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## Evaluation of UNESCO's Standard-setting Work of the Culture Sector

### Part II – 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property

**FINAL REPORT**

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## Executive Summary

As the only UN agency with a mandate in culture, UNESCO has developed a comprehensive series of standard-setting instruments in this field, including six main culture conventions, many recommendations and a number of declarations. Significant time and resources are spent on standard-setting activities related to these instruments and even though the visibility of some of this work is high, no comprehensive evaluation has ever been conducted of the standard-setting work of UNESCO. It is in this context that UNESCO decided to conduct this evaluation.

### **Evaluation purpose, scope and methodology**

The purpose of the overall evaluation is to generate findings and recommendations regarding the relevance and the effectiveness of the standard-setting work of the culture sector with a focus on its impact on ratification; on legislation, policies, and strategies of Parties to UNESCO's culture conventions; and on the implementation of the conventions at the national level. A separate report by the IOS Audit Section assesses the adequacy and efficiency of the working methods used in the standard-setting work.

The evaluation aims to help the UNESCO Culture Sector, Senior Management and the Governing bodies of the conventions to strengthen, refocus and better coordinate the organisation's standard-setting activities. It also wants to contribute to generating a better understanding about how conventions work in practice, i.e. how they affect legislation and policies of Parties and the behaviour of key institutional actors. It thereby intends to serve as a source of information for Member States, who have the primary responsibility for the implementation of the standard-setting instruments at national level.

The overall evaluation examines four of UNESCO's culture conventions (1970, 1972, 2003 and 2005). The present report constitutes part two of the overall evaluation. It focuses on the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and looks at the following three levels of standard-setting work and at related activities undertaken both by State Parties and by UNESCO:

- I. Ratification (or acceptance / succession) of the Convention;
- II. Integration of the provisions of the Convention into national / regional legislation, policy and strategy; and,
- III. Implementation of the legislation, policies and strategies at the national level.

The evaluation aims to find out about the results achieved at each of these levels, about the effectiveness of the mechanisms used to support the implementation of the Convention, and about the overall relevance of this standard-setting instrument. It also examines the relevance and effectiveness of the support provided by UNESCO to State Parties to the Convention.

The foundation of the evaluation methodology is constituted by a Theory of Change. This is a summary overview of the key causal assumptions connecting, through a number of intermediate assumptions, the different types of UNESCO support, as well as the actions of State Parties and other stakeholders within the framework of the 1970 Convention, to the final intended objectives. The Theory of Change was reconstructed on the basis of different inputs, such as documents and interviews, as it had not yet been clearly articulated. It provided the basis for a 'nested' methodological design, which included purposive sampling and data collection at the different levels of the causal chain from ratification to implementation as basis for acquiring credible data at all three levels. Data collection methods included a desk study, phone/Skype interviews, a survey, and in person interviews in a few selected countries.

## Key evaluation findings

**The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (thereafter the 1970 Convention) is considered by many to be a watershed moment in the fight against illicit trafficking of cultural property. The adoption of an international instrument on this oftentimes polarizing issue was seen as a major achievement in international cooperation in and of itself.** Today, both for State Parties and for UNESCO the overall objectives of the Convention continue to be as relevant as ever. The illicit import, export and transfer of ownership of cultural property are far from being over, indeed the international art market is booming, and cultural objects of dubious provenance continue to be sold publicly in international auctions or through dealers, or clandestinely by a variety of actors involved along the way.

**Considerable divergence of views exists between State Parties and other stakeholders with regard to the relevance of the 1970 Convention as a framework for finding solutions to all the issues at stake, and as a tool for international cooperation.** On the other hand, it is widely acknowledged that the Convention has significantly contributed to creating a collective consciousness about the issue of illicit trafficking, and that it serves as a framework also for other types of international collaboration, including diplomatic cooperation for the return or restitution of cultural property, and bilateral technical support provided by one State Party to another. It is also recognized that the year 1970 is used as a cut-off date for ascertaining provenance for many players, especially museums, despite the fact that the Convention only goes into effect in each country the year it is ratified.

**In recent years, UNESCO and its Member States have confirmed repeatedly that the 1970 Convention is and should continue to be a priority for UNESCO.** Activities related to the 1970 Convention have increased accordingly in the past several years. In addition to the establishment of a new governance system composed of a Meeting of State Parties and a Subsidiary Committee, more capacity-building projects have been implemented by the Secretariat in cooperation with Field Offices, and there is increased momentum and heightened visibility around the issue in general.

**The resources allocated to the Convention do not, however, reflect its priority status, and financial constraints continue to be an impediment to work in support of the 1970 Convention. Additionally, the staffing of the Convention Secretariat has been and currently still is woefully inadequate to effectively serve the Convention.** Over the past couple of years the situation has become ever more precarious because of increasing demands on the services of the Secretariat, generated by the need to serve the newly established statutory bodies and a growing number of State Parties, the overall growing interest in the Convention, the demand for capacity building initiatives, the need to liaise more closely with partner organizations such as UNIDROIT, the number of conflict situations involving heritage, and the exponential rise of illicit traffic in the world, together with the explosion of the art trade, especially via the internet.

**Ratification rates are still lower than those of several other UNESCO culture conventions. This points to the political and commercial issues at stake and to challenges related to the implementation of this Convention both at the policy / legislation and implementation levels.** The 1970 Convention has, however, seen a steady stream of new ratifications to the present day. By identifying the reasons for and against ratification that are within their powers to influence, the UNESCO Secretariat and Statutory Bodies can continue to strategically encourage ratification of the Convention. The 1995 UNIDROIT Convention is an important complementary instrument to the 1970 Convention. However, given its relatively low levels of ratification, its applicability remains limited for the time being.

**The effectiveness of the 1970 Convention depends both on the national legal environment of each State Party and on the harmonization of national legislations at regional and at global levels in order**

**to facilitate international cooperation.** Lack of uniformity in the ratification, a diversity of legal traditions and priorities, and considerable differences in the interpretation of obligations deriving from the Convention and consequently between State Parties' national implementing legislation exist, even within regions. Regions with long-established regional intergovernmental organizations with specialist instruments covering movable heritage have a more widespread uptake of the 1970 Convention and more consistent domestic laws regionally. However, these domestic laws often more closely align with the obligations under the relevant specialist instrument, rather than with the 1970 Convention.

**Even though many State Parties have changed their legal framework as a result of having ratified the Convention and many examples of successful cooperation under (and outside) the framework of the Convention exist, the totality of State Parties' obligations is rarely fulfilled.** This calls for a review of existing legislation, especially with regard to the provisions related to the definition of cultural property, the classification and inventorying of cultural property, regulations for the trade of cultural property (including those relating to dealers and online sales), export and import controls, and procedures facilitating restitution claims, etc.

**Coordination between relevant stakeholders at the national level, including Ministries of Culture, Foreign Affairs and other Government offices, police, customs, etc., is seen both as an integral component of successful implementation of the Convention and a major challenge.** Coordination mechanisms vary significantly across State Parties, from little to no communication to communication as specific cases arise to formal coordinating mechanisms such as ongoing working groups. The majority of State Parties do not have specialised police forces to deal with cultural property crime.

**Many State Parties have some type of national inventory of cultural property, but the design, purpose, scale and quality of these inventories vary considerably.** Museum inventories are also a key aspect of successful implementation of the Convention. However, in many countries they remain underdeveloped and / or incomplete. The same applies to inventories of religious institutions, which are furthermore often not accessible to Government authorities.

**Looting of archaeological sites remains a significant problem in many States, including both known archaeological sites and sites accidentally discovered.** Chaos caused by armed conflict or natural disasters also makes sites more vulnerable. Other challenges include weak law enforcement, increasing international demand for archaeological objects, the involvement of more organized groups of smugglers, insufficient supervision of sites, low levels of awareness and education of local populations, capacity constraints of local authorities, etc.

**Across State Parties, considerable variation exists in the level of skills and knowledge that police and customs officers have about cultural property crime. Overall, unless there is a specialised police force, the capacity of law enforcement agencies to deal with this issue often remains insufficient.** Additionally, even when training occurs, subsequent turnover of officers often hinders its effectiveness. This calls for long-term capacity building approaches and increased efforts to include training on cultural property into basic training for police and customs.

**Engaging the art market remains a major challenge for many State Parties; nevertheless several of them are making efforts in this area. Overall, the 1970 Convention has had a significant impact on the practices of museums and to a lesser degree on the practices of other players in the art market.** While it seems that some of the larger international auction houses have started to change their attitude and practices, this is not so much the case for smaller local auction houses or for galleries, which appear to be less likely to change their ways of working.

**Questions related to the return and restitution of illegally excavated objects remain among the most pertinent issues and continue to polarize State Parties.** Many of these issues originate at the level of

the Convention, its lack of clarity and the diversity of interpretations of the protection it provides for such objects. Gaps at the policy and implementation level, including the lack of universal recognition of other State Parties' export restrictions as well as the challenges to getting national ownership laws enforced in foreign courts, have contributed to this. There is a need for continued dialogue between State Parties to move towards a clearer consensus on this issue and to create a shared understanding about the way forward.

**Overall, UNESCO's capacity building activities in support of the Convention, including a large number of workshops and a few longer term projects, are appreciated by State Parties, partner organizations and other training participants as they have facilitated networking between them and helped them acquire new skills and knowledge.** However, in view of ensuring the sustainability of the training activities and to increase the focus of the overall capacity building programme, a more comprehensive capacity building approach, including a longer term engagement with State Parties and the use of a variety of different capacity building modalities, should be considered in the future. More efforts are also needed to follow-up and assess results achieved by the capacity building activities.

**State Parties value the work of the 1970 Convention and of UNESCO's Field Offices in support of this Convention, and overall, UNESCO is seen as a global leader in the fight against illicit trafficking of cultural property. However, resource and capacity constraints severely limit the work of the Secretariat and other parts of the Organization.** Without significant reinforcements, trade-offs will have to be made between the different functions the Secretariat is expected to fulfil (providing support to statutory bodies, capacity building, sharing good practices, awareness raising, responding to emergency situations, etc.). State Parties' long term commitment is needed to strengthen the Secretariat with the level of expertise and stability required to perform its functions. Clear direction should also be given to the Secretariat about what areas of work should be prioritised over others.

**UNESCO enjoys strong partnerships in support of the 1970 Convention, which complement and contribute to UNESCO's work and expand its reach.** Main international partners include UNIDROIT, INTERPOL, WCO, UNODC, ICOM, ICOMOS, ICCROM and many others. UNESCO's partnerships work particularly well when each partner's areas of expertise and activities are clear and complementary. Potential overlap and competition should be avoided as they might hamper effective collaboration. Thus, clarifying roles and having dialogues about how work can be complementary, not redundant, will continue to be important for moving forward.

**So far, the overall monitoring mechanism for the Convention has not been particularly effective.** Periodic reports vary in quality, reporting rates are low, there have been no checks on the accuracy of the information contained therein, and hardly any follow up. The establishment of the Subsidiary Committee in 2013 presents an opportunity to strengthen the existing reporting system. This could entail the development of an overall results framework for the Convention, linked to a Convention Theory of Change (or another type of intervention logic) and including clear objectives, time-frames, indicators and benchmarks; as well as the improvement of the Periodic Reporting by revisiting the reporting format, introducing an online system for submission and analysis of the reports, and systematic follow up.

The evaluation generated a large number of recommendations directed at State Parties, the Subsidiary Committee and the 1970 Convention Secretariat. They are included in the respective chapters of the report and a full list is available in [Chapter 9](#) of this report.



## List of Acronyms and Terms

1954 Convention	The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention (The Hague)
1970 Convention	The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
1972 Convention	The 1972 Convention concerning the Protection of the World Cultural and Natural Heritage
1995 UNIDROIT Convention	The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects
2001 Convention	The 2001 Convention on the Protection of the Underwater Cultural Heritage
2003 Convention	The 2003 Convention for the Safeguarding of the Intangible Cultural Heritage
2005 Convention	The 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions
CCLG	Culture Conventions Liaison Group
ICCROM	International Centre for the Study of the Preservation and Restoration of Cultural Property
ICOM	International Council of Museums
ICOMOS	International Council on Monuments and Sites
ICPRCP	Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation
INTERPOL	International Criminal Police Organization
OCBC	Office central de lutte contre le trafic des biens culturels
UNEG	United Nations Evaluation Group
UNIDROIT	International Institute for the Unification of Private Law
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
WCO	World Customs Organization
WCO/RILO WE	World Customs Organization / Regional Intelligence Liaison Office for Western Europe

# Chapter 1: Introduction and Background

## 1.1 Evaluation Purpose, Scope, and Methodology

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1. UNESCO has developed a comprehensive series of standard-setting instruments in this field, including six main culture Conventions, many recommendations and a number of declarations.<sup>1</sup> Significant time and resources are spent on standard-setting activities related to these instruments and even though the visibility of some of this work is high, no comprehensive evaluation has ever been conducted of the standard-setting work of UNESCO.

### 1.1.1 Purpose

2. The purpose of the overall evaluation is to generate findings and recommendations regarding the relevance and the effectiveness of the standard-setting work of the culture sector with a focus on its impact on legislation, policies, and strategies of Parties to UNESCO's culture conventions. A separate report by the IOS Audit Section assesses the adequacy and efficiency of the working methods used in the standard-setting work.
3. The evaluation aims to help the UNESCO Culture Sector, Senior Management and the Governing Bodies of the Conventions to strengthen, refocus and better coordinate the Organization's standard-setting activities. The evaluation also wants to contribute to generating a better understanding about how conventions work in practice, i.e. how they affect legislation and policies of Parties and the behaviour of key institutional actors. It thereby also intends to serve as a source of information for Member States, who have the primary responsibility for the implementation of the standard-setting instruments at national level. Last but not least, the evaluation is expected to feed into ongoing discussions about the challenges and lessons learned with regard to evaluating normative work in the UN.
4. The overall evaluation examines four of UNESCO's Culture Conventions (1970, 1972, 2003 and 2005). The results of the analysis will inform the design, implementation and management of the standard-setting work to be carried out under the new eight-year Medium-Term Strategy (C4) for 2014-2021 and the new four-year Programme (C5) for 2014-2017.

### 1.1.2 Scope

5. The present report constitutes part two of the overall evaluation of UNESCO's standard-setting work of the Culture Sector. It focuses on the *1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (hereafter, the 1970 Convention). It builds on other evaluations and studies about the 1970 Convention, including an earlier evaluation that was completed in 2005, and several global and regional studies completed in 2012.
6. It looks at the following three levels of standard-setting work and at related activities undertaken both by State Parties and by UNESCO:
  - Ratification (or accession / acceptance / approval) of the Convention;

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<sup>1</sup> Full list of UNESCO's standard-setting instruments in Culture available here: [http://portal.unesco.org/en/ev.php-URL\\_ID=13649&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=-471.html](http://portal.unesco.org/en/ev.php-URL_ID=13649&URL_DO=DO_TOPIC&URL_SECTION=-471.html)

- Integration of the provisions of the Convention into national / regional legislation, policy and strategy; and,
  - Implementation of the legislation, policies and strategies at the national level.
7. The evaluation aims to find out about the results achieved at each of these levels, about the effectiveness of the mechanisms used to support the implementation of the Convention, and about the overall relevance of this standard-setting instrument.
  8. The evaluation covers the standard-setting work undertaken within the framework of both the regular and extrabudgetary programmes during the 34C/5 (2008-2009), 35C/5 (2010-2011) and 36C/5 (2012-2013) biennia up to the time of the evaluation.

### 1.1.3 Evaluation Methodology

9. The foundation of the evaluation methodology constitutes a nested design, i.e. including purposive sampling and data collection at different levels of the causal chain from ratification to implementation. The three levels of this design correspond to the three levels of standard-setting work as described above: I) Ratification; II) Integration of the provisions of the Conventions in into national/regional legislation, policy and strategy (policy and legislation development level); and III) Implementation of the legislation, policies and strategies at national level (implementation level).
10. The methodology included a desk study, phone/Skype interviews, a survey, and in person interviews in a few selected countries. The multi-level purposive sampling strategy starts out from a sample from the broad population of all countries at the ratification level, and gradually narrows down to sampling from smaller populations of countries with certain levels of policy development and implementation (or a lack thereof).
11. The evaluation used the following methodology:
  - Desk review of all relevant documents on the 1970 Convention including:
    - 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;
    - Subsidiary Committee of the 1970 Convention, Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (“ICPRCP”), and Meeting of State Parties materials;
    - Previous evaluations and studies on the Convention commissioned by UNESCO<sup>2</sup> and the regional implementation reports prepared by various consultants for the 2<sup>nd</sup> meeting of State Parties in 2012;<sup>3</sup>
    - Brochures and other communication materials including the website;
    - 2011 Periodic Reports of State Parties;
    - National culture and other policies, legislation, strategies;
    - Materials for capacity building workshops including workshop reports; and

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<sup>2</sup> The IOS “Evaluation of UNESCO’s Actions to Help Member States Prevent Illicit Trafficking in Cultural Property” conducted by external evaluators in 2005 (IOS/EVS/PI/52: and “Strengths and Weaknesses of the 1970 Convention: An Evaluation 40 years after its adoption” completed by Lyndel Prott in 2012.

<sup>3</sup> See <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/meetings/meetings-of-states-parties/2msp-1970-convention/> for a full list of the regional implementation reports.

- Academic and research papers on illicit trafficking of cultural property.
  - Articulation of a draft Theory of Change for the 1970 Convention;
  - Interviews with UNESCO Secretariat staff at Headquarters and in the field, members of the Subsidiary Committee of the 1970 Convention and of the Intergovernmental Committee for Promoting the Return or Restitution of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (hereafter ICPRCP), representatives of Permanent Delegations to UNESCO, representatives of international organizations, and other experts on illicit trafficking;
  - Survey to all State Parties of the Convention administered from November 2013-January 2014, with over half of State Parties responding (66 responses received, response rate of 53%);
  - Observation of the July 2013 extra-ordinary meeting of State Parties to the Convention and of the first session of the Subsidiary Committee; and
  - Field Missions to Australia, Mongolia, Peru and Turkey.
12. As this is not the first evaluation or study on this topic undertaken by UNESCO, care was taken to integrate findings from and build on previous work. Notably, this evaluation looks closely both at the actions undertaken by State Parties as well as those undertaken by UNESCO, whereas previous evaluations predominantly focused on one or the other. Additionally, this evaluation synthesizes findings from previous work related to policy/legislation and implementation, while also integrating new findings.

#### **1.1.4 Limitations**

13. The evaluation faced the following limitations:
- Data collection and analysis for the evaluation of the standard-setting work related to the 1970 Convention were limited to a very short time frame (September 2013 to January 2014).
  - Periodic Reports (2011 reports), which serve as an important source of information on the implementation of the Convention, were only available for 43 countries (out of 125 State Parties in 2013).
  - Information contained in the Periodic Reports submitted by State Parties to the Convention is more activity- than results-oriented, which makes the assessment of results produced difficult.
  - Lack of monitoring data on the longer-term outcomes of capacity building activities further complicated the assessment of results achieved. The evaluation tried to compensate for this by collecting data through interviews and during the field missions.
  - The resources (human and financial) for this evaluation were limited. Therefore, only a few countries could be visited to collect data on the implementation of the Convention.

## 1.2 Background on the 1970 Convention

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### 1.2.1 Background on Illicit Trafficking of Cultural Property

14. Historically, cultural property has left its country of origin via a number of routes — from legitimate cultural exchanges to questionable gifts and sales to outright looting and theft, with flows going both from the South to the North and the East to the West. While a market for antiquities and cultural property has long existed, its growth after World War II led to significant increases in looting and theft from archaeological sites and museums. Countries in the South that are rich in archaeological and cultural heritage but lack adequate capacity and resources to protect this heritage have been particularly impacted by detrimental effects of this illicit trafficking.
15. These effects are manifold. Illicit trafficking of cultural property contributes to the degradation of a nation's cultural heritage: as described in the preamble to the 1970 Convention “cultural property constitutes one of the basic elements of civilization and national culture” and “the true value [of cultural property] can be appreciated only in relation to the fullest possible information regarding its origin, history, and traditional setting.” In addition, looting and amateur excavation of archaeological sites results in the loss of important historical and archaeological evidence that cannot be recreated—the spatial relationship of objects and the level in the earth in which an object is found provides important contextual information that helps archaeologists reconstruct an object and a society's history.<sup>4</sup> It also makes it more difficult to differentiate between authentic and forged objects overall, as it contributes to the obfuscation of provenance information in the market.<sup>5</sup> And while an argument may be made that looting provides financial benefits for local residents in economically depressed communities, researchers estimate that “looters” (local people commissioned by dealers or other middlemen) ultimately receive only around 1% of the profit made at the close of sale.<sup>6</sup>
16. Despite challenges to documenting the exact scope of the illicit import, export and transfer of ownership of cultural property, evidence suggests that it continues to be a widespread and pervasive problem.<sup>7</sup> In addition to recent high profile examples, such as the looting of the Malawi Museum in Egypt, a 2011 survey by UNESCO and ICCROM found that one in ten museums reported having had an object stolen.<sup>8</sup> A 2002 survey of 81 archaeological sites in Mali found that 42 of them showed evidence of illegal excavation,<sup>9</sup> and a 2006 study found that of 116 documented tumuli (burial mounds) in Bin Tepe in Western Turkey, 96% showed evidence of illicit digging.<sup>10</sup> In the United Kingdom, the cost of theft of art and antiquities is believed to exceed 300

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<sup>4</sup> P. Gerstenblith, 2007, Controlling the international market in antiquities: reducing the harm, preserving the past. *Chi. J. Int'l L.*, 8, 169.

<sup>5</sup> *Ibid.*

<sup>6</sup> N. Brodie, 1998, Pity the poor middlemen, *Culture Without Context*, (3), 7–9.

<sup>7</sup> For a full review of methodologies employed to estimate the extent of illicit trafficking, see Brodie, N. (2012) *Uncovering the antiquities market*. In: Skeates, R., McDavid, C. and Carman, J. (eds.) *Oxford Handbook of Public Archaeology*. Series: Oxford handbooks in archaeology. Oxford University Press, Oxford, UK, pp. 230-252.

<sup>8</sup> ICCROM-UNESCO International Storage Survey 2011 Summary of Results. Accessible at

[http://www.iccrom.org/eng/prog\\_en/01coll\\_en/archive-re-org/2011StorageSurveyResults\\_en.pdf](http://www.iccrom.org/eng/prog_en/01coll_en/archive-re-org/2011StorageSurveyResults_en.pdf)

<sup>9</sup> Panella, Christiana, Schmidt, Annette, Polet, Jean and Bedaux, Rogier, 2005, Le contexte du pillage, in Rogier Bedaux, Jean Polet, Klena Sanogo and Annette Schmidt (eds.), *Recherches archéologiques à Dia dans le Delta intérieur du Niger (Mali): bilan des saisons de fouilles 1998-2003* (Leiden: CNWS), 15-25.

<sup>10</sup> C. H. Roosevelt and C. Luke, 2006, Mysterious Shepherds and Hidden Treasures: The Culture of Looting in Lydia, Western Turkey, *Journal of Field Archaeology*, 31: 185–98

million pounds.<sup>11</sup> Additionally, one study estimates that 80-90% of antiquities on the market lack sufficient provenience to establish that they were discovered long enough ago that their acquisition would not raise legal problems under existing laws.<sup>12</sup> While these examples by no means provide a comprehensive picture of the problem, they do suggest it is wide reaching and quite large.

## 1.2.2 Creation of a Convention on Illicit Trafficking of Cultural Property

17. The 1970 Convention was created as a way to address the negative effects of illicit trafficking of cultural property and has its roots in former colonies seeking means to recover cultural heritage objects and protect them from ongoing looting and theft.<sup>13</sup> Following the Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import, and Transfer of Ownership of Cultural Property in 1964<sup>14</sup> and a study of the technical and legal aspects of drafting a Convention on this topic, in 1968 the General Conference of UNESCO adopted a Resolution calling for the drafting of a Convention.<sup>15</sup> The UNESCO Secretariat commissioned a draft, and in April 1970, after circulation for comments from Member States, the draft was revised and sent to a Special Committee for Governmental Experts to finalize for submission to the General Conference later that year.<sup>16</sup>
18. However, the process of preparing this final draft was complicated by the diverging interests of “market” and “source” States. Broadly speaking, “market” States, those with large public and private collections and commercial trade in cultural property, were more averse to imposing restrictive controls on the trading of cultural objects within their jurisdictions. “Source” States rich in cultural property, on the other hand, preferred stronger measures to curb illicit trafficking. Reflecting this tension, the United States prepared its own separate draft of the Convention that was geared more towards the interests of market States, and Switzerland and the United Kingdom, two large market States, were not represented in the committee at all.<sup>17</sup>
19. Ultimately, the final approved text was the result of a number of hard compromises that could be supported by both market and source States, led by the United States and Mexico respectively.<sup>18</sup> The Convention was adopted by the General Conference of UNESCO in November 1970 and went into force 24 April 1972. While the passage of the Convention was a considerable achievement at the time, experts have noted that the series of compromises that were undertaken to ensure the Convention’s adoption resulted in a somewhat “clumsy” drafting and the inclusion of phrases such as “as appropriate for each country” that give States discretion in terms of policy and

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<sup>11</sup> Heritage and Cultural Property Crime National Policing Strategic Assessment 2013. Association of Chief Police Officers. Accessible at <http://www.museumsassociation.org/download?id=1038797>

<sup>12</sup> S. R. Mackenzie, 2005, *Going, going, gone: Regulating the market in illicit antiquities*, Institute of Art and Law as cited in P. Gerstenblith, 2007, *Controlling the international market in antiquities: reducing the harm, preserving the past*. *Chi. J. Int'l L.*, 8, 169.

<sup>13</sup> CLT/2011/CONF.207/7, *Strengths and Weaknesses of the 1970 Convention A Background Paper* by Lyndel V. Prott, 2nd meeting of State Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, Paris France, 20-21 June 2012. Available at [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Prott\\_2\\_en.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Prott_2_en.pdf)

<sup>14</sup> Resolutions, Records of the 13<sup>th</sup> Session of the General Conference, Paris, 1964. Available at <http://unesdoc.unesco.org/images/0011/001145/114581e.pdf>

<sup>15</sup> Resolution 3.344, Records of the Fifteenth Session of the General Conference, Paris, 1968. Available at [http://unesdoc.unesco.org/images/0011/001140/114047e.pdf#xml=http://www.unesco.org/ulis/cgi-bin/ulis.pl?database=gcx&set=52442A6D\\_0\\_194&hits\\_rec=2&hits\\_lng=eng](http://unesdoc.unesco.org/images/0011/001140/114047e.pdf#xml=http://www.unesco.org/ulis/cgi-bin/ulis.pl?database=gcx&set=52442A6D_0_194&hits_rec=2&hits_lng=eng)

<sup>16</sup> P. J. O'Keefe, 2000, *Commentary on the UNESCO 1970 Convention on illicit traffic*, Institute of art and law.

<sup>17</sup> P. M. Bator, 1982, *An essay on the international trade in art*, *Stanford Law Review*, 275-384 and P. J. O'Keefe, 2000, *Commentary on the UNESCO 1970 Convention on illicit traffic*, Institute of art and law.,

<sup>18</sup> *Ibid*

implementation.<sup>19</sup> As will be discussed further in this report, this has complicated implementation of the Convention at times.

20. The overall aim of the 1970 Convention is also reflected in the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (hereafter the UNIDROIT Convention), which was adopted 25 years later. In 1983, already recognizing some of the shortcomings of the 1970 Convention, UNESCO asked UNIDROIT to explore private law rules related to the return and restitution of illicitly trafficked cultural objects, ultimately leading to the drafting and adoption of the UNIDROIT Convention. Care was taken in its drafting to ensure maximum compatibility with the UNESCO Convention, for example, both Conventions use the same definition of cultural property<sup>20</sup>. Whereas the UNESCO Convention deals both with protection and return of cultural property, the UNIDROIT Convention specifically addresses return and restitution of illicitly trafficked cultural property. It includes inter alia, provisions regarding the right of individuals to pursue cases directly in a foreign court, time frames for return and restitution, issues surrounding bona fide purchasers, and return of illicitly excavated objects.<sup>21, 22</sup>

### 1.2.3 Administration of the Convention

21. The 1970 Convention does not have any provision for the establishment of a governing body, and accordingly, for the first 30 plus years of the Convention, no such body existed. This changed in October 2003, when the first Meeting of State Parties to the 1970 Convention was held at the recommendation of the 165<sup>th</sup> Executive Board.<sup>23</sup> Following the discussion at the 40<sup>th</sup> Anniversary of the 1970 Convention and 187 EX/Decision 43, the Second Meeting of State Parties was organized in June 2012. The rules of procedures adopted at this meeting established a biennial Meeting of State Parties and a Subsidiary Committee composed of representatives of 18 State Parties to meet annually. This Committee met for the first time in July 2013 and as of the time of the evaluation, was in the process of developing Operational Guidelines for the Convention.
22. Previous to these changes, two other bodies were involved in oversight and implementation of the Convention: the Committee on Conventions and Recommendations of the Executive Board and the ICPRCP. The Committee was charged with examining the national reports for the 1970 Convention along with those of other conventions and recommendations that had no specific institutional mechanism for monitoring.<sup>24</sup> The ICPRCP, while technically independent from the 1970 Convention has in some ways served as a de facto committee of the Convention due to the lack of any other body to fulfil this role and the complementarity between its mandate and the purpose of the 1970 Convention.<sup>25</sup>

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<sup>19</sup> In "Strengths and Weaknesses of the 1970 Convention A Background Paper," Prutt referred to the "clumsiness" of drafting, exemplified by a lack of consistent language, and in *Commentary on the UNESCO 1970 Convention on illicit traffic* O'Keefe points to the inclusion of phrases such as "as appropriate for each country" as giving states some discretion in terms of policy and implementation.

<sup>20</sup> Under the 1970 Convention, a public law text, cultural property is "specifically designated" by the state, while this is not the case for the UNIDROIT Convention, which is a private law instrument.

<sup>21</sup> M. Schneider, 2001, UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects: Explanatory Report. *Uniform L. Rev.*, 6, 512. Available at <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-explanatoryreport-e.pdf>

<sup>22</sup> CLT 2005/Conf/803/2, UNESCO Information Note Complementarity between, and functioning of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, Conference Celebrating the 10<sup>th</sup> Anniversary of the 1996 UNIDROIT Convention, Paris France, 24 June 2005

<sup>23</sup> 165 Ex/Decision 6.2 invited the Director General to organize a meeting of State Parties to conventions entrusted to the Committee on Conventions and Recommendations on which reports are due in the near future, including the 1970 Convention.

<sup>24</sup> This monitoring procedure was approved in 177 EX/Decision 35.

<sup>25</sup> The ICPRCP was established in 1978 by resolution 20 C4/7.6/5 of the 20<sup>th</sup> session of the General Conference.

23. UNESCO's Cultural Heritage Protection Treaties Section assumes the function of the Secretariat for the 1970 Convention (as well as for the 1954 Convention and its two Protocols, the 2001 Convention, the Committee for the Protection of Cultural Property in the Event of Armed Conflict established by the 1999 Second Protocol to the Hague Convention, and the ICPRCP, as well as the new governing system related to the 1970 Convention referred to above). In addition to the staff members at Headquarters (one permanent staff member together with temporary staff), the implementation of the 1970 Convention is supported by the network of Culture Programme Specialists in UNESCO's Field Offices. And finally, as will be discussed further in [Chapter 7](#), UNESCO's partners play an important role in the implementation of this Convention.

### **1.3 1970 Convention Theory of Change**

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24. In 2012 Evaluation Heads involved in the United Nations Evaluation Group (UNEG) agreed on the following definition of normative (standard-setting) work:

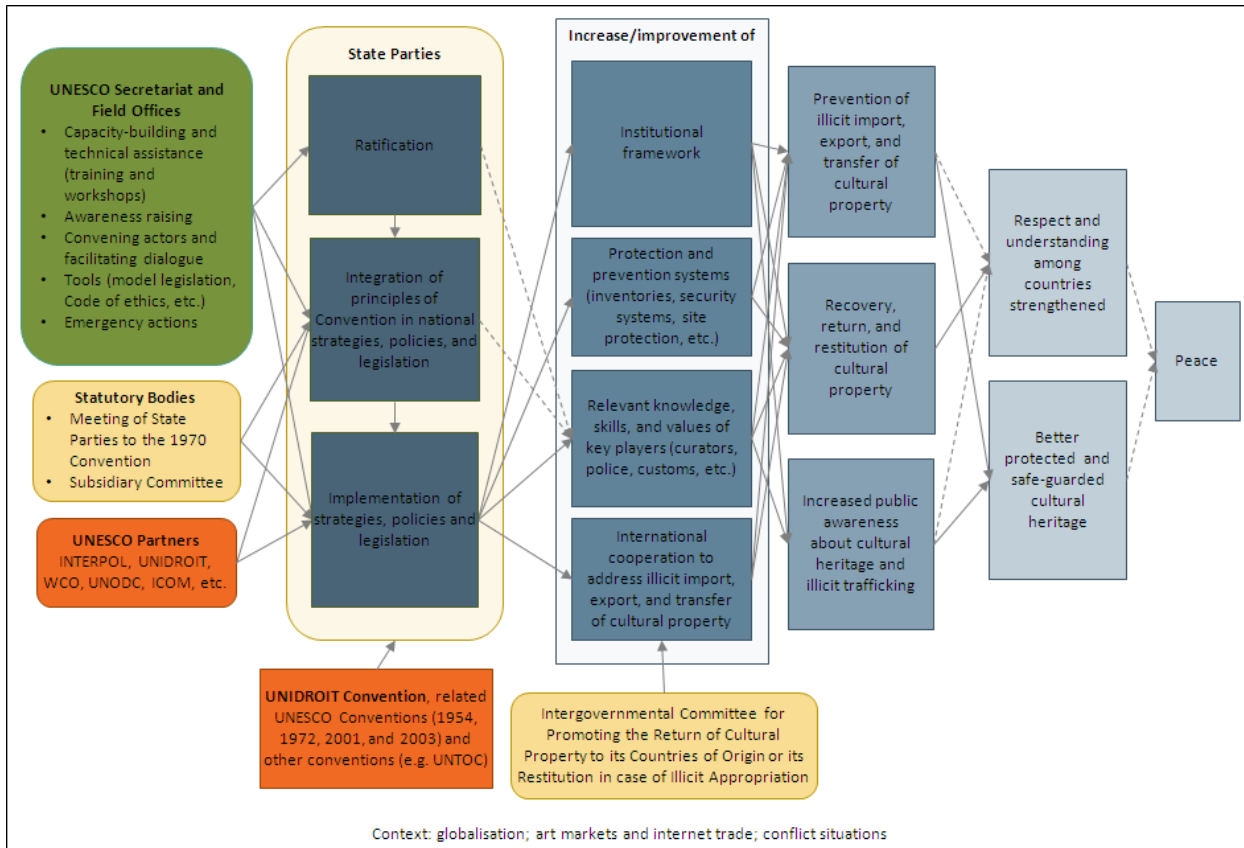
*The support to the development of norms and standards in conventions, declarations, resolutions, regulatory frameworks, agreements, guidelines, codes of practice and other standard setting instruments, at global, regional and national level.*

*Normative work also includes the support to the implementation of these instruments at the policy level, i.e. their integration into legislation, policies and development plans, and to their implementation at the programme level.*

25. This definition is now used in the evaluation of standard-setting work across UN Agencies. It points to various levels of standard-setting work, such as the development of norms and standards; the ratification of norms and standards (not specifically mentioned in the definition); the integration of norms and standards into legislation, policies and development plans; and finally to their implementation at the programme level.
26. The evaluators drafted a Theory of Change for the 1970 Convention (see figure below) using this definition in order to provide a framework for the current evaluation exercise. The intention of the evaluators was to depict the different levels of the causal chain from ratification to policy/legislative development to implementation, as well as some of the short- and longer-term results that the standard-setting work on the 1970 Convention is expected to produce.
27. The Theory of Change was developed based on an in-depth study of the Convention text and other key documents. The draft Theory of Change was then used to structure data collection for this exercise and inspired the basic structure of the present report.
28. The Theory of Change thereby became a working tool for this evaluation. It is not meant to represent any overall consensus among State Parties (hereafter SPs) about how this Convention is expected to work, but rather serves as a living draft that hopefully will be further discussed and improved in the future. It will certainly be further refined by the evaluators based on the feedback received, and any new insights will feed into the other elements of the overall Evaluation of the Standard-Setting work of the Culture Sector, which the present evaluation is a part of, and into future evaluation exercises.



**Figure 1 Draft Theory of Change for the 1970 Convention**



29. The above draft Theory of Change shows the assumptions that underlie the work related to the 1970 Convention. Assumptions underlying the main pathways (shown above in blue) can be read as follows:

*If State Parties ratify the Convention, then they will integrate its principles into national strategies, policies, and legislation.*

*If the Convention's principles are integrated into national strategies, policies, and legislation, then they will be implemented.*

*If the strategies, policies, and legislation are implemented, then there will be an improvement in (i) institutional frameworks; (ii) protection and prevention systems, etc.; (iii) skills, knowledge, and values of key players; and (iv) international cooperation*

*If there are improvements in (i) institutional frameworks; (ii) protection and prevention systems, etc.; (iii) skills, knowledge, and values of key players; and (iv) international cooperation; then the illicit import, export, and transfer of cultural property will be prevented.*

*If there are Improvements in (i) institutional frameworks; (ii) protection and prevention systems, etc.; (iii) skills, knowledge, and values of key players; and (iv) international cooperation; then cultural property will be recovered, returned, and/or restituted.*

*If there are improvements in (i) institutional frameworks and (ii) skills, knowledge, and values of key players, then there will be increased public awareness about cultural property and illicit trafficking.*

*If theft and illicit trafficking are prevented; cultural property is returned and restituted; and public awareness about cultural heritage and illicit trafficking is increased, then (i) respect and understanding among countries is strengthened and (ii) cultural heritage is better protected and safe-guarded.*

*If respect and understanding among countries is strengthened and cultural heritage is better protected and safe-guarded, ultimately, this will contribute to peace (which is what UNESCO stands for).*

30. As shown in the above Theory of Change, a number of other factors also affect work related to the 1970 Convention. The assumptions behind these influences can be read as follows:

*If UNESCO provides capacity building activities and other supports, then State Parties will be in a better position to ratify the Convention, amend/draft policy and legislation, and implement controls against illicit trafficking.*

*If international and national partners and stakeholders are involved in the work of the Convention then the integration of its provisions into policy/legislation and its implementation will be enhanced.*

*If contextual factors change, the implementation of the 1970 Convention will be affected.*

31. It was beyond the scope of the present evaluation to test all the above assumptions, but efforts were made to shed some light on most of them. Starting with [Chapter 3](#), each chapter of this report relates to a specific aspect of the Theory of Change, as highlighted at the beginning of the relevant section. Before discussing these causal linkages and the results achieved, however, the next chapter first looks at the overall relevance of the 1970 Convention.

## Chapter 2 Relevance of the 1970 Convention

32. The question about relevance of the 1970 Convention is concerned with whether the objectives of this international legal instrument are consistent with the requirements of State Parties and with global priorities as identified in UNESCO's main strategic documents. Given that the Convention is already over 40 years old, asking about relevance also becomes a question as to whether its objectives are still appropriate given the way circumstances have changed since 1970. Another issue to be looked at is whether the Convention is a valuable tool to achieving its overall objectives.

### 2.1 Alignment with State Parties' priorities

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33. 1970 is considered by many to be a watershed moment in the fight against illicit trafficking of cultural property. The adoption of an international instrument on this oftentimes polarizing issue was seen as a major triumph in international cooperation in and of itself.
34. As expressed in the title of the Convention, its primary goal is to prohibit and prevent the illicit import, export and transfer of ownership of cultural property. This is to be achieved through a variety of measures as described in the various articles of the Convention. Many of these measures are preventative in nature, others relate to restitution of stolen cultural property, and others concern the wider field of international cooperation. The draft Theory of Change displayed in the previous chapter shows the causal linkages between these various areas of work and the results to be achieved. In its preamble, the Convention situates these objectives and areas of work in the larger context of UNESCO's mission and work that aims to inspire mutual respect, appreciation and understanding among nations, which are some of the best prerequisites for peace.
35. Both for State Parties and for UNESCO the overall objectives of the Convention continue to be as relevant as ever. The illicit import, export and transfer of ownership of cultural property are far from being over, indeed the international art market is booming, and cultural objects of dubious provenance continue to be sold publicly in international auctions or through dealers, or clandestinely by a variety of actors involved along the way. Certainly, the problem has not gone away since the adoption of the Convention in November 1970. Without a doubt, it has also gained more and more attention over the past ten to fifteen years. The overall evolution of geopolitics that has resulted in "source" countries playing a more prominent role in shaping international agendas, increased understanding of the link between cultural property and national identity, and several high profile cases of looting, theft, and/or sale of cultural property have all contributed to the salience of the issue. Governments, public and private museums, the media, the general public and also the art market, including dealers and collectors, do not and cannot afford to ignore it any longer.
36. Ratification rates of the Convention are still lower than those of some other UNESCO Conventions, but the ratification patterns described in [Chapter 3](#) show that a steady stream of new ratifications continues to the present day, including of a notable number of "market" countries. Increased interest in the Convention has also led to the establishment in 2012 of a new governing system composed of a Meeting of State Parties and a Subsidiary Committee, and to joint efforts to draft operational guidelines for the Convention. This work is still ongoing and it is too early to judge the ultimate result of the exercise.

37. On the whole, these developments demonstrate that the overall objectives of the Convention remain relevant more than 40 years after its adoption in 1970. Furthermore UNESCO's member States continue to consider an international treaty to be the most adequate instrument to address the issues at stake. In fact, given that the problem of illicit import, export and transfer of cultural property is by definition trans-national in nature, the solution hinges on effective international cooperation. An international treaty is therefore considered to be the only mechanism that can provide an adequate framework for international cooperation. With the creation of the two statutory bodies, this framework has recently been enriched with a space for discussion and joint reflection.
38. However, even though most stakeholders agree on the need for an international treaty and on the relevance of the Convention's larger objectives, considerable divergence of views exist with regard to its relevance as a framework for finding solutions to some of the most pertinent issues, such as for instance the pillage, and subsequent export, import and trade of archaeological objects, or the cooperation with the international art market. Many stakeholders also stress that because the Convention's articles are not self-executing, its success depends to a large extent on how and whether State Parties make the necessary policy and legislative changes, and on whether national legislation is then actually implemented. The Convention also lacks enforcement mechanisms as many other UNESCO conventions also do.
39. The framework provided by the Convention certainly does not fully satisfy all State Parties' needs, nor does it provide solutions to all the issues at stake, nor are all articles of the Convention equally appreciated. Quite to the contrary, as discussed in later chapters of this report, many stakeholders have reservations with regard to the overall usefulness of the Convention as a tool for international cooperation, or about specific articles of the Convention and how they are being interpreted by other State Parties. Obviously, given that the Convention dates from 1970, more recent issues, such as the trade of cultural property on the internet, are also not covered.
40. On the other hand, it is widely appreciated that the Convention has significantly contributed to creating a collective consciousness about the issue of illicit trafficking, and that it serves as a framework also for other types of international collaboration, including for instance diplomatic cooperation for the return or restitution of cultural property (even that which falls outside the specific parameters of the Convention) and bilateral technical support provided by one State Party to another. 1970 has been recognized as the date on which, for the first time, there was an international agreement on the need to control illicit traffic. It is appreciated that the year 1970 is now used as a cut-off date for ascertaining provenance for many players, especially museums, despite the fact that the Convention came into force in 1972 and is binding on State Parties from that time or subsequently upon their ratification of the agreement. (The utility of such a cut-off point was also criticized by some, as it can be seen as legitimizing pre-1970 exports that were actually illegal under pre-existing national laws.) Additionally, high profile returns of objects by museums such as the Getty Museum, the Museum of Fine Arts in Boston, and the Metropolitan Museum of Art demonstrate a significant change in the perspectives on the ethics of acquiring cultural property and represent a response that "one would hardly have imagined...in the 1960s."<sup>26</sup> Many respondents saw the Convention as the catalyst for this shift in values.
41. In recent years, a number of stakeholders have called for a renegotiation of the Convention or for a Protocol to the Convention in order to increase its relevance and usefulness as a tool for

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<sup>26</sup> Lyndel V. Prott, *Philosophies, Politics, Law, and the 1970 UNESCO Convention* in Jorge A. Sánchez Cordero, (ed.), 2013, *La Convención de la UNESCO de 1970. Sus nuevos desafíos*, Universidad Nacional Autónoma de México.

international cooperation. Given the divergence of views existing among State Parties regarding several of the issues at stake, a renegotiation might not constitute a feasible option right now. Opening up the treaty text might also lead to a narrowing of the treaty obligations, not necessarily to their expansion. The elaboration of a new instrument would furthermore divert resources from the implementation of the 1970 Convention as well as from capacity-building and awareness-raising activities. It should also be noted that the 1995 UNIDROIT Convention was designed as a complementary mechanism to the 1970 Convention at the request of UNESCO. To date, ratification rates of the 1995 Convention are low, which limits its effectiveness and complementary value. This might change in the future.

## 2.2 Alignment with UNESCO's priorities

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42. In recent years, UNESCO's Member States and the institution have confirmed that the 1970 Convention is and should continue to be a priority for UNESCO. The Executive Board, at its fifth special session in July 2013, designated the standard-setting work related to the 1970 Convention as one of the priorities to be pursued by the culture sector under the 37 C/5. It is further noted that "While all conventions should be resourced to the extent possible, the 1970 Convention shall be accorded particular attention in order to ensure its effective implementation".<sup>27</sup> At the 37<sup>th</sup> General Conference in November 2013, the Director General again expressed her continued commitment to reviving the 1970 Convention and several Member States reaffirmed the importance of the 1970 Convention in their policy speeches.<sup>28</sup>
43. Activity related to the 1970 Convention has accordingly increased in the past several years, apart from the establishment of two new statutory bodies, more capacity-building projects have been implemented by the Secretariat in cooperation with Field Offices, and there is increased momentum and heightened visibility around the issue in general. More details about the capacity building programme and other activities are provided in [Chapter 6](#) of this report.
44. The resources allocated to the Convention do, however, not reflect its priority status, as shown in the table below. In the 2012-2013 biennium, 10% of the Culture sector's overall RP activities budget and just over 1% of the EX budget was dedicated to the 1970 Convention. The Convention received a greater priority in the allocation of the Emergency Fund, receiving 15% of the Culture Sector's allocation. However, given that the Emergency Fund is not ongoing, this priority was time-limited.
45. In the current biennium (2014-2015), the 1970 Convention is budgeted at just under 10% of the Culture Sector's RP activities budget and just under 6% of the EX budget. Thus, at least for the RP activities budget, the 1970 Convention specifically is receiving a slightly smaller share of the Culture Sector's budget in this biennium. It must also be kept in mind that for the previous biennium, the C/5 budget for the 1970 Convention did not include work in support of museums (which was a separate budget line), but for the current biennium, it does, as some of the activities of the two responsible sections are being combined administratively. Out of the overall RP activity budget amounting to USD 766 200, USD 334,000 are managed by the Convention Secretariat, while the balance is managed by UNESCO's field offices. More than half of the Secretariat's budget is used to cover costs related to the statutory meetings.

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<sup>27</sup> Executive Board; 5 X/EX/Decisions; 15 July 2013; <http://unesdoc.unesco.org/images/0022/002215/221595e.pdf>

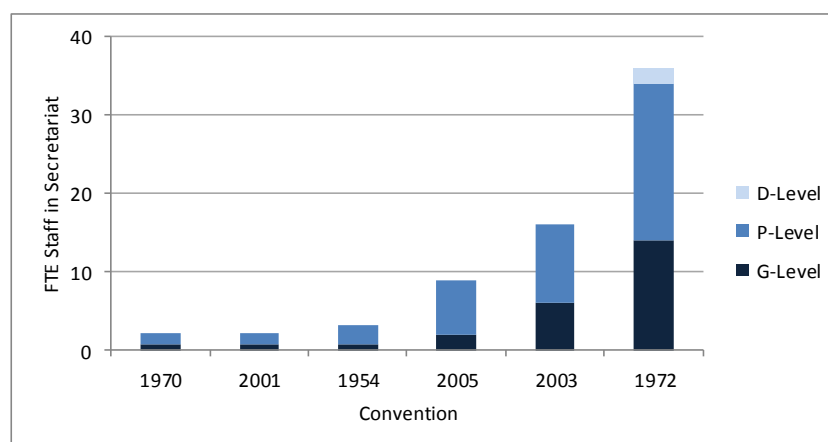
<sup>28</sup> Address by Irina Bokova, Director-General of UNESCO on the occasion of the Opening of the General Debate of the 37<sup>th</sup> session of the General Conference. 5 November 2013. <http://unesdoc.unesco.org/images/0022/002243/224370m.pdf>

**Table 1 Overview of Activity Budget Allocated to Relevant Expected Result and Culture Sector Overall<sup>29</sup>**

	2012-2013 Biennium		Emergency Fund <sup>30</sup>	2014-2015 Biennium <sup>31</sup>	
	RP	EX (incl. additional appropriations)		RP	EX
ER for 1970 Convention (plus museums for 37 C/5)	803 729	1 314 241	516 710	766 200	2 466 000
Culture Sector Total	8 041 811	115 967 547	3 517 111	8 001 100	43 550 100
1970 Convention (plus museums for 37 C/5) as % of CLT Total	10.0%	1.1%	14.7%	9.6%	5.7%

46. Financial constraints continue to be an impediment to work in support of the 1970 Convention. For example, the 192 EX/4 describes the difficulty faced in securing financing for the Extraordinary Meeting of State Parties in July 2013.<sup>32</sup> Additionally, as shown in the figure below, the staff of the Convention Secretariat is significantly smaller than that of UNESCO’s other culture convention secretariats, notably that of the 1972, the 2003 and 2005 Conventions.

**Figure 2 Full-Time Equivalent Staff Levels in Each Culture Convention’s Secretariat<sup>33</sup>**



<sup>29</sup> All figures based on SISTER extract from 20/2/2014 unless otherwise specified. Only activities and projects falling under ER 6: Implementation of the 1970 Convention made effective and reinforced, and measures enabling the fight against the illicit import, export and transfer of ownership of cultural property strengthened were counted in the figures specific to the 1970 Convention. Figures include budget for field offices and headquarters.

<sup>30</sup> Included in EX budget for the 2012 – 2013 biennium.

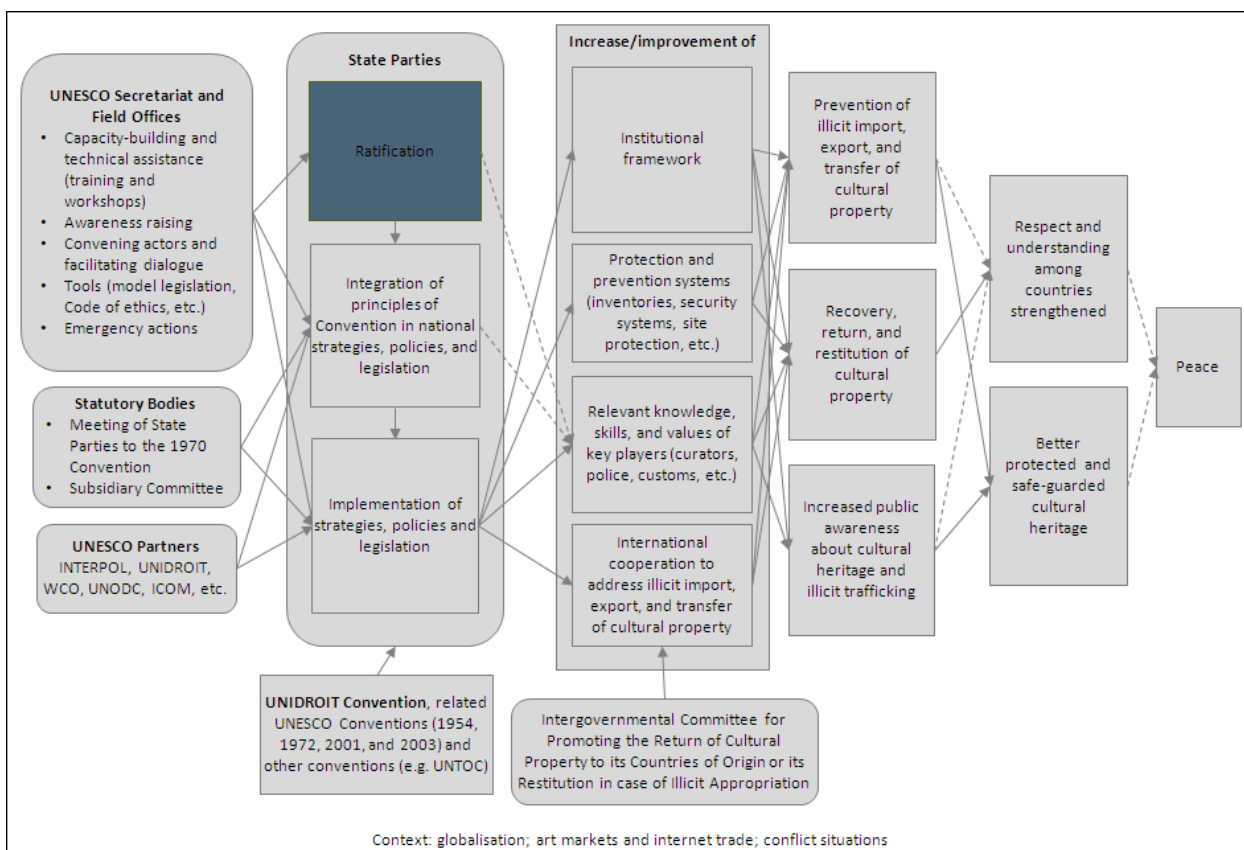
<sup>31</sup> 192 EX/16 Part I Annex II, 507 million allocation plan.

<sup>32</sup> 192 EX/4 Part I (A) – page 16

<sup>33</sup> Numbers based on IOS’s Audit of the Working Methods of Cultural Conventions (September 2013). These figures do not include temporary or project staff and are based on staffing levels prior to the current redeployment exercise. For calculation purposes, full time equivalency for the 1 P-level and 2.5 G-level staff shared across the 1954, 1970, and 2001 Conventions have been divided equally across the three Conventions.

47. The team of the 1970 Convention works under the supervision of the Chief of Section (P-5), who is also responsible for the supervision of the teams of the 1954 Convention (together with its two Protocols) and of the 2001 Convention.
48. In April 2014, only one permanent staff member at the P-3 level, with a post established under the Regular Programme, was working exclusively on the 1970 Convention, the ICPRCP and related statutory and operational activities. He was assisted by the two longer-term temporary staff (1 Associate Expert whose contract will expire in February 2015, and 1 professional whose contract will expire in June 2014) and two-short term temporary staff. Temporary professionals are not reflected in the above graph, because it only shows established posts. While the team of the 1970 Convention profits from assistance by a General Service staff member, such assistance is occasional.
49. The recently approved 37C/5 foresees the establishment of a new P-3 post dedicated to work on the 1970 Convention and museums, as well as of a G-4 dedicated to the Convention. Finally, a new P-4 post will exercise section wide functions, including related to the 1970 Convention, but also to the 1954 Convention and its Protocols, the 2001 Convention, museums, etc.
50. To draw a conclusion about the adequacy of the staffing of the various Convention Secretariats, would require looking at these figures in the context of the existing work-load and specific requirements arising from each of the Conventions. This was not part of the present evaluation exercise. Nevertheless, even without a similar comparison, the above figures clearly demonstrate that in terms of funding, the 1970 Convention does currently not constitute a priority for UNESCO.
51. **In fact, the evaluation also confirmed what was already discussed on earlier occasions and what many stakeholders consulted pointed out as well, namely that the current staffing of the Convention Secretariat is grossly inadequate.** It has always been inadequate, over the past couple of years, however, the situation has become ever more precarious because of reduced staffing (at the end of the 1990s and beginning of 2000, two permanent professional staff were dedicated to the Convention), and increasing demands on the services of the Secretariat. These are generated by the need to serve the newly established statutory bodies and a growing number of State Parties, the overall growing interest in the Convention, the demand for capacity building initiatives, requests for sharing of good implementation practices, the need to liaise more closely with partner organizations such as UNODC and UNIDROIT, the number of conflict situations involving heritage, and the exponential rise of the illicit traffic in the world, together with the explosion of the art trade, especially via the internet.

