

## **CULTURE UNDER THREAT:**

### **A BACKGROUND READER FOR THE ART MARKET**

On April 13, the Antiquities Coalition released its first [report](#) *Culture Under Threat: Recommendations for the U.S. Government* ("Report"). This Report detailed the current cultural, economic, and security crisis in the Middle East and North Africa. More importantly, it provided 31 specific recommendations for the United States Government and other stakeholders to address. Below are the specific recommendations distilled from the Report addressed to the art market:

- Art market players should pledge to be fully transparent in their dealings, making publicly available documentation of legal title and known ownership history for all antiquities.
- Museums that receive public funding should adopt a disclosure policy that follows the intent of the Freedom of Information Act (FOIA).
- A relevant professional organization should establish a registry of antiquities dealers who are verified to abide by prescribed ethical codes and industry best practices.
- Because incidents of looting most often remain undiscovered until the objects surface on the market, and thus no records of their theft exist, we call upon stolen art databases to cease certifying antiquities.

Encouraged by the response to the first Report, the Antiquities Coalition is now launching a follow-up report specifically geared to developing recommendations geared to the art market.. The documents, legislation, and articles in this Reader are useful as background information on existing efforts to provide regulation of illicit traffic in conflict antiquities, both national and international, legislation, and efforts at encouraging self-regulation. The recent UNESCO conference in March 2016 with follow-up, the Basel Art Market Governance Report, and Codes of Ethics are efforts with respect to the latter, and a good starting point for the discussion of the issues as well as existing obstacles.

This Reader is intended to provide participants on the Art Market Task Force to assist in developing recommendations for art market stakeholders (auction houses, antique dealers, gallery owners, brokers and experts), operators of online sales platforms, museums and collectors to deter the illicit traffic in conflict antiquities.

Because the illicit trade is global, national laws require harmonization to prevent "safe havens." International cooperation and consensus building against collecting conflict antiquities, self-regulation and professional due diligence, newly defined "cultural crimes" are useful subjects of inquiry.

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3. ICOM Code of Ethics for Museums

4. Association of Art Museum Directors Code of Ethics

5. UNESCO International Code of Ethics for Dealers in Cultural Property

6. World Archaeology Congress Code of Ethics
7. Archeological Institute of America Code of Ethics

- I. INTRODUCTION AND OVERVIEW TO ISSUES TO BE ADDRESSED WITH RESPECT TO ART MARKET
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# UNESCO's Édouard Planche on the looting of antiquities in war zones

PARIS | 19 February 2015 | AMA | [Tweet](#) | [LinkedIn](#)

During a speaker event at the Club de la chasse et de la nature, organised by AMA on 16 February, Édouard Planche, a specialist in the trafficking of cultural goods at UNESCO, addressed a small audience on the subject of the looting of artworks and artefacts in war zones. ...

. The Middle-Eastern country is home to six UNESCO world heritage sites: the ancient city of Aleppo, the ancient city of Bosra, the ancient city of Damascus, the Krac des Chevaliers, the ancient city of Palmyra, and the ancient cities of the North; along with no fewer than twelve sites which are currently being considered for official recognition as world heritage sites, including Elba, Mari, Dura Europos, and Apamea. Since the beginning of the Syrian conflict 290 sites of cultural or archaeological importance have been affected, with 24 destroyed, 104 seriously damaged, 85 partially damaged, and 77 believed to be damaged. Amongst the worst affected are Aleppo, Damascus, the Krac des Chevaliers, Palmyra, Dura Europos, Bosra, Elba, Apamea, and Raqqa.

**The funding of terrorist activities through the trafficking of ancient artefacts.** While some countries are not yet fully involved in the fight against illicit traffic of cultural heritage from Syria and Iraq, most of the bordering countries are doing significant efforts to cooperate in this field. To give an idea of the extent of the problem... the legal trade of antiquities is a \$60 billion-a-year industry, but as far as figures related to the illegal trade in the world and in Syria and Iraq are concerned, it is extremely difficult to provide a precise estimate. “the trafficking of drugs, arms, and antiquities are all means of money laundering [...] if you purchase a Syrian antiquity, you are supporting organised crime”. The only silver lining to the situation seems to be that authorities in charge of the country’s antiquities succeeded in safeguarding the majority of the important collections in secure vaults beneath banks in Damascus prior to the conflict.

“terrorist groups in the area employ professional archeologists to show them important sites, before digging them up with bulldozers”. As for the Palmyra sepulchres and the bust that have been stolen from the site ...: “I’m sure that in a few months time these artefacts will be proposed to Christie’s and Sotheby’s for \$200,000 – \$300,000, if not more [...] it’s the same story as with the Angkor temples. Thankfully, their internal standards and due diligence processes will prevent them from doing so.” **what action does UNESCO take?** “We act in several different ways. The aim is to be preventative before conflicts occur [...] to work in cooperation with our partners [...]. Many police forces are cooperating with UNESCO in the fight against illicit traffic of cultural heritage, starting with INTERPOL Works of Art Unit, as well as the Guardia Civil (Spain), OCBC (France), FBI (USA), Carabinieri (Italy), Federal Police (Switzerland). UNESCO wants to be able to warn them about what has been stolen, and to recover photos, if possible, as well as stolen pieces, so that they can be recorded in a data base.”

**The discussion moved on to auction houses, which are essential links for trafficking.** The speaker took the example of Galerie Golconda, in Saint-Paul de Vence, which recently sold an Iraqi cuneiform block, which was banned from sale. Police intervened immediately, and according to Planche “it is now up to them to do the work”. The work’s certificate consists of 30 lines about the history of the block, the provenance of which is never mentioned but which features, nevertheless, “the police registration number 1081, which doesn’t say anything at all”, Planche adding that “what interests us is knowing whether this comes from an indexed collection, when it was returned to France

“Can you freeze the sales of objects that come from Syria?” Édouard Planche’s reply was an encouraging one: “yes”, as the 2199 (2015) resolution has now been adopted by the Security Council in the UN. Most importantly, paragraph 17, states: “All member states should take deliberate measures to stop the trade of Iraqi and Syrian cultural goods and other objects of archaeological, historical or cultural value [...] which have been smuggled illegally from Iraq since 6 August 1990 and Syria since 15 March 2011 [...]” The problem is that these aforementioned works were “registered in a collection during the 1960s” because it was only in the 1970s that international regulations made it obligatory to state the provenance of a work.

The speaker concluded with a few words on the role of governments, mentioning the existence of UNIDROIT, an international organisation that watches over the standardisation of private international law. UNIDROIT has established an agreement that should be directly applied by the states, stating that: “every stolen cultural good should be returned unconditionally [...] and the burden of the proof should be reversed in good faith.” Italy and Greece, for example, have already ratified this agreement; whilst some important countries in the art market such as France, the United States, and the United Kingdom, still refuse to do so...

# The movement of cultural property in 2016: regulation, international cooperation and professional diligence for the protection of cultural heritage



**30 March 2016 - 9 a.m. to 6 p.m.**

**One-day round table focused on the art market and its important role in the fight against the illicit trafficking of cultural property took place at UNESCO Headquarters, Room II**

This pioneering event brought together for the first time market stakeholders, including representatives of auction houses and online platforms, museum representatives, cultural heritage experts, specialized intergovernmental and non-governmental organizations as well as Member States, to take stock on the situation of the illicit trade in cultural heritage and identify areas to improve synergies and strengthen international cooperation to successfully overcome this worldwide issue.

In partnership with the Conseil des Ventes Volontaires (CVV), the regulatory authority for operators of voluntary sales operators of chattels by public auction in France, this UNESCO event was opened by Francesco Bandarin, Assistant Director-General for Culture to UNESCO along with the Catherine Chadelat, President of the CVV. Two experts presented the state of the art market and the state of trafficking in cultural property respectively, before four round table sessions took place with speakers representing both the public and the private sectors.

This is timely considering the conflicts currently ravaging the Middle East, particularly in Iraq, in the Syrian Arab Republic, in Libya and in Yemen, have led to a surge in trafficking in cultural property, mainly archaeological objects, which are subject to large-scale looting and the sale of which are used to finance terrorism, as reflected in Resolution 2199, unanimously adopted by UN Security Council on 12 February 2015. Objects found in various marketplaces highlight the challenges in fighting against illicit trafficking in cultural property. Concerted efforts must be made to remedy this scourge. A balance must be met between the exchange of cultural property, whose circulation is authorized and enriches cultural diversity and knowledge sharing, with the affirmation by States of their cultural identity, and the right to protect certain objects from illegal export.

To achieve this balance, all the market stakeholders must comply with legal and ethical regulations for the protection of heritage and the legal security of transactions. In this context, strengthening cooperation between international and national governmental as well as non-governmental institutions with art market stakeholders (auction houses, antique dealers, gallery owners, brokers, experts, operators of online sales platforms and collectors) is vitally necessary. Raising public awareness, adapting good ethical practices, harmonizing international and national regulations are all avenues that were

explored during this round table event to better fight against illicit trafficking in cultural property and to better protect heritage in the future.

## Webcast

**Webcast of the Round Table, Paris, UNESCO Headquarters, 30 March 2016, Room II**

Morning session: 9 a.m. to 1 p.m.

[mms://stream.unesco.org/vod/CLT\\_300316\\_AM\\_en.wmv](mms://stream.unesco.org/vod/CLT_300316_AM_en.wmv)

Afternoon session: 2:30 p.m. to 6 p.m.

[mms://stream.unesco.org/vod/CLT\\_300316\\_PM\\_en.wmv](mms://stream.unesco.org/vod/CLT_300316_PM_en.wmv)

(please note that only the audio is available for the first two minutes of the webcast)

**Disclaimer:** The interpretation of proceedings serves to facilitate communication and does not constitute an authentic record of the proceedings. Only the original speech is authentic.



## See also:

Samuel Andrew Hardy: [Archaeomafias traffic antiquities as well as drugs](#)

[Headline Figures and Misleading Statistics Relating to Antiquities and the Syrian Crisis](#); International Association of Dealers in Ancient Art (IADAA)

### Background paper

[Provenance for cultural objects: Several difficulties and some lines of actions. The issue in Latin American countries](#), Archaeologist and University Professor, Maria Luz Endere

**Information** on the "Fondation Gandur pour l'art" (in French only)

**Annual Report** (in French only)

Rapport annuel 2014, Fondation Gandur pour l'art



## **ROUND TABLE**

### **The movement of cultural property in 2016: regulation, international cooperation and professional diligence for the protection of cultural heritage**

**Wednesday 30 March 2016**

**UNESCO Headquarters (Room II), Paris**

**AGENDA**



United Nations  
Educational, Scientific and  
Cultural Organization



Convention for the fight  
against the illicit trafficking  
of cultural property



8:30 a.m. Welcome coffee

### OPENING AND INTRODUCTION OF THE ROUND TABLE

09:00 a.m. - 09:30 a.m.

#### Opening address

- Francesco Bandarin, Assistant Director-General for Culture a.i., UNESCO
- Catherine Chadelat, President of the Conseil des Ventes Volontaires (CVV)
- Ye Zhu, Chief of Section of International Organisations, State Administration of Cultural Heritage (SACH) China
- Corrado Catesi, Coordinator, Works of Art Unit, INTERPOL
- Maria Vlazaki, Chairperson of the Subsidiary Committee of the Meeting of States Parties to the 1970 UNESCO Convention

09:30 a.m. - 10:00 a.m.

#### Introduction

Mechtild Rössler, Director of the Division for Heritage and Secretary of the 1970 Convention, UNESCO

#### State of the art market in 2016

Françoise Benhamou, Economist, Professor at University Paris 13, expert in cultural and digital economics, France

#### State of trafficking in cultural property in 2016

Samuel Andrew Hardy, Archaeologist, historian and criminologist, expert in the illicit trafficking of antiquities, United Kingdom

### ROUND TABLE No. 1

10:00 a.m. - 11:30 a.m.

#### *The difficulty of establishing provenance for cultural objects issued from plundered archaeological sites*

*The increase in the illicit excavations of archaeological sites, in particular in countries with an abundance of such sites, is grounds for growing concern. Preventive measures are vitally important in the face of this threat. The speakers will discuss the difficulties encountered in curbing unauthorized excavations and in exercising due diligence to ascertain provenance.*

**Moderator:** Edouard Planche, 1970 Convention Programme Specialist, UNESCO

- Maria Luz Endere, Archaeologist and University Professor, Buenos Aires, Argentina
- Ali Ahmed Ali Farhan, Director General of Seized Artifacts Department, Egypt
- Samuel Sidibé, Director of the National Museum of Mali
- Cecilia Fletcher, Senior Director, Compliance and Business Integrity Counsel, Europe, Sotheby's
- Jean-Claude Gandur, President, the Gandur Art Foundation
- Gianpietro Romano, Expert of the Carabinieri Department for Protection of Cultural Heritage, TCP, Italy

Q&A

20 minutes



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**ROUND TABLE No. 2**

**11:30 a.m. - 1:00 p.m.**

***The role of transit States and market professionals in fighting against illicit trafficking***

*Today's conflict zones, especially in the Middle East, have highlighted the inextricable link between cultural heritage protection and international security. Accordingly, the countries through which transit cultural goods of illicit origin from this region have a crucial role to play, in particular in the light of certain practices (storage in free ports, money-laundering, etc.).*

**Moderator:** Gilles Andreani, President of the French Observatory of Art Market

- Candemir Zoroğlu, Expert in Combatting Illicit Trafficking of Cultural Property, Ministry of Culture and Tourism, Turkey
- Jean-Robert Gisler, Coordinator of the Cultural Heritage Unit, Fedpol, Switzerland
- Martin Wilson, Global Managing Director, Christie's
- Mariya Polner, Policy Advisor, Enforcement and Compliance Sub-Directorate, World Customs Organization
- Catherine Muganga, Legal Officer, Organized Crime and Trafficking Branch, UNODC
- Anne-Catherine Robert-Hauglustaine, Director General, ICOM

**Q&A**

20 minutes

**1:00 p.m. - 2:30 p.m.**

**Lunch break**



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2:15 p.m. - 2:30 p.m. Welcome coffee

### ROUND TABLE No. 3

2:30 p.m. - 4:00 p.m.

