, India, Iran, Japan, Kyrgyzstan, the Democratic People's Republic of Korea, the Republic of Korea, Nepal, Pakistan, Sri Lanka and Uzbekistan are party to the 1970 convention. That is, 16 of the 50 nations in the Asian-Pacific region, a very small fraction of the 129 States party to the 1970 convention.

The UNIDROIT convention has so far has been ratified by 37 States. Afghanistan, Cambodia, China and New Zealand are the only ratifying countries in the Asia-Pacific area so far. This is a pity as in many ways it is a much stronger convention but, as is typical in conventions that make major changes to the law, rates of ratification tend to be slow. It is important to get larger numbers of States to ratify this convention.



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Educational, Scientific and
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International Institute for the Unification of Private Law
Institut international pour l'unification du droit privé

Expert Committee
on State Ownership of Cultural Heritage

Model Provisions on State Ownership of Undiscovered Cultural Objects

**Explanatory Report
with model provisions and explanatory guidelines**

INTRODUCTION

This document contains model legislative provisions (the "Model Provisions") established by a group of experts convened by the UNESCO and UNIDROIT Secretariats which are intended to assist domestic legislative bodies in the establishment of a legislative framework for heritage protection, to adopt effective legislation for the establishment and recognition of the State's ownership of undiscovered cultural objects with a view, inter alia, to facilitating restitution in case of unlawful removal. They are followed by guidelines aimed at better understanding the provisions.

The Model Provisions cannot answer all questions raised by the legal status of undiscovered cultural objects. They are designed to be applied, adapted and supplemented where necessary by the issuance of regulations providing further details. They can either supplement or replace the relevant existing provisions to strengthen enforcement or to fill a gap.

In the context of these Model Provisions, "national law" or "domestic law" are to be understood broadly, in the sense that they also include federal, regional or international law that is applicable to the State adopting the Model Provisions (hereafter the enacting State).



2. UNESCO-UNIDROIT Model Provisions on State's Ownership of Undiscovered Cultural Objects

BACKGROUND/CONTEXT

During the extraordinary session of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation held in Seoul in November 2008 legislation on undiscovered antiquities was one of the major issues discussed. It was in particular noted that such national legislation is often too vague and that this lack of precision in legislation is often penalised by courts. States consequently encounter numerous legal obstacles when requesting restitution of such objects found in another country. A proposal was then put forward concerning the preparation of model provisions for protecting cultural property against illicit traffic to be submitted to States as a model that could be integrated into their own body of law or adapted nationally in accordance with specific legal traditions. The aim was to ensure that all States were equipped with sufficiently explicit legal principles to guarantee their ownership of cultural property.

On that occasion, Mr Patrick O'Keefe, Honorary Professor at the University of Queensland (Australia) presented the legal obstacles which many countries faced during the restitution process, particularly when dealing with archaeological artefacts from sites for which there were no inventories or documentation on provenance. He encouraged States to affirm their right to ownership of cultural heritage as an inalienable and imprescriptible right and to claim the ownership of all yet undiscovered archaeological and cultural property.

In this connection, it is worthwhile recalling that UNESCO looked at this issue as long ago as 1956 in its *Recommendation on the International Principles Applicable to Archaeological Excavations* which, after setting out the general principle that each State should ensure the protection of its archaeological heritage, it goes on to say that "[e]ach Member State should define legal status of the archaeological sub-soil and, where State ownership of the said sub-soil is recognized, specifically mention the fact in its legislation" (see Principle 5(e)).

Professor Jorge Sánchez Cordero, Director of the Mexican Center of Uniform Law and member of the Governing Council of UNIDROIT, presented a project for the effective promotion of ratification of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. Describing these Conventions as "two sides of the same coin", he depicted the UNIDROIT Convention to the Intergovernmental Committee as the natural follow-up of the 1970 Convention. In the same vein of Professor O'Keefe, he defended the possibility of drafting a uniform law to fill the legal void at the international level. He also suggested the creation of a working group that could address the task of standardisation. Indeed those conventions were based partly on national legislation, but some States did not have sufficient legislation and needed assistance.

At the 15th session of the UNESCO Intergovernmental Committee (Paris, May 2009), the twenty-two members of the Committee came out in favour of pursuing this initiative and encouraged UNESCO and UNIDROIT to set up a committee of independent experts to draft model legislative provisions defining State ownership of cultural property, in particular the archaeological heritage. Such legal guidelines could, it was felt, form the basis for drafting national legislation and promote uniformity of the cultural terminology, the ultimate goal being for all States to adopt sufficiently explicit legal principles in this area.

At its 88th session (May 2009), the UNIDROIT Governing Council decided to agree in principle to work with UNESCO in drafting an instrument that would facilitate the application of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention as well as their ratification by as many States as possible. It was clear that the aim was not to question the principles laid down by those two instruments, but to facilitate their application.

UNESCO-UNIDROIT Model Provisions on State's Ownership of Undiscovered Cultural Objects 3.

At the 16th session of the UNESCO Intergovernmental Committee (Paris, September 2010), the Committee formally adopted a Recommendation in which it "encourages the establishment of a working group of independent experts chosen jointly by UNESCO and UNIDROIT [and] encourages the preparation of model provisions with explanatory guidelines to be made available to States to consider in the drafting or strengthening of national laws". The General Assembly of UNIDROIT decided in December 2010 to include this item in the Work Programme 2011 – 2013, in close co-operation with UNESCO.

The UNESCO and UNIDROIT Secretariats accordingly set up an Expert Committee, using a criterion which would guarantee the most representative geographic participation. The members of the Committee were appointed in their personal capacity as independent experts and composed as follows: as Co-chairs, Dr. Jorge Sánchez Cordero (Mexico) and Prof. Marc-André Renold (Switzerland) and, as members, Thomas Adlercreutz (Sweden), James Ding (China), Manlio Frigo (Italy), Vincent Négri (France), Patrick O'Keefe (Australia), Norman Palmer (United Kingdom) and Folarin Shyllon (Nigeria). The UNIDROIT and UNESCO Secretariats were represented by Marina Schneider and Edouard Planche respectively.

At its 90th session in May 2011, the UNIDROIT Governing Council took note of the state of advancement of the work on drafting model legislative provisions and reiterated its support and involvement for the project.

The Expert Committee met formally on three occasions in Paris, on September 20, 2010, March 14, 2011 and June 29, 2011. Several exchanges among the members of the Committee also took place via e-mail.

At its 17th session (Paris, July 2011), the UNESCO Intergovernmental Committee examined the draft Model Provisions accompanied by explanatory guidelines and adopted a recommendation in which it "takes note of the finalization of model provisions, [...] invite the Expert committee to incorporate in its explanatory guidelines the observations made [...] and] request to widely disseminate those model provisions [...]" (see Attachment I).

The UNIDROIT Governing Council then also took note of the finalisation of the model provisions and welcomed the close collaboration with UNESCO. The Council also requested the Secretariat to continue this joint effort by calling for the wide dissemination of the work.

STATUS OF THE MODEL PROVISIONS

As stated in the Recommendations adopted by the UNESCO Intergovernmental Committee at its 16th and 17th sessions, those provisions are made available to States to consider in the drafting or strengthening of their national legislations.

It is by no means a binding legal text or a normative instrument as it has not been submitted to States for formal approval. The provisions constitute a model offered to States which might need it, among other legal tools of which the UNESCO and UNIDROIT Secretariats have the mission to encourage the implementation.

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4. UNESCO-UNIDROIT Model Provisions on State's Ownership of Undiscovered Cultural Objects

It is important at this stage to note that the Expert Committee made great efforts to come to a short text – so as to be more incisive -, with only six provisions, which aims, in line with both the 1970 UNESCO and the 1995 UNIDROIT Conventions, both to encourage the protection of archeological objects and to favor their restitution to the State where illicit excavations took place.

