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Educational, Scientific and  
Cultural Organization

# Executive Board

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# 184 EX/25

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## Item 25 of the provisional agenda

### **CONSIDERATION OF THE DRAFT GUIDELINES FOR THE PREPARATION OF REPORTS BY MEMBER STATES ON THE APPLICATION OF THE 1970 CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY**

#### **SUMMARY**

In accordance with the new procedures adopted in 2007 for the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided (177 EX/Decision 35 Parts I and II), the Executive Board has adopted framework guidelines for the preparation of reports on the implementation of these conventions, including the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970).

After the draft has been adopted by the Board, the guidelines will be sent to the national authorities responsible for the preparation of reports on the implementation of this standard-setting instrument in order to assist them in providing UNESCO with more information about the monitoring and effective implementation of the 1970 Convention through measures taken at the international and national levels.

This agenda item has no financial and administrative implications.

Action expected of the Executive Board: proposed decision in paragraph 3.

1. Under Article VIII of the Constitution of UNESCO, Member States are required to submit a report on the legislative and administrative provisions that they have adopted and on other measures that they have taken to implement the conventions and recommendations adopted by the Organization. In accordance with the specific multi-stage procedure and 32 C/Resolution 38, the frequency for submitting such reports on the implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) is set at four-year intervals. The purpose of reporting is to illustrate the action taken to implement the Convention, the progress achieved and the obstacles encountered by States Parties. The next consultation of Member States will be launched following the Board's approval of the draft Guidelines as annexed to this document. Subsequently, a summary of the reports

received from Member States will be examined by the Executive Board at its 187th session in autumn 2011 and by the General Conference at its 36th session.

2. The Secretariat therefore submits to the Board for approval the draft drawn up on the basis of the framework guidelines adopted at the 177th session in 2007. This is the methodology that the Secretariat wishes to be recommended to the Member States to ensure that their reports will include the most precise information possible on the ratification and implementation of the 1970 Convention and on the implementation of other complementary standard-setting instruments, such as the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995).

3. In the light of the above, the Executive Board may wish to adopt a draft decision along the following lines:

The Executive Board,

1. Bearing in mind Member States' obligations under Article VIII of UNESCO's Constitution and Article 17 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution,
2. Further recalling Part I and Part II of 177 EX/Decision 35 adopting respectively a specific multi-stage procedure for the monitoring of the implementation of UNESCO conventions and recommendations for which no specific institutional mechanism is provided and framework guidelines,
3. Having examined document 184 EX/25 and the report of the Committee on Conventions and Recommendations thereon (184 EX/..),
4. Approves the guidelines drawn up for the preparation of reports by Member States on the application of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), as annexed to document 184 EX/25;
5. Requests the Director-General to request Member States to submit to UNESCO, within a period of six months, reports on the implementation of the 1970 Convention;
6. Further requests the Director-General to submit, at its 187th session, a summary of the reports received from Member States on the measures taken in regard to the implementation of the 1970 Convention, with a view to the submission of the summary, together with the Board's comments, to the General Conference at its 36th session.

## ANNEX

### DRAFT GUIDELINES

As far as practicable, it is recommended that Member States follow all points contained in this draft. In its contribution, however, the State may disregard any point on which no information is available. Lastly, even though some points are framed as questions, the document must be regarded more as a guide than as a questionnaire.

#### **I. Information on the legislative, judicial, administrative and other measures taken by the State at the national level**

##### **1. Accession to the UNESCO Convention of 1970**

*(Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and participation in the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation)*

- (a) Have the two international instruments on action to combat trafficking in cultural property been ratified?
  - UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970;
  - UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995.
- (b) If one or other of the above-mentioned instruments has not been ratified, please indicate, where applicable:
  - the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term);
  - obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;
  - the extent to which UNESCO can assist in completing the process.
- (c) Describe the extent to which your country is following the work 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.

##### **2. Implementation of international conventions and recommendations in the national legal system and in the organization of services**

- (a) What are the references, dates and aims of the principal national laws and regulations adopted in order to implement the above-mentioned conventions?
- (b) The definition of “cultural property”, in keeping with the definition of the Conventions, is important to increasing the effectiveness of international cooperation. Is this the case for your country? If not, which definition has your national legislation adopted?
- (c) Do national laws contain a definition of the content of the national cultural heritage as opposed to foreign cultural heritage? If so, which one?

### **3. System for the acquisition, ownership and transfer of cultural property**

- (a) What measures have been taken in the country to control the acquisition of cultural property (for example mechanisms to prevent museums and similar institutions from acquiring cultural property exported illegally from another State)?
- (b) Specify the existing legal system concerning ownership of cultural property:
  - to what extent is the principle of inalienability applied to cultural items in national collections and objects originating in heritage sites?
  - what is the status of yet unfound cultural objects, of cultural items found by chance and archaeological artefacts found during legal or illegal excavations?
- (c) Are there special rules on the transfer of title deeds in respect of cultural property? If so, please summarize their content.