#### *Diligence of professionals and market regulation to effectively fight against illicit trafficking*

*Harmonized regulation of the art market at the international level is one of the challenges to which the sector's professionals absolutely must respond. Harmonization efforts are all the more urgent as online sales of cultural property are increasing considerably.*

**Moderator:** Catherine Chadelat, CVV President

- Douglas Bort, Special Agent, Homeland Security Investigations, USA
- Alexandre Giquello, Chairman, Supervisory Board of the Drouot Auction House
- Sonia Farsetti, Deputy President, European Federation of Auctioneers
- Marina Schneider, Senior Legal Officer, UNIDROIT
- Wolfgang Weber, Head of Global Regulatory Policy, eBay
- UN Sanctions Monitoring Team

Q&A

20 minutes

### ROUND TABLE No. 4

4:00 p.m. - 5:30 p.m.

#### *Challenges, solutions and prospects*

*This final round table will propose a summary of the arguments put forward by the various speakers at the previous round tables, with a view to making the market more transparent, for a better implementation of due diligence, and to strengthen cooperation among States to this end.*

**Moderator:** Mechtild Rössler, Director of Heritage Division and Secretary of the 1970 Convention, UNESCO

- Qahtan Al Abeed, Director of Basrah Museum, Iraq
- Claire Chastanier, General Secretary of the Observatory on the Art Market and Movement of Cultural Property, Minister of Culture and Communication, France
- Vincent Geerling, Chairman, International Association of Dealers in Ancient Art (IADAA)
- Dominique Chevalier, Chairman, French National Syndicate of Antique Dealers
- Zhifeng Qi, Deputy Chairman, China Association of Auctioneers
- Claudia von Selle, Senior Advisor, Basel Institute on Governance

Q&A

20 minutes

5:30 p.m. – 6:00 p.m.

*Closing of proceedings and acknowledgments: Francesco Bandarin or Mechtild Rössler (UNESCO) Catherine Chadelat (CVV) and Maria Vlazaki (Chairperson of the Subsidiary Committee of the Meeting of States Parties to the 1970 UNESCO Convention)*

13.03.2016 - Culture Sector

# Addressing the illicit trafficking of cultural property at the end of the market chain



Protecting Cultural Heritage –an Imperative for Humanity © UNESCO

On Wednesday 2 March 2016, the Permanent Missions of Jordan and Italy to the United Nations, together with UNESCO, INTERPOL, and UNODC, organized the First Meeting on Art Markets of Stolen Works of Art as part of the partnership initiative “Protecting Cultural Heritage –an Imperative for Humanity: Acting together against the destruction and trafficking of cultural property by terrorist groups and organized crime”. It was chaired by the Ambassador H.E. Dina Kawar (Jordan) and Ambassador H.E. Inigo Lambertini (DPR of Italy) with the participation of other permanent representatives of member states, Ms. Emily Rafferty, Former director of Metropolitan Museum, as well as representatives of UNESCO, INTERPOL, UNODC, Antiquities Coalition and others.

Participants deliberated on where are the real final destination countries, what could be done to address this problem, what were the risk and the consequences of inaction. In this context, the discussions emphasized the need to address the critical issues at the “Final Destination Countries” and some participants highlighted the importance of due diligence, careful search of provenance, border controls, training and awareness raising, the criminalization of specific harmful conduct or the establishment of administrative offences, international cooperation in response to crime, intelligence sharing, implementation of existing legal frameworks, cooperation of stakeholders, and the importance of implementing the current obligations on countering terrorist financing.

Concrete recommendations were made targeting different stakeholders such as destination countries’ governments, museums, auction houses, international art market dealers, tour operators, companies specialized in the transport of antiquities, judges, magistrates, prosecutors, asset managers, bankers and investment advisors.

The initiative “**Protecting Cultural Heritage –an Imperative for Humanity: Acting together against the destruction and trafficking of cultural property by terrorist groups and organized crime**” was launched last September and focuses on addressing the potential ways to act together against the destruction and trafficking of cultural property by terrorists and organized crime groups in all affected countries.

# Informal Reflection Group Meeting

The Informal Reflection Group (IRG) was established by the Subsidiary Committee of the Meeting of States Parties to the 1970 Convention, at its Third session on 30 September 2015 ([Decision 3.SC 9](#)).

## 2nd Meeting - July 2016

**4 July 2016**

The second meeting of the IRG will meet at UNESCO Headquarters in room IX.

[Information note and draft agenda](#)

## 1st Meeting - June 2016

**3 to 5 June 2016, Delphi, Greece**

Members and Observers of the Committee will meet in Delphi, Greece, to review the outcomes of the [30 March 2016 Roundtable “The movement of cultural property in 2016: regulation, international cooperation and diligence of professionals for cultural heritage protection”](#), organized within the framework of several decisions taken at its last session, with the goal to promote the dialogue between different actors, including strengthening cooperation with art market professionals.

Moreover, the Group will discuss establishing draft procedures to claim protected cultural property on sale at auction and exchange good practices. The Group will also deal with the simplification and standardization of the procedures in cases of theft, seizure or restitution, as well as a review of the national reports on the implementation of the 1970 Convention which were prepared at the last Session of the Subsidiary Committee.

This meeting is generously hosted by the Government of Greece with the support of the People's Republic of China. Simultaneous interpretation will be provided in English and French. Both Member and Observer States are invited to attend this meeting.

[Agenda](#) (rev)

## SECOND MEETING OF THE INFORMAL REFLECTION GROUP OF THE SUBSIDIARY COMMITTEE OF THE MEETING OF STATES PARTIES OF THE 1970 CONVENTION

UNESCO HEADQUARTERS

Room IX - 4 July 2016

### INFORMATION NOTE AND DRAFT AGENDA

The Informal Reflection Group (IRG) was established by the Subsidiary Committee of the Meeting of States Parties to the 1970 Convention, at its Third session on 30 September 2015 ([Decision 3.SC 9](#)).

The first meeting of the IRG took place in Delphi, Greece, between 3 and 5 June 2016. The main topics discussed on this occasion were:

- Outcomes of the 30 March Roundtable “The movement of cultural property in 2016: regulation, international cooperation and diligence of professionals for cultural heritage protection”
- Strengthening cooperation with art market professionals especially focused on online sales
- Standardization of the return and restitution procedure of the cultural objects
- National reports on the implementation of the 1970 Convention

The second meeting of the IRG will take place in Paris, UNESCO Headquarters, on 4 July 2016, in room IX. This meeting will consider the following items:

- Outcomes of the first IRG meeting
- Update on the proposals received for the amendment of the Rules of Procedures of the Subsidiary Committee
- Protection and prevention of illicit trafficking of the documentary heritage (proposal from Mexico)
- Information on the proposed new questionnaire for periodic reporting

**Place:** Room IX, UNESCO Headquarters  
**Time:** 10.00 – 18.00  
**Languages:** English - French interpretation will be provided



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Informal Reflection Group  
of the Subsidiary Committee of the Meeting of  
States Parties to the UNESCO 1970 Convention

## First Meeting of the Informal Reflection Group of the Subsidiary Committee

3 to 5 June 2016 - Delphi, Hellenic Republic

### Agenda

#### Friday 3<sup>rd</sup> of June 2016

3 pm: Departure from Athens International Airport to Hosios Loukas Monastery

<http://whc.unesco.org/en/list/537> .

5 pm: Arrival at Hosios Loukas Monastery

5 pm – 6:30 pm: Guided tour of the Hosios Loukas Monastery

6:30 pm: Departure to Delphi

7:30 pm: Arrival at Delphi

7:30 pm – 8:30 pm: Accommodation arrangements

8:30 pm: Welcome session - *dinner at the European Cultural Center of Delphi*

#### Saturday 4<sup>th</sup> of June 2016

9 am – 10 am: Official opening of the Informal Reflection Group by the Chairperson, Ms Vlazaki, and representatives from local authorities

10 am – 11.30 am: **1<sup>st</sup> Session - Outcomes of the 30 March Roundtable “The movement of cultural property in 2016: regulation, international cooperation and diligence of professionals for cultural heritage protection”**

- Presentation by the Secretariat on the outcomes
- Good Practices
- Discussion

11.30 am - 12 pm *Coffee break*



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12 pm – 2 pm: **2<sup>nd</sup> session –Strengthening cooperation with art market professionals especially focused on online sales**

- Presentation by DHS/Homeland Security Investigations, U.S. Embassy Athens
- Presentation on the role of customs Authorities in the fight against illicit trade of cultural goods

*2 pm – 3 pm Lunch break*

3 pm – 4:30 pm: **3<sup>rd</sup> Session - Standardization of the return and restitution procedure of the cultural objects**

- Procedures of seizure and confiscation of cultural objects
- Role of National Police Authorities on the return of cultural objects on sale: experience of the Hellenic Police
- INTERPOL's role on facilitating the return and restitution procedure
- Discussion

*4:30 pm – 5 pm Coffee break*

5 pm – 6:30 pm: **3<sup>rd</sup> Session - Standardization of the return and restitution procedure of the cultural objects (continued)**

- Presentation of the draft document on standard procedures for return of cultural objects on sale, by the UNESCO 1970 Secretariat
- Case Study presentation: Repatriation of stolen post byzantine icons from Greece
- Discussion

6:30 pm – 7:30 pm: **4<sup>th</sup> Session - National reports on the implementation of the 1970 Convention**  
based on the 'Review of National Reports (C70/15/3.SC/6)' prepared at the 3rd Session  
of the Subsidiary Committee

*8:30 pm: Dinner at Arachova*

**Sunday 5<sup>th</sup> of June 2016**

9 am – 10 am: Final discussion and remarks

10 am – 11:30 am: Guided tour of the archaeological site and museum of Delphi

11:30 am: Departure from Delphi

2:30 pm: Arrival at Athens International Airport – departure of the participants

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## II. INTERNATIONAL LEGAL CONVENTIONS FOR PROTECTING CULTURAL HERITAGE AND THE TRADE IN ILLICIT ANTIQUITIES

- A. Hague Convention Concerning the Laws and Customs of War on Land, October 8, 1907
- B. Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954
- C. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, November 14, 1970
- D. Convention Concerning the Protection of the World Cultural and Natural Heritage, November 23, 1972
- E. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995
- F. Convention on the Protection of the Underwater Cultural Heritage, November 6, 2001
- G. Convention for the Safeguarding of the Intangible Cultural Heritage, October 17, 2003
- H. Convention on the Protection and Promotion of the Diversity of Cultural Expression, October 20, 2005

### III. SPECIFIC INTERNATIONAL, AND REGIONAL LEGISLATION RELATED TO THE MIDDLE EAST ANTIQUITIES TRADE AND ISIL

- A. United Nations Security Council Resolution 1483
- B. United Nations Security Council Resolutions 2199 (12 February 2015) and 2253 (17 December 2015)
- C. General Assembly 69/281
- D. The European Parliament: Joint Resolutions on the Destruction of Cultural Sites Perpetrated by ISIS
- E. The Cairo Declaration, May 2015

## II. INTERNATIONAL LEGAL CONVENTIONS FOR PROTECTING CULTURAL HERITAGE AND THE TRADE IN ILLICIT ANTIQUITIES

- Hague Convention Concerning the Laws and Customs of War on Land, October 8, 1907, 36 Stat. 2277, 15 U.N.T.S. 9. <http://www.icrc.org/ihl.nsf/0/1d1726425f6955aec125641e0038bfd6?OpenDocument>
- Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention 1954, The Hague, 14 May 1954
  - The Hague Convention regulates the conduct of nations during war and military occupation in order to assure the protection of cultural sites, monuments, and repositories, including museums, libraries, and archives. 122 nations have ratified the Convention, the U.S. in 2008.
  - Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflicts, 26 March 1999, 38 I.L.M. 769. [http://www.unesco.org/culture/laws/hague/html\\_eng/protocol2.shtml](http://www.unesco.org/culture/laws/hague/html_eng/protocol2.shtml)  
The Second Protocol is intended to supplement the provisions of the original 1954 Hague Convention and to reinforce its implementation. It contains general provisions for the safeguarding of cultural property that include taking preparatory measures in times of peace, fostering respect for cultural property, and employing precautionary measures in times of conflict.
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, November 14, 1970, 823 U.N.T.S. 231. ("1970 Convention") [http://www.unesco.org/culture/laws/1970/html\\_eng/page1.shtml](http://www.unesco.org/culture/laws/1970/html_eng/page1.shtml)
  - The 1970 Convention was conceived as the lynchpin of an international legal framework for controlling traffic in illegally exported or stolen cultural property and is based primarily on an essentially public international law and administrative law model.
  - Among other things, the final version of the 1970 UNESCO requires signatories to take appropriate steps to 'prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned.' The 1970 UNESCO also calls for an embargo on cultural property 'stolen from a museum or a religious or secular public monument or similar institution in another State Party ... provided that such property is documented as appertaining to the inventory of that institution.' In addition, it allows a member state whose cultural property is in jeopardy to request other member states to 'participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned.' The 1970 UNESCO is not retroactive, and enters into force three months after a state's ratification. It is, thus, not available for colonial and World War II claims.
  - Principally, 1970 UNESCO works at the level of government administrations: governments are required to take action at the request of a State party to the convention to seize cultural property which has been stolen. They must also collaborate to prevent major crises in the protection of cultural heritage, such as those now occurring in Iraq and Afghanistan.