The drafting of clear provisions also aims at avoiding the time and efforts that would be needed to develop comprehensive interpretations of the law of the State bringing an action for return of an object that falls within the scope of these provisions.

Simplicity further avoids that ambiguity could be exploited before foreign courts. Moreover, the provisions have to be understandable by foreigners engaged in the trade in cultural heritage as it should be recalled that the Court of Appeal (United States of America) in *United States v. McClain* 593 F2d 658 at 670 held that the Mexican claim of ownership was not expressed "with sufficient clarity to survive translation into terms understandable and binding upon American citizens."

Model Provisions on State Ownership of Undiscovered Cultural Objects accompanied by explanatory guidelines

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.

Guidelines:

It is felt that the first provision should be a general clause that recalls the general duty of the State regarding cultural objects that have not yet been discovered.

The duty relates both to the *protection* and *preservation* of such objects. These terms are to be found also in the Preambles of the UNESCO Convention on the Protection of Underwater Cultural Heritage of 2001 and of the UNIDROIT Convention on Stolen or Illegally exported Cultural Objects of 1995.

An earlier version of the text indicated some measures to be taken: for example, a State should encourage, through financial and other means, persons who find archaeological objects to disclose their finding to the competent authorities, or encourage the national and international circulation of such archaeological objects, for example through loans to museums and other cultural institutions. It was finally decided to allow each State to take the measures it deemed necessary and appropriate in accordance with the national and international practice and standards and, among others, the 1976 UNESCO Recommendation concerning the International Exchange of Cultural Property or the Preambles of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention.

 UNESCO-UNIDROIT Model Provisions on State's Ownership of Undiscovered Cultural Objects 5.

The State's duty applies both in the present times (i.e. on the date the model provisions are adopted by a State) and for the future (i.e. after they have been adopted). The obligation of preservation for future generations is indeed now a significant factor for sustainable development of all communities. The model provisions will not affect past situations as they are not intended to be retroactive. It should be recalled that the 1970 and 1995 Conventions also have no retroactive application, following the general principle stated in Article 28 of the 1969 Vienna Convention on the Law of Treaties.

This provision imposes a general obligation and indicates the intent of the law which may be adopted according to the legislative tradition of the enacting State, such as being the first clause of a national statute, or incorporated in the statute's preamble.

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.

Guidelines:

The model provisions definition is based on the general definition given by the 1970 UNESCO Convention (art.1) and the 1995 UNIDROIT Convention (art. 2). This is to stress that these provisions must facilitate the implementation of the two instruments and that the definition is applied among the 120 States bound by the 1970 UNESCO Convention. As it is a model of a national legislation a reference to the national law is appropriate.

The definition incorporates both types of Undiscovered Cultural Objects, i.e. those found in the *soil* and those found *underwater*. The ownership regime under the Convention on the Protection of the Underwater Cultural Heritage of 2001 – which is different from that of these Model Provisions – will apply to States Parties to that Convention.

It should be stressed that the list of categories is not exhaustive and the enacting State is free to add what it wants (for example, also covered are anthropological objects, human remains, etc.). Similarly, the location of the object should be understood broadly (for example, an undiscovered object could be located in a building or in ice). The enacting State can of course choose on the contrary to limit the definition in its internal law.

Provision 3 – State Ownership

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

Guidelines:

This provision is the central rule of the model provisions. The principle adopted - State ownership - follows that of many existing national legislations, but in the most clear and simple terms. As drafted, the text clearly indicates that such objects are owned by the State *before* being discovered, thus avoiding the problem of interpretation of vague legislations.



6. UNESCO-UNIDROIT Model Provisions on State's Ownership of Undiscovered Cultural Objects

The terms "*are owned by the State*" were chosen as opposed to "*are the property of the State*", for the nature of the right of ownership to be absolutely clear. It is also evident that such a right does not aim at the enrichment of the State (institutions or representatives) but allows it to fulfil its role as custodian of the heritage.

A restriction should be made in case prior ownership by a third party can be established. It could be a person who buries a cultural object belonging to him/her in order to protect it during a conflict, intending to retrieve it later so that he/she has not abandoned ownership. Some existing statutes go in the same direction when they provide for State ownership if the discovered object "belong to no one".

Given the general and abstract nature of a model law, it does not appear necessary for it to provide in detail what the precise circumstances are in which "prior existing ownership" is to be considered as established. The national legislator might wish to provide an (illustrative or exhaustive) list of such circumstances, based on local understandings or traditions.

The enacting State may wish to consider the effect of national and international human rights laws on the validity of an extended ownership of the State (see for example the 1948 Universal Declaration of Human Rights, the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms – and amendments –, the national implementing legislations).

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.

Guidelines:

Once the principle of the State's ownership of undiscovered cultural objects is clearly established, the effects of it once the objects are illicitly discovered must be clearly set forth. Illicitly discovered means either illicit excavation or retention. This provision considers such objects as stolen.

It should be recalled in this connection that art. 3(2) of the 1995 UNIDROIT Convention provides that "[f]or the purpose of this Convention a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen when consistent with the law of the State where the excavation took place".

Among the several possible definitions of what "illicit excavation or retention" of a cultural object can be, the definition given by art. 3(2) of the 1995 UNIDROIT Convention should be followed, since one of the purposes of the model provisions is to facilitate the enforcement by national courts of the Unidroit Convention. Model provision 4 (and 6 as well) follow that purpose, although they also have an autonomous existence.

This is an indirect reference to the 1995 UNIDROIT Convention which will assist States not yet Parties to it to have the legal basis in their own legislation to become Party and benefit in particular from article 3(2) ("when consistent with the law of the State where the excavation took place"), having a perfect harmony between the Convention and the national legislation. If the enacting State is not

UNESCO-UNIDROIT Model Provisions on State's Ownership of Undiscovered Cultural Objects 7.

Party to the 1995 Convention, the normal rules of private law will apply such as, for example, the fact that under certain legal systems title of a stolen object cannot be acquired.

The fact that this provision considers such objects as stolen has certain legal effects in domestic law (see Provision 5). This characterisation of theft triggers for example the application of the *National Stolen Property Act* in the United States of America.

The provision follows the wording of the 1995 Convention "are deemed to be stolen" and not "are stolen" to answer a problem which some States could have because as long as it is not in a possession of the object, such object cannot be stolen. A retention for the purposes of this provision would not then be a theft. This is why a broader formula has been chosen.

The licit or illicit nature of an excavation ("object excavated contrary to the law") will be determined by additional national legislation which very often already exists. For example, many national legislations require excavations to be authorised with an administrative process being followed.

The other effect concerns criminal law as the provision is dealing with theft. This criminal activity involves the setting into force of the criminal law procedures at national level, but also international co-operation in criminal law matters when international aspects are concerned (see Provision 6).

In case an object is lawfully excavated and lawfully exported on a temporary basis, but not returned after the expiry of the term, and thus illicitly retained, it should be deemed stolen.

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.

Guidelines:

Provision 5 is the private law complement of Provision 4. An undiscovered cultural object is a thing which may not be the object of private rights and remains such once it has been discovered. It can therefore not be validly acquired by a subsequent acquirer (by purchase, donation, succession, etc.).

A reservation should, however, be made if the transferor has a valid title, for example a State archeological museum that decides, validly according to its national law, to sell an item in its collection (for example by *deaccessioning*) or a private person who validly acquired the object prior to the entering into force of the model provision in the State concerned. If this is the case, the museum or the private person are the actual owners of the object and they may as such dispose of it.