## Chapter 3 Ratification

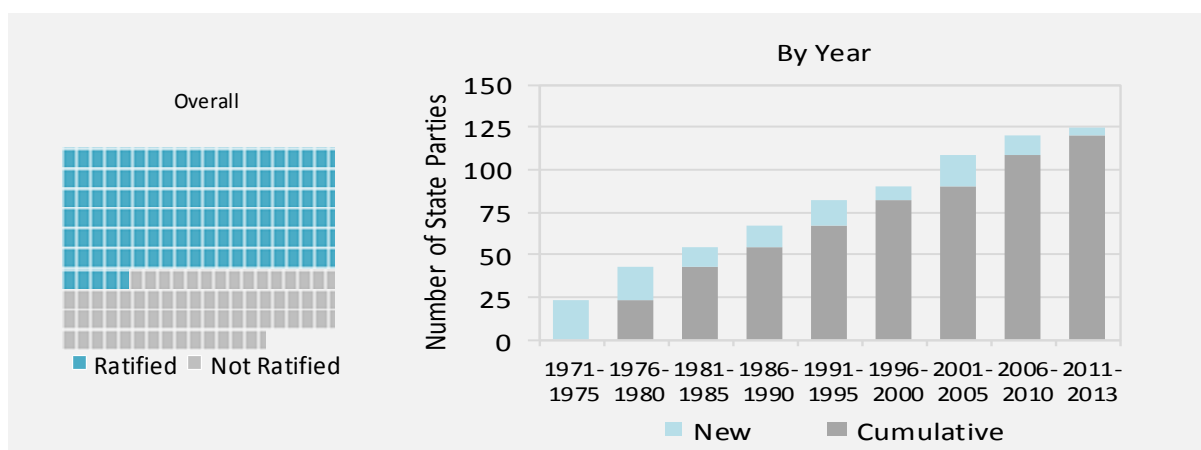


52. As of 2013, 125 Member States, 64% of all UNESCO's Member States, had ratified the Convention.<sup>34</sup> After an initial burst of ratification in the decade after its adoption in 1970, the 1970 Convention has had relatively steady levels of new ratifications over the past 30 years (roughly two to three ratifications per year). While the 1970 Convention has a lower rate of ratification compared to UNESCO's other culture conventions except for the 1954 Hague Convention and the 2001 Convention, this is not surprising given the complex legal, political, and commercial interests that the Convention touches upon.

<sup>34</sup> A number of State Parties have ratified with reservations or made later declarations. See [http://portal.unesco.org/en/ev.php-URL\\_ID=13039&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html) for more information.



**Figure 3 Ratification of the 1970 convention: 1970-2013<sup>35</sup>**



53. UNESCO’s Program and Budget documents (C/5) list expected results related to ratification of the 1970 Convention for the three biennia under examination. As shown in the table below, the number of new ratifications was in line with these expected results for 2008-2009, but fell short in 2011-2012 and 2012-2013.

**Table 2 Ratification of the 1970 Convention by Regional Group**

BIENNIUM	EXPECTED RESULT (C/5)	ACTUAL NUMBER OF NEW RATIFICATIONS	LIST OF NEW RATIFICATIONS
2008-2009	3-5 new State Parties	3	Belgium, Chad, and the Netherlands
2010-2011	4 new State Parties, (predominantly in Africa)	2	Equatorial Guinea and Haiti
2012-2013	8-10 new state parties (2 for each regional group)	5	Kazakhstan, Palestine, Swaziland, Lesotho, and Myanmar

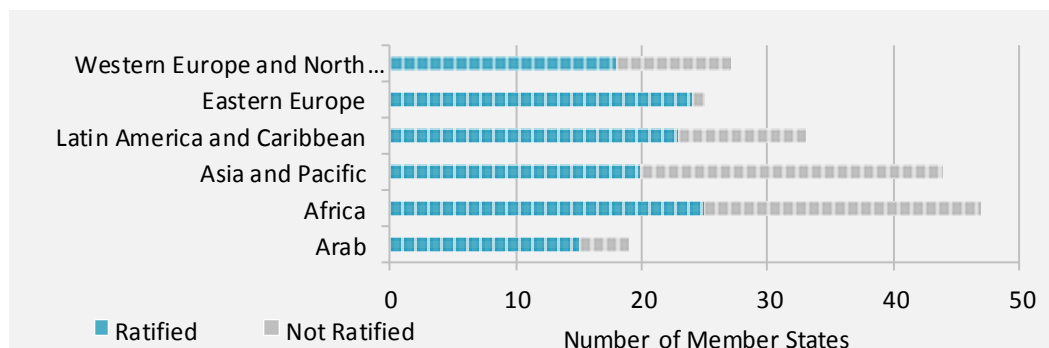
### 3.1.1 Patterns in Ratification

54. Levels of ratification vary greatly by UNESCO’s Executive Board groupings. Eastern European States have the highest rate of ratification at 96%. Only Latvia has not ratified the Convention. Comparatively, Asian and Pacific States and African States have relatively low levels of ratification (45% and 53% of all States in the region respectively). Western European and North American States, Latin-American and Caribbean States, and Arab States lie in the middle of these extremes, with approximately three-quarters of States having ratified.
55. There is also considerable variation in ratification rates within regions. For example, South East Asian States, which are gravely impacted by the illicit transfer of their cultural property, have a

<sup>35</sup> State Parties to Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Paris, 14 November 1970. Available at <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=E&order=alpha>

lower take up rate than the rest of the region (18% in South East Asia).<sup>36</sup> While all North African States are State Parties to the 1970 UNESCO Convention and West African countries are also largely covered, the same cannot be said of Southern Africa. This lack of uniformity in the uptake of these instruments is surprising in a region which has and continues to suffer the loss of movable cultural heritage and has campaigned internationally for decades for effective action on this front.<sup>37</sup> Eastern Africa also has a low ratification rate. Within the Latin America and Caribbean group, there is a particularly low uptake rate within Caribbean States. Finally, except for New Zealand and Australia, Pacific Island countries have not ratified the 1970 UNESCO Convention.

**Figure 4 1970 CONVENTION RATIFICATION BY EXECUTIVE BOARD GROUPING**



**Figure 5 1970 CONVENTION RATIFICATION MAP**



56. Initial concerns that “market” States would not ratify the Convention were not unfounded, at least in the first decade after the Convention’s adoption. However, between 1983 and 2003, the five States with the largest share of the art market—China (30%), United States (29%), United Kingdom (22%), France (6%), and Switzerland (3%)—all ratified the Convention.<sup>38</sup> As will be discussed later in this report, implementation of the Convention varies between these States.

<sup>36</sup> K-G Lee, 2012, Overview of the Implementation of the 1970 UNESCO Convention in Asia, Report to be presented to the Second Meeting of the State Parties to the 1970 UNESCO Convention, 20-21 June 2012 pp.3-6.

<sup>37</sup> F. Shyllon, 2012, Implementation of the 1970 UNESCO Convention by African states: The Failure to Grasp the Nettle, Background Paper for Participants in the Second Meeting of the State Parties to the 1970 Convention, 20-21 June 2012.

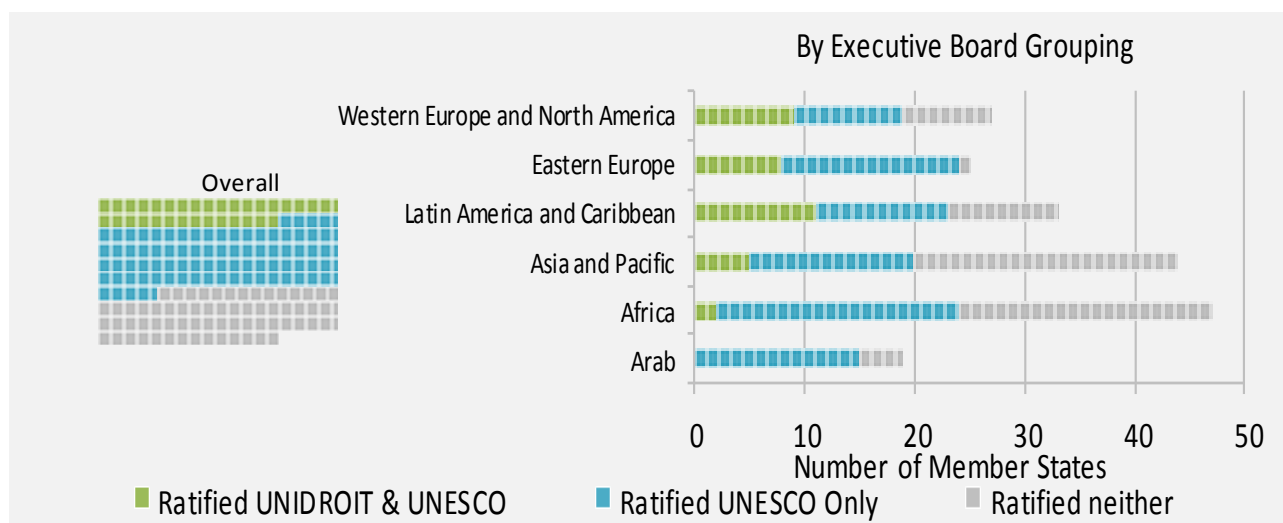
<sup>38</sup> Data on the art market drawn from McAndrew, Claire (2011) “The International Art Market in 2011: Observations on the Art Trade Over 25 Years.” The European Fine Art Foundation. Available at [http://www.tefaf.com/media/tefafmedia/TEFAF%20AMR%202012%20DEF\\_LR.pdf](http://www.tefaf.com/media/tefafmedia/TEFAF%20AMR%202012%20DEF_LR.pdf)

57. In addition to market States, it is also important for transit States (States that cultural property pass through between its excavation or theft and its final sale) to ratify the Convention. While Switzerland was once considered a major transit state, evidence suggests its ratification of the 1970 Convention and subsequent legislative changes have diminished trafficking through the country. Turkey is also considered a transit state, particularly for objects from Syria, but has also ratified the Convention. However, a number of transit States identified in the proceedings from the 40<sup>th</sup> anniversary of the Convention — Israel, United Arab Emirates, Singapore, and Thailand — have not ratified the Convention.<sup>39</sup> Another important transit market is the autonomous region of Hong Kong.

### 3.1.2 UNIDROIT Ratification

58. The UNIDROIT Convention is an important complement to the 1970 Convention, particularly as it relates to expanding and clarifying rules and procedures for the return of illicitly trafficked cultural property. It specifically addresses the right of individuals to pursue cases directly in a foreign court, time frames for return, issues surrounding bona fide purchasers and due diligence, and return of illicitly excavated objects. However, to date, only 35 States have ratified the UNIDROIT Convention (all of whom have also ratified the 1970 Convention).<sup>40</sup> In two regions, Western Europe and North America and Latin America and the Caribbean, roughly half of State Parties to the 1970 Convention are also State Parties to the UNIDROIT Convention. Rates of ratification for the UNIDROIT Convention are particularly low in African and Arab States: out of the two regions, only Gabon and Nigeria have ratified the Convention. Finally, China is the only state with a large art market that has ratified the UNIDROIT Convention.<sup>41</sup> These relatively low rates of ratification limit the applicability of its provisions.

**Figure 6 UNESCO AND UNIDROIT CONVENTION RATIFICATION**



<sup>39</sup> CLT/2011/Conf. 207/8REV, The Fight Against the Illicit Traffic of Cultural Property: The 1970 Convention: Past and Future Reporting of the Meeting, Paris France, 15-16 May 2011. Available at <http://unesdoc.unesco.org/images/0019/001927/192779E.pdf>

<sup>40</sup> STATUS / état - UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 1995) / convention d'UNIDROIT sur les biens culturels volés ou illicitement exportés. <http://www.unidroit.org/fr/etat-signatures-ratifications-cp>

<sup>41</sup> France and Switzerland both signed the UNIDROIT Convention but have not ratified it.

### 3.1.3 Reasons for Ratification and Non-Ratification

59. While the decision to ratify any convention results from a complex mix of national and international forces, a number of factors were uncovered over the course of the evaluation that can help to explain the patterns in ratification described above.<sup>42</sup> As shown in the table below, these factors can be roughly categorized as relevance of the Convention, state capacity, legal environment, and political / social context.

**Table 3 Reasons for Ratification and Delayed/Non-Ratification of the 1970 Convention**

	REASONS FOR RATIFICATION	REASONS FOR DELAYED/NON-RATIFICATION
<b>Relevance</b>	<ul style="list-style-type: none"> <li>Rich in antiquities and cultural property valued in the art market</li> <li>History of looting and/or trafficking</li> <li>Desire to become a “clean player” on the art market</li> </ul>	<ul style="list-style-type: none"> <li>Other UNESCO Culture Conventions considered more of a priority</li> <li>Little interest on the part of main stakeholders</li> </ul>
<b>State capacity</b>		<ul style="list-style-type: none"> <li>Limited capacity in culture sector</li> </ul>
<b>Political / social context</b>	<ul style="list-style-type: none"> <li>Shift in values and priorities</li> <li>UNIDROIT Convention “moved the bar” for state action</li> <li>High profile examples of looting/theft</li> <li>Increased public awareness of the issue</li> <li>Emergency situations (such as natural or human-made disaster or armed conflict)</li> </ul>	<ul style="list-style-type: none"> <li>Political pressure from players in the art market</li> </ul>
<b>Legal environment</b>		<ul style="list-style-type: none"> <li>Perceived mismatch between national legal framework and the Convention</li> </ul>

60. Countries for which the Convention is highly relevant because they are rich in antiquities and cultural property and/or are located along trafficking routes have greater incentives to ratify the Convention. A history of looting during times of conflict and subsequent repatriation campaigns also made the Convention particularly relevant for some States, such as those in the Balkans. Other explanatory factors include the creation of the UNIDROIT Convention in 1995. For some market States, the legal changes that would result from ratification of the UNIDROIT Convention made the relatively less stringent requirements of the UNESCO Convention more appealing.<sup>43</sup>

<sup>42</sup> Research exists on the circumstances that lead to states ratify conventions more broadly (see, for example Hathaway, O. A. (2007). Why do countries commit to human rights treaties? *Journal of Conflict Resolution*, 51(4), 588-621.) Rather than rehash those larger theoretical arguments here, we have focused on factors identified in the evaluation’s interviews and literature review on the 1970 Convention.

<sup>43</sup> For example, as described in E. Rutger Leukfeldt, Bo Bremmers, Wouter Ph. Stol, Anton Van Wijk (2011) *The Art of the Internet*. Eleven International Publishing, in 2004, the Dutch State Secretary and Minister of Justice recommended ratifying the UNESCO Convention as opposed to the UNIDROIT Convention, which the Netherlands had already signed, because it was more in line with Dutch legislation and had more signatories. Additionally, one description of the United Kingdom’s ratification process described representatives of the antiquities trade agreeing to a compromise solution in which they would endorse a recommendation to ratify the 1970 Convention if the UNIDROIT Convention was taken off the table. (See Mackenzie, S., & Green, P. (2008). Performative Regulation A Case Study in How Powerful People Avoid Criminal Labels. *British Journal of Criminology*, 48(2), 138-153.)

Finally, increased public awareness of the issue due to high profile examples of trafficking and an overall shift in values and priorities related to illicit trafficking have also helped to catalyse ratification.

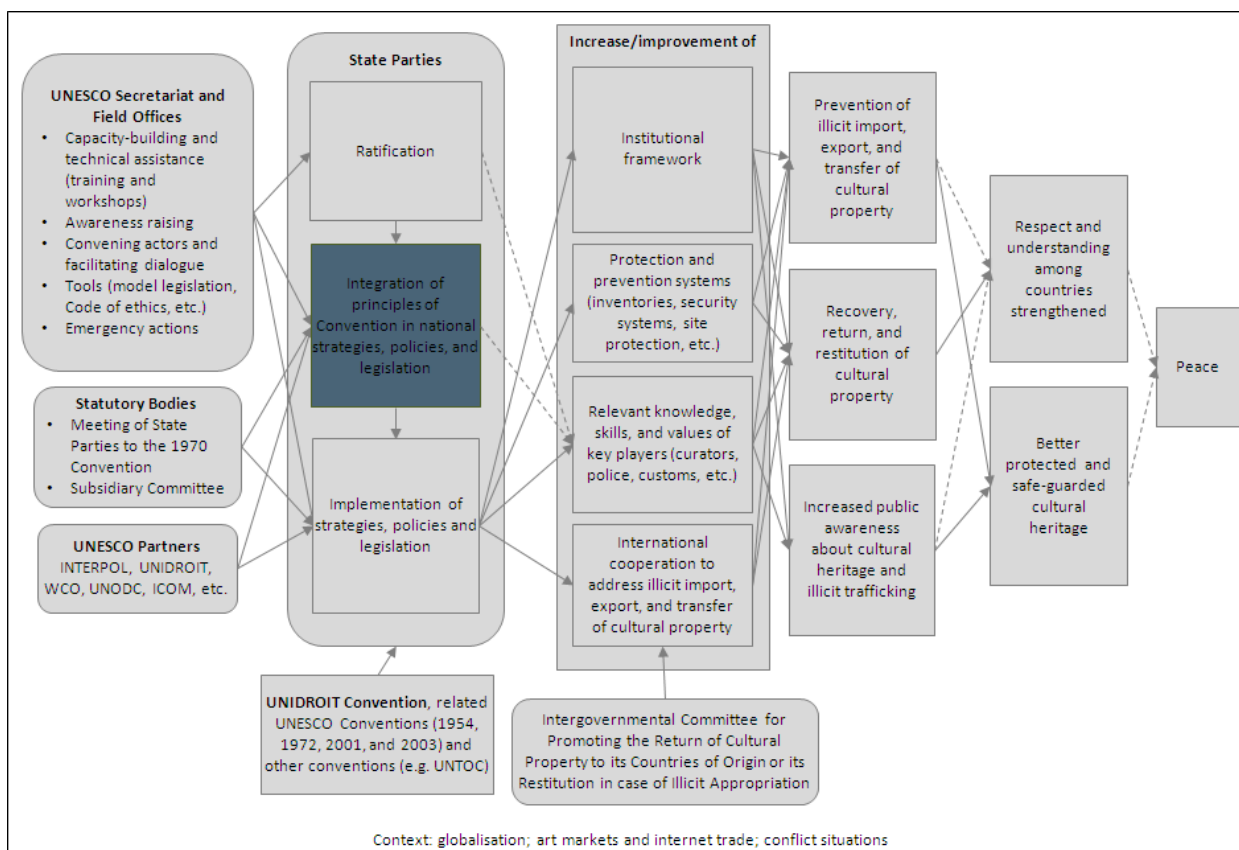
61. Reasons for non-ratification are likewise manifold. In some States UNESCO's other culture conventions, such as the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage, are considered more relevant. If this is coupled with little capacity within a state's culture sector, the 1970 Convention might not be given priority for ratification. Additionally, as noted by Shyllon in his report on African implementation, the lack of interest in cultural property on the part of lawyers also impedes ratification.<sup>44</sup> In the cases of some market States, advocacy on the part of the art market delayed ratification. Concerns about how the provisions of the Convention would fit with existing national law systems likewise did the same.
62. Overall, while the 1970 Convention does not have as high a rate of ratification as some of UNESCO's other culture conventions, the steady increase in ratification over the forty plus years is a testament to its enduring relevance and shifting attitudes towards this issue. By identifying the reasons for and against ratification that are within their powers to influence, the UNESCO Secretariat and the statutory bodies can continue to strategically encourage ratification of the 1970 Convention.

**Recommendation 1.** Provide targeted support, through awareness raising and capacity building activities, to regions where ratification rates are low. (State Parties / Subsidiary Committee / Secretariat)

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<sup>44</sup> Shyllon, *op. cit.*, p.12.

## Chapter 4 Policy / Strategy and Legislation of State Parties



63. This chapter is concerned with the overall policy and legal environment provided by State Parties for the implementation of the Convention and against the illicit trafficking of cultural objects. It first briefly looks at policy and then provides evaluation findings and conclusions about how the provisions of the 1970 Convention have been integrated in national legislation. It builds on previous evaluation exercises, on several studies undertaken by various experts over the past couple of years, and on the in-depth analysis of the legislation of a number of sample countries from all over the world, including source, market and transit countries. The country analysis is included in the annex of the present report. The present chapter also takes account of data from the evaluation survey and from interviews. The chapter concludes with a number of general conclusions and recommendations. (Recognizing the various interpretations of the Convention, this chapter sticks as closely as possible to the Convention text in enumerating these obligations.)

### 4.1 Policy and strategy

64. With regard to policy and strategy the evaluation was interested in whether State Parties had put in place any document that described the country's overall vision for fighting the illicit export, import and trafficking of cultural property, including a reference to relevant legislation, a description of the roles and responsibilities of all involved stakeholders (including the Ministry of Culture and other concerned Government authorities, the police, the national Interpol Bureau, customs, education institutions, museums, research institutions, art market, etc.), cooperation mechanisms, specific goals to be achieved and responsibilities assigned to them, time-frames etc.

While the Convention does not directly call on State Parties to have such an overall policy or strategy, it requires State Parties to set up national services (Art. 5) to carry out a number of functions including contributing to the formulation of draft laws and regulations, establishing a list of public and private property not to be exported, promoting the development of scientific and technical institutions, the supervision of archaeological excavations, educational measures and others.

65. The extent to which such services have been established is discussed in a later chapter of this report. In the present chapter it is enough to point out that all of the functions to be undertaken by such services require cooperation with a variety of national stakeholders, which will have to be carefully planned, coordinated and monitored. National policies and strategies might be useful tools that could help with such a rather demanding task.
66. Data gathered showed that most State Parties do not dispose of any such comprehensive strategic documents as described above. Although 62% of survey respondents confirmed that their respective country had an overall policy and / or strategy for fighting illicit trafficking of cultural property, a closer look at the information provided showed that in many cases State Parties' overall legal environment was considered at the same time to also constitute the policy environment. Several States also pointed to their overall culture policy or strategy that included the issue of illicit import, export and transfer of cultural property, or stated that there was no specific policy or strategy related to illicit trafficking of cultural property in place, but that concerned institutions each had their own strategy. Others pointed to the specialised units or committees that had been established and that were responsible, among other issues, for contributing to the development of legislation, for stakeholder coordination and supervision of archaeological excavations. Very few State Parties reported having comprehensive overall national policy and / or strategy documents in place that provided an overall framework for coordination and cooperation at national level.

## **4.2 Legislation**

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67. Domestic laws regulating the trade in cultural objects have been the driving force from the time that a multilateral instrument was proposed in the 1930s to its realisation with the 1970 UNESCO Convention to the present day. The original impetus was the realisation by many countries that domestic laws for the protection of movable heritage alone were simply ineffective for their purpose. Once a cultural object had left its territory, a country's own laws were of little benefit. Instead, a multilateral instrument, which promoted reciprocity through mutual recognition of domestic laws of other States and international cooperation in their effective implementation by facilitating return, was imperative.
68. The 1970 Convention is this instrument. But also, like most treaties, it is clearly built on compromises. The Convention is a sum of the numerous domestic legal traditions for the protection of movable heritage of the negotiating States. Then, as now, these national laws reflected the diverse (and sometimes competing domestic) priorities and legal systems of these States. In the intervening years, even where State Parties have adopted new laws or substantially revised pre-existing legislation because of their ratification of the Convention, generally, the full range of their obligations are not addressed.
69. By its nature, the 1970 Convention rises or falls on mutual recognition, reciprocity and international cooperation. The persistent, at best, patchwork application of key obligations by the domestic laws of State Parties, means that the circle has not been squared to date.

### 4.2.1 Definition of cultural property

70. Given that the main purpose of the Convention is to prohibit and prevent the illicit import, export and transfer of ownership of cultural property, having a clear definition of cultural property is paramount. For the purposes of the 1970 Convention, the term “cultural property” was defined to mean 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 categories listed in Art. 1 of the Convention. The 1995 UNIDROIT Convention has adopted the same definition of cultural property, with the difference that cultural property does not have to be “specifically designated by each State” as in the case of the 1970 Convention. The latter furthermore specifies which categories of “cultural property” forms part of the “cultural heritage” of each State (Art. 4).
71. In reality these two terms are often used interchangeably and legal definitions vary from State Party to State Party, depending on the specific historical and legal context. The present evaluation established that the large majority of State Parties have included a definition of cultural property and / or cultural heritage in their legislation. Indeed, around 88% of respondents to the evaluation survey confirmed that their country’s policy and legislation provided such a definition.
72. However, these definitions vary considerably between State Parties. This was already pointed out by previous studies, for instance the 2012 report on the Arab Region<sup>45</sup> where it is said that legal definitions of cultural property differ from one country to another, both in terms of terminology and content, with most definitions not being in line with that of the Convention. Egypt, for instance, adheres to a definition that corresponds to a classical definition of antiquity. In Europe<sup>46</sup> several countries have adopted the definition of cultural property contained in the 1970 Convention. For instance, countries such as France, Romania, Switzerland and Turkey define cultural property largely in line with Art. 1 of the Convention. But this is far from being the general rule. Considerable variety also exists in other regions. South Africa, for example, uses a definition of cultural property (National Estate) that is much broader than that contained in the Convention.
73. This diversity of definitions of cultural property and cultural heritage reflects the diverse historical, political and legal environment of State Parties. As long as the definition within the national legislation falls within the broad parameters of the 1970 Convention, this diversity is not problematic. It would be difficult to get exact uniformity across State Parties, nor should that be encouraged given the diversity of cultures and how they are manifested as movable heritage.

### 4.2.2 Establishment of state ownership of cultural property

74. Art. 13 (d) of the Convention “recognizes the inalienable right of each State Party ... 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.” State Parties are encouraged to establish State ownership for whatever is deemed appropriate by the national authorities, and for cultural property not yet excavated, or illicitly excavated from the national territory. This provision may help in requesting return of these

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<sup>45</sup> R. Fraoua, 2012, Legislative and institutional measures to combat trafficking in cultural property in Arab States, *Background Paper for participants in the Second Meeting of State Parties to the 1970 Convention*, Paris, UNESCO.

<sup>46</sup> M. Cornu, 2012, Implementation of the 1970 UNESCO Convention in Europe, *Background Paper for the participants in the Second Meeting of the State Parties to the 1970 UNESCO Convention*, Paris, UNESCO.



objects domestically or even abroad. For objects legally excavated, national legislation may either maintain the State's ownership or permit private ownership.<sup>47</sup>

75. The results of the evaluation survey showed that around 83% of State Parties responding to the survey had established state ownership of undiscovered cultural heritage. In Turkey, for example, the law provides "that movable cultural property that is known to exist or will be discovered on an immovable property owned by a real and legal person subject to civil law" shall be state property. Owners or occupants of the ground or waterway where the cultural property is discovered must notify a local museum or authority, which must then protect and secure the property and inform the Ministry of Culture and Tourism. In Egypt accidental finds of movable antiquity or fragments of immovable antiquity must be reported and become state property with compensation paid to the finder, and in China movable cultural relics remaining underground, in inland waters or territorial seas within the boundary of China are owned by the state. The state also owns cultural relics unearthed in China.
76. In a number of countries, on the other hand, undiscovered cultural property can also be private property. This is the case in Peru, for instance, where such private property is however subject to certain limitations contained in the relevant legislation. In Mali movable and immovable objects discovered during archaeological excavations on public or private state land are state property. If the movable archaeological material is discovered on another (privately held) land, ownership will be shared with the private owner, while the State has the right of pre-emption over cultural property.
77. However, the existence of state ownership laws has not always guaranteed their recognition in foreign courts. As noted in the background on the UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects, national legislation on undiscovered antiquities is "often too vague . . . and this lack of precision is often penalized by [foreign] courts."<sup>48</sup> The situation is, however, constantly evolving, especially when there is no ambiguity in the legislative texts of the country of origin concerning its ownership of cultural property. Courts in the United States resisted recognition of such laws concerning national ownership for years but have gradually changed their position where the laws of the other state are clear concerning the assertion of state ownership. According to Gerstenblith, court cases in the United States and the United Kingdom in 2002 and 2007 respectively have helped to universalize the principle that laws that vest ownership of antiquities in a state create ownership rights recognized by foreign courts.<sup>49</sup>

### 4.2.3 National inventory systems

78. State Parties to the Convention are required to establish and keep 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 (Art 5. (b)). Art. 7 (b) (i) of the Convention establishes the documentation of a cultural property stolen from a museum or a religious or secular public monument as appertaining to the inventory of that institution as a prerequisite for the prohibition of its import, and the Convention provides for a specific return procedure (as described by Art. 7 (b) (ii)) for such objects. Well documented

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<sup>47</sup> UNESCO Handbook: Legal and Practical Measures Against Illicit Trafficking in Cultural Property, 2006.

<sup>48</sup> Expert Committee on State Ownership of Cultural Heritage. Explanatory report with model provisions on state ownership of undiscovered cultural objects and explanatory guidelines. [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/UNESCO-UNIDROIT\\_Model\\_Provisions\\_en.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/UNESCO-UNIDROIT_Model_Provisions_en.pdf)

<sup>49</sup> P. Gerstenblith, 2009, Schultz and Barakat: Universal Recognition of National Ownership of Antiquities, *Art Antiquity and Law*, 14(1), 09-007.

inventories are therefore important as they can constitute a proof of ownership in the case of theft. The existence or not of the inventoried documentation of an object can prove decisive in settlement negotiations or a law suit related to restitution after it has been stolen. Of course, inventories also serve other purposes such as those related to scientific study, the restoration, care, and protection of the objects. Potential users of inventories of cultural property include government, museum, researchers, dealers, police, customs, the insurance industry, lawyers and magistrates and others. The question to be answered in this chapter is whether the requirement for inventories is established by law. Whether the laws are then implemented, what these inventories look like, how comprehensive they are, their quality etc. is a question for [Chapter 5](#) on implementation. 83% of respondents to the survey reported that their country's policy and legislation provided for a national inventory of cultural property, while about 77% reported to have specific inventory requirements for museums, public institutions etc.

79. The following constitute a few examples of countries with legislation that provides for an inventory of cultural property: in Turkey, for instance, the Ministry of Culture and Tourism classifies and registers movable cultural property declared to them. Additionally, public and private institutions, real and legal persons (including foundations) seeking to create collections (and museums) must obtain a permit from the Ministry and record their movable cultural property. In France, public collections are required to maintain an inventory or database, but there is no one single, national centralized inventory. In the Russian Federation, on the other hand, there is a state inventory of movable cultural property. It is maintained by the Federal Culture and Cinematography Agency (Roskultura), which also holds the Public Museum Stock Catalogue of the collections of the Russian Federation's Museums. There is also a federal database of cultural objects lost during World War II, of those that have been stolen or illicitly exported from Russia, or those banned from export.
80. China also has a national system of registering cultural relics including those of private owners. Also, museums, libraries and other institutions housing collections of cultural relics must classify them and provide a record to the relevant administrative department, which then provides it to the State Council for Cultural Relic Administration. The Council, in turn, maintains a record of all Grade 1 relics of the state and those cultural relics in the collection of state institutions. Mali also has a national inventory of all movable cultural properties of the state, local authorities, associations, natural persons or legal entities, which are considered to be important and need to be protected. The South African Heritage Resources Agency maintains an inventory of the National Estate. It must liaise with provincial authorities in the maintenance of the inventory and publish summaries and analyses of the inventory on a regular basis.
81. Overall, the evaluation established that most State Parties' legislation provides for the development and maintenance of an inventory of cultural property. However, considerable differences exist in the implementation of this provision, as discussed in [Chapter 5](#). However, it is useful to emphasize here that that two major challenges exist worldwide when it comes to inventorying of cultural property. One relates to the cultural property of religious institutions. Often these institutions either do not have inventories or are hesitant to provide Government authorities access to them. The other major challenge relates to cultural property in the subsoil or under the sea and as yet undiscovered, which cannot be included in any national inventory. Illicit excavations are rampant in many parts of the world and contribute to the global illicit export, import and transfer of cultural property. Such objects are not protected under Art. 7 (b) (i) of the Convention.

#### 4.2.4 Regulation of archaeological excavations

82. State Parties to the Convention are required to set up one or more national services for the protection of the cultural heritage. These services are expected to carry out a number of functions including the organization of the supervision of archaeological excavations, ensuring the preservation in situ of certain cultural property, and protecting certain areas reserved for future archaeological research (Art. 5(d)).
83. Most of the State Parties' legislations regulate archaeological excavations in some way. From the respondents of the evaluation survey, over 94% reported that their country's policy and legislation addressed the protection and regulation of archaeological sites. Previous reports confirm that this is the case in many regions. In the Arab region, for instance, archaeological excavations are regulated in 17 States without exception, although the degree of detail in the regulations differs from one State to another.<sup>50</sup>
84. This also applies to other regions. In Mali, for instance, archaeological excavations are strictly regulated by law. They must be authorized by the Minister of Culture and Minister for Scientific Research, with authorization being renewed annually. In South Africa, not only archaeological sites, but also palaeontology, meteorites, graves and burial sites are regulated by national and provincial laws and regulations. In China, archaeological excavations are regulated extensively, with further legislative requirements for foreign based archaeological activities. Cambodia also regulates archaeological excavations by law. The same applies to most Latin American countries such as, for instance, to Ecuador whose Institute of Cultural Patrimony has the authority to regulate archaeological and paleontological excavations in the country, which cannot be undertaken without its prior authorization. This regulation is enforced by the military, police and customs agents.
85. Even though archaeological excavations are regulated by the legislation of most State Parties, this does not mean that the problem of illegal excavations has been solved. Quite to the contrary, illegal excavations continue to be one of the major challenges faced by State Parties to the Convention.

#### 4.2.5 Transfer of cultural property within the national territory

86. Regulations for the transfer of cultural property within the territory are concerned with the categories of property that can or cannot be traded and establish whether the transfer of cultural property needs to be authorized by any Government authority such as the Ministry of Culture. Only around 59% of respondents to the evaluation survey confirmed that their countries' legislation contained regulations on the trade of cultural property, and even fewer (52%) reported that antique dealers were required to register their sales. The latter constitutes a requirement under Art. 10 (a) of the Convention where State Parties are to "... oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject".<sup>51</sup>
87. The transfer of ownership of cultural property is mentioned in Art. 13(a) of the Convention, which calls on State Parties to "... prevent by all appropriate means transfers of ownership of cultural

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<sup>50</sup> Fraoua, *op. cit.*, p. 9ff

<sup>51</sup> Encouraging self-regulation of the market is another approach. The UNESCO International Code of Ethics for Dealers in Cultural Property, adopted by the ICPDPC, represents one attempt to do just this.

property likely to promote the illicit import or export of such property". Apart from the title of the Convention, this is the only reference to transfer of ownership contained therein. Neither in this article, nor anywhere else in the Convention is it explained what types of transfers of ownership of cultural property were most likely to promote its illicit import or export. As pointed out by O'Keefe<sup>52</sup>, States therefore have considerable freedom of action in deciding how best within their own legal system to hinder transfers of ownership, which are likely to promote illicit traffic, and there may therefore be considerable variation between States.

88. Variation certainly exists between the sample countries whose legislation was analysed for the present evaluation exercise. It should be noted that in some cases, these regulations apply to cultural property generally while in other cases, they apply to classified cultural property only. There is broader regulation in respect of the latter group. In Romania, cultural objects can be transferred with the prior authorization of the Ministry of Culture and National Commission of Museums Collections and only through authorized economic agents, with the State having the right of pre-emption. Romania has specialist legislation and a related licensing system covering persons who are authorized to trade movable cultural goods. In France, dealers and auction houses are required since 2000 to maintain a register of movable property. France is also currently assessing means of regulating the sales of cultural objects on the internet. While there is no formal requirement on French museums and other collecting institutions concerning the purchase of illicitly exported objects, there is a practice of refusing objects with unclear or incomplete provenance.
89. In Switzerland, on the other hand, Federal Institutions are prohibited by law from acquiring or exhibiting cultural property that is stolen, illegally exported, or is the cultural heritage of a state from which it is illicitly exported. Significantly, people working in the art trade and auction businesses can only transfer cultural property that is not stolen, removed against the will of the owner, or illegally excavated or illicitly imported. They must act with due diligence by establishing the identity of the seller and obtaining their written declaration that they have a right to transfer the property, advise their customers of current import and export regulations of contracting States, maintain written records of all sales for 30 years, and provide this data to the specialized body in the Federal Office for Culture.<sup>53</sup> The Swiss Federal Office for Culture has a Memorandum of Understanding with eBay International AG of 20 October 2009 which prohibits eBay Switzerland from selling archaeological artefacts the seller cannot prove they have title, that are certified by the Canton where they were discovered or, if imported into Switzerland, that they have an export certificate from the relevant state.
90. In Peru private individuals and private museums can transfer property forming part of the 'Cultural Heritage of the Nation' within Peru but the relevant agency must be advised beforehand. Such objects which are part of a collection can only be transferred with expressed authorization by the competent agency. Anyone who acquires such cultural property must be able to prove valid title, if they cannot there is a presumption that it is illicitly acquired and any transfer of title or possession is rendered void and title is reverted to the state. Private museums, which hold cultural property designated part of the Cultural Heritage of the Nation, are regulated also.
91. In Ecuador, Transfer of the Cultural Patrimony of the Nation, can only occur with the prior authorization of the Institute of Cultural Patrimony. Also, such property can only be moved to

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<sup>52</sup> P. O'Keefe, 2007, *Commentary on the UNESCO 1970 Convention*, Second Edition, Institute of Art and Law.

<sup>53</sup> These obligations only apply to cultural property valued at more than CHF5,000. This limitation does not apply to objects from archaeological or paleontological excavations, dismembered artistic or historical monuments or archaeological sites, or ethnological objects (particularly those used for sacral or profane rituals) (OTBC Art.16).

another location with a permit from the Institute. Following authorized transfer, the object cannot be dismembered or divided in such a way that it impacts upon its essential characteristics. While collections are considered indivisible, the owner of cultural property in a collection may transfer it to another if it can be shown that it will not affect the collection's coherence and integrity. The Institute of Cultural Patrimony also regulates the domestic trading on items of Cultural Patrimony of the State. Any individual or legal entity involved in the trade of such assets must obtain the prior authorization of the Institute. Transfers without their authorization are void. Such enterprises must keep a record of their sales activities. Their premises must be operable, secure, and meet conditions favourable to prevent the deterioration or destruction of the cultural property. Also they must allow visits by the Institute to inspect that items are inventoried and the sales records are maintained.

92. In Egypt, the trade in cultural objects is prohibited, even if private property. Any transfer of antiquities by an owner or possessor must be reported to the Supreme Council of Antiquities, otherwise it is void. In Australia, trade in cultural property within Australia is not regulated. However, relevant State and territory laws do prohibit the sale of human remains and Aboriginal and Torres Strait Islander secret and sacred objects. No further specific provisions cover museums and collecting institutions and dealers.<sup>54</sup> Indeed, Australia lodged a reservation in respect of Article 10 of the 1970 Convention concerning the requirement that dealers maintain a register of objects traded.

#### **4.2.6 Import and export controls**

93. Art. 7 (b)(i) of the Convention requires State Parties 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 after entry into force of this Convention. This article is very limited in scope since it only covers property stolen from specific institutions. Additionally it requires that the stolen objects had been inventoried, which is very often not the case, especially for objects from religious institutions where inventories often do not exist or they are not accessible to Government. The article is also not relevant for cultural property clandestinely excavated from archaeological sites and exported abroad. Cultural property stolen from private institutions is also not protected.
94. Around 71% of survey respondents indicated that the import of cultural property stolen from a museum or religious / secular institution was prohibited by their country. Only about 50% responded affirmatively to the overall question regarding the provision of import controls. Most of the sample countries have not established import controls; exceptions include Cambodia, who has a legally prescribed system of import control that forbids the import into Cambodia of cultural objects in contravention of the national legislation of the country of origin. Another exception is South Africa, where cultural property from another State cannot be imported except through a customs port of entry, and a valid export permit or authorization from the State of origin must be presented. Where South Africa has a bilateral agreement with a country, no cultural property illegally exported from that State can enter South Africa. When a customs officer believes there is a possible contravention, the object can be withheld until the necessary investigations are

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<sup>54</sup> The federal government has noted that Museums Australia, which is affiliated with ICOM, adheres to that organization's Code of Ethics. The Heads of Collecting Institutions have also adopted the 'Collecting Cultural Material: Principles for Best Practice' (2009) which provides guidelines on best practice concerning acquisition of cultural property which references the 1970 Convention. The Australian Antique and Art Dealers Association (AAADA) has its own Code of Practice which is not mandatory.

- undertaken. Australia has an import control system for protected cultural objects from other countries, pursuant to its obligation under Article 7 (b)(i) of the 1970 Convention.
95. The Swiss legislation provides for a system of import control based on bilateral agreements. Switzerland follows the U.S. model on the domestic implementation of the 1970 Convention, which confines obligations under Art. 7 and Art. 9 to countries with which they have a bilateral agreement.
  96. France, Romania, Turkey, Peru, China, Mali, Morocco and Egypt do not have import control systems. Romania and France, however, are both bound by the Council Directive [93/7/EEC](#) of 15 March 1993<sup>55</sup> on the return of cultural objects unlawfully removed from the territory of a Member State, and Romania is also bound by the UNIDROIT Convention. Peru's law does provide for fines, expropriation or confiscation of the cultural property of another state from the possessor if it is brought into Peru without the appropriate export license from the country of origin.
  97. Overall, import controls often do not exist, as was also confirmed by earlier research. In the European Region, for instance, they rarely exist.<sup>56</sup> In Asia it was observed that several larger countries such as China, Japan and Korea are mostly concerned with the outbound flow of cultural objects, while paying much less attention to the inbound traffic.<sup>57</sup> In the Arab Region half of the countries' legislations do not contain provisions on import controls, which means that they neither prohibit nor control the import of cultural objects into their territory, while the other half do contain specific rules on imports such as that antiquities may be imported as long as they are accompanied by a certificate issued by the exporting countries, or that they are subject to customs declaration and registration.<sup>58</sup>
  98. With regard to the export of cultural property, State Parties are requested (Art. 6 (a) (b)) to introduce appropriate certificates in which the exporting State would specify that the export of the cultural property in question is authorized and to prohibit the exportation of cultural property unless accompanied by such an export certificate. Among the respondents to the survey around 91% had reported that their legislation contained export controls, while around 82% confirmed that export certificates were required.
  99. Export legislations, however, differ considerably in scope and content. It also became apparent that while authorization is usually required for the export of cultural property that is not banned from export, export certificates in line with the UNESCO-WCO Model Export Certificate or similar models are not always in use. The following paragraphs include a few examples of regulations put in place by State Parties.
  100. France is one of the States whose legislation stipulates that cultural property that is not a national treasure, but which is of historic, artistic or archaeological importance, must obtain an export certificate for it to move through the EU and beyond. The certificate is based on the EU certificate and not on the UNESCO-WCO Model Export Certificate. The same certificate is used by Romania where the export of privately owned movable cultural goods can only occur with such an export certificate. In Switzerland cultural property on the Federal Register can only be exported with authorization, and Turkey's legislation provides that movable cultural property that has to be preserved in the country cannot be taken abroad. Loans for temporary exhibitions abroad are

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<sup>55</sup> EC Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member state.

<sup>56</sup> Cornu, *op. cit.*, p. 7.

<sup>57</sup> Keun-Gwan Lee, *op. cit.*, p. 16.

<sup>58</sup> Fraoua, *op. cit.*, p. 13.

possible under certain conditions and subject to authorization. In the Russian Federation the export of certain cultural objects is banned. Some of these can, however, be exported temporarily. An export certificate must be issued for cultural objects that are not banned from export.

101. In Peru the export of the Cultural Heritage of the Nation is completely banned except in certain enumerated circumstances, including for exhibitions, studies or restoration. Ecuador's legislation has similar provisions, so does Egypt where the transfer of antiquities outside the country by any means is prohibited. In Cambodia export of cultural objects is only permitted when an export license has been issued by the competent authority. China's legislation provides that state owned cultural relics, valuable cultural relics in private hands and others prohibited from export cannot leave the country except for exhibitions. For cultural relics that can be exported, an export permit must be issued. The permit is modelled on the UNESCO-WCO Model Export Certificate. In Mali the export of classified cultural property or that proposed for classification is prohibited, so is the export of cultural property from archaeological sites. Only dealers with prior authorization from the Minister may export cultural property for commercial purposes, and individuals seeking to export cultural property which exceeds a certain value and number, must conduct this through an authorized dealer. An official export authorization is required.

#### 4.2.7 Sanctions

102. Art. 8 of the Convention requires State Parties to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under articles 6(b) and 7(b). Its scope is restricted since it only refers to Art. 6(b), which is concerned with export prohibitions, and Art. 7(b), which refers to the prohibition of the import of property stolen from a museum or public monument. Art. 10 (a) requires State Parties put in place penal or administrative sanctions for antique dealers who do not fulfil their obligations with regard to maintenance of a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold, etc. These are the only articles in the Convention that deal with the issue of sanctions. Both articles leave it up to the State Parties to determine the nature, scope and depth of the penalties to be imposed.
103. About 89% of survey respondents reported that their countries' legislation includes sanctions (criminal and/or administrative and/or civil) for activities related to the illicit import, export and transfer of cultural property. Here again, exists considerable variety with regard to the sanctions imposed. Egypt, for instance, prohibits private ownership, possession or trade in antiquities, and imposes sanctions for violations including prison terms with hard labour. Even a person who "accidentally defaces" an Egyptian antiquity faces imprisonment.<sup>59</sup> Morocco, like Egypt, prescribes civil and criminal penalties for violations of the obligations contained in domestic law. Agents of the public administration (including museum officials, curators etc.), customs agents, and administration covering the maritime domain with authority over maritime cultural property shall investigate violations as will the Criminal Investigation Department.
104. In Switzerland fraud, theft and receipt of stolen property are covered by the Swiss Penal Code. Additional fines and terms of imprisonment for individuals and businesses are introduced by the Federal Act on the International Transfer of Cultural Property for violating its provisions. Peru also provides for fines, expropriation or confiscation of the cultural property of another State from the possessor if it is brought into Peru without the appropriate export license from the country of

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<sup>59</sup> Shyllon, *op.cit.*, p. 19.

origin. In Turkey as well, civil and criminal sanctions, with fines and terms of imprisonment, are attached to individual and other legal persons violating the requirements of the Law. Turkey itself has conceded that these penalties have done little to deter the illicit trade in cultural property. Other State Parties share similar experiences.

105. The exact extent to which sanctions are imposed on dealers for not fulfilling their obligations under Art. 10 (a) of the Convention could not be established by the evaluation. However, given that almost half of the survey respondents had reported that antique dealers were not required to register their sales, it can be assumed that penal or administrative sanctions also did not exist in these States. Most likely, similar situations exist in even more State Parties.

#### **4.2.8 International cooperation, bilateral agreements**

106. Several articles in the Convention are concerned with issues related to international cooperation between State Parties. Article 9, for instance, calls upon State Parties to participate in a “concerted international effort” to protect cultural patrimony in jeopardy from pillage, in order to undertake concrete measures such as the control of exports and imports and international commerce. The United States used this article as a basis for certain bilateral agreements. Other articles put a focus on the return of illicitly exported cultural property as part of international cooperation. Art. 7 (b) (ii), for example, requires State Parties to take appropriate steps to recover and return cultural property stolen from a museum or public monument in another State Party and imported after the entry into force of the Convention in both States concerned, provided that the property had been inventoried. Over 80% of respondents to the evaluation survey confirmed that their state’s legislation addressed the return of cultural objects stolen from a museum or public institution. The article does not explain what constitutes “appropriate steps” and leaves it up to the importing State Party to define the most suitable mechanism. Art. 13 calls on State Parties to ensure that their competent services co-operate in facilitating the return of illicitly exported cultural property to its rightful owner (b), to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners (c), and to facilitate recovery of property declared as inalienable by the State Party concerned in cases where it has been exported (d). The implementation of these articles is discussed in [Chapter 5](#) below, while the present chapter discusses their integration into legislation.
107. Art. 15 of the Convention recognizes that under certain circumstances, bilateral agreements might be required for the return of cultural property. It stipulates that nothing in the Convention shall prevent State Parties from concluding agreements among themselves or from continuing to implement agreements already concluded regarding the return of cultural property removed, whatever the reason, from its territory or origin, before the entry into force of this Convention for the States concerned. As pointed out by O’Keefe<sup>60</sup> and stakeholders consulted in the context of the present evaluation exercise, Art. 15 should not to be interpreted by State Parties to mean that the Convention can only be implemented where a bilateral agreement is in place. Rather, bilateral agreements should complement the Convention - not substitute it - by covering returns of cultural property removed prior to the Convention coming into force or going beyond the obligations of the Convention itself. However, some State Parties have interpreted Article 15 to preclude or to impede international cooperation in the absence of a specific bilateral agreement.
108. Around 40% of survey respondents reported to have concluded bilateral agreements with other State Parties specifically related to the prevention and combat against the illicit traffic of cultural

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<sup>60</sup> O’Keefe, *op. cit.*, p. 89.



objects. Additionally, over 12% reported to have the topic included in more general cultural cooperation agreements.<sup>61</sup> Some of those State Parties that reported to not have any specific bilateral agreements, such as for example the Netherlands, pointed out that the only condition for the return of cultural property was that the requirements of the national legislation were fulfilled, without the need for the prior conclusion of a bilateral agreement. Others pointed to the multilateral agreements they are bound by and that are relevant for cooperation in this area.

109. In France, for instance, objects, which have left the territory of another EU member state in violation of its laws protecting national treasures or relevant EC regulations, may entail conservation measures or return procedures. In respect of cultural objects removed from non-EU Member States, the Civil Code provides that (absent bilateral agreements) a claimant can seek recovery from a possessor in good faith. Claims against the state or national museums are only admissible concerning acts after 1997, when the Convention came into force in France.
110. Canada's legislation<sup>62</sup> stipulates that "it is illegal to import into Canada any foreign cultural property that has been illegally exported from that reciprocating State". Recovery of the property may then be ordered by the court if it is convinced that the cultural materials have been imported into Canada in violation of Canada's import controls. Payment of compensation is required to a person, institution or public authority that qualifies as a bona fide purchaser or has a valid title to the property and acquired it without knowledge that the property had been illegally exported from the reciprocating State. Gerstenblith also points out that for both Canada and the United States, implementation of the 1970 Convention brought about significant change in their existing laws by establishing a mechanism by which the attempted import of cultural objects whose export violated another nation's export controls constitutes a violation of the importing nation's domestic law. Canada grants across-the-board recognition of the export controls on cultural objects of another State Party. For the United States, this change is more modest because recognition of the foreign nation's export controls is limited to those nations with which the United States has entered into a bilateral agreement.
111. The United States<sup>63</sup> has entered into bilateral agreements with fourteen nations.<sup>64</sup> These agreements are designed to allow the United States to implement Art. 9 of the Convention, which calls on State Parties affected by pillage of archaeological or ethnological materials to call upon other affected Parties to participate in a concerted international effort and to carry out concrete measures, including the control of exports and imports and international commerce in the specific materials' concerned. Pursuant the United States' bilateral agreements import restrictions are imposed on certain categories of archaeological or ethnological materials. Bilateral agreements are only established if the requesting nation has taken measures towards protecting its own archaeological and ethnological heritage consistent with the 1970 Convention, as well as efforts undertaken to seek assistance from other State Parties. The agreements furthermore establish a path toward mutual cooperation between the US and the other State Party in the realm of heritage preservation, including the provision of technical assistance.
112. Switzerland follows a similar approach as the United States in that bilateral agreements are designed to facilitate the implementation of Art. 9 of the Convention. They stipulate the

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<sup>61</sup> Here, the actual figure might be higher since some State Parties might have focused their survey response only on agreements exclusively related to the illicit traffic of cultural property.

<sup>62</sup> Gerstenblith, *op. cit.*, p. 6ff.

<sup>63</sup> Gerstenblith, *op. cit.*, p. 2f.

<sup>64</sup> Gerstenblith, *op. cit.*, p. 2f. Salvador, Guatemala, Nicaragua, Honduras, Peru, Bolivia, Mali, Italy, Canada, Cambodia, Colombia, Cyprus, China and the Hellenic Republic (Greece).

conditions under which the transfer of cultural property from one state to another will be lawful, establish the procedures for the repatriation of illicitly transferred objects, how compensation is to be determined for the good faith possessors of the object that is returned, exchange of information and mutual cooperation, and exclude retroactive application. As at 2013, Switzerland had bilateral agreements in force with five State Parties.<sup>65</sup>

113. Australia has bilateral agreements (Memorandum for Understanding) for the protection and return of cultural objects with China and the Republic of Korea. It furthermore reported to have standing requests for seizure with a number of countries such as Argentina, Cambodia, Egypt and China. For requests for seizure, forfeiture and return of illicitly imported protected objects received from other State Parties, proceedings under the Protection of Movable Cultural Heritage Act will only be initiated once the Commonwealth has made such a request. The Act does not consider return requests from non-state actors nor does it provide compensation for a good faith purchaser.
114. China has eighteen bilateral agreements covering the protection and return of cultural relics with various countries, including with Australia, Switzerland and the United States. The Memorandum of Understanding between China and the United States, for instance, concerns the imposition of import restrictions on categories of archaeological material and monumental sculpture and wall art from certain periods. Egypt is another State Party that has emphasized the importance of bilateral and multilateral agreements for the effective return of illicitly removed cultural property in its national reports to UNESCO. It has signed agreements with a number of State Parties. Significantly the bilateral agreement with Switzerland mentions cooperation in preventing the import and transit of antiquities that were illicitly removed from the territory of one of the parties, and the import and transit of illicitly exported antiquities from the respective State Party is prohibited. Egypt's law currently does not cover this obligation.

### **4.3 Challenges / Conclusion**

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115. The articles of the 1970 Convention are not self-executing. The effectiveness of the Convention therefore depends both on the national legal environment of each State Party and on the harmonization of these national legislations at regional and at global levels in order to facilitate international cooperation. The importance of ensuring that State Parties' legislation complies with all their obligations under the 1970 Convention can therefore not be overemphasized.
116. Overall, the evaluation confirmed what previous studies had already demonstrated: Considerable diversity exists between State Parties' legislation. Diversity of priorities and legal traditions is present within regions themselves, so is lack of uniformity in the ratification and integration of the provisions of the 1970 Convention in national implementing legislation. What is clear is that regions with long-established regional intergovernmental organizations with specialist instruments covering movable heritage (for example, Europe and the Americas), have a more widespread uptake of the 1970 Convention and more consistent domestic laws regionally. However, these domestic laws often more closely align with the obligations under the relevant regional instrument, rather than the 1970 Convention.
117. Even though the majority of States (77% of survey respondents) reported to have changed their legal framework as a result of having ratified the Convention, the totality of their obligations deriving from the Convention is hardly ever fulfilled. Many of the articles of the Convention leave

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<sup>65</sup> Italy, Egypt, Greece, Columbia and China.

ample room for interpretation, the discussion of which has filled numerous scientific reports and the minutes of meetings of State Parties and other stakeholders over several decades. Furthermore it seems that the fact that many obligations under the Convention are subject to be “consistent with national legislation” has been interpreted by some State Parties to mean that the obligations deriving from certain articles will only be fulfilled if they are in line with existing legislation, rather than that the existing legislation should be reviewed in order to make it more consistent with the Convention.