- Convention Concerning the Protection of the World Cultural and Natural Heritage, November 23, 1972, 27 U.S.T. 37, 1037 U.N.T.S. 151. Adopted by the General Conference at its seventeenth session Paris, 16 November 1972 [http://whc.unesco.org/world\\_he.htm](http://whc.unesco.org/world_he.htm)
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, June 24, 1995, 34 I.L.M. 1322 (Rome, 24 June 1995) <http://www.unidroit.org/english/conventions/c-cult.htm>  
The convention applies to claims of an international character for (a) the restoration of stolen cultural objects (b) the return of objects removed from the territory of a contracting state, contrary to its law regulating export of cultural objects.
- Convention on the Protection of the Underwater Cultural Heritage, November 6, 2001, 41 I.L.M. 40 [http://www.unesco.org/culture/laws/underwater/html\\_eng/convention.shtml](http://www.unesco.org/culture/laws/underwater/html_eng/convention.shtml)
- Convention for the Safeguarding of the Intangible Cultural Heritage, October 17, 2003 <http://unesdoc.unesco.org/images/0013/001325/132540e.pdf>
- Convention on the Protection and Promotion of the Diversity of Cultural Expression, October 20, 2005, (Syria, Iraq, the European Union and the U.S. have ratified) <http://unesdoc.unesco.org/images/0014/001429/142919e.pdf>

### III. SPECIFIC INTERNATIONAL, AND REGIONAL LEGISLATION RELATED TO THE MIDDLE EAST ANTIQUITIES TRADE AND ISIL

#### A. United Nations Security Council Resolution 1483

- May 2003, the United Nations Security Council passed Resolution 1483 urging member states to facilitate the safe return to Iraqi institutions of Iraqi cultural property allegedly removed from the Iraq National Museum, the National Library and other locations in Iraq since the adoption of Resolution 661 in 1990. Several nations, including so-called “market-nations” involved in the global art and antiquities market have taken steps to implement the Resolution. On May 28, 2003, the Swiss Federal Council imposed a ban that covers importation, exportation and transit as well as selling, marketing, dealing in, acquiring or otherwise transferring Iraqi cultural assets stolen in Iraq since 2 August 1990, removed against the will of the owner, or taken out of Iraq illegally. It includes cultural assets acquired through illegal excavations. Such assets are presumed to have been exported illegally if they can be proved to have been in the Republic of Iraq after 2 August 1990.<sup>[1]</sup>
- In the United Kingdom, the Iraq (United Nations Sanctions) Order 2003<sup>[2]</sup> brought these restrictions into effect on June 14, 2003. The Order prohibits the import or export of illegally removed Iraqi cultural property and created a criminal offence with a maximum penalty of seven years imprisonment for “any person who holds or controls any item of illegally removed Iraqi cultural property...unless he proves he did not know and had no

<sup>[1]</sup> Ordinance on Economic Measures against the Republic of Iraq of 28 May 2003, SR 946.206, available at: [www.kultur-schweiz.admin.ch/arkgt/kgte/e/e\\_kgt.htm](http://www.kultur-schweiz.admin.ch/arkgt/kgte/e/e_kgt.htm).

<sup>[2]</sup> The Iraq (United Nations Sanctions) Order 2003, Statutory Instrument 2003, No, 1519 (UK, The Stationery Office Limited (TSO) 2003) ©Crown Copyright 2003. The Order inverts the burden of proof which usually applies in criminal prosecutions. Normally, the object is “innocent until proven guilty.” In the case of Iraqi cultural property, the object is presumed guilty unless proven otherwise.

reason to suppose that the item in question was illegally removed Iraqi material.”<sup>[3]</sup>

- Initially the United States left existing sanctions in place for illegally removed Iraqi cultural property whilst lifting sanctions for most other commercial goods.
- On October 17, 2003, UNESCO General Conference adopted the Declaration Concerning the Intentional Destruction of the Cultural Heritage.<sup>[5]</sup> The text emerged mainly in response to the destruction of the Bamiyan Buddhas, but its language is broad enough to cover the destruction by rampant looting of Iraqi cultural heritage<sup>[6]</sup>. The Preamble begins by, “[r]ecalling the tragic destruction of the Buddhas of Bamiyan that affected the international community as a whole,”<sup>[7]</sup> The Declaration recognizes the commitment of UNESCO Member States to fight against the intentional destruction of this common heritage in any form so that it may be transmitted to succeeding generations.
- What obligations, if any, do the Hague Convention and the First Protocol place on an occupying force to safeguard antiquities, museums and sites in situations as occurred in Iraq, both before and after the declaration of the end of military operations? Do the principles of the Hague Convention apply once a war has been declared at an end? With the end of hostilities following the end of operations, the greatest threat to Iraq’s cultural heritage is not from the “collateral damage of war,” but from the civil disorder and the ensuing looting and destruction of museums, monuments and sites

#### B. United Nations Security Council Resolutions 2199 (12 February 2015) and 2253 (17 December 2015)

- Unanimously adopting resolution 2199 under the binding Chapter VII of the United Nations Charter. The Council condemned any trade with the Islamic State in Iraq and the Levant (ISIL, also known as Daesh), the Al-Nusrah Front and other entities designated to be associated with Al-Qaida . The resolution was co-sponsored by more than 35 countries, and it targets the three key areas of revenue for ISIS and other terrorist organizations - oil, antiquities and ransom from kidnappings. On 17 December 2015, concerned with the implementation by Member States, the Security Council issued Resolution 2253. It calls upon Member States to fulfill their existing commitments under Resolution 2199, while reinforcing and expanding these obligations. Resolution 2253 additionally requires that they report any “interdictions of antiquities, as well as the outcome of proceedings brought against individuals and entities as a result of any such activity

*(see next pages)*

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<sup>[3]</sup> The Order inverts the burden of proof which usually applies in criminal prosecutions. Normally, the object is “innocent until proven guilty.” In the case of Iraqi cultural property, the object is presumed guilty unless proven otherwise. The British Art Market Federation reported to the House of Commons in 2004, that legitimate trade in Mesopotamian antiquities had collapsed to virtually nothing in the aftermath of the Iraq war and the related establishment of the specific legislation aimed at preventing illicit trade in cultural property sourced in Iraq.

<sup>[5]</sup> UNESCO Declaration Concerning the Intentional Destruction of Cultural Heritage, October 17, 2003. The full text of the Declaration is available on at <http://unesdoc.unesco.org/images/0013/001331/133171e.pdf#page=68>

<sup>[6]</sup> The U.S. Department of State through its Bureau of Educational and Cultural Affairs maintains a constantly updated website on Iraqi cultural heritage at <http://exchanges.state.gov/culprop/iraq.html>

<sup>[7]</sup> *ibid.* fn. 13



**UNITED  
NATIONS**

**MEETINGS COVERAGE AND  
PRESS RELEASES**

12 FEBRUARY 2015

SC/11775

# **Unanimously Adopting Resolution 2199 (2015), Security Council Condemns Trade with Al-Qaida Associated Groups, Threatens Further Targeted Sanctions**

**7379th Meeting (AM)**

**SECURITY COUNCIL | MEETINGS COVERAGE**

The Security Council this morning underlined the obligations of Member States to take steps to prevent terrorist groups in Iraq and Syria from benefiting from trade in oil, antiquities and hostages, and from receiving donations.

Unanimously adopting resolution 2199 (2015) under the binding Chapter VII of the United Nations Charter, the Council condemned any trade with the Islamic State in Iraq and the Levant (ISIL, also known as Daesh), the Al-Nusrah Front and other entities designated to be associated with Al-Qaida under resolutions 1267 (1999) and 1989 (2011), threatening possible further listings for targeted sanctions under those resolutions.

It affirmed that the direct and indirect trade in oil and refined oil products, modular refineries and related materials was subject to the requirement of resolution 2161 (2014) that countries ensure that their nationals and those in their territories not make assets or economic resources available to ISIL and related terrorist groups.

Condemning the destruction of cultural heritage in Iraq and Syria, particularly by ISIL and the Al-Nusrah Front, it decided that all Member States should take steps, in cooperation with Interpol, the United Nations Educational, Scientific and Cultural Organization (UNESCO) and other international organizations, to prevent the trade in items of cultural, scientific and religious importance illegally removed from either country during periods of conflict.

Expressing its determination to end hostage-taking by the terrorist groups, it said that the provisions of resolution 2161 (2014) also banned the payment of ransom to such groups, regardless of how or by whom the ransom is paid. It reiterated its call on Member States to help secure the safe release of hostages without payments or political concessions. It further emphasized the importance of all Member States in preventing their nationals and others in their territories from making donations to the terrorists.

Finally, it urged States to prevent the terrorist groups from gaining access to international financial institutions and reaffirmed States' obligations to prevent the groups from acquiring arms and related materiel, along with its call to enhance coordination at the national, regional and international level for that purpose.

It called upon Member States to report within 120 days to the Al-Qaida Sanctions Committee on their compliance with the resolution, calling for the United Nations counter-terrorism bodies to also track progress on implementation.

Speaking after the adoption, the representatives of the Russian Federation, United States, United Kingdom, Jordan and China welcomed the action. The Russian representative, Vitaly I. Churkin, thanked the other members of the Security Council for their constructive collaboration on the text, calling it an important step on suppressing the terrorist threat in the Middle East, the effect of which was felt far beyond the region.

The representative of the United States, Samantha Power, agreed that the resolution showed the joint international commitment on countering terrorism and, in particular, defeating ISIL. She said that because of actions of the coalition against ISIL, securing resources had become harder for it and the resolution would help cut off further sources of funds and help end the ongoing brutality of the group. She regretted, however, that the Council had not dealt with a major factor that led to the rise ISIL, the cruelty of the Assad regime.

The representative of the United Kingdom, Mark Lyall Grant, said he looked forward to working on the full and effective implementation of the resolution, and France's representative, François Delattre, said that the recent attacks on his country made it even more resolute to fight the scourge of terrorism.

Jordan's representative, Mahmoud Daifallah Mahmoud Hmoud, said that all the tools of international law must be used to fight terrorism, pledging his country would remain one of the leaders in the battle following the martyrdom of its pilot. Finally, the representative of China, Liu Jieyi, emphasized the importance of avoiding double standards in fighting terrorism and avoiding a linkage with any religion or ethnic group. He called for cooperation on cutting off terrorists' ability to utilize the Internet for their activities.

The meeting opened at 10:05 a.m. and closed at 10:23 a.m.

### Resolution

The full text of resolution 2199 (2015) reads as follows:

*"The Security Council,*

*"Reaffirming* its primary responsibility for the maintenance of international peace and security, in accordance with the Charter of the United Nations,

*"Reaffirming* that terrorism in all forms and manifestations constitutes one of the most serious threats to international peace and security and that any acts of terrorism are criminal and unjustifiable regardless of their motivations, whenever and by whomsoever committed,

*"Reaffirming* the need to combat by all means, in accordance with the Charter of the United Nations and international law, including applicable international human rights, refugee, and humanitarian law, threats to international peace and security caused by terrorist acts, stressing in this regard the important role the United Nations plays in leading and coordinating this effort,

*"Emphasizing* that sanctions are an important tool under the Charter of the United Nations in the maintenance and restoration of international peace and security including countering terrorism, and *underlining* the importance of prompt and effective implementation of relevant resolutions, in particular Security Council resolutions 1267 (1999) and 1989 (2011) as key instruments in the fight against terrorism,

*"Recalling* its Resolutions 1267 (1999), 1989 (2011), 2161 (2014), 2170 (2014), and 2178 (2014) and its Presidential Statements of 28 July 2014 and 19 November 2014, including its stated intention to consider additional measures to disrupt oil trade by Islamic State in Iraq and the Levant (ISIL, also

known as Daesh), Al-Nusrah Front (ANF) and all other individuals, groups, undertakings and entities associated with Al-Qaida, as a source of terrorism financing,

*"Recognizing* the importance of the role that financial sanctions play in disrupting ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, and emphasizing also the need for a comprehensive approach to fully disrupt ISIL and ANF that integrates multilateral strategies with national action by Member States,

*"Reaffirming* the independence, sovereignty, unity and territorial integrity of the Republic of Iraq and the Syrian Arab Republic, and reaffirming further the purposes and principles of the Charter of the United Nations,

*"Reaffirming* also that terrorism cannot and should not be associated with any religion, nationality, or civilization,

*"Stressing* that terrorism can only be defeated by a sustained and comprehensive approach involving the active participation and collaboration of all States, and international and regional organizations to impede, impair, isolate and incapacitate the terrorist threat,

*"Expressing*, in this regard, its deep appreciation for Arab League Resolution 7804 (September 7, 2014), the Paris Statement (September 15, 2014), the FATF statement on countering the financing of ISIL (October 24, 2014) and the Manama declaration on countering terrorist finance (November 9, 2014),

*"Reaffirming* its resolution 1373 (2001) and in particular its decisions that all States shall prevent and suppress the financing of terrorist acts and refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists,

*"Recognizing* the significant need to build capacities of Member States to counter terrorism and terrorist finance,

*"Reiterating its deep concern* that oilfields and their related infrastructure, as well as other infrastructure such as dams and power plants, controlled by ISIL, ANF and potentially other individuals, groups, undertakings and entities associated with Al-Qaida, are generating a significant

portion of the groups' income, alongside extortion, private foreign donations, kidnap ransoms and stolen money from the territory they control, which support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks,

*"Condemning* in the strongest terms abductions of women and children, *expressing outrage* at their exploitation and abuse, including rape, sexual abuse, forced marriage, committed by ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida, and encouraging all state and non-state actors with evidence to bring it to the attention of the Council, along with any information that human trafficking may support the perpetrators financially,

*"Reaffirming* the obligation of Member States to freeze without delay funds and other financial assets or economic resources of persons who commit, or attempt to commit, terrorist acts or participate in or facilitate the commission of terrorist acts; of entities owned or controlled directly or indirectly by such persons; and of persons and entities acting on behalf of, or at the direction of such persons and entities, including funds derived or generated from property owned or controlled directly or indirectly by such persons and associated persons and entities,

*"Expressing its concern* that economic resources such as oil, oil products, modular refineries and related material, other natural resources including precious metals such as gold, silver, and copper, diamonds, and any other assets are made available to ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida, and noting that direct or indirect trade with ISIL and ANF in such materials could constitute a violation of the obligations imposed by resolution 2161 (2014),

*"Reminding* all States of their obligation to ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice,

*"Reaffirming* its decision 2133 (2014) and *noting again* that ransom payments to terrorist groups are one of the sources of income which supports their recruitment efforts, strengthens their operational capability to organize and carry out terrorist attacks, and incentivizes future incidents of kidnapping for ransom,

*"Expressing concern* at the increased use, in a globalized society, by terrorists and their supporters, of new information and communications technologies, in particular the Internet, to facilitate terrorist acts, as well as their use to incite, recruit, fund or plan terrorist acts,

*"Expressing grave concern at the increased incidents of kidnapping and hostage-murdering committed by ISIL, and condemning those heinous and cowardly murders which demonstrate that terrorism is a scourge impacting all of humanity and people from all regions and religions or belief,*

*"Welcoming the report on ANF and ISIL from the Analytical Support and Sanctions Monitoring Team, published on November 14, 2014, and taking note of its recommendations,*