The enacting State should be conscious of the limited scope of the provision: if the object is transferred abroad, the nullity of the transfer of ownership will be effective only if the foreign State has adopted Provision 5 or a similar rule.



8. UNESCO-UNIDROIT Model Provisions on State's Ownership of Undiscovered Cultural Objects

Provision 6 – International enforcement

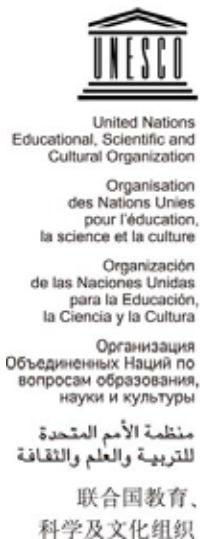
For the purposes of ensuring the return or the restitution to the enacting State of cultural objects excavated contrary to the law or illicitly excavated but illicitly retained, such objects shall be deemed stolen objects.

Guidelines:

Model provision 6 aims to facilitate the return or the restitution of a cultural object that has been exported after having been discovered and unlawfully removed. If the object is considered stolen, international judicial cooperation in criminal matters will generally enable its return to the country where it was discovered.

Also, from a private international law point of view, a foreign court having to deal with a claim for restitution, seeing that the country where the object was discovered considers it as stolen on the basis this provision, will have little difficulty in returning it on the basis of that state's law. This will even more so be the case if the States involved have ratified the 1995 Unidroit Convention (see its art. 3(1)).

It should also be noted that the model provisions cannot and do not intend to answer all questions linked to the legal status of excavations and discoveries of cultural objects. For example, the model provisions do not deal with the issue of "treasure trove", i.e. to what extent the discoverer should be rewarded for his or her discovery. If the national legislator deems it to be relevant, this will have to be dealt with separately in accordance with its legal system. The Provisions also do not purport to solve the vexed issue of the protection of the good faith acquirer and his or her duty of diligence. It should be recalled that UNESCO specifically asked UNIDROIT to deal with this fundamental issue and the 1995 UNIDROIT Convention provides an answer in Articles 3 and 4. In particular Article 4(4) indicates the criteria to determine due diligence at the time of acquisition of an object, which will be of great assistance to the potential buyer who will know in advance how to behave, but also to the judge called to decide in case of dispute. Such criteria have inspired several national legislations adopted since.

**ATTACHMENT 1**

CLT-2011/CONF.208/COM.17/5
Paris, 1st July 2011
Original: English

**INTERGOVERNMENTAL COMMITTEE
FOR PROMOTING THE RETURN OF CULTURAL PROPERTY
TO ITS COUNTRIES OF ORIGIN OR ITS RESTITUTION IN CASE OF
ILLICIT APPROPRIATION**

Seventeenth session

Paris, UNESCO Headquarters, 30 June – 1 July, 2011

Recommendation No. 4

The Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation

Recalling recommendation No. 3, adopted by its 16th session on the preparation of model provisions with explanatory notes by an independent Expert committee under the auspices of UNESCO and UNIDROIT Secretariats,

Welcoming the participation of UNIDROIT in this project given its expertise regarding the harmonisation of legal systems,

1. *Thanks* with appreciation this Expert committee for having elaborated and presented the project to the Committee at its 17th session,
2. *Takes note* of the finalization of model provisions and expresses its satisfaction with the obtained results,
3. *Invites* the Expert committee to incorporate in its explanatory guidelines the observations made by the Member States and Observers of both organizations which will be circulated by UNESCO and UNIDROIT Secretariats to the States,
4. *Requests* the Secretariat to widely disseminate these model provisions with explanatory notes and to make them available to Member States which could consider them for elaborating or reinforcing their national legislations,
5. *Requests* the Secretariat to present an assessment on the use of model provisions during its 19th session.



Annex III: Port Vila Declaration

Port Vila Declaration (UNESCO Workshop, Port Vila, Vanuatu, August 2015)

Preamble

Recognizing the Agreement establishing the Melanesian Spearhead Group (MSG) and the MSG Leaders' Summit decision in Auki, Solomon Islands, in July 1994, to respect, protect and safeguard Melanesian customs, cultures, traditions and values;

Recognizing the signed MSG Leaders' Framework Treaty of May 2013 on the Protection of Traditional Knowledge and Expressions of Culture; and

Recalling the decisions of MSG Ministers of Arts and Culture in Port Moresby, Papua New Guinea, in October 2013 on the implementation of the UNESCO conventions;

We, the participants in the Workshop on the Fight against the Illicit Trafficking of Cultural Property in Melanesia

organized by the Vanuatu Culture Centre (VCC) in collaboration with the United Nations Educational, Scientific and Cultural Organization (UNESCO), representatives of museums, cultural institutions, customs and police of five countries and territories in Melanesia (Fiji, New Caledonia/France, Papua New Guinea, Solomon Islands, and Vanuatu) together with participants from Australia and New Zealand, representatives

of UNESCO, the International Criminal Police Organization (INTERPOL), the Pacific Islands Museums Association (PIMA), the Oceania Customs Organisation Secretariat (OCOS), the Pacific Heritage Hub (PHH) of the University of the South Pacific (USP) and the Melanesia Spearhead Group (MSG) Secretariat met in Port Vila from 5 to 7 August 2015 and are committed to the following:

To constitute a network among museums, customs and police services for improved collaboration in the fight against the illicit trafficking in cultural property through exchange of information, expertise and best practices.

To advise our respective national authorities to adapt their legislation in accordance with international standards in order to better protect our cultural heritage objects against theft, looting, illicit import and export and to recover them if they have been illegally exported.

To organize national workshops aiming at improving collaboration between various stakeholders, based on the draft national action plans prepared during this workshop. These national workshops will address the following issues:

- Establish inventories, lists and photographs and other records of important cultural properties, based on the 'Object ID'.

- Develop capacity-building activities for museums, customs and police and biosecurity officers.
- Develop awareness among prosecutors and judicial officers about the significance of dealing appropriately with cultural property offences.
- Develop educational activities to promote respect for cultural heritage, especially among young people and children.
- Undertake awareness-raising campaigns among local communities who are the custodians of important cultural properties.
- Develop awareness-raising materials targeting visitors and temporary expatriate residents on the issues surrounding illicit trafficking of cultural property.
- Prepare regulations applicable to dealers in art and antiquities.
- Review the security of collections, museums and archaeological sites, whether they are terrestrial or underwater.

To lodge a copy of existing national legislation on the protection of movable cultural heritage to the UNESCO Secretariat for inclusion in the Database of National Cultural Heritage Laws.

To recommend our respective governments to join the relevant international conventions:

- Without delay the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

- The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.
- The 2001 UNESCO Convention on the Protection of Underwater Cultural Heritage.

To seek cooperation from UNESCO, INTERPOL, OCOS, PIMA, ICOM, ICOMOS and PHH/USP for the achievement of these commitments.

To call on our respective governments to report to the MSG Council of Arts and Culture and to the MSG Ministers of Culture and Arts on the implementation of the **Port Vila Declaration**.

Port Vila, Vanuatu, 7 August 2015



Annex IV: Text of the 1970 Convention and List of States Parties

Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property 1970¹

Paris, 14 November 1970

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 12 October to 14 November 1970, at its sixteenth session,

Recalling the importance of the provisions contained in the Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference at its fourteenth session,

Considering 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,

Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its

¹ This Convention entered into force on 24 April 1972. It subsequently entered into force for each State three months after the date of deposit of that State's instrument, except in cases of notifications of succession, where the entry into force occurred on the date on which the State assumed responsibility for conducting its international relations.

true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting,

Considering 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,

Considering 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,

Considering that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles,

Considering that the illicit import, export and transfer of ownership of cultural property is an obstacle to that understanding between nations which it is part of UNESCO's mission to promote by recommending to interested States, international conventions to this end,

Considering that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close co-operation,

Considering that the UNESCO General Conference adopted a Recommendation to this effect in 1964,

Having before it further proposals on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, a question which is on the agenda for the session as item 19,

Having decided, at its fifteenth session, that this question should be made the subject of an international convention,

Adopts this Convention on the fourteenth day of November 1970.