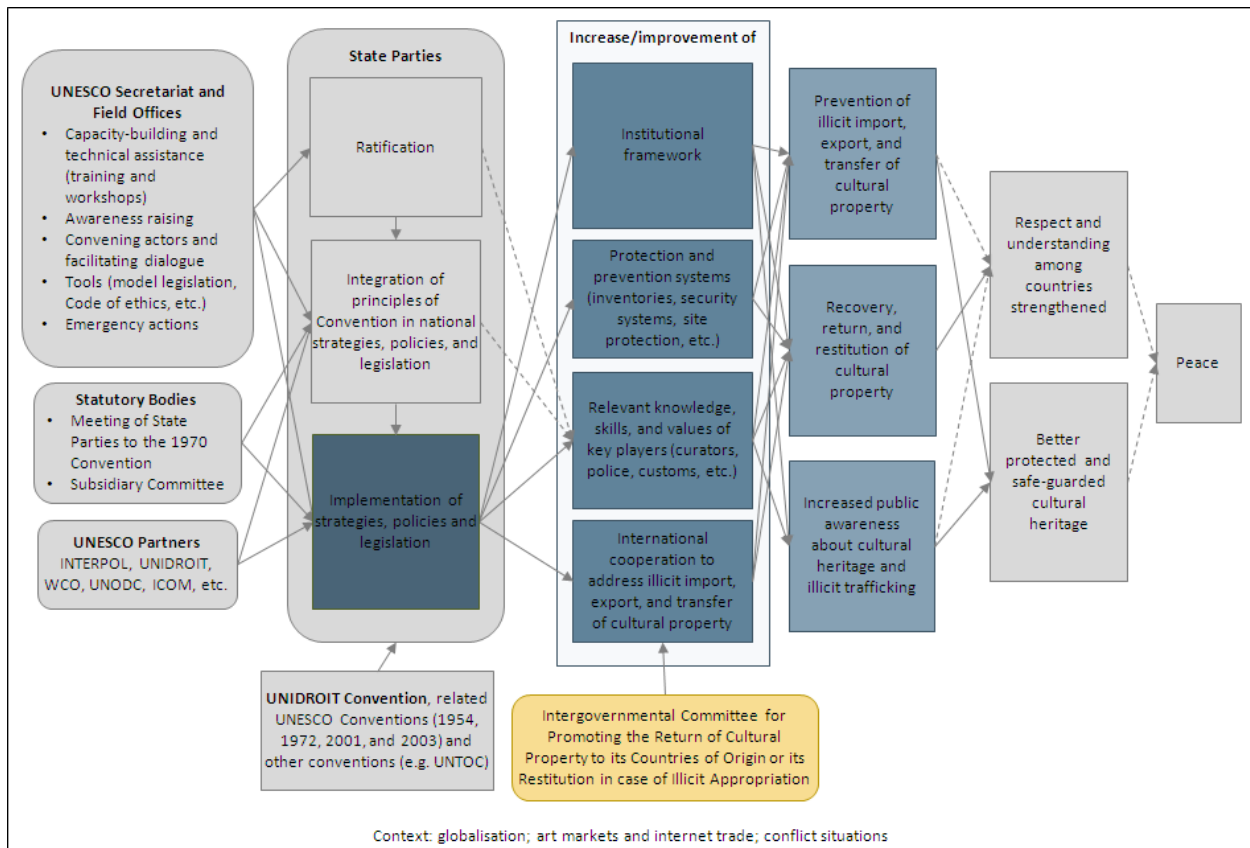
118. It should also be noted that not only countries who are State Parties to the 1970 Convention have put legislation in place to address the illicit export, import and transfer of cultural property, and not only State Parties to the UNIDROIT Convention have put mechanisms in place to facilitate restitution and return.
119. Several examples exist of State Parties to the 1970 Convention whose legislations also fulfil some of the obligations deriving from the UNIDROIT Convention even though these States have not ratified it. Also, there are other States whose law, even though they have ratified neither of the two, reflects at least some of the concerns of these international instruments.
120. Overall, as already pointed out above, the success of the 1970 Convention hinges on State Parties’ willingness to cooperate and on the mechanisms in place to facilitate such cooperation. Right now, while many examples of successful cooperation under (and outside) the framework of the 1970 Convention exist, considerable differences in interpretation of the obligations of the Convention also persist. These are reflected in the diversity of State Parties’ legislation and practice.
121. Several people interviewed for this evaluation suggested that the Convention Secretariat should help clarify some of the articles of the Convention, for which differences in interpretation or understanding exist between State Parties. Some interlocutors also requested the evaluation team to clarify the Convention. However, it should be noted that under treaty law, only the State Parties under treaty law can elaborate on the obligations and rights under the treaty and not the Secretariat. Thus, this is an issue that must be resolved by State Parties through dialogue amongst each other (and with partners). The discussions around the Operational Guidelines of the Convention, which are currently ongoing, provide such an opportunity, so will future meetings of the newly established governing mechanism, as well as meetings held on the fringes of these and other conferences.

<b>Recommendation 2.</b>	Review existing national legislation to ensure it complies with all the obligations that State Parties have under the 1970 Convention. Issues to be looked at include, but are not limited to, the definition of cultural property for the purpose of the 1970 Convention, classification and inventorying of cultural property, regulations for the trade of cultural property (including those relating to dealers and online sales), export and import controls, and procedures facilitating restitution claims. <sup>66</sup> (State Parties)
<b>Recommendation 3.</b>	Identify crucial issues (such as the ones mentioned in the previous Recommendation and throughout the report) and facilitate a dialogue among State Parties and with concerned partners in order to collectively take the implementation of these issues forward. (Subsidiary Committee)

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<sup>66</sup> More detailed and region-specific recommendations are included in the 2012 regional reports and previous evaluation studies.

## Chapter 5 Implementation of the 1970 Convention



122. This chapter is concerned with the degree that the policies and legislations described in the previous chapter have been implemented. It is based on the key provisions of the Convention and organized around the four outputs described in the Theory of Change above.

### 5.1 Institutional Framework

123. Article 5 of the 1970 Convention calls for “State Parties . . . to set up within their territories one or more national services . . . for the protection of the cultural heritage.” This article continues by laying out a number of functions these services should fulfil, ranging from development of draft laws and regulations to maintenance of a national inventory of protected cultural property to educational measures. Although not explicitly identified in Article 5, other functions that specialized services fulfil in practice include investigating and prosecuting cultural property crime, issuing export certificates, and serving as the focal point for return/restitution claims. This Article is often interpreted to refer specifically to specialized police forces, but in reality, it is unlikely that a specialized police force could fulfil the variety of outlined functions.
124. Most State Parties (e.g., 89% of survey respondents) reported having national services that fulfil at least some of these functions. Hardly any single services fulfil all of these functions, but rather a variety of national actors are involved. These include Ministries of Culture, Interior, Foreign Affairs, Trade, and Mining in some countries; Departments of Antiquities; police; customs agencies; and museums.

125. Not surprisingly, across State Parties, Ministries of Culture often play a significant role in the implementation of the 1970 Convention. Responsibilities of Ministries of Culture vary from general implementation of relevant legislation to public education to issuing export certificates. For example, in the Czech Republic the Department of Protection of Movable Cultural Heritage, within the Ministry of Culture, is responsible for managing the “Integrated Protection System of Movable Cultural Heritage,” a set of legislative measures, financial tools, and administrative tools for protecting cultural property. In Greece, the Directorate for the Documentation and Protection of Cultural Property was established within the Hellenic Ministry of Culture and Tourism in 2008 “to protect property, fight illicit trafficking, document the provenance of objects, and repatriate those that have been illegally transferred to Greek territory.” Likewise, Departments of Antiquities or Archaeology are also commonly involved, as is the case with Cyprus’s Department of Antiquities whose responsibilities include, inter alia, establishment, management, and operation of state archaeological and ethnographic museums, protection of moveable antiquities, drafting of laws and regulations, and the digitization and management of inventories of moveable finds.
126. Police are also an important part of the institutional framework. Because investigating cultural property crime requires unique skills and knowledge, a number of respondents stressed the necessity of having a specialized police service. However, this appears to be more of the exception than the rule. Evidence gathered over the course of the evaluation suggests that not more than one quarter of State Parties have specialized police forces, with the majority of them being in Europe and Latin America. Examples of specialized police include the Carabinieri Department for the Protection of Cultural Heritage in Italy (hereafter Carabinieri DPCH), l’Office Central de Lutte Contre le Trafic des Biens Culturels (OCBC) in France, the Unidad Especializada en Investigación de Delitos contra el Patrimonio Cultural (UEIDPC) in Ecuador, and the 012 Special Police Force in Afghanistan. While the establishment of a specialized police force is a considerable step in implementation of the 1970 Convention, the capacity of these forces is contingent on the allocation of human and financial resources. And, in reality, the size of police forces, vary greatly, from approximately 300 in the Carabinieri DPCH to 25 in the OCBC to 10 in the UEIDPC. INTERPOL’s National Central Bureaus (NCBs) can also be an important part of the national institutional infrastructure, as is the case with INTERPOL Argentina’s National Centre for the Protection of Cultural Property.
127. Customs agencies are also an important aspect of the institutional framework. In most cases, their primary responsibility related to this issue is controlling the import and export of cultural property and exchanging information with other concerned stakeholders at national level and sometimes international level. Ministries of Foreign Affairs also play a role, especially with regard to return/restitution requests, and museums and other cultural heritage experts are often called upon to assist with the identification and protection of cultural property. Additionally, a few State Parties have public prosecutors specialized in cultural property crime. Compared to other aspects of cultural protection and safeguarding, there are notably very few non-governmental organizations engaged on this issue, with the exception of international NGOs such as ICOM, ICOMOS, and ICCROM (and their national committees).
128. At the national level, coordination between these actors was seen as both an integral component of successful implementation of the Convention and a key challenge. Coordination mechanisms vary significantly across State Parties; from little to no communication to communication as specific cases arise to formal coordinating mechanisms such as ongoing working groups. Over 90% of survey respondents reported that relevant agencies communicate and meet as necessary (i.e., for specific cases) and almost 60% reported that trainings occur between agencies. Over one-third

reported the existence of a more formal coordinating mechanism, and almost 40% reported that a specialized agency is responsible for managing coordination between relevant agencies.

129. Despite these mechanisms, over two-thirds of survey respondents reported that coordination between relevant stakeholders was “somewhat of”, “a considerable”, or “a major” challenge. Having a policy or strategy that describes a State Party’s overall vision for fighting illicit trafficking of cultural property could help to clarify the division of roles and responsibilities of the various agencies involved and facilitate coordination, but as described in [Chapter 4](#), such strategies rarely exist.

### Box 1 Formal Coordinating Mechanisms in Argentina and South Africa

**Argentina.** The Argentina Committee for the Fight against Illicit Traffic of Cultural Goods was established in 2003 and includes the Ministry of Foreign Relations, the Ministry of Education, the National Commission for UNESCO, the Federal Administration for Public Revenue, the Customs Bureau, the national office of INTERPOL, and the National Library. Coordinated by the National Directorate of Heritage and Museums, functions of this committee include establishing procedures to combat illicit traffic, raising public awareness, processing the International Council of Museums Red List of cultural objects, maintaining up-to-date identifying information on objects, implementing training programs through regional workshops, and promoting exchange of information within the various groups that comprise the committee. This Committee convenes twice a month.

**South Africa.** In South Africa, the National Forum for the Law Enforcement of Heritage related matters (NALEH) was established in 2005 to serve as a platform for collaboration between heritage and law enforcement officials. This Forum includes representatives from the South African Police Service, Department of Arts and Culture, the national office of INTERPOL, South African Heritage Resources Agency, South African Museums Association, ICOM South Africa, Customs, and the University of South Africa. It has established short training courses for police offices on topics such as identification of cultural objects and best practices for storage of confiscated objects. It has also developed a database of heritage experts across the country that police can call on to help with the identification and storage of stolen objects. Finally, it created a stolen works of art poster that has been distributed to police stations and museums across the country. There are a number of examples of how the work of the NALEH has led to improved protection of cultural property: a few cultural objects have been recovered as a result of someone recognizing their photographs on the poster and a police officer who had received NALEH training recognized a stolen bronze sculpture as having heritage value, resulting in a harsher punishment for the thief than if this value had not been recognized.<sup>67</sup>

- Recommendation 4.** Assign responsibility for coordinating the various stakeholders involved in the implementation of the Convention to one specific service / unit. (State Parties)
- Recommendation 5.** Consider establishing a specialized police unit to deal specifically with crime against cultural property (including looting and illicit traffic), and provide it with the necessary resources. (State Parties)

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<sup>67</sup> Prevention and Combat Against Illicit Traffic of Cultural Goods in South Africa Presented by Renette Stander and Regina Isaacs. Available at [http://portal.unesco.org/en/files/48657/13173073941South\\_Africa.pdf/South%2BAfrica.pdf](http://portal.unesco.org/en/files/48657/13173073941South_Africa.pdf/South%2BAfrica.pdf)

## 5.2 Protection and Prevention Systems

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### 5.2.1 Inventories

130. As described in [Chapter 4](#), up-to-date and accurate inventories were seen as a key component of a broad system of protection for cultural property. The vast majority of State Parties have some type of national inventory of cultural property, but the design, purpose, and scale of these inventories vary considerably.
131. Despite these differences, almost three-quarters of survey respondents reported having a national inventory that included “all/almost all” or “most, but not all” protected cultural property. These inventories always include objects in public collections, and in addition, some also include objects in private collections or religious institutions. In recent years, a number of State Parties have undertaken initiatives to improve their national inventories. For example, starting in 2001 cultural heritage authorities in China conducted surveys to collect data about rare and valuable items in state-owned museums and in 2007, the Third Nationwide Survey of Cultural Heritage was conducted. In 2009, Cyprus began a project to digitize its hardcopy inventories. Additionally, significant progress has been reported in the Andean Community countries. In Ecuador, for example, an information system for cultural heritage management has been developed and 76,208 cultural assets have been inventoried.<sup>68</sup>
132. Inventories at the level of museums and other institutions are also a key aspect of successful implementation of the Convention, as only objects that are on these inventories are covered by the return provisions of Article 7(b)ii of the Convention. The importance of museum inventories was recently demonstrated after the looting of the Malawi National Museum in Egypt in August 2013. UNESCO and the Egyptian authorities were able to work together to quickly communicate and disseminate the inventory of the museum’s objects, including photos and descriptions. The visibility given by the media and the actions taken on the national level contributed to the recovery of more than half the stolen objects by the end of September 2013.<sup>69</sup>
133. The fact that 80% of survey respondents reported that museums and other monuments have all or most of their cultural property inventoried is an encouraging sign, but specific gaps continue to exist. In many developing countries, museum inventories remain underdeveloped and/or incomplete. In the 2012 Regional Reports prepared for UNESCO, Shyllon noted the lack of inventories in African States and Fraoua reported that “most of the regulations of the 17 Arab States provide for an inventory and/or classification procedure for cultural objects, and stipulate the legal effects of both. However, owing to their complexity and the lack of resources, the inventory and classification procedures are not often enforced, and when they are applied, this is frequently done occasionally and incompletely.” A number of State Parties also reported that despite holding significant collections of cultural property, churches often had inadequate and/or incomplete inventories (or inventories unavailable to government authorities). (A number of State Parties also noted challenges with documentation of objects in private collections, although these objects are not directly covered by Article 7(b) of the 1970 Convention.) Finally, while digitizing inventories was identified as a goal for many, it comes with its own set of challenges, ranging from the high cost of such projects to inadequate equipment to lack of staff capacity.

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<sup>68</sup> UNESCO Regional Office for Culture in Latin America and the Caribbean. (November 2013) Stop the Illicit Traffic of Cultural Property. Culture and Development No 10, UNESCO Havana Office

<sup>69</sup> Warning: Looting of the Malawi National Museum in the Upper Egypt city of Minya <http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/emergency-actions/egypt/warning-looting-of-the-malawi-national-museum/>

134. The utility of any inventory is dependent on its quality, and the Object ID Standard is used as a minimum standard for documentation in many State Parties. And, in 1999 the General Conference of UNESCO, following a recommendation by the ICPRCP, endorsed the “Object ID”<sup>70</sup> as the international standard for recording minimal data on movable cultural property, which should be used to the fullest extent possible by all Member States.<sup>71</sup> In the Republic of Korea, the Standardized Cultural Relic Management system is provided to museums at no-cost since 2002 and the Object ID is used as a checklist to establish documentation guidelines. Poland’s Safe Collections program was launched in 2010 by the National Institute of Museology and Collections Protection and provides a documentation standard for relics and works of art owned by individuals, collectors, and churches and is based on museum cards and the Object ID.<sup>72</sup>
135. However, the use of the Object ID should not be considered the last step. In many countries, the introduction of new technologies for museum inventorying and museum work in general has been an increasing trend. This includes, for instance, the use of computerized documentation systems, which also facilitate museum managerial work, research, the preparation of exhibitions, publications and proper public access to collections. Obviously, the introduction of such systems depends on the availability of resources and the required infrastructure.

**Recommendation 6.** Establish an up-to-date and accurate national inventory system for cultural property with a minimum of information recorded in line with the Object ID Standard. (State Parties)

## 5.2.2 Databases and Lists of Stolen Objects

136. Article 5(g) of the Convention calls upon national services to “see that appropriate publicity is given to the disappearance of any items of cultural property.” Databases of stolen cultural objects are an important means of publicizing this type of information. A large number of State Parties use their own national database, the INTERPOL Database of Stolen Works of Art, or both, to report and track stolen cultural objects. Only 17% of survey respondents reported not using the INTERPOL or a national database. Like the INTERPOL database, a number of these national databases are available to the public online (e.g., Czech Republic: <http://pseud.policie.cz/wps/portal/>; Hungary: <http://www.forsterkozpont.hu>).
137. However, not all national databases are linked with the INTERPOL database. Increasing the number of linked databases would not only facilitate the work of police, but would also bolster the “due diligence” process for buyers and sellers in the art market. Rather than having a number of separate databases to check, they could consult one single, comprehensive database. As part of the PSYCHE (Protection SYstem for Cultural HERitage) project launched in 2012 by INTERPOL and the Italian Carabinieri DPCH to modernize INTERPOL’s database, a service to transfer data directly from existing national works of art databases is being developed.<sup>73</sup>
138. Other important sources of information about missing and at-risk objects are the One Hundred Missing Objects and the ICOM Red Lists of Cultural Objects at Risk. Just over half of State Parties who submitted National Reports reported that these lists are distributed and/or known in their

<sup>70</sup> The Object ID was originally created and coordinated by the Getty Information Institute. It is now promoted by several organizations including UNESCO.

<sup>71</sup> O’Keefe, *op. cit.*, p. 49f.

<sup>72</sup> Program “Safe Collections” <http://www.nimoz.pl/en/protection-of-art-collections/program-safe-collections>,

<sup>73</sup> COM/FS/2012-05/DC)-05. INTERPOL. Fact Sheet: Stolen works of art. <http://www.interpol.int/en/News-and-media/Publications/Fact-sheets/Stolen-works-of-art/>



countries. ICOM reports that the distribution of these lists has led to the return of cultural objects, including the seizure of 6,000 pre-Hispanic artefacts and arrest of three people in the United States and Ecuador.<sup>74</sup>

139. Despite these efforts, overall challenges persist in collection of accurate and comprehensive data on the scope of illicit trafficking. *Not only are activities such as illicit excavations difficult to identify and monitor, sometimes museums and other institutions are hesitant to report thefts because they do not want to publicize security vulnerabilities. In other cases, if inventories are only updated sporadically, thefts from such institutions may only be discovered many years after their actual occurrence. Additionally, not all State Parties distinguish between crimes against cultural property and other types of crime in the collection of statistics. For example, in the 11<sup>th</sup> United Nations Survey of Crime Trends and the Operations of Criminal Justice System (2007-2008), response rates to questions on illicit trafficking of cultural property were low and inconsistent with data reported to INTERPOL.<sup>75</sup> The textbox below describes a project in Europe's Nordic Region to help fill some of these data gaps.*

**Box 2 Theft of the World Project in the Nordic Region<sup>76</sup>**

Through the "Theft of the World Project," the Swedish National Council for Crime Prevention worked in collaboration with the National Heritage Board in Sweden, the National Cultural Heritage Agency in Denmark, the Norwegian Archive, Library and Museum Authority and the National Board of Antiquities in Finland to explore cultural heritage crimes in order to facilitate the implementation of more effective preventive measures. This study was financed by the EU Commission's AGIS Programme and was based on 2,111 questionnaire responses from museums, libraries, archives, etc. and dealers in the region, 150 interviews with stakeholders and experts, a study of Danish Internet trade in cultural objects, and a literature review. In addition a reference group of 25 people met twice to discuss the results of the research. The report presents detailed information on various aspects of cultural property crime in the region, including the risks, origins, and circumstances surrounding stolen and illegally excavated objects as well as their use and sale in the market. Based on the findings, the report recommends crime prevention strategies in the areas of knowledge, prioritization, and control.

**Recommendation 7.** Link national databases of stolen objects with the INTERPOL database. (State Parties)

### 5.2.3 Protection of Museums and of Archaeological Sites

140. While inventories and databases serve as a means of protection for objects already discovered and in collections or other institutions, there is no way to inventory those yet to be discovered in archaeological sites. As described in [Chapter 4](#), State Parties have put in place a variety of regulations regarding archaeological excavations.
141. Despite these measures, looting of archaeological sites remains a significant problem, and a number of State Parties noted the near impossibility of effectively monitoring all archaeological sites within their borders. Almost 40% of survey respondents reported that "inadequate security

<sup>74</sup> ICOM. 100 missing objects. <http://icom.museum/programmes/fighting-illicit-traffic/100-missing-objects/>

<sup>75</sup> Statistics and Surveys Section. United Nations Office on Drugs and Crime, Overview of statistics on illicit trafficking in cultural property. [http://www.unodc.org/documents/treaties/organized\\_crime/SASS\\_illicit\\_trafficking\\_in\\_cultural\\_property.pdf](http://www.unodc.org/documents/treaties/organized_crime/SASS_illicit_trafficking_in_cultural_property.pdf)

<sup>76</sup> Lars E. Korsell, 2005, *Cultural heritage crime: the Nordic dimension*. BRÅ, Brottsförebyggande rådet : [Distributed by] Fritzes Kundservice, Stockholm.

of archaeological sites” was a “major challenge” and another 22% reported it was a “considerable challenge”. Sites in remote locations and/or near international borders are particularly vulnerable to looting as well as sites that are adjacent to communities with high rates of poverty and unemployment. In addition to known archaeological sites, a number of State Parties noted challenges with regulating excavations in sites discovered accidentally, for example, during construction projects, especially in countries with many infrastructure development projects. Chaos caused by armed conflict or natural disasters also makes sites more vulnerable, and the increased use of technology in illicit excavations and the involvement of more organized groups of smugglers have also exacerbated this problem. Other challenges include weak law enforcement, increasing international demand for archaeological objects, insufficient supervision of sites, low levels of awareness and education of the local population, capacity constraints of local authorities, lack of archaeological mapping etc.

142. Thefts from museums and other institutions also remain a problem, but overall were considered a smaller challenge than illicit excavations. The exception is in emergency situations, where looting and theft can be rampant. To mitigate the risk of theft, State Parties use a variety of measures, including training for museum staff, creation of security and risk management plans, use of video surveillance, patrols, etc. Documenting these measures in depth was beyond the scope of this evaluation, but a few interesting examples were identified. In the United Kingdom, the National Museum Security Group is managed by the Victoria and Albert Museum and has approximately 800 institutions as members. The group has developed a website to facilitate information sharing between members and police regarding thefts and suspects, including sharing photographs and video clips.<sup>77</sup> In Norway, each museum is responsible for establishing their own security procedures, and the Arts Council Norway is responsible for overseeing these plans; in 2009, 71% of museums in Norway had approved security plans. Additionally, the Arts Council Norway provides annual training for museum staff on security matters. In France, two officers of the OCBC are seconded to the Ministry of Culture to specifically focus on issues of security for France’s museums.<sup>78</sup> These officers produce security reports for museums, assess the suitability of temporary exhibit sites, assess risks associated with French exhibits travelling abroad, provide training for Ministry of Culture Staff, and provide advice to museums on recruitment of security personnel.
143. Despite these promising practices in some State Parties, a number of State Parties reported in their national reports that museum security remains a challenge. In the survey, only 13% of respondents reported museum security was a “major challenge”, but almost a quarter reported it was a “considerable challenge.” Significant disparity in museums security exists across regions, for example “in sub-Saharan Africa, subject to few exceptions, South Africa, for example, the museums lack adequate security.”<sup>79</sup> Securing adequate human and financial resources to develop up-to-date security systems (electronic alarms, video surveillance, etc.) was noted as a particular gap across a number of regions. In addition to museums, a number of State Parties noted challenges securing objects in churches and other religious institutions. Portugal’s approach to this problem is described in the text box below.

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<sup>77</sup> Nick Clark, 17 Feb. 2013, Look out art thieves: museums are fighting back. *The Independent*, <http://www.independent.co.uk/arts-entertainment/art/news/look-out-art-thieves-museums-are-fighting-back-8498774.html>

<sup>78</sup> Art Media Agency. (31 July 2013) Securing the museum—interview with Captain Guy Tubiana. <http://www.artmediaagency.com/en/70834/securing-the-museum-interview-with-captain-guy-tubiana/>

<sup>79</sup> Shyllon, *op. cit.*, p.24.

### Box 3 «Igreja Segura Ibrega Aberta» Safe Church Open Church in Portugal<sup>80</sup>

In Portugal, it is estimated that 70% of historic and artistic heritage is owned by Catholic churches. In order to better protect these objects and facilitate the opening of churches often kept closed for security reasons, the Portuguese Judiciary Police Institute and the Museum and Archives of the Judiciary Police organized the Safe Church project. A variety of partners signed an MoU to be part of this project in 2003, including the National Association of Portuguese Local Authorities, Catholic Church Commission for its Cultural Heritage, General Direction For National Historic Buildings And Monuments, Polytechnic Institute Of Portalegre, Portuguese Institute For The Conservation-Restoration, Chartered Engineers' Association, União Das Misericórdias (a Catholic institution owning a large amount of religious cultural heritage) and the Portuguese Catholic University.

In order to address the loss of cultural heritage to theft and a lack of conservation, Safe Church includes both security and conservation components. There are three main axes to this project:

- “SOS Church” is a multimedia exhibit featuring works of religious art that have been stolen and recovered by police. In addition to featuring these works, it presents challenges to security in churches as well as proposed solutions. This exhibit was displayed in a number of churches across Portugal and is now on permanent display in the Museum of Judicial Police.
- Another component of the project is the selection of pilot churches. To be designated a pilot, church leaders of the church work with a team of experts in security and conservation to improve security and conservation of movable cultural heritage and historic buildings. Based on a safety report prepared by this team, actions taken include the preparation of diagnostic studies, completion of pre-inventories and inventories, completion of risk assessment questionnaires, and development of comprehensive security systems. Through these pilot churches, best practice models on safety and conservation can be developed for future phases of the project.
- Finally, research and trainings comprises the third axis. Trainings include in-person trainings on topics such as crime prevention, emergency planning, etc. as well as train-the-trainer activities. An educational DVD as well as a basic safety guide has also been developed.

## 5.2.4 Monitoring and Enforcing Regulations

### Monitoring

144. State Parties have developed a variety of legal frameworks that regulate the transfer, trade import, and export of cultural property, ranging from none to limited to more significant regulations (see [Chapter 4](#)). Where regulations do exist, they are only effective to the extent that they are widely known and enforced. Unfortunately, in National Reports and surveys, information provided on how these regulations are monitored was patchwork at best. For example, no State Party reported on how often registers of sales or licences for dealing in cultural property are checked.
145. Some information was collected on how State Parties monitor online sales of cultural property, which have been recognized as a “very serious and growing problem.”<sup>81</sup> In France, for example,

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<sup>80</sup> Projecto Igreja Segura Ibrega Aberta <http://www.igrejasegura.com.pt>

<sup>81</sup> INTERPOL, UNESCO, and ICOM. (2007) Basic Actions concerning Cultural Objects being offered for sale over the internet. Available at <http://portal.unesco.org/culture/fr/files/21559/11836509429MesuresTraficIlliciteEn.pdf/MesuresTraficIlliciteEn.pdf>

the OCBC uses an interface built by eBay to search for stolen goods and artefacts.<sup>82</sup> Poland has an agreement with the largest internet auction site in its country to facilitate the identification of illicitly excavated relics, and Germany likewise reached an agreement with eBay in 2008 that disallowed the sale of cultural property on the site without proof of origin. The British Museum and the Museums, Libraries, and Archives Council also signed a Memorandum of Understanding with eBay in 2006 to monitor the site's auctions.<sup>83</sup> Finally, France appears to be one of the few State Parties to have developed a specific institution for monitoring public auctions more generally: the "Conseil des ventes volontaires de meubles aux enchères publiques". It has published a code of ethics for auction houses, which contains provisions about the verification of the provenance of objects to be sold.<sup>84</sup>

146. Customs officers are typically responsible for the enforcement of import and export restrictions (although Ministries of Culture are often responsible for issuing export certificates). However, as described in [Chapter 4](#), relatively few State Parties have import restrictions as opposed to export restrictions, so the bulk of monitoring of cultural property by customs officers appears to be more focused on the latter.
147. Most State Parties rely on general customs officers, who enforce cultural property restrictions alongside other customs restrictions, but a few State parties reported having specialized officers or representatives of Ministries of Culture at key border crossings. For example, Egypt has archaeological units at each port, airport, and border responsible for addressing cultural property crime. Similarly, a representative of the Afghani Ministry of Information and Culture is stationed at every airport and port to work with customs officers, and Algeria has created teams of customs officers and curators stationed at airports. Finally, Peru's Ministry of Culture disposes of three decentralised entities at the international airport, the post office in Lima, and in a border town, staffed with a total of ten archaeologists and art historians who check luggage and cargo for cultural objects that are illegal to export out of the country. The Ministry of Culture in Peru also reports that in 2013 a total of 1,515 export certificates were issued after having checked 21,330 objects. 145 objects were denied export because they were considered part of the Cultural Heritage of the Nation.
148. However, beyond identifying *who* is responsible for enforcing import and export restrictions, in general little information is available on the degree to which these restrictions are enforced and how effective they are at diminishing illicit trafficking. Very little information was available on how imports are monitored in State Parties where regulations are in place.
149. In national reports, only eight countries reported specific figures for annual customs seizures. Although reported for different years (ranging from 2008 to 2010), these numbers ranged from 5 to 51 annual seizures.<sup>85</sup> In contrast, a single Joint Customs Operation focused on cultural property in the European Union in 2011 resulted in 32 seizures in approximately two weeks. The Joint Customs Operation Colosseum was carried out under the framework of the Customs Cooperation Working Party of the EU Council and was led by the Italian Customs Agency. It focused on the EU, but also included participants from other countries. The seizures included 70 archaeological objects from Central Macedonia dated from the 6<sup>th</sup> Century BC. Sanctions

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<sup>82</sup> E. Planche, Fighting against illicit trafficking of cultural goods in the Internet: UNESCO and its partners' response. CITES World Official Newsletter of the parties Issue 19 Available at <http://www.cites.org/eng/news/world/19/5.shtml>

<sup>83</sup> United Kingdom National Report on the Implementation of the 1970 Convention (2011)

<sup>84</sup> Recueil des Obligations Déontologiques des Opérateurs de Ventes Volontaires de Meubles aux Enchères Publiques; Février 2012

<sup>85</sup> Some State Parties may be reporting on the number of objects seized while others may be reporting on instances of seizure.

150. As described in [Chapter 4](#), the majority of State Parties have adopted legislation to impose penalties or administrative sanctions related to illicit trafficking. The Convention specifies that penalties and administrative sanctions apply in three cases: (1) export of cultural property without an export certificate (Article 6 (b)); (2) import of cultural property stolen from a museum or religious or secular public monument (Article 7(b)i); and (3) antique dealers who do not fulfil their obligations with regard to maintenance of a register (Article 10 (a)).
151. [Chapter 4](#) indicates that it is unlikely that many State Parties have developed regulations imposing penalties and sanctions for antique dealers who do not fulfil their obligations to maintain a register, making the question of application of these sanctions irrelevant. Collecting detailed information on the application of penalties and sanctions for illicit export and import was also beyond the scope of this evaluation. According to one presentation by UNODC, only three Member States provided data on “unlawful excavation of cultural property, persons convicted” in the eleventh annual United Nations Survey of Crime Trends and Operations of Criminal Justice System.<sup>86</sup>
152. Evidence suggests that compared to the scope of the problem, application of penalties and sanctions is relatively limited, although they do occur. Illegal activities often go undiscovered or unreported. Additionally, even when those involved in illicit trafficking are identified, return of the objects often occurs outside of the legal system due to the time, expense, and evidentiary burden required to successfully pursue court cases (especially when the crimes are transnational in nature). Some of these problems are described in a recent report by the Heritage and Cultural Property Crime Working Group in the United Kingdom:

*There is an acknowledged low reporting rate for cultural property and art theft. The recovery rate for such stolen property is thought to be only around 10% and convictions even lower. It is also acknowledged that basic investigative methods are almost ineffective because those criminals involved with this type of crime are specialists in their field. Although victims may be prepared to report offences, this does not mean they necessarily progress to support a police prosecution.<sup>87</sup>*

### **5.3 Knowledge, Skills, and Values of Key Players**

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#### **5.3.1 Police and Customs Officers**

153. Addressing illicit trafficking of cultural property requires specialized expertise on the part of customs and police officers. Across State Parties, considerable variation exists in the level of skill and knowledge police and customs officers have related to cultural property crime. In general, State Parties reported that customs officers were better equipped to address this issue than police, unless a specialized police service existed (20% of survey respondents reported that lack of police capacity was a “major challenge,” while only 13% of survey respondents said the same about customs capacity). However, a number of State Parties reported that neither police nor customs were sufficiently competent. To address these gaps, almost three-quarters of survey respondents reported having some type of training for customs and slightly less reported some type of training for police (68%). A number of actors were involved in such training, including

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<sup>86</sup> Statistics and Surveys Section. United Nations Office on Drugs and Crime, Overview of statistics on illicit trafficking in cultural property. [http://www.unodc.org/documents/treaties/organized\\_crime/SASS\\_Illicit\\_trafficking\\_in\\_cultural\\_property.pdf](http://www.unodc.org/documents/treaties/organized_crime/SASS_Illicit_trafficking_in_cultural_property.pdf)

<sup>87</sup> United Kingdom Heritage and Cultural Property Crime National Policing Strategic Assessment (2013). Association of Chief Police Officers. Retrieved from <http://www.museumsassociation.org/download?id=1038797>

- national services specialized in cultural property protection, international counterparts (e.g., OCBC and the Carabinieri DPCH), universities, and international organizations such as INTERPOL.
154. Training for customs officers occurs at several different points. A number of State Parties reported that training on cultural property is included in general customs training (e.g., Australia, Bangladesh, Canada, and Finland). Additionally, in some State Parties, specialized services in other agencies hold trainings for customs officers. The OCBC, the specialized police in France, holds annual trainings for customs officers, and the Specialized Body for the International Transfer of Cultural Property holds four to six trainings per year for customs officers in Switzerland. Training was also held in conjunction with the adoption of new laws or regulations. For example, the same Swiss agency trained over 1,000 officers after the adoption of Switzerland's new legislation in 2005. Likewise, Guatemala's Departamento de Prevención y Control de Tráfico Ilícito de Bienes Culturales has been working with the Customs Administration to prepare customs regulations relevant to the import and export of cultural property, to train customs officers, and to provide material supports such as Lists of Guatemalan Cultural Property in Danger, copies of relevant legislation, etc.
  155. Specialized police tend to attend in-depth trainings on the topic of cultural property protection. One of the more intensive trainings is provided by Italian Carabinieri DPCH, where each representative of the Carabinieri DPCH attends a postgraduate course arranged by the Minister of Cultural Heritage and Activities. In Ecuador, officers of the specialized police took a 1.5 year course in Columbia and Ecuador where they were trained by members of the US Department of Justice. They also received training in Rome by the Italian Carabinieri DPCH. In Cyprus, specialized police follow a specific training program in the European Police College.
  156. Some State Parties also reported looking for particular expertise in recruiting officers for these forces. For example in Ecuador, most members of the specialized police were former instructors on the topic of criminal investigations for members of the Policía Judicial. In Romania, specialized police officers and graduates of history, art, and cultural heritage conservation programs are recruited for the specialized police service. The Art and Antiquities Unit of the Metropolitan Police of the United Kingdom has taken an innovative approach to supplementing the capacity and expertise of the unit. Through its Employer Supported Policing, the Metropolitan Police Service partners with local employers to train their staff to be volunteer police officers known as Special Constables. The Metropolitan Police provides a four and a half week training, and employers provide paid time off for staff to carry out patrols in London alongside regular police officers. In the Art and Antiquities Unit, these Special Constables are known as the 'Artbeat' team. In 2010, there were 10 such Constables on the team, most of whom held degrees or the equivalent in art, history, archaeology, cultural heritage, or museum studies.
  157. Even for State Parties with specialized police, developing the skills and knowledge of non-specialized police services was also considered important, as investigations are often carried out by decentralized police (e.g., in Hungary where local police investigate most cases and in the UK, where specialized police only addresses London-based enquiries.) In some State Parties (e.g., Australia and Portugal), information on cultural property is included as part of general police training or manuals, although this was less commonly reported than for customs officers. Other State Parties have developed virtual trainings on the topic, as is the case in Canada, where a CD-ROM on the topic was developed, and in Columbia, where some representatives of police have

participated in a virtual course called “Vivamos el Patrimonio.” open to a variety of participants.<sup>88</sup> Others hold periodic, on-going workshops, such as Algeria.

158. Despite the efforts described above, lack of knowledge about issues related to cultural property crime on the part of police and customs officers was cited as a common challenge across State Parties, but was particularly noted as a challenge in Africa. Additionally, even when training did occur, subsequent turnover in officers hindered its effectiveness. One potential remedy is to include training on cultural property into basic training for police and customs. A number of State Parties already include information on cultural property in their general customs training, but this is less often the case for police. In general, it seems that in State Parties without specialized police services, there is relatively little interest to train police on this issue. Another potential remedy would be to develop online or self-directed training modules so that training would always be available to incoming officers.

<b>Recommendation 8.</b> Institutionalize trainings on cultural property crime for policy and customs, for example by incorporating it into their basic training programmes. (State Parties)
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### 5.3.2 Museums

159. Many of the measures and activities described so far are attempts to regulate the market for cultural property externally (laws to constrain what sales can be made, customs officers to enforce import and export restrictions, etc.). Those involved directly in the sale, purchase, and/or display of cultural property also play a role in determining the shape and size of the market, and their values, practices and self-regulation mechanisms can have a significant impact on the illicit trafficking of cultural property.
160. Codes of ethics appear to be widely adopted by museums. In the survey, over 70% of respondents reported that all or most museums have adopted a code of ethics in line with the principles of the 1970 Convention. Those countries in which the adoption of codes of ethics was less common tended to be those without museums actively acquiring cultural property originating in another State Party. The ICOM Code of Ethics, which is promoted by UNESCO and its partners, in particular has been adopted by many museums. With over 30,000 ICOM members, this Code of Ethics reaches a large swatch of the museum community. For example, in the Netherlands, all museums registered with the National Museums Association are required to apply the ICOM Code of Ethics. In other cases, museum professionals are members of other museum associations, which have their own codes of ethics. In general, these codes of ethics are consistent with the ICOM code of ethics.<sup>89</sup>
161. The 1970 Convention appears to have led to considerable changes in the acquisition practices of museums that acquire and display cultural property with foreign origins (typically large Western “universal” or “encyclopaedic” museums). Rather than changing their policies in alignment with national legislation, these museums have generally adopted acquisition policies that use 1970 as a baseline date, (which has no actual legal basis in national legislation). For example, the Association of Art Museum Directors’ (AAMD, which represents art museum directors in the United States, Canada, and Mexico) has Guidelines on the Acquisition of Archaeological Material

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<sup>88</sup> Abiertas inscripciones para el curso virtual ‘Vivamos el patrimonio’, que empieza el 22 de junio available at [http://www.mincultura.gov.co/prensa/noticias/Paginas/2011-06-03\\_43850.aspx](http://www.mincultura.gov.co/prensa/noticias/Paginas/2011-06-03_43850.aspx)

<sup>89</sup> Terrier, France. (2009) “The Code of Ethics: a soft law with a strong impact?” Paper presented at Basel Institute of Governance Governance of Cultural Property conference Available at [http://www.baselgovernance.org/fileadmin/docs/Cultural\\_Property/1\\_France\\_Terrier\\_Paper.pdf](http://www.baselgovernance.org/fileadmin/docs/Cultural_Property/1_France_Terrier_Paper.pdf)

and Ancient Art stating that “Member museums should normally not acquire a Work unless provenance research substantiates that the Work was outside of its country of probable modern discovery before 1970 or was legally exported from its probable country of modern discovery after 1970.”<sup>90</sup> (It should be noted that the guidelines include a number of exceptions to this general rule, which have been the subject of criticism).

162. Additionally, while there are many outstanding cases of disputes over cultural property in museums worldwide, the number of cases of museums returning cultural property has increased significantly since the Convention was adopted. Again, many of these returns were the result of negotiations outside of court.

### 5.3.3 Actors in the Art Market

163. There has also been some shift in the practices of dealers and auction houses, but overall they appear to be less likely to change their ways of working. 38% of survey respondents reported that none or only a few dealers and auction houses in their countries have adopted a code of ethics and/or follow practices in line with the 1970 Convention. Likewise, one study of antiquities dealers in the UK found that even in response to changes in British law, half of survey respondents reported no change in market routines.<sup>91</sup> Overall, it seems that some of the larger international auction houses have started to change their attitude and practices, while this is not so much the case for smaller local ones or galleries. Research evidence also suggests that the date of 1970 as a norm for acquisition of antiquities – buyers have to establish provenance dating back to at least that date – is not greatly influencing aggregate buying decisions in public market settings.<sup>92</sup>
164. While this gap remains significant, evidence suggests that there is at least some movement towards closing it. For example, Sotheby’s Worldwide Director of Compliance argues that “whether motivated by belief in the value of cultural heritage or by self-preservation, buyers and sellers are demanding and getting better and deeper provenance for ancient materials” and “there is an increasing recognition that the long-term sustainability of the market for archaeological objects depends on how successful market players (buyers and sellers) can transform the business from one that has historically treated provenance as an irrelevant afterthought, to one in which provenance plays a central role in determining the legitimacy and value of the object.”<sup>93</sup> Providing more quantitative evidence of this shift, one study of Greek vases found that of vases offered for sale and documented in auction catalogues or gallery publications, the percentage with a documented provenance grew from only about 20% from the 1950s onwards to 42% between 1994 and 1998.<sup>94</sup> However, 42% is still an overall low percent, demonstrating that there is still significant room for improvement.
165. Engaging the art market remains a challenge for many State Parties, nevertheless several of them are making efforts to do so. Spain is one example, where since 2012 the Ministry of Culture has

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<sup>90</sup> Association of Art Museum Directors. 29 Jan 2013. Guidelines on the Acquisition of Archaeological Materials and Ancient Art (revised 2013). [https://aamd.org/sites/default/files/document/Guidelines%20on%20the%20Acquisition%20of%20Archaeological%20Material%20and%20Ancient%20Art%20revised%202013\\_0.pdf](https://aamd.org/sites/default/files/document/Guidelines%20on%20the%20Acquisition%20of%20Archaeological%20Material%20and%20Ancient%20Art%20revised%202013_0.pdf)

<sup>91</sup> S. Mackenzie and P. Green, 2000, Criminalizing the Market in Illicit Antiquities: an Evaluation of the Dealing in Cultural Objects (Offences) Act 2003 in England and Wales in S. Mackenzie and P. Green (eds.), *Criminology and Archaeology: Studies in Looted Antiquities* (Oxford: Hart).

<sup>92</sup> S. Mackenzie, 2014, While Elgin Marbles debate rages, there is still a market for looted antiquities, in *The Conversation*, <http://theconversation.com/while-elgin-marbles-debate-rages-there-is-still-a-market-for-looted-antiquities-22422>

<sup>93</sup> J. A. Levine, 2008, Importance of Provenance Documentations in the Market for Ancient Art and Artifacts: The Future of the Market May Depend on Documenting the Past, *The. DePaul J. Art Tech. & Intell. Prop. L.*, 19, 219.

<sup>94</sup> V. Nørskov, 2002, Greek vases for sale: some statistical evidence in N. Brodie, & K. W. Tubb (ed.), *Illicit Antiquities. The Theft of culture and the extinction of archaeology*. London, pp. 23-37.



organized an annual meeting of art professionals. In the first meeting, art market professionals participated as speakers and shared their perspectives on the issue. In Nigeria, members of Artefacts Rescuers Association of Nigeria (ARAN), a non-governmental organization made up of arts and antiquities dealers, acquire cultural property from communities and private collections and then deposit them with the National Commission for Museums and Monuments. The National Commission for Museums and Monuments, in turn, pays these dealers for the property. It should be noted that despite the positive results this initiative has had on reducing illicit trafficking, challenges regarding payment have hindered its implementation.

166. Overall, the 1970 Convention has had a significant impact on the practices of museums and to a lesser degree an impact on the practices of other players in the art market. Some stakeholders expressed concerns that as players in the public art market become more stringent about provenance of cultural property, objects with questionable provenance will be less likely to enter the public market at all. Rather, these objects will be sold privately, lessening the ability of countries of origin to identify and seek return of their cultural property. While this might be so, it does not negate the responsibility of actors in the art market to check provenance and to refrain from buying and selling those objects that are of dubious origin. Future research should demonstrate the impact of more stringent requirements in the art market on the illegal trade with cultural property.

**Recommendation 9.** Strengthen relationships with actors in the art market to encourage stronger cooperation, greater adherence to rules, regulations and codes of ethics, and improved self-regulation. (State Parties)

### 5.3.4 Education and Awareness Raising

167. Educational and awareness raising activities are extremely important tools in the fight against illicit trafficking of cultural property. This is addressed by two articles of the Convention. Article 5(f) stipulates that State Parties shall be “taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention”. According to Article 10(b), State Parties shall also “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”.
168. Data collected during the evaluation exercise shows that the majority of countries implement some kind of awareness raising activities. 76% of survey respondents reported to have undertaken public awareness campaigns related to cultural property during the past five years. About one quarter of these activities focuses specifically on illicit trafficking of cultural property, while the others are related to cultural heritage in general. Target groups include youth, both in and out of school, museum visitors, tourists travelling across borders, local communities living next to archaeological sites and art collectors. The target audiences differ depending on whether the States are so called “market” or “source” countries. The former usually target potential buyers while the latter target those who could be involved in the looting. Many of the activities also address young people with the aim of sensitising them about the value of their cultural heritage and the importance of its protection. One interesting example of awareness-raising among scholars was implemented in Italy as part of the cooperation between an Italian foundation and the local authorities:

#### Box 4 Interesting example of raising awareness among students

The “Schools Adopt Monuments” (La scuola adotta un monumento), a project launched in Italy in 1992 by the Naples NinetyNine Foundation, aims to increase the awareness of young generations about the importance of cultural heritage. Monuments in the vicinity of schools are “adopted” for a period of at least 3 years. Within the first six months following the “adoption” each school develops a project related to the monument and different materials like photos, films video. The students thereby learn about the history of the respective monument and about its artistic value, which helps them to better understand the importance of its protection. Since the beginning of this project 47 Italian cities and 6 provinces and 160 schools have been involved. They now form a network of schools. Similar projects were also implemented by a number of other European countries such as Finland and the UK (Scotland), where not only schools but also local communities were engaged in the protection and maintenance of archaeological monuments.<sup>95</sup>

169. In many countries public awareness raising activities target university students. Often they are implemented by the universities. For example, in Poland the program “Protection of cultural heritage in Poland” aims to sensitize university students in various cities about issues related to the security and protection of museum collections; the National Office of Cultural Heritage of Hungary has agreements with several universities to promote the protection of cultural heritage among students; and in Belize, the Institute of Archaeology has put in place anti-looting awareness-raising campaigns.<sup>96</sup> Innovative examples of raising awareness through the cinema were produced in Burkina Faso and in Mali:

#### Box 5 The cinema in service of public awareness campaigns.

In Burkina Faso, the film of the Burkinabe director, J.N. Traore, « Mamio, l’exil des dieux » served as a didactic support for public awareness campaigns. Based on a true story, the film addresses the issue of looting of cultural property in Burkina Faso. It was shown in the regions affected by looting. The film tells the story of the theft in 1991 of the statuette « Mamio », which was found 10 years later in Germany and returned to the village where it was stolen. In 2009 the film was presented at the Festival of African films.

[http://www.film-documentaire.fr/Mamio\\_exil-dieux.html,film,27080](http://www.film-documentaire.fr/Mamio_exil-dieux.html,film,27080)  
[http://www.festivalfilmAfriqueiles.fr/index2.php?option=com\\_content&do\\_pdf=1&id=475](http://www.festivalfilmAfriqueiles.fr/index2.php?option=com_content&do_pdf=1&id=475)

"Les Dieux sont à vendre", a 52 minute documentary film, stressed for the first time the issue of illicit trafficking of art objects from the African continent. Produced in 2008 by Michel Brent, the film tells the true story of the theft of a cultural object of the Dogon in a village in Mali, which was later identified in an art gallery in Paris and returned to its village of origin.

<http://artsdesmondes.e-monsite.com/pages/mes-pages/les-dieux-sont-a-vendre.html>  
<http://vimeo.com/groups/82465/videos/19752908>

170. Surprisingly, none of the State Parties reported to involve social media like Facebook or Twitter in their awareness raising campaigns. Being an integral part of young people’s lives in many countries, these channels may have the potential to reach the general public, especially young generations.

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<sup>95</sup> <http://adoptoimonumentti.fi/?lang=en/>

<http://www.archaeologyscotland.org.uk/our-projects/adopt-monument>

<sup>96</sup> <http://traffickingculture.org/data/anti-looting-campaign-posters-from-belize/>

171. In several countries education and awareness raising programs for young people are developed in collaboration with museums. For instance, in Greece, Mali and Madagascar visits to museums, « museum-class » and « heritage-class » are organised for young scholars. In Peru, the project *Brigada Cultural*, a programme for young volunteers committed to culture, is implemented by the History and Cultural Management Degree Program (Licence) of University of Piura. The aim of the programme is to teach high school students about art, culture and heritage, to allow them to discover the value of museums, and to encourage them to promote art and culture in their city. Following a series of lectures on topics related to intercultural dialogue and cultural diversity, museums and cultural heritage, museum management, etc. high schools students work in museums as volunteers giving guided tours and organising various cultural events.
172. Many State Parties also organize public events to sensitise people about the importance of their cultural heritage and the need to protect it. In Europe, for instance, once a year for already 23 years (since 1984 in France) public monuments and buildings are opened to the public during the “European Heritage Days”. Similar initiatives exist in China with the “cultural heritage day” and “international museum day”, and in Senegal with the annual organization of the “Journées Nationales du Patrimoine”. In Cyprus the Department of Antiquities regularly organises cultural events in medieval castles and ancient theatres. All these events are expected to also contribute to raising the public’s awareness about issues related to the illicit transfer of cultural property.
173. A number of State Parties, such as Argentina, Australia and Mexico, undertake awareness-raising campaigns specifically targeting travellers in transportation hubs like airports and ports. In Mexico, the public transportation authority (Collective Transit System) organized a series of exhibitions on cultural heritage and its conservation in the subway. In Australia, the Ministry of Arts in cooperation with the Australian Customs and Border Protection Service developed the information campaign “Buying Legally”, which, through pamphlets and posters distributed at airports, highlights the importance of consulting relevant databases and national laws before buying cultural objects abroad. An interesting example of a joint public awareness raising activity is the Norwegian / Polish project “Legal and illicit trade with cultural heritage”, which informed travel agencies about the risks related to the export/import of cultural objects. It was undertaken in cooperation with the Norwegian National Committee of ICOM, the Norwegian Blue Shield Committee and the Norwegian National Commission for UNESCO.
174. Many State Parties also developed specific information guides, brochures and emergency newsletters to directly target potential buyers or dealers in cultural objects. For instance, specialised agencies and/or Ministries of Culture in several countries, including Australia, Germany, Cyprus, Canada and Hungary, implement initiatives to inform the public about the national and international legislation related to the protection of cultural heritage, including about the procedures of exporting and importing cultural property, and about the authorities responsible for the protection of cultural property in the respective country. In the Netherlands, the Ministry of Culture developed the information brochure “Import and Export of Cultural Property”, which targets five groups: dealers and collectors; heritage institutions (museums, libraries, etc.); law enforcement and supervision agencies (police, customs, etc.); specialized groups like military and the public at large. In Hungary the electronic newsletter of stolen art is sent out to art dealers, auction houses and galleries as soon as a new stolen item is registered in the national database.
175. Many State Parties consulted stressed the importance of citizens taking ownership of the protection of their cultural heritage. Two initiatives, one in Canada and another in Norway illustrate the approaches used to engage the public. In Canada, the government provides

Canadian passport holders with a publication on cultural property protection and on the national legislation to implement the 1954 and 1970 Conventions. Norway developed awareness-raising cards through the cooperation of several actors (Art Council Norway, Directorate for Cultural Heritage, ICOM Norway, and Blue Shield Norway). Each card contains information on issues such as the damage inflicted on cultural property in conflict situations, relevant international conventions, the types of objects that are frequently being looted etc. These cards were distributed to the Norwegian international forces, customs and police services.<sup>97</sup>

176. Turkey is a good example of a State Party following a comprehensive approach with regard to public awareness campaigns. The Turkish Ministry of Culture coordinates a number of educational and awareness raising activities addressing young generations and local communities in different regions of the country. These are being implemented by museums and other organizations. For example, museum professionals in Burdur and Antalya organise simulation workshops for children about the importance of protecting the cultural heritage and of fighting against illicit excavations. Special information campaigns address communities located close to archaeological sites. As a result, the authorities have noted an increased interest of local populations in the protection of the national cultural heritage and their active contribution to the fight against illicit trafficking of cultural property, for instance by informing local police about any suspicious activity happening at archaeological sites in the neighbourhood or by handing in objects that community members themselves had found. Other State Parties, such as Senegal, Mauritius, and Greece reported similar developments.
177. However, the evaluation established that raising the awareness of local communities and engaging them in the protection and prevention activities remains a challenge for many State Parties, even though many stakeholders agree that over the past 5 – 10 years the level of public awareness of issues related to the illicit trafficking of cultural property has significantly increased in many countries. Data provided by UNESCO's Sector for External Relations and Information also confirms that the media visibility of the Convention has increased over the last decade. This is due to increased efforts by State Parties to raise public awareness, but also to other factors that have contributed to increasing the visibility of the issue. These include conflict situations such as those in Egypt, Syria, Libya, or Mali which seriously affected the national heritage of these countries. The destruction and the looting of the national cultural heritage were repeatedly discussed and condemned by the world media. Media coverage of thefts in museums, return and restitution cases, and of sensitive sales of cultural objects by auction houses has also increased. In Mali the creation of local museums has contributed to increasing public understanding of the importance of cultural heritage and a more respectful behaviour towards cultural objects.
178. Overall, the evaluation established that awareness raising and education activities related to cultural property are implemented by many State Parties. In many countries, this (and other factors as described above) has led to a behaviour change among some groups, as demonstrated for instance by the increased engagement of local communities, volunteerism by young people, or increased attention paid by buyers to the provenance of the objects for sale. However, even though this is encouraging, it is by far not enough and more continuous efforts are needed to induce a change of attitude by the larger public, including among specific groups (tourists, communities, collectors, etc.).
179. The evaluation also established that many of the education and awareness raising activities are not embedded in any larger and systematic approach, but constitute isolated activities rather

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<sup>97</sup> <http://traffickingculture.org/data/norwegian-arts-council-and-partners-awareness-raising-playing-cards/>

than a longer term holistic engagement based on a systematic identification of the target audience, of the most appropriate approaches to be used, of clear objectives to be achieved, and of the responsibilities all the actors involved in the initiatives. All this should be outlined in any overall policy / strategy for dealing with the illicit import, export and transfer of cultural property (as described in [Chapter 4](#)).

**Recommendation 10.** Follow a more comprehensive approach to awareness raising at the national level based on a systematic identification of the target audience, of the most appropriate mechanisms to be used and of clear objectives to be achieved. Responsibilities of all involved actors also need to be clearly defined. (State Parties)

## ***5.4 International Cooperation in Service of Return***

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180. The 1970 Convention includes several articles related to international cooperation. Article 7(b)(ii) describes the procedures for the recovery and return of objects stolen from a museum or similar institution. Article 9 calls upon State Parties to participate in a “concerted international effort” to protect cultural patrimony in jeopardy from pillage. Article 13 includes provisions on cooperation to ensure the earliest possible return of illicitly exported cultural property (b) as well as on admitting actions for recovery of lost or stolen items of cultural property (c). Article 15 stipulates that the Convention does not preclude State Parties from entering into other bilateral or multilateral agreements, and, finally, Article 17 describes the roles UNESCO can play in coordination and dispute settlement. [Chapter 4](#) describes how these mechanisms for international cooperation have been integrated into legislation, while this section looks at how they have been implemented in practice. It focuses on international cooperation in the context of return of cultural property while recognizing that it can also be in service of other means (e.g., capacity building, development of preventive measures, etc.)
181. Drawing a direct causal link between the 1970 Convention and return/restitution is difficult because of the myriad and complicated legal, political, and moral aspects involved. For example, items may be seized and returned under implementing legislation for the 1970 Convention, cultural property protection legislation that predates the 1970 Convention but is in line with it, other legislation regarding stolen property, other multilateral agreements, or out-of-court settlements. While survey respondents gave a large number of examples of return of cultural property, the impact the 1970 Convention had on these returns was not always straightforward.
182. However, there are some examples of return/restitution that are based directly on a State Party’s legislation specifically designed to implement the 1970 Convention.<sup>98</sup> One example is the return by Australia of a 15<sup>th</sup> century world map stolen from a Spanish library. Because this object was considered a “protected foreign object” under the Protection of Movable Cultural Heritage Act of 1986, the Australian Federal Police were able to seize it, and Australia was able to return it to Spain. Likewise, Canada has returned a number of objects under its implementing legislation, including several hundred pre-Columbian artefacts to Bolivia in 2002. Finally, as part of its implementing legislation, the United States has entered into bilateral agreements with a number of other State Parties. These agreements have led to the return of cultural property, including the return of 14 cultural objects to China.