*"Noting with concern the continued threat posed to international peace and security by ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, and reaffirming its resolve to address all aspects of that threat,*

*"Acting under Chapter VII of the Charter of the United Nations,*

### *Oil Trade*

*"1. Condemns any engagement in direct or indirect trade, in particular of oil and oil products, and modular refineries and related material, with ISIL, ANF and any other individuals, groups, undertakings and entities designated as associated with Al-Qaida by the Committee pursuant to resolutions 1267 (1999) and 1989 (2011), and reiterates that such engagement would constitute support for such individuals, groups, undertakings and entities and may lead to further listings by the Committee;*

*"2. Reaffirms that States are required by resolution 2161 (2014) to ensure that their nationals and those in their territory not make assets or economic resources, directly or indirectly, available to ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, and notes that this obligation applies to the direct and indirect trade in oil and refined oil products, modular refineries and related material;*

*"3. Reaffirms that States are required by resolution 2161 (2014) to freeze without delay the funds and other financial assets or economic resources of ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida, including funds derived from property owned or controlled directly or indirectly, by them or by persons acting on their behalf or at their direction;*

*"4. Reaffirms that States are required by resolution 2161 (2014) to ensure that no funds, other financial assets or economic resources are made available, directly or indirectly, by their nationals or by persons within their territory for the benefit of ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida;*

"5. *Recalls* that funds and other financial assets or economic resources made available to or for the benefit of listed individuals or entities are not always held directly by them, and *recalls* in addition that in identifying such funds and benefits, States should be alert to the possibility that property owned or controlled indirectly by the listed party may not be immediately visible;

"6. *Confirms* that economic resources include oil, oil products, modular refineries and related material, other natural resources, and any other assets which are not funds but which potentially may be used to obtain funds, goods or services;

"7. *Emphasizes* therefore that States are required by UN Security Council resolution 2161 (2014) to freeze without delay funds, other financial assets and economic resources of ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida, including oil, oil products, modular refineries and related material and other natural resources owned or controlled by them, or persons acting on their behalf or at their direction, as well as any funds or negotiable benefit arising from such economic resources;

"8. *Recognizes* the need to take measures to prevent and suppress the financing of terrorism, individual terrorists, and terrorist organizations, including from the proceeds of organized crime, inter alia, the illicit production and trafficking of drugs and their chemical precursors, and the importance of continued international cooperation to that aim;

"9. *Emphasizes* that States are required to ensure that their nationals and persons in their territory not make available, directly or indirectly, any funds, other financial assets or economic resources, including oil, oil products, modular refineries and related material and other natural resources that are identified as directed to, collected for, or otherwise for the benefit of ISIL, ANF, and other individuals, groups, undertakings and entities associated with Al-Qaida, as well as any funds or negotiable benefit arising from such economic resources;

"10. *Expresses concern* that vehicles, including aircraft, cars and trucks and oil tankers, departing from or going to areas of Syria and Iraq where ISIL, ANF or any other groups, undertakings and entities associated with Al-Qaida operate, could be used to transfer oil and oil products, modular refineries and related material, cash, and other valuable items including natural resources such as precious metals and minerals like gold, silver, copper and diamonds, as well as grain, livestock, machinery, electronics, and cigarettes by or on behalf of such entities for sale on international markets, for barter for arms, or for use in other ways that would result in violations of the asset freeze or arms embargo in paragraph 1 of resolution 2161 (2014) and *encourages* Member States to

take appropriate steps in accordance with international law to prevent and disrupt activity that would result in violations of the asset freeze or targeted arms embargo in paragraph 1 of resolution 2161 (2014);

"11. *Reaffirms* that all States shall ensure that any person who participates in the financing, planning, preparation or perpetration of terrorist acts or in supporting terrorist acts is brought to justice and ensure that such terrorist acts are established as serious criminal offenses in domestic laws and regulations and that the punishment duly reflects the seriousness of such terrorist acts, and *emphasizes* that such support may be provided through trade in oil and refined oil products, modular refineries and related material with ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida;

"12. *Decides* that Member States shall inform the 1267/1989 Committee within 30 days of the interdiction in their territory of any oil, oil products, modular refineries, and related material being transferred to or from ISIL or ANF, and *calls upon* Member States to report to the Committee the outcome of proceedings brought against individuals and entities as a result of such activity;

"13. *Encourages* the submission of listing requests to the Committee by Member States of individuals and entities engaged in oil trade-related activities with ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida and directs the 1267/1989 Al-Qaida Sanctions Committee to immediately consider designations of individuals and entities engaged in oil trade-related activities with ISIL, the ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida;

"14. *Calls upon* Member States to improve international, regional, and subregional cooperation, including through increased sharing of information for the purpose of identifying smuggling routes used by ISIL and ANF, and for Member States to consider provision of technical assistance and capacity building to assist other Member States to counter smuggling of oil and oil products, and modular refineries and related material, by ISIL, ANF and any other individual, group, undertaking or entity associated with Al-Qaida;

#### *Cultural Heritage*

"15. *Condemns* the destruction of cultural heritage in Iraq and Syria particularly by ISIL and ANF, whether such destruction is incidental or deliberate, including targeted destruction of religious sites and objects;

"16. *Notes with concern* that ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida, are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks;

"17. *Reaffirms* its decision in paragraph 7 of resolution 1483 (2003) and *decides* that all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by prohibiting cross-border trade in such items, thereby allowing for their eventual safe return to the Iraqi and Syrian people and *calls upon* the United Nations Educational, Scientific, and Cultural Organization, Interpol, and other international organizations, as appropriate, to assist in the implementation of this paragraph;

#### *Kidnapping for Ransom and External Donations*

"18. *Reaffirms its condemnation of* incidents of kidnapping and hostage-taking committed by ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida for any purpose, including with the aim of raising funds or gaining political concessions and *expresses its determination* to prevent kidnapping and hostage-taking committed by terrorist groups and to secure the safe release of hostages without ransom payments or political concessions, in accordance with applicable international law;

"19. *Reaffirms* that the requirements of paragraph 1(a) of resolution 2161 (2014) apply to the payment of ransoms to individuals, groups, undertakings or entities on the Al-Qaida Sanctions List, regardless of how or by whom the ransom is paid, *emphasizes* that this obligation applies to ISIL and ANF, and *calls upon* all Member States to encourage private sector partners to adopt or to follow relevant guidelines and good practices for preventing and responding to terrorist kidnappings without paying ransom;

"20. *Reiterates its call upon* all Member States to prevent terrorists from benefiting directly or indirectly from ransom payments or from political concessions and to secure the safe release of hostages, and *reaffirms* the need for all Member States to cooperate closely during incidents of kidnapping and hostage-taking committed by terrorist groups;

"21. *Expresses its grave concern* of reports that external donations continue to make their way to ISIL, ANF and other individuals, groups, undertakings and entities associated with Al-Qaida, and *recalls the importance* of all Member States complying with their obligation to ensure that their nationals and persons within their territory do not make donations to individuals and entities designated by the Committee or those acting on behalf of or at the direction of designated entities;

"22. *Stresses* that donations from individuals and entities have played a role in developing and sustaining ISIL and ANF, and that Member States have an obligation to ensure that such support is not made available to those terrorist groups and other individuals, groups, undertakings and entities associated with Al-Qaida by their nationals and persons within their territory, and urges Member States to address this directly through enhanced vigilance of the international financial system and by working with their non-profit and charitable organizations to ensure financial flows through charitable giving are not diverted to ISIL, ANF or any other individuals, groups, undertakings and entities associated with Al-Qaida;

#### *Banking*

"23. *Urges* Member States to take steps to ensure that financial institutions within their territory prevent ISIL, ANF or other individuals, groups, undertakings or entities associated with Al-Qaida from accessing the international financial system;

#### *Arms and related materiel*

"24. *Reaffirms* its decision that States shall prevent the direct or indirect supply, sale, or transfer to ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida from their territories or by their nationals outside their territories, or using their flag vessels or aircraft, of arms and related materiel of all types including weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical advice, assistance or training related to military activities, as well as its calls for States to find ways of intensifying and accelerating the exchange of operational information regarding traffic in arms, and to enhance coordination of efforts on national, subregional, regional and international levels;

"25. *Expresses concern* at the proliferation of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, to ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida, and its potential impact on regional and international peace and security and impeding efforts to combat terrorism in some cases;

"26. *Reminds* Member States of their obligation pursuant to paragraph 1 (c) of resolution 2161 (2014), to prevent the direct or indirect supply, sale or transfer of arms and related materiel of all types to listed individuals and entities, including ISIL and ANF;

"27. *Calls upon* all States to consider appropriate measures to prevent the transfer of all arms and related materiel of all types, in particular man-portable surface-to-air missiles, if there is a reasonable suspicion that such arms and related materiel would be obtained by ISIL, the ANF or other individuals, groups, undertakings and entities associated with Al-Qaida;

#### *Asset Freeze*

"28. *Reaffirms* that the requirements in paragraph 1 (a) of Security Council resolution 2161 apply to financial and economic resources of every kind, including but not limited to those used for the provision of Internet hosting or related services, used for the support of Al-Qaida and other individuals, groups, undertakings or entities included on the Al-Qaida Sanctions List;

#### *Reporting*

"29. *Calls upon* Member States to report to the Committee within 120 days on the measures they have taken to comply with the measures imposed in this resolution;

"30. *Requests* the Analytical Support and Sanctions Monitoring Team, in close cooperation with other United Nations counter-terrorism bodies to conduct an assessment of the impact of these new measures and to report to the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) within 150 days, and thereafter to incorporate reporting on the impact of these new measures into their reports to the Committee in order to track progress on implementation, identify unintended consequences and unexpected challenges, and to help facilitate further adjustments as required, and further requests the Committee established pursuant to resolutions 1267 (1999) and 1989 (2011) to update the Security Council on the implementation of this resolution as part of its regular oral reports to the Council on the state of the overall work of the Committee and the Monitoring Team;

"31. *Decides* to remain actively seized of the matter."

 **For information media. Not an official record.**

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United Nations  
Educational, Scientific and  
Cultural Organization

06/03/2015

Ref.: CL/4100

Subject: **United Nations Security Council Resolution 2199**

Sir/Madam,

I wish to call your attention to the recent **United Nations Security Council Resolution 2199, issued on 12 February 2015**, which condemns unanimously the destruction of cultural heritage in Iraq and Syria, and adopts legally-binding measures to combat the illicit trafficking of antiquities and cultural objects from these countries. A copy of the Resolution is attached for easy reference.

The adoption of Resolution 2199 is a milestone in order to increase the protection of cultural heritage in Iraq and Syria, **extending to Syria the prohibition of trade of cultural objects** already in place for Iraq since 2003 (Resolution 1483). It **condemns the destruction of cultural heritage in the two countries**, whether such destruction is accidental or deliberate, including targeted destruction of religious sites and objects.

The Resolution notes, with concern, that *"the looting and trafficking of cultural objects is one of the sources of financing for the Islamic State in Iraq and in the Levant (ISIL), al-Nusra Front (ANF) and other individuals, groups and entities associated with al-Qaida"*. It indicates that *"such funding is being used to support recruitment efforts and to strengthen operational capability to organize and carry out terrorist attacks"*.

Moreover, the Security Council reaffirms its decision, in paragraph 7 of Resolution 1483 (2003), and decides that all Member States shall take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance **illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by prohibiting crossborder trade in such items**, thereby allowing for their eventual safe return to the Iraqi and Syrian people. It goes on to call upon the United Nations Educational, Scientific, and Cultural Organization, Interpol, and other international organizations, as appropriate, to assist in the implementation of this paragraph.

**In your capacity** as a key partner in the fight against the looting of Syrian and Iraqi cultural property, your cooperation and vigilance is required more than ever, therefore. **By verifying systematically the provenance and title of cultural objects entering your art market or your collections, especially those of an archaeological nature, and by reporting stolen objects, you can help to prevent the alarming destruction of Syrian and Iraqi cultural heritage.**

I wish to draw your specific attention to paragraph 29 of the Resolution, which *“calls upon Member States to report to the Subsidiary Council Committee, within 120 days, on the steps they have taken to comply with the measures imposed by this Resolution, i.e. before 12 June 2015”*. I should be most grateful if you would inform me about the measures implemented in your country, therefore.

Please also find enclosed in this letter, a copy of the United Nations Security Council press statement and two statements which I issued on the destruction of the Mosul Museum.

Finally, allow me to remind you of a number of tools that exist to help in the fight against the illicit trafficking of cultural property, which you may wish to draw upon in your work:

- (i) the first tool is **INTERPOL’s Stolen Works of Art Database**,<sup>1</sup> a highly efficient system for circulating information in the form of a database that is accessible not only to law-enforcement agencies, but also to individuals who have been provided with specific access rights;
- (ii) the second tool is **the UNESCO Database of National Cultural Heritage Laws**,<sup>2</sup> and,
- (iii) the third tool is the **Emergency Red Lists of Cultural Objects at Risk**,<sup>3</sup> which was created by the International Council on Museums (ICOM) with the aim of helping art and heritage professionals and law enforcement officials to identify Syrian and Iraqi objects that are protected by national and international legislations. Several national databases of stolen objects also are most relevant in this regard

UNESCO is taking every opportunity to raise awareness on this matter, and to encourage the competent authorities and key actors in the art market to act in accordance with the international conventions and resolutions adopted by UNESCO and the United Nations.

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<sup>1</sup> <http://www.interpol.int/Crime-areas/Works-of-art/Database>

<sup>2</sup> <http://www.unesco.org/culture/natlaws/>

<sup>3</sup> <http://icom.museum/resources/red-lists-database/red-list/syria/>;  
<http://icom.museum/resources/red-lists-database/red-list/iraq/>

Please rest assured that we are following closely the evolution of the situation in Syria and Iraq, as well as on the international art market. In this context, I appreciate greatly the concern and actions taken by your country for the implementation of Resolution 2199, which endeavours to safeguard cultural heritage and to fight against illicit trafficking.