Article 1

For the purposes of this Convention, the term 'cultural property' means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artist and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;

(e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;

(f) objects of ethnological interest;

(g) property of artistic interest, such as:

(i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);

(ii) original works of statuary art and sculpture in any material;

(iii) original engravings, prints and lithographs;

(iv) original artistic assemblages and montages in any material;

(h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;

(i) postage, revenue and similar stamps, singly or in collections;

(j) archives, including sound, photographic and cinematographic archives;

(k) articles of furniture more than one hundred years old and old musical instruments.

Article 2

1. The States Parties to this Convention recognize that the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international



co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting there from.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

Article 3

The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.

Article 4

The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

- (a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;
- (b) cultural property found within the national territory;
- (c) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the

competent authorities of the country of origin of such property;

(d) cultural property which has been the subject of a freely agreed exchange;

(e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.

Article 5

To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

- (a) contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;
- (b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;
- (c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives,

laboratories, workshops...) required to ensure the preservation and presentation of cultural property;

(d) organizing the supervision of archaeological excavations, ensuring the preservation in situ of certain cultural property, and protecting certain areas reserved for future archaeological research;

(e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;

(f) taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;

(g) seeing that appropriate publicity is given to the disappearance of any items of cultural property.

Article 6

The States Parties to this Convention undertake:

(a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations ;

(b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;

(c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

Article 7

The States Parties to this Convention undertake:

(a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;

(b)(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 after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

(ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through

diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

Article 8

The States Parties to this Convention undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under Articles 6(b) and 7(b) above.

Article 9

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State.

Article 10

The States Parties to this Convention undertake:

(a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, 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;

(b) to endeavour by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.

Article 11

The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit.

Article 12

The States Parties to this Convention shall respect the cultural heritage within the territories for the international relations of which they are responsible, and shall take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories.

Article 13

The States Parties to this Convention also undertake, consistent with the laws of each State:

- (a) to prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;
- (b) to ensure that their competent services co-operate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;
- (c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners ;
- (d) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

Article 14

In order to prevent illicit export and to meet the obligations arising from the implementation of this Convention, each State Party to the Convention should, as far as it is able, provide the national services responsible for the protection of its cultural heritage with an adequate budget and, if necessary, should set up a fund for this purpose.

Article 15

Nothing in this Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned.

Article 16

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with details of the experience acquired in this field.

Article 17

1. The States Parties to this Convention may call on the technical assistance of the United Nations Educational, Scientific and Cultural Organization, particularly as regards:

- (a) Information and education;
- (b) consultation and expert advice;
- (c) co-ordination and good offices.



2. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative conduct research and publish studies on matters relevant to the illicit movement of cultural property.

3. To this end, the United Nations Educational, Scientific and Cultural Organization may also call on the co-operation of any competent non-governmental organization.

4. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative, make proposals to States Parties to this Convention for its implementation.

5. At the request of at least two States Parties to this Convention which are engaged in a dispute over its implementation, UNESCO may extend its good offices to reach a settlement between them.

Article 18

This Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

Article 19

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 20

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited to accede to it by the Executive Board of the Organization.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 21

This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

Article 22

The States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territories but also to all territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to securing the application of the Convention to those territories, and to notify the Director-General of the United

Nations Educational, Scientific and Cultural Organization of the territories to which it is applied, the notification to take effect three months after the date of its receipt.

Article 23

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

Article 24

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 20, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in Articles 19 and 20, and of the notifications and denunciations provided for in Articles 22 and 23 respectively.

Article 25

1. This Convention may be revised by the General Conference of the United

Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

Article 26

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Done in Paris this seventeenth day of November 1970, in two authentic copies bearing the signature of the President of the sixteenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 19 and 20 as well as to the United Nations.



List of States Parties

| STATES | DATE OF DEPOSIT OF INSTRUMENT | TYPE OF INSTRUMENT |
|----------------------------------|-------------------------------|----------------------------|
| Afghanistan | 08/09/2005 | Acceptance |
| Albania | 13/06/2002 | Acceptance |
| Algeria | 24/06/1974 | Ratification |
| Angola | 07/11/1991 | Ratification |
| Argentina | 11/01/1973 | Ratification |
| Armenia | 05/09/1993 | Notification of succession |
| Australia | 30/10/1989 | Acceptance |
| Austria | 15/07/2015 | Ratification |
| Azerbaijan | 25/08/1999 | Ratification |
| Bahamas | 09/10/1997 | Ratification |
| Bahrain | 07/03/2014 | Ratification |
| Bangladesh | 09/12/1987 | Ratification |
| Barbados | 10/04/2002 | Acceptance |
| Belarus | 28/04/1988 | Ratification |
| Belgium | 31/03/2009 | Ratification |
| Belize | 26/01/1990 | Ratification |
| Bhutan | 26/09/2002 | Ratification |
| Bolivia (Plurinational State of) | 04/10/1976 | Ratification |
| Bosnia and Herzegovina | 12/07/1993 | Notification of succession |
| Brazil | 16/02/1973 | Ratification |
| Bulgaria | 15/09/1971 | Ratification |
| Burkina Faso | 07/04/1987 | Ratification |
| Cambodia | 26/09/1972 | Ratification |
| Cameroon | 24/05/1972 | Ratification |
| Canada | 28/03/1978 | Acceptance |
| Central African Republic | 01/02/1972 | Ratification |
| Chad | 17/06/2008 | Ratification |
| Chile | 18/04/2014 | Ratification |
| China | 28/11/1989 | Acceptance |
| Colombia | 24/05/1988 | Acceptance |
| Costa Rica | 06/03/1996 | Ratification |
| Côte d'Ivoire | 30/10/1990 | Ratification |
| Croatia | 06/07/1992 | Notification of succession |
| Cuba | 30/01/1980 | Ratification |
| Cyprus | 19/10/1979 | Ratification |
| Czech Republic | 26/03/1993 | Notification of succession |

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|---------------------------------------|------------|----------------------------|
| Democratic People's Republic of Korea | 13/05/1983 | Ratification |
| Democratic Republic of the Congo | 23/09/1974 | Ratification |
| Denmark | 26/03/2003 | Ratification |
| Dominican Republic | 07/03/1973 | Ratification |
| Ecuador | 24/03/1971 | Acceptance |
| Egypt | 05/04/1973 | Acceptance |
| El Salvador | 20/02/1978 | Ratification |
| Equatorial Guinea | 17/06/2010 | Ratification |
| Estonia | 27/10/1995 | Ratification |
| Finland | 14/06/1999 | Ratification |
| France | 07/01/1997 | Ratification |
| Gabon | 29/08/2003 | Acceptance |
| Georgia | 04/11/1992 | Notification of succession |
| Germany | 30/11/2007 | Ratification |
| Greece | 05/06/1981 | Ratification |
| Grenada | 10/09/1992 | Acceptance |
| Guatemala | 14/01/1985 | Ratification |
| Guinea | 18/03/1979 | Ratification |
| Haiti | 08/02/2010 | Ratification |
| Honduras | 19/03/1979 | Ratification |
| Hungary | 23/10/1978 | Ratification |
| Iceland | 09/11/2004 | Ratification |
| India | 24/01/1977 | Ratification |
| Iran (Islamic Republic of) | 27/01/1975 | Acceptance |
| Iraq | 12/02/1973 | Acceptance |
| Italy | 02/10/1978 | Ratification |
| Japan | 09/09/2002 | Acceptance |
| Jordan | 15/03/1974 | Ratification |
| Kazakhstan | 09/02/2012 | Ratification |
| Kuwait | 22/06/1972 | Acceptance |
| Kyrgyzstan | 03/07/1995 | Acceptance |
| Lebanon | 25/08/1992 | Ratification |
| Lesotho | 17/07/2013 | Ratification |
| Libya | 09/01/1973 | Ratification |
| Lithuania | 27/07/1998 | Ratification |
| Luxembourg | 03/02/2015 | Ratification |
| Madagascar | 21/06/1989 | Ratification |
| Mali | 06/04/1987 | Ratification |
| Mauritania | 27/04/1977 | Ratification |
| Mauritius | 27/02/1978 | Acceptance |
| Mexico | 04/10/1972 | Acceptance |