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<sup>98</sup> See L. V. Prott, 2009, *Witnesses to history: A compendium of documents and writings on the return of cultural objects*. UNESCO; for additional information.

183. In addition to the cases that can be directly attributed to the 1970 Convention under specific implementing legislation, many more cases have been influenced by the moral and diplomatic framework that the 1970 Convention provides. These influences are particularly relevant given the growing trend towards out-of-court resolution for cultural property disputes.<sup>99</sup> For example, there is evidence that U.S. museums are being more proactive about returning cultural objects. One article on this topic points to the repatriation of 30 memorial totems by the Denver Museum of Nature and Science to the National Museum of Kenya in 2014 based on the initiative of the museum, the return of a Greek vase to Italy by the Minneapolis Institute of Arts, and the return of marble mosaic to Turkey by the Dallas Museum of Art (described in more detail in the textbox below).<sup>100</sup> Other cases of returns of objects by museums also exist. For example, the Louvre returned cultural objects that were acquired between 2000 and 2003 after evidence emerged that they had been looted from a tomb in Egypt.<sup>101</sup>

#### Box 6 Turkey, Italy, and Dallas Museum of Art's DMX Program

- Dallas Museum of Art's Exchange Program (DMX) seeks to develop a new type of cultural exchange program, in response to the problems of illicit trafficking of cultural property. Through this program, the Dallas Museum of Art will "share expertise in conservation, exhibitions, education, and new media in exchange for loaned works of art from other museums and cultural agencies worldwide."<sup>102</sup>
- The Turkish Director General for Cultural Heritage and Museums became DMX's first partner in 2012. That year, the new Director of the Dallas Museum initiated a project to identify objects in the museum's collection with questionable provenance. One such object was the Orpheus mosaic (a fragment of a Roman marble mosaic), which the museum had bought at an auction over a decade earlier. Around the same time, a Turkish prosecutor opened an investigation into looting in the province of Şanlıurfa and provided the museum with "compelling evidence" that the mosaic had been illegally removed from Turkey in 1998. The Dallas Museum of Art and the Director General for Cultural Heritage and Museums signed an MOU under which the Dallas Museum of Art agreed to return the mosaic to Turkey, Turkey agreed to provide the Museum "significant loans from important museums" in Turkey, and both parties agreed to "collaborate in the furtherance of musicological education, conservation, exhibitions, symposia, and responsible collecting."<sup>103</sup>
- A similar agreement was reached with Italy, after the Dallas Museum of Art transferred ownership of six objects in its collection to Italy after discovering they were likely the objects of looting. Through this agreement, the Italian Ministry of Culture gave the Dallas Museum of Art a long term

<sup>99</sup> Irina A. Stamatoudi, 2011, *Cultural Property Law and Restitution: A Commentary to International Conventions and European Union Law*. Edward Elgar Publishing.

<sup>100</sup> Halperin, Julia and Pes, Javier. (6 Feb. 2014) US museums' about-face on restitution. *The Art Newspaper*. <http://www.theartnewspaper.com/articles/US-museums-aboutface-on-restitution/31684>

<sup>101</sup> The above examples are only a few of the many cases of cultural property being returned to their country of origin. For additional examples, see the book *Witnesses to History – Documents and writings on the return of cultural objects*, the Arthemis project of the Art-Law Centre at the University of Geneva (<https://plone.unige.ch/art-adr>), and the list of cases available on the 1970 Convention Secretariat's website (<http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/1970-convention/>). As described in these books and sites, a variety of arrangements are used to solve these disputes, including transfer of ownership and long-term loans.

<sup>102</sup> Dallas Museum of Art Exchange Program (DMX). Accessed at <http://www.dallasmuseumofart.org/art/dallas-museum-art-exchange-program-dmx>

<sup>103</sup> Ece Velioglu, Alessandro Chechi, Marc-André Renold, "Case Orpheus Mosaic – Turkey and Dallas Museum of Art," Platform ArThemis (<http://unige.ch/art-adr>), Art-Law Centre, University of Geneva.

Memorandum of Understanding. The Museum of Arts, Dallas and the General Directorate for Cultural Heritage and Museums of the Ministry of Culture and Tourism of the Republic of Turkey. Accessed at [https://plone.unige.ch/art-adr/cases-affaires/orpheus-mosaic-2013-turkey-and-dallas-museum-of-art/memorandum-of-understanding-between-turkey-and-dallas-museum-of-art/at\\_download/file](https://plone.unige.ch/art-adr/cases-affaires/orpheus-mosaic-2013-turkey-and-dallas-museum-of-art/memorandum-of-understanding-between-turkey-and-dallas-museum-of-art/at_download/file)

loan of Etruscan artefacts from a 5<sup>th</sup> Century tomb that had never previously been publicly displayed.<sup>104</sup>

184. Despite these positive examples, the overall picture of the links between the 1970 Convention and improved international cooperation in service of return is mixed. Many countries seeking return/restitution of cultural property have expressed frustration with the limitations in the 1970 Convention, particularly as it relates to the return/restitution of illicitly excavated objects, and felt that not all State Parties were fulfilling their international cooperation obligations under the Convention. At the same time, however, there are also examples of international cooperation mechanisms that go beyond the obligations of the Convention. This is discussed in more detail below.
185. Coordination and communication between State Parties in service of the return/restitution of cultural property occurs through many of the agencies described in the institutional framework section of this chapter. (Specialized services such as the Carabinieri DPCH in Italy and the Heritage Team of the Central Operational Unit of the 'Guardia Civil' in Spain also participate in capacity building for other State Parties.) Some State Parties have specific mechanisms in place to help with the return of cultural property. However, overall, many State Parties reported that communication and coordination with other State Parties remains a considerable challenge. Interestingly, while this feedback was provided predominantly by State Parties seeking the return of objects, it was also noted by some State Parties that have recovered objects and attempted to contact relevant authorities in the countries of origin of these objects.
186. The bilateral agreements described in [Chapter 4](#) also facilitate international cooperation, but can be somewhat of a double-edged sword. In State Parties where the protection offered by the Convention is contingent on the existence of bilateral agreements (e.g., the United States), these agreements offer considerable protection to those State Parties that have signed them, while leaving other State Parties with relatively few means to recover illicitly exported cultural objects. As discussed in [Chapter 4](#) of this report, many State Parties do not require bilateral agreements in order to provide protection under the Convention. In cases where bilateral agreements offer enhanced protection than what is provided for in the Convention, their benefit is clearer.
187. While not specific to the 1970 Convention, mutual legal assistance treaties have also served as a means to enhance cooperation for the return of cultural property. For example, in citing a bilateral mutual legal assistance treaty and the 1970 Convention, Italy requested assistance from the United States of America in 2008 to locate, seize, and repatriate antiquities that had been illicitly excavated from Italy and exported to the United States. Italian authorities travelled to the States to assist in the preparation of search warrants, participate in interviews, and consult on-site during the execution of the search warrant. The search resulted in the recovery of 22 objects as well as other evidence that led to the identification of the sites where the illicit excavation had occurred.<sup>105</sup>

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<sup>104</sup> Simek, Pete. After returning looted antiquities, Dallas Museum of Art scores long term loan of Etruscan treasures. Front/Row blog. 31 October 2013. Accessed at <http://frontrow.dmagazine.com/2013/10/after-returning-looted-antiquities-dallas-museum-of-art-scores-long-term-loan-of-etruscan-treasures/>

<sup>105</sup> UNODC. Application of the United Nations Convention against Transnational Organized Crime by State parties with respect to criminal offences against cultural property. Working Group of Government Experts on Technical Assistance and Working Group on International Cooperation. Vienna, 15-19 October 2012. And Operation "Augusto Imperatore". Sharing Electronic Resources and Laws against Organized Crime Case Law Database. Available at [http://www.unodc.org/cld/case-law-doc/traffickingculturalpropertycrimetype/ita/operation\\_augusto\\_imperatore.html](http://www.unodc.org/cld/case-law-doc/traffickingculturalpropertycrimetype/ita/operation_augusto_imperatore.html)

188. International organizations such as INTERPOL, WCO, and UNESCO also serve to facilitate international cooperation. With INTERPOL, this coordination predominantly occurs through national bureaux, and with WCO, it predominantly occurs through Regional Intelligence Liaison Offices. These international organizations play a particularly important role in mobilizing the international community to participate in “concerted international efforts” in cases where cultural patrimony is in jeopardy (for example, in Afghanistan where national and international efforts lead to the recovery 30,000 objects looted and illicit excavated during the civil war.)
189. Within UNESCO, both the 1970 Convention Secretariat and the ICPRCP play a role in facilitating international coordination. The 1970 Convention Secretariat is often called upon to provide information and advice on how to navigate requests for return (e.g., whom to contact, identification of potential experts on the object in question, etc.) The ICPRCP was established in 1978 to, inter alia, “seek ways and means of facilitating bilateral negotiations for the restitution or return of cultural property” and “promote bilateral and multilateral co-operation with a view to the restitution and return of cultural property to its countries of origin.” Specifically, the ICPRCP was established to address cases concerning cultural property not covered by the 1970 Convention.<sup>106</sup>
190. While the ICPRCP has initiated the development of tools and resources to support international cooperation, respondents expressed a wide range of opinions as to its efficacy in directly promoting return and restitution of cultural property. Some respondents felt that the ICPRCP had had little success to date, and that most cases it had considered were actually resolved through other means, such as bilateral negotiations. Others felt that while this may be the case, the deliberations in the ICPRCP contributed to the rapprochement between the two parties. Despite these differences in opinion, the general consensus was that the ICPRCP’s role remains unique and valued, but that its function needs to be revisited and refined, particularly in light of the establishment of the Subsidiary Committee. Specifically, its mediation role can be further promoted and its fund should be examined to explore why it has been underutilized to date.
191. In addition to the development of their own instruments on this topic (as described in [Chapter 7](#)), regional and sub-regional organizations also facilitate cooperation through joint projects. For example, through the Andean Committee to Fight Illicit Trafficking of Cultural Property, Bolivia, Colombia, Ecuador, and Peru agreed in May 2013 to several joint initiatives, including enhanced cooperation, development of joint mechanisms to restrain international auctions of Andean cultural property, and development of software/early warning system to enhance communication.<sup>107</sup> The Council of the EU’s second work plan for Culture 2011-2014 set down three initiatives on cultural objects, including the establishment of a panel of experts to prepare a toolkit covering good practice guidelines and a code of ethics on due diligence in the fight against illicit trafficking and theft of cultural objects.<sup>108</sup> Finally, under the partnership between the European Union and the African Union, one of the priorities in the Strategy Action Plan (2011-2013) was to “strengthen cooperation in the area of cultural goods and other areas of cultural

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<sup>106</sup> Resolution 20 C4/7.6/5 of the 20<sup>th</sup> Session of the UNESCO General Conference. Paris. 24-28 November 1978.

<sup>107</sup> CAN countries agree on joint mechanisms to bolster the fight against illicit trafficking of cultural property. 1 May 2013. Accessed at <http://www.comunidadandina.org/en/Prensa.aspx?id=3401&title=can-countries-agree-on-joint-mechanisms-to-bolster-the-fight-against-illicit-trafficking-of-cultural-property&accion=detalle&cat=NP>

<sup>108</sup> Council of the European Union. 3046<sup>th</sup> Education, Youth, Culture, and Sport Council meeting. Work Plan for Culture 2011-2014. Brussels. 18 and 19 November 2010. [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/educ/117795.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/educ/117795.pdf)



cooperation.”<sup>109</sup> In service of this priority, a workshop was held in January 2014 bringing together 80 experts from Africa, Europe, and international organizations.

192. Some respondents saw the bulk of these mechanisms as falling under the larger umbrella of the 1970 Convention and thus felt that the 1970 Convention has significantly contributed to return/restitution. Others took a more narrow view, reporting that, in fact, the 1970 Convention has not facilitated the return of any cultural property, particularly because of the lack of adequate protection for illicitly excavated objects. Even in State Parties that offer legal protection for these objects, the burden of proof required to obtain the return of such objects through foreign courts was repeatedly noted as a challenge. Proof required includes evidence that the object originated within the requesting country’s borders and that it was illicitly excavated after relevant legislation came into force.
193. In addition to these legal barriers, requests for return/restitution were reported to have been hampered by poor communication or unwillingness to cooperate between State Parties, a lack of the legal skills and knowledge needed to pursue claims in foreign courts, the high cost of litigation, and other administrative procedures such as finding appropriate experts, translating relevant documents, etc. Finally, some stakeholders expressed the view that the framework provided by the 1970 Convention has had unintended consequences, as some holders of cultural objects view it as legitimizing pre-1970 acquisitions, even if they were contrary to existing national laws in countries of origin.<sup>110</sup> This, of course, is not correct. The Convention does not in any way legitimize any illegal transaction of cultural property that has taken place before its entry into force for the State Parties concerned, nor does it limit the right of a State Party or of another person to make a claim for the restitution or return of a cultural object stolen or illegally exported before the entry into force of the Convention under legal remedies available outside the framework of this Convention.
194. Overall, questions related to the return/restitution of illegally excavated objects remain among the most pertinent issues and continue to polarize State Parties and other UNESCO Member States. Many of these issues originate at the level of the Convention, which is somewhat ambiguous about the protection it provides for such objects, and which, contrary to the UNIDROIT Convention, does not offer any direct mechanism for the return of cultural property. Gaps at the policy and implementation level, including the lack of universal recognition of other State Parties’ export restrictions, the challenges to getting national ownership laws enforced in foreign courts, as well as the lack of ratification of the UNIDROIT Convention have likewise contributed to this polarization. Thus, there is a need for continued dialogue between State Parties to move towards a clearer consensus on this issue. This dialogue is needed to encourage compliance with the obligations of the Convention (which not all State Parties are currently meeting) and to create a shared understanding about the way forward.

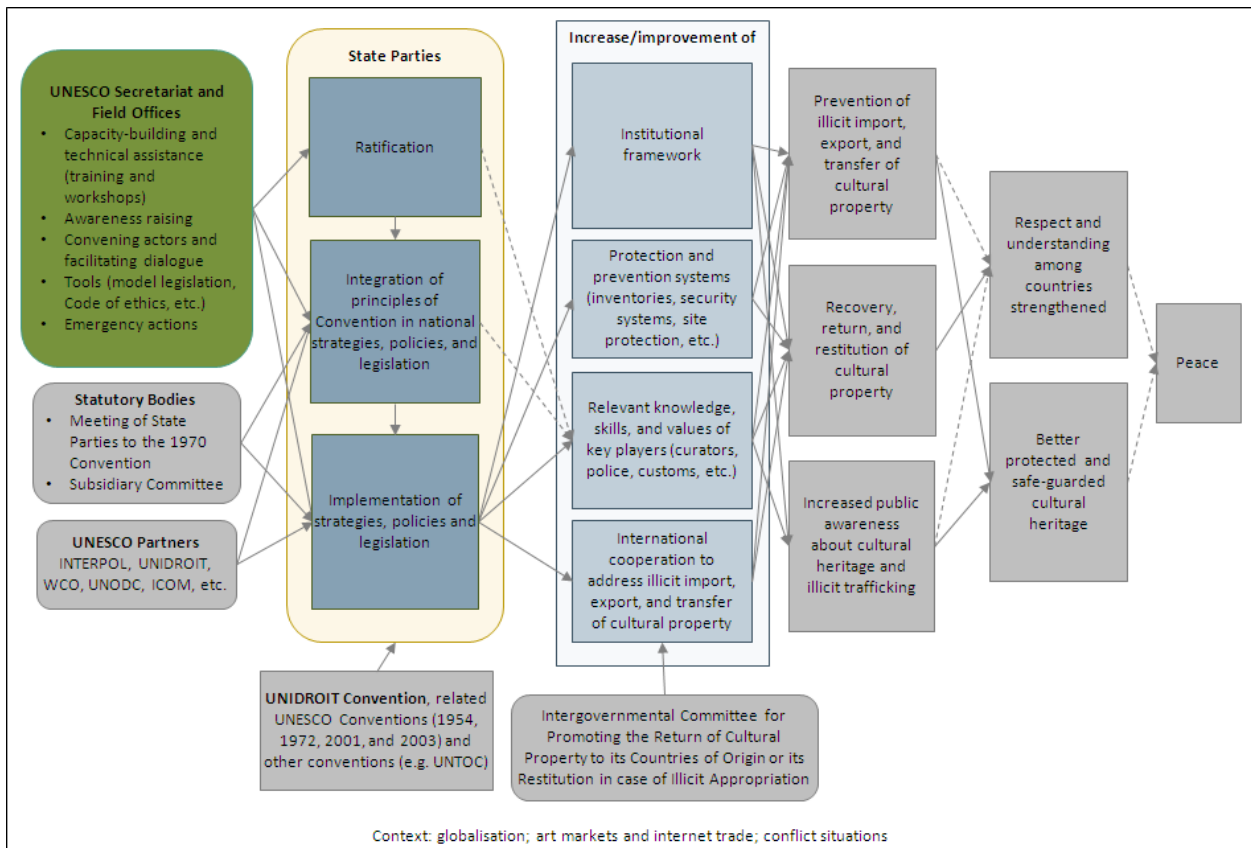
<b>Recommendation 11.</b>	Facilitate international cooperation by clarifying procedures for return/restitution on the national level and by designating focal points that can be contacted by other State Parties. (State Parties / Subsidiary Committee)
<b>Recommendation 12.</b>	Strengthen the dialogue about illegally excavated archaeological objects to build consensus on how they can be protected through international cooperation. (State Parties / Subsidiary Committee)

<sup>109</sup> Joint Africa EU Strategy Action Plan 2011-2013. [http://www.africa-eu-partnership.org/sites/default/files/documents/doc\\_jaes\\_action\\_plan\\_2011\\_13\\_en\\_1.pdf](http://www.africa-eu-partnership.org/sites/default/files/documents/doc_jaes_action_plan_2011_13_en_1.pdf)

<sup>110</sup> The UNIDROIT Convention contains a specific Article (10 (3)) to expressly exclude this interpretation.

**Recommendation 13.** Revisit and define the role of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation and initiate coordination with the Subsidiary Committee. (ICPRCP)

## Chapter 6 UNESCO Activities in Support of Implementation



195. The 1970 Secretariat and culture staff working in field offices support State Parties in implementing the 1970 Convention in a variety of ways, including through capacity building activities (workshops, longer-term projects) development and promotion of legal and practical tools, awareness raising, etc.

### 6.1 Types of Support and Activities

#### 6.1.1 Capacity Building Workshops and Projects

196. The Convention Secretariat and Field Offices provide capacity building predominantly through workshops and longer term projects (as well as the emergency actions described in more detail in a later section). The objectives of this capacity building is four-fold: (1) to develop capacities regarding the prevention and fight against the illicit trafficking of cultural property as well as the restitution of stolen or illegally exported objects; (2) to establish preventive measures related to the establishment and regular update of inventories and registration of cultural objects (whether archaeological or not); (3) to raise awareness of the need to adopt and update an effective national legislation and to develop international cooperation in this area; and (4) to develop

networks at local, national and regional levels to ensure general awareness of the dramatic consequences of trafficking of cultural property on the impoverishment of the population.<sup>111</sup>

197. UNESCO executed a few longer-term capacity building projects to help further implementation of the 1970 Convention. These projects include workshops as well as other activities, such as technical support, study tours, etc. Two such projects are described in the text box below.

**Figure 7 Examples of longer-term Capacity Building Programs**

**Mongolia.** This project, which was supported by Monaco, has been implemented in Mongolia since 2009 in cooperation with local partners, such as the National Commission for Mongolia and the then Ministry of Education, Culture and Science, and international partners such as INTERPOL, the OCBC and the Italian Carabinieri. The purpose of this three-year long intervention is to strengthen capacities for dealing with illicit trafficking of cultural objects. It includes support to improving the legislative framework for the protection of cultural heritage, public awareness raising activities with a focus on youth, and activities to strengthen the capacities of specialists for the protection of cultural heritage within customs and police. The latter involved a study tour to Europe with visits to Interpol HQ and the Italian Carabinieri. Video clips and a cultural heritage toolbox were produced for awareness raising activities in schools and local communities living in the Orkhon Valley Cultural Landscape, a UNESCO World Heritage Site.

**Libya.** Following the opening of UNESCO's project office in Tripoli in 2012, UNESCO launched a capacity building programme in 2013 in partnership with Department of Antiquities in Libya and the Italian government to help build and strengthen institutional and legal framework protecting cultural property in Libya. The first major activity under this programme was the Introductory Workshop on Prevention and Fight against Illicit Trafficking of Libyan Cultural Property in April 2013. This event brought together over 70 national and international participants from a variety of agencies and departments (border patrol, tourist and antiquities police, civil society, university professors, INTERPOL, UNIDROIT, WCO etc.) to network, assess the current situation in Libya, and make recommendations for next steps. Two other workshops have since been organized—a two week training session in Sept. 2013 for staff from public institutions in the Tripolitania and Fezzan regions and a weeklong training in November 2013 in Cyrene for participants from the Cyrenaica and Fezzan regions. At each of these workshops, a series of recommendations were developed which serve as the strategic framework for UNESCO's actions in Libya. This broader strategic framework includes support for the creation of a specialized police unit within the tourist police, the convening of a law review roundtable, the development of a database of stolen objects, additional practical training sessions, and a public awareness campaign. At the time of the evaluation, activities in support of each of these strands of the strategic framework were ongoing.

198. Outside of these longer term projects, in the 2012-2013 biennium, UNESCO held 17 workshops and training activities<sup>112</sup> (including four which were part of longer term projects), involving over 600 participants from 78 countries. This represents a dramatic increase in workshop activities over the previous biennium. At least part of this increase can be attributed to the UNESCO's Emergency Fund, which supported six of these workshops. These workshops were typically organized by Field Office staff in cooperation with HQ and include presentations from UNESCO HQ staff, partner organizations (INTERPOL, UNIDROIT, WCO etc.), and local experts. They ranged from

<sup>111</sup> 1970 Convention Subsidiary Committee Informal Working Group Background Note N 1. Promotion of the Purposes of the Convention. 17-18 Feb 2014 Available at [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/BKD1\\_PROMOTION\\_1970.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/BKD1_PROMOTION_1970.pdf)

<sup>112</sup> Fighting the illicit trafficking of cultural property: training and awareness raising. Presentation at UNESCO HQ 19 Nov. 2013

one day events to more intensive two week training sessions, but typically last two to four days. In most cases, these workshops brought together participants from a variety of sectors (Ministries of Culture, police, customs, museum staff, legal experts, etc.) across a given region. However, in some cases, they were organized nationally. Participants varied in their degree of implementation of the 1970 Convention, even within the same workshop. Some came from Member States that had not yet ratified the 1970 Convention while others came from State Parties that had taken significant steps towards full implementation.

199. Over the course of the last three biennia, activities were held in each of region of the world (based on UNESCO's Executive Board groupings), except for North America and Canada. More activities were organized in the Arab region than any other region. Some, but not all, of these activities were in response to conflict and post-conflict situations that put cultural heritage at risk. Outside of emergency situations, Latin America and the Caribbean had a large number of workshops, and a large, long-term project was organized in Asia (see textbox above). Despite Priority Africa, only five workshops have been organized in Sub-Saharan Africa since 2008, including two in response to the emergency situation in Mali. Another capacity building project in Mali to safeguard historic manuscripts was started in the 2012-2013 biennium.
200. Interview and survey respondents who had attended workshops were generally positive about their experiences and appreciated the opportunity to come together with national and international counterparts as well as international organizations. In general, they reported that these workshops resulted in the following key outputs:
  - **Deepened national and international network.** Workshop participants and facilitators reported that the biggest takeaway from these workshops were the connections made with their counterparts in other agencies and departments, both nationally and internationally. For many participants, the workshop was the first opportunity to make these connections and this was regarded as very valuable. Presenters from international organizations (INTERPOL, WCO, UNIDROIT etc.) also noted that these connections were valuable in their own work.
  - **Increased knowledge.** Respondents also noted the importance of these workshops as an opportunity to exchange experience with their counterparts from other countries and learn from UNESCO and its partners. In particular, these workshops increased their knowledge about relevant laws in other countries and how other State Parties structure the implementation of the Convention. Discussions of good practices and lessons learned from others' experiences were especially appreciated.
  - **List of recommendations/plans of action.** At about half of the workshops, the main output was a list of recommendations/plan of action. However, these documents vary in their depth. At one extreme, some contain specific steps to be taken with designated roles for key players and at the other, they provide only a more general list of actions (e.g., "strengthen protection of sites, museums, collections, and archives.")<sup>113</sup> For the other half of the workshops, no such document could be found.
201. Documenting the outcomes of these workshops beyond these initial outputs was difficult for this evaluation, as very little information is routinely collected on the results of these workshops. No formal follow-up or evaluation mechanism exists, and field office staff reported having little

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<sup>113</sup> Déclaration de Beyrouth. Séminaire sur la Protection du patrimoine culturel Beyrouth 6-7 June 2012 Available at [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Declaration\\_Beyrouth\\_june2012.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/Declaration_Beyrouth_june2012.pdf)

capacity to conduct post-workshop follow-up or to make additional support from UNESCO available because of competing demands on their time and resources. Thus, while some examples of outcomes were collected over the course of the evaluation, they are only anecdotal. These examples include the facilitation of the development of a bilateral agreement between Turkey and Bulgaria, the recovery of two stolen objects by Libyan police who had attended a workshop, increased outreach to a cultural property expert on the part of customs officers, ongoing electronic communication about auctions of cultural property, and stimulus to the development of national regulations in Gambia.

202. While these workshops were appreciated by many for the reasons described above, the extent to which relatively short workshops that are not part of a larger capacity building approach could produce any tangible longer-term outcomes or impacts was questioned. Finally, in some cases, participants who attended workshops left their respective agencies relatively quickly after the workshop, making their involvement somewhat irrelevant.
203. Recognizing both the strengths and challenges associated with the current capacity building approach, it is recommended that the capacity building for the 1970 Convention be revisited and a more comprehensive approach be developed. In particular, the evaluation presents the following issues for consideration.
  - **Shift balance away from workshops to longer term engagements.** The key features of the new approach would include the use of a variety of capacity building tools and consistent engagement over a period of time. This would increase the impact and the sustainability of the benefits generated by the activities.
  - **Enhance follow-up.** Emphasis should be put not only on designing and implementing activities, but also on follow-up after these activities occur. Given that implementation of the 1970 Convention involves a number of agencies for whom cultural property is not their primary concern (police, customs, etc.) several respondents noted that it is easy for these issues to “fall off the radar” for participants after training occurs. Follow-up is an important means for keeping these issues on relevant stakeholders’ agendas and should be a key component of an overall capacity building strategy.
  - **Focus on regions and countries where UNESCO can play a catalysing role and cooperate with regional organizations wherever feasible.** Although all regions could benefit from UNESCO’s support in implementing the 1970 Convention, UNESCO should consider focusing its efforts on those places where support is most needed, such as regions with low ratification rates, regions where implementation capacities are low, and / or where the biggest implementation challenges exist, and where little support is available from other sources. Regions with relatively little momentum behind the Convention and significant needs include Eastern Africa and South East Asia. Cooperation with regional organizations would allow the regional organizations and UNESCO to benefit from their shared commitment and to leverage each other’s resources, and create a framework for a longer term engagement by UNESCO.
  - **Consider a range of capacity building topics and modalities.** Much of the capacity building in support of the 1970 Convention to date has taken the form of workshops. Through interviews and a review of capacity building projects both within and outside of UNESCO, the evaluation identified a number of approaches to capacity building that could help improve implementation of the 1970 Convention. While not exhaustive or extremely detailed, the list presented in the table below helps to illuminate the range of approaches

that could be taken. These modalities could be tailored to address key areas of need identified by the evaluation, including development of inventories, development of more specialized capacities of lawyers and judges, creation of specialized police units, specialized skill development, etc.

**Table 4 Potential Capacity Building Modalities**

<b>Expert in residence</b>	People with specialized, applied expertise (e.g., members of the Carabinieri DCPH) could be brought into targeted countries to work closely with relevant agencies (police, customs, etc.) over the course of several weeks or months.
<b>Policy / legislation advice</b>	To ensure the robustness of the legal framework protecting cultural property, specialized experts could work with State Parties to develop and update relevant laws and policies. The 2005 Convention used a similar approach in a recent European Union funded project. <sup>114</sup>
<b>Online trainings</b>	Many of the presentations are repeated across workshops so there may be an opportunity to turn these presentations into online trainings that are available to a wide audience on demand. (A programme under the Convention on International Trade in Endangered Species of Wild Fauna and Flora’s, the CITES Virtual College, could serve as inspiration. <sup>115</sup> )
<b>Short-term site visits</b>	Another format suggested in interviews was short-term site visits that give stakeholders the opportunity to learn in-depth from their counterparts in other countries. This would mean stakeholders from targeted countries spend some time working on-site in more established agencies of other countries to learn from the work they are doing.
<b>Skills training</b>	More intensive and applied workshops can be a means to help participants learn and upgrade their skills. For example, inventorying workshops could include hands-on practicums, as opposed to more theoretical presentations.
<b>Train-the-trainers</b>	Effective training of trainers requires supporting trainers in acquiring the requisite knowledge <i>and</i> the skills and tools to effectively share that knowledge. Follow-up workshops to support trainers in delivering their own trainings and the development of customized training materials and guides are two such approaches to doing this. These trainers may also be able to lead projects to institutionalize training about illicit trafficking into training for police, customs, etc.
<b>Workshops for networking and information sharing</b>	UNESCO could continue existing workshops but tailor the design so they are more targeted to networking and information sharing between participants. <sup>116</sup> Since respondents overwhelmingly said that the most important part of these workshops is the connections made, more attention could be paid how to structure the meetings accordingly.

204. Starting in 2010, the 2003 Convention Secretariat undertook its own revamping of its capacity building work. In revisiting capacity building under the 1970 Convention, this approach could offer inspiration in areas such as use of needs assessment, phasing of trainings over several years, the development of a trained pool of regionally diverse facilitators, attention paid to evaluation and

<sup>114</sup> See “Strengthening the Governance of Culture to Unlock Development Opportunities. Results of the UNESCO-EU Expert Facility Project” for more information. <http://unesdoc.unesco.org/images/0022/002246/224630E.pdf>

<sup>115</sup> The CITES Virtual College [https://cites.unia.es/index.php?lang=en\\_utf8](https://cites.unia.es/index.php?lang=en_utf8)

<sup>116</sup> Gather: the Art and Science of Effective Convenings, includes a number of suggestions for designing such workshops. <http://www.rockefellerfoundation.org/uploads/files/934f8c4a-866a-44bc-b890-7602cc99aefa-rockefeller.pdf>

continual improvement, etc.<sup>117</sup> Obviously, the capacity building needs of the 1970 Convention are different than those of the 2003 Convention. Nevertheless, some of the underlying principles of the approach apply to both. However, it should be noted that without staff reinforcements, the 1970 Secretariat cannot implement a program as large scale as the 2003 Secretariat's (the 2003 Secretariat has three RP staff in the Capacity building unit alone, more than the 1970 Secretariat has overall). Reinforcing staffing in the 1970 Convention Secretariat is thus critical to fostering its ability to expand capacity building.

<b>Recommendation 14.</b>	Develop a comprehensive capacity building strategy that foresees a longer-term engagement with SPs, enhanced follow-up, and the use of a variety of different capacity building modalities. (Secretariat)
<b>Recommendation 15.</b>	Focus capacity building activities on those regions that have low ratification rates and / or capacity constraints and implementation challenges. (Secretariat)

### 6.1.2 Legal and Practical Instruments

205. In addition to these workshops and projects, UNESCO has developed and/or promoted a number of legal and practical tools to assist State Parties in the fight against illicit trafficking. These tools are promoted, inter alia, via the 1970 Convention Secretariat's website and workshops and trainings.

**Table 5 UNESCO and Partner Tools<sup>118</sup>**

NAME	DESCRIPTION	ORGANIZATION S INVOLVED	YEAR DEVELOPED
Object ID Standard	Standardized international description of cultural property	J. Paul Getty Trust, ICOM, UNESCO	1997
UNESCO International Code of Ethics for Cultural Property Dealers Code	Serves to harmonize professional practices and establish more ethical behaviour in transactions	UNESCO	1999
ICOM Code of Ethics for Museums	Sets minimum standards of professional practice and performance for museums and their staff	ICOM	1986 <sup>119</sup> (revised in 2004)
UNESCO Database of National Cultural Heritage Laws	Database containing over 2,650 texts from 181 countries related to national cultural heritage laws	UNESCO	2005 (ongoing)
Basic Actions Concerning Cultural Items Offered	Measures to improve the monitoring of property circulating through online	UNESCO, INTERPOL, and	2007

<sup>117</sup> The capacity building work of the 2003 Secretariat is organized around three axis: development of content and materials, creation of a network of expert facilitators, and delivery of training. National capacity building projects are multi-year, tailored to the needs of each country is, and include needs assessments, workshops and trainings, policy and institution-building support (as necessary).<sup>117</sup> More information on this approach to capacity building is available here: <http://www.unesco.org/culture/ich/en/capacitation>

<sup>118</sup> C70/12/2.MSP/INF.2 Proposed strategies aimed at improving implementation of the 1970 Convention Meeting of State Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. 20-21 June 2012 Paris France. Witnesses to History was not included in this list because of its more academic focus.

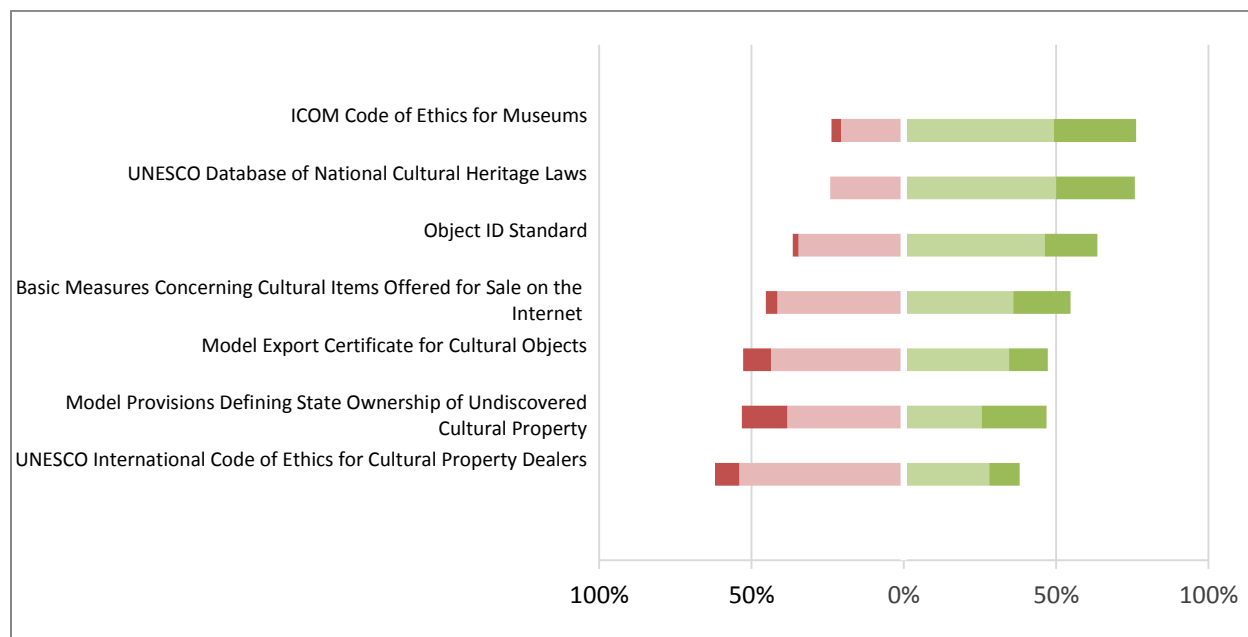
<sup>119</sup> ICOM. Code of Ethics. <http://icom.museum/the-vision/code-of-ethics/>



for Sale on the Internet	sales platforms, cooperation with foreign and international police and the possibility of seizing property	ICOM	
Model Export Certificate for Cultural Objects,	Model export certificate that States that State Parties can partially or completely adopt	UNESCO, WCO	2007
Model Provisions on State Ownership of Undiscovered Cultural Objects	Six provisions articulating legal status of undiscovered cultural property	UNESCO, UNIDROIT	2011
Mediation and conciliation procedures (Rules of Procedure)	Tool to facilitate bilateral negotiations through the intermediary of the ICPRCP	UNESCO	2011

206. The figure below shows how survey respondents ranked the helpfulness of each of these tools.<sup>120</sup>

**Figure 8 Survey Respondents' Ranking of Helpfulness of UNESCO's Tools**



207. While the use of the tools varied across State Parties based on their own capacity and experience, in general, the tools developed by UNESCO and its partners were appreciated by State Parties and other stakeholders and were perceived to be beneficial to the implementation of the 1970 Convention. As the above graph shows, two of the highest rated tools were the **ICOM Code of Ethics for Museums** and the **Object ID Standard**. Use of these tools in national implementation is discussed in [Chapter 5](#). Additionally, just over half of respondents reported that “**Basic Actions Concerning Sale of Objects on the Internet**” was extremely or very helpful. However, relatively little information was provided during interviews and on the survey about the use of these actions in practice.

<sup>120</sup> Because the mediation and conciliation procedures of the ICPRCP have not been used yet, questions about these procedures were not included on the survey.

208. The **UNESCO Database of National Cultural Heritage Laws** was also ranked very highly. A number of State Parties with import restrictions reported that they consult this database to identify when a cultural object falls under the export restrictions of other State Parties, and State Parties making requests for return/restitution likewise consult the database. The database was also used by State Parties to compare national laws with the laws of other State Parties, and other stakeholders, such as academics and representatives of other intergovernmental organizations also reported consulting the database for research and training purposes. Finally, while detailed information on this topic was not collected, the database is also used in support of UNESCO's other culture conventions. For example, national laws in the database are referenced as part of Periodic Reporting for the 1972 Convention and are available on the World Heritage Centre's website.
209. This database remains an active project for UNESCO and has one full-time consultant dedicated to its management. In 2013, 111 new/updated laws were added from 14 countries and a number of laws are being translated into English and French<sup>121</sup> These efforts will address some of the shortcomings identified by users of the database, such as the need to increase the number of French and English translations. Other issues identified include the incomplete coverage of national laws, as confirmed by the fact that many of the laws that respondents listed on the survey are not included in the database. Addressing these issues is not a small undertaking and already part of the overall vision for the project. These are, however, not tasks that can be undertaken exclusively by the Secretariat. Rather, they require the active involvement of State Parties. At times, this engagement can be hard to obtain, as evidenced by the fact that at the end of the 2012-2013 Biennium, the database manager was waiting for a response from six member States regarding updates to their national cultural heritage laws.<sup>122</sup>
210. The remaining tools were rated as less helpful overall, but were still of use to a number of State parties. There are a number of examples of countries that use or have adapted components of the **UNESCO-WCO Model Export Certificate** (Albania, Argentina for paleontological property, Côte d'Ivoire, etc.) However, in other places, regional intergovernmental organizations, such as the European Union and the Andean Community of Nations, have created their own export certificates. Relatively little information was provided during the evaluation regarding the **Model Provisions On State Ownership of Undiscovered Cultural Objects**. Some State Parties have indicated in their Periodic Reports that they do not find them useful. In terms of **the Code of Ethics for Cultural Property Dealers**, the relatively low ratings may be due to the fact that it is not widely adopted by dealers, that dealer associations already have their own code of ethics, and/or that as it is not binding, it does not have a significant impact on the practices of dealers. The fact that the provisions of the 1970 Convention regarding regulation of dealers are not consistently implemented may also contribute to the lack of use of the code of ethics.
211. A number of respondents noted that some of these tools had not yet been used extensively. As such, continued support for the implementation of existing tools was seen as a higher priority than the development of new tools.

**Recommendation 16.** Continue to expand the National Cultural Heritage Law Database by increasing the coverage of legislation and the availability of translations. (Secretariat / State Parties)

<sup>121</sup> SISTER 36 C/5 Substance programming report. Extrabudgetary Project: Development of the UNESCO cultural heritage laws Database Phase II. Accessed 31 Jan 2013

<sup>122</sup> SISTER 36 C/5 Substance programming report. Extrabudgetary Project: Development of the UNESCO cultural heritage laws Database Phase II. Accessed 31 Jan 2013

### 6.1.3 Public Awareness and Information Distribution

212. As stipulated in several articles of the 1970 Convention, raising public awareness is one of the key elements in the fight against illicit traffic of cultural property. The Convention Secretariat and field offices contribute to this with awareness raising activities for the general public as well as for specific groups. Specialised audiences are, for instance, addressed in the context of training activities as described in an earlier section of this chapter. The present section discusses other types of awareness raising activities such as the production and diffusion of video clips and documentary films and the enhancement of the Convention website.
213. Over the last years the Secretariat has developed several videos, some of which provide a general overview of the activities of UNESCO and its partners, others are more specific in nature. For example, on the occasion of the 40<sup>th</sup> anniversary of the Convention a 1 minute clip was produced to highlight the importance of international cooperation, and an 18 minute video summarizes the efforts of UNESCO and its partners over the last few years. Another video clip was produced for the public in Latin America, Africa, and South-East Europe. This clip is broadcast in public spaces, train stations, airports and tourist sites<sup>123</sup>. Furthermore, the UNESCO Venice Office developed a 15 minute video in 10 languages spoken in South-Eastern Europe, which was diffused on local TV. For Iraq, the UNESCO Office produced three small television spots of 3 minutes and a film, which were broadcast on Iraqi television in Arabic language<sup>124</sup>. Some of these videos are also shown to participants in capacity building activities. The quality of the videos varies with some of them having a clearer message than others. No information was available to the evaluators about how videos shown in public places had been received by members of the public or what impact they might have had.
214. The 1970 Convention website is one of the Secretariat's most important tools for awareness-raising. It contains a considerable amount of information, including some of the video material mentioned above, publications, reference to events organised in the framework of the Convention, a press review on the subject of illicit trafficking, examples of restitution cases etc. Over the last year (2013) the number of consultations of the 1970 Convention website increased significantly by 82% when compared to 2012.<sup>125</sup> Since 2011 a total of nearly 60,000 people have visited the 1970 Convention website. 50% of the people who visited the website in 2012 and 2013 were new visitors.
215. It is also interesting to note that almost 70% of the visitors of the 1970 Convention website come to the website through search engines after looking for specific terms like "1970 Convention". This suggests that most visitors are already aware of the Convention. The analysis of the website traffic also shows that the most frequent visitors are national state agencies. This confirms that the majority of the Convention website visitors are professionals who already involved into the fight of illicit traffic of cultural property. On the other hand, visits of members of the general public are rare.
216. The same applies to social media users who come to the website through Facebook or Twitter. They represent only 11% of the visitors of the Convention website. They furthermore have the shortest visiting time. This is unfortunate, given that social media are mostly used by young generations who should be one of the main target groups for all general awareness raising

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<sup>123</sup> : [Video Africa](#) (English) and [Video Africa](#) (French) [Video Latin America](#) (Spanish)

<sup>124</sup> <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/videos/>

<sup>125</sup> All the data on the use of the 1970 Convention website was provided by ERI.

activities. It is even more unfortunate in light of the fact that overall the number of UNESCO's social media followers has doubled in 2013<sup>126</sup>. This shows that interest in UNESCO's work exists and demonstrates the importance of social media when communicating with the public about UNESCO.

217. The website analysis also shows that some parts of it generate only very few or no visits at all. This might partly be due to the fact that the website is not always easy to navigate, given that the structure of the individual pages is quite heterogeneous. It was furthermore noted that the Convention is not easily accessible and visible from the main UNESCO website. Alerts about issues related to the Convention could be introduced to direct visitors of the UNESCO's general website to the Convention website. To summarize, while the Convention website has been continuously improved over the years, there is considerable room for making it even more user-friendly. The Convention Secretariat is currently working on this and has introduced some improvements already during the time of the present evaluation exercise. The findings of ERI's analysis of the use of the website provide additional inputs to this process. It would also be good to better link the websites of UNESCO's field offices to the Convention website. A quick review of field office sites shows that only few of them contain information on the 1970 Convention.
218. Awareness raising activities undertaken by the Secretariat also include public events, such as for instance the 2012 exhibition organized at UNESCO's Headquarters to share the achievements of the Italian Carabinieri in the fight against illicit trafficking. 31 stolen cultural objects that had been recovered by the Carabinieri were presented. A similar exhibition is currently taking place in Italy, where more than one hundred recovered objects are on display. In addition, about ten publications on the fight against illicit trafficking were published over the last three years and are available on the Convention website.
219. Communication campaigns undertaken in the context of emergency actions also create an opportunity to raise awareness about the issue. For instance, during the recent conflicts in Egypt, Libya, Syria and Mali, UNESCO called for the stop of the destruction and looting of cultural property of these countries. Press releases were distributed to journalists all over the world. A review of the world media during the days following the dissemination of the press releases illustrates their positive impact. In most cases 60% to 80% of all the articles mentioning UNESCO cover the issues highlighted by the press release. However, overall the number of articles on the illicit import, export and transfer of cultural property is still relatively low. In comparison, the worldwide press response to the launch of the "EFA Global Monitoring report"<sup>127</sup> was three times more important.
220. In response to the Syrian conflict, in addition to press releases and other activities, UNESCO also produced a 2 minute video appeal with the aim to safeguard Syrian cultural heritage<sup>128</sup> and a 4 minute video call for "Help to save the cultural heritage of Syria"<sup>129</sup> that were prepared by UNESCO's Office in Amman. These activities complement national efforts such as the awareness-raising campaign "Save Syria's History", which was launched to inform about the ongoing looting of national museums and illicit excavations<sup>130</sup>.

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<sup>126</sup> ERI/DPI/2013/PIPMR/36, Monthly Report on the Use of UNESCO Public Information Products, December 2013. Available at <http://unesdoc.unesco.org/images/0022/002262/226208E.pdf>

<sup>127</sup> The Education for All Global Monitoring Report, Teaching and Learning: achieving quality for all, 2014, Paris, UNESCO.

<sup>128</sup> <http://www.youtube.com/watch?v=TIzqXkkBUmA>

<sup>129</sup> <http://www.unesco.org/new/fr/culture/themes/illicit-trafficking-of-cultural-property/emergency-actions/syria/>;

<http://www.youtube.com/watch?v=cUh4Ma0Doc>

<sup>130</sup> <http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/emergency-actions/national-campaign/>

221. One of the performance indicators listed in the 36 C/5<sup>131</sup> for the implementation of the Convention is related to awareness raising activities by the Secretariat. The issue is clearly regarded as important, both by the Secretariat and by many State Parties who consider awareness raising activities as one of the most significant areas of engagement of the Convention Secretariat and the larger UNESCO. The evaluators recommend undertaking an analysis of the effectiveness of the various awareness raising tools used, especially of the above mentioned video clips and documentary films. Alternative approaches should also be considered. They also suggest to clearly define the target audience before embarking on any such future endeavours, and to ensure that tools are of good quality and adapted to the specific context.

<b>Recommendation 17.</b>	Prioritize the use of awareness raising tools (videos, website, events) in light of their specific quality and effectiveness. (Secretariat)
<b>Recommendation 18.</b>	Further improve the Convention website in order to increase its user-friendliness, and introduce more frequent alerts about issues related to the 1970 Convention in order to direct visitors of the UNESCO's general website to the Convention website. (Secretariat / Sector for External Relations and Public Information)

#### 6.1.4 Emergency Actions

222. UNESCO has used a number of strategies, including those described above, to respond to conflict and emergency situations in Egypt, Haiti, Iraq, Libya, Mali, and Syria that made cultural heritage more vulnerable to destruction and/or illicit trafficking. The interconnection between the 1970 Convention and other culture conventions, most notably the 1954 Hague Convention and the 1972 World Heritage Convention, is evident in UNESCO's work in this area.
223. UNESCO has sent several emergency missions of experts to Egypt and Mali to assess existing damage, looting, and ongoing security of cultural property and sites, and to develop contacts and strategies to prevent further damage. UNESCO has also convened meetings to create a network of concerned stakeholders, to develop action plans and to identify potential donors (fundraising). In the case of Iraq, this resulted in the creation of the International Coordinating Committee for the Safeguarding of Iraqi Cultural Heritage, which has met five times as of 2011. Additionally, the workshops and longer-term projects described earlier in this chapter include those that are designed specifically to address capacity building in post-conflict situations (for example, the project in Libya described in the text box). In several cases, these activities have resulted in coordinated plans of action and recommendations (as was the case in Oct. 2011 regarding Libya, Feb. 2013 regarding Mali, and Feb. 2013 regarding Syria). Finally, UNESCO has also leveraged its international visibility to call attention to the vulnerability of cultural property in such situations through issuing press releases, alerting relevant stakeholders on specific cases of looting and theft, etc.
224. Although the focus of the evaluation was not on UNESCO's emergency actions, preliminary feedback suggests that the general feedback received on UNESCO's capacity building may also be applicable to emergency situations. In particular the importance of follow-up and ongoing communication with all stakeholders was stressed.

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<sup>131</sup>Approved Programme and Budget 2012-2013 36 C/5, Major Programme IV, Main line of action 2, Expected result 6. Available at <http://www.unesco.org/new/en/culture/about-us/how-we-work/strategy/biennial-sectoral-priority-1/>

### 6.1.5 Capacity Building by the Section on Museums and Creativity

225. In addition to the capacity building provided by the 1970 Secretariat and the Field Office staff, some of the activities of the Section on Museums and Creativity also support the implementation of the 1970 Convention, particularly as it relates to building the capacity of the museum sector, risk management planning, and the development of inventories. The most important training activities were conducted within the framework of the UNESCO-ICCROM partnership for the preventive conservation of endangered museum collections in developing countries, which started in 2007 with follow-up still ongoing.<sup>132</sup> The partnership focuses on the following key areas: documentation of museum collections, risk and deterioration assessment for preventive conservation, preventive conservation for collections in storage; and teamwork for integrated emergency management.
226. UNESCO and ICOM have developed a Museum Studies Training Programme, which includes a *Practical Handbook* and a *Trainer's Manual*. These guides include modules on inventories and documentation, museum security, and illicit trafficking. The Section on Museums has also created a collection of cultural heritage protection handbooks that are geared less towards high level museum professionals and more towards general staff working in museums (security guards, technicians, janitors, etc.) Because these handbooks rely heavily on illustrations as opposed to text, it has been possible to translate them into over a dozen languages. Finally, one example of a national level project occurred in Cambodia in 2009, where UNESCO coordinated trainings for staff in charge of documentation and inventories from all the national museums.
227. Despite the potential for synergy between this work and the work directly in support of the 1970 Convention, collaboration between the two sections has been minimal to date. However, as part of UNESCO's restructuring, it is foreseen to transfer one Professional staff member, who will dedicate approximately 50% of his/her time to the 1970 Convention, and one General Service staff member from the Section on Museums and Creativity to the 1970 Convention Secretariat. The latter will be working exclusively for the 1970 Convention. This presents an opportunity for closer collaboration.

## 6.2 Implementation of UNESCO's Global Priorities

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228. As expressed in the 34 C/4 for 2008-2013, Africa and gender equality should be priorities that influence UNESCO's work in all of its fields of competence. This section examines how these priorities have been implemented, particularly in the 2012-2013 biennium. It should be noted that many of the issues identified in this section have already been addressed in the 37 C/5.

### 6.2.1 Global Priority Africa

229. As discussed throughout this report, there is a high level of need in Africa related to the 1970 Convention. Second to Asian and Pacific States, Africa has the lowest rate of ratification of any region and as discussed in [Chapter 5](#), even those countries that have ratified are facing significant challenges in implementation. The fact that the sales price of African cultural objects in the art

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<sup>132</sup> <http://www.unesco.org/new/en/culture/themes/museums/unescoiccrom-re-org/unesco-iccrom-partnership-for-the-preventive-conservation-of-endangered-museum-collections-in-developing-countries-2007-2010/>

market has grown in the last decade likewise makes a focus on Africa especially important, as the rise in market value may encourage more looting and theft.<sup>133</sup>

230. The 36 C/5 does not provide clear guidance on how Global Priority Africa was to be implemented for the 1970 Convention. According to this document, the Culture Sector’s support for Global Priority Africa “will be targeted on the enhanced implementation of the conventions in the field of culture, notably the 1972, 2003, and 2005 Conventions.”<sup>134,135</sup> Additionally, none of the benchmarks under the 1970 Convention’s expected result mention any focus on Africa. For example, the benchmark on new ratifications has no specific focus on Africa (this has been addressed in the 37C/5; see below).
231. Given this, it is not surprising that spending in Africa under the 1970 Convention represented only 7% of Regular Programme and Extrabudgetary expenditures in the 2012-2013 biennium. The key activities in Africa during this time were three workshops (held in Bamako, Gaborone, and Dakar); and a project to safeguard Mali’s historic manuscripts via storage upgrades and training as part of UNESCO’s overall emergency response. Activities in previous biennia have included additional workshops and the development and distribution of an awareness raising video.

**Table 6 2012-2013 Expenditures by Region for the 1970 Convention (not including staff costs)<sup>136</sup>**

	RP EXPENDITURES		EX EXPENDITURES		RP + EX EXPENDITURES	
	%	\$	%	\$	%	\$
Global	45%	\$ 361,196	40%	\$ 385,805	42%	\$ 747,001
Arab States	26%	\$ 203,624	21%	\$ 203,740	23%	\$ 407,364
Latin America and the Caribbean	7%	\$ 54,268	19%	\$ 180,594	13%	\$ 234,862
Asia & the Pacific	8%	\$ 65,802	9%	\$ 91,143	9%	\$ 156,945
Africa	9%	\$ 70,714	6%	\$ 53,907	7%	\$ 124,621
Europe and North America	5%	\$ 41,689	5%	\$ 50,860	5%	\$ 92,549
<b>Grand Total</b>	<b>100%</b>	<b>\$ 797,293</b>	<b>100%</b>	<b>\$ 966,049</b>	<b>100%</b>	<b>\$1,763,342</b>

*Note: EX expenditures include the Emergency Fund.*

232. It should be noted that while Table 6 reflects the figures in SISTER, it may misrepresent actual spending allocations. Some funding in the global category may have actually been spent in the field without reflecting such in SISTER.
233. However, overall, it seems that more focus is needed on supporting Africa member countries at all stages of implementation of the Convention, i.e., ratification, policy/legislation development, and implementation. The 37 C/5 offers some improvements in this regard. For example, in the 37 C/5, there is a target of 20 new ratifications overall, with at least four in Africa (and four each in the Caribbean and the Asia and Pacific Island region). Additionally, the section on Global Priority Africa contains strategies specific to the 1970 Convention.

**Recommendation 19.** Better integrate Global Priority Africa into planning and programs in support of the 1970 Convention. (Secretariat)

<sup>133</sup> Art Finance; Databank. Out of Africa. (March 2012) Available at [http://www.art-finance.com/AA\\_March\\_2012.pdf](http://www.art-finance.com/AA_March_2012.pdf)

<sup>134</sup> Pg. 159 36 C/5

<sup>135</sup> While the 1970 Convention is notably absent from this list, it is referred to regarding the development of specific strategy to address illicit trafficking and looting of cultural property in post-conflict countries. Significant activity has been undertaken to address this issue, but with the exception of the work in Mali, all of this work has taken place outside of Sub Saharan Africa.

<sup>136</sup> Calculations based on SISTER Extract from 20/02/2014. Region was based on regional/thematic group and associated region, with the exception of the Arabic translation of “Witnesses to History,” which was reclassified from the Global region to the Arab State region.

