

PROTECTION OF ARCHAEOLOGICAL OBJECTS
UNDER THE 1970 UNESCO CONVENTION

Background paper by
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for participants in the

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It has been suggested that items of archaeological significance have not been adequately protected by the provisions of the 1970 Convention. I believe that this is not the case. It is true that some States have implemented the Convention in modes that have reduced the protection of such objects, but this is due to the way that some States have interpreted the Convention. As we will see below, other States have directly returned archaeological objects to their States of origin at a simple request, without requiring special prior agreements generated under Article 9 of the Convention.

Article 1(c) clearly defines "cultural property" covered by the Convention to include "products of archaeological excavations (including regular and clandestine) or of archaeological discoveries" and Article 1(d) includes "elements of artistic or historical monuments or archaeological sites which have been dismembered". There is, therefore, no question that the Convention operates to protect objects of archaeological significance.

Article 3 clearly provides 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".

A number of States Parties have applied those provisions to return clandestinely excavated objects to the State of origin which so requests. For example, Australia has returned three container loads of dinosaur fossils to China in accordance with its implementing legislation, *The Protection of Movable Cultural Heritage Act 1986* (as amended) without requiring the objects to have been inventoried or covered by a separate bilateral agreement.

Some other States have regarded Articles 7 and 9 as the only sections mandating return and have required items requested to have been inventoried (for return under Article 7) or to have a bilateral agreement in place between the claiming State and the holding State (for return under Article 9). States which have taken this approach include the United States, Switzerland and Japan. Nonetheless objects of archaeological significance have been returned by these States, some of which have an agreement in place, others seized for false declarations to the Customs Service or proof of theft. Examples from the United States include important pieces such as the Chinese marble wall image from the tomb of Wang Chuzhi (returned in 2001) and a series of Egyptian antiquities stolen between October 2008 and November 2009 including a Greco-Roman style Egyptian sarcophagus, a three-part nesting coffin set, a set of Egyptian funerary boats and Egyptian limestone figures (returned 2001).

While it may be desirable to have agreed interpretation and similar forms of implementation of the 1970 convention, the responsibility to see that it is properly interpreted and implemented is largely the responsibility of other States Parties to the Convention. While the Legal Adviser of UNESCO sought clarification of some of the declarations and reservations made to the Convention by the United States at the time of its ratification in 1983, Mexico was the only State to challenge the validity of that form of implementation. The lack of reaction from other States was noted and that form of implementation requiring bilateral agreements for items not inventoried – largely archaeological objects – led other States such as Japan and Switzerland to use that same method. However it should be observed that those three States have also provided for substantial assistance in protecting their heritage, such as assistance in the making of inventories, to be given to States who agree to a bilateral agreement.

The problem of reclaiming clandestinely excavated objects has been much more clearly dealt with in the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects 1995. Where a State has clearly declared in its law its ownership of any cultural object, it may directly claim the return of that object if stolen: this covers all undiscovered objects which have not been inventoried (Article 3(1)) and no compensation is payable to the possessor unless he has scrupulously searched its origin (Article 4(4)).

If a State is not satisfied with the implementation of the 1970 Convention, the single most important step it can take to protect its archaeological heritage is to ratify the 1995 UNIDROIT Convention. Ideally all States should be party to both the 1970 and 1995 Conventions as are all the 33 States now party to the UNIDROIT Convention, including States such as China, Greece, Guatemala, New Zealand, and Nigeria. Twelve years after the adoption of the 1970 Convention there were ratifications by about **one-third** of the Member States of UNESCO. Twelve years after the adoption of the UNIDROIT Convention 1995 ratifications number about **half** the number of States which are members of that organization. This Convention is open for ratification by any State, whether or not a Member of UNIDROIT.