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|---|------------|----------------------------|
| Mongolia | 23/05/1991 | Acceptance |
| Montenegro | 26/04/2007 | Notification of succession |
| Morocco | 03/02/2003 | Ratification |
| Myanmar | 05/09/2013 | Ratification |
| Nepal | 23/06/1976 | Ratification |
| Netherlands | 17/07/2009 | Acceptance |
| New Zealand | 01/02/2007 | Acceptance |
| Nicaragua | 19/04/1977 | Ratification |
| Niger | 16/10/1972 | Ratification |
| Nigeria | 24/01/1972 | Ratification |
| Norway | 16/02/2007 | Ratification |
| Oman | 02/06/1978 | Acceptance |
| Pakistan | 30/04/1981 | Ratification |
| Palestine | 22/03/2012 | Ratification |
| Panama | 13/08/1973 | Acceptance |
| Paraguay | 09/11/2004 | Ratification |
| Peru | 24/10/1979 | Acceptance |
| Poland | 31/01/1974 | Ratification |
| Portugal | 09/12/1985 | Ratification |
| Qatar | 20/04/1977 | Acceptance |
| Republic of Korea | 14/02/1983 | Acceptance |
| Republic of Moldova | 14/09/2007 | Ratification |
| Romania | 06/12/1993 | Acceptance |
| Russian Federation | 28/04/1988 | Ratification |
| Rwanda | 25/09/2001 | Ratification |
| Saudi Arabia | 08/09/1976 | Acceptance |
| Senegal | 09/12/1984 | Ratification |
| Serbia | 11/09/2001 | Notification of succession |
| Seychelles | 28/05/2004 | Ratification |
| Slovakia | 31/03/1993 | Notification of succession |
| Slovenia | 05/11/1992 | Notification of succession |
| South Africa | 18/12/2003 | Acceptance |
| Spain | 10/01/1986 | Ratification |
| Sri Lanka | 07/04/1981 | Acceptance |
| Swaziland | 30/10/2012 | Acceptance |
| Sweden | 13/01/2003 | Ratification |
| Switzerland | 03/10/2003 | Acceptance |
| Syrian Arab Republic | 21/02/1975 | Acceptance |
| Tajikistan | 28/08/1992 | Ratification |
| The former Yugoslav Republic of Macedonia | 30/04/1997 | Notification of succession |

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| Tunisia | 10/03/1975 | Acceptance |
| Turkey | 21/04/1981 | Ratification |
| Ukraine | 28/04/1988 | Ratification |
| United Kingdom of Great Britain and Northern Ireland | 01/08/2002 | Acceptance |
| United Republic of Tanzania | 02/08/1977 | Ratification |
| United States of America | 02/09/1983 | Acceptance |
| Uruguay | 09/08/1977 | Ratification |
| Uzbekistan | 15/03/1996 | Ratification |
| Venezuela (Bolivarian Republic of) | 21/03/2005 | Acceptance |
| Viet Nam | 20/09/2005 | Ratification |
| Zambia | 21/06/1985 | Ratification |
| Zimbabwe | 30/05/2006 | Acceptance |



Annex V: Text of the 1995 UNIDROIT Convention and List of States Parties



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS

(Rome, 24 June 1995)

THE STATES PARTIES TO THIS CONVENTION,

ASSEMBLED in Rome at the invitation of the Government of the Italian Republic from 7 to 24 June 1995 for a Diplomatic Conference for the adoption of the draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects,

CONVINCED of the fundamental importance of the protection of cultural heritage and of cultural exchanges for promoting understanding between peoples, and the dissemination of culture for the well-being of humanity and the progress of civilisation,

DEEPLY CONCERNED by the illicit trade in cultural objects and the irreparable damage frequently caused by it, both to these objects themselves and to the cultural heritage of national, tribal, indigenous or other communities, and also to the heritage of all peoples, and in particular by the pillage of archaeological sites and the resulting loss of irreplaceable archaeological, historical and scientific information,

DETERMINED to contribute effectively to the fight against illicit trade in cultural objects by taking the important step of establishing common, minimal legal rules for the restitution and return of cultural objects between Contracting States, with the objective of improving the preservation and protection of the cultural heritage in the interest of all,

EMPHASISING that this Convention is intended to facilitate the restitution and return of cultural objects, and that the provision of any remedies, such as compensation, needed to effect restitution and return in some States, does not imply that such remedies should be adopted in other States,

AFFIRMING that the adoption of the provisions of this Convention for the future in no way confers any approval or legitimacy upon illegal transactions of whatever kind which may have taken place before the entry into force of the Convention,

CONSCIOUS that this Convention will not by itself provide a solution to the problems raised by illicit trade, but that it initiates a process that will enhance international cultural co-operation and maintain a proper role for legal trading and inter-State agreements for cultural exchanges,

ACKNOWLEDGING that implementation of this Convention should be accompanied by other effective measures for protecting cultural objects, such as the development and use of registers, the physical protection of archaeological sites and technical co-operation,

RECOGNISING the work of various bodies to protect cultural property, particularly the 1970 UNESCO Convention on illicit traffic and the development of codes of conduct in the private sector,

HAVE AGREED as follows:

2.

CHAPTER I - SCOPE OF APPLICATION AND DEFINITION

Article 1

This Convention applies to claims of an international character for:

- (a) the restitution of stolen cultural objects;
- (b) the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects for the purpose of protecting its cultural heritage (hereinafter "illegally exported cultural objects").

Article 2

For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.

CHAPTER II - RESTITUTION OF STOLEN CULTURAL OBJECTS

Article 3

(1) The possessor of a cultural object which has been stolen shall return it.

(2) For the purposes of this Convention, a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place.

(3) Any claim for restitution shall be brought within a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft.

(4) However, a claim for restitution of a cultural object forming an integral part of an identified monument or archaeological site, or belonging to a public collection, shall not be subject to time limitations other than a period of three years from the time when the claimant knew the location of the cultural object and the identity of its possessor.

(5) Notwithstanding the provisions of the preceding paragraph, any Contracting State may declare that a claim is subject to a time limitation of 75 years or such longer period as is provided in its law. A claim made in another Contracting State for restitution of a cultural object displaced from a monument, archaeological site or public collection in a Contracting State making such a declaration shall also be subject to that time limitation.



(6) A declaration referred to in the preceding paragraph shall be made at the time of signature, ratification, acceptance, approval or accession.