## 6.2.2 Global Priority Gender Equality

234. So far the main mechanism for integrating Global Priority Gender Equality in the work in support of the 1970 Convention to date has been inviting and encouraging women to participate in the workshops and events. Relevant institutions for the 1970 Convention are often male-dominated, particularly the law enforcement agencies. These imbalances have complicated efforts to have a more balanced gender representation in workshops, as confirmed by an analysis of participant lists for recent workshops and by interviews with UNESCO staff. In one review of 14 countries, the percentage of police officers who were female ranged from a low of 2 to a high of 29 percent.<sup>137</sup> Statistics on the representation of women within border management institutions (including customs) are harder to find, but this same study found that the percentage of women was even lower than for police.<sup>138</sup> Thus, encouraging the participation of women as experts and participants continues to be important.
235. Neither of the relevant documents (36 C/5 and the Gender Equality Action Plan 2008-2013) clearly describes what constitutes success for the 1970 Convention in terms of gender representation (for example, in expected results and performance indicators), and it is positive that their successors are stronger in this regard. The GEAP for 2014-2021 has a performance indicator that includes the gender balance in workshops for all the Conventions, including the 1970 Convention. Likewise, the 37 C/5 includes an expected result for the 1970 Convention related to “enhanced gender balance amongst experts/participants ... in capacity workshops.”<sup>139</sup>
236. Beyond this approach, the issues addressed in the 1970 Convention do not easily lend themselves to gender mainstreaming. While not an immediate priority, it might be interesting in the future to explore how the Convention could better contribute to UNESCO’s overall global priority gender equality, by going beyond encouraging women’s participation in workshops to analysing whether there is a gender dimension to other issues addressed by the Convention, for instance the level of awareness of female and male citizens or students about the issue of illicit trafficking etc. Among other reasons, this would be interesting in view of the fact that both women and men play a critical role in educating children about cultural heritage and its protection.

## 6.3 UNESCO’s Work Going Forward

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237. Evidence collected over the course of this evaluation suggests that the work of the UNESCO Secretariat and Field Offices is much appreciated and valued, and many respondents expressed amazement at the quality and quantity of support provided given the relatively low levels of staffing. Overall, UNESCO is clearly seen as a global leader in the fight against illicit trafficking of cultural property. It also has the ability to bring a range of national, regional, and international stakeholders from a variety of agencies (Ministries, police, culture, etc.) around the same table. Additionally, the issue of illicit trafficking cannot be considered in isolation from a more comprehensive approach to protecting and safeguarding cultural heritage, making UNESCO’s culture sector a natural fit for this work. For instance, UNESCO is also the repository of the 1954

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<sup>137</sup> T. Denham, 2008, “Gender and Security Sector Reform Toolkit: Police Reform and Gender.”

<http://www.osce.org/odihr/30662?download=true>

<sup>138</sup> A. McKay, 2008, “Gender and Security Sector Reform Toolkit: Border Management and Gender.”

<http://www.osce.org/odihr/30690?download=true>

<sup>139</sup> Alignment between these two documents remains an outstanding issue. For example, the benchmark in the GEAP II is “At least 40% of experts/participants are women” while the benchmark in the 37 C/5 is “three out of every five workshops involving local communities and women.”



Convention and its Protocols, as well as of several other culture conventions. Finally, UNESCO has expertise working in post-conflict zones, which are particularly vulnerable to trafficking of cultural property.

238. At the same time that these strengths were recognized, concern was also expressed about UNESCO's ability to maintain this leadership position given the number of other organizations increasingly working on this issue and the mismatch between the resources dedicated to this Convention and the workload required of the Secretariat. Although it is unlikely that any other organization will be able to serve as a standard-setter and catalyst for international cooperation in the way that UNESCO can, without significant reinforcements, trade-offs will have to be made between the different functions the Secretariat is expected to fulfil (providing support to the statutory bodies, capacity building, sharing good practices, awareness raising, responding to emergency situations etc.).
239. Going forward, it is imperative that the staffing for the 1970 Convention Secretariat be reinforced as the current situation is absolutely untenable. State Parties' long term commitment is needed to strengthen this Secretariat with the level of expertise and stability required to perform its functions. This entails stabilizing the situation for the existing temporary staff and increasing staffing levels overall. Given the current resources, it is unrealistic to expect that the Secretariat will be able to sustain let alone increase its workload in the future.

<b>Recommendation 20.</b>	Given the human and financial resource constraints of the Secretariat, provide clear direction about what areas of work should be prioritised over others. (State Parties)
<b>Recommendation 21.</b>	Strengthen the Secretariat with the level of expertise, stability and resources required to respond to the ever increasing demand for its services. (State Parties)

## Chapter 7 Partnerships, and Knowledge Management

### 7.1 *Related international instruments*

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#### 7.1.1 UNESCO's Culture Conventions

240. UNESCO currently administers six conventions in the field of culture. Connections exist between most of them as already demonstrated in previous documents and studies. A 2010 report requested by the World Heritage Committee explored the linkages between the 1972 Convention and other culture conventions, including the 1970 Convention.<sup>140</sup> Specific linkages identified between the 1970 Convention and the 1972 Convention included the following:
- Examples of illicit trafficking of cultural property from World Heritage Sites include the Butrint Site in Albania in the 1990s, the Angkor site in Cambodia, and the Jiroft site in Iran.
  - Natural World Heritage Sites can derive protection from the 1970 Convention, as “rare collections and specimens of fauna, flora, minerals, and anatomy, and objects of paleontological interest” are included as cultural property.
  - The looting of a World Heritage Site has a direct impact on its preservation, and de facto, on the Outstanding Universal Value of the site.
  - Inclusion of a site on the World Heritage List may make it more vulnerable to looting because inscription can contribute to (1) promotion of the site to a wide audience, (2) facilitation of its accessibility due to tourism development, and (3) enhancement of the commercial value of the objects found there because of their new popularity.
241. Conflict situations also increase the vulnerability of both movable and immovable cultural property, requiring a strategy that includes aspects of the 1970 Convention, the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict and its two Protocols (hereafter the 1954 Convention and Protocols) and the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage (hereafter the 1972 Convention). Thus, it is not surprising that, for example, the emergency missions dispatched by UNESCO in such situations cover topics that cross-cut these Conventions.
242. Interview respondents also pointed to the protection of cultural objects associated with intangible cultural heritage (for example, musical instruments) as one example of links between the 1970 Convention and the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (hereafter the 2003 Convention). UNESCO's Universal Declaration on Cultural Diversity (2001) includes a specific main line of action (13) encouraging State Parties to combat illicit traffic in cultural goods. There is also a link with the 2001 Convention on the Protection of the Underwater Cultural Heritage, which contains several provisions related to illicit trafficking of cultural heritage recovered underwater.
243. In general, as discussed in the report on the standard-setting work related to the 2003 Convention that constitutes Part I of this evaluation exercise, while mutual supportiveness at the normative level is essential, in practical terms there are challenges to the coordination and cooperation between the Conventions. Each Convention has its own group of constituencies, which sometimes

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<sup>140</sup> WHC-09/34.COM/5E The World Heritage Convention and the other UNESCO Conventions in the field of culture. Thirty-fourth session of the World Heritage Committee 25 July – 3 August 2010. Brasilia. <http://whc.unesco.org/archive/2010/whc10-34com-5Ee.pdf>

overlaps and sometimes does not overlap with that of the others, and this can make any concrete cooperation a challenging task. In addition, the way in which programmes and interventions are structured (and budgeted) does not always support inter-conventional cooperation. Working across Convention boundaries also requires a high degree of understanding of the concepts, objectives as well as of the implementation challenges of the other Conventions and partnership arrangements that facilitate such cross-conventional linkages. Opportunities and challenges exist both at the level of State Parties and at the level of UNESCO, where the organizational set-up and the specific working methods of each Convention, including the way how technical assistance and capacity building are provided and how programmes/projects are managed and funded, do not easily lend themselves to cross-conventional cooperation.

244. At the level of the culture sector, in part to address the some of these challenges, the Culture Conventions Liaison Group (hereafter CCLG) was established in 2011. Its role is to “ensure coordination among these Conventions, identify options for improved implementation of and enhanced coherence and cooperation in programme implementation and to explore opportunities for synergistic activities and increased coordination, and exchange information.”<sup>141</sup> This could take many different forms in practice. For example, as recommended by the World Heritage Committee in 1997<sup>142</sup>, an estimate of the vulnerability of the site to illicit traffic and the adequacy of measures taken to ensure its protection could be made by the Advisory Bodies at the time of inscription of a site on the World Heritage List.
245. The potential for increased cooperation also exists with the regard to the working methods of the Conventions. This was pointed out by the IOS Audit of the Working Methods of the Culture Conventions in 2013<sup>143</sup>, which recommended that given UNESCO’s resource constraints and the increasing demand for the services of all Convention Secretariats, cost-saving, cost recovery and fund-raising measures be considered. A number of such measures are currently already being prepared. They include the creation of a Conventions Common Services Unit, which will cover all aspects common to the culture conventions including the preparation of statutory meetings, communications, outreach and partnerships; the development of new effective and integrated fund-raising mechanisms; and the development of proposals for the reduction of the duration and agenda of the statutory meetings; harmonization of translation and interpretation requirements; the consistent application of UNESCO’s cost recovery policy across all Conventions and others.

### 7.1.2 International Instruments Outside of UNESCO

246. More so than with any other international instrument<sup>144</sup>, the 1970 Convention is directly connected to the 1995 UNIDROIT Convention. These Conventions are not only linked conceptually but also in their promotion and associated capacity building activities (see partnership section below). Additionally, some countries have passed legislation that implements the 1970 Convention and also includes aspects of the UNIDROIT Convention (even if they have not ratified the UNIDROIT Convention). More information on the UNIDROIT Convention was included in earlier chapters of this report.

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<sup>141</sup> Information Document on the UNESCO Culture Conventions, the challenges faced and proposals to streamline processes and procedures. Prepared by the Culture Conventions Liaison Group in April 2013

<sup>142</sup> WHC-97/CONF.208/15. World Heritage and the Prevention of Illicit Traffic of Cultural Property. Twenty-first session of the World Heritage Committee. 1-6 December 1997. Naples. <http://whc.unesco.org/archive/1997/whc-97-conf208-15e.pdf>

<sup>143</sup> <http://unesdoc.unesco.org/images/0022/002232/223256E.pdf>

<sup>144</sup> Note that already in the 1970s, an annex (XI) was included in the World Customs Organization’s International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (Nairobi, 1977) that is specifically dedicated to the “Assistance in action against the smuggling of works of art, antiques and other cultural property”.

247. In resolution 2010/19, the United Nations Economic and Social Council considered that the UN Convention against Transnational Organized Crime (hereafter UNTOC) should be fully used to strengthen the fight against illicit trafficking in cultural property. Parties to UNTOC (currently 179<sup>145</sup>) commit to fighting transnational organized crime through the creation of domestic offences, enhanced international cooperation, and capacity-building for national authorities. Because trafficking in cultural property often involves domestic and transnational offences as well as organized crime groups, the provisions of UNTOC can be applicable to fighting illicit trafficking, particularly the provisions related to penal sanctions, international cooperation and law enforcement.<sup>146</sup>
248. There are also regional and sub-regional instruments related to the protection of cultural property against illicit trafficking, some of which are discussed in the international cooperation section of [Chapter 5](#). Such instruments include the Council of Europe’s EEC Regulation No.3911/92 of 9 December 1992 on the export of cultural goods, EC Regulation No.116/2009 of 18 December 2008 on the export of cultural goods (codified version), and EC Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member state (updated in 2014). The Organization of American States also has its own relevant specialist instruments: the Treaty on the Protection of Movable Property of Historic Value (PAU Treaty), which predates the 1970 Convention;<sup>147</sup> and the Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations (Convention of San Salvador) approved 16 June 1976.<sup>148</sup> Sub-regionally, the 2004 Andean Community Decision No. 588 on the Protection and Recovery of Cultural Property created new mechanisms to protect and recover illicitly trafficked goods.<sup>149</sup> Finally, the African Union’s Charter for African Cultural Renaissance (2006 African Charter) of 24 January 2006 makes explicit reference to the 1970 UNESCO Convention in its preamble and calls on African States to ‘take steps to put an end to the pillage and illicit traffic of African cultural property to ensure that such cultural property is returned to the countries of origin’ and to work towards the return of archives illicitly removed from the continent (Arts 26 and 27).
249. In general, regions with long-established regional intergovernmental organizations with specialist instruments covering movable heritage (for example, Europe and the Americas), have a more widespread uptake of the 1970 Convention and more consistent domestic laws. However, these domestic laws often more closely align with the obligations under the relevant regional instrument, rather than the 1970 Convention.

## **7.2 Partnerships in the Fight against Illicit Trafficking**

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250. UNESCO’s Comprehensive Partnership Strategy endorsed by the 192<sup>nd</sup> Executive Board, lists “reinforc[ing] the understanding, ratification, implementation, and monitoring of UNESCO’s

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<sup>145</sup>United Nations convention against Transnational Crime. Status as at 27-3-2014.

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12&chapter=18&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12&chapter=18&lang=en)

<sup>146</sup>For more information see the CTOC/COP/2010/12 document on the Use of the United Nations Convention against Transnational Organized Crime for protection against trafficking in cultural property, 2010: [U:\Share\Evaluation\4 CLT Culture\Normative Work CLT \(2012- 2013\)\1970 Convention Illicit Traffic\Partners\UNODC\Use of the United Nations Convention against Transnational.pdf](U:\Share\Evaluation\4 CLT Culture\Normative Work CLT (2012- 2013)\1970 Convention Illicit Traffic\Partners\UNODC\Use of the United Nations Convention against Transnational.pdf)

<sup>147</sup>Adopted 15 April 1935, in force 17 July 1936, OASTS No.28, in Anon., Protection of Movable Monuments (February 1935) *The Bulletin of the Pan-American Union* 92.

<sup>148</sup>Resolution AG/Res.210(VI-O/76), OASTS No.47. State Parties as at December 2013 include Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay, and Peru.

<sup>149</sup><http://www.comunidadandina.org/ingles/culture.htm>

normative frameworks” as one rational for partnerships.<sup>150</sup> Towards this end, the 1970 Convention Secretariat works with a number of partners.

251. UNESCO and **UNIDROIT** enjoy a particularly close partnership, given the complementarity between the 1970 Convention and the UNIDROIT Convention.<sup>151</sup> In addition to almost daily communication between the two, UNIDROIT routinely presents at UNESCO training sessions and workshops and worked with UNESCO to develop the Model Provisions on State Ownership of Undiscovered Cultural Objects.<sup>152</sup>
252. **INTERPOL** and UNESCO also work closely together. Representatives of INTERPOL serve as trainers and participants at UNESCO workshops and events, and likewise, UNESCO representatives are often invited to present and participate at INTERPOL events. Additionally, the MOU between the two organizations allows UNESCO to send INTERPOL information to include in its Stolen Works of Art Database. (UNESCO and ICOM are the only organizations besides INTERPOL’s National Central Bureaus with such an arrangement.). Finally, UNESCO, INTERPOL, and ICOM worked together to develop “Basic Actions concerning Cultural Objects being offered for Sale over the Internet.”
253. UNESCO likewise has a strong partnership with the **World Customs Organization (WCO)**, which is governed by a MOU between the two organizations. The WCO and UNESCO worked together to establish the Model Export Certificate discussed in the previous chapter, and WCO representatives are often present at UNESCO events and workshops. WCO/RILO WE is the lead for the ARCHEO program, an online information exchange and cooperation tool to help link relevant agencies and departments involved in protecting cultural property at border crossings.<sup>153</sup> To date, the membership mostly consists of representatives of European countries, although it is continually expanding.
254. **The United Nations Office on Drugs and Crime (UNODC)** began to address the issue of illicit traffic in cultural property within mandates entrusted to it by the Conference of the Parties to the Organized Crime Convention, the Commission on Crime Prevention and Criminal Justice (including the convening of its open-ended intergovernmental expert group on protection against trafficking in cultural property), as well as the Economic and Social Council and the General Assembly of the United Nations. UNESCO has provided input to UNODC throughout this process. Following resolutions by the Economic and Social Council and the General Assembly, UNODC has convened three intergovernmental expert groups on the topic of crime prevention and criminal justice responses to illicit trafficking of cultural property in the past five years. Most recently, this group met in January 2014 to finalize guidelines on this topic. These guidelines will be submitted to the 23<sup>rd</sup> session of the Commission on Crime Prevention and Criminal Justice.<sup>154</sup><sup>155</sup>

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<sup>150</sup> 192 EX/5.INF, Follow-up to decisions and resolutions adopted by the Executive Board and the General Conference at their previous sessions Part III – Management issues Comprehensive partnership strategy, 192<sup>nd</sup> Session of the Executive Board, Paris, France, 6 September 2013.

<sup>151</sup> See Prott, L. (1996) UNESCO and UNIDROIT - a Partnership against Trafficking" in Uniform Law Review (1996) 59-71.

<sup>152</sup> C/70/12/2.MSP/5, Report of the Secretariat on its activities and on the implementation of the 1970 Convention by State Parties. 2nd meeting of State Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, Paris France, 20-21 June 2012.

<sup>153</sup> Pinot, Laurent. Programme ARCHEO. Presentation at UNESCO Workshop, Gazantiep, Turkey, 19-21 November 2011. Available at <http://fr.slideshare.net/UNESCOVENICE/laurent-pinot-programme-archeo>

<sup>154</sup> The finalized version of the guidelines is included in Annex I of the Report on the meeting of the expert group on protection against trafficking in cultural property held in Vienna from 15 to 17 January 2014 (UNODC/CCPCJ/EG.1/2014/3):

[http://www.unodc.org/documents/organized-crime/UNODC\\_CCPCJ\\_EG.1\\_2014/UNODC\\_CCPCJ\\_EG1\\_2014\\_E.pdf](http://www.unodc.org/documents/organized-crime/UNODC_CCPCJ_EG.1_2014/UNODC_CCPCJ_EG1_2014_E.pdf)

<sup>155</sup> Another joint activity was recently (March 2014) launched: UNESCO, together with UNODC and the World Tourism Organization (UNWTO) initiated a global campaign to engage travelers in the fight against a number of forms of trafficking, including that of cultural property.

255. **ICOM** and UNESCO have had formal relationships since 1946,<sup>156</sup> and the partnership is currently governed by a framework agreement in effect through 2013. In support of the 1970 Convention, successful coordination includes projects such as the development and promotion of Emergency Red Lists and the ICOM Code of Ethics for Museums. ICOM has also played a role in assessing damages and risk in post-conflict and -disaster situations, such as in Egypt in 2011 and Haiti in 2010. ICOM's work related to illicit trafficking has grown in recent years, and it launched the International Observatory on Illicit Traffic in Cultural Goods not long ago, which will culminate in 2015 with a global report on illicit traffic.<sup>157</sup> The 1970 Convention Secretariat expects ICOM to play a more active role in the area of inventories, security of museums and conservation issues.
256. **ICCROM and ICOMOS** work predominantly with UNESCO via other culture conventions (e.g., 1972 and 1954) but due to the interconnections between these Conventions, their work also touches on issues relevant to the 1970 Convention. ICCROM and UNESCO have furthermore jointly conducted training activities, such as in the fields of museum documentation and storage management, which also contribute to UNESCO's overall efforts to support the implementation of the 1972 Convention.
257. A number of **national specialized police units** also work particularly closely with UNESCO, including the Italian Carabinieri, the Spanish Heritage Team of the Central Operational Unit of the Guardia Civil, and the French Central Office for the Fight against Illicit Trafficking of Cultural Property. Coordination with the Italian Carabinieri is especially well developed, as a Lieutenant-Colonel from this unit was seconded to work with the 1970 Convention Secretariat for two years.<sup>158</sup>
258. In addition to these key partners, the 1970 Convention Secretariat also works with other partners, although on a less intensive basis. The **UNESCO Chair in the International Law of Cultural Heritage Protection** was established at the University of Geneva in 2012. While the professor who holds this chair has participated in some meetings and events regarding the 1970 Convention, greater potential for collaboration exists. In general, the overall engagement between UNESCO and academics could be enhanced. Particular attention could be paid to how the UNESCO Chair and other interested academic institutions could contribute to addressing a challenge to implementation identified by a number of State Parties: the lack of national-level legal capacity to draft laws, prosecute crimes, and seek the return/restitution of objects. Respondents also noted that graduate departments may be a rich source of potential interns for the Secretariat.
259. The 1970 Secretariat has increasingly reached out to actors in the **art market**, for example by inviting representatives of auction houses and dealers associations to the 40th Anniversary Celebration of the 1970 Convention and the 16th and 17th sessions of the ICPRCP. The goal of this engagement is to "encourage better mutual knowledge of art-market working methods . . . and Member States' concerns about movements of works of art and issues relating to the restitution of cultural property."<sup>159</sup> The evaluation would be remiss not to acknowledge that the relationship between the art market and strong advocates of return/restitution can be characterized by antagonism, as there are strong feelings on both sides regarding the morals and practices of

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<sup>156</sup> NGO Partners Admitted to Associate Status. Individual Fact Sheets. Accessed at

<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ERI/pdf/Individual%20factsheets%20NGO%20associate%20status.pdf>

<sup>157</sup> First meeting of the International Observatory on Illicit Traffic in Cultural Goods. Accessed at <http://icom.museum/news/news/article/first-meeting-of-the-international-observatory-on-illicit-traffic-in-cultural-goods-1/L/O/>

<sup>158</sup> This secondment lasted until February 2014.

<sup>159</sup> C/70/12/2.MSP/5, Report of the Secretariat on its activities and on the implementation of the 1970 Convention by State Parties. 2nd meeting of State Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, Paris France, 20-21 June 2012.

cultural property collection. And, as discussed in [Chapter 5](#), while there have been positive changes in the art market, there still remains considerable room for improvement. While acknowledging these tensions, overall, both State Parties and representatives of the art market interviewed for this evaluation felt that increased constructive dialogue would be beneficial to all parties involved. Not only could this dialogue facilitate better mutual understanding of the perspectives of each, more sharing of practical information (e.g., relevant laws, due diligence practices and resources, etc.) could benefit all parties involved.

260. Other partners include the **European Union and the media**. For example, UNESCO contributed to a November 2011 report on means of preventing and combating trafficking in cultural goods and is working with the EU Cultnet, an informal network of EU law enforcement authorities and experts in the area of cultural goods crime.<sup>160</sup> Finally, as discussed in the section of UNESCO's public awareness raising activities, the media is also an important partner in this work.<sup>161</sup>
261. Overall, UNESCO enjoys strong partnerships in support of the 1970 Convention, which complement and contribute to UNESCO's work and expand its reach. A number of these partners saw UNESCO as the overarching "umbrella" for the larger combat against the illicit traffic of cultural property, exemplifying the critical role that UNESCO plays in providing an overall framework for the work in this field. It also demonstrates the extent to which the core framing of this problem still focuses on cultural heritage protection, an area where UNESCO is considered a leader.
262. Specifically, UNESCO's partnerships work particularly well when each partner's area of expertise and work are clear and complementary, for example, UNIDROIT's expertise in private law matters, INTERPOL in police, etc. However, at the same time that the 1970 Convention has enjoyed renewed attention within UNESCO, addressing illicit trafficking of cultural property has also become an increased priority for UNESCO's partners. As each organization seeks to identify and refine its area of work and expertise, potential overlap and competition should be avoided as they might serve as a hindrance to effective collaboration. Thus, clarifying roles and having dialogues about how work can be complementary, not redundant, will continue to be important moving forward.

<b>Recommendation 22.</b>	Continue the dialogue with partners to clarify roles and to enhance complementarity of the work. (Subsidiary Committee / Secretariat)
<b>Recommendation 23.</b>	Identify ways of continuously engaging with representatives of the art market to enhance the implementation of the Convention and develop a road-map, with a view of creating a shared understanding of the issues at stake and a commitment to enhance collaboration. (Subsidiary Committee / Secretariat)

### **7.3 Knowledge Management**

263. Knowledge Management is "a set of principles, policies and practices through which an organization consciously and comprehensively gathers, organises, shares, and analyses its

<sup>160</sup> European Union and UNESCO. Accessed at <http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/partnerships/european-union/>

<sup>161</sup> For examples of several high profile media investigations that contributed to concrete changes in policies and practices, see Brodie, N. (2012) Uncovering the antiquities market. In: Skeates, R., McDavid, C. and Carman, J. (eds.) Oxford Handbook of Public Archaeology. Series: Oxford handbooks in archaeology. Oxford University Press, Oxford, UK, pp. 230-252.

knowledge—in terms of insights, experiences and skills—perceived as a strategic resource.”<sup>162</sup> In the context of the 1970 Convention, knowledge is generated by and needs to be shared between a large variety of stakeholders within State Parties, between State Parties, between the Secretariat and UNESCO’s field offices and State Parties, as well as with partners including other international organizations, Academic institutions and others.

264. At the national level the extent to which knowledge is shared between stakeholders is directly linked to the degree of cooperation between the various national actors. As illustrated in earlier chapters of the present report, collaboration at the national level varies from one country to another. At the international level, the role of the Secretariat in gathering, organizing, analysing, and sharing knowledge related to the implementation of the Convention is also vital. This view is shared by many stakeholders consulted and confirmed by responses to the survey, where over 90% of respondents had indicated that facilitating the exchange of good practices between State Parties should be either a high priority or somewhat of a priority for the Secretariat. Several of the already existing mechanisms contribute to gathering and exchanging information on the implementation of the Convention. These include Periodic Reports submitted by State Parties, capacity building activities undertaken by the Secretariat, Subsidiary Committee meetings and others.
265. Although the quality of Periodic Reports submitted by State Parties varies, some of them include good practices and implementation experiences that may be of interest to other State Parties. This means that additionally to serving monitoring purposes (as discussed in the next chapter); the Reports could be one of the major sources of information that feeds into the overall knowledge management efforts related to this Convention. This would require properly analysing the reports with a view of identifying good practices and experiences at the national level or in international cooperation, requesting additional information from State Parties if necessary, organizing this information in a way that it can be easily understood by stakeholders in other countries, and then sharing the final product in whatever way is appropriate. Obviously, such a process requires time and resources.
266. Future meetings of State Parties and of the newly established Subsidiary Committee could also serve as a platform for knowledge and experience sharing between State Parties about specific topics. Capacity-building workshops and conferences organised by the Secretariat of the 1970 Convention in cooperation with field offices are already serving this purpose to some extent.
267. The 1970 Convention website also constitutes an important tool for knowledge sharing. In spite of the considerable amount of information already available online, some additional improvements would increase not only its relevance as a tool for information and experience sharing but also its user-friendliness. The Secretariat is currently already in the process of improving and reorganizing its web-site. The following constitute a few ideas for its further amelioration. For example, automatic alerts on updates of specific sections of the website may increase the visibility of the information that has been posted. Another useful tool would be a newsletter with links to the website, where interesting implementation experiences, successful projects, latest news and achievements of the Secretariat and State Parties as well as relevant up-coming events could be presented to State Parties and partners.
268. An analysis of the users of the website shows that while it is frequently consulted by Government agencies from various regions of the world, not all are equally represented. For instance, it is

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<sup>162</sup> UNESCO’s Knowledge Management and Information and Communication Technology Strategy (2012 – 2017)



rarely accessed by users from Africa, Central Asia and some of the Eastern European countries. There is therefore a need to bring the website to the attention of stakeholders in these regions in order to ensure both that they can benefit from the information shared and that they can actively contribute by sharing their own experiences. It is interesting to note that 10% of the traffic on the website is generated by Interpol.

269. Of course, knowledge is not only produced by State Parties and the Secretariat. Other stakeholders, such as international NGOs and research institutions, also contribute significantly to these efforts. For instance, the following two on-going EU funded university research projects are worth mentioning: “Trafficking Culture” is a research programme conducted by the University of Glasgow, including several individual research projects about the global traffic in looted cultural objects. The programme has a website where research material is shared<sup>163</sup>. The Art-Law Centre of the University of Geneva runs the project “ArThemis”, which focuses on restitution cases that were resolved through alternative methods and includes a database of cases.<sup>164</sup> ICOM is in the process of establishing an “International Observatory on Illicit Traffic in Cultural Goods”, which will provide a platform for information related to this issue.<sup>165</sup>
270. All these and many other initiatives generate a lot of interesting information that could be of use to State Parties and UNESCO if it was presented and shared in a way that responds to the needs and implementation challenges faced by these various actors. This is an area, where a lot more could be done in terms of liaising with academic institutions, experts and partners in order to collect research findings, discuss them and to subsequently bring some of the findings and experiences to the attention of policy makers and other actors all over the world. Needless to say that this would require time and resources on the part of the Secretariat, which it currently does not have.

<b>Recommendation 24.</b>	Familiarise State Parties, especially in those regions that only make limited use of it, with the 1970 Convention website as a tool for information sharing and knowledge management. (Secretariat)
<b>Recommendation 25.</b>	Strengthen the engagement with research institutions, experts and partners with a view of reinforcing UNESCO’s role as a broker for knowledge related to the implementation of the 1970 Convention. (Subsidiary Committee / Secretariat)

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<sup>163</sup> <http://traffickingculture.org/>

<sup>164</sup> <https://plone.unige.ch/art-adr>

<sup>165</sup> <http://icom.museum/news/news/article/first-meeting-of-the-international-observatory-on-illicit-traffic-in-cultural-goods-1/L/0/>

## Chapter 8 Monitoring the Implementation of the Convention

271. State Parties are required to submit Periodic Reports on the implementation of the Convention every four years. For the period 2007 - 2011, a summary of the Periodic Reports was prepared by the Convention Secretariat and examined by the Committee on Conventions and Recommendations of the UNESCO Executive Board (hereafter CCR) and subsequently by the General Conference of UNESCO, but this procedure has changed with the establishment in 2012 of a new governing system composed of a Meeting of State Parties and a Subsidiary Committee.
272. While some Periodic Reports include rich and detailed information on the status of and challenges to implementing the 1970 Convention, so far the overall monitoring mechanism for the Convention has not been particularly effective. It is important to note that the challenges identified over the course of the evaluation are not new or unique to the 1970 Convention. Many of these same issues were identified in a 2002 Secretariat report to the CCR to help inform decisions regarding monitoring of standard-setting instruments within UNESCO.<sup>166</sup>
- **Low reporting rate.** Only 38% of State Parties to the 1970 Convention submitted Periodic Reports in 2011, the most recent round of reporting. In none of the seven rounds of reporting since the Convention was adopted have more than 50% of State Parties responded.<sup>167</sup>
  - **Variance in quality of reports.** The most recent Periodic Reports also vary considerably in their depth, coverage, and quality. The length of the Reports is between two and 46 pages, with variance as to what questions were addressed and to the depth of response to each question. Even in cases where State Parties addressed the same issue, responses varied greatly.<sup>168</sup> These variations make it difficult to get an overall picture of implementation in any single country and also complicate the analysis of the global situation.
  - **No checks on accuracy of reporting.** Monitoring is based on self-reporting, and there is no oversight mechanism to monitor the accuracy of the Periodic Reports submitted.<sup>169</sup>
  - **Lack of follow-up on reporting.** Only the cross-country summary of Periodic Reports was examined by the CCR and is examined by the General Conference. This, de facto, means that there is no monitoring of State Parties who have not submitted reports, no identification of specific gaps or challenges in individual countries, or meaningful follow-up based on findings from Periodic Reports. Coupled with the fact that preparing Periodic Reports can be a time and resource heavy undertaking, some State Parties expressed a

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<sup>166</sup> 164 EX/23 8, Proposals by the Committee on Conventions and Recommendations on the Conditions and Procedures Applicable to the Examination of Questions Relating to the Implementation of UNESCO's Standard-Setting Instruments, 165<sup>th</sup> Executive Board, 8 April 2002 Paris France

<sup>167</sup> C70/12/2.MSP/5, Report of the Secretariat on its activities and on the implementation of the 1970 Convention by State Parties, Meeting of State Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership of Cultural Property, 20-21 June 2012, Paris France

<sup>168</sup> For example, information on inventories ranged from descriptions of how inventories help in return/restitution cases, descriptions of inventories of stolen and missing cultural goods, references to laws on inventories, the number of objects that have been inventoried, to detailed descriptions of inventory systems.

<sup>169</sup> See Yusuf, A. (Ed.). (2007). *Standard-Setting In Unesco: Conventions, Recommendations, Declarations and Charters Adopted by UNESCO (1948-2006)* (Vol. 2). BRILL. pg. 59 for more context on Periodic Reporting at UNESCO

reluctance to prepare Periodic Reports, despite it being mandated by the UNESCO Constitution and the 1970 Convention.<sup>170</sup>

273. The establishment of the Subsidiary Committee in 2013 presents an opportunity to revisit the monitoring mechanism for the Convention, as part of the Subsidiary Committee's mandate is to review Periodic Reports, exchange best practices, and identify problem areas arising from the implementation of the Convention.<sup>171</sup> The 37 C/4 specifically notes that special attention should be placed on this newly created monitoring mechanism. While the use of Periodic Reports is mandated by the Convention text itself and by UNESCO's Constitution, the structure of these reports as well as the method for examining them can be adapted. In light of this opportunity, the evaluation presents the following issues for consideration.
274. Currently, there is no framework to define what successful implementation of the Convention looks like or how to measure that success. The fact that the Convention is, *inter alia*, intended to *prevent* an activity makes measuring success even more complicated. The development of a results framework, including the identification of key objectives to be achieved globally and of related qualitative and quantitative indicators would facilitate the monitoring of the implementation of the Convention by State Parties. The draft Theory of Change presented in this report (or any other intervention logic) may serve as a useful starting point for developing this framework.
275. The results framework would also provide the Subsidiary Body with direction about where to focus its work over the next years. As this evaluation has shown, implementation challenges abound and neither the Committee nor the Meeting of State Parties, and even less the Secretariat, will be able to address them all at the same time. For instance, if one of the objectives to be achieved is the establishment of specialised services (Art. 5) by X no. of State Parties by 2020 (as identified in the results framework), some of the work of the Committee should focus on exchanging good practices related to the establishment of such services, encouraging discussions about this issue, building capacities needed to run such a service etc.
276. The structure of the Periodic Reports and the questions included in the Periodic Reporting format should in turn, be aligned with this results framework so that the information presented by State Parties can then be used by the Committee and the Meeting of State Parties to draw conclusions about the global status of implementation and to use this information to take actions in support of national implementation and international cooperation.<sup>172</sup>
277. Another issue to be considered is whether the Periodic Reporting fulfils all the requirements of a mechanism to monitor the implementation of an international Convention. Periodic Reports, when properly done, certainly provide a wealth of useful information. However, given that the information contained therein is self-reported, it only presents one of a number of possible perspectives. The existing mechanism could therefore be complemented with other instruments,

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<sup>170</sup> Article VIII of the UNESCO Constitution reads "Each Member State shall submit to the Organization, at such times and in such manner as shall be determined by the General Conference, reports on the laws, regulations and statistics relating to its educational, scientific and cultural institutions and activities, and on the action taken upon the recommendations and conventions referred to in Article IV, paragraph 4." Article 16 of the 1970 Convention reads "The State 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."

<sup>171</sup> Rules of Procedure of the Subsidiary Committee of the Meeting of State Parties to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, Adopted by the Subsidiary Committee at its First Ordinary Session in Paris, UNESCO HQ 2-3 July 2013

<sup>172</sup> For example, Periodic Reporting for Ramsar Convention on the Wetlands is closely aligned with the Strategic Plan for the Convention.

such as a periodic review of national reports (e.g. the practice of the UN Human Rights Council) or reviews by an independent panel of experts (e.g. World Heritage Convention advisory bodies, the IUCN, ICOMOS, and ICCROM). This would provide State Parties with a more complete picture of the overall status of implementation of the Convention.

278. There is also room for improvement in the administration and processing of Periodic Reports. For example, State Parties' input into the Periodic Reports could be done online and thereby automatically feed into a database from which responses can be down-loaded not only for each State Party but also by question in order to analyse reports across State Parties (as is done by other culture convention secretariats). Additionally, questions and reporting guidelines should be clear and straightforward. The current guidelines include a number of questions that are somewhat ambiguous or double-barrelled (i.e., actually asks two separate questions within one question).<sup>173</sup> The survey developed for this evaluation could serve as a starting point for clarifying and streamlining questions.

<b>Recommendation 26.</b>	Develop an overall results framework for the Convention, linked to a Convention Theory of Change (or another type of intervention logic) and including clear objectives, time-frames, indicators and benchmarks. (Subsidiary Committee / Secretariat)
<b>Recommendation 27.</b>	Improve Periodic Reporting by revisiting the reporting format and introducing an online system for submission and analysis of Periodic Reports (benefitting from what other Conventions do already have in use.) (Subsidiary Committee / Secretariat)
<b>Recommendation 28.</b>	Request State Parties to all submit their Periodic Reports every four years (next round in 2015) in order to provide the Secretariat with the required information on the national and regional implementation of the Convention. (State Parties / Subsidiary Committee / Secretariat)

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<sup>173</sup> While the guidelines developed by the Secretariat are not intended to be a questionnaire, in fact, many state reports used these guidelines as a template for reporting.

## Chapter 9 Conclusion and Summary List of Recommendations

279. 1970 is considered by many to be a watershed moment in the fight against illicit trafficking of cultural property. The adoption of an international instrument on this oftentimes polarizing issue was seen as a major achievement in international cooperation in and of itself. More than 40 years later the 1970 Convention is still considered the most important global legal instrument in this area, responding to issues that create major problems both at the national and at the international levels. However, like most treaties, it is clearly built on compromises, which is reflected in the way it is drafted, the selection of issues included (or not included), and the lack of clarity of some of its provisions.
280. Ratification rates are still lower than those of several other UNESCO culture conventions. This points to the political and commercial issues at stake and to challenges related to the implementation of this Convention both at the policy / legislation and implementation levels. The 1970 Convention has, however, seen a steady stream of new ratifications to the present day and a renewed interest over the past decade, which culminated in the creation in 2012 of a new governing system, composed of a Meeting of State Parties and a Subsidiary Committee.
281. Progress has been made by many State Parties with regard to the integration of the provisions of the Convention in national legislations. However, even where States have adopted new laws or substantially revised pre-existing legislation because of their ratification of the Convention, generally, the full range of their obligations is not addressed. By its nature, the 1970 Convention, rises or falls on mutual recognition, reciprocity and international cooperation. This is hampered by persistent, at best, patchwork application of key obligations by the domestic laws of State Parties. Implementation of the national legislation also often remains a challenge. Areas to be improved include, but are not limited to, the establishment of the required institutional frameworks and the coordination of the various stakeholders involved, inventorying of cultural property, regulations for the trade in cultural property (including those for dealers and online sales), import controls, facilitation of restitution claims, and capacity building of law enforcement agencies.
282. The Convention Secretariat has established effective partnerships with many organizations and engages in capacity building activities to help State Parties address some of the issues mentioned above. It, however, lacks both human and financial resources, which clearly limits its capacity to respond to the ever increasing demands for its services. State Parties' long term commitment is needed to strengthen this Secretariat with the level of expertise and stability required to perform its functions. The present situation is absolutely untenable.
283. Overall, this is a crucial moment in time for the 1970 Convention. A lot will depend on whether State Parties succeed in engaging in a constructive dialogue about the issues at stake, and in involving other stakeholders in the larger combat against illicit trafficking. The newly established Subsidiary Committee has a decisive role to play in facilitating this dialogue and encouraging a rapprochement around the most polarising issues. Improving the overall reporting and monitoring of the implementation of the Convention will also be important to demonstrate progress made over the years to come.
284. The summary list of evaluation recommendations is presented below:

**Recommendation 1.** Provide targeted support, through awareness raising and capacity building activities, to regions where ratification rates are low. (State Parties / Subsidiary Committee / Secretariat)

- Recommendation 2.** Review existing national legislation to ensure it complies with all the obligations that State Parties have under the 1970 Convention. Issues to be looked at include, but are not limited to, the definition of cultural property for the purpose of the 1970 Convention, classification and inventorying of cultural property, regulations for the trade of cultural property (including those relating to dealers and online sales), export and import controls, and procedures facilitating restitution claims. (State Parties)
- Recommendation 3.** Identify crucial issues (such as the ones mentioned in the previous Recommendation and throughout the report) and facilitate a dialogue among State Parties and with concerned partners in order to collectively take the implementation of these issues forward. (Subsidiary Committee)
- Recommendation 4.** Assign responsibility for coordinating the various stakeholders involved in the implementation of the Convention to one specific service / unit. (State Parties)
- Recommendation 5.** Consider establishing a specialized police unit to deal specifically with crime against cultural property (including looting and illicit traffic), and provide it with the necessary resources. (State Parties)
- Recommendation 6.** Establish an up-to-date and accurate national inventory system for cultural property with a minimum of information recorded in line with the Object ID Standard. (State Parties)
- Recommendation 7.** Link national databases of stolen objects with the INTERPOL database. (State Parties)
- Recommendation 8.** Institutionalize trainings on cultural property crime for policy and customs, for example by incorporating it into their basic training programmes. (State Parties)
- Recommendation 9.** Strengthen relationships with actors in the art market to encourage stronger cooperation, greater adherence to rules, regulations and codes of ethics, and improved self-regulation. (State Parties)
- Recommendation 10.** Follow a more comprehensive approach to awareness raising at the national level based on a systematic identification of the target audience, of the most appropriate mechanisms to be used and of clear objectives to be achieved. Responsibilities of all involved actors also need to be clearly defined. (State Parties)
- Recommendation 11.** Facilitate international cooperation by clarifying procedures for return/restitution on the national level and by designating focal points that can be contacted by other State Parties. (State Parties / Subsidiary Committee)
- Recommendation 12.** Strengthen the dialogue about illegally excavated archaeological objects to build consensus on how they can be protected through international cooperation. (State Parties / Subsidiary Committee)
- Recommendation 13.** Revisit and define the role of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation and initiate coordination with the Subsidiary Committee. (ICPRCP)
- Recommendation 14.** Develop a comprehensive capacity building strategy that foresees a longer-term engagement with SPs, enhanced follow-up, and the use of a variety of different capacity building modalities. (Secretariat)
- Recommendation 15.** Focus capacity building activities on those regions that have low ratification rates and / or capacity constraints and implementation challenges. (Secretariat)

- Recommendation 16.** Continue to expand the National Cultural Heritage Law Database by increasing the coverage of legislation and the availability of translations. (Secretariat / State Parties)
- Recommendation 17.** Prioritize the use of awareness raising tools (videos, website, events) in light of their specific quality and effectiveness. (Secretariat)
- Recommendation 18.** Further improve the Convention website in order to increase its user-friendliness, and introduce more frequent alerts about issues related to the 1970 Convention in order to direct visitors of the UNESCO's general website to the Convention website. (Secretariat / Sector for External Relations and Public Information)
- Recommendation 19.** Better integrate Global Priority Africa into planning and programs in support of the 1970 Convention. (Secretariat)
- Recommendation 20.** Given the human and financial resource constraints of the Secretariat, provide clear direction about what areas of work should be prioritised over others. (State Parties)
- Recommendation 21.** Strengthen the Secretariat with the level of expertise, stability and resources required to respond to the ever increasing demand for its services. (State Parties)
- Recommendation 22.** Continue the dialogue with partners to clarify roles and to enhance complementarity of the work. (Subsidiary Committee / Secretariat)
- Recommendation 23.** Identify ways of continuously engaging with representatives of the art market to enhance the implementation of the Convention and develop a road-map, with a view of creating a shared understanding of the issues at stake and a commitment to enhance collaboration. (Subsidiary Committee / Secretariat)
- Recommendation 24.** Familiarise State Parties, especially in those regions that only make limited use of it, with the 1970 Convention website as a tool for information sharing and knowledge management. (Secretariat)
- Recommendation 25.** Strengthen the engagement with research institutions, experts and partners with a view of reinforcing UNESCO's role as a broker for knowledge related to the implementation of the 1970 Convention. (Subsidiary Committee / Secretariat)
- Recommendation 26.** Develop an overall results framework for the Convention, linked to a Convention Theory of Change (or another type of intervention logic) and including clear objectives, time-frames, indicators and benchmarks. (Subsidiary Committee / Secretariat)
- Recommendation 27.** Improve Periodic Reporting by revisiting the reporting format and introducing an online system for submission and analysis of Periodic Reports (benefitting from what other Conventions do already have in use.) (Subsidiary Committee / Secretariat)
- Recommendation 28.** Request State Parties to all submit their Periodic Reports every four years (next round in 2015) in order to provide the Secretariat with the required information on the national and regional implementation of the Convention. (State Parties / Subsidiary Committee / Secretariat)

## Annexes

### *A: Evaluation Terms of Reference*

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Note: The below Terms of Reference refer to the overall evaluation of standard-setting work of the Culture Sector. The present evaluation report on the work related to the 1970 Convention represents part II of this exercise.

#### **Evaluation of UNESCO's standard-setting work of the Culture Sector - with a focus on four Conventions**

##### ***TERMS OF REFERENCE***

*November 2012*

#### **Background**

Through its standard-setting work UNESCO aims to serve as a central forum for coordinating the ethical, normative and intellectual issues of our time, and to work towards universal agreements on these issues, defining benchmarks and mobilizing international opinion. The standard-setting function is key for UNESCO and sets it apart from many other UN organizations.

A large number of standard-setting instruments, including conventions, recommendations and declarations, have been adopted under the Organization's auspices. As the only UN agency with a mandate in culture, UNESCO has developed a comprehensive series of standard-setting instruments in this field, including six main culture Conventions, many recommendations and a number of declarations.<sup>174</sup> Significant time and resources are spent on standard-setting activities related to these instruments and even though the visibility of some of this work is high, no comprehensive evaluation has ever been conducted of the standard-setting work of UNESCO.

It is in this context that UNESCO decided to include an evaluation of UNESCO's standard-setting work in the work-plan for the current biennium. The evaluation is expected to provide critical insights that will help UNESCO strengthen its reform efforts and follow up on the recommendations of the 2010 Independent External Evaluation, specifically on those related to a need for more strategic focus. With the current challenging times, UNESCO is more than ever called to demonstrate its relevance, to be more effective in its work and to increase its efficiency. UNESCO thereby also responds to a request from the culture sector to review the working methods of its Conventions.

The present evaluation aims to help the UNESCO Culture Sector, Senior Management and the Governing bodies of the Conventions to strengthen, refocus and better coordinate the Organization's standard-setting activities. The evaluation will also contribute to generating a better understanding about how conventions work in practice, i.e. how they affect legislation and policies of Parties and the behaviour of key institutional actors. It thereby also intends to serve as a source of information for Member States, who have the primary responsibility for the implementation of the standard-setting instruments at national level. Last but not least, the evaluation is expected to feed into ongoing discussions about the challenges and lessons learned with regard to evaluating normative work in the UN.

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<sup>174</sup> Full list of UNESCO's standard-setting instruments in Culture : [http://portal.unesco.org/en/ev.php-URL\\_ID=13649&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=-471.html](http://portal.unesco.org/en/ev.php-URL_ID=13649&URL_DO=DO_TOPIC&URL_SECTION=-471.html)



## Purpose

The purpose of the evaluation is two-fold:

- To generate findings and recommendations regarding the relevance and the effectiveness of standard-setting work of the culture sector with a **focus on its impact on legislation, policies, and strategies of Parties to the conventions**; and
- To assess the **adequacy and efficiency of the working methods** of UNESCO's standard-setting work.

The results of the analysis will inform the design, implementation and management of the standard-setting work to be carried out under the new eight-year Medium-Term Strategy (C4 document) for 2014-2021 and the new four-year Programme (C5) for 2014-2017.

The evaluation is furthermore expected to inform and significantly enrich ongoing discussions in the international evaluation community (UNEG and others) about the opportunities and challenges encountered when evaluating standard-setting / normative work and the approaches to be used for this type of evaluation.

## Scope

The evaluation will assess the **contribution of UNESCO's** standard-setting work, which is designed to support Member States with the:

Ratification (or accession / acceptance / approval) of the Conventions

Integration of the provisions of the Conventions into national / regional legislation, policy and strategy (policy development level)

Implementation of the legislation, policies and strategies at national level (policy implementation level).

The evaluation will focus on a purposive sample of the Culture Sector's standard-setting work. It will specifically **look at four of the six main Culture Conventions** (1970, 1972, 2003, and 2005 Conventions). UNESCO's work related to all four Conventions will be examined with regard to its relevance and effectiveness, with a focus on its impact at the legislation / policy / strategy level, (i.e. at the policy development level II (see three levels above)).

As explained above, it will be beyond the scope of this evaluation to fully examine the results of UNESCO's support to the implementation of legislation, policies and strategies by State Parties (level III.) for all four Conventions. The evaluation will, however, analyse samples of work at the implementation level in order to illustrate some of the effects of the implementation of legislation / policies / strategies on actual behaviour of institutions (and citizens). The samples chosen for **in-depth analysis will relate to the 1970 and 2003 Conventions**. UNESCO's work on these two Conventions has either been evaluated by IOS long ago (1970 Convention) or so far not been subject to evaluation at all (2003 Convention). These two Conventions also represent two different governing models and levels of maturity.

The analysis of the efficiency and effectiveness of the working methods (Management Review) will include all four Conventions.

The evaluation will cover the standard-setting work undertaken within the framework of both the regular and extrabudgetary programmes during the 34C/5 (2008-2009), 35C/5 (2010-2011) and 36C/5 (2012-2013) biennia up to the time of the evaluation. It will build on several evaluations and audits conducted by IOS over the past few years, including the 2012 evaluation of the International Fund for Cultural Diversity (under the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions), evaluations of UNESCO's Strategic Programme Objective (SPO) 11 and SPOs 9&10,

the 2005 evaluation of the 1970 Convention on Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership Cultural Property, and other relevant evaluations and studies commissioned by sectors. It will also build on previous audits of the World Heritage Centre (WHC) (1972 Convention on the Protection of the World Cultural and Natural Heritage), specifically on an IOS audit exercise taking place in 2012, which takes stock of earlier audits and evaluations, follows up on recommendations, and assesses internal controls and the financial model of the WHC.

This is an annotated list of the four Conventions that will be covered by this evaluation:

**Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005):** This Convention is intended to ensure that artists, cultural professionals, practitioners and citizens worldwide can create, produce, disseminate and enjoy a broad range of cultural goods, services and activities, including their own. Recognizing that culture can no longer be just a by-product of development, but rather the mainspring for sustainable development, the Convention aims to usher in a new international framework for the governance and management of culture.

**Convention on the Safeguarding of the Intangible Cultural Heritage (2003):** Intangible cultural heritage includes traditions or living expressions inherited from our ancestors and passed on to our descendants, such as oral traditions, performing arts, social practices, rituals, festive events, knowledge and practices concerning nature and the universe or the knowledge and skills to produce traditional crafts. The purposes of this Convention are to safeguard and ensure respect for the intangible cultural heritage, to raise awareness at the local, national and international levels of the importance of the intangible cultural heritage, and to provide for international cooperation and assistance.

**Convention on the Protection of the World Cultural and Natural Heritage (1972):** This Convention seeks to encourage the identification, protection and preservation of cultural and natural heritage around the world considered to be of outstanding value to humanity. As the most visible of UNESCO's normative instruments, its mission is to encourage countries to preserve their cultural and natural heritage and to encourage international cooperation in the field of conservation.

**Convention on Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership Cultural Property (1970):** Under the provisions of this international treaty, States cooperate to protect the cultural property on their territory and fight its illicit import, export and transfer. This Convention addresses a rapidly evolving issue that is attracting a significant political, media, diplomatic, and legal attention.

## **Evaluation Questions**

The major evaluation questions are the following:

### **How relevant is the standard-setting work of the culture sector?**

To what extent do UNESCO's standard-setting instruments occupy a niche, i.e. address a clear need among stakeholders?

What are stakeholders' (governing bodies, national governments, civil society, private sector, UNESCO Secretariat) expectations regarding the four Conventions?

To what extent do the four Conventions complement other international standard-setting instruments?

To what extent has UNESCO's standard-setting work influenced (and been influenced by) the international discourse and practice, including international codes of ethics and other tools, related to issues addressed by the four Conventions?

How has the Organization reflected its two Global Priorities (Africa and Gender) in its standard-setting work?

### **How effective is the standard-setting work?**

What are the main results achieved at the ratification level, policy development level (all four Conventions), policy implementation level (1970 and 2003 Conventions)?

Are UNESCO's theories of change (causal chains) for the standard-setting work related to the four Conventions clearly articulated and reflected in programming and reporting? Is there a shared understanding among stakeholders (UNESCO Secretariat, governing bodies, national governments, etc.) about what the standard-setting work is expected to achieve and how?

To what extent has UNESCO been able to identify and address the key factors that enable or constrain standard-setting work of Parties to the Conventions? At what level in the causal chain from ratification to policy development to policy implementation of a Convention do they occur?

When compared to other international standard-setting instruments, what are the key factors (conditions, incentives, resources, mechanisms etc.) that need to be in place to ensure success at the policy development and implementation level?

To what extent has UNESCO been successful in establishing effective partnerships (with Governments, civil society, the private sector, UN, National Commissions, Category I and II Centres etc.) in the context of its standard-setting work?

Has UNESCO been successful in analysing and sharing the results of its work, thereby contributing to learning by Member States?

What mechanisms are in place to monitor and evaluate progress achieved in the Organization's standard-setting work? How effective are the existing reporting mechanisms on the implementation of the Conventions?

### **How adequate and efficient are the working methods of the Conventions and how could they be improved for greater synergies, harmonization and efficiencies?**

How does UNESCO oversee and coordinate its standard-setting work at the overall organizational / sectoral level and is this mechanism effective?

Are the working methods for administration, programming and governance of each Convention clearly established, operating as intended and achieving the expected results?

Are resources (Regular Programme, State Party assessment and/or voluntary contribution) associated with each Convention programmed, budgeted and reported in a transparent and consolidated manner?

What common administrative, programmatic and governance practices are in place among the Convention secretariats and governing bodies?

Are there potential efficiencies in grouping these common practices while achieving equivalent or improved services or results?

What unique administrative, programmatic and governance practices are in place among the Convention secretariats and governing bodies?

Which of these could be seen as best practices to be considered for replication or adoption within other Conventions?

What good practices are in place among other Conventions (both within UNESCO and external to UNESCO) that could bring increased efficiency or effectiveness if replicated or adopted within the UNESCO Culture Conventions?

The evaluation will identify good practices and lessons learned for all three areas of inquiry.

The evaluation questions will be fine-tuned and finalized in the context of the inception report.

### **Methodology**

The overall methodological design will include:

- A systematic in-depth desk study (to be undertaken by external consultants in cooperation with IOS)
- Articulation of theories of change for those Conventions where they do not exist
- Multi-site data collection with purposive sampling of cases (to be undertaken by external consultants in cooperation with IOS)
- Management review (to be undertaken by IOS).

The foundation of the evaluation methodology constitutes a nested design, i.e. including purposive sampling and data collection at different levels of the causal chain from ratification to implementation. This will allow the evaluation to present credible complementary perspectives on UNESCO's achievements with regard to its standard-setting function at different levels. The three levels of this design correspond to the three levels of standard-setting work as described above: I. Ratification; II. Integration of the provisions of the Conventions into national / regional legislation, policy and strategy (policy development level); and III. Implementation of the legislation, policies and strategies at national level (policy implementation level). They also cover the first two major evaluation questions on the relevance and the effectiveness of the standard-setting work.

The methodology will include a desk study, phone/Skype interviews, surveys, in person interviews in a few selected countries. The multi-level purposive sampling strategy starts out from a sample from the broad population of all countries at the ratification level, and gradually narrows down to sampling from smaller populations of countries with certain levels of policy development and implementation (or a lack thereof).

The Management Review (to be undertaken by IOS only) will focus on the third overall evaluation question related to the adequacy and efficiency of the working methods of the Conventions and potentials for their improvement. The methodology will include a comparative analysis of the working methods used for each of the four Conventions through a desk study and interviews with UNESCO staff and members of the Governing Bodies.

### **Responsibilities, Deliverables and Schedule**

The evaluation will be conducted by a team of external consultants, under the supervision of IOS. IOS will also actively participate in the evaluation process. The precise division of labour will be agreed upon in the inception phase. The external evaluation team is expected to produce the following deliverables:

- Inception Report outlining the overall proposed evaluation approach, including logical framework(s), final evaluation questions, methodology, list of key informants, workplan, timeline and division of responsibilities
- Detailed Country Studies (to be submitted at the end of each country visit)
- Draft Evaluation Report
- Final Evaluation Report

The consultants are furthermore responsible for editing and quality control of language. The final report should be presented in a way that directly enables publication.

IOS (Evaluation Section) will participate in the data collection process, and be responsible for approving the inception and the final reports and for initiating payments upon approval. **Data collection, analysis and report writing related to the third overall evaluation question (including its various sub-questions) regarding the working methods of the Conventions (Management Review) will be entirely conducted by IOS (Audit Section).** It will constitute an integral part of the overall evaluation report.