### **4. Bilateral agreements**

- (a) List the bilateral agreements concluded with other countries on the import, export and return of cultural property and comment briefly on their level of effectiveness.
- (b) Apart from the conclusion of bilateral agreements, is there administrative aid or any other type of special cooperation with neighbouring countries, particularly in respect of police and customs services?

### **5. UNESCO Database of National Cultural Heritage Laws**

Indicate action taken to organize the contribution to the UNESCO Database of National Cultural Heritage Laws and to check whether it contains all historical and existing laws and regulations, including successive amendments.

## **II. Information on the implementation of the Convention (with reference to its provisions)**

### **1. Institutional aspects**

- (a) Have specialized units been established in order to prevent and combat trafficking and ensure international cooperation for the protection of cultural heritage? Within the Heritage Department? In other government departments?
- (b) Describe briefly the administrative coordination of the activities of these specialized units, especially with the police and customs authorities.
- (c) Are working meetings held to enable police officers, customs officials and ministerial representatives to meet and coordinate their activities?

### **2. Inventories and identification**

- (a) State briefly the extent to which inventories provide for the risks of misappropriation and theft.
- (b) Specify the degree of precision, at the national level, of the definition of “cultural property” covered by international conventions (see point I.2 (b)). State whether “national treasures” are identified in an official, tentative or exhaustive list.
- (c) To what extent is the Object ID standard used? Is it on the basis of the value of the objects and the potential for abuse? Is the standard adapted to the State’s needs?

- (d) Are systems to combat theft in museums recommended?
- (e) Indicate or describe briefly the special measures that have been taken in libraries and in archival and manuscript repositories, and any specialized units established to monitor them.

### **3. Archaeological excavations**

- (a) Summarize the basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force in the country.
- (b) Is there a recurrent problem of illegal excavations? If so, what are the reasons and when did it begin? What steps have been taken to combat this scourge?

### **4. Trade in cultural goods**

- (a) Give a brief description of the cultural goods market in the country.
- (b) What are the main rules governing trade in cultural goods? Are control measures in place for such trade, in particular through the Internet (see 7 (d) below)? If so, which ones?

### **5. Monitoring of the export and import of cultural property**

- (a) Give an estimate of the scale of the illicit export or import of cultural property.
- (b) What are the main rules in place for monitoring the export of cultural property? Which categories of cultural property are so monitored?
- (c) Is the import of cultural property monitored? If so, what are the main monitoring rules in place and do they provide for the restitution of illicitly imported cultural property?
- (d) Is the illicit import of cultural property a recurring problem? If so, for which reasons (lack of financial and human resources, shortcomings in the legal supervision framework, etc.)?
- (e) What primarily administrative and legal measures have been taken to counter the plundering of the national cultural heritage?
- (f) Are statistics compiled on the theft of cultural property? Are they updated?
- (g) What are the main obstacles encountered in securing the restitution of illicitly exported cultural property? What type of obstacles are they (administrative, legal or political) and why do they arise (legal loopholes, unwillingness by importing countries, lack of international cooperation, etc.)?
- (h) If the country has succeeded in securing the restitution of a stolen cultural object, describe the circumstances and state whether that involved legal proceedings, arbitration or alternative dispute resolution.

### **6. INTERPOL, police services and criminalization of offences against cultural property**

- (a) What is the state of cooperation between authorities and INTERPOL and to which specialized police services can directors of cultural heritage have recourse for investigations or legal action and repressive measures?
- (b) If a cultural object is stolen, is the INTERPOL database on stolen objects checked? Is information on the persons implicated in the theft of cultural property transmitted to INTERPOL?

- (c) Do members of the relevant police services follow a specific training programme?
- (d) Under which criminal law provisions are such fraud and theft punishable? Are judges specialized in this field?
- (e) Has cooperation been established with the United Nations Office on Drugs and Crime (UNDOC)?

#### **7. World Customs Organization, customs services**

- (a) What is the status of cooperation with the World Customs Organization and which specialized customs services can assist heritage conservationists in preventing the illicit export of cultural property?
- (b) Do members of the customs administration follow a specific training programme?
- (c) To what extent is the UNESCO-WCO Model Export Certificate for Cultural Objects used?
- (d) Are there any specific provisions on the surveillance of online cultural property transactions? Is any reference made to the basic measures proposed by UNESCO, INTERPOL and ICOM concerning cultural objects being offered for sale over the Internet?

#### **III. Methods used to draw the attention of the various authorities in the country to the instrument and to remove the obstacles encountered**

##### **Ethical standards**

- (a) Are the professionals concerned aware of the ethical standards (ICOM Code of Ethics for Museums and the International Code of Ethics for Dealers in Cultural Property)?
- (b) Describe the method used to monitor the application of these standards, in particular with regard to antique dealers, art dealers and collectors.
- (c) Are the “One hundred missing objects” series and the ICOM Red Lists disseminated and read?
- (d) Are any existing ethical rules in place or is there even a constant practice as to the alienation and acquisition of cultural property by museums and other public cultural institutions? What is the content thereof?
- (e) Briefly describe activities carried out to raise public awareness of the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export.