(7) For the purposes of this Convention, a "public collection" consists of a group of inventoried or otherwise identified cultural objects owned by:

- (a) a Contracting State
- (b) a regional or local authority of a Contracting State;
- (c) a religious institution in a Contracting State; or
- (d) an institution that is established for an essentially cultural, educational or scientific purpose in a Contracting State and is recognised in that State as serving the public interest.

(8) In addition, a claim for restitution of a sacred or communally important cultural object belonging to and used by a tribal or indigenous community in a Contracting State as part of that community's traditional or ritual use, shall be subject to the time limitation applicable to public collections.

Article 4

(1) The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object.

(2) Without prejudice to the right of the possessor to compensation referred to in the preceding paragraph, reasonable efforts shall be made to have the person who transferred the cultural object to the possessor, or any prior transferor, pay the compensation where to do so would be consistent with the law of the State in which the claim is brought.

(3) Payment of compensation to the possessor by the claimant, when this is required, shall be without prejudice to the right of the claimant to recover it from any other person.

(4) In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.

(5) The possessor shall not be in a more favourable position than the person from whom it acquired the cultural object by inheritance or otherwise gratuitously.

4.

CHAPTER III - RETURN OF ILLEGALLY EXPORTED CULTURAL OBJECTS

Article 5

(1) A Contracting State may request the court or other competent authority of another Contracting State to order the return of a cultural object illegally exported from the territory of the requesting State.

(2) A cultural object which has been temporarily exported from the territory of the requesting State, for purposes such as exhibition, research or restoration, under a permit issued according to its law regulating its export for the purpose of protecting its cultural heritage and not returned in accordance with the terms of that permit shall be deemed to have been illegally exported.

(3) The court or other competent authority of the State addressed shall order the return of an illegally exported cultural object if the requesting State establishes that the removal of the object from its territory significantly impairs one or more of the following interests:

- (a) the physical preservation of the object or of its context;
- (b) the integrity of a complex object;
- (c) the preservation of information of, for example, a scientific or historical character;
- (d) the traditional or ritual use of the object by a tribal or indigenous community,

or establishes that the object is of significant cultural importance for the requesting State.

(4) Any request made under paragraph 1 of this article shall contain or be accompanied by such information of a factual or legal nature as may assist the court or other competent authority of the State addressed in determining whether the requirements of paragraphs 1 to 3 have been met.

(5) Any request for return shall be brought within a period of three years from the time when the requesting State knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the date of the export or from the date on which the object should have been returned under a permit referred to in paragraph 2 of this article.

Article 6

(1) The possessor of a cultural object who acquired the object after it was illegally exported shall be entitled, at the time of its return, to payment by the requesting State of fair and reasonable compensation, provided that the possessor neither knew nor ought reasonably to have known at the time of acquisition that the object had been illegally exported.

(2) In determining whether the possessor knew or ought reasonably to have known that the cultural object had been illegally exported, regard shall be had to the circumstances of the acquisition, including the absence of an export certificate required under the law of the requesting State.



(3) Instead of compensation, and in agreement with the requesting State, the possessor required to return the cultural object to that State, may decide:

- (a) to retain ownership of the object; or
- (b) to transfer ownership against payment or gratuitously to a person of its choice residing in the requesting State who provides the necessary guarantees.

(4) The cost of returning the cultural object in accordance with this article shall be borne by the requesting State, without prejudice to the right of that State to recover costs from any other person.

(5) The possessor shall not be in a more favourable position than the person from whom it acquired the cultural object by inheritance or otherwise gratuitously.

Article 7

(1) The provisions of this Chapter shall not apply where:

- (a) the export of a cultural object is no longer illegal at the time at which the return is requested; or
- (b) the object was exported during the lifetime of the person who created it or within a period of fifty years following the death of that person.

(2) Notwithstanding the provisions of sub-paragraph (b) of the preceding paragraph, the provisions of this Chapter shall apply where a cultural object was made by a member or members of a tribal or indigenous community for traditional or ritual use by that community and the object will be returned to that community.

CHAPTER IV - GENERAL PROVISIONS

Article 8

(1) A claim under Chapter II and a request under Chapter III may be brought before the courts or other competent authorities of the Contracting State where the cultural object is located, in addition to the courts or other competent authorities otherwise having jurisdiction under the rules in force in Contracting States.

(2) The parties may agree to submit the dispute to any court or other competent authority or to arbitration.

(3) Resort may be had to the provisional, including protective, measures available under the law of the Contracting State where the object is located even when the claim for restitution or request for return of the object is brought before the courts or other competent authorities of another Contracting State.

6.

Article 9

(1) Nothing in this Convention shall prevent a Contracting State from applying any rules more favourable to the restitution or the return of stolen or illegally exported cultural objects than provided for by this Convention.

(2) This article shall not be interpreted as creating an obligation to recognise or enforce a decision of a court or other competent authority of another Contracting State that departs from the provisions of this Convention.

Article 10

(1) The provisions of Chapter II shall apply only in respect of a cultural object that is stolen after this Convention enters into force in respect of the State where the claim is brought, provided that:

- (a) the object was stolen from the territory of a Contracting State after the entry into force of this Convention for that State; or
- (b) the object is located in a Contracting State after the entry into force of the Convention for that State.

(2) The provisions of Chapter III shall apply only in respect of a cultural object that is illegally exported after this Convention enters into force for the requesting State as well as the State where the request is brought.

(3) This Convention does not in any way legitimise any illegal transaction of whatever nature which has taken place before the entry into force of this Convention or which is excluded under paragraphs (1) or (2) of this article, nor limit any right of a State or other person to make a claim under remedies available outside the framework of this Convention for the restitution or return of a cultural object stolen or illegally exported before the entry into force of this Convention.

CHAPTER V - FINAL PROVISIONS

Article 11

(1) This Convention is open for signature at the concluding meeting of the Diplomatic Conference for the adoption of the draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects and will remain open for signature by all States at Rome until 30 June 1996.

(2) This Convention is subject to ratification, acceptance or approval by States which have signed it.

(3) This Convention is open for accession by all States which are not signatory States as from the date it is open for signature.

(4) Ratification, acceptance, approval or accession is subject to the deposit of a formal instrument to that effect with the depositary.



Article 12

(1) This Convention shall enter into force on the first day of the sixth month following the date of deposit of the fifth instrument of ratification, acceptance, approval or accession.

(2) For each State that ratifies, accepts, approves or accedes to this Convention after the deposit of the fifth instrument of ratification, acceptance, approval or accession, this Convention shall enter into force in respect of that State on the first day of the sixth month following the date of deposit of its instrument of ratification, acceptance, approval or accession.

Article 13

(1) This Convention does not affect any international instrument by which any Contracting State is legally bound and which contains provisions on matters governed by this Convention, unless a contrary declaration is made by the States bound by such instrument.

(2) Any Contracting State may enter into agreements with one or more Contracting States, with a view to improving the application of this Convention in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary.

(3) In their relations with each other, Contracting States which are Members of organisations of economic integration or regional bodies may declare that they will apply the internal rules of these organisations or bodies and will not therefore apply as between these States the provisions of this Convention the scope of application of which coincides with that of those rules.

Article 14

(1) If a Contracting State has two or more territorial units, whether or not possessing different systems of law applicable in relation to the matters dealt with in this Convention, it may, at the time of signature or of the deposit of its instrument of ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may substitute for its declaration another declaration at any time.

(2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.

(3) If, by virtue of a declaration under this article, this Convention extends to one or more but not all of the territorial units of a Contracting State, the reference to:

- (a) the territory of a Contracting State in Article 1 shall be construed as referring to the territory of a territorial unit of that State;
- (b) a court or other competent authority of the Contracting State or of the State addressed shall be construed as referring to the court or other competent authority of a territorial unit of that State;
- (c) the Contracting State where the cultural object is located in Article 8 (1) shall be construed as referring to the territorial unit of that State where the object is located;

8.