**PROPOSALS SUBMITTED IN THE CONTEXT OF THE PRESENT RFP THEREFORE ONLY NEED TO ADDRESS MAJOR EVALUATION QUESTIONS 1 (ON THE RELEVANCE OF THE STANDARD-SETTING WORK) AND 2 (ON THE EFFECTIVENESS OF THE STANDARD-SETTING WORK).**

A reference group will accompany the evaluation process and provide feedback on the draft TOR and the draft evaluation report. The group will include members from IOS, the Culture Sector, the Bureau of Strategic Planning, and potentially one or two external experts.

Development of ToR and Consultation	September - October 2012
International tender and recruitment of consultants	November - December 2012
Start of work of external consultants	January 2013
Desk Study and Inception Report	January - February 2013
Data collection	March – May 2013
Draft Evaluation report	Early June 2013
Consultation and debriefing workshop	June 2013
Final Evaluation report	July 2013

**Evaluation Team**

The evaluation will be undertaken under the supervision of UNESCO’s Internal Oversight Service, Evaluation Section and in cooperation with two external consultants. One or two evaluators from IOS’ Evaluation Section will be part of the overall team. One or two auditors from IOS’ Audit Section will also be part of the team, the latter with a focus on the working methods of the Conventions.

The following qualifications are required:

Company:

It is mandatory for Firm/Entity to have min 5 years of global/international experience in policy / programme evaluation. Firm/entity with less than 5 years of experience will be disqualified

Team leader and senior evaluation expert:

It is mandatory for the team members to have: Advanced university degree in specialized fields of culture, social science, law, public policy, international relations or related fields; and excellent oral communication and report writing skills in English or French.

It is also mandatory for each of the proposed candidates to have min 10 years of policy and programme evaluation on a global/international basis of relevance to policy making,

It is desirable for the firm to propose candidates with 3 references that demonstrate knowledge of the international conventions that are included in the present evaluation exercise (1970, 1972, 2003 and 2005 Conventions);

It is desirable that the candidates have undertaken at least 3 assignments for the UN;

It is desirable that the candidates have at least 3 references that demonstrate experience with the evaluation of international conventions and other standard-setting instruments.

Three samples of previous evaluation work, preferably relevant to the evaluation of standard-setting work, must be submitted as part of the technical proposal. Candidates are furthermore encouraged to also submit other references (research papers, articles, etc.) that demonstrate team members’ familiarity with the conventions that are included in the present evaluation exercise.

**Budget**

The evaluation is budgeted with a maximum of 30 consultant person weeks. The team is expected to visit three to four countries. Additionally, team members are expected to travel to Paris three times to participate in a kick-off meeting during the inception phase, to conduct interviews during the data collection phase, and to present the draft report to relevant stakeholders.

## ***B: Country analyses of the domestic laws implementing the 1970 Convention***

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By Ana Filipa Vrdoljak; Professor and Associate Dean (Research), Faculty of Law, The University of Technology Sydney.

### ***Introduction***

285. Domestic laws regulating the trade in cultural objects have been the driving force from the time that a multilateral instrument was proposed in the 1930s to its realisation with the 1970 Convention to the present day.
286. The original impetus was the realisation by many countries that domestic laws for the protection of movable heritage alone were simply ineffective for their purpose. Once a cultural object had left its territory, a country's own laws were of little benefit. Instead, a multilateral instrument, which promoted reciprocity through mutual recognition of domestic laws of other States and international cooperation in their effective implementation by facilitating return, was imperative.
287. The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereafter the 1970 Convention) is this instrument. But also, like most treaties, it is clearly built on compromises. The Convention is a sum of the numerous domestic legal traditions for the protection of movable heritage of the negotiating States. Then, as now, these national laws reflected the diverse (and sometimes competing domestic) priorities and legal systems of these States. In the intervening years, even where State Parties have adopted new laws or substantially revised pre-existing legislation because of their ratification of the Convention, generally, the full range of their obligations are not addressed.
288. By its nature, the 1970 Convention rises or falls on mutual recognition, reciprocity and international cooperation. The persistent, at best, patchwork application of key obligations by the domestic laws of State Parties, means that the circle has not been squared to date.
289. To better understand this phenomenon, this report examines select countries in Europe (France, Romania, Switzerland, Turkey, and the Russian Federation), the Americas (Peru and Ecuador), Asia (Cambodia and China), Africa (Mali, South Africa, Morocco and Egypt) and Oceania (Australia). Each country report follows the same basic structure in order to facilitate comparisons: relevant constitutional provisions (where relevant), ratification of relevant multilateral instruments (including the 1970 Convention, the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (hereafter the UNIDROIT Convention) and other treaties covering movable heritage), list of relevant domestic laws, definition of cultural property, title and state ownership, inventories and classification, export control system, import control system, regulation of archaeological excavations and transfer of cultural property within its territory (including auction houses, dealers etc.), sanctions, bilateral agreements, and international cooperation.
290. Each regional section commences with a brief introduction to any relevant regional multilateral initiatives, where they exist. It is important to bear in mind the diversity of priorities and legal traditions within regions themselves and lack of uniformity in the ratification of the 1970 Convention within them also. What is clear is that regions with long-established regional intergovernmental organizations with specialist instruments covering movable heritage (for example, Europe and the Americas), have a more widespread uptake of the 1970 Convention and more consistent domestic laws. However, these domestic laws often more closely align with the obligations under the relevant regional instrument, rather than the 1970 Convention.

## Implementation of the 1970 Convention in Europe<sup>175</sup>

291. The majority of European States have ratified the 1970 Convention.<sup>176</sup> Several European States have become party to the UNIDROIT Convention (Azerbaijan, Croatia, Cyprus, Denmark, Finland, FYROM (the former Yugoslav Republic of Macedonia), Greece, Hungary, Italy, Lithuania, Norway, Portugal, Romania, Slovakia, Slovenia, Spain, and Sweden).<sup>177</sup>
292. The region's multilateral bodies (European Union and Council of Europe) have their own specialist instruments which are relevant to the protection of movable cultural heritage. For the Council of Europe:
- Convention on Offences relating to Cultural Property (Delphi Convention),<sup>178</sup> and
  - European Convention on the Protection of the Archaeological Heritage (revised) (Valletta Convention).<sup>179</sup>
293. For the European Union:
- EEC Regulation No.3911/92 of 9 December 1992 on the export of cultural goods<sup>180</sup>
  - EC Regulation No.116/2009 of 18 December 2008 on the export of cultural goods (codified version)<sup>181</sup>
  - EC Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member state.<sup>182</sup>
294. Some States have interpreted 'cultural property' under their domestic laws implementing the 1970 Convention as confined to the list annexed to the EC Regulation and Directive (e.g. Belgium and the United Kingdom).
295. Following the recommendations of a 2011 study instigated by the European Commission,<sup>183</sup> and Conclusions of the Council of the EU of the same year,<sup>184</sup> the second Work Plan for Culture 2011-2014 adopted by the Council set down three initiatives on cultural objects: (1) establishment of a panel of experts to prepare a toolkit covering good practice guidelines and a code of ethics on due diligence in the fight against illicit trafficking and theft of cultural objects; (2) group of national experts to consider simplifying the lending and borrowing of artworks within the EU; and (3) study of the system of evaluation of artworks for insurance, state indemnity and share liability

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<sup>175</sup> By way of background see: M. Cornu, Implementation of the 1970 Convention in Europe, Background Paper for the participants in the Second Meeting of the State Parties to the 1970 Convention, UNESCO Headquarters, Paris, 20 and 21 June 2012.

<sup>176</sup> 23 Members States of the EU have ratified the 1970 Convention and 5 (Austria, Ireland, Latvia, Luxembourg and Malta) have not. In addition other European States, Finland, Iceland, Montenegro, Norway, Russia, Serbia, Switzerland, FYROM, Turkey, Ukraine and Uzbekistan have ratified, and Andorra, Israel, Monaco, Moldova, San Marino have not.

<sup>177</sup> A number of European States have signed but not ratified the Convention to date including France, Georgia, Netherlands, Russian Federation, and Switzerland.

<sup>178</sup> ETS No.119 adopted in 23 June 1985, not entered into force.

<sup>179</sup> ETS No.121, adopted 16 January 1992, entered into force 25 May 1995, updates and replaces for the State Parties of the Valletta Convention that European Convention on the Protection of Archaeological Heritage (ETS No.66) (London Convention) adopted 6 May 1969. This latter convention was based on the UNESCO Recommendation on International Principles applicable to Archaeological Excavations adopted New Delhi, 5 December 1956.

<sup>180</sup> OJ L 395, 31.12.1992, p.1.

<sup>181</sup> OJ L 39, 10.2.2009, p.1.

<sup>182</sup> OJ L 74, 27.3.1993, p.74, amended by Directive 96/100.EC of the European Parliament and of the Council of 17 February 1997, OJ L 60, 1.3.1997, p.59, and by Directive 2001/38/EC of the European Parliament and of the Council of 5 June 2001, OJ L 187, 10.7.2001, p.43. See generally A. Biondi, *The Gardener and other Stories: The Peregrinations of Cultural Artefacts within the European Union*, in R. Craufurd Smith (ed.), *Culture and European Union Law* (Oxford, 2004), p.153.

<sup>183</sup> CECOJI-CNRS-UMR 6224, Study on Preventing and Fighting Illicit Trafficking in Cultural Goods in the European Union, Final Report October 2011.

<sup>184</sup> Conclusions of the Council of European Union on preventing and combating crime against cultural goods, 13 and 14 December 2011.



purposes.<sup>185</sup> Also, the EC Regulation No.44/2011 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters covers recovery proceedings by owners of cultural objects.<sup>186</sup>

296. Cornu notes that some European States implementing the 1970 Convention into domestic law have passed legislation with specific procedures or have amended existing laws to ensure compliance, and others have simply ratified the Convention. The 2011 Study noted that less than 10 States had incorporated mechanisms specifically for return of cultural objects illicitly exported or transferred. Prott observed that even States that had not ratified the Convention nonetheless referred to the date it came into force to determine whether its transfer was illegal for the purposes of restitution claims.<sup>187</sup> The 2011 Study recommended States ratify the 1970 and 1995 Conventions and work to harmonize criminal law, civil law, and cultural heritage law.<sup>188</sup> Cornu also noted that there was a need for standardization of the definition (or ‘delimitation’) of cultural property and the modes of its protection and regulation of its transfer. This is highlighted in the notion of good faith/due diligence, which could be based on the UNIDROIT Convention definition. The study also recommended that the national laws of EU member States criminalize the illegal removal of material from archaeological, historical or cultural sites protected by domestic laws in line with the UNIDROIT Convention. The Delphi Convention also engages this issue and was inspired by the 1970 Convention and 1978 UNESCO Recommendation for the Protection of Movable Cultural Property. Cornu noted that within the EU there was an urgent need to strengthen inter-institutional cooperation to enhance information sharing and effectiveness of resources and skills, cooperation between private and public stakeholders, and articulation and application of good practices. She also found that more could be done by States to ensure that museums and their officials operate responsibly. Also, there was a need to address import controls and their violation, regulation of online sales, and enforce due diligence measures.

## France

297. France ratified the 1970 Convention on 7 January 1997 (entered into force 7 April 1997), with a declaration concerning the definition of ‘cultural property’. It has signed but not ratified the UNIDROIT Convention. The 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (hereafter the 1954 Hague Convention) and First Protocol entered into force for France on 7 September 1957. The 2001 Convention on the Protection of the Underwater Cultural Heritage (hereafter the 2001 Convention) entered into force for it on 7 May 2013. France became a State Party to the 2003 Convention for the Safeguarding of the Intangible Cultural Heritage (hereafter the 2003 Convention) on 11 October 2006. EC Regulation No.116/2009 of 18 December 2008 was effective as of 2 March 2009, and France transposed EC Directive 93/7/EEC of 15 March 1993 by *Loi Numéro 95-877 du 3 August 1995*.<sup>189</sup> While France has ratified the Custom Co-operation Council

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<sup>185</sup> Conclusions of the Council and of the Representatives of the Governments of the Member States meeting within the Council, on the Work Plan for Culture 2011-2014 OJ C 325, 2.12.2010, p.1. See EC Council Resolution of 19 December 2002 implementing the work plan on European cooperation in the field of culture; European added value and mobility of persons and circulation of works in the cultural sector, OJ C 13, 18.1.2003, p.5; EC Council Resolution of 24 November 2003, on cooperation between cultural institutions in the field of museums, OJ C 295, 5.12.2003, p.1; and *Action Plan for the EU Promotion of Museum Collections’ Mobility and Loan Standards*, (Finnish Ministry of Education, 2006).

<sup>186</sup> EC Regulation No.1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ L 351, 20.12.2012, p.1.

<sup>187</sup> L. V. Prott, *Strengths and Weaknesses of the 1970 Convention: An Evaluation 40 Years after its Adoption*, March 2011, UNESCO, Doc.CLT/2011/CONF.207/7, 3.

<sup>188</sup> Cornu, *supra* note 1, p.3.

<sup>189</sup> *Journal Officiel de la République Française* (JORF) page 11664 (4 August 1995).

(WCO) Nairobi Convention (hereafter the Nairobi Convention) of 9 June 1977, it has not signed its Annex XI on assistance in action against the smuggling of works of art, antiques and other cultural property.

298. The relevant national laws include: the National Heritage Code (Ordinance No.2004-178)(2004); Control of the Export of Cultural Goods (Act No.92-1477 of 31 December 1992) and implementing legislation (Decree No.93-124 of 29 January 1993); the Restitution of Cultural Goods within the EU (Law No.95-877 of 3 August 1995), and the Measures against Theft and Malicious Acts committed against Cultural Property (Arts 311-4-2 of the Criminal Code).
299. The definition of cultural property under Decree No.93-124 of 1993, Annex largely reflects Article 1 of the 1970 Convention and EC Reg.116/2009. Property belonging to public collections and French Museums, designated as part of historic monuments, archives or those of major interest to the national heritage (history, art or archaeology) are 'national treasures' (NHC Art.L111-1). Archaeological sites and objects are protected (NHC Art.L510-1).<sup>190</sup> Also, sites, wrecks, remains or property of prehistoric or historic interest, located in the maritime public domain or at the bottom of the sea in the adjacent area constitutes maritime cultural property (NHC, Art.L532-1).
300. The principle of inalienability applies to national collections (NHC Art.L451-5).<sup>191</sup> All movable objects designed as historic monuments under the Heritage Code are inalienable (NHC, Art.L622-13) and those belonging to the state cannot be transferred (NHC, Art.L622-14). The disposal or acquisition of any movable object designated as a historic monument attracts a fine or imprisonment (NHC Art.L624-4). There are penal provisions covering violations of protections concerning archaeological sites on land or sea (NHC Art.L.544-1 et seq) and looting, destruction or degradation of these sites is also covered by the Criminal Code (Arts 311-4 and 322-3).
301. Movable cultural objects which are of public interest because of history, art, science or technology can be listed as a historic monument by an administrative decision (NHC, Art.L622-1). While public collections are required to maintain an inventory or database, France does not maintain a single, national centralized inventory. The Ministry of Culture and Communication, with local authorities, is digitalizing collections and creating databases of stolen or missing objects. This information is available on the Ministry's website.
302. France has an export control system (NHC, Arts L111-1 to 111-7). Violation of these provisions attracts penal sanctions (Criminal Code, Arts L114-1 to L114-6). Cultural property, not a national treasure, which is of historic, artistic, or archaeological importance and coming within categories defined by the Council of State, must obtain an export certificate for it to be moved through the EU and, if to go beyond Europe, authorization must also be obtained. The license is permanent for objects older than 100 years and must be renewed every 20 years for those between 50 and 100 years (NHC, Art.L111-2). The certificate is only denied to national treasures. Compensation cannot be obtained if a certificate is refused. It will be given to those objects lawfully entering France in the preceding 50 years. If there is evidence that the object was not lawfully obtained, the certificate can be refused. This decision is reviewable (NHC, Art.L111-4). Temporary export certificates, even for national monuments, may be authorized by administrative authorities for 'restoration, appraisal or participation in a cultural exhibit or inclusion in a public collection' (NHC

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<sup>190</sup> Archaeological sites and excavations were previously covered by Act of 31 December 1913 on Historic Monuments, the Act of 27 September 1941 on Archaeological Excavations, and the Laws of 15 July 1980 and 18 December 1989 on Metal Detectors. The Decree No.95-1039 of 18 September 1995 transposes the Valletta Convention into French law.

<sup>191</sup> See case involving the contested return of Māori human remains held in the city of Rouen: *Loi No. 2010-501 du 18 mai 2010 visant à autoriser la restitution par la France des têtes maories à la Nouvelle-Zélande et relative à la gestion des collections*; and O. Amiel, A Māori Head: Public Domain? (trans. M. Bel and M. Berger), *International Journal of Cultural Property* (2008) 15:371-375.

Art.L111-7). France export certificate is based on the EU one contained in EC Regulation No.656/2004 of 7 April 2004, and not the UNESCO-WCO Model Export Certificate.<sup>192</sup>

303. France does not have an import control system. However, pursuant to EC Regulation No.1210 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq restrictions were placed on the import, export and transfer of Iraqi cultural objects within France. More generally, objects which have left the territory of another EU member state in violation of its laws protecting national treasures or EC Regulation No.399/92 may entail conservation measures (Art.L112-5) and restitution procedure (Art.L112-6). In respect of cultural objects removed from non-EU Member States, the Civil Code provides that (absent bilateral agreements) a claimant can seek recovery from a possessor in good faith (Article 2276). Claims against state or national museums are only admissible concerning acts after 1997, when the 1970 Convention came into force for France. Accordingly, mural fragments from the tomb of an Egyptian prince from the eighteenth dynasty acquired by the Louvre in 2000 and 2003 were being de-accessioned for their return to Egypt.<sup>193</sup>
304. Since 2000, French dealers and auction houses are required to maintain a register of movable property.<sup>194</sup> France is also currently assessing means of regulating the sales of cultural objects on the internet. While there is no formal requirement on museums and other collecting institutions concerning the purchase of illicitly exported objects, there is a practice of refusing objects with unclear or incomplete provenance.<sup>195</sup>
305. The *Office central de lutte contre le trafic de biens culturels* (OCBC) cooperates with the INTERPOL in this field; but does not presently cooperate with the UN Office against Drugs and Crime (UNODC). French Customs also works with the World Customs Organization and France has ratified a number of bilateral (with Spain and Germany) and multilateral agreements relevant for effective cooperation and implementation in this area (e.g. Nairobi Convention of 1977 (Act No.2001-84 of 30 January 2001), and EC Convention on Mutual Assistance and Cooperation between Customs Administrations (Naples II Council Act 98/C24/01 of 18 December 1997).<sup>196</sup>

## Romania

306. The Constitution of Romania of 1991 guarantees access to culture and requires to the state to ensure that the nation's 'cultural legacy is protected and preserved ... and Romania's cultural and artistic values are promoted through the world.'
307. The 1970 Convention was accepted and entered into force for Romania on 6 December 1993. The UNIDROIT Convention entered into force for it on 1 July 1998. The 1954 Hague Convention and First Protocol entered into force for Romania on 21 March 1958 and the Second Protocol on 7 August 2006. The 2001 Convention entered into force for it on 2 January 2009. Romania became a state party to the 2003 Convention on 20 April 2006. As with other EU Member States, the EC Regulation No.116/2009 of 18 December 2008 was effective for Romania as of 2 March 2009, and EC Directive 93/7/EEC of 15 March 1993 came into force on 1 April 2007.<sup>197</sup> Romania has not

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<sup>192</sup> France, Rapport sur l'application de la Convention concernant les mesures à prendre pour interdire et empêcher l'importation, l'exportation et le transfert de propriété illicites des biens culturels (2011), [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/france\\_2010-11natrep\\_1970\\_fr.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/france_2010-11natrep_1970_fr.pdf) (viewed on 28 December 2013), p.12 (which it describes as 'plus compliquée').

<sup>193</sup> Ibid., p.7.

<sup>194</sup> See also Code of Ethics of Auction Houses of 2012 published by JORF and *Conseil des Ventes Volontaires*.

<sup>195</sup> See for example, Circular No.2007/007 of 26 April 2007 on the Code of Ethics for Curators, para.11.4.c; and NHC Art.L442-8 based on the ICOM Code of Ethics. The UNESCO Code of Ethics for Dealers in Cultural Property is applied less systematically.

<sup>196</sup> France, *supra* note 18.

<sup>197</sup> *Journal Officiel de la République Française* (JORF) page 11664 (4 August 1995).

ratified the Nairobi Convention nor signed its Annex XI on assistance in action against the smuggling.

308. The relevant national laws include: Decision No.518 of 7 April 2004 On the Approval of the Methodological Norms on Temporary or Permanent Exportation of Movable Cultural Goods; Law No.311 of 8 July 2003 regarding Museums and Public Collections; Law No.1420 of 4 December 2003 On the Approval of the Norms Regarding the Movable Cultural Goods Trade; Law No.422 of 18 July 2001 On the Protection of Historical Monuments; Law No.182 of 25 October 2000 Regarding the Protection of Movable National Heritage; and Ordinance No.43 of 30 January 2000 On the Protection of Archaeological Sites as National Interest Areas.
309. Cultural property is defined largely in accordance with (but in much more detail than) the 1970 Convention definition (Law 182/2000, Art.3). 'National cultural heritage' include goods of exceptional historic, archaeological, documentary, ethnological, artistic, scientific, technical, literary, cinematographic, numismatic, philatelic, heraldic, bibliographic, cartographic, and epigraphic value which represent people's relationship with the natural environment, human creativity, and Romanian contribution to universal civilization, or belonging to public collections (that is, inventoried by museums, archives and libraries); or inventoried by religious cults and ecclesiastical institutions (Law 182/2000, Art.1). Archaeological Heritage includes movable objects, objects or traces of human existence and the ground where they are located (Ordinance 43/2000, Art.2(1)(b)). This law covers archaeological sites on land and underwater. Archaeological heritage can be classified and protected as movable national cultural heritage (Ordinance 43/2000, Art.4). And discovery of such objects must be notified by the discoverer to the Ministry of Culture and Cults within 72 hours.
310. The principle of inalienability attaches to publicly owned cultural objects and those from heritage sites.<sup>198</sup> Archaeological, epigraphic, numismatic, paleontological or geolitic objects found underground or in the territorial waters or continental shelf are public property (Art.136(3), Romanian Constitution). The National Commission of Museums and Collections nominates the relevant state institution which holds the object (Law 182/2000, Art.45). The state can establish management or other rights over cultural objects (Law 182/2000, Art.5(2)). Public authorities, owners and administrative right holders attached to movable national cultural heritage are obliged to protect the objects against deliberate or perfunctory acts that result in their degradation, damage, loss, illegal export or appropriation (Law 182/2000, Art.8). Cultural objects can be transferred with the prior authorization of the Ministry of Culture and National Commission of Museums Collections and only through authorized economic agents (Law 182/2000) Art.35). The state has the right of pre-emption. Any sale conducted without prior authorization of the state is null (Law 182/2000, Art.36).
311. An Inventory of the National Movable Cultural Heritage is maintained of all cultural objects of public institutions or in their custody, religious cults, offered for public sale through authorized agents, given temporary or permanent export license, confiscated by the state, unsuccessfully illicitly exported, and illegally removed from Romania (Law 182/2000, Arts 11 and 15(1)). The Institute of Cultural Memory maintains a Register of Destroyed, Stolen, Missing or Illegally Exported Cultural Objects. Public institutions with movable heritage must also maintain an image archive (Art.13(1)).

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<sup>198</sup> Romania, National Report on the Implementation of the 1970 Convention (2011), at [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/romania\\_2010-11natrep\\_1970\\_en.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/romania_2010-11natrep_1970_en.pdf) (viewed on 28 December 2013), p.3.

312. Export of privately owned movable cultural goods can only occur with an export certificate issued by the state (Law 182/2000, Art.37). However, they can be exported temporarily for an exhibition, laboratory investigations, restoration, or other investigations requiring foreign expertise (Law 182/2000, Art.38). In rare circumstances, they can be permanently exported provided that it is part of an exchange of cultural objects of equal cultural significance, which is determined by the Government, local or county council and the National Commission of Museums and Collections (Law 182/2000, Art.40; Decision 518/2004). The export certificate reflects the one attached to the EC Regulation.
313. Violations of legal obligations under these laws covering movable cultural heritage attract civil and penal sanctions by individuals and legal bodies (e.g. Law 182/2000, Chapter IX).
314. While there is no specific legislation covering the import of cultural property, Romania is bound by the UNIDROIT Convention and EEC Directive. These are transposed into Romanian domestic law by Law 182/2000, Chapter VIII. Likewise, the legislation imposes an obligation on the state to pursue restitution procedures in the other EU Member States for cultural objects illegally removed from Romanian territory (Law 182/2000, Art.58). In its 2011 National Report, Romania advised that it had successfully recovered 13 illicitly removed objects, nine pursuant to the UNIDROIT Convention.<sup>199</sup>
315. Romania has general bilateral agreements with Israel, Italy, Nigeria, Senegal, and Turkey which also cover combatting theft of cultural objects and the promotion of return. The Romanian Police cooperate with INTERPOL by providing data and images of stolen or illicitly removed cultural objects. Its police have been trained through the PHARE project (*Integrated Information Management for the Protection of Mobile Cultural Heritage and Cultural Objects*), which was established by the Ministry of Culture and National Heritage with EU funding.<sup>200</sup> It was designed to increase the capacity of ministries and related bodies to combat the illegal transfer, theft, destruction and falsification of cultural objects including the use of the Object ID, data management and cooperation with other European counterparts. The Romanian Customs Authority cooperates with the World Custom Organization's CEN network and customs authorities of the EU.<sup>201</sup> Police records showed that between 2003-2006, they detected three illicit imports and 60 illicit exports.<sup>202</sup>
316. Romania has specialist legislation and related licensing system covering persons who are authorized to trade movable cultural goods (Law 182/2000, Art.77; Decision no.1420/2003). The conduct of museums and public collections' officials is regulated by law also (Law 311/2003).

## Switzerland

317. The 1970 Convention entered into force 3 January 2004 for Switzerland. It has signed but not ratified the UNIDROIT Convention. The 1954 Hague Convention and First Protocol entered into force for Switzerland on 15 August 1962, and the Second Hague Protocol on 9 October 2004. It has not ratified the 2001 Convention. It became a State Party to the 2003 Convention on 16 October 2008. It is not an EU Member State and therefore not subject to EC Regulation No.116/2009 or EEC Directive 93/7/EEC of 15 March 1993. Switzerland has not ratified the 1977

<sup>199</sup> Ibid.

<sup>200</sup> CECOIJ-CRNS, *supra* note 9, at p.62.

<sup>201</sup> Romanian, *supra* note 24 p.3.

<sup>202</sup> Romania, National Report Summary, in Examination by the Executive Board of the New Report by Member States and other State Parties on Measures Taken to Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), 20 September 2007, Doc.177EX/38, Annex II, p.38.

Nairobi Convention nor signed its Annex XI on assistance in action against the smuggling of cultural property.

318. The relevant national laws include the Federal Act on the International Transfer of Cultural Property (2003) (LTBC); Ordinance on the Transfer of Cultural Property (2005) (OTBC); and Swiss Civil Code of 10 December 1907. The legislation of Cantons covers archaeological sites. The LTBC has been described as ‘implement[ing] the minimal standards’ of the 1970 Convention.<sup>203</sup>
319. Cultural property is defined by Article 2 LTBC which adopted Article 1 of the 1970 Convention. Cultural heritage is defined in Article 3 LTBC as cultural property covered by categories contained in Article 4 of the Convention.
320. Cultural property of the Swiss Confederation ‘of significant importance for the cultural heritage’ is registered with the Federal Registry (LTBC, Art.3(1)). The relevant specialized body will maintain it in the form of an electronic database and publish it also. As at 2012, the register had not been established but it was anticipated that it would adopt the Object ID system. To aid border controls, Cantons can connect their registries of cultural property and those of privately owned cultural property (with their consent) to the federal database (Art.4). Since the LTBC, the Civil Code was revised to provide that all antiquities belong to the Canton where they are discovered (Art.724).
321. Cultural property on the Federal Register cannot be acquired by adverse possession or in good faith, return claims on these objects are not subject to the statute of limitations, and their permanent export from Switzerland is prohibited (LTBC, Art.3(2)). Cantons can extend such restrictions to cultural objects which they requested be included on the Register. An item can be removed from the Register when it is no longer of ‘significant importance to the cultural heritage’, ‘consolidation speaks in favour of an ensemble’, and the Swiss Confederation loses or waives title (LTBC Art.(30(3); OTBC Art.2).
322. Cultural property on the Register can only be exported from Switzerland with authorization from the specialized body (LTBC Art.5; OTBC Art.3). Authorization can only be granted on a temporary basis and only for research, conservation, exhibition, or similar grounds. The Federal Council of the State shall claim repatriation of any cultural property, on the Register illicitly exported from Switzerland, against any contracting state (LTBC Art.6; OTBC Art.5). Any compensation of a good faith purchase and legal costs will be met by Switzerland. The Confederation can bring such actions on behalf of a Canton, which will bear the relevant costs.
323. The Swiss legislation provides for a system of import control based on bilateral agreements.<sup>204</sup> The agreements only cover cultural property of ‘significant importance to the cultural heritage of the contracting state in question’ with a detailed list in the annex to the agreement, it must be subject to that state’s export controls designed to protect the cultural heritage, and the contracting state must grant reciprocal rights (LTBC Art.7). As at 2013, Switzerland had bilateral agreements in force with Italy (2008), Egypt (2011), Greece (2011) and Columbia (2011), and China (2013). In keeping with the 1970 Convention, these agreements are designed to protect a state’s cultural heritage

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<sup>203</sup> M. Weber, *New Swiss Law on Cultural Property*, *International Journal of Cultural Property*, (2006) 13:99.

<sup>204</sup> Switzerland follows the U.S. model on the domestic implementation of the 1970 Convention, which confines obligations under Arts 7 and 9 to countries with which they have a bilateral agreement (and one assumes, those which are covered by a Security Council Resolution as was the case with Iraq). This mode of implementation is contrasted with the Australian (discussed below) and Canadian models where the obligation is triggered in respect of any other State Party requesting the return of illicitly exported cultural property. This later interpretation of the Convention appears to accord with the plain reading of the text and treaty law generally. The only allusion to bilateral agreements on restitution in the 1970 Convention is contained in Art.15 concerning arrangements for the return of objects removed prior to the treaty entering into force. See also Mexico’s declaration on its ratification of 1970 Convention, letter LA/Depositary/1985/40 of 3 March 1986.

jeopardized by exceptional circumstances, or facilitate a common international action (Art.9 1970 Convention), like the Iraq Ordinance instituting Economic Measures of 7 August 1990. These bilateral agreements stipulate the conditions under which the transfer of cultural property from one state to another will be lawful, establish the procedures for the repatriation of illicitly transferred objects, how compensation is to be determined for good faith possessors of the object which is returned, exchange of information and mutual cooperation, and exclude retroactive application.<sup>205</sup>

324. A contracting state making a repatriation claim under such bilateral agreements must show that the cultural property is of significant importance to its cultural heritage and was imported 'illicitly'; meet the costs of securing, maintaining and repatriating the object; and compensate the good faith possessor (LTBC Art.9). Compensation is the purchase price and necessary expenses for the protection and maintenance of the cultural property. Repatriation claims are subject to the statute of limitations, that is, claims must be brought within one year of the authorities becoming aware of the location and identity of the possessor of the object; and 30 years from its illicit export (Art.9(4)).
325. A Swiss museum or other cultural institution which has temporarily received a loan of a cultural object from a contracting state for the purposes of an exhibition may request that the specialized body provide a return guarantee to the loaning institution for the period of the exhibition as defined by the loan agreement (LTBC Art.10). A request for a guarantee must be published in the Federal Bulletin with a description of the object and its origin with any objections being filed within 30 days of the publication (OTBC Art.7). The return guarantee may only be issued where there is no objection, the import is not illicit, and the loan agreement States that the object be returned to the contracting state of origin on conclusion of the exhibition (LTBC Art.12). The guarantee prevents a private person or authorities from bringing a legal claim against the cultural property while it is located in Switzerland (Art.13).
326. Swiss Federal Institutions are prohibited by law from acquiring or exhibiting cultural property that is stolen, illegally exported, or is the cultural heritage of a state from which it is illicitly exported. If they are offered such property they must report it immediately to the specialized body (LTBC Art.15). Significantly, the LTBC requires those in the art trade and auction businesses (OTBC Art.1(e)), can only transfer cultural property that is not stolen, removed against the will of the owner, or illegally excavated or illicitly imported (LTBC Art.16). Reflective of the scale and importance of the art market in Switzerland,<sup>206</sup> and pursuant to the requirement of the UNIDROIT Convention and UNESCO Code of Ethics for Art Dealers, they must act with due diligence by establishing the identity of the seller and obtaining their written declaration that they have a right to transfer the property, advise their customers of current import and export regulations of contracting States, maintain written records of all sales for 30 years, and provide this data to the specialized body (Art.16(2)). These obligations only apply to cultural property valued at more than CHF5,000. This limitation does not apply to objects from archaeological or paleontological excavations, dismembered artistic or historical monuments or archaeological sites, or ethnological objects (particularly those used for sacral or profane rituals) (OTBC Art.16). The Swiss Federal Office for Culture has a Memorandum of Understanding with eBay International AG of 20 October

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<sup>205</sup> Switzerland, Rapport sur l'application de la Convention concernant les mesures à prendre pour interdire et empêcher l'importation, l'exportation et le transfert de propriété illicites des biens culturels (2011), at [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/switzerland\\_2010-11natrep\\_1970\\_fr.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/switzerland_2010-11natrep_1970_fr.pdf) (viewed on 28 December 2013), p.4.

<sup>206</sup> Switzerland, *supra* note 31, p.3 and C. Schümperli-Younossian, 13.Législation du commerce de l'art en Suisse, in *Annuaire Suisse de politique de développement* vol.23, no.1 (2004), p.225.

- 2009 which prohibits eBay Switzerland from selling archaeological artefacts the seller cannot prove they have title, meaning that it is certified by the Canton where it was discovered or, if imported into Switzerland, that they have an export certificate from the relevant state.
327. While fraud, theft and receipt of stolen property are covered by the Swiss Penal Code, the LBTC introduces additional fines and terms of imprisonment for individuals and businesses violating its provisions (Section 9 LBTC).
328. The LTBC provides for the establishment of a specialized body, the *Service spécialisé transfert international des biens culturels* in the Federal Office for Culture (FOC) which in addition to the duties outlined above is tasked with representing Switzerland internationally in respect of the transfer of cultural property and working with the authorities of other States seeking repatriation of cultural heritage (LTBC Art.18). It coordinates regular meetings with the Federal Office of Culture, the Federal Customs Administration, the Federal Police Office and the Federal Office for Justice and cooperates with the cantonal authorities in the administration of the Act. Customs authorities are authorized to inspect transfers of cultural property at the border, withhold those that are suspicious and report them to criminal prosecuting authorities (LTBC Art.19; OBTC Arts 23-26). The Swiss customs authorities exchange information with the WCO on these matters several times a week.<sup>207</sup> Federal authorities are required to cooperate with competent foreign authorities and international organization through the provisions of data and seizure of cultural property (LBTC Art.24; OBTC Art.27). The Swiss National Centre Bureau for INTERPOL is located in the Federal Police Office which actively cooperates with INTERPOL and regularly attends the meetings of its Expert Group on Stolen Cultural Property. It has also established contact with UNODC.

## Turkey

329. The Constitution of the Republic of Turkey (Article 63) provides: ‘The state shall ensure the conservation of the historical, cultural, and natural assets and wealth and shall take supportive and promotional measures towards that end.’
330. Turkey accepted the 1970 Convention on 10 March 1975. It has not signed or ratified the UNIDROIT Convention.<sup>208</sup> Turkey, as with Arab States, has raised the issue that this Convention may retroactively render prior illicit removal legal.<sup>209</sup> The 1954 Hague Convention and First Protocol entered into force for Turkey on 15 March 1966. It is not a signatory to the 2001 Convention. Turkey became a State Party to the 2003 Convention on 27 June 2006. As it is not an EU Member state, Turkey is not bound by EC Regulation No.116/2009 or EC Directive 93/7/EEC. It has nonetheless readied its domestic legislation to be compliant with EU law.<sup>210</sup> Also, it does cooperate in other ways with EU Member States, particularly in the Mediterranean region.<sup>211</sup> Turkey ratified the Nairobi Convention on 25 August 1982, and has signed its Annex XI on assistance in action against the smuggling of cultural property.
331. The relevant national legislation is Law No.2863 of 23 July 1983 on the Protection of Cultural and Natural Assets (as amended by Laws No.3386 of 16 June 1987 and No.5226 of 17 July 2004) (in

<sup>207</sup> Ibid.

<sup>208</sup> See generally UNIDROIT Report, Practical Operation of the UNIDROIT Convention: Turkey <http://www.unidroit.org/english/conventions/1995culturalproperty/1meet-120619/answquest-ef/turkey.pdf>

<sup>209</sup> R. Fraoua, Legislative and Institutional Measures to Combat Trafficking in Cultural Property in Arab States, Background Paper for Participants in the Second Meeting of State Parties to the 1970 Convention, 20 and 21 June 2012, p.3.

<sup>210</sup> Turkey, *supra* note 35.

<sup>211</sup> See Strategy for the Development of Euro-Mediterranean cultural heritage: priorities from Mediterranean countries (2007-2013), (EC, 2007) at <http://www.euromedheritage.net/euroshared/doc/Culture%20strategy%202007%20-%202013.pdf> (viewed 30 December 2013).



particular Chapter Three: Movable Cultural and Natural Property to be Protected); and Regulation on the Classification, Registration, and Admission to the Museums of the Movable Cultural and Natural Assets Requiring Preservation of 20 April 2009; Regulation on the Collection and Control of Movable Cultural and Natural Property to be Protected of 15 March 1984; Regulation on the Trade of Movable Cultural Property and the Audit of Workplaces and Warehouses Pertaining to Such Trade of 11 January 1984; and Regulation on the Importing and Exporting of Movable Cultural and Natural Property to be Preserved of 16 February 1984.

332. The definition of cultural property contained in the Law 2863/1983 (Arts 3(a)(i) and 23) largely encompasses that contained in Article 1 of the 1970 Convention. It covers 'movable and immovable property on the ground, under the ground or under the water pertaining to science, culture, religion, and fine arts of before and after recorded history or that is of unique scientific and cultural value for social life before and after recorded history.' Turkey's legislation since the nineteenth century has embodied its intention to protect its archaeological sites and objects from unregulated excavation and transfer.<sup>212</sup> The definition of cultural property reflects this concern.
333. Law 2863 also provides that movable cultural property 'that is known to exist or will be discovered on an immovable property owned by a real and legal persons subject to civil law' shall be state property (Art.5). Owners or occupants of the ground or waterway where the movable cultural property is discovered must notify a local museum, or authorities within three days and a prize can be claimed (Art.64). Those authorities must then protect and secure the property and notify the Ministry of Culture and Tourism and museum director within 10 days, who shall commence investigations in compliance with the law (Art.4). The state is required to ensure that the cultural property which is state property is preserved by the state or a museum. They may buy the property from a real or legal person by 'paying for their cost' (Art.24). Ethnographic objects can be transferred within the state but a register must be maintained of these transactions. Antiquities which cannot be removed from the country are identified and returned to the owner. The state has a right of pre-emption in respect of the purchase of antiquities (Art.24).
334. The question of maintaining an inventory of its cultural property has long been logistically problematic for countries like Turkey with numerous archaeological sites.<sup>213</sup> The Ministry of Culture and Tourism classifies and registers movable cultural property declared to them, pursuant to scientific principles (Art.25). Antiquities which are excluded from classification and registration and not placed in a museum are returned to the owners. Those objects not claimed by the owner within a year are kept by the museum or sold by the state.<sup>214</sup> Additionally, public and private institutions, real and legal persons (including foundations) seeking to create collections (and museums) must obtain a permit from the Ministry and 'record their movable cultural property in

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<sup>212</sup> Reports of Member States on the Action Taken by Them to Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), 20 August 1987, Doc.24C/24, pp.15-16 (Turkey).

<sup>213</sup> Ibid. See also extract from letter of the Permanent Delegation of Turkey dated 28 June 1989 in Doc.28C/35, p.8 both in respect to the unworkability of inventories in respect of materials from archaeological excavations and rejection of compensation for good faith purchasers as all such movable cultural property and its transfer is strictly regulated in Turkey and is designed state property; and Turkey, *supra* note 35, p.15.

<sup>214</sup> See Regulation on the Classification, Registration, and Admission to the Museums of the Movable Cultural and Natural Assets Requiring Preservation of 20 April 2009. With objects considered fakes taken out of circulation and relevant prosecuting authorities notified (Art.9).

the inventory logbook according to regulation.<sup>215</sup> Turkey also maintains a database and website of stolen artefacts.<sup>216</sup>

335. Turkey has an export control system. Article 32 Law 2863/1983 provides that movable cultural property that ‘has to be preserved in the country cannot be taken abroad.’ However, the Council of Ministers can, having regard to the national interest and following a decision of a scientific panel of heads of archaeology and art history departments of higher education institutions and the proposal of the Ministry of Culture and Tourism, permit loans for temporary exhibitions abroad. This is only permitted if the relevant foreign officials guarantees and insures against damage, loss, threat or violations. Likewise, export permits may be allowed for property brought into the country by diplomatic staff of other countries or international organizations. In the latter case, these cultural objects cannot be transferred to others in Turkey but can be donated to a state museum if they are not removed from the country.<sup>217</sup> Also, cultural objects acquired by diplomats in Turkey are regulated like other movable cultural property under Law 2863/1983.<sup>218</sup>
336. Turkey does not have an import control system as such. Article 33 Law 2863/1983 provides that ‘cultural property can be freely brought into the country’. When a collection is brought into the country from abroad an inventory list with photographs of every item must be submitted to the Ministry upon entry. Only items contained on this list can be removed from the country later. These collections can only be sold or donated to a state museum or another suited to the purpose. All other sales are not permitted.<sup>219</sup> Turkey has indicated that its museums use the UNESCO International Code of Ethics for Dealers in Cultural Property and that ‘if it is established by museum directorates that the imported cultural properties are stolen from any country, the necessary procedures for their return to the concerned country are realized.’<sup>220</sup>
337. The trade in cultural objects in Turkey is strictly regulated. Only movable cultural property falling outside the scope of listing, registration and conservation under Article 25 Law 2863/1983 can be trade with the permission of the Ministry of Culture and Tourism (Art.27). Those trading in cultural objects must obtain a license from the Ministry. The business can only be conducted at commercial premises and their storage facilities are subject to the control of the Ministry (Arts 27 and 29). Licensed traders must obtain from the seller of movable cultural heritage documentation from a relevant museum that it is not subject to registration. These records and the trader’s premises can be audited by the General Directorate for Monuments at any time.<sup>221</sup>

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<sup>215</sup> See Regulation on the Collection and Control of Movable Cultural and Natural Property to be Protected of 15 March 1984. Art.10 provides: *The collectors shall record the antiquities included in their collections on the inventory logbook to be given in two copies by the museum directorship under the supervision of the museum specialists. One copy of this inventory book that also includes photos taken by owners of antiquities in line with the procedures shall be kept at the museum. Antiquities to be included in the collection later shall be duly recorded in both copies at the latest within one month.*

<sup>216</sup> Turkey, *supra* note35

<sup>217</sup> See Regulation on the Importing and Exporting of Movable Cultural and Natural Property to be Preserved of 16 February 1984. OG No.18314, Art.10.

<sup>218</sup> *Ibid.*, Art.11.

<sup>219</sup> Regulation on the Collection and Control of Movable Cultural and Natural Property to be Protected, Art.8.

<sup>220</sup> Turkey, National Report Summary, in Examination by the Executive Board of the New Report by Member States and other State Parties on Measures Taken to Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), 20 September 2007, Doc.177EX/38, Annex II, p.46; and Turkey, *supra* note 35.

<sup>221</sup> See Regulation on the Trade of Movable Cultural Property and the Audit of Workplaces and Warehouses Pertaining to Such Trade of 11 January 1984, Arts 9-11.

338. Civil and criminal sanctions, with fines and terms of imprisonment, are attached to individual and other legal persons violating the requirements of Law 2863/1983 (Arts 65-75). Turkey itself has conceded that these penalties have done little to deter the illicit trade in cultural property.<sup>222</sup>
339. Turkey has indicated that its public authorities continue to cooperate with relevant international organizations, like INTERPOL. However, it has also placed great emphasis on education at the national and local level of those working in this field and the general public.<sup>223</sup> It has also relied on bringing restitution claims in the courts of other State Parties to the 1970 Convention.<sup>224</sup> However, Turkey presently has a bilateral agreement with Greece, Uzbekistan, Turkmenistan and Peru and negotiating agreements with Ecuador, Romania, Bulgaria, Italy and the United States.

### Russian Federation

340. Article 44(2) and (3) of the Constitution of the Russian Federation provides: ‘Everyone shall have the right to participate in cultural life and use cultural establishments and to have access to cultural values’ and ‘[e]veryone shall be obliged to care for the preservation of cultural and historical heritage and protect monuments of history and culture’.
341. The Russian Federation ratified the 1970 Convention on 28 April 1988. It has signed but not ratified the UNIDROIT Convention.<sup>225</sup> The 1954 Hague Convention entered into force for Russian Federation on 4 April 1957. It is not a signatory to First or Second Protocol to the 1954 Hague Convention. Also, it is not a signatory to the 2001 Convention or the 2003 Convention. As it is not an EU Member State, the Russian Federation is not bound by EC Regulation No.116/2009 or EC Directive 93/7/EEC. Russia ratified the Nairobi Convention on 13 December 1994, but has not signed its Annex XI on assistance in action against the smuggling of cultural property.
342. The pertinent law is the Russian Federation Law No.4804-1 of 15 April 1993 on Export and Import of Objects of Cultural Value;<sup>226</sup> together with Order No.844 of 7 August 2001 of the Russian Federation Ministry of Culture (Updated Requirements for Authorisations to Export Cultural Goods and Cultural Heritage Objects from the Territory of the Russian Federation); Regulations Governing the Examination and Control of Export of Cultural Goods (approved by the Russian Federation Government Decree No.322 of 27 April 2001); Regulation related to Fee Payment Principles and Charges Criteria Applicable to Official Examination of Cultural Goods (approved by the Russian Federal Ministry of Culture Order No.888 of 4 June 2002). Other relevant legislation includes the Law on the Museum Collections of the Russian Federation of 1996; Law on Cultural Values Displaced to the USSR as a result of the Second World War and remaining on the territory of the Russian Federation of 1998; and Law on Objects of Cultural Heritage (On Monuments of History and Culture) of the Peoples of the Russian Federation of 2002.<sup>227</sup>

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<sup>222</sup> Turkey, *supra* note 46, p.47.

<sup>223</sup> *Ibid.*

<sup>224</sup> See for example *Republic of Turkey v. Metropolitan Museum of Art*, 762 F. Supp. 44 (S.D.N.Y. 1990) (denying motion to dismiss) (parties reached a confidential out of court settlement where the museum returned the Lydian Hoard to Turkey); and *Republic of Turkey v. OKS Partners*, 797 F. Supp. 64 (D. Mass. 1992) (the parties reached out of court settlement in 1999 whereby the Elmali Hoard was returned to Turkey by the defendants).

<sup>225</sup> See generally UNIDROIT Report, Practical Operation of the UNIDROIT Convention: Russia <http://www.unidroit.org/english/conventions/1995culturalproperty/1meet-120619/answquest-ef/russia.pdf>

<sup>226</sup> For earlier iterations of legal protections see: USSR, Doc.24C/24 (1987), p.16.

<sup>227</sup> See generally J Staines and J Pinel, *Moving Art: A Guide to the Export and Import of Cultural Goods Between Russia and the European Union*, (Delegation of the European Commission to Russia, 2007), at

[http://eeas.europa.eu/delegations/russia/documents/eu\\_russia/moving\\_art\\_07\\_en.pdf](http://eeas.europa.eu/delegations/russia/documents/eu_russia/moving_art_07_en.pdf); and A. Trunk, Russia in the International Context: Private International Law, Cultural Heritage, Intellectual Property, Harmonization of Laws. In *Festschrift für Mark Moiseevic Boguslavskij*. A. Trunk, R. Knieper, A.G. Svetlanov, (eds.), (Berlin, Berliner Wissenschafts-Verlag, 2004) pp.739-748.

343. The Russian Federation bans the export of certain cultural objects under Article 9 of Law No.4804-1/1993. This includes (a) movable goods of historic, artistic, scientific, or other cultural value, placed under the current laws in the category of especially prized pieces of cultural legacy of various peoples living in the Russian Federation regardless of when they were made; (b) cultural objects regardless of when they were created which are inscribed on the protective list or register pursuant to the laws of the Russian Federation; (c) collections of public or publicly financed repositories of cultural treasures of the Russian Federation; (d) and those cultural objects created more than 100 years ago (unless excluded by the Law). Only those in the first category cannot be exported temporarily.
344. Owners of cultural property taking up permanent residence outside of the Russian Federation can request authorization for export by showing ownership, or that the objects are family keepsakes, and that they do not form part of the collection of a public or publicly funded museums or institutions (Art.37 Law No.4804-1/1993). The state has the right of pre-emption in respect of the purchase of objects intended for export (Art.38).
345. The Federal Culture and Cinematography Agency (*Roskultura*) maintains the state inventory (*svod*) of movable cultural property which forms part of the cultural heritage of the Russian Federation. It also holds the Public Museum Stock Catalogue of the collections of the Russian Federation's museums. The Federal Regulatory Service for Mass Media, Communications, and Protection of Cultural Heritage (*Rossvyazokhrankultura*) also maintains a database (Automated Electronic Registration and Search System) of cultural objects lost during the Second World War, those that have been stolen or illicitly exported from Russia, or those banned from export.
346. The Russian Federation has an export control system covering cultural objects. A certification of export must be issued by *Rossvyazokhrankultura*. The certificate form is contained in Decree No.322/2001. The official list of cultural objects permitted to be exported with an export license is contained in Order No.844/2001 include the collections of museums, archives and libraries of the Russian Federation; objects and collections of historical, scientific, artistic, or any other cultural value related to important events in the lives of nations, evolution of society and the state, and the history of science, and engineering; artefacts from archaeological excavations; works of art, printed works, coins, medals, and stamps over 50 years old; fragments of architectural and historical monuments; manuscripts and archives; unique and rare musical instruments; and rare specimens and collections of flora, fauna, and scientific interest. The law provides for the issuing of licenses for permanent or temporary export. Those seeking export authorization, that is, either the owner of the object or authorized person, must certify that they have good title to them. Following the export application, the objects must be examined by an expert and stamp duty is payable (Decree No.322/2001; Order No.888/2002). *Rossvyazokhrankultura* makes its decision about the issuing of the export license after receipt of the expert's report and checking official lists of stolen property. An application can be rejected either because the objects are subject to an export ban (Art.9 Law No.4804-1/1993) or there are doubts concerning title. The license together with a customs declaration must be presented to customs authorities when exiting Russian territory.
347. Cultural property banned from export under Article 9 of Law No.4804-1/1993, whether owned by private or public institutions or individuals can receive authorization for temporary export. State museums and other public institutions requesting a temporary export license must provide details of the agreement with the host institution outlining the purpose and terms of the export, insurance coverage, and guarantees from the host organization and government authorities in the host country regarding the safety and return of the objects. Consent must be obtained from the

executive government official overseeing the institution. Authorization for temporary export can be declined where the requisite guarantees have not been provided; title or authority is in doubt; conservation concerns exist; or the host country is hit by natural disaster, armed conflict or other circumstances which endanger the cultural property. Private institutions or individuals must also provide this information and a certificate that the objects have been entered on lists for protected heritage under Russian law. The cultural property is examined on its departure and return to the Russian Federation.

348. The Russian Federation does control the import of cultural property onto its territory. Objects brought into the country for *permanent* import must be declared to customs authorities. The importer must certify the origin and value of the goods. They must also be examined by a *Rossvyazokhrankultura* approved expert. The details are entered into the register maintained under Law No.4804-1/1993. Slightly different rules apply under this law in respect of materials temporarily imported, usually by museums and other cultural institutions.
349. Administrative and criminal penalties are attached to violations of Law No.4804-1/1993 and the Customs Code provisions covering the illicit export or import of cultural property (Administrative Offences Code of the Russian Federation Art 16; and Criminal Code of the Russian Federation, Arts 164, 188 and 190).
350. Under Law No.4804-1/1993, the state is 'urged to promote the development of the international cultural cooperation, mutual assistance of the people of the Russian Federation and other States with cultural values of each other'.

### ***Implementation of the 1970 Convention in the Americas***

351. Latin American countries, Peru and Mexico were instrumental in the campaign for the realization of a multilateral instrument covering the regulation of the trade in cultural objects within UNESCO from the 1960s. The majority of American States (except those in the Caribbean) have ratified the 1970 Convention.<sup>228</sup> Several American States have ratified the UNIDROIT Convention (Argentina, Bolivia, Brazil, Colombia, Ecuador, El Salvador, Guatemala, Honduras, Panama, Paraguay, and Peru).
352. The region's multilateral body, the Organization of American States has its own specialist instruments which are relevant to the protection of movable cultural heritage: the Treaty on the Protection of Movable Property of Historic Value (PAU Treaty) predates the 1970 Convention;<sup>229</sup> and Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations (Convention of San Salvador) approved 16 June 1976.<sup>230</sup>
353. The purpose of the Convention of San Salvador is contained in Article 1. It provides that the cultural heritage of the American nations will be identified, registered, protected and safeguarded to prevent its illicit import and export and to promote cooperation among them for mutual awareness and appreciation of their cultural property. Cultural property is defined as objects, fragments of ruined buildings, archaeological material of American cultures existing prior to European contact, and includes human remains, fauna and flora of these cultures; monuments,

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<sup>228</sup> Only Antigua and Barbuda, Chile, Guyana, Jamaica, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, and Trinidad and Tobago are not State Parties to the 1970 Convention. See K. Farmer, *Implementing the 1970 Convention: The Caribbean in Review*, Background paper for the Second Meeting of the State Parties to the 1970 Convention, June 2012.

<sup>229</sup> Adopted 15 April 1935, in force 17 July 1936, OASTS No.28, in Anon., *Protection of Movable Monuments (February 1935) The Bulletin of the Pan-American Union* 92.

<sup>230</sup> Resolution AG/Res.210(VI-O/76), OASTS No.47. State Parties as at December 2013 include Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Nicaragua, Panama, Paraguay, and Peru.

buildings, objects of artistic, utilitarian and ethnological nature from the colonial period and 19<sup>th</sup> century; libraries and archives, incunabula, manuscripts, books and publications, maps and documents published before 1850; any objects after 1850 provided they are recorded as cultural property and notified to the other State Parties; and any other cultural property any State Parties declared is included within the scope of the Convention (Art.2).

354. The export or import of such cultural property will be unlawful unless export is authorized by the relevant state party (Art.3). Export controls exercised by a state party over its own cultural heritage and related claims are imprescriptible (Art.6). In order to prevent unlawful trade in cultural objects, domestic laws of State Parties must include the registration of collections and the transfer of protected cultural property; registration of transfers by establishments engaged in its trade; and the prohibition on the import of cultural objects from other States without authorization and requisite certification (Art.7). Measures which State Parties should undertake in respect of their own cultural property include the adoption of relevant laws, establishment of technical bodies for their protection and safeguarding, inventories, establishment of museums, libraries and other institutions, delimitation and protection of archaeological sites and collaboration with scientific institutions to prevent unlawful excavations (Arts 8 and 9). Measures are also outlined in respect of facilitating of restitution requests and the prosecution of offenders (Arts 11 and 12).
355. Not surprisingly, the domestic laws on movable heritage of many American States mirror the regional agreement more closely than the 1970 Convention.