Yours sincerely,

Irina Bokova  
Director-General

cc: Permanent Delegations to UNESCO  
National Commissions for UNESCO

Enc.: S/RES/2199 (2015)  
S/RES/1483 (2003)  
Press statement of Security Council  
Recent Statements

## Director-General requests UN Security Council meeting on destruction of heritage in Mosul



**"I am deeply shocked by footage released today showing the destruction of statues and other artefacts of the Mosul Museum. I condemn this as a deliberate attack against Iraq's millennial history and culture, and as an inflammatory incitement to violence and hatred," said the Director-General.**

"This attack is far more than a cultural tragedy – this is also a security issue as it fuels sectarianism, violent extremism and conflict in Iraq. This stands in direct violation to the most recent United Nations Security Council Resolution 2199 that condemns the destruction of cultural heritage and adopts legally-binding measures to counter illicit trafficking of antiquities and cultural objects from Iraq and Syria. This is why I have immediately seized the President of the Security Council to ask him to convene an emergency meeting of the Security Council on the protection of Iraq's cultural heritage as an integral element for the country's security."

Large statues from the UNESCO world Heritage site of Hatra, as well as unique artefacts from the archeological sites of the governorate of Ninewah have been destroyed or defaced in the Mosul Museum, among many other pieces.

"The systematic destruction of iconic components of Iraq's rich and diverse heritage that we have been witnessing over the past months is intolerable and it must stop immediately", said the Director-General, reiterating her numerous previous statements on this matter."

*Source: [http://www.unesco.org/new/en/media-services/single-view/news/unesco\\_director\\_general\\_expresses\\_outrage\\_following\\_terrorist\\_attacks\\_against\\_the\\_mosul\\_museum/#.VPYGtNHwvGh](http://www.unesco.org/new/en/media-services/single-view/news/unesco_director_general_expresses_outrage_following_terrorist_attacks_against_the_mosul_museum/#.VPYGtNHwvGh)*

## **Security Council Press Statement on ISIL's Destruction of Religious and Cultural Artefacts in Mosul**

- Security Council Press Release

The following Security Council press statement was issued today by Council President Liu Jieyi (China):

The members of the Security Council strongly condemned the ongoing barbaric terrorist acts in Iraq by ISIL [Islamic State in Iraq and the Levant] (Da'esh), including: the abduction of 100 Sunni tribesmen from outside Tikrit on 25 February; the immolation of 45 Iraqis in Baghdadi on 17 February; ongoing daily attacks targeting civilians in Baghdad; and the deliberate destruction of irreplaceable religious and cultural artefacts housed in the Mosul Museum and burning of thousands of books and rare manuscripts from the Mosul Library.

The members of the Security Council reiterated their condemnation of the destruction of cultural heritage in Iraq and Syria, particularly by ISIL, including targeted destruction of religious sites and objects, and noted with concern that ISIL and other individuals, groups, undertakings and entities associated with Al-Qaida are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage items from archaeological sites, museums, libraries, archives, and other sites in Iraq and Syria, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks.

The members of the Security Council stressed again that ISIL must be defeated and that the intolerance, violence, and hatred it espouses must be stamped out. The members of the Council further emphasized that such continued acts of barbarism perpetrated by ISIL do not intimidate them, but rather stiffen their resolve and stressed that there has to be a common effort amongst Governments and institutions, including those in the region most affected, to counter ISIL, as the Council resolved in United Nations Security Council resolutions 2161 (2014), 2170 (2014) and 2199 (2015), and underscored the need for their full and immediate implementation by all Member States.

The members of the Security Council reiterated that no act of violence or terrorism can reverse a path towards peace, democracy and reconstruction in Iraq, underpinned by the rule of law and respect for human rights, which is supported by the people and the Government of Iraq and the international community. They reminded States that they must ensure that measures taken to combat terrorism comply with all their obligations under international law, in particular international human rights, refugee, and humanitarian law.

*Source: <http://www.un.org/press/en/2015/sc11804.doc.htm>*

## **Director-General welcomes UN Security Council statement on destruction of artifacts at Mosul Museum**



**The Director-General of UNESCO, Irina Bokova, has welcomed the UN Security Council's statement denouncing the attack on the Mosul Museum.**

"This statement is a strong testament to the unity of the international community regarding the tragic destruction of irreplaceable heritage for all mankind," said the Director-General. "The members of the Security Council have reaffirmed the deep connection between the destruction of cultural heritage in Mosul and the persecution of people. It is the same strategy of terror and we must continue to fight against it by joining our efforts," she continued.

"The values of tolerance, cultural diversity and respect for human rights are stronger than these barbaric acts. UNESCO remains determined to do everything it can to assist the Iraqi government in preserving its heritage," concluded Ms Bokova.

*Source: [http://www.unesco.org/new/en/media-services/single-view/news/director\\_general\\_welcomes\\_un\\_security\\_council\\_statement\\_on\\_destruction\\_of\\_artifacts\\_at\\_mosul\\_museum/#.VPYE0dHwvGh](http://www.unesco.org/new/en/media-services/single-view/news/director_general_welcomes_un_security_council_statement_on_destruction_of_artifacts_at_mosul_museum/#.VPYE0dHwvGh)*



# General Assembly

Distr.: General  
9 June 2015

Sixty-ninth session  
Agenda item 14

## Resolution adopted by the General Assembly on 28 May 2015

[without reference to a Main Committee (A/69/L.71 and Add.1)]

### 69/281. Saving the cultural heritage of Iraq

*The General Assembly,*

*Recalling* its resolutions 66/180 of 19 December 2011 and 68/186 of 18 December 2013 on strengthening crime prevention and criminal justice responses to protect cultural property, especially with regard to its trafficking, 67/80 of 12 December 2012 on the return or restitution of cultural property to the countries of origin, 69/196 of 18 December 2014 on the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences and 69/197 of 18 December 2014 on strengthening the United Nations crime prevention and criminal justice programme, in particular its technical cooperation capacity, as well as the United Nations Global Counter-Terrorism Strategy<sup>1</sup> and its biennial reviews,<sup>2</sup>

*Recalling also* the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land, the Geneva Conventions of 12 August 1949,<sup>3</sup> the Convention for the Protection of Cultural Property in the Event of Armed Conflict<sup>4</sup> and the first<sup>4</sup> and second Protocols thereto,<sup>5</sup> the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,<sup>6</sup> the Convention concerning the Protection of the World Cultural and Natural Heritage,<sup>7</sup> the Convention on Stolen or Illegally Exported Cultural Objects,<sup>8</sup> the United Nations Convention against Transnational Organized Crime,<sup>9</sup> the Convention for the Safeguarding of the Intangible Cultural Heritage,<sup>10</sup> the Convention on the Protection and Promotion of the Diversity of Cultural

<sup>1</sup> Resolution 60/288.

<sup>2</sup> See resolutions 62/272, 64/297, 66/282 and 68/276.

<sup>3</sup> United Nations, *Treaty Series*, vol. 75, Nos. 970–973.

<sup>4</sup> *Ibid.*, vol. 249, No. 3511.

<sup>5</sup> *Ibid.*, vol. 2253, No. 3511.

<sup>6</sup> *Ibid.*, vol. 823, No. 11806.

<sup>7</sup> *Ibid.*, vol. 1037, No. 15511.

<sup>8</sup> *Ibid.*, vol. 2421, No. 43718.

<sup>9</sup> *Ibid.*, vol. 2225, No. 39574.

<sup>10</sup> *Ibid.*, vol. 2368, No. 42671.



Expressions,<sup>11</sup> other relevant international legal instruments and customary international law,

*Recalling further* all relevant Security Council resolutions, including resolutions 1267 (1999) of 15 October 1999, 1373 (2001) of 28 September 2001, 1483 (2003) of 22 May 2003, 2161 (2014) of 17 June 2014, 2170 (2014) of 15 August 2014, 2178 (2014) of 24 September 2014, 2195 (2014) of 19 December 2014 and 2199 (2015) of 12 February 2015,

*Mindful* of the Universal Declaration on Cultural Diversity,<sup>12</sup> the Declaration concerning the Intentional Destruction of Cultural Heritage<sup>13</sup> and Executive Board decision 196 EX/29 of 21 April 2015, of the United Nations Educational, Scientific and Cultural Organization, and the World Heritage List of the United Nations Educational, Scientific and Cultural Organization, which contains several sites in Iraq, including Hatra, as well as the Doha Declaration adopted at the Thirteenth United Nations Congress on Crime Prevention and Criminal Justice, held from 12 to 19 April 2015,

*Appalled* by the destruction and looting carried out by the Islamic State in Iraq and the Levant (ISIL), also known as Daesh, of the cultural heritage of Iraq, cradle of the Mesopotamian civilization, found in its museums, libraries, archives and archaeological sites, places of worship, including mosques, shrines and churches, and of religious and cultural artefacts, which are irreparable losses for Iraq and for humanity as a whole,

*Alarmed* by the increasing number of intentional attacks against and threats to the cultural heritage of countries affected by armed conflict as well as the organized looting of and trafficking in cultural objects, which occurs on an unprecedented scale today,

*Deeply concerned* about such acts generating income for terrorist groups, which can support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks,

*Recognizing* the indispensable role of crime prevention and criminal justice responses in combating all forms and aspects of trafficking in cultural property and related offences in a comprehensive and effective manner,

*Affirming* that the destruction of cultural heritage, which is representative of the diversity of human culture, erases the collective memories of a nation, destabilizes communities and threatens their cultural identity, and emphasizing the importance of cultural diversity and pluralism as well as freedom of religion and belief for achieving peace, stability, reconciliation and social cohesion,

*Underlining*, therefore, the necessity to take measures to safeguard and protect the tangible and intangible heritage of communities against the effects of armed conflict at all times,

*Resolved* to stand up against attacks on the cultural heritage of any country as attacks on the common heritage of humanity as a whole,

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<sup>11</sup> *Ibid.*, vol. 2440, No. 43977.

<sup>12</sup> United Nations Educational, Scientific and Cultural Organization, *Records of the General Conference, Thirty-first Session, Paris, 15 October–3 November 2001*, vol. 1 and corrigendum, *Resolutions*, sect. V, resolution 25, annex I.

<sup>13</sup> *Ibid.*, *Thirty-second Session, Paris, 29 September–17 October 2003*, vol. 1, *Resolutions*, sect. IV, resolution 33, annex.

1. *Condemns* the barbaric acts of destruction and looting of the cultural heritage of Iraq carried out by the Islamic State in Iraq and the Levant (ISIL), and deplores the rising incidence of intentional attacks against and threats to the cultural heritage of countries affected by armed conflict as well as damage to cultural property resulting from indiscriminate attacks and the organized looting of and trafficking in cultural objects;
2. *Expresses outrage* that attacks on cultural heritage are used as a tactic of war in order to spread terror and hatred, fan conflict and impose violent extremist ideologies;
3. *Calls for* an immediate halt to the wanton destruction of the cultural heritage of Iraq, including religious sites or objects, emphasizes that no such acts committed by ISIL or other individuals, groups, undertakings and entities associated with Al-Qaida will be tolerated, and also calls for the preservation of the cultural heritage of Iraq by protecting cultural and religious properties and sites consistent with international humanitarian law;
4. *Recalls* that, under the Convention for the Protection of Cultural Property in the Event of Armed Conflict,<sup>4</sup> all parties to an armed conflict shall refrain from committing any act of hostility directed against cultural property, that the use of cultural property, its immediate surroundings or the appliances in use for its protection, for purposes which are likely to expose it to destruction or damage in the event of armed conflicts, is prohibited and such obligations may be waived only in cases where military necessity imperatively requires such a waiver, and that all parties to an armed conflict shall prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property;
5. *Affirms* that attacks intentionally directed against buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments, may amount to war crimes;
6. *Stresses* the importance of holding accountable perpetrators of attacks intentionally directed against buildings dedicated to religion, education, art, science or charitable purposes, or historic monuments, provided they are not military objectives, and of other violations of international legal instruments on the protection of cultural heritage, and calls upon all States to take appropriate action to this end within their jurisdiction in accordance with applicable international law;
7. *Affirms its support* for the Government of Iraq in protecting the heritage of Iraq, an inseparable and permanent part of its national identity, and safeguarding its rich cultural, religious and ethnic diversity which has an important role to play in its efforts of national reconciliation and reconstruction;
8. *Calls upon* community leaders to stand up and reaffirm unambiguously that there is no justification for the destruction of humanity's cultural heritage, appeals also to cultural institutions, museums, archives, libraries, journalists and scientists to explain the necessity of safeguarding and protecting this heritage, and in this regard welcomes the launch of the sensitization campaign "Unite 4 Heritage" by the Government of Iraq and the United Nations Educational, Scientific and Cultural Organization;
9. *Calls upon* all States to assist the Iraqi authorities in fighting against trafficking in cultural property illegally excavated from archaeological sites and taken from museums, libraries, archives and manuscript collections, as required under Security Council resolutions 1483 (2003) and 2199 (2015), including through

international cooperation regarding the restitution of stolen or illicitly exported cultural property, as appropriate, as well as in criminal justice matters and in meeting the challenge of repairing, restoring and conserving damaged or destroyed cultural heritage when security conditions allow;

10. *Expresses concern* that ISIL and other individuals, groups, undertakings and entities associated with Al-Qaida are generating income from engaging directly or indirectly in the looting of and trafficking in Iraqi cultural heritage items, which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks;

11. *Welcomes*, in this regard, the adoption of Security Council resolution 2199 (2015) which aims to counter terrorism financing, in particular the decision in paragraph 17 that all Member States shall take appropriate steps to prevent the trade in Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific and religious importance illegally removed from Iraq since 6 August 1990, which complements a similar provision for Iraq in place since 2003 contained in paragraph 7 of Council resolution 1483 (2003), calls for full and timely implementation by all Member States of this decision, recalls the obligation of all States to provide the Security Council Committee pursuant to resolutions 1267 (1999) and 1989 (2011) with information pertaining to violations of the sanctions regime as well as to provide all other necessary assistance to the Committee, calls upon the United Nations Educational, Scientific and Cultural Organization, the International Criminal Police Organization (INTERPOL) and other international organizations, as appropriate, to assist all Member States in the implementation of Council resolution 2199 (2015), as requested in paragraph 17 of that resolution, and welcomes the actions already undertaken by the United Nations Educational, Scientific and Cultural Organization, INTERPOL and the United Nations Office on Drugs and Crime in this regard;

12. *Urges* all States to take appropriate measures to ensure that all actors involved in the trade in cultural property, including but not limited to auction houses, art dealers, art collectors and museum professionals, are required to provide verifiable documentation of provenance as well as export certificates related to any cultural property imported, exported or offered for sale, including through the Internet;

13. *Encourages* States that are not already parties to consider ratifying or acceding to relevant legal instruments, in particular the Convention for the Protection of Cultural Property in the Event of Armed Conflict and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property;<sup>6</sup>

14. *Invites* all States, intergovernmental bodies, the United Nations system, relevant non-governmental organizations and all other stakeholders to support existing national legal frameworks and policies for the protection and preservation of cultural heritage and the return of cultural property, and especially to identify and close any gaps in the national regulations against trafficking in cultural property;

15. *Calls for* the urgent implementation and strengthening of the Emergency Response Action Plan on Iraq of the United Nations Educational, Scientific and Cultural Organization, adopted in July 2014, which provides for close monitoring of the conservation status of Iraqi heritage, training of professional curators and support for staff in place, including by taking emergency measures for the transfer of any cultural property at risk, in particular from museums, libraries, archives and manuscript collections;

16. *Also calls for* intensified efforts by States to protect, preserve, inventory and document items of cultural heritage endangered by armed conflicts, including through close cooperation and exchange among museums, libraries, archives and manuscript collections or other institutions or persons dealing with cultural heritage.