- (d) the law of the Contracting State where the object is located in Article 8 (3) shall be construed as referring to the law of the territorial unit of that State where the object is located; and
- (e) a Contracting State in Article 9 shall be construed as referring to a territorial unit of that State.

(4) If a Contracting State makes no declaration under paragraph 1 of this article, this Convention is to extend to all territorial units of that State.

Article 15

(1) Declarations made under this Convention at the time of signature are subject to confirmation upon ratification, acceptance or approval.

(2) Declarations and confirmations of declarations are to be in writing and to be formally notified to the depositary.

(3) A declaration shall take effect simultaneously with the entry into force of this Convention in respect of the State concerned. However, a declaration of which the depositary receives formal notification after such entry into force shall take effect on the first day of the sixth month following the date of its deposit with the depositary.

(4) Any State which makes a declaration under this Convention may withdraw it at any time by a formal notification in writing addressed to the depositary. Such withdrawal shall take effect on the first day of the sixth month following the date of the deposit of the notification.

Article 16

(1) Each Contracting State shall at the time of signature, ratification, acceptance, approval or accession, declare that claims for the restitution, or requests for the return, of cultural objects brought by a State under Article 8 may be submitted to it under one or more of the following procedures:

- (a) directly to the courts or other competent authorities of the declaring State;
- (b) through an authority or authorities designated by that State to receive such claims or requests and to forward them to the courts or other competent authorities of that State;
- (c) through diplomatic or consular channels.

(2) Each Contracting State may also designate the courts or other authorities competent to order the restitution or return of cultural objects under the provisions of Chapters II and III.

(3) Declarations made under paragraphs 1 and 2 of this article may be modified at any time by a new declaration.

(4) The provisions of paragraphs 1 to 3 of this article do not affect bilateral or multilateral agreements on judicial assistance in respect of civil and commercial matters that may exist between Contracting States.



Article 17

Each Contracting State shall, no later than six months following the date of deposit of its instrument of ratification, acceptance, approval or accession, provide the depositary with written information in one of the official languages of the Convention concerning the legislation regulating the export of its cultural objects. This information shall be updated from time to time as appropriate.

Article 18

No reservations are permitted except those expressly authorised in this Convention.

Article 19

(1) This Convention may be denounced by any State Party, at any time after the date on which it enters into force for that State, by the deposit of an instrument to that effect with the depositary.

(2) A denunciation shall take effect on the first day of the sixth month following the deposit of the instrument of denunciation with the depositary. Where a longer period for the denunciation to take effect is specified in the instrument of denunciation it shall take effect upon the expiration of such longer period after its deposit with the depositary.

(3) Notwithstanding such a denunciation, this Convention shall nevertheless apply to a claim for restitution or a request for return of a cultural object submitted prior to the date on which the denunciation takes effect.

Article 20

The President of the International Institute for the Unification of Private Law (UNIDROIT) may at regular intervals, or at any time at the request of five Contracting States, convene a special committee in order to review the practical operation of this Convention.

Article 21

- (1) This Convention shall be deposited with the Government of the Italian Republic.
- (2) The Government of the Italian Republic shall:
 - (a) inform all States which have signed or acceded to this Convention and the President of the International Institute for the Unification of Private Law (UNIDROIT) of:
 - (i) each new signature or deposit of an instrument of ratification, acceptance, approval or accession, together with the date thereof;
 - (ii) each declaration made in accordance with this Convention;

10.

- (iii) the withdrawal of any declaration;
 - (iv) the date of entry into force of this Convention;
 - (v) the agreements referred to in Article 13;
 - (vi) the deposit of an instrument of denunciation of this Convention together with the date of its deposit and the date on which it takes effect;
- (b) transmit certified true copies of this Convention to all signatory States, to all States acceding to the Convention and to the President of the International Institute for the Unification of Private Law (UNIDROIT);
- (c) perform such other functions customary for depositaries.

IN WITNESS WHEREOF the undersigned plenipotentiaries, being duly authorised, have signed this Convention.

DONE at Rome, this twenty-fourth day of June, one thousand nine hundred and ninety-five, in a single original, in the English and French languages, both texts being equally authentic.



a n n e x

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs;
 - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

List of States Parties

| STATE | SIGNATURE | RATIFICATION/ACCESSION | |
|------------------|------------|------------------------|------------|
| Afghanistan | - | AS | 23.09.2005 |
| Algeria | - | AS | 09.04.2015 |
| Angola | - | AS | 19.06.2014 |
| Argentina | - | AS | 03.08.2001 |
| Azerbaijan | - | AS | 06.06.2003 |
| Bolivia | 29.06.1996 | RT | 13.04.1999 |
| Brazil | - | AS | 23.03.1999 |
| Burkina Faso | 24.06.1995 | RT | - |
| Cambodia | 24.06.1995 | RT | 11.07.2002 |
| China | - | AS | 07.05.1997 |
| Colombia | - | AS | 14.06.2012 |
| Côte d'Ivoire | 24.06.1995 | RT | - |
| Croatia | 24.06.1995 | RT | 20.09.2000 |
| Cyprus | - | AS | 02.03.2004 |
| Denmark | - | AS | 01.01.2011 |
| Ecuador | - | AS | 26.11.1997 |
| El Salvador | - | AS | 16.07.1999 |
| Finland | 01.12.1995 | RT | 14.06.1999 |
| France | 24.06.1995 | RT | - |
| FYR of Macedonia | - | AS | 22.08.2013 |
| Gabon | - | AS | 12.05.2004 |
| Georgia | 27.06.1995 | RT | - |
| Greece | - | AS | 19.07.2007 |
| Guinea | 24.06.1995 | RT | - |
| Guatemala | - | AS | 03.09.2003 |
| Honduras | - | AS | 27.08.2013 |
| Hungary | 24.06.1995 | RT | 08.05.1998 |
| Iran | - | AS | 22.06.2005 |
| Italy | 24.06.1995 | RT | 11.10.1999 |
| Lithuania | 24.06.1995 | RT | 04.04.1997 |
| Netherlands | 28.06.1996 | RT | - |
| New Zealand | - | AS | 16.11.2006 |
| Nigeria | - | AS | 10.12.2005 |
| Norway | - | AS | 28.08.2001 |
| Pakistan | 27.06.1996 | RT | - |
| Panama | - | AS | 26.06.2009 |
| Paraguay | 13.06.1996 | RT | 27.05.1997 |



| | | | |
|--------------------|------------|----|------------|
| Peru | 28.06.1996 | RT | 05.03.1998 |
| Portugal | 23.04.1996 | RT | 19.07.2002 |
| Romania | 27.06.1996 | RT | 21.01.1998 |
| Russian Federation | 29.06.1996 | RT | - |
| Senegal | 29.06.1996 | RT | - |
| Slovakia | - | AS | 16.06.2003 |
| Slovenia | - | AS | 08.04.2004 |
| Spain | - | AS | 21.05.2002 |
| Sweden | - | AS | 28.06.2011 |
| Switzerland | 26.06.1996 | RT | - |
| Zambia | 24.06.1995 | RT | - |

** Based on information available to the UNIDROIT Secretariat. For further information please contact the Italian Government.*