## *Peru*

356. The Political Constitution of Peru of 1993 in Article 21 provides that: 'The archaeological sites and remains, buildings, monuments, places, bibliographical and on file documents, artistic objects and testimonies of historic value expressly declared cultural assets, and those provisionally presumed as such, are [the] cultural heritage of the Nation regardless of its condition of private or public property. These are protected by the state. The law guarantees the ownership of such heritage. In compliance with the law, the state promotes the private participation in the conservation, restoration, exhibition and diffusion of it, as well as its return to the country when it would have been illegally transferred out of the national territory.'
357. The 1970 Convention entered into force for Peru on 24 January 1978. The UNIDROIT Convention entered into force for the country on 1 September 1998, which included a declaration under Article 16 concerning restitution or return claims brought by the State making the declaration. The 1954 Hague Convention and First Protocol entered into force for Peru on 21 October 1989 and the Second Protocol on 24 August 2005. It became a State Party to the 2003 Convention on 20 April 2006. It has not ratified the 2001 Convention. It ratified the Convention of San Salvador on 28 November 1979. Peru has not ratified the Nairobi Convention nor signed its Annex XI.
358. The relevant domestic laws include: Law No.28296 of 22 July 2004 General Law of the Cultural Heritage of the Nation; Executive Order No.004-2000-ED of 2000; Executive Order No.012-2006-ED of 21 April 2006; Civil Code of 1984, Articles 934-936, and 954; Criminal Code of 1999 (as amended 2005) Articles 226-231; and Law No.29565 of 2010 Law establishing the Ministry of Culture.
359. Movable cultural heritage under the Peruvian law (Law No.28296/2004 Art.1.2) is largely consistent with Article 1 of the 1970 Convention. The 'cultural heritage of the Nation' is defined as 'any tangible or intangible expression of human work, which paleontological, archaeological,

- architectural, historical, artistic, military, social, anthropological, traditional, religious, ethnical, scientific, technological or intellectual importance, value and significance is expressly declared as such or if there is a legal presumption for it. These assets have the condition of public or private property with the limitations established by Law No.28296/2004 (Art.II). Cultural property of the pre-Hispanic, Viceroy or Republican periods is presumed to fall within this category (Art.III).
360. Article VI of Law No.28296/2004 provides that the rights of Peruvian state 'over the property declared as Cultural Heritage of the Nation are imprescriptible.' Further, the Civil Code of 1984 in Article 954 provides that private property rights over land do not extend to 'archaeological sites and remains or other assets'. Discovered or known archaeological material that is public property at the time of the enactment of the legislation is imprescriptible. Its extraction, unauthorized removal, trade in, or concealment is a criminal offence (Art.5, Law No.28296/2004). Undiscovered cultural property which is private property but is deemed the 'Cultural Heritage of the Nation' under the Law remains private property but is subject to the limitations contained in this law (Art.7). Private owners (including the Church) must register, protect and appropriately conserve and avoid 'abandoning, depredating, deteriorating, and/or destroying' it and must advise the relevant agency if this occurs; all restoration or conservation must be reported to the relevant agency. Failure to comply with these obligations through gross negligence or wilful misconduct results in administrative, civil and criminal penalties (Arts 7 and 8). Private individuals and private museums can transfer property forming part of the 'Cultural Heritage of the Nation' within Peru but the relevant agency must be advised beforehand, otherwise the transfer is void (Art.9). The state has the right to exercise the right of pre-emption, and if this does not occur the transfer is void. Such objects which are part of a collection can only be transferred with expressed authorization by the competent agency (Arts 9 and 42). Anyone who acquires such cultural property must be able to prove valid title, if they cannot there is a presumption that it is illicitly acquired and any transfer of title or possession is rendered void and title is reverted to the state (Art.18). Private museums, which hold cultural property designated part of the Cultural Heritage of the Nation, are regulated also (Arts 40-44).
361. The owner of property forming part of the Cultural Heritage of the Nation must register it with the competent authority (Art.17 Law No.28296/2004). Previously, the *Instituto Nacional de Cultura* (INC), *Biblioteca Nacional*, and *Archivo General de la Nación* were responsible, but now the Ministry of Culture is in charge of registering, declaring, and protecting the Cultural Heritage of the Nation (Art.VII, Law No.28296/2004). The Ministry of Culture is also charged with elaborating and maintaining an updated register of movable (and immovable) property which forms the Cultural Heritage of the Nation. The *Biblioteca* and *Archivo* are responsible for the bibliographic, documentary and file materials. There are also National Registers of Public and Private Museums (which house the Cultural Heritage of the Nation), and Individuals or Legal Entities dedicated to the trade in Property part of the Cultural Heritage of the Nation (Art.16). The Ministry of Culture is also responsible for the National Computerized Hereditary Register of Property Part of the Cultural Heritage of the Nation designed to centralize the data on this cultural property. Each entry contains a detailed description, technical information and Registration Certificate (Art.15). This enables the holder of the Certificate to claim benefits under Law No.28296/2004.
362. Peru has an export control system for cultural property. There is a complete ban on the export of the Cultural Heritage of the Nation except in certain enumerated circumstances (Arts 33 and 34). In exceptional circumstances such cultural property can be exported by Executive Order including for exhibitions with a scientific, artistic and cultural purpose; specialized studies or restoration unable to be undertaken in Peru; or with diplomats during their period abroad. The export is for a

period of one year, renewable only once. Expert opinion and insurance must be obtained by the owner prior to the authorization. A curator, who is an expert on the relevant cultural property, will be designated by Executive Order and will supervise the exhibition, adhere to the approved catalogue, and prepare a report on completion of the exhibition (Arts 36-39).

363. Law No.28296/2004 stipulates that the Ministry of Foreign Affairs has primary responsibility in respect of restitution claims for Cultural Heritage of the Nation which is exported or removed illicitly (Art.35). Peru has entered into bilateral agreements with the United States and Switzerland covering among other aspects of protection of movable cultural property, mutual assistance in restitution claims.<sup>231</sup> The latter has not entered into force yet.
364. Peru does not have an import control system. However, Article 49(10(9) Law No.28296/2004 does provide for fines, expropriation or confiscation of the cultural property of another state from the possessor if it is brought into Peru without the appropriate export license from the country of origin.
365. Law No.28296/2004 and Criminal Code of 1991 (as amended in 1991, 1999, 2005) Articles 226-231 provide for civil, administrative and criminal sanctions for violations of these obligations or 'crimes against cultural assets'. The *Unidad de Delitos contra el Patrimonio Cultural de la Dirección de la Policía Fiscal*, which is dedicated to the protection of cultural heritage, cooperates with INTERPOL.

## Ecuador

366. The Constitution of Ecuador of 2008 provides that: 'The state's prime duties are: ... Protecting the country's natural and cultural assets' (Art.3(7)). Also Article 21 States that: 'Persons have ... the right to learn about the historical past of their cultures and to gain access to their cultural heritage...'. And Article 83(13) States that Ecuadorians have the duty and obligation, without detriment to others provided for by the Constitution or by the law: ... To preserve the country's cultural and natural heritage and to take care of and uphold public assets'.<sup>232</sup> Article 380 stipulates that it is the responsibility of the state to among other things: safeguard, by means of permanent policies, the identification, protection, defence, preservation, restoration, dissemination and growth of tangible heritage, historical, artistic and archaeological wealth; and promote the return and restoration of heritage assets that were plundered, lost, degraded.

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<sup>231</sup> Memorandum of Understanding between the Government of the United States of America and the Government of the Republic of Peru concerning the Imposition of Import Restrictions on Archaeological Material from the Prehispanic Cultures and Certain Ethnological Material from the Colonial Period of Peru on 9 June 1997 and last extended and amended on 9 June 2012 for five years; and Bilateral agreement between the Swiss Confederation and the Republic of Peru signed 28 December 2006, not entered into force. Civil actions brought in U.S. courts by Peru include *Peru v. Johnson* 720 F. Supp. 810 (C.D. Cal.1989), *aff'd* 933 F. 2d. 1013 (9<sup>th</sup> Circ. 1991) (seizure of Peruvian artefacts from a number of art dealers in the U.S. Judgment granted to Johnson after finding that Peru's title was uncertain. Another art dealer, Swetman, plead guilty to making false declaration on customs declarations and served 6 months in prison. Only a small portion of the artefacts were return to Peru); *United States v. Bernstein* No.CR-82-00019-A (E.D. Va. 5 March 1982) (U.S. customs seized antiquities from Peru brought into the United States by an art dealer with a falsified customs declaration. The defendant pleaded guilty and given a fine and suspended sentence and agreed to return the collection); *Republic of Peru v. Yale University* (2009) (concerning a dispute between Peru and the University over archaeological finds excavated in Peru between 1912 and 1915. Settlement reached in 2011 for the return of the artefacts and the establishment of a Joint International Center for the Study of Machu Picchu and Inca Culture with the University of San Antonio Abad of Cusco); *In re Search Warrant Executed 1 February 1999* No.M. 18-65, (S.D.N.Y. 7 July 1995) (denying motion for the return of cultural property) (arising from a consignment by an art dealer of Pre-Columbian artefacts to Sotheby's for auction was seized by U.S. customs in violation of U.S. domestic law implementing the 1970 Convention. Objects returned to Peru). See generally D. Kobrinski, *Illicit Trafficking of Cultural Patrimony and Legal Protection of Cultural Heritage in Peru*, USMP, December 2011.

<sup>232</sup> See also Art.264 which States that municipal governments have exclusive jurisdiction to preserve, uphold and promote the canton's architectural, cultural and natural heritage.



367. The 1970 Convention entered into force for Ecuador on 24 June 1971. The UNIDROIT Convention entered into force for the country on 26 February 1998, which included a declaration under Article 3(5) concerning time limitations for restitution claims for cultural objects removed from monuments, archaeological sites and public collections and Article 16 concerning restitution or return claims.<sup>233</sup> The 1954 Hague Convention and First Protocol entered into force for Ecuador on 2 January 1957 and the Second Protocol on 2 November 2004. It has ratified the 2001 Convention on 1 December 2006. It became a State Party to the 2003 Convention on 13 May 2008. It ratified the Convention of San Salvador on 31 August 1978. Ecuador has not ratified the Nairobi Convention nor signed its Annex XI.
368. The relevant domestic laws include: Law on Cultural Patrimony No.3501 of 19 June 1979 (as amended); General Regulation to the Law on Cultural Patrimony Decree No.2733 of 16 July 1984; and Criminal Code (as amended 25 January 2000), Articles 415-A to 415-C. The competent agency created under Law No.3501/2001 is the Institute of Cultural Patrimony (ICP).
369. The definition of cultural property covering State Cultural Patrimony is contained in Article 7 Law No.3501/1979, and covers much of the items enumerated in Article 1, 1970 Convention. The ICP Director shall make a decision, based on technical reports, of whether an object or collection is state Cultural Property (Arts 8 and 11, Decree No.2733/1984). A statement is then made to this effect by the Minister of Education and Culture following a request from the Director (Art.9). Also, the Director may request the Minister to make a statement that the asset has lost this character when its condition has deteriorated and it cannot be repaired (Art.13).
370. Article 379 of the Constitution provides that the ‘cultural assets of the state shall be inalienable, immune from seizure, and not subject to the statute of limitations. The state shall have the right of priority over the acquisition of cultural heritage assets and shall guarantee their protection. Any damage shall be punishable by the law.’ The state is the owner of archaeological materials in the soil, subsoil or ocean bed of Ecuadorian territory, regardless of whether it is privately or publicly owned, or deliberately or accidentally located (Arts 9 and 30 Law No.3501/1979). The Ecuadorian state exercises these rights through the Institute which will obtain the objects and hand them over to a major public museum. Transfer of the Cultural Patrimony of the Nation can only occur with the prior authorization of the ICP. Also, such property can only be moved to another location with a permit from the ICP. Following authorized transfer, the object cannot be dismembered or divided in such a way that it impacts upon its essential characteristics (Art.25, Decree No.2733/1984). If such authorization is not received the transfer is void (Art.17 Law No.3501/1979). While collections are considered indivisible, the owner of cultural property in a collection may transfer it to another if it can be show that it will not affect the collection’s coherence and integrity in order to obtain the authorization of the ICP’s national director (Art.12, Decree No.2733/1984). Also, as an exception, the ICP’s Board of Directors may authorize a national museum to exchange national or foreign objects of the Cultural Patrimony of the state with another with similar characteristics that is located abroad (Art.40 Law No.3501/1979).
371. All state or private institutions or individuals in possession of the Cultural Patrimony of the State are obliged to grant access to the ICP to observe, study and record the cultural property (Art.17, Law No.3501/1979). Also, the Institute has the power to remove it from their usual site temporarily if it is endangered, as long as the risk exists (Art.22, Law No.3501/1979). The ICP may impose precautionary measures on owners of such property to protect it, with penalties and

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<sup>233</sup> See generally UNIDROIT Report, Practical Operation of the UNIDROIT Convention: Ecuador  
<http://www.unidroit.org/english/conventions/1995culturalproperty/1meet-120619/answquest-ef/ecuador.pdf>

- confiscation applicable if they do not comply (Art.41). An item can be declared to have lost its character as the Cultural Patrimony of the State when its 'deterioration has fully eliminated its relevance as such and restoration is no longer feasible' (Art.39 Law No.3501/1979).
372. The Institute of Cultural Patrimony is charged with developing and maintaining the inventory of all properties that form the Cultural Patrimony of Ecuador whether state or privately owned (Art.4(b), Law No.3501/1979). Owners, administrators, and possessors of cultural property falling within State Cultural Patrimony must advise the ICP and allow them to inventory the holdings (Art.8; and Arts 19 and 20, Decree No.2733/1984). From this information, the ICP will maintain a Register of the Moveable Property forming the Cultural Patrimony of the Nation which includes a detailed written, graphic or audiovisual description of the item's essential characteristics (Art.22, Law No.3501/1979).
373. Ecuador has strict export control system in respect of cultural property. Cultural Patrimony of the Nation can only be removed temporarily for the purpose of an exhibition or other types of 'popularization' following a technical report of the ICP, and the permission of its Board of Directors (Art.22 Law No.3501/1979; Arts 47-62 Decree No.2733/1984). If the cultural property is removed contrary to the law, then it will be confiscated (Art.23, Law No.3501/1979). All persons, even diplomatic staff, upon leaving the country, must provide a sworn statement to Immigration or Customs stating that they are not removing any Cultural Patrimony of the Nation in their luggage (Art.37).
374. The ICP regulates the domestic trading in items of Cultural Patrimony of the State (Art.12 Law No.3501/1979). Any individual or legal entity involved in the trade of such assets must obtain the prior authorization of the Institute (Art.27 Decree No.2733/1984). Transfers without their authorization are void. Such enterprises must keep a record of their sales activities (Art.31 Decree No.2733/1984). Their premises must be operable, secure, and meet conditions favourable to prevent the deterioration or destruction of the cultural property. Also they must allow visits by the ICP to inspect that items are inventoried and the sales records are maintained (Art.30 Decree No.2733/1984). Also, the ICP has the authority to regulate archaeological and paleontological excavations in the country which cannot be undertaken without its prior authorization and its enforcement is done by the military, police and customs agents (Art.28 Law No.3501/1979; Art 63-68 Decree No.2733/1984).
375. Assets which are the Cultural Patrimony of the state that were legally removed abroad prior to these laws can be brought temporarily back into Ecuador for a public exhibition or research with the authorization of the ICP Director and Customs (Art.57 Decree No.2733/1984).
376. Violations of these obligations attract civil and criminal sanctions including fines and terms of imprisonment (Arts 73-88 Decree No.2733/1984; and Arts 415-A – 415-C Penal Code).
377. The Ecuador Government is empowered to enter into international agreements to prevent illegal trading of cultural property and to facilitate return when it has been illegally removed from the country (Art.26, Law No.3501/1979). As well as the UNESCO and OAS multilateral agreements in these fields, Ecuador is a signatory to the Andean Community Decision No.588 of 3 March 2004 on the Protection and Recovery of Cultural Property which entered into force on 16 July 2004.

### ***Implementation of the 1970 Convention in Asia***<sup>234</sup>

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<sup>234</sup> See K-G Lee, Overview of the Implementation of the 1970 Convention in Asia, Report to be presented to the Second Meeting of the State Parties to the 1970 Convention, 20-21 June 2012.

378. While the majority of Asian countries are State Parties to the 1970 Convention, there is a significant lack of uniformity across the region. South East Asian States which are gravely impacted by the illicit transfer of their cultural property have the lowest take up rate.<sup>235</sup> There is much lower adoption of the UNIDROIT Convention (only Afghanistan, Cambodia, China and Iran are State Parties, while Pakistan is a signatory).
379. There is no intergovernmental organization which covers the entire region, which may explain the lack of uniformity in the distribution of State Parties to the 1970 Convention.

## Cambodia

380. As noted above, South East Asia has the lowest number of State Parties to the 1970 Convention in Asia (18%).<sup>236</sup> Only Cambodia and Vietnam are State Parties. A number of intergovernmental organizations cover this region, including the Association of South East Asian Nations (ASEAN). ASEAN's Declaration on Cultural Heritage adopted on 25 July 2000 provides that Member countries shall cooperate in the protection of antiquities and works of historic significance, movable cultural properties that are manifestations of national history, of outstanding archaeological, anthropological or scientific value, or associated with exceptional events and are to be considered or declared National Treasures or Protected Artefacts (para.2). Also, paragraph 10 of the Declaration provides that:

*ASEAN Member Countries shall exert the utmost effort to protect cultural property against theft, illicit trade and trafficking, and illegal transfer. As parties to this Declaration, ASEAN Member Countries shall cooperate to return, seek the return, or help facilitate the return, to their rightful owners of cultural property that has been stolen from a museum, site, or similar repositories, whether the stolen property is presently in the possession of another member or non-member country.*

381. The 1970 Convention entered into force for Cambodia on 26 December 1972. The UNIDROIT Convention entered into force of this country on 1 January 2003, with declarations in respect of Articles 3(5) and 16. The 1954 Hague Convention and First Protocol entered into force for Cambodia on 4 July 1962 and the Second Protocol on 17 December 2013. It became a State Party to the 2001 Convention on 2 January 2009. The 2003 Convention entered into force for the country on 13 September 2006. Cambodia has not ratified the Nairobi Convention nor signed its Annex XI.
382. State property includes cultural centres which are regulated by law (Art.58 Constitution of the Kingdom of Cambodia). The state shall 'preserve ancient monuments and artefacts and restore historic sites (Art.69). Further, under the Constitution 'any offense affecting cultural artistic heritage shall carry a severe punishment' (Art.70).
383. The relevant domestic laws include: Law on the Protection of Cultural Heritage of 25 January 1996 (in force 2006) NS/RKM/0196/26; Subdecree No.98 of 9 August 2002 respecting the Implementation of Cultural Heritage Protection; and Law on Customs of 20 July 2007. The Supreme Council on National Culture is responsible for policy development and the Ministry of Culture and Fine Arts is responsible for its implementation. However, the Authority for the Protection and Management of Angkor and the Region of Siem Reap (APSARA) is responsible for that region (Art.5, 1996 Law; and Royal Decree NS/RKT/0199/18).

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<sup>235</sup> Ibid., pp.3-6.

<sup>236</sup> Ibid.

384. Cultural property is defined as ‘any work by human agency and any natural phenomenon of a scientific, historic, artistic, or religious nature which bears witness to a certain stage in the development of a civilization or of the natural world and whose protection is of public interest’ (Art.4, 1996 Law). This definition is further expanded by Articles 3 and 4 of 2002 Subdecree which largely covers Article 1 of the 1970 Convention.
385. Article 7 of the 1996 Law States that listing of public and private cultural property is important from ‘a scientific, historical, artistic or religious point of view’. Classification of cultural property and its listing on the inventory is to be carried out either by the Ministry or APSARA, with the list published on an annual basis (Section 3, 1996 Law).
386. Classified property is imprescriptible (Art.19) and that in public ownership is inalienable (Art.20, 1996 Law). Private owners of classified property must inform the person to whom they propose to transfer it that it is classified and the competent authority within 15 days of the transfer, otherwise the transfer is void (Art.21). Alienation of fragments illegally removed from classified cultural property is void. An owner of classified cultural property is responsible for its protection (Art.25, 1996 Law) and must seek approval for any move, destruction, modification, alteration or repair or restoration to the object from the competent authority. Any person seeking to sell classified cultural property must inform the authority who may exercise the right of pre-emption (Art.28, 1996 Law). Also, movable cultural property found by chance is public property, with a reward payable to the finder (Art.39, 1996 Law). Further, movable cultural property discovered by scientific institutions during archaeological excavations is state property (Art.44, 1996 Law). The competent Authority may donate duplicates provided they are displayed in scientific institutions accessible to the public (Art 41, 2002 Subdecree).
387. Cambodia has a system of export control for cultural property (Section 9, 1996 Law; Chapter V, Section 1, 2002 Subdecree; Art.8 Customs Law). Export of cultural objects from Cambodia is only permitted when an export license has been issued by the competent authority (Art.51, 1996 Law; Annex to 2002 Subdecree). When issuing the license, the authority must determine whether it would impoverish the national cultural heritage, public collections already have a similar object, or it is of irreplaceable importance for the study of the sciences of the past or human sciences in general (Art.54, 1996 Law). Export licenses will be granted to a foreign scientific institution which has a valid excavation permit, temporarily for exhibitions or scientific purposes (provided appropriate conditions guaranteeing conservation and return), for exchanges with other objects from a museum or similar foreign institution, or for objects legally imported into Cambodia (Art.57, 1996 Law). Failure to obtain an export license prior to removal from the country will result in seizure and confiscation for public collections.
388. When a cultural object has been removed, permanently or temporarily from Cambodia, the Ministry of Culture and Fine Arts in cooperation with the Ministry of Foreign Affairs and International Cooperation shall be involved in the diplomatic and legal processes to secure its return (Arts 54-59, 2002 Subdecree). The Ministry will act on behalf of the state or private owner in any proceedings under bilateral or multilateral agreements including the UNIDROIT Convention. The public shall be provided with details of the outcome of the process. The state shall meet the compensation payable to the bona fide purchaser. The object shall be returned to the owner provided the state is reimbursed for all its expenses and the owner was not party to the fraudulent export. Ownership reverts to the state after five years if the owner cannot be located.
389. Cambodia also has a legally prescribed system of import control (Arts 58-61, 1996 Law; Arts 60-68). The 1996 Law forbids the import into Cambodia of cultural objects in contravention of the national legislation of the country of origin (Art.58). The item will be seized and placed in the

custody of the competent authority, and subject to the condition of reciprocity, the state shall return them to the country of origin pursuant to international standards and agreements. The costs involved shall be met by the requesting state. Illicitly imported cultural property not requested within the timeframe stipulated in domestic or international law will result in the title reverting to the Cambodian state (Art.68, 1996 Law).

390. Cambodia has entered bilateral agreements with the United States,<sup>237</sup> and the neighbouring state of Thailand.<sup>238</sup>
391. The trade in antiquities is regulated by legislation including fairs, antique shows, bazaars, flea markets, and exchanges (Art.5 2003 Subdecree). Permits are issued by the competent authority, and renewable annually. They provide the dealers' details, qualifications, types of objects they trade and where they trade to the Supreme Council of National Culture (Art.32, 1996 Law; and Arts 6-8 2002 Subdecree). There are strict trading conditions on the dealer including maintaining a record of all sales and purchases, and permitting inspection by the competent authority of their trading premises and personal residence (Arts 33 and 34). The permit can be withdrawn if the trader violated their legal obligations by acquiring or exchanging cultural property of dubious origin or whose owner cannot be identified, or is acquired gratuitously or in exchange with a minor without the guardian's consent, or fails to advise of the classified nature of the object, or does not declare a change in location (Art.10 2002 Subdecree).
392. Cambodia also regulates archaeological excavations through the law (Arts 37-50, 1996 Law; Chapter IV, 2002 Subdecree).
393. Violation of legal protection for cultural property attracts civil and criminal sanctions (Section 11, 1996 Law; Chapter IV 2002 Subdecree; 2000 Agreement between Cambodia and Thailand).

## China

394. Like Cambodia, China's present day legislative framework for the protection of movable cultural heritage was preceded by laws adopted by former European colonial powers. This situation explains why Macau and Hong Kong continue to have their own regulatory regimes, listed below. Significantly, Eastern Asia where China is located has a 100% take up of the 1970 Convention by States in this part of the region. Also, this region is home to countries which because of their growing affluence represent both so-called source and market countries in the global trade in cultural objects.<sup>239</sup> China in particular is viewed as the largest art market in recent years.<sup>240</sup> Consequently, its application of relevant international agreements is vital both for China and for the treaties' overall effectiveness.
395. The 1970 Convention entered into force for China on 28 February 1990. The UNIDROIT Convention entered into force for China on 1 July 1998 and it made declarations in respect of Articles 3(5) and 16.<sup>241</sup> It also explicitly reiterated the non-retroactive application of the 1995 Convention in its declaration. The 1954 Hague Convention and First Protocol entered into force on

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<sup>237</sup> Memorandum of Understanding between the Kingdom of Cambodia and the United States originally effective 22 September 2003, extended and amended 19 September 2008 and 19 September 2013. See *U.S. v. A 19<sup>th</sup> Century Cambodian Sandstone Sculpture*, (S.D.N.Y 28 March 2013, pending); and T. Davis, Supply and Demand: Exposing the Illicit Trade in Cambodian Antiquities through a Study of Sotheby's Auction House, *Crime Law Social Change* (2011) 56:155-174.

<sup>238</sup> Agreement between the Government of the Kingdom of Cambodia and the Government of the Kingdom of Thailand to Combat Against Illicit Trafficking and Cross Border Smuggling of Movable Cultural Property and to Restitute it to the Country of Origin of 14 June 2000.

<sup>239</sup> Lee, *supra* note 60, p.7.

<sup>240</sup> *Ibid.*

<sup>241</sup> See generally UNIDROIT Report, Practical Operation of the UNIDROIT Convention: China <http://www.unidroit.org/english/conventions/1995culturalproperty/1meet-120619/answquest-ef/china.pdf>

5 April 2000 for the country. Although it is not a signatory to the 2001 Convention it has dedicated domestic legislation which predates this instrument. The 2003 Convention entered into force on 20 April 2006 for China. China has not ratified the Nairobi Convention nor signed its Annex XI.

396. Chinese internal laws were revised following its ratification of the 1970 Convention.<sup>242</sup> The relevant domestic laws include: Law of the People's Republic of China on Protection of Cultural Relics (Order No.76 of 20 October 2002 and revised 2007); Regulations for the Implementation of the Law on the Protection of Cultural Relics (Decree No.377 of 1 July 2003); Provisional Measures on the Recognition and Administration of Cultural Relics (Decree No.46 of 10 August 2009); Administrative Rules for the Examination and Approval of Entry and Exit of Cultural Relics (Decree of 3 July 2007); Regulations of the People's Republic of China Concerning the Administration of the Work for the Protection of Underwater Cultural Relics (Decree No.42 of 20 October 1989); Measures of the People's Republic of China for the Administration of Foreign Archaeological Activities (Decree No.1 of the state Bureau of Cultural Relics of 22 February 1991); and Ratings Standards for Cultural Relics Collections (Order No.19, 4 September 2001). Also relevant are Antiquities and Monuments Ordinance (for Hong Kong) adopted *L.N. 103 of 2007*; and Cultural Heritage Protection Act (Law No.11/2013 of the Macau Special Administrative Region). This section on China only covers the legislation of the mainland.
397. The definition of cultural property is contained in Article 2 of the 2002 Law and covers 'material objects ... related to major historical events, revolutionary movements or famous personalities and that are highly memorable or are of great significance for education or for the preservation of historical data'; 'valuable works of art and handicraft articles dating from any historical period'; 'important documents dating from various historical periods and manuscripts, books, and materials, etc. that are of historical, artistic or scientific value'; 'typical material objects reflecting the social system, social production or the life of various nationalities in different historical periods'; and 'fossils of paleovertebrates and paleoanthropoids of scientific value'. Also, covered are cultural objects of Chinese, foreign or of unidentified origin in China's inland and territorial waters, of Chinese or unidentified origin outside Chinese territorial waters but under its jurisdiction pursuant to its domestic law, or Chinese origin on the high seas (Decree No.42/1989). Also, industrial patrimony, agricultural patrimony and other types of special cultural relics shall be recognized (Section 2, Decree No.46/2009). Palaeolithic fossils, hominid fossils, and Quaternary Period vertebrae fossils related to human activity are also categorized as cultural relics (Section 16, Decree No.46/2009). Cultural objects are classified either as valuable cultural relics (further subdivided into grade 1, 2 or 3) or ordinary cultural relics pursuant to the Rating Standards for Cultural Relic Collections which impacts upon their protection and dealings with them (Art.3, 2002 Law; and Decree No.46/2009).<sup>243</sup>
398. Movable cultural relics remaining underground, in inland waters or territorial seas within the boundary of China are owned by the state (Art.5, 2002 Law). The state also owns: cultural relics unearthed in China, those preserved and collected by state institutions, those collected and purchased by the state, those donated to the state, or others owned by state as provided by law (Art.5). These remain in state ownership even if the holding institution ceases to exist. State ownership is exerted in respect to underwater cultural relics of Chinese or unknown origin, located in China's inland and territorial waters and those outside its territorial waters but over which it has jurisdiction under domestic law (Art.3, Decree No.42/1989). For those located in the

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<sup>242</sup> Wang Yunxia, Enforcing Import Restrictions of China's Cultural Objects: The Sino-US Memorandum of Understanding, in Francioni and Gordley, *Enforcement of International Cultural Property* (Oxford, 2013), p.240 at p.248.

<sup>243</sup> T. Lau, The Grading of Cultural Relics in Chinese Law, *International Journal of Cultural Property* (2011) 18:1.

territorial waters or on the high seas it claims the right to identify the owners of the objects. Institutions for the collection of cultural relics can obtain them through purchases, donations, exchanges permitted by law or other means permitted by law or administrative rules (Art.37, 2002 Law).

399. The State Administration of Cultural Heritage in China (SACH), the administrative department within the State Council, can transfer cultural relics in the collections of state owned institutions in the country (Art.39, 2002 Law). No state institutions may donate, lease or sell cultural relics in their collections to other organizations or individuals (Art.44, 2002 Law). Nor can they undertake repairs which alter their state, duplicate, photograph, or make rubbings of the relics (Art.46). Any theft or loss of cultural relics or damage to Grade 1 cultural relics shall be reported to SACH. Excavated archaeological relics must be reported, registered and forwarded to the relevant state institution (Art.34, 2002).
400. The 2002 Law permits private ownership of cultural relics (Art.6, 2002 Law). Citizens, legal persons or other organizations can collect cultural relics which are lawfully inherited or accepted as gifts, purchased through cultural relic stores or auction enterprises, mutually exchange between individual citizens, or other lawful means permitted by the state (Art.50, 2002 Law). However, they cannot purchase or sell cultural relics which are state owned, valuable cultural relics in the collection of cultural institutions, or fragments of immovable state owned cultural relics (Art.51, 2002 Law). The 2002 Law regulates the activities of 'cultural relic stores and auction enterprises' (Arts 54-58). They must be licensed through SACH, any items for sale or auction must be verified through it, they must keep records of all transactions, and state institutions may exercise first option on purchase.<sup>244</sup>
401. The recognition, administration and registration of cultural relics is regulated by Decree No.46/2009. A national system of registering cultural relics was carried out by a special agency created by cultural relic bureaus above the county level (Section 14, Decree No.46/2009) and completed in late 2011. The relevant indexing system of this register is intended to be sufficient for preservation, research and public education purposes. However, the identity of private owners can be kept confidential. Recognition of cultural relics is the responsibility of local cultural relic bureaus (Section 3, Decree No.46/2009). However, the State Council issues guiding opinions on the scope and important points concerning recognition of cultural relics (Section 4). The decision-making procedure of local bureau is prescribed, its decision must be made public and the private owner is able to challenge it by administrative review. Also, museums, libraries and other institutions housing collections of cultural relics must classify them and provide a record to the relevant administrative department which then provides it to the State Council. It, in turn, maintains a record of all Grade 1 relics of the state and those cultural relics in the collection of state institutions (Art.36, 2002 Law).
402. Archaeological excavations are regulated extensively (Chapter III, 2002 Law; Chapter III, Decree No.377/2003), with further legislative requirements for foreign based archaeological activities (Decree No.1/1991).
403. China has an export control system in place for cultural relics (Chapter IV, Decree No.377/2003; 2007 Administrative Rules for Examination and Approval of Entry and Exist of Cultural Relics).

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<sup>244</sup> See also Auction Law of the People's Republic of China, Regulations for the Implementation of the Auction Law, Working Rules for Antique Shops, and the Interim Regulations for the Administration of Auction of Cultural Objects: China, Report 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 (2011), [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/china\\_2010-11natrep\\_1970\\_en.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/china_2010-11natrep_1970_en.pdf) (viewed on 28 December 2013), p.5.

Article 52 of 2002 Law provides that '[n]o cultural relics that the state prohibits from leaving the country may be transferred, leased or pledged to foreigners'. State owned cultural relics, valuable cultural relics in private hands and others prohibited from export, cannot leave China, except for exhibition as provided by Law or special needs approved by the State Council (Art.60, 2002 Law). SACH shall examine and verify the entry and exit of the cultural relics and issue an export permit and it must be declared to Customs authorities (Art.61, 2002 Law). The permit is modelled on the UNESCO-WCO Model Export Certificate.<sup>245</sup> Cultural relics exported for an exhibition will be approved by SACH and, if it is Grade 1 objects above a quota, then approval must be given by the State Council. The quota for Grade 1 objects being more than 120 pieces (sets) to be exhibited or Grade 1 objects represent 20 per cent or more of the exhibit (Art.48, Decree No.377/2003) 'Only existing or fragile relics' of Grade 1 are prohibited from export. Also, cultural relics never exhibited in China will also not be exported for an exhibition abroad (Art.49, Decree No.377/2003). Export for purposes of exhibition cannot be longer than a year. But in special circumstances can be extended for a second year (Art.50, Decree No.377/2003).

404. The Central Administration of Customs' website States that: '[T]here is no restriction on the import of cultural objects, whereas strict controls are in place over their export'.<sup>246</sup> However, cultural objects temporarily entry China must be sealed by customs authorities which examine and verify their entry and exit (Art.52, 2003 Decree No.377/2003). The Circular Concerning Issues Pertaining to Stolen or Illicitly Exported Cultural Property issued by SACH States that state institutions and other registered museums shall not purchase stolen or illicitly exported cultural property.<sup>247</sup>
405. Violations of the legislation for the protection of cultural relics attract administrative and criminal sanctions including fines and imprisonment (Chapter VII, 2002 Law; Chapter VII, Decree No.377/2003; Arts 14-18 Decree No.1/1991; Art. 10 Decree No.42/1989).<sup>248</sup>
406. China has entered into bilateral agreements covering protection and return of cultural relics with Peru (2000), Italy (2006), India (2006), the Philippines (2007), Greece (2008), Chile (2008), Venezuela (2008), the United States (2009), Turkey (2009), Ethiopia (2009), Australia (2009), Egypt (2010), Mongolia (2011), Mexico (2012), Columbia (2012), Nigeria (2013), Switzerland (2013) and Cyprus (2013).<sup>249</sup> China has also indicated its cooperation with relevant intergovernmental organizations including ICOM, INTERPOL, UNODC and WCO.<sup>250</sup> In 2010, ICOM released the *Red List of Chinese Objects at Risk* in Chinese and English which lists categories of cultural objects vulnerable to looting<sup>251</sup> The Chinese national database of stolen cultural objects is not linked to the INTERPOL database.

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<sup>245</sup> China, *supra* note 70, p.8.

<sup>246</sup> Lee, *supra* note 60, p.14.

<sup>247</sup> China, *supra* note 70, p.5.

<sup>248</sup> Lau, *supra* note 69; and Wang, *supra* note 68 at p.250.

<sup>249</sup> See Memorandum of Understanding between the Government of the United States of America and the Government of the People's Republic of China concerning the imposition of Import Restrictions on Categories of Archaeological Material from the Paleolithic Period through to the Tang Dynasty and Monumental Sculpture and Wall Art at least 250 Years Old of 14 January 2009 and *United States v. A Tenth Century Marble Wall Panel Sculpture* (S.D.N.Y., 8 March 2001) (proceedings by U.S. Attorney General and Customs for forfeiture against Christie's for a painted marble tomb relief from China's Hebei Province in 2000. Order given by Court in 2001 and returned to China same year); and Agreement between the Federal Council of the Swiss Confederation and the People's Republic of China on Illicit Import and Export and Repatriation of Cultural Property concluded 16 August 2013, not yet in force. See also Wang, *supra* note 68, p.240.

<sup>250</sup> China, *supra* note 70, pp.7-8.

<sup>251</sup> Wang, *supra* note 68 at p.254.



## Implementation of the 1970 Convention in Africa<sup>252</sup>

407. The initial uptake of the 1970 Convention by African States has slowed in recent years. Compared to other regions, the overall number of State Parties is low at just 50%.<sup>253</sup> The UNIDROIT Convention has only Gabon and Nigeria as State Parties.<sup>254</sup> This represents only a 4% take up rate. However, as with Asia, there is a need to look closer at parts of this region. So, for example, while all North African States are State Parties to the 1970 Convention and West African countries are also largely covered; the same cannot be said of Southern Africa. As Shyllon indicates, this lack of uniformity in the uptake of these instruments is surprising in a region which has and continues to suffer the loss of movable cultural heritage and has campaigned internationally for decades for effective action on this front.<sup>255</sup>
408. The region has an intergovernmental organization which has adopted instruments covering cultural heritage. The African Union's Charter for African Cultural Renaissance (2006 African Charter) of 24 January 2006, is inspired by the Cultural Charter for Africa adopted thirty years before. It makes explicit reference to the 1970 Convention in its preamble. The Charter calls on African States to 'take steps to put an end to the pillage and illicit traffic of African cultural property to ensure that such cultural property is returned to the countries of origin' and to work towards the return of archives illicitly removed from the continent (Arts 26 and 27). However, it does not expressly call on them to ratify the 1970 Convention as it does the 1954 Hague Convention.<sup>256</sup> While the Charter does make reference to mutual cooperation between African States in the cultural field, it does not list protection and return of cultural objects in the enumerated list. However, the ACP-EEC Partnership Agreement (which covers African States as well as Caribbean and Pacific Island States) of 15 December 1989 (Lomé Agreement) in Declaration XI attached covers protection and enhancement of cultural heritage of each ACP state at the international bilateral and domestic level including the promulgation of appropriate legislation.<sup>257</sup>
409. Region specific reports prepared under the auspices of UNESCO and UNIDROIT highlight the need for action on constitutional amendments, adoption, strengthening and updating national law, ratification of relevant multilateral instruments, harmonisation and reinforcement of regional agreements and arrangements, and better participation in intergovernmental fora, particularly, the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation.<sup>258</sup>

## Mali

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<sup>252</sup> For a thoughtful and detailed account see: F. Shyllon, Implementation of the 1970 Convention by African states: The Failure to Grasp the Nettle, Background Paper for Participants in the Second Meeting of the State Parties to the 1970 Convention, 20-21 June 2012.

<sup>253</sup> Shyllon, *supra* note 78, p.2.

<sup>254</sup> Burkina Faso, the Ivory Coast, Guinea, Senegal and Zambia are signatories of the UNIDROIT Convention but have not ratified it.

<sup>255</sup> Shyllon, *supra* note 78.

<sup>256</sup> The 1976 Cultural Charter for Africa (Chapter VII) had required the protection of African cultural heritage according to international instruments and best practice in the field. It called on Member states to adopt national laws and inter-African regulations for the protection of cultural heritage during time of war and peace. Also, Art.28 provided that:

*The African states should take steps to put an end to the despoliation of African cultural property and ensure that cultural assets, in particular archives works of art and archaeological objects, which have been removed from Africa, are returned there. To this end, they should, in particular, support the efforts exerted by UNESCO and take all other necessary steps to ensure the implementation of the United Nations General Assembly resolution on the restitution of works of art removed from their country of origin.*

<sup>257</sup> Entered into force 1 September 1991, L 299/17/8/199.

<sup>258</sup> See Shyllon, *supra* note 78, pp.16ff; F. Shyllon, The Recovery of Cultural Objects by African States through the UNESCO and UNIDROIT Convention and the Role of Arbitration, *Uniform Law Review* (2000) 2:219; and F. Shyllon, V. Négri, and M. Schneider. The Role of National and International Legal Instruments in the Protection of African Cultural Objects, Preliminary Study for the 2<sup>nd</sup> Pan African Cultural Congress (2009).

410. The Constitution of the Republic of Mali of 1992 provides that the Cabinet and Parliament have the power to enact laws covering the fundamental principles for the protection of cultural heritage and archaeology (Art.70).
411. The Republic of Mali became a State Party to the 1970 Convention on 6 April 1987. It is not a signatory to the UNIDROIT Convention. The 1954 Hague Convention and its First Protocol entered into force for the country on 18 August 1961, and the Second Protocol on 15 February 2013. It is not a State Party to the 2001 Convention. The 2003 Convention entered into force for Mali on 20 April 2006. Mali has not ratified the Nairobi Convention nor signed its Annex XI.
412. Much of Mali's relevant domestic legislation was enacted prior to its ratification of the 1970 Convention. Relevant legislation includes: Law No.85-40 of 14 May 1985 related to the Protection and Enhancement of the National Cultural Patrimony; Decree No.203 of 13 August 1985 to institute a National Cultural Heritage Protection Commission; Decree No.275 of 4 November 1985 regulating Archaeological Excavations; Law No.86-62 of 26 July 1986 regarding Merchants in Cultural Property; Decree No.299 of 19 September 1986 regulating the Prospecting, Marketing and Export of Cultural Property; and Inter-Ministerial Order No.94-7968 of 18 July 1994 to regulate the Profession of Dealers in Cultural Property, Prospecting, Marketing and Export of Cultural Property. The *Direction nationale des Arts et de la Culture* formed in 1976 oversee the protection and safeguarding of cultural property.
413. 'Cultural heritage' is defined under Malian law as 'all movable and immovable cultural properties which, for religious or secular reasons, are important for history, art, thought, science and technology' (s.2, Law No.85-40). Movable property is that which can be displaced without damage to itself or its environment' and includes archaeological, historical, ethnographic properties, architectural units, works of art, rare zoological, botanic, and mineralogical collections and specimens and objects of paleontological importance (s.3, Law No.85-40).
414. Movable and immovable objects discovered during archaeological excavations on public or private state land are state property (Art.11, Decree No.275/1985). If the movable archaeological material is discovered on private land, the ownership shall be shared between the State and the owner of the land according to domestic property law. However, the state can claim the objects found (Art.12 Decree No.275/1985). The state has the right of pre-emption over cultural property 'to enrich the cultural heritage of the Nation' (s.4, Law No.85-40). The state will protect and safeguard the cultural heritage against destruction, and illicit transformation, excavation, alienation, exploitation or export (ss. 1 and 5). Classified cultural property belonging to the state or local authorities is inalienable (s.18). Classified property cannot be destroyed, modified or restored without the consent of the National Cultural Heritage Protection Commission (NCHPC) (s.17). Transfer of classified property will be declared null and void if the beneficiary of the transfer is not informed of its status and the Commission is not informed of the transfer. Transfer of fragments from classified properties will be null and void. The owner or holder of classified property must protect and conserve it (s.25). The state may permanently or temporarily seizure classified property if the owner or holder is unable to protect it. It may also compulsorily purchase such property in the public interest.
415. To protect the country's cultural heritage it is inventoried and classified by the NCHPC (s.6, Law No.85-40; and Decree No.203/1985). Mali commenced an inventory of its cultural patrimony in 1982-83 which was broadened to a national inventory.<sup>259</sup> All movable cultural properties of the

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<sup>259</sup> Reports of Member States on the Action Taken by Them to Implement the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), 20 August 1987, Doc.24C/24, p.12 (Mali).

state, Local Authorities, associations, natural persons or legal entities which are 'sufficiently important and need to be protected from the point of view of history, art, thought, science or technology' shall be registered on the inventory. Owners and holders of the property should be notified of the registration. Once it is registered they must notify the authorities of the destruction, transfer or repair of the item. Objects can be placed on the inventory prior to classification. The NCHPC shall classify items and notify its owner or holder, who in turn must advise authorities of any transfer of ownership or displacement of location of the object, to enable them to object. Objections to the classification of cultural objects are heard by a judicial authority. Classification of the cultural property is retained by it regardless of transfer of title (Art.30, Law 85-40).

416. Mali operates an export control system in respect of cultural property (Decree No.299/1986). Export of objects which have been classified or are proposed for classification is prohibited (ss.12 and 24, Law No.85-40). The state may authorize temporary export. It is prohibited to export cultural property from archaeological sites (Art.3, Decree No.299/1986) and where it is seized contrary to this prohibition it will be deposited with the National Museum. However, other cultural property being exported can also be held so that in exceptional circumstances the state can exercise the right of pre-emption (Art.15 Inter-Ministerial Order No.94-7668). Only dealers with prior authorization from the Minister may export cultural property for commercial purposes (Art.12, Decree No.299/1986). Individuals seeking to export cultural property which exceeds a set value and number must be conducted through an authorized dealer. It must be presented to the NCHPC for issuing of an export authorization. If it is not recorded in the inventory, it can be proposed for classification. Special authorization for export for scientific purposes is required (Art.18, Decree No.299/1986).
417. Mali does not regulate the import of cultural property onto its territory.
418. Archaeological excavations (Decree No.275/1985) and dealing in cultural property (Law No.86-61; and Decree No.299/1986) is strictly regulated by law. Archaeological excavations must be authorized by the Minister of Culture and Minister for Scientific Research, with authorization being renewed annually. Likewise those engaged as dealers in cultural property must obtain prior authorization from the Minister of Culture and their details shall be kept on a register (Inter-Ministerial Order No.94-7968). The dealer must also keep a detailed log of their transactions (Art.18).
419. These domestic laws each provided for civil and criminal sanctions, including fines, imprisonment, confiscation of property, and revocation of authorization, for violations. In its 1987 National Report on implementation of the 1970 Convention, Mali indicated there was coordination between its police force and customs service and the gendarmerie concerning the curbing of illicit traffic in cultural objects.<sup>260</sup>
420. Mali has entered into bilateral agreements with the United States for mutual cooperation in the protection and return of its cultural property.<sup>261</sup> Significant international cooperation among intergovernmental organizations, governmental and non-governmental actors and Malian authorities, coordinated by UNESCO, arose in response to the armed conflict in 2012 and included

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<sup>260</sup> Mali, *supra* note 85, p.12.

<sup>261</sup> Agreement between the Government of the United States of America and the Government of the Republic of Mali concerning the Imposition of Import Restrictions on Archaeological Material from Mali from the Paleolithic Era (Stone Age) to approximately the mid-18<sup>th</sup> Century dated 23 September 1997 and extended and amended, 18 September 2002, 19 September 2007, and 19 September 2012.

redressing the escalation of looting and illicit trafficking in cultural materials.<sup>262</sup> This effort involved coordination with neighbouring States, INTERPOL, WCO, and the International Criminal Court, among others.

## *South Africa*

421. The 1970 Convention entered into force for South Africa on 18 March 2004. The country is not a state Party to the UNIDROIT Convention. The 1954 Hague Convention entered into force for South Africa on 18 March 2004, but it is not a state Party to either of the Protocols. Nor is it a signatory to the 2001 Convention or the 2003 Convention. South Africa ratified the Nairobi Convention on 10 August 1993 but has not signed its Annex XI.
422. The relevant South African domestic laws in the field include: the National Heritage Resources Act (No.25 of 1999) (NHRA); Declaration of Types of Heritage Objects (No.1512 of 2002); and National Archives of South Africa Act (No.43 of 1996) (NASAA). The South African Heritage Resources Agency (SAHRA) is responsible for the coordination and management of the National Estate (s.12, NHRA). It is also responsible for the repatriation of heritage resources which have been removed from South Africa but which it considers to be a 'significant part of the national estate' (s.13(2)(a)(iv)).
423. Movable objects can form part of the National Estate under the NHRA if they are 'of cultural significance or other special value for the present community and for future generations' including: objects removed from the soil or water of South Africa (archaeological and paleontological objects and material, meteorites, and rare geological specimens); objects to which oral traditions are attached or associated with living heritage; ethnographic art and objects; military objects; objects of decorative or fine art; objects of scientific or technological interests; and books, records, documents, photographic positives and negatives, graphic, film or video material or sound recordings (Section 3). Public records are covered by the NASAA. Special values which would bring objects within the National Estate include: importance to the community or South Africa's history; uncommon, rare or endangered aspect of its cultural heritage; potential to yield understanding of its cultural heritage; demonstrative of a particular class of cultural objects; importance in exhibiting particular aesthetic characteristics of a community or cultural group; demonstrating a high degree of creative or technical achievement during a particular period; strong spiritual or other association with a particular community or group for social, cultural or spiritual reasons; and strong association with the life or work of an individual, group or organization important in South Africa's history. This definition of cultural property is much broader than that contained in the 1970 Convention. A more detailed and specific list of cultural objects to which export controls attach is contained in Declaration No.25/1999.
424. SAHRA in consultation with the Minister and member of the Executive Council of the relevant Province shall establish a system of grading objects which form the National Estate (s.7 NHRA). Grade I are those objects whose qualities are so exceptional that they are of 'special national significance' and SAHRA is responsible for their identification and management; Grade II are those though part of the National Estate are of special significance within a province or region and therefore the provincial heritage resources authority has responsibility; and Grade III are other cultural resources worthy of conservation where the local authority is responsible under the Act.

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<sup>262</sup> International Experts' Meeting for the Safeguarding of Mali's Cultural Heritage, Final Report and Action Plan for the Rehabilitation and Cultural Heritage and the Safeguarding of Ancient Manuscripts in Mali, UNESCO, Paris, 18 February 2013.

425. SAHRA, for 'the purpose of the consolidation and coordination of information of heritage resources', has established and maintains an inventory of the National Estate including all objects with which it or its predecessors were involved, protected through the publication of official national or provincial notices, subject to protection by NHRA or other national or provincial laws, or others which are of interests and must have coordinated protection (s.39(1) NHRA). SAHRA must liaise with provincial authorities in the maintenance of the inventory. Also, it must regularly publish summaries and analyses of the inventory (s.39(7)).
426. SAHRA must maintain a register of all declared heritage objects (s.32(7) NHRA). It is kept in two parts: the first covers objects listed by type, the second lists specific objects in the inventory of public museums or other secure locations and other specific heritage objects. The location details of an object can be suppressed if necessary for its proper protection. Owners of heritage objects in the second list are provided with a certificate and must keep the objects in good condition and notify SAHRA of any loss or damage or if it is sold or alienated.
427. SAHRA is also tasked with issuing regulations for the registration of dealers in heritage objects and the control of trade in heritage objects (s.32(14) NHRA). It is unclear whether these have been established.
428. South Africa has an export control system for cultural property. Object or collections of objects or type of object or list of objects, generic or specific that are part of the National Estate and which SAHRA determines should be subject to an export control can be declared a heritage object (s.32(1) NHRA; and Declaration No.1512/2002). Prior to such a determination, SAHRA must advise the owner so that they can challenge the decision. The decision must be made public through the official gazette. Heritage objects cannot be exported from South Africa without an export permit issued by SAHRA (s.32(19) NHRA). They can only be removed through a customs port and the production of an export permit or certificate of exemption under the Act. When determining an application for permanent export, SAHRA must consider the outstanding significance of its association with South Africa, its history, culture, its aesthetic qualities, or its value in the study of the arts and sciences, and whether it is of 'such a degree of national importance that its loss to South Africa would significantly diminish the national heritage' (s.32(24), NHRA). If it refuses to grant the export permit it must do so by written notice advising of intent to compulsorily purchase the object for fair offer. If it fails the state does not purchase the object, it must issue an export permit.
429. South Africa also has an import control system for cultural objects (s.33 NHRA). Cultural property from another state cannot be imported into South Africa except through a customs port of entry and a valid export permit or authorization from the state of origin must be presented. Where South Africa has a bilateral agreement with a country, no cultural property illegally exported from that state can enter South Africa (s.33(2)). Where a customs officer believes there is a possible contravention the object can be withheld until the necessary investigations are undertaken. SAHRA may with the consent of the Minister and Minister of Foreign Affairs co-operate in the return of such cultural property to the country of origin. Further, persons intending to import heritage objects listed on the SAHRA List on a temporary basis or may wish to export it later can apply to the authority for a certificate of exemption concerning export control (s.32(32) NHRA). The duties and powers of heritage inspectors, (which covers South African Police Services, customs and excise officers) are enumerated in detail in NHRA.
430. Archaeological, palaeontology, meteorites, graves and burial sites are regulated by national and provincial laws and regulations.

431. NHRA elaborates a number of civil and criminal sanctions including fines, terms of imprisonment and other penalties for infringements and breaches of the Act (s.51).

## *Morocco*

432. Morocco ratified the 1970 Convention on 3 February 2003. It is not a signatory to the UNIDROIT Convention. The 1954 Hague Convention and First Protocol entered into force for the country on 30 November 1968 but is not a State Party to the Second Protocol. The 2001 Convention entered into force for Morocco on 20 September 2011. And the 2003 Convention entered into force on 6 October 2006. Morocco ratified the Nairobi Convention on 21 February 1982 and has signed its Annex XI.
433. The relevant domestic laws in Morocco include: Law 19-05 of 15 June 2006 concerning the Preservation of Historic Monuments, Sites, Inscriptions, and Art Objects and Antiquities; Decree of 22 October 1981 concerning the Preservation of Historic Monuments, Sites, Inscriptions, Art Objects and Antiquities; and Law 22-80 of 25 December 1980 concerning the Conservation of Historic Monuments, Sites, Inscriptions, Art Objects and Antiquities.
434. Cultural property covered by Law 22-80 includes objects of ‘an artistic or historic nature or relevant to the study of the past and the human sciences generally’. This expanded upon by Law 19-05 which defines movable property to include: ‘documents, archives, and manuscripts whose archaeological, historic, scientific, artistic, aesthetic, or traditional aspects are of national or universal value’, they may be single objects or in collections.
435. Movable objects registered or listed according to Moroccan law and which are the property of the state, Habous (or Waqf), public institutions, local governments or municipalities cannot be transferred and are inalienable (Law 19-05). Classified movable objects or all movable art objects and antiquities which are of historical, archaeological, or anthropological value to Morocco or which are relevant to the study of the past and the human sciences in general and that are domanial, habous, or owned by local communities or laws governing the administrative protection of ethnic communities and transfer of collective property, shall be inalienable and imprescriptible (Arts 29 and 44, Law 22-80). While classified objects which are privately owned can be transferred, they are subject to the right of pre-emption exercised by the state (Art.30 and Part V, Law 22-80). The exercise of pre-emption by the state prior to the transfer of ownership of the movable object through sale or auctions is defined in the 1980 Law. The registration of title transfer can be refused by public authorities without evidence of the waiver of the right of pre-emption (Art.42 Law 22-80). All movable works of art and antiquities discovered during authorized excavations or work of any nature is state property. The discoverer is entitled to compensation (Art.50 Law 22-80).
436. Law 22-80 provides that all movable items ‘the conservation of which is of particular relevance to the art, history or culture of Morocco’ may be listed or classified (Art.1). Listing is carried out by the government authority responsible for Cultural Affairs pursuant to the procedures laid down in 1981 Decree. Owners of listed movable items must facilitate access and study by authorized researchers (Art.5). They must not deface, destroy, restore or modify without notifying the relevant authorities (Art.6). They can obtain public monies for restoration and preservation or it may be undertaken by public authorities with their agreement. They may put it to commercial use or transfer it subject to the conditions laid down in Law 22-80. They are nonetheless required to make its registration or listing known and the transfer does not affect the listing (1981 Decree). Classified movable items cannot be destroyed, altered or exported (Art.31 Law 22-80). Also, the Ministry for responsible for cultural affairs shall prepare an inventory of movable objects listed or

registered by prefectures and provinces which are updated annually (1981 Decree). A copy of the inventory shall be updated annually and deposited with government offices at each prefectures, provinces and customs offices and border controls (Law 19-05). Private museums must keep an inventory of their collections which will be maintained with the guidance of public bodies to ensure that they meet international standards (Law 19-05).

437. Morocco has some measures controlling the export of cultural property. Classified movable items or art objects and antiquities of historical, archaeological or anthropological value to Morocco or which are relevant to the study of the past or human sciences generally cannot be exported (Arts 31 and 45, Law 22-80). A temporary export license can be granted for exhibitions, restoration or study abroad (Law 19-05). Items can be declassified partially or totally at the request of administrative authorities or individuals (Art.36).
438. There is no import control over cultural property contained in the domestic legislation discussed.
439. These laws regulate archaeological excavations (Part VII, Law 22-80; Title V, 1981 Decree); but not the trade in cultural property.
440. Civil and criminal penalties are prescribed for violations of the obligations contained in the domestic law (Part VIII, 1981 Decree). Agents of the public administration for cultural heritage (including museum officials, curators etc.), customs agents, administration covering the maritime domain with authority over maritime cultural property shall investigate violations as will the Criminal Investigation Department (Art.51 Law 22-80, Law 19-05). Each prefecture and province will also set up a commission regulating compliance with representatives from the Criminal Investigation Department appointment by the Royal Prosecutor.