*91st plenary meeting  
28 May 2015*

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## JOINT MOTION FOR A RESOLUTION

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PE555.177v01-00}	B8-0403/2015}
PE555.179v01-00} RC1	B8-0405/2015} RC1

pursuant to Rules 128(5) and 123(4), of the Rules of Procedure replacing the motions by the following groups:

ALDE (B8-0375/2015)

EFDD (B8-0390/2015)

Verts/ALE (B8-0391/2015)

PPE (B8-0393/2015)

S&amp;D (B8-0403/2015)

GUE/NGL (B8-0405/2015)

on the destruction of cultural sites perpetrated by ISIS/Da'esh (2015/2649(RSP))

Michèle Alliot-Marie, Andrea Bocskor, Daniel Caspary, Lara Comi, Santiago Fisas Ayxelà, Raffaele Fitto, Kinga Gál, Elisabetta Gardini, Marc Joulaud, Giovanni La Via, Barbara Matera, Alessandra Mussolini, Claude Rolin, Tokia Saïfi, Michaela Šojdrová, Davor Ivo Stier, Dubravka Šuica, Pavel Svoboda, Giovanni Toti, Ramón Luis Valcárcel, Sabine Verheyen, Elissavet Vozemberg, Theodoros Zagorakis, Tomáš Zdechovský, Joachim Zeller, Milan Zver on behalf of the PPE Group

Silvia Costa, Petra Kammerevert, Krystyna Łybacka, Eider Gardiazabal Rubial, Luigi Morgano, Julie Ward, Momchil Nekov, Kashetu Kyenge, Alessia Maria Mosca, Doru-Claudian Frunzulică, Sylvie Guillaume, Andi Cristea, Enrico Gasbarra, Viorica Dăncilă, Victor Negrescu, Boris Zala, Ana Gomes, Goffredo Maria Bettini on behalf of the S&D Group

Fernando Maura Barandiarán, Ilhan Kyuchyuk, Juan Carlos Girauta Vidal, Marietje Schaake, Marielle de Sarnez, Urmas Paet, Gérard Deprez, Ivan Jakovčić, Petr Ježek, Filiz Hyusmenova, Frédérique Ries, Mircea Diaconu on behalf of the ALDE Group

Curzio Maltese, Marisa Matias, Luke Ming Flanagan, Marie-Christine Vergiat, Patrick Le Hyaric, Younous Omarjee, Martina Michels, Kostas Chrysogonos on behalf of the GUE/NGL Group

Helga Trüpel, Jordi Sebastià, Ernest Maragall, Jill Evans, Davor Škrlec on behalf of the Verts/ALE Group  
Isabella Adinolfi on behalf of the EFDD Group

AMENDMENTS 001-009 010-011

European Parliament resolution on the destruction of cultural sites perpetrated by

**ISIS/Da'esh (2015/2649(RSP))**

*The European Parliament,*

- having regard to the Questions for Oral Answer to the Council and the Commission on the destruction of cultural sites perpetrated by ISIS/Da'esh (O-000031/2015 – B8-0115/2015 and O-000032/2015 – B8-0116/2015),
- having regard to Article 167 of the Treaty on the Functioning of the European Union (TFEU), which provides that 'action by the Union shall be aimed at encouraging cooperation between Member States', notably in the area of 'conservation and safeguarding of cultural heritage of European significance' and that 'the Union and the Member States shall foster cooperation with third countries and the competent international organisations in the sphere of culture',
- having regard to Council Regulation (EC) No 116/2009 of 18 December 2008 on the export of cultural goods<sup>(1)</sup>,
- having regard to Council Regulation (EC) No 1210/2003 of 7 July 2003 concerning certain specific restrictions on economic and financial relations with Iraq and repealing Regulation (EC) No 2465/96<sup>(2)</sup>,
- having regard to Council Regulation (EU) No 1332/2013 of 13 December 2013 amending Regulation (EU) No 36/2012 concerning restrictive measures in view of the situation in Syria<sup>(3)</sup>, adopted on the basis of Council Decision 2013/760/CFSP of 13 December 2013 amending Decision 2013/255/CFSP concerning restrictive measures against Syria<sup>(4)</sup>, and in particular Article 11c thereof concerning import, export or transfer of Syrian cultural property goods,
- having regard to Council Joint Action 2001/555/CFSP of 20 July 2001 on the establishment of a European Union Satellite Centre<sup>(5)</sup>, amended by Council Joint Action 2009/834/CFSP<sup>(6)</sup>,
- having regard to the Council Resolution of October 2012 on the creation of an informal network of law enforcement authorities and expertise competent in the field of cultural goods (EU CULTNET),
- having regard to the Second Protocol to the Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict, of 1999,
- having regard to the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 14 November 1970,
- having regard to the UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage of 16 November 1972,
- having regard to the UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage of 17 October 2003,
- having regard to the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions of 20 October 2005,
- having regard to the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects of 1995,
- having regard to UN Security Council Resolution 2199 of 12 February 2015 on threats to international peace and security caused by terrorist acts by Al-Qaida<sup>(7)</sup>,
- having regard to the Venice Charter for the Conservation and Restoration of Monuments and Sites of 1964 that provides an international framework for the preservation and restoration of ancient buildings,
- having regard to the Rome Statute of the International Criminal Court adopted on 17 July 1998, and in particular to Article 8(2)(b)(ix) thereof, which recognises the act of 'intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected, provided they are not military objectives' as a war crime,
- having regard to its resolution of 12 March 2015 on the Annual Report on Human Rights and Democracy in the World 2013 and the European Union's policy on the matter, paragraph 211 of which states that 'intentional forms of destructions of cultural and artistic heritage, as it is currently occurring in Iraq and in Syria, should be prosecuted as war crimes and as crimes against humanity'<sup>(8)</sup>,

- having regard to the Joint Communication to the European Parliament and the Council of 6 February 2015, entitled 'Elements for an EU regional strategy for Syria and Iraq as well as the Da'esh threat', JOIN(2015)0002, in which the Commission and the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy recognised the seriousness of destruction and looting of cultural heritage in tackling the crises in Syria and Iraq and the threat posed by Da'esh,
  - having regard to Rules 128(5) and 123(4) of its Rules of Procedure,
- A. whereas numerous archaeological, religious and cultural sites in Syria and Iraq have recently been subject to targeted destruction perpetrated by groups of extremists linked particularly to the Islamic State in Iraq and Syria (ISIS/Da'esh) and whereas these systematic attacks against cultural heritage were described by UNESCO Director-General Irina Bokova as 'cultural cleansing';
- B. whereas according to UNESCO the term 'cultural cleansing' refers to an intentional strategy that seeks to destroy cultural diversity through the deliberate targeting of individuals identified on the basis of their cultural, ethnic or religious background, combined with deliberate attacks on their places of worship, memory and learning, and whereas the strategy of cultural cleansing that can be witnessed in Iraq and Syria is reflected in attacks against the cultural heritage, i.e. both against physical, tangible and built expressions of culture such as monuments and buildings, and against minorities and intangible expressions of culture such as customs, traditions and beliefs<sup>(9)</sup>;
- C. whereas some acts of destruction of the cultural heritage have been considered, under certain circumstances, as crimes against humanity<sup>(10)</sup>; whereas, in particular, when directed against members of a religious or ethnic group, they can be assimilated to the crime of persecution, as set out in Article 7(1)(h) of the Statute of the International Criminal Court;
- D. whereas such acts of destruction of cultural and historical sites and objects are not new and are not confined to Iraq and Syria; whereas, according to UNESCO, 'cultural heritage is an important component of the cultural identity of communities, groups and individuals, and of social cohesion, so that its intentional destruction may have adverse consequences on human dignity and human rights'<sup>(11)</sup>; stressing that, as stated by UNESCO and others, the product of looting and smuggling of cultural and religious sites and objects in Iraq and Syria by ISIS/Da'esh, is being used to help fund ISIS/Da'esh terrorist activities, with the result that artistic and cultural goods are becoming 'war weapons';
- E. whereas, on 1 March 2014, thanks to the funding provided by the European Union, UNESCO with other strategic partners launched a three-year project called 'Emergency Safeguarding of the Syrian Heritage', aimed in particular at ensuring emergency protection of the Syrian cultural heritage;
- F. whereas the European Union has ratified the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, adopted on 20 October 2005, the first international instrument to recognise the dual economic and cultural nature of cultural goods, which 'must therefore not be treated as solely having commercial value';
- G. whereas the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted on 17 November 1970, and the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, adopted on 24 June 1995, are essential instruments for strengthening protection of the global cultural heritage;
- H. whereas illicit trade in cultural goods is now the third most significant illegal trade after drugs and arms, whereas this illicit trade is dominated by organised criminal networks, and whereas current national and international mechanisms are neither adequately equipped nor supported to tackle the issue<sup>(12)</sup>,
- I. whereas, although combating the illicit trade in cultural goods is not a specific competence of the European Union, insofar as it is not defined as such in the treaties, it nevertheless comes under several EU fields of competence, such as the internal market, the area of freedom, security and justice (AFSJ), culture and the common foreign and security policy (CFSP);
- J. whereas there is an urgent need to better coordinate the fight against the illicit trade in cultural artefacts and to work closely together in order to promote awareness raising and information sharing and to achieve a strengthening of legal frameworks; recalling in this context that, in December 2011, the Council conclusions on preventing and combating crime against cultural goods recommended, inter alia, that the Member States strengthen cooperation between law enforcement officials, cultural authorities and private organisations;
- K. whereas, in October 2012, a Council resolution created an informal network of law enforcement authorities and expertise competent in the field of cultural goods (EU CULTNET), whose main objective is to improve the exchange of

information related to the prevention of illicit trade in cultural goods and to identify and share information on criminal networks suspected of being involved in illicit trade;

- L. whereas, on Saturday, 28 March 2015, Director-General Irina Bokova launched in Bagdad the campaign #Unite4Heritage, which is aimed at mobilising global support for the protection of cultural heritage, using the power of social networks;
1. Strongly condemns the intentional destruction of cultural, archaeological and religious sites perpetrated by ISIS in Syria and Iraq;
  2. Calls on the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy (VP/HR) to take appropriate action at political level, in accordance with UN Security Council Resolution 2199 of 12 February 2015, in order to put an end to the illegal trade in cultural property from the territories of Syria and Iraq during periods of conflict in those territories, thereby preventing them from being used as a source of financing;
  3. Calls on the VP/HR to use cultural diplomacy and intercultural dialogue as a tool when it comes to reconciling the different communities and rebuilding the destroyed sites;
  4. Calls on the VP/HR, the EU and its Member States to implement security measures at the EU's external borders to prevent cultural goods from Syria and Iraq from being smuggled into the Union and to effectively cooperate in a joint action against the trading of artefacts of Syrian and Iraqi origin in Europe, since a high concentration of the trade in Middle Eastern art is destined for the European market, together with the United States and the Gulf area;
  5. Suggests in this context that the Commission, in line with paragraph 17 of UN Security Council Resolution 2199 of 12 February 2015, focus on the fight against illicit trade in cultural artefacts, specifically as regards items of cultural heritage illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011; calls on the Commission to devise a coordinated approach for combating that illegal trade, working together with those responsible at national level in the investigation services and in close cooperation with UNESCO and other international organisations such as ICOM (International Council of Museums), ICOM's International Committee of the Blue Shield (ICBS), Europol, Interpol, UNIDROIT (International Institute for the Unification of Private Law), the WCO (World Customs Organisation), ICOMOS (International Council on Monuments and Sites) and ICCROM (International Centre for the Study of the Preservation and Restoration of Cultural Property);
  6. Calls on the VP/HR to involve the European Union Satellite Centre in Torrejón, which supports the decision making of the Union in the context of the CFSP by providing material resulting from the analysis of satellite imagery, for the purpose of monitoring and listing archaeological and cultural sites in Syria and Iraq and supporting the activities of Syrian archaeologists, with the aim of preventing further lootings and preserving the lives of civilians;
  7. Calls on the Commission to set up a rapid and secure exchange of information and sharing of best practices between the Member States to effectively combat the illicit trade in cultural artefacts illegally removed from Iraq and Syria and to urge the Member States to use international tools against illicit trafficking in cultural goods for police and custom officers, such as Interpol's dedicated database 'I-24/7' on stolen works of art and the online communication tool of the ARCHEO programme of the World Customs Organisation (WCO);
  8. Calls for consideration to be given to putting in place European training programmes for judges, police and customs officers, government administrations and market players more generally in order to enable those involved in combating illicit trade in cultural goods to develop and improve their expertise and to support initiatives such as the e-learning course for Syrian Heritage Professionals promoted by ICOMOS in January 2013, teaching information on disaster risk management, first aid measures for cultural collections and documentation technique;
  9. Asks the Commission to link up with international projects from civil society on protecting and reporting on cultural goods in danger, such as the AAAS geospatial technologies project, and to continue to support research communities' activities such as Project Mosul, developed by the Initial Training Network for Digital Cultural Heritage (funded by a Marie Skłodowska-Curie actions grant);
  10. Calls on the Commission to provide stronger support to ICOM's International Observatory on Illicit Traffic in Cultural Goods, which has produced an emergency red list of Syrian and Iraqi antiquities at risk, designed as a tool for museums, customs officials, police officers, art dealers and collectors and which plans to use satellite imagery to monitor the situation on the ground, in cooperation with UNITAR;
  11. Calls for the EU and the Member States to develop awareness-raising campaigns in order to discourage the purchase and sale of cultural goods coming from illicit trade from war areas;