Annex VI: List of Participants

| COUNTRY | NAME | TITLE | EMAIL |
|-----------------|-----------------------|--|----------------------------------|
| Fiji | Adi Mere Ratunabuabua | Acting Director Fiji Museum | mereculture@hotmail.com |
| | Jale Samuwai | Fiji Revenue and Customs Authority | jsamuwai@frca.org.fj |
| PNG | Gunubiang Gunu Gao | Port Manager for Wewak PNG Customs | gaog@customs.gov.pg |
| Solomon Islands | Rita Pama Sahu | Senior Ethnologist Solomon Islands National Museum | saripa@gmail.com |
| | Fiona Fa'aronda | Senior Team Leader – Boarder Operations & Enforcement Solomon Islands Customs and Exercise Division | FFa'arondo@customs.gov.sb |
| Vanuatu | Marcelin Abong | Director Vanuatu Culturale Centre | Lisamconsultingservice@gmail.com |
| New Caledonia | Regis Vendegou | Direction de la culture, de la condition féminine et de la citoyenneté (DCCFC) | regis.vendegou@gouv.nc |
| Australia | Duncan Chapell | National Cultural Heritage Committee | Duncan.chappell@sydney.edu.au |
| New Zealand | Arapata Hakawai | Museum of New Zealand Te Papa Tongarewa | ArapataH@tepapa.govt.nz |
| | David Butts | Museum of New Zealand Te Papa Tongarewa | David.Butts@tepapa.govt.nz |



| REGIONAL AGENCIES AND NGOS | NAME | TITLE | EMAIL |
|---|----------------------|--------------------------------------|----------------------------------|
| Melanesia Spearhead Group (MSG) Secretariat | P. Sikivou | Director Programmes Division | p.sikivou@msg.int |
| | Stanley Wapot | Programmes Division | sj.wapot@msg.int |
| Oceania Customs Organisation Secretariat (OCOS) | Clement Taipala | Law Enforcement and Security Advisor | ClementT@ocosec.org |
| Pacific Heritage Hub (PHH),/ University of the South Pacific (USP) | Temalesi Waqainabete | Capacity building officer | Temalesi.a.waqainabete@usp.ac.fj |
| Pacific Islands Museums Association (PIMA) | Marcelin Abong | Director Vanuatu Culturale Centre | Lisamconsultingservice@gmail.com |

| INTERNATIONAL AGENCY | NAME | TITLE | EMAIL |
|-------------------------------|----------------------|-------------------------------|-------------------|
| INTERPOLE Lyon, France | Francoise Bartolotti | Criminal Intelligence Officer | p.sikivou@msg.int |

| RESOURCE PERSONS | NAME | TITLE | EMAIL |
|-------------------|--------------|--|---------------------|
| Consultant | Lyndel Prott | International Expert Brisbane, Australia | lvprott@bigpond.com |

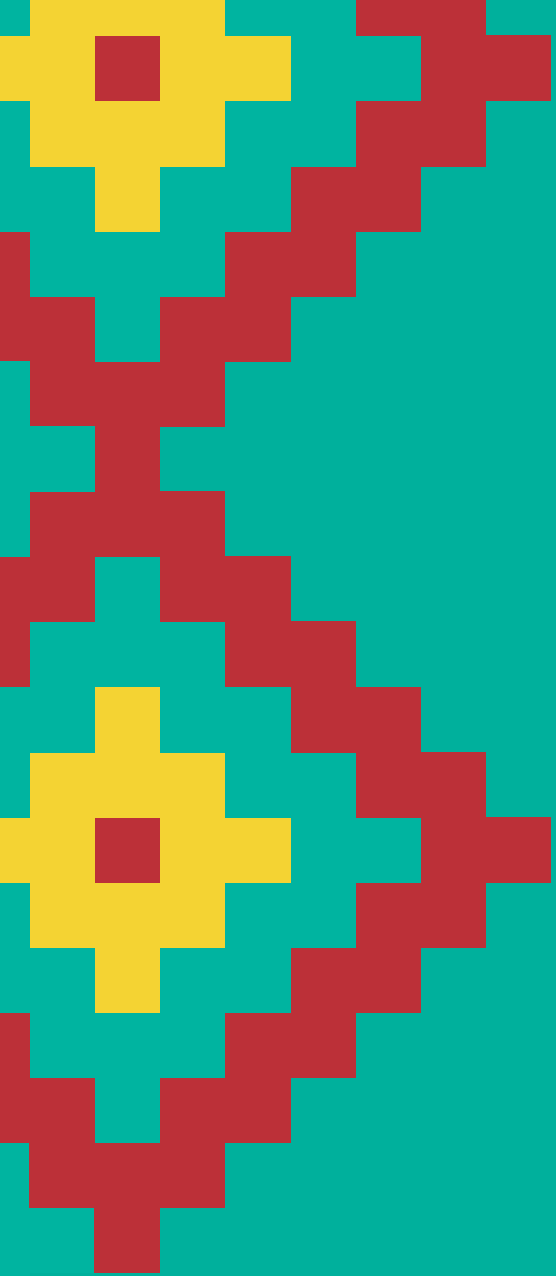
| WORKSHOP SECRETARIAT | NAME | TITLE | EMAIL |
|--------------------------------------|-------------------|-----------------|---------------------|
| Vanuatu Cultural Centre (VCC) | Brigitte Laboukly | Manager | laboukly@gmail.com |
| | Richard Shinji | Culture Officer | rijashna@gmail.com |
| | Jenny Toa | Finance Officer | jenny.toa@gmail.com |

| | NAME | TITLE | EMAIL |
|---|--------------------|----------------------------------|------------------------|
| UNESCO Office for the Pacific States | Etienne Clement | Director | e.clement@unesco.org |
| | Akatsuki Takahashi | Programme Specialist for Culture | a.takahashi@unesco.org |

Annex VII: Programme

| TIME | DAY 1 WEDNESDAY 5 AUGUST 2015 | DAY 2 THURSDAY 6 AUGUST 2015 |
|----------------|--|---|
| 8:30 | Registration | Recap |
| 9:00 10:00 | Opening Session Opening prayer Opening remarks – Vanuatu Opening remarks – UNESCO | Session 4: Keynote speech on legal issues, conventions and national laws Lyndel Prott Q and A |
| 10:00 10:30 | Group photo Morning tea | Morning tea Demonstration of Vanuatu Sand Drawing on ICH Representative List |
| 10:30 11:30 | Session 1: Introduction of the topic UNESCO Etienne Clement | Session 5: Law enforcement (police and customs) Oceania Customs Organisation Secretariat INTERPOL Q and A |
| 11:30 12:30 | Session 2: Country reports Vanuatu Solomon Island PNG Q and A | Session 6: Capacity building, education and awareness raising PHH/USP Q and A |
| 12:30 13:30 | Lunch | Lunch |
| 13:30 14:30 | New Caledonia Fiji Australia New Zealand Q and A | Session 7: Security of collections, museums and sites Pacific Island Museum Association Q and A |
| 14:30 15:00 | Afternoon tea | Afternoon tea |
| 15:00 17:00 | Session 3: Presentations by regional organizations Pacific Island Museum Association Melanesia Spearhead Group Secretariat Q and A | Session 8: Preparing national action plans (by country groups) |
| Evening | Launching of the ICHCAP/ UNESCO publication: Traditional Knowledge: Wisdom in the Pacific | Meeting of the drafting group: Preparation of the Melanesian Action Plan Drafting Group |

| TIME | DAY 3 FRIDAY 7 AUGUST 2015 | DAY 4 SATURDAY 8 AUGUST 2015 |
|----------------|--|--|
| 8:30 | | |
| 9:00 10:00 | Session 9: Presentation of national action plans | Field visit to Chief Roi Mata Domain (Optional) |
| 10:00 10:30 | Morning tea | |
| 10:30 11:30 | Session 10: Presentation and discussion of the Melanesian Action Plan | |
| 11:30 12:30 | Closing Session | |
| 12:30 13:30 | Lunch | |
| 13:30 14:30 | Field visit | |



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