## Egypt

441. Egypt ratified the 1970 Convention on 5 April 1973. It is not a State Party to the UNIDROIT Convention. The Hague Convention and First Protocol came into force for Egypt on 17 November 1955 and the Second Protocol on 3 November 2005. It is not a signatory to the 2001 Convention. The 2003 Convention entered into force for Egypt on 20 April 2006. Egypt has not ratified the Nairobi Convention nor signed its Annex XI.
442. The relevant domestic law in Egypt is the Antiquities Protection Law (No.117 of 1983, as amended by Law No.3 of 2010). The Supreme Council of Antiquities has exclusive authority concerning 'antiquities affairs at its museums and stores, at archaeological sites and areas, over or under the earth's surface, at the local waters and Egyptian regional waters and any antiquity discovered by accident' (Art.5). It also oversees matters relating to archaeological sites and excavations.
443. 'Antiquity' under Law 117 is defined as that which is 'the product of Egyptian civilization or the successive civilizations or the creation of art, sciences, literature or religions that took place on the Egyptian lands since prehistoric times and during successive historic periods until 100 years ago'; 'of archaeological or artistic value or of historical importance as an aspect of the different aspects of Egyptian civilization or any other civilizations that took place on the Egyptian lands'; and that 'produced and grown up on the Egyptian lands and of a historical relations to it, as well as human and animal remains from any such period' (Art.1, Chapter 1). As Fraoua has observed this definition adheres to the classical definition of antiquity.<sup>263</sup> Further, it can, upon the pronouncement of the Prime Minister following the recommendation of the Competent Minister

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<sup>263</sup> R. Fraoua, Legislative and Institutional Measures to Combat Trafficking in Cultural Property in Arab states, Background Paper for Participants in the Second Meeting of State Parties to the 1970 Convention, 20 and 21 June 2012, p.4.

for Antiquities, include movable property of 'historical, scientific, religious, artistic, or literary value' of less than 100 years old, where its protection and conservation is of national interest (Art.2). The Ministry of Antiquities became a full ministry in March 2014.

444. All antiquities are public property (except those of Waqfs, or charitable endowments). They can only be owned, possessed, transferred or handled in accordance with Law 117 and its related regulations (Art.6).<sup>264</sup> Within six months of the Law, owners of archaeological objects were required to notify the Supreme Council of Antiquities and preserve it until it is registered by the Council (Art.8). The Council has the right of pre-emption in return for fair compensation to the owner or possessor. It may also recover from an owner or possessor antiquities removed from immovable structures, where the Board of Directors of the Council assert a national interest and in return for valuable consideration. Individuals or corporations exploiting an archaeological site cannot exert ownership through prescription, rather the Council can evacuate the site where it is deemed necessary and with provision for compensation (Art.15 Law 117). Accidental finds of movable antiquity or fragments of immovable antiquity must be reported within 48 hours and it becomes state property with compensation paid to the finder (Art.24). Discovered antiquities excavated by Egyptian or foreign scientific missions are state property (Art.35).
445. Antiquities are registered following a ministerial resolution from the relevant Minister of Antiquities following the recommendation of the Board of Directors of the Antiquity authority (Art.12) and publication in the Official Gazette (Art.13). The Council shall be responsible for inventorying, photographing, making drawings of and registering all movable antiquities and keeping these records in accordance with rules set down by its Board of Directors (Art.26). Antiquities and fragments where required will be kept and preserved in the museums or storage facilities of the Council which will be administered using scientific methods. It will also sponsor temporary exhibitions (Art.28), or delegate such tasks to duly registered and secure university or college museums. All these museums are deemed state property. The Council shall provide these facilities with sufficient and competent police and security guards (Art.29).
446. Trade in cultural objects is prohibited, even if private property (Art.8 Law 117). Transfer of antiquities by an owner or possessor must be notified to the Council, otherwise it is void. The Council has a right of pre-emption with the owner or possessor given fair compensation. Fraoua has observed that while there is awareness of the ICOM Code of Ethics and UNESCO's International Code of Ethics for Dealers in Cultural Property, these are not widely disseminated in Arab States.<sup>265</sup>
447. Transfer of antiquities outside the country by any means is prohibited (Art.8, Law 117, amended 2010). Except for those determined as unique by competent committees, antiquities can be exhibited abroad subject to adequate security, and some duplicates can be exchanged with States, museums and educational institutions pursuant to Presidential resolution (Art.10).
448. Egypt does not regulate the import of cultural property in its domestic law.
449. Egypt regulates archaeological excavations and sites through Law 117 and it is overseen by the Supreme Council of Antiquities (Arts 31-38).
450. Law 117 (Chapter III) provides for civil and criminal penalties for violations of the obligations pertaining to the protection of antiquities and archaeological sites. Egyptian customs and police

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<sup>264</sup> See *United States v. Schultz* 178 F. Supp. 2d 445, [S.D.N.Y. 2002] *aff'd* *United States v. Schultz* 333 F. 3D 393 [2d Cir. N.Y. 2003], *cert. denied* 540 U.S. 1106 (Jan 12, 2004).

<sup>265</sup> Fraoua, *supra* note 89, p.18.



are not trained in respect of these laws, instead, a special Antiquities Police established by the Council pursuant to the earlier iteration of the Law is involved in the protection of sites and objects where relevant the Ministry for Antiquities and Ministry of Foreign Affairs.

451. Egypt has emphasised the importance of bilateral and multilateral agreements in the field for the effective return of illicitly removed cultural property in its national reports to UNESCO.<sup>266</sup> It has signed bilateral agreements for the protection and return of cultural property with Italy, Greece, Denmark, and Switzerland and is currently negotiating an agreement with the United States.<sup>267</sup> Significantly, the Swiss bilateral agreement mentions cooperation in preventing the import and transit of antiquities that were illicitly removed from the territory of one of the parties and the import and transit of illicitly exported antiquities from the respective state Party is prohibited. Law 117 as it currently stands does not cover this obligation.
452. Fraoua noted in 2012 that most Arab States like Morocco and Egypt cooperate with INTERPOL in matters concerning cultural property, but not as closely with WCO.<sup>268</sup> The Egyptian national database of stolen cultural objects is not linked to the INTERPOL database.

### **Implementation of the 1970 Convention in the Pacific Region**

453. Except for New Zealand and Australia, Pacific Island countries have not ratified the 1970 Convention. And only New Zealand is a State Party to the UNIDROIT Convention. This extremely low take up of relevant multilateral instruments by a region which has experienced significant loss of movable heritage is also reflected at the regional and domestic levels.<sup>269</sup> It is rare for a Pacific Island country to have passed legislation regulating the protection and export of movable heritage.<sup>270</sup>
454. The region's multilateral body, the Pacific Islands Forum does not have a specialist instrument covering the protection and return of movable cultural heritage. This is contrasted with the protection of intangible heritage, where the region adopted a path-breaking Model Law for the Protection of Traditional Knowledge and Expressions of Culture in 2009. The ICOM affiliated, Pacific Islands Museums Association (PIMA) adopted a Code of Ethics for Pacific Islands Museums and Cultural Centres in February 2006 which advocates for the effective implementation of international conventions and domestic legislation for the protection of cultural resources.<sup>271</sup> However, the region's customs organization, the Oceania Customs Organization can also play a vital role in realizing the aims of these countries in this sphere. It is important to note that Pacific Island countries are party to the ACP-EEC Agreement mentioned earlier concerning cooperation between the European Union and African, Caribbean and Pacific countries on cultural heritage matters.
455. Crucial strategies raised during a regional meeting sponsored by UNESCO to mark the 30<sup>th</sup> anniversary of the 1970 Convention remain pertinent including: effective domestic legislation, ratify of the Convention, cooperation with WCO, INTERPOL, and ICOM, implementation of

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<sup>266</sup> Egypt, National Report Summary, in Reports of Member states on Measures they have adopted to implement the Convention on the means of prohibiting and preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), 11 July 1995, Doc.28C/35, p.5.

<sup>267</sup> See Agreement between the Swiss Federal Council and the Government of the Arab Republic of Egypt regarding the Illicit Import and Transit as well as the Recovery of Antiquities to their Place of Origin signed 14 April 2010, entered into force 20 February 2011; and Fraoua, *supra* note 89, p.17.

<sup>268</sup> Fraoua, *supra* note 89, pp.17-18.

<sup>269</sup> Final Report, UNESCO Pacific Workshop on the Protection of National Cultural Heritage: No to Illicit Traffic in Cultural Property, Nadi Fiji, June 2001, paras 9-18.

<sup>270</sup> *Ibid.*, para.19.

<sup>271</sup> Reproduced at [http://pacificasiaobservatory.org/files/2011/10/pima\\_code\\_ethics.pdf](http://pacificasiaobservatory.org/files/2011/10/pima_code_ethics.pdf) (viewed on 28 December 2013).

international standards (e.g. inventories and object identification), adherence to the ICOM Code of Ethics and creation of a Red List of 100 stolen Pacific objects, training and education, and codes of ethics for researchers.<sup>272</sup>

456. There was also a call to work collectively on the protection and return of movable heritage, with Australia and New Zealand taking the lead.<sup>273</sup>

## Australia

457. The 1970 Convention entered into force for Australia on 30 January 1990. It is not a State Party to the UNIDROIT Convention.<sup>274</sup> The 1954 Hague Convention entered into force for Australia on 19 December 1984, but it is not a signatory to either of its two Protocols.<sup>275</sup> Australia is not a State Party to the 2001 Convention or 2003 Convention.<sup>276</sup> Australia ratified the Nairobi Convention on 3 November 1986 but has not signed its Annex XI.
458. The relevant domestic legislation is the Protection of Movable Cultural Heritage Act 1986 (as amended 2011) (Cth) (PMCHA);<sup>277</sup> Protection of Movable Cultural Heritage Regulations 1987 (as amended 2006) (Cth.) (PMCH Regs); Aboriginal and Torres Strait Islander Heritage Protection Act (Cth.) (as amended 2005) (ATSIHPA);<sup>278</sup> Historic Shipwrecks Act 1976, (as amended 2001) (Cth.) (HSA);<sup>279</sup> Historic Shipwrecks Regulations 1978 (as amended 2002) (Cth.) (HS Regs); and Environmental Protection and Biodiversity Conservation Act 1999 (as amended 2013) (Cth.) (EPBCA).<sup>280</sup> The PMCHA was passed with the intention on ensuring Australia's compliance with the 1970 Convention prior to its acceptance of this treaty. The EPBCA is the Commonwealth government's omnibus heritage legislation which regulates world heritage and archaeological sites. This discussion will also cover the protection of indigenous and underwater movable heritage within Australian law.<sup>281</sup> In its 2011 response to the independent review of the EPBCA, the Commonwealth rejected the incorporation of the HSA and PMCHA into the provisions of this omnibus legislation. However, it agreed to incorporate the requirements of the ATSIHPA into the EPBCA.<sup>282</sup>

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<sup>272</sup> UNESCO Pacific Workshop, *supra* note 95, para.21.

<sup>273</sup> *Ibid.*, paras 23-25.

<sup>274</sup> Further investigation of the possible ratification of the 1995 Convention by Australia was recommended in 2009 as part of the review of the relevant domestic law in the field: Review of the Protection of Movable Cultural Heritage Act 1986 and Protection of Movable Cultural Heritage Regulations 1987: Report of Public Consultation (Australian Government, 2009) (hereafter 'PMCHA Report').

<sup>275</sup> The 2009 PMCHA Report recommended consultation with stakeholders concerning possible impact of Australia's ratification of the 1954 and 1999 Hague Protocols: Recommendation 70, PMCHA Report, *supra* note 100, p.23.

<sup>276</sup> *Ibid.*, Recommendation 69, PMCHA Report, *supra* note 100, p.23, concerning consultation about possible ratification of the Convention by Australia. Likewise, the Review of the Historic Shipwrecks Act 1976 and consideration of the requirements arising from the UNESCO 2001 Convention for the Protection of the Underwater Cultural Heritage, Discussion Paper (Australian Government, 2009) (hereafter 'HSA Discussion Paper'), p.6, noted Australia's active participation in the development of the Convention and that its principles were similar to the manner in which the country protects and manages its shipwrecks and relics. Cf. Australia, National Report on the Implementation of 1970 Convention (2011), para.4(a) which erroneously states that it has ratified the Underwater Heritage Convention. The HSA Discussion Paper noted that the existing legislation would need to be amended if Australia ratified the Convention.

<sup>277</sup> The PMCHA and Regulations were reviewed in 2009: PMCHA Report, *supra* note 100.

<sup>278</sup> The ATSIHPA was the subject of review in 2009: see Indigenous Heritage Law Reform, Possible Reforms to the Legislative Arrangements for Protecting Traditional Areas and Objects, Discussion Paper (Australian Government, 2009) (hereafter 'ATSIHPA Discussion paper'). The ATSIHPA has the expressed purpose of 'preserv[ing] and protect[ing] from injury or desecration of areas and objects in Australia and in Australian waters, that are of particular significance to Aboriginals in accordance with Aboriginal tradition' (s.4).

<sup>279</sup> The HSA was reviewed in 2009: see HSA Discussion paper, *supra* note 102.

<sup>280</sup> The EPBCA was also the subject of a review in 2009: see Australian Government Response to the Report of the Independent Review of the Environmental Protection and Biodiversity Conservation Act 1999, (Australian Government, 2011) (hereafter 'EPBCA Report').

<sup>281</sup> The PMCHA Report noted that indigenous objects, particularly secret sacred material elicited the most deliberation during the review of that Act: *supra* note 100, p.3.

<sup>282</sup> Recommendation 64, EPBCA Report, *supra* note 106, pp.105-106.

459. 'Movable cultural heritage' is defined as objects that are 'of importance to Australia, or to a particular part of Australia, for ethnological, archaeological, historical, literary, artistic, scientific, or technological reasons' recovered from Australian soil, inland waters, coastal sea, continental shelf or seabed or subsoil beneath (s.7 PMCHA). It also encompasses objects of Aboriginal and Torres Strait Islander peoples or their descendants,<sup>283</sup> ethnographic material, military objects, decorative art, fine art, scientific or technological objects, books, records, documents, photographs, graphics, film, and sound recordings. While the legislation does not designate objects as 'national treasures' explicitly, those objects listed under Class A of the Control List are considered 'roughly equivalent' (s.8 PMCHA, PMCH Regs).<sup>284</sup> These include Aboriginal and Torres Strait Islander Objects, namely, sacred and secret ritual objects, bark and log coffins used as traditional burial objects, human remains, rock art, and dendroglyphs; Victoria Cross medals awarded to persons listed in PMCH Regulations; and the armour of Ned Kelly. The ATSIHPA covers human remains and significant Aboriginal objects (s.3). Under the HSA, 'historic relics' are defined as articles officially recognised as associated with a ship in Australian waters or above its continental shelf that are at least 75 years old (ss.4A(6), (7)), Dutch relics, Papua New Guinea relics, or articles that are situated in Australian waters or above its continental shelf which may have been associated with a ship or are of historic significance (s.6(2)).
460. The principle of inalienability does not apply to cultural objects contained in Australian public collections.<sup>285</sup> Ownership of cultural objects recovered from heritage sites is covered by the applicable state, Territory, Commonwealth and customary law.<sup>286</sup> The EPBCA regulates activities within Australia's World Heritage and National Heritage sites including the permanent removal, destruction, damage or disturbance to archaeological artefacts and cultural artefacts or ceremonial objects. When an object is forfeited under PMCHA either because it has been illicitly exported or imported (ss.9(3) and 14(2)), then title and interest in the protected object is vested in the Commonwealth and it will be disposed at the direction of the Minister (s.38 PMCHA). In respect of indigenous ancestral remains, there is a requirement to report discoveries to the Minister who then reports to the relevant community and facilitates their return to them and if they cannot be identified then, the remains are kept in safekeeping (ss.20 and 21 ATSIHPA). Likewise there is a requirement under the HSA to notify authorities of the discovery of a shipwreck or any historic relics, with a reward being payable (ss.17 and 18). In respect of shipwrecks or relics, the Minister may declare ownership to be vested in the Commonwealth, State or Dutch governments (s.20 HSA).<sup>287</sup> Consistent with the provisions of the Constitution of the Commonwealth of Australia, the HSA provides for the payment of compensation on 'just terms' where there has been an acquisition of property under the Act (s.21).<sup>288</sup> However, the HSA does not stipulate who and how excavations of underwater sites are to be undertaken. However, non-statutory guidelines were prepared in 1994.<sup>289</sup>

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<sup>283</sup> The PMCHA 2009 Review included a long term recommendation that there was a need to better coordinate the protection of Indigenous objects under the PMCHA, ATSIHPA and state and territory laws and consult with Indigenous communities during the assessment process: Recommendation 16, PMCHA Report, *supra* note 100, p.14.

<sup>284</sup> Australia, *supra* note 102, p.2.

<sup>285</sup> *Ibid.*, para.6(d).

<sup>286</sup> See Heritage Act 2004 (ACT); Heritage Objects Act 1991 (ACT); Heritage Act 1977(NSW); National Parks and Wildlife Amendment (Aboriginal Ownership) Act 1996(NSW); Aboriginal Sacred Sites Act 1989 (NT); Heritage Conservation Act 1991 (NT); Aboriginal Cultural Heritage Act 2003 (Qld); Torres Strait Islander Cultural Heritage Act 2003 (Qld); Aboriginal Heritage Act 1988 (SA); Aboriginal Relics Act 1975 (Tas.); Aboriginal Heritage Act 2006 (Vic.); Heritage Act 1994 (Vic.); and Aboriginal Heritage Act 1972 (WA).

<sup>287</sup> Agreement between the Netherlands and Australia Concerning Old Dutch Shipwrecks of 6 November 1972, reproduced in Schedule 1, HSA.

<sup>288</sup> See also s.28 ATSIHPA.

<sup>289</sup> See Australian Institute for Marine Archaeology (AIMA), *Guidelines for the Management of Australia's Shipwrecks* (1994).

461. The PMCHA does not regulate the trade in cultural property within Australia. Nor does the HSA prevent the transfer of shipwreck relics, although their export is regulated by the PMCHA. The Competition and Consumer Act 2010 (Cth) applies to all trading and therefore affords legal protection to purchasers. However, relevant State and territory laws do prohibit the sale of human remains and Aboriginal and Torres Strait Islander secret and sacred objects.<sup>290</sup> While no further specific provisions cover museums and collecting institutions and dealers under the PMCHA, the federal government has noted that Museums Australia, which is affiliated with ICOM, adheres to that organization's Code of Ethics.<sup>291</sup> The Heads of Collecting Institutions have also adopted the 'Collecting Cultural Material: Principles for Best Practice' (2009) which provides guidelines on best practice concerning acquisition of cultural property which references the 1970 Convention.<sup>292</sup> The Australian Antique and Art Dealers Association (AAADA) have its own Code of Practice which is not mandatory.<sup>293</sup> Indeed, Australia lodged a reservation in respect of Article 10 of the 1970 Convention concerning the requirement that dealers maintain a register of objects traded.<sup>294</sup>
462. Australia does not maintain a centralised national inventory of protected movable cultural objects.<sup>295</sup> Commonwealth, State and territory public collecting institutions keep an inventory of their significant objects. However, the PMCHA does provide a description of the class of objects on the Control List which is divided into two parts, Classes A and B. Class A objects, described earlier, cannot be exported from Australia. Class B objects can be exported with the permission of the relevant Minister. Class B objects include those of Aboriginal and Torres Strait Islander heritage not made for sale, more than 30 years old and not adequately represented in the relevant Indigenous community or public collections; archaeological, natural science, applied science or technological, historical objects of significance to Australia and not represented adequately in public collections; heritage machinery, fine and decorative arts, documentary heritage, numismatics, philately, and sporting trophies and memorabilia (PMCH Regs). Archaeological objects in Class B include relics from shipwrecks. Not all objects in this class are covered by export control and some are expressly excluded (e.g. art works less than 30 years old and Aboriginal and Torres Strait Islander art less than 20 years old). The 2009 Review of the PMCHA recommended that in the short term a list be compiled and made publically available of examples of 'nationally significant' objects including those rejected for export and purchased on the National Cultural Heritage Account, which would serve as a useful guide.<sup>296</sup> Also, it recommended that in the mid-term, owners of protected objects refused export permits must register their contact information and location of the object with the Department of the Arts. This list would be accessible to customs officials.<sup>297</sup> This would align it with the HSA covering shipwrecks.

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<sup>290</sup> Ibid.

<sup>291</sup> Australia, *supra* note 102, para.II, 1(a). See also Museum Australia, Code of Ethics for Art, History and Science Museums 1999; and Heads of Collecting Institutions, *Collecting Cultural Material: Principles for Best Practice* 2009.

<sup>292</sup> Australian Government, *Collecting Cultural Material: Principles for Best Practice* (2009), p.8. These guidelines are presently being reviewed by the Department for the Arts.

<sup>293</sup> Ibid.

<sup>294</sup> Letter LA/Depositary/1989/20 of 10 January 1990. Over the longer term, the PMCHA Review recommended that Australia consider withdrawing this reservation: Recommendation 65, PMCHA Report, *supra* note 100, p.113.

<sup>295</sup> The Australian system of categories is based on the Canadian Cultural Property Export and Import Act (R.S. 1985, c. C-51). The question of a national inventory was discussed at the 2009 Review of the PMCHA but rejected as unnecessary by the majority of submission: PMCHA Report, *supra* note 100, pp.29-30, 64-67.

<sup>296</sup> Recommendation 20, PMCHA Report, *supra* note 100, pp.15, and 64-67.

<sup>297</sup> Ibid., Recommendation 24.

463. The Minister for the Environment may receive an application for or on behalf an Indigenous Australian community seeking to preserve or protect a specific object or class of objects from injury or desecration (s.12 ATSIHPA). The Minister must be satisfied that it is an object of significance to the community and that it is under threat and consider any effect the declaration may have on the proprietary or pecuniary interests of others, and any other relevant matters. Prior to any declaration, the Minister must consult with the relevant state or territory authorities and any other persons he or she deems appropriate. The declaration must identify the object in detail, outline the measures for protection and preservation, and may order its delivery to the Minister or the community (provided they have consented to the return). The declaration must be published in the *Gazette* and notification given to all persons 'substantially affected by the declaration' (s.14 ATSIHPA). If an application is refused, all reasonable steps must be taken to notify the applicant(s) (s.16).
464. By contrast to the PMCHA, the earlier Historic Shipwrecks Act does provide for a Register of Historic Shipwrecks (s.12). The Register contains details of the remains of all officially declared ships and articles in Australian waters or above its continental shelf, and known Dutch wrecks and relics. The Australian National Shipwrecks Database is organised in a manner which facilitates the control of the transfer, possession and custody of such materials.<sup>298</sup> However, there is no central inventory of known shipwreck relics. The States and territories maintain a register of objects declared during a 1993-94 amnesty. The Commonwealth Department of the Environment is upgrading its Database to include such relics.<sup>299</sup>
465. Australia has an export control system of cultural objects on the National Movable Heritage Control List. Application can be made to the Minister for the Arts for a permit to export a Class B object (s.10 PMCHA).<sup>300</sup> The application is referred by the Minister to the National Cultural Heritage Committee who then refer it to an expert examiner for a written report. The expert examiner(s) States whether it is an 'Australian protected object' as defined by the criteria set out in the PMCH Regulations and whether it is of such importance to Australia that its export would diminish Australia's cultural heritage. If the expert examiner finds that it is not a protected object then it is not subject to export control. If he or she finds that it is a protected object but its export would not lead to significantly diminish the national cultural patrimony then it can be exported. However if it is a protected object and its significance is high then the recommendation would be against export.<sup>301</sup> Once the Committee receives the examiner's report they forward it together with their recommendations to the Minister for a decision. Based on this information, the Minister can grant the export permit together with any conditions, or refuse the grant. The form of the export permit was amended recently to reflect some aspects of the UNESCO-WCO Model Export Certificate.<sup>302</sup> The export of Class B objects can be refused if the Minister is satisfied that it is 'of such importance to Australia or part of Australia ... that its loss to Australia would

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<sup>298</sup> Australia, *supra* note 102, para.4(a).

<sup>299</sup> HSA Discussion Paper, *supra* note 102, p.11.

<sup>300</sup> The 2009 PMCHA Review recommended that applicants provide more rigorous documentation concerning provenance before an application is processed, as is required in other countries (including the United Kingdom, Canada and New Zealand): Recommendation 27, PMCHA Report, *supra* note 100, pp.71-72.

<sup>301</sup> Australian Government, Attorney-General's Department, Ministry for the Arts, Movable cultural heritage: The role of Expert Examiners, at <http://arts.gov.au/movable/export/examiners> (viewed 21 December 2013).

<sup>302</sup> Australian Cultural Heritage Export Permit: No.1071P; and Australia, *supra* note 102, para.III(h). The revised form strengthened object identification and permit verification. Exporters must notify the Department when an object is exported and if exported temporarily, when it is returned. The permit is produced on tamper proof paper. The Australian Customs and Border Protection Service expressed concern about the Model Permit's use of wet-stamp and signatures as the Service uses electronic verification: para.III (h).

significantly diminish the cultural heritage of Australia' (s.10(6)(b) PMCHA).<sup>303</sup> A principal collecting institution (that is, public art gallery, museum, library or archives) may apply to the Minister to export an object accessioned into their collection for the purposes of research, public exhibition or similar purpose (s.10A PMCHA).

466. The National Cultural Heritage Committee is also charged with advising the Minister on the operation of the National Cultural Heritage Account (s.16(a)(iv) PMCHA). The Minister makes such determinations on a case-by-case basis. The National Cultural Heritage Account is to be spent to 'facilit[e] the acquisition of Australian protected objects for display or safe-keeping' (s.25B). The funding usually only covers a part of the fair market value of the object, assessed by sale price at recent public auction or purchase price paid by applicant. The applicant can be asked by the Department to provide two independent valuations. The Account assists Australian cultural institutions to purchase and make accessible to the Australian public nationally significant cultural objects. The funds are available to government and non-government, non-profit organizations including museums, art galleries, libraries, archives, national trusts, and Aboriginal and Torres Strait Islander keeping places. About 30% of the funds to date have been provided to non-government institutions. While preference is given to institutions with permanent, public collections which will care for and provide ongoing public access, recognition is given to the importance of Class A objects of Aboriginal and Torres Strait Islander communities even if they do not have a permanent, public collection.<sup>304</sup> Priority is currently given to Class A objects located in Australia or abroad, Class B object refused an export permit, Class B objects granted an export permit on condition that they are offer for purchase at fair market price an eligible cultural institution, and Class B objects located abroad. An institution which receives funding from the National Account must advise the Department of the Arts when they can no longer care for or keep the object safe, or if they de-accessioned it from their permanent collection. If the object is sold within five years of receipt of the funding, the organization must reimburse the monies.
467. A certificate of exemption from export control can be requested by someone seeking to import an Australian protected object temporarily or with the intention of exporting it later (s.12 PMCHA). This avenue is intended to encourage owners of protected objects held abroad to return them to Australia for sale or exhibition. If granted the certificate of exemption provides the possessor with the security of re-export when the exhibition is completed or if the sale is unsuccessful.<sup>305</sup> If the application for an export permit or certificate of exemption is refused by the Minister, notice must be served in writing within the prescribed period setting out the reasons for the decision. The Minister can vary the terms or revoke the permit or certificate at any time while it is in force (s.13 PMCHA). Application for review of these decisions is made to the Administrative Appeals Tribunal (s.48 PMCHA).
468. Australia has an import control system for protected cultural objects from other countries (s.14 PMCHA), pursuant to its obligation under Article 7(b)(1) of the 1970 Convention. O'Keefe has noted that this provision does not state when the object must be illicitly exported from the

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<sup>303</sup> The issue of how 'significance' is determined was the subject of deliberation during the 2009 PMCHA Review: PMCHA Report, *supra* note 100, pp.48-53. In respect of Indigenous objects it was recommended that in the mid-term there should be an examination of whether 'spiritual and cultural significance' should be added as criteria as well as age and monetary thresholds: PMCHA Report, *supra* note 100, Recommendation 19, pp.14, 53-63.

<sup>304</sup> The 2009 PMCHA Review urged better promotion of the Account among Indigenous and regional organizations: Recommendation 51, PMCHA Report, *supra* note 100, p.20.

<sup>305</sup> Australia, *supra* note 102, para.5(c).

country of origin.<sup>306</sup> A protected object illicitly exported from the country of origin and imported into Australia will be forfeited. The individual or legal person attempting to import the object will be subject to a fine or term of imprisonment. The Ministry of Arts official website provides simple and accessible information concerning the import of foreign and Australian protected cultural objects into Australia. The Ministry has, in conjunction with the Australian Customs and Border Protection Service (ACBPS), developed the 'Buying Legally' information campaign. The Ministry website and posters and pamphlets distributed at airports provide information about the need to check relevant domestic laws, the Red List, a databases like The Art Loss Register, Nazi Looted Art and INTERPOL before purchasing cultural objects abroad.<sup>307</sup> In addition, education and training has been provided to Australian Customs and Federal Police on illegal trafficking of cultural objects regularly over the last two years.<sup>308</sup>

469. However, there is an exemption for objects imported pursuant to an agreement between the Australian government (federal, state or territory), a principal collecting institution or exhibition organiser and another person or body (including a government) to loan the object for not more than two years for a public exhibition in Australia (s.14(3) PMCHA). During the 2009 PMCHA Review, the Commonwealth received submissions from numerous museums and collecting institutions including the British Museum concerning the lack of dedicated anti-seizure laws in Australia.<sup>309</sup> The Review Report noted that that the Act provided for a certificate of exemption, and protection was afforded under the Foreign States Immunities Act 1985 (Cth) and Diplomatic Privileges and Immunities Act 1967 (Cth). It also noted that such provisions for immunity from seizure or suit would need to be balanced against obligations under the 1970 Convention.<sup>310</sup> Australia has passed the Protection of Objects on Loan Act 2013 (Cth).
470. The PMCHA provides for the seizure, forfeiture and return of illicitly imported protected objects (s.41).<sup>311</sup> An inspector appointed under the Act can exercise the powers of search and seizure only if he or she has 'reasonable grounds' to believe that the 'Commonwealth has received from the Government of the country a request for the return of the object'.<sup>312</sup> Proceedings under s.14 will not be commenced until the Commonwealth has received such a request from the relevant country. A note from the Secretary of the Department of the Arts to the court stating that the Commonwealth has received a request from a specific country for a specified objects is '*prima facie* evidence of the facts stated' (s.41(3)). Any cost incurred by the federal government in transferring the object is a debt owed by the person who was the owner immediately before it was forfeited (s.38(c) PMCHA). In its 2011 National Report, Australia indicated that it has

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<sup>306</sup> P. O'Keefe, *Commentary on the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, (Leicester, 2007), p.105.

<sup>307</sup> Australian Government, Attorney-General's Department, Ministry for the Arts, Movable cultural heritage: The role of Expert Examiners, at <http://arts.gov.au/movable/import/buying-legally> (viewed 21 December 2013). The 2009 PMCHA Review recommended further investigation of whether the Act should extend to cover objects on the INTERPOL and Art Loss Register databases: Recommendation 61, PMCHA Report, *supra* note 100, p.22.

<sup>308</sup> Australia, *supra* note 102, para.II.2.(c).

<sup>309</sup> PMCHA Report, *supra* note 100, p.116. See also *Museums Board of Victoria v. Carter* [2005] FCA 645 (20 May 2005), *Carter v. Minister for Aboriginal Affairs* [2005] FCA 667(23 May 2005); L. V. Prott, The Dja Dja Wurrung Bark Etching Case, *International Journal of Cultural Property* (2006) 13: 241; and E. Willis, The Law, Politics, and 'Historical Wounds': The Dja Dja Wurrung Bark Etchings Case in Australia, *International Journal of Cultural Property* (2008) 15:49.

<sup>310</sup> *Ibid.*

<sup>311</sup> For example, Australian officials seized artefacts including earrings, wrist and ankle bands made from human remains removed illicitly from grave sites in Cambodia which had been placed for sale by an art gallery on eBay. The objects were returned to Cambodia in early 2011. For a full list of objects returned under the PMCHA, at <http://arts.gov.au/movable/enforcement> (viewed on 15 January 2014).

<sup>312</sup> See also ATSIHPA provided for the appointment of authorized officers, issuing of identity cards, emergency declarations, injunctions, proceedings *in camera*, compensation for acquisition of property, and legal assistance (ss 17 and 18, and Part III); and HAS provides for the appointment of inspectors, provision of identity cards, search and seizure powers similar to those under the PMCHA (ss.22-25).

streamlined this process with some countries like Argentina, China, Egypt, and Cambodia, to have a standing request for seizure.<sup>313</sup> Furthermore, Australia has bilateral agreements for the protection and return of cultural objects with China (Memorandum of Understanding with the state Administration for Cultural Heritage) and Korea (Memorandum of Understanding with the Cultural Heritage Administration of the Republic of Korea).<sup>314</sup> Also, details of the deliberations of the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Country of Origin or its Restitution in case of Illicit Appropriation are circulated to relevant Ministry staff.<sup>315</sup> The PMCHA does not consider restitution requests from non-state actors nor does it provide compensation for a good faith purchaser.<sup>316</sup>

471. The PMCHA includes criminal sanctions for breaches of its provisions (s.46 PMCHA;<sup>317</sup> ss.22 and 23 ATSIHPA; ss.9(6), 10(2), 11(4), 14(1), and 15(5) HSA). The Act also provides for an enforcement framework. The Minister can appoint a member of the Australian Federal Police or state or territory police force as an inspector who is issued with requisite identity cards (ss.28 and 29 PMCHA). It also lays out the procedure for the obtaining of search warrants from a magistrate or by telephone, searches in emergencies, powers of arrest, and seizure of objects (ss.30-34). The inspector can require a person who they suspect on reasonable grounds of exporting or attempting to export a protected object to produce a permit or certificate (s.39). The owner or person in charge of premises or vehicles being searched must provide reasonable assistance to the inspector (s.43). There is greater cooperation and awareness between the Australian Federal Police and INTERPOL, than with their state and territory counterparts. The AFP has officers seconded to INTERPOL and EUROPOL and a member attached to the UNODC Bangkok Office.<sup>318</sup> Also, ACBPS works closely with WCO.<sup>319</sup>
472. The 2009 Review of the PMCHA noted the importance of enhancing Australia's cooperation and contribution in the Asia Pacific region and international fora in shaping and promoting the protection of movable heritage.<sup>320</sup>

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<sup>313</sup> Australia, *supra* note 102, para.7(b).

<sup>314</sup> Australia, *supra* note 102, para.7(a).

<sup>315</sup> Australia, *supra* note 102, para.IV(2).

<sup>316</sup> See PMCHA Review, *supra* note 100, pp.109-113.

<sup>317</sup> The 2009 PMCHA Review recommended that the PMCHA penalties align with those of the EPBC Act which provides for civil, administrative and criminal sanctions: Recommendation 57, PMCHA Report, *supra* note 100, p.104.

<sup>318</sup> Australia, *supra* note 102, para.III, (a) and (e).

<sup>319</sup> Australia, *supra* note 102, para.III(f).

<sup>320</sup>

PMCHA Report, *supra* note 100, p.114.



## ***C: List of People Interviewed***

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### **UNESCO 1970 Convention Secretariat**

Sahar Al Tabbal	Consultant	Cultural Heritage Protection Treaties Section
Sophie Delepierre	Assistant programme specialist	Cultural Heritage Protection Treaties Section
Alberto Deregibus	Lieutenant-Colonel, Italian Carabinieri	Cultural Heritage Protection Treaties Section
Jan Hladik	Chief of Section	Cultural Heritage Protection Treaties Section
Maria Minana	Assistant programme specialist	Cultural Heritage Protection Treaties Section
Edouard Planche	Program Specialist	Cultural Heritage Protection Treaties Section

### **UNESCO Headquarters Staff**

Ulrike Guerin	Program Specialist	Cultural Heritage Protection Treaties Section
Nao Hayashi-Denis	Program Specialist	Museum Section
Anthony Krause	Program Specialist	Diversity of Cultural Expressions Section
Christian Manhart	Chief of Section	Museum Section
Arturo Rey da Silva	Associate Expert	Cultural Heritage Protection Treaties Section

### **UNESCO Field Office Staff**

Fernando Berríos	National Professional Officer	UNESCO Office in Lima
Brendan Cassar	Assistant Programme Specialist	UNESCO Office in Kabul
Chiara Dezzi Bardeschi	Consultant for Culture	UNESCO Office in Cairo and Regional Bureau for Science
Mohamed Ould Khattar	Programme Specialist	UNESCO Office in Rabat
David Stehl	Programme Specialist	UNESCO Office in Dakar and Regional Bureau for Education
Akatsuki Takahashi	Programme Specialist	UNESCO Office in Apia

Tamara Teneishvili	Programme Specialist	UNESCO Office in Cairo and Regional Bureau for Science
Frederic Vacheron	Programme Specialist	UNESCO Office in Montevideo

### **Permanent Delegations**

Mohamed Sameh Amr	Ambassador, Permanent Delegate	Delegation of Egypt
Stella Bezirtzoglou	Counsellor, Deputy Permanent Delegate	Delegation of Greece
Mauricio Escanero	Deputy Permanent Delegate	Delegation of Mexico
Laura Faxas	Ambassador	Delegation of Dominican Republic
Mohammad Kacem Fazelly	Ambassador, Permanent Representative	Delegation of Afghanistan
Jean-Frederic Jauslin	Ambassador, Permanent Delegate	Delegation of Switzerland
David Measketh	Counsellor	Delegation of Cambodia
Marina Misitano	Permanent Representative	Delegation of Italy
Humaira Zia Mufti	Deputy Permanent Representative	Delegation of Pakistan
Patrick Ozulonye Okafor	Deputy Permanent Delegate	Delegation of Nigeria
Ghada Omar	Deputy Permanent Delegate	Delegation of Egypt
Liefke Reitsma	Deputy Permanent Delegate	Delegation of Netherlands
Najat Rhandi	Deputy Permanent Delegate	Delegation of Morocco
Mohamed Sheya	Deputy Permanent Delegate	Delegation of Tanzania
Francesco Tafuri	Deputy Permanent Delegate	Delegation of Italy

### **Intergovernmental organizations**

Stephano de Caro	Director General	ICCROM
Paolo Giorgio Ferri	State Attorney, Special Advisor to the Director-General of ICCROM for legal matters	ICCROM
Gamini Wijesuriya	Project Manager	ICCROM
Fabrizio Panone	Criminal Intelligence Officer	INTERPOL
Marina Schneider	Senior Officer	UNIDROIT

Citlalin Castaneda de la Mora	Associate Legal Officer	UNODC
Laurent Pinot	Technical Attaché	WCO

### **Non-governmental Organizations**

Peter Stone	Head of School Arts and Cultures Newcastle University	Blue Shield
France Desmarais	Director of Programmes and Development	ICOM
Raphael Roig	Programme Officer	ICOM
Willem Willems	Co-president of the ICOMOS International Scientific Committee on Archaeological Heritage Management	ICOMOS

### **Experts**

Lee Keun – Gwan	Professor, Chair of ICPRCP	College of Law, Seoul National University
Simon Mackenzie	Professor of Criminology, Law & Society	SCCJR School of Social and Political Sciences, University of Glasgow
Lyndel Prott	Professor, former Director of UNESCO's Division of Cultural Heritage	University of Queensland
Marc-André Renold	Professor, UNESCO Chair in the International Law of the Protection of Cultural Heritage	Art Law Centre, Geneva University
Folarin Shyllon	Professor, Vice Chairman of the Subsidiary Committee of the Meeting of State Parties to the 1970	Faculty of Law, University of Ibadan (Nigeria)
Donna Yates	Justice Research	University of Glasgow

### **Museum professionals**

Beatrice Andre-Salvini	Director of the Department of Oriental Antiquities	Louvre Museum
Hassoum Ceesay	Overseeing Curator Gambia National Museum	National Centre for Arts and Culture
Sophie Makariou	President	Guimet Museum

Samuel Sidibé	Director	National Museum of Mali
Alberto Vial	Diplomatic Advisor	Louvre Museum

### Other

Ariane Chausson	Director of Communications	The Council for voluntary sales of movable property by public auction (Conseil des ventes volontaires de meubles aux enchères publiques)
Dominique Chevalier	Tapestry Specialist, Owner of Gallery Chevalier	The French Syndicate of Professional Experts on Works of Art and Collections (SFEP)
Stephane Gauffeny	Chief of Office	The Central Office for the Fight against Traffic in Cultural Goods (OCBC) in France
Hrvoje Korzinek	Head of Service Inspection Directorate for the Protection of Cultural Heritage	Ministry of Culture of Croatia
Pierre Taugourdeau	Assistant General Secretary, Manager of the Legal Department	The Council for voluntary sales of movable property by public auction (Conseil des ventes volontaires de meubles aux enchères publiques)
Martin Wilson	Head of the Art Law Department	Christie's Auction House

### People interviewed during field missions

#### Mongolia

Jamiyan Batsuuri	Director-General ; Professor ScD in Anthropology	The Management Office of the Orkhon Valley Culture Landscape World Heritage site
Naidan Enkhtsogt	Deputy Director General	Customs General Administration of Mongolia
E. Khaliunbayar	Chief of 4th Division Police Lieutenant Colonel	General Police Department of Mongolia Criminal Police Department
Otgonbileg Mendsaikhan	Director	Bogd Khan Palace Museum

Batsumber Mukhzorig	Customs Officer	Customs General Administration of Mongolia Customs International Cooperation Division
Luvsansamdan Ochgerel		Customs General Administration of Mongolia Division of customs offences prevention
Urtnasan Sarantuya	Director	Zanabazar Museum of Fine Arts

## Turkey

Irem Alpaslan	Sector Expert Assistant Secretary General	Turkish National Commission for UNESCO
Zeynep Bayrak Boz	Head of Combating Illicit Trafficking Division	Ministry of Culture and Tourism
Emir Gokhan Bozkutlar	Head of the Section on Anti- Smuggling	Ministry of Culture and Tourism, General Directorate of Cultural Heritage and Museums
,Halil Demirdelen	Archaeologist Vice Director	Ministry of Culture and Tourism, The Museum of Anatolian Civilizations
Mustafa Demirel	Director	Ministry of Culture and Tourism, Antalya Museum
Ahmet Duyan	Inspector	Ministry of Interior Turkish National Police Department of Anti-smuggling and organized crime
Haci Ali Ekinci	Director	Archaeological Museum of Burdur
Dr. Onder Ipek	Director	Corum Museum
Abdullah Kocapinar	Director General	Ministry of Culture and Tourism, General Directorate of Cultural Heritage and Museums
Doc. Dr. Zeynep Cizmeli Ogun	Archaeology specialist	Ankara University, Department of Classical Archaeology
Ali Ozudogru	Director of Gorum Province Culture and Tourism	Ministry of Culture and Tourism
Zulkuf Yilmaz	Head of Department	Ministry of Culture and Tourism, General Directorate of Cultural Heritage and Museums

Candemir Zoroglu	Archaeologist Culture and Tourism Expert	Ministry of Culture and Tourism, The Museum of Anatolian Civilizations
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**Peru**

Diana Aguirre Manrique	Professor	University of Piura
Mirva Aranda Escalante	General Coordinator	Peruvian National Commission for UNESCO
Mirva Aranda Escalante	General Coordinator	Peruvian National Commission for UNESCO
Javier Arturo Arteta Valencia	Minister, Director for Cultural Policy	The Directorate General for Cultural Affairs, Ministry of Foreign Affairs
Luis Octavio Bisso Pun	Colonel, Director of the OCN	National Police of Peru, INTERPOL Lima
Patricia Diaz Cano Bellido	Third Secretary	The Directorate General for Cultural Affairs, Ministry of Foreign Affairs
Carmen Teresa Carrasco Cavero	Director	National Museum of Archaeology, Anthropology and History of Peru
H.E. José Alberto Carrión Tejada	Ambassador, General Director	The Directorate General for Cultural Affairs, Ministry of Foreign Affairs
Rubén Cuadros Alcarraz	Major	National Police Of Peru
Leny Espejo Espinal	Legal Adviser to Ms Sonia Elizabeth Guillen Oneeglio, Director General of Museums	General Directorate of Museums, Ministry of Culture
María Belén Gómez de la Torre Barrera	Archaeologist	The Directorate of World Heritage Sites, Ministry of Culture
David de Lambarri Samanez	Director	The Directorate for Cultural Heritage Ministry of Culture
Gustavo Antonio Romero Murga	National Intendant of Smuggling Prevention and Customs Enforcement	National Superintendency of Tax Administration
Manuel Soarez Documet	Minister, Director of Cultural Heritage	The Directorate General for Cultural Affairs, Ministry of Foreign Affairs

José Villagaray Torres

Chief of the Division of Crimes  
against Public Administration  
and Cultural Heritage

National Police of Peru

And participants in the International Workshop on Restitution and Return of Cultural Objects;  
organized by UNESCO and the Ministry of Culture of Peru from 3 – 5 December, 2013, Lima.

## ***D: Survey of State Parties***

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### **Respondent Information**

Name:	
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Position	
Organization/Agency	
Country	

### **Policy and Legislative Framework**

**Does your country have an overall policy and/or strategy for fighting illicit trafficking of cultural property (i.e., a document that describes the country's overall vision for fighting illicit trafficking)?**

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No

**If yes, please provide the name and year the policy was passed (and web link to the policy/strategy if possible)**

--

**Please describe your country's overall legal framework for protecting cultural property from illicit trafficking, referencing specific laws and years passed.**

--

**To what extent does your country's policy and legislation on this issue address the following topics: (mark all that apply)**

<input type="checkbox"/>	Clear definition of cultural property
<input type="checkbox"/>	State ownership of undiscovered cultural heritage
<input type="checkbox"/>	Regulations on trade of cultural property
<input type="checkbox"/>	Export controls
<input type="checkbox"/>	Export certificates
<input type="checkbox"/>	Import controls
<input type="checkbox"/>	Establishment of a national service
<input type="checkbox"/>	National inventory of cultural property
<input type="checkbox"/>	Inventory requirements for museums, public institutions, etc.
<input type="checkbox"/>	Protection and regulation of archaeological sites
<input type="checkbox"/>	Public education and awareness raising
<input type="checkbox"/>	Measures to prevent museums and similar institutions from acquiring illegally exported cultural property
<input type="checkbox"/>	Prohibition of import of cultural property stolen from a museum or religious/secular institution
<input type="checkbox"/>	Return of cultural objects stolen from a museum or other public institution
<input type="checkbox"/>	Sanctions (criminal and/or administrative and/or civil) illicit activities
<input type="checkbox"/>	Requirement of register of sales for antique dealers



	Protection of underwater cultural heritage
	Other (please specify):

**Did your country's legal framework regarding illicit trafficking of cultural property change as a result of ratifying the 1970 Convention?**

	Yes
	No

**If yes, what laws were passed or changed as a result of ratification? (Please provide the name of the law and the year it was passed)**

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**Any additional comments on the legislative/policy framework**

--

## Implementation

### Institutional Framework

**Does your country have a national, specialized service for the protection of cultural property, as described in Article 5 of the Convention (functions may include drafting laws and legislation; establishing national inventory; promoting establishment/development of scientific and technical institutions; organizing the supervision of archaeological sites; establishing rules for curators, antique dealers, etc.; developing educational activities; and/or publicizing the disappearance of cultural property)?**

	Yes
	No

**If yes, please describe this service's major roles and responsibilities:**

--

**Please indicate which of the following departments/ministries/agencies also have specialized services for the protection of cultural property against illicit trafficking: (mark all that apply)**

	Magistrates and/or judges
	Police, gendarmerie, and/or Department of Interior
	Public prosecutor
	Customs
	Other (please specify):

**Please describe the roles and responsibilities of these specialized services in more detail:**

--

**How do relevant stakeholders (Ministry of Culture, police, customs, etc.) coordinate regarding protection of illicit trafficking? Mark all that apply**

<input type="checkbox"/>	Formal coordinating committee, working group, etc.
<input type="checkbox"/>	Coordination lead by specialized service (as described in Article 5)
<input type="checkbox"/>	Communication and meetings as necessary (i.e., for specific cases)
<input type="checkbox"/>	Cross-trainings (i.e., trainings for police from Ministry of Culture staff)
<input type="checkbox"/>	Other (please specify):

**Please provide more detail on this coordination, including how it functions and who is involved:**

--

**Does your country use a database of stolen cultural objects?**

<input type="checkbox"/>	Yes, we have our own national database that is not linked with the INTERPOL database
<input type="checkbox"/>	Yes, we have our own national database that is linked with the INTERPOL database
<input type="checkbox"/>	Yes, we use the INTERPOL database (and do not have our own national database)
<input type="checkbox"/>	No, we do not currently have a national database or use the INTERPOL database

**Please provide additional details on how your country uses such a database:**

--

**Protection and Prevention Systems**

**To what extent do museums and religious or secular public monuments have inventories of their cultural property?**

<input type="checkbox"/>	All/almost all cultural property is inventoried
<input type="checkbox"/>	Most, but not all, cultural property is inventoried
<input type="checkbox"/>	Some cultural property is inventoried, but significant gaps remain
<input type="checkbox"/>	Very little cultural property is inventoried
<input type="checkbox"/>	No/almost no cultural property is inventoried

**Please provide additional details on these inventories, including any challenges in creating/maintaining them:**

--

**To what extent does your country have a national inventory of protected cultural property?**

<input type="checkbox"/>	All/almost all protected cultural property is inventoried
<input type="checkbox"/>	Most, but not all, protected cultural property is inventoried
<input type="checkbox"/>	Some protected cultural property is inventoried, but significant gaps remain
<input type="checkbox"/>	Very little protected cultural property is inventoried
<input type="checkbox"/>	No/almost no protected cultural property is inventoried

**Please provide additional details on this inventory, including any challenges in creating/maintaining it:**

--

Please describe the extent to which looting/pillaging of archaeological and ethnological objects is a challenge, including actions taken to combat it.

--

### Knowledge, Skills and Values of Stakeholders and the Public

Has your country undertaken any public awareness campaigns related to the protection of cultural property in the past five years?

Yes
No

If yes, please describe, including methods, target audience, etc.

--

To what extent is the public in your country engaged in the protection of cultural property?

Examples of engagement may include

- Protection of local archaeological and heritage sites by the public
- Return of objects to relevant authorities
- Sharing information on stolen objects with authorities
- Placing pressure on museums to change acquisition policies
- Advocating for policy change

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Overall, to what extent do police and/or gendarmerie have the necessary resources and knowledge to address cultural property crime?

--

Overall, to what extent do customs officers have the necessary resources and knowledge to address cultural property crime?

--

What type of training do police receive on cultural property crime?

No specific training on this issue
Training has occurred in the past, but is not ongoing
Training occurs periodically
In-depth, specialized training for officers working on this issue
Other (please specify):

Please provide additional details on the content and frequency of these trainings:

--

**What type of training do customs officers receive on cultural property crime?**

	No specific training on this issue
	Training has occurred in the past, but is not ongoing
	Training occurs periodically
	In-depth, specialized training for officers working on this issue
	Other (please specify):

**Please provide additional details on the content and frequency of these trainings:**

--

**To what extent have museums in your country adopted a code of ethics, such as the ICOM Code of Ethics, that is in line with the principals of the 1970 Convention?**

	All or almost all have adopted such a code of ethics
	Most have adopted such a code of ethics
	Some have adopted such a code of ethics
	None/only a few have adopted such a code of ethics

**Please provide additional details on the degree to which museums adhere to such a code of ethics:**

--

**To what extent do dealers and auction houses in your country follow practices that are in line with the principals of the 1970 Convention, such as those outlined in the UNESCO International Code of Ethics for Cultural Property Dealers?**

	All or almost all follow such practices
	Most follow such practices
	Some follow such practices
	None/only a few follow such practices

**Please provide additional details on the policies and practices of dealers and auction houses in your country:**

--

**How has your country engaged art and antiquities dealers around the issue of illicit trafficking of cultural property?**

--

**International Cooperation**

**Please list any formal, bilateral agreements your country has regarding the protection of cultural property, including the years for which the agreement is in effect.**

--

**Please indicate how the 1970 Convention helped with return/restitution cases your country has been involved in?**

	To no extent	To some extent	To a considerable extent	To a great extent	N/A
Provided a legal framework for return/restitution					
Provided a moral framework for return/restitution					
Provided a diplomatic framework for return/restitution					
Other (please specify):					

**Please provide additional details on or examples of how the 1970 Convention has facilitated return/restitution cases**

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## Overall

**Please rate the extent to which each of the following is a challenge your country faces in preventing theft and illicit exportation of its cultural property:**

	Not a challenge	Somewhat of a challenge	A considerable challenge	A major challenge	N/A
Gaps in national legislation to protect cultural property					
Lack of police capacity related to cultural property					
Lack of customs capacity related to cultural property					
Lack of coordination between relevant stakeholders					
Lack of inventories and databases in museums					
Inadequate security systems in museums					
Inadequate security of archaeological sites					
Lack of cooperation from the art market					
Lack of expertise/capacity in the legal field (lawyers, judges, prosecutors, etc.)					

	Not a challenge	Somewhat of a challenge	A considerable challenge	A major challenge	N/A
Lack of public awareness					
Other (please specify):					

**If applicable, please describe the three biggest barriers your country faces in securing the return/restitution of cultural property that has been stolen/illegally exported (e.g., cost of legal proceedings in other countries, lack of communication with counterparts in other countries, etc.):**

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**If applicable, please describe the most common reasons why your country is not able to fulfill requests for return/restitution made by other countries (e.g., requests made outside parameters of existing legal framework, lack of evidence base for claims, etc.)**

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### UNESCO Support for the Implementation of the 1970 Convention

**UNESCO and its partners have developed a number of tools to help State Parties implement the 1970 Convention. Please rate how helpful these tools have been to your country:**

	Not at all helpful	Somewhat helpful	Very helpful	Extremely helpful	N/A
Object ID Standard (ICOM, the Getty, and UNESCO)					
UNESCO International Code of Ethics for Cultural Property Dealers					
ICOM Code of Ethics for Museums					
UNESCO Database of National Cultural Heritage Laws					
Basic Measures Concerning Cultural Items Offered for Sale on the Internet (INTERPOL, UNESCO, ICOM)					
Model Provisions Defining State Ownership of Undiscovered Cultural Property (UNESCO and UNIDROIT)					
Model Export Certificate for Cultural Objects (UNESCO and WCO)					

Please provide additional details on how your country has used UNESCO's tools:

--

What additional tools would be helpful for UNESCO to develop:

--

Have you or other stakeholders in your country participated in any of UNESCO's capacity building workshops or projects related to preventing illicit trafficking of cultural property in the past five years?

	Yes
	No

If yes, how did these workshops or projects contribute to the implementation of the 1970 Convention in your country? Please provide specific examples where possible.

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There are a number of ways the UNESCO Secretariat could support State Parties in the implementation of the 1970 Convention in the future, in addition to servicing the governing bodies of the Convention. Please indicate the extent to which the Secretariat should give priority to the following activities:

	No priority	Low priority	Somewhat of a priority	High priority
Support in reforming national policies and legislation				
Promoting policy dialogues between countries				
Support for inventorying projects				
Specialized trainings for police				
Specialized trainings for customs				
Specialized trainings for museum staff				
National workshops to bring together stakeholders across departments, ministries, etc.				
Regional workshops to bring together stakeholders from across the region across departments, ministries, etc.				
Awareness raising activities (press releases, video clips, etc.)				
Development of more legal and practical tools such as the WCO model export certificate, the Database of National Cultural Heritage Laws, etc.				
Facilitating the sharing of best practices between countries (e.g., online or through a newsletter)				

	No priority	Low priority	Somewhat of a priority	High priority
Other (please specify):				

**Please provide any additional suggestions for how UNESCO should focus its work on this topic going forward:**

**Any other additional issues or comments you would like to share:**



## ***E: Bibliography***

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### **Documents produced or commissioned by UNESCO**

“Strengthening the Governance of Culture to Unlock Development Opportunities. Results of the UNESCO-EU Expert Facility Project” for more information.

<http://unesdoc.unesco.org/images/0022/002246/224630E.pdf>

1970 Convention Emergency Fund. <http://www.unesco.org/new/en/culture/themes/illicit-traffic-of-cultural-property/1970-convention-emergency-fund/>

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[http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/BKD1\\_PROMOTION\\_1970.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/BKD1_PROMOTION_1970.pdf)

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