12. Calls on the Member States to take the necessary steps to involve universities, research bodies and cultural institutions, inter alia through codes of ethics, in the fight against illicit trade in cultural goods from war areas;
13. Calls on the Commission to support UNESCO's #Unite4Heritage campaign by initiating an information campaign focused on Iraq and Syria, with the aim of raising awareness of the importance of their cultural heritage, of the way the product of looting is used to finance terrorist activities, and of the possible penalties associated with the illegal import of cultural goods coming from these countries, or from other third countries;
14. Calls on the Commission to strengthen and improve the functioning of the informal network of law enforcement authorities and expertise competent in the field of cultural goods (EU CULTNET), created by the Council Resolution (14232/12) of October 2012, whose objective is to improve the exchange of information related to the prevention of illicit trade in cultural goods, and to envisage the creation of an additional instrument to control the import of cultural goods unlawfully removed by Syria and Iraq into the EU;
15. Calls on the Council to strengthen the Eurojust and Europol units devoted to supporting the ongoing investigations, prevention and exchange of intelligence regarding illegal trade in cultural goods;
16. Encourages the relaunching of the actions of ICOM's International Committee of the Blue Shield;
17. Calls on the European Union to take the necessary steps, in collaboration with UNESCO and the International Criminal Court, to extend the international law category of crimes against humanity so that it encompasses acts which wilfully damage or destroy the cultural heritage of mankind on a large scale;
18. Calls on the Member States which have not already done so to ratify the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 1970, the UNIDROIT Convention of 1995, the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict of 1954 and the Second Protocol thereto of 1999;
19. Instructs its President to forward this resolution to the Council, the Commission, the Vice-President of the Commission / High Representative of the Union for Foreign Affairs and Security Policy, the UNESCO Director-General, the EU Special Representative for Human Rights and the governments and parliaments of the Member States.

(1) OJ L 39, 10.2.2009, p. 1.

(2) OJ L 169, 8.7.2003, p. 6.

(3) OJ L 335, 14.12.2013, p. 3.

(4) OJ L 335, 14.12.2013, p. 50.

(5) OJ L 200, 25.7.2001, p. 5.

(6) OJ L 297, 13.11.2009, p. 18.

(7) <http://www.refworld.org/docid/54ef1f704.html>

(8) Texts adopted, P8\_TA(2015)0076).

(9) [http://www.unesco.org/new/en/media-services/single-view/news/conference\\_report\\_heritage\\_and\\_cultural\\_diversity\\_at\\_risk\\_in\\_iraq\\_and\\_syria/](http://www.unesco.org/new/en/media-services/single-view/news/conference_report_heritage_and_cultural_diversity_at_risk_in_iraq_and_syria/)

(10) International Criminal Tribunal for Yugoslavia, *Kordić & Čerkez*, 26 February 2001, IT-95-14/2; paragraphs 207-8.

(11) UNESCO Declaration on Intentional Destruction of Cultural Heritage, 2003.

(12) <http://www.africa-eu-partnership.org/newsroom/all-news/morocco-africa-eu-workshop-fight-against-illegal-trafficking-cultural-goods>

## E. THE CAIRO DECLARATION<sup>1</sup>

Released in Cairo, Egypt  
May 14, 2015

Recognizing the continuing threat to our economic, cultural well-being and national security as a result of antiquities looting, trafficking, and destruction by criminal networks and extremist groups of our cultural property that is either registered, unregistered or submerged, the Governments of Egypt, Saudi Arabia, United Arab Emirates, Iraq, Jordan, Kuwait, Lebanon, Libya, Sudan and Sultanate of Oman agreed at a Ministerial Conference held in Cairo on the 13th and 14th of May 2015, to launch immediate joint efforts to stand against the above mentioned threats. The Middle East and Northern African region is home to the beginnings of human civilization due to its long and rich history. Criminal networks and terrorists groups have systematically looted historic sites and profited from the sales of these antiquities in international black markets. In addition, as a means to intimidate local populations, these looters have intentionally destroyed historical relics. We deplore their actions, and view this as a crime against human civilization. In light of the above, the participating governments attending this conference have agreed on the necessity of the following actions:

- Launch a Cultural Racketeering Task Force consisting of a senior representative from each country to coordinate regional and international efforts to protect cultural property and prevent smuggling and repatriate stolen artifacts.
- Establish an International Advisory Committee which will provide advice and support for the task force on ways to fight cultural racketeering.
- Initiate an awareness campaign in demand countries to discourage purchases of looted antiquities.
- Consider the possibilities to start negotiations with international partners on a “Regional Cultural Memorandum of Understanding” which would lead to the ban of dealing in looted antiquities.
- Raise awareness campaigns aiming to protect cultural property against illegal digging, smuggling and dealing, while implementing harsher sanctions on those who attempt such illegal activities.
- Study the possibilities of establishing an independent regional Antilaunching Agency that will cooperate with the competent international agencies to help monitor and halt the trade of antiquities. It was agreed on to hold other conferences with the concerned Middle East and Northern African region countries and other governments interested in joining this Initiative against antiquities looting.

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<sup>1</sup> <http://theantiquitiescoalition.org/wp-content/uploads/2015/05/Cairo-Declaration-final-version-May-2015.pdf>

#### IV. U.S. Legislation Related to the Protection of International Cultural Heritage

- A. The Convention on Cultural Property Implementation Act 1983 (Public Law 97-446, 19 U.S.C. 2601 et seq., as amended)
- B. The 1954 Hague Convention
- C. Applicable U.S. Laws for Prosecuting the Illicit Sale or Possession of Antiquities
- D. Recent U.S. Efforts to Deal with Cultural Heritage Protection and Conflict Antiquities in Iraq and Syria
- E. U.S. Senate Bill S. 1887

#### IV. U.S. LEGISLATION RELATED TO THE PROTECTION OF INTERNATIONAL CULTURAL HERITAGE AND TRAFFIC IN STOLEN OR CONFLICT ANTIQUITIES

##### A. The Convention on Cultural Property Implementation Act 1983 (Public Law 97-446, 19 U.S.C. 2601 et seq., as amended)

- The Cultural Property Implementation Act, 19 U.S.C. §§260-2613 ("CPIA"), focuses primarily on implementation of Articles 7(b) and 9 of the UNESCO Convention.
- The CPIA embodies a policy of prohibiting the importation of cultural property and returning it a source nation only if (1) it was previously identified and then stolen from an institution or public monument (19 U.S.C. §2607), or (2) pursuant to a request from a foreign country to the extent necessary to prevent pillage (19 U.S.C. §2602-06).
- A country whose cultural patrimony "is in jeopardy from the pillage of archaeological or ethnological" materials must demonstrate, in its request for assistance. Once a request has been submitted, it is reviewed by the Cultural Property Advisory Committee (CPAC), which is composed of members representing the interests of the public, museums, the trade, and archaeology/anthropology. As part of its deliberative process, CPAC invites comments from members of the public and typically holds an open session at which any member of the public may provide relevant comment and interact with CPAC members. The invitation for public comment is a proactive step taken by the Department of State which administers CPAC. Because the Committee itself represents the viewpoints of interested parties, there is no statutory requirement to hold a public session or consider any outside public comment. Four determinations must be made: (1) that the cultural patrimony of the requesting nation is in jeopardy from the pillage of archaeological materials; (2) that the requesting nation has taken measures to protect its cultural patrimony; (3) that U.S. import restrictions, either alone or in concert with actions taken by other market nations, would be of substantial benefit in deterring the serious situation of pillage, and (4) import restrictions would promote the interchange of cultural property among nations for scientific, cultural, and educational purposes
- The President only has authority to enter into bilateral or multilateral agreements imposing U.S. import restrictions on archaeological material. If the above four "determinations" are met, and "after request is made."
- To date, the U.S. has signed bilateral agreements with 15 nations, and imposed one emergency action with similar terms for Iraq. These import restrictions for Iraq, along with others for Mali, are the only ones in effect for the Middle East and North Africa. <http://eca.state.gov/cultural-heritage-center/cultural-property-protection/bilateral-agreements>

##### B. The Hague Convention

- On September 25, 2008, the United States Senate voted to ratify the Convention for the Protection of Cultural Property in the Event of Armed Conflict, May 14, 1954, 249 U.N.T.S. 240. [http://www.unesco.org/culture/laws/hague/html\\_eng/page1.shtml](http://www.unesco.org/culture/laws/hague/html_eng/page1.shtml)
- Although the US signed the convention soon after its writing, the Pentagon objected to ratification because of increasing cold-war tensions. The public attention given to the looting of the Iraq Museum in Baghdad in 2003 and the looting of archaeological

sites in southern Iraq during the ensuing years revived interest in the convention, and the Senate finally voted to give its advice and consent to ratification in 2008. Understandings were established in connection with the ratification, mostly to ensure that the convention does not interfere substantially with the US military's ability to wage war. The final element of the ratification is a "declaration," which states that the treaty, though self-executing: (a) does not require the US government to prosecute anyone who violates the convention (implicitly meaning that such prosecution is required only if a US law is also violated); and (b) does not give individual persons a right of redress in US courts.

### C. Applicable U.S. Laws for Prosecuting the Illicit Sale or Possession of Antiquities

The National Stolen Property Act Title 18, U.S.C. §§2314-2315 prohibits the knowing receipt or possession of property that has "crossed a State or United States boundary after being stolen, unlawfully converted, or taken." There are two parts of this law that may be applied when a stolen artifact or cultural property crosses the border into the United States. Under these sections of the NSPA, a federal prosecutor does not need to prove that a criminal defendant actually stole the object at issue. The federal prosecutor only needs to prove that the defendant knew the object was stolen when he received it, possessed it, transported it, or sold/disposed of it, and that the object had a value that exceeded \$5,000.

**Title 18 U.S.C. 545 - Smuggling goods into the United States:** "Whoever fraudulently or knowingly imports or brings into the United States, any merchandise contrary to law, or receives, conceals, buys, sells, or in any manner facilitates the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported or brought into the United States contrary to law, shall be fined under this title or imprisoned not more than five years, or both. Proof of defendant's possession of such goods, unless explained to the satisfaction of the jury, shall be deemed evidence sufficient to authorize conviction for violation of this section."

A person is only guilty of smuggling if it is illegal to import the item under U.S. law. Therefore, even if a foreign government forbids the export of a piece of cultural property under its laws, smuggling only occurs if it is illegal under U.S. law to import the object in question. Because the act of smuggling occurs at a federal point of entry prior to reaching state jurisdiction, anti-smuggling laws are only prosecuted on the federal level.

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**Title 18 U.S.C. 542 Entry of Goods by Means of False Statements:** "Whoever enters or introduces, or attempts to enter or introduce, into the commerce of the United States any imported merchandise by means of any fraudulent or false invoice, declaration, affidavit, letter, paper, or by means of any false statement, written or verbal, or by any means of any false or fraudulent practice or appliance, or makes any false statement in any declaration without reasonable cause to believe the truth of such statement, or procures the making of any such false statement as to any matter thereto without reasonable cause to believe the truth of such statement, whether or not the United States shall or may be deprived of any lawful duties ... shall be fined for each offense under this title or imprisoned not more than two years, or both. Nothing in this section shall be construed to relieve imported merchandise from forfeiture under other provisions of law."

**Title 18 U.S.C. 982 - Criminal Forfeiture,** when a person is convicted of making false statements under section 542, or smuggling under section 545, the law *mandates* forfeiture of any property related to the crime.

#### Civil Forfeiture Statutes:

**Title 18 U.S.C. 981 - Civil Forfeiture, ("CAFRA")** property that is stolen in violation of that nation's laws, or property that is linked to the federal crime of smuggling of false statements is subject to seizure. In general, civil forfeiture is more flexible than criminal forfeiture; under civil forfeiture, a prosecutor does not need to prove that a person

committed a crime beyond a reasonable doubt. Instead, the prosecutor undertakes a civil action to recover the property in a manner that is permitted under Title 18. This type of forfeiture is a civil remedy that a federal prosecutor can use which falls under the federal criminal code.

Title 19 U.S.C. 1595a - Forfeitures and other penalties also provides for forfeiture in cases where an object's entry into the United States is deemed to be illegal. Violation of any of Title 18 statutes are predicate offenses for civil asset forfeiture. The burden of proof is altered and the object presumed guilty. There is no innocent owner defense for a claimant. Several District Courts have held that the "innocent owner defense" is only available under CAFRA

**State Laws that Prohibit the Receipt of Stolen Property.** All 50 states in the U.S. have laws or statutes similar to the National Stolen Property Act. These state laws are commonly referred to as Receipt of Stolen Property or Possession of Stolen Property laws. Two-thirds of state laws require lower mental states. Where the NSPA requires proof that a criminal defendant had full knowledge that a cultural object was stolen, most state laws only require proof that the offender should know, had reason to know, had reason to believe, or simply believed that the property in a dealer's possession or offered for sale was stolen or probably stolen. A federal prosecutor would need to prove that a dealer actually knew an object was stolen, but a state prosecutor may simply need to prove that a dealer had reason to believe that an artifact had been stolen, which is a much lower legal burden.

More importantly, almost one quarter of the states have a built-in legal assumption that a dealer in goods is *presumed to know* an object was stolen when (a) the dealer did not reasonably gather information about whether the good was lawfully sold or delivered to the dealer, (b) acquired the good far below reasonable value, or (c) purchased or sold the good outside the regular course of business.<sup>2</sup>

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#### D. Recent U.S. Efforts to Deal with Cultural Heritage Protection and Conflict Antiquities in Iraq and Syria

- Iraq Stabilization and Insurgency Sanctions Regulations (31 CFR part 576), and more seriously, prosecution under 18 USC 2339A for providing financial support to terrorist organizations. These laws come with penalties of up to a \$1,000,000 fine or life imprisonment for the most severe violations.

#### Presidential Executive Orders Governing Cultural Property from Iraq (12722, 13290, 13303 and 13315)

- Dating back to August of 1990, the Executive Order states (in part) that: "Unless licensed or otherwise authorized pursuant to this order or otherwise consistent with U.S. law, the trade in or transfer of ownership or possession of Iraqi cultural property or other items of archeological, historical, cultural, rare scientific, and religious importance that were illegally removed, or for which a reasonable suspicion exists that they were illegally removed, from the Iraq National Museum, the National Library, and other locations in Iraq since August 6, 1990, is prohibited."
- On November 19, 2004, the United States Senate passed the "emergency Protection for Iraqi Cultural Antiquities Act of 2004"<sup>[4]</sup> which allows the President to impose import restrictions on any cultural materials illegally removed from Iraq. The legislation tracks Resolution 1483. At the time Senator Charles Grassley introduced the bill, he stated, I believe it is very important that we in Congress remain mindful of the need to take steps to protect Iraq's cultural heritage. Our bill will ensure that going forward we continue to adhere to the full spirit of Resolution 1483 and avoid any break in the protections

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<sup>2</sup> <http://www.cemml.colostate.edu/cultural/09476/laws11iraqenl.html>

<sup>[4]</sup> "Emergency Protection for Iraqi Cultural Antiquities Act of 2004," The House of Representatives, H.R. 1047, Title III, Iraqi Cultural Antiquities, Sec. 3001.

afforded to Iraqi antiquities. Our bill also provides an important signal of our commitment to preserving Iraq's resources for the benefit of the Iraqi people.

- The most recent extension of this Executive Order, May 18, 2007, remains in effect until May 17, 2008 and remains subject to further extension or modification by the President at a later date. Since property of the type described in this Executive Order is, by definition, illegal to import into the United States, a charge of smuggling may be sustained in federal court for anyone who violates this particular Executive Order.<sup>3</sup>
- The Protect and Preserve International Cultural Property Act. The Act passed the House as H.R. 1493 on 1 June 2015, and the Senate as S. 1887. The Bill's passage came on the same day that the Antiquities Coalition, together with the Asia Society and the Middle East Institute released #CultureUnderThreat: Recommendations for the U.S. Government. The Report calls on Congress to expeditiously pass H.R. 1493/S. 1887, along with 30 other proposed steps for the Administration, Congress, United Nations, and art market. Current tracking standards for these imports are considered inadequate leaving these details in the hands of the seller/shipper. The seller/shipper designates and codes an item's country of origin and value, under the Harmonized Tariff Schedule (HTS). These HTS codes establish the imported item's duties and tariffs. If the item is over 100 years old and imported for consumption—meaning, for collectors and dealers—the item is coded as “HTS 9706.” These HTS 9706 items are then not subjected to any duties. Most of these imported antique objects are not inspected by US Customs.

*(See Next Page)*

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<sup>3</sup> <https://www.federalregister.gov/articles/2014/05/29/2014-12651/ending-immunities-granted-to-the-development-fund-for-iraq-and-certain-other-iraqi-property-and>

114TH CONGRESS  
1ST SESSION

# S. 1887

To protect and preserve international cultural property at risk due to political instability, armed conflict, or natural or other disasters, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JULY 29, 2015

Mr. CASEY (for himself, Mr. GRASSLEY, and Mr. PERDUE) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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## A BILL

To protect and preserve international cultural property at risk due to political instability, armed conflict, or natural or other disasters, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Protect and Preserve  
5 International Cultural Property Act”.

6 **SEC. 2. DEFINITION.**

7 In this Act:

8 (1) **APPROPRIATE CONGRESSIONAL COMMIT-**  
9 **TEES.**—The term “appropriate congressional com-

1 mittees” means the Committee on Foreign Affairs,  
2 the Committee on Ways and Means, the Committee  
3 on Armed Services, and the Committee on the Judi-  
4 ciary of the House of Representatives and the Com-  
5 mittee on Foreign Relations, the Committee on Fi-  
6 nance, the Committee on Armed Services, and the  
7 Committee on the Judiciary of the Senate.

8 (2) CULTURAL PROPERTY.—The term “cultural  
9 property” includes property covered under—

10 (A) the Hague Convention for the Protec-  
11 tion of Cultural Property in the Event of  
12 Armed Conflict, concluded at The Hague on  
13 May 14, 1954 (Treaty Doc. 106–1(A));

14 (B) Article 1 of the Convention Concerning  
15 the Protection of the World’s Cultural and Nat-  
16 ural Heritage, adopted by UNESCO on Novem-  
17 ber 23, 1972 (commonly referred to as the  
18 “1972 Convention”); or

19 (C) Article 1 of the Convention on the  
20 Means of Prohibiting and Preventing the Illicit  
21 Import, Export, and Transfer of Ownership of  
22 Cultural Property, adopted by UNESCO on  
23 November 14, 1970 (commonly referred to as  
24 the “1970 UNESCO Convention”).

1 **SEC. 3. FINDINGS AND STATEMENT OF POLICY.**

2 (a) FINDINGS.—Congress finds the following:

3 (1) Over the years, international cultural prop-  
4 erty has been looted, trafficked, lost, damaged, or  
5 destroyed due to political instability, armed conflict,  
6 natural disasters, and other threats.

7 (2) During China's Cultural Revolution, many  
8 antiques were destroyed, including a large portion of  
9 old Beijing, and Chinese authorities are now at-  
10 tempting to rebuild portions of China's lost architec-  
11 tural heritage.

12 (3) In 1975, the Khmer Rouge, after seizing  
13 power in Cambodia, systematically destroyed  
14 mosques and nearly every Catholic church in the  
15 country, along with many Buddhist temples, statues,  
16 and Buddhist literature.

17 (4) In 2001, the Taliban destroyed the  
18 Bamiyan Buddhas, ancient statues carved into a  
19 cliffside in central Afghanistan, leading to worldwide  
20 condemnation.

21 (5) After the fall of Saddam Hussein, thieves  
22 looted the Iraq Museum in Baghdad, resulting in the  
23 loss of approximately 15,000 items, including an-  
24 cient amulets, sculptures, ivories, and cylinder seals.  
25 Many of these items remain unrecovered.

1           (6) The 2004 Indian Ocean earthquake and  
2 tsunami not only affected 11 countries, causing mas-  
3 sive loss of life, but also damaged or destroyed li-  
4 braries, archives, and World Heritage Sites such as  
5 the Mahabalipuram in India, the Sun Temple of  
6 Koranak on the Bay of Bengal, and the Old Town  
7 of Galle and its fortifications in Sri Lanka.

8           (7) In Haiti, the 2010 earthquake destroyed  
9 art, artifacts, and archives, and partially destroyed  
10 the 17th century Haitian city of Jacmel.

11           (8) In Mali, the Al-Qaeda affiliated terrorist  
12 group Ansar Dine destroyed tombs and shrines in  
13 the ancient city of Timbuktu—a major center for  
14 trade, scholarship, and Islam in the 15th and 16th  
15 centuries—and threatened collections of ancient  
16 manuscripts.

17           (9) In Egypt, recent political instability has led  
18 to the ransacking of museums, resulting in the de-  
19 struction of countless ancient artifacts that will for-  
20 ever leave gaps in humanity's record of the ancient  
21 Egyptian civilization.

22           (10) In Syria, the ongoing civil war has resulted  
23 in the shelling of medieval cities, damage to five  
24 World Heritage Sites, and the looting of museums  
25 containing artifacts that date back more than six

1 millennia and include some of the earliest examples  
2 of writing.

3 (11) In Iraq and Syria, the militant group ISIL  
4 has destroyed numerous cultural sites and artifacts,  
5 such as the Tomb of Jonah in July 2014, in an ef-  
6 fort to eradicate ethnic and religious minorities from  
7 contested territories. Concurrently, cultural antiq-  
8 uities that escape demolition are looted and traf-  
9 ficked to help fund ISIL's militant operations.

10 (12) On February 12, 2015, the United Na-  
11 tions Security Council unanimously adopted resolu-  
12 tion 2199 (2015), which "[r]eaffirms its decision in  
13 paragraph 7 of resolution 1483 (2003) and decides  
14 that all Member States shall take appropriate steps  
15 to prevent the trade in Iraqi and Syrian cultural  
16 property and other items of archaeological, histor-  
17 ical, cultural, rare scientific, and religious impor-  
18 tance illegally removed from Iraq since 6 August  
19 1990 and from Syria since 15 March 2011, includ-  
20 ing by prohibiting cross-border trade in such items,  
21 thereby allowing for their eventual safe return to the  
22 Iraqi and Syrian people."

23 (13) United Nations Security Council resolution  
24 2199 (2015) also warns that ISIL and other extrem-  
25 ist groups are trafficking cultural heritage items

1 from Iraq and Syria to fund their recruitment ef-  
2 forts and carry out terrorist attacks.

3 (14) The destruction of cultural property rep-  
4 resents an irreparable loss of humanity's common  
5 cultural heritage and is therefore a loss for all  
6 Americans.

7 (15) Protecting international cultural property  
8 is a vital part of United States cultural diplomacy,  
9 showing the respect of the United States for other  
10 cultures and the common heritage of humanity.

11 (16) The United States Armed Forces have  
12 played important roles in preserving and protecting  
13 cultural property. In 1943, President Franklin D.  
14 Roosevelt established a commission to advise the  
15 United States military on the protection of cultural  
16 property. The commission formed teams of individ-  
17 uals known as the "Monuments Men" who are cred-  
18 ited with securing, cataloguing, and returning hun-  
19 dreds of thousands of works of art stolen by the  
20 Nazis during World War II.

21 (17) The Department of State, in response to  
22 the Convention on Cultural Property Implementation  
23 Act, noted that "the legislation is important to our  
24 foreign relations, including our international cultural  
25 relations. The expanding worldwide trade in objects

1 of archaeological and ethnological interest has led to  
2 wholesale depredations in some countries, resulting  
3 in the mutilation of ceremonial centers and archae-  
4 ological complexes of ancient civilizations and the re-  
5 moval of stone sculptures and reliefs.” The Depart-  
6 ment further noted that “[t]he United States con-  
7 siders that on grounds of principle, good foreign re-  
8 lations, and concern for the preservation of the cul-  
9 tural heritage of mankind, it should render assist-  
10 ance in these situations.”.

11 (18) The U.S. Committee of the Blue Shield  
12 was founded in 2006 to support the implementation  
13 of the 1954 Hague Convention for the Protection of  
14 Cultural Property in the Event of Armed Conflict  
15 and to coordinate with the United States military,  
16 other branches of the United States Government,  
17 and other cultural heritage nongovernmental organi-  
18 zations in preserving international cultural property  
19 threatened by political instability, armed conflict, or  
20 natural or other disasters.

21 (b) STATEMENT OF POLICY.—It shall be the policy  
22 of the United States to—

23 (1) protect and preserve international cultural  
24 property at risk of looting, trafficking, and destruc-

1       tion due to political instability, armed conflict, or  
2       natural or other disasters;

3           (2) protect international cultural property pur-  
4       suant to its obligations under international treaties  
5       to which the United States is a party;

6           (3) prevent, in accordance with existing laws,  
7       importation of cultural property pillaged, looted, sto-  
8       len, or trafficked at all times, including during polit-  
9       ical instability, armed conflict, or natural or other  
10      disasters; and

11          (4) ensure that existing laws and regulations,  
12      including import restrictions imposed through the  
13      Office of Foreign Asset Control (OFAC) of the De-  
14      partment of the Treasury, are fully implemented to  
15      prevent trafficking in stolen or looted cultural prop-  
16      erty.

17 **SEC. 4. UNITED STATES COORDINATOR FOR INTER-**  
18 **NATIONAL CULTURAL PROPERTY PROTEC-**  
19 **TION.**

20       The Secretary of State shall designate a Department  
21      of State employee at the Assistant Secretary level or above  
22      to serve concurrently as the United States Coordinator for  
23      International Cultural Property Protection. The Coordi-  
24      nator shall—

1           (1) coordinate and promote efforts to protect  
2 international cultural property, especially activities  
3 that involve multiple Federal agencies;

4           (2) act as Chair of the Coordinating Committee  
5 on International Cultural Property Protection estab-  
6 lished under section 5;

7           (3) resolve interagency differences;

8           (4) develop strategies to reduce illegal trade  
9 and trafficking in international cultural property in  
10 the United States and abroad, including by reducing  
11 consumer demand for such trade;

12           (5) support activities to assist countries that  
13 are the principle sources of trafficked cultural prop-  
14 erty to protect cultural heritage sites and to prevent  
15 cultural property looting and theft;

16           (6) work with and consult domestic and inter-  
17 national actors such as foreign governments, inter-  
18 governmental organizations, nongovernmental orga-  
19 nizations, museums, educational institutions, and re-  
20 search institutions to protect international cultural  
21 property; and

22           (7) submit to the appropriate congressional  
23 committees the annual report required under section  
24 6.

1 **SEC. 5. COORDINATING COMMITTEE ON INTERNATIONAL**  
2 **CULTURAL PROPERTY PROTECTION.**

3 (a) **ESTABLISHMENT.**—There is established a Coordi-  
4 nating Committee on International Cultural Property Pro-  
5 tection (in this section referred to as the “Committee”).

6 (b) **FUNCTIONS.**—The full Committee shall meet not  
7 less often than annually to coordinate and inform Federal  
8 efforts to protect international cultural property and to  
9 facilitate the work of the United States Coordinator for  
10 International Cultural Property Protection designated  
11 under section 4.

12 (c) **MEMBERSHIP.**—The Committee shall be com-  
13 posed of the United States Coordinator for International  
14 Cultural Property Protection, who shall act as Chair, and  
15 representatives of the following:

16 (1) The Department of State.

17 (2) The Department of Defense.

18 (3) The Department of Homeland Security, in-  
19 cluding U.S. Immigration and Customs Enforcement  
20 and U.S. Customs and Border Protection.

21 (4) The Department of the Interior.

22 (5) The Department of Justice, including the  
23 Federal Bureau of Investigation.

24 (6) The United States Agency for International  
25 Development.

26 (7) The Smithsonian Institution.

1           (8) Such other entities as the Chair determines  
2           appropriate.

3           (d) SUBCOMMITTEES.—The Committee may include  
4 such subcommittees and taskforces as the Chair deter-  
5 mines appropriate. Such subcommittees or taskforces may  
6 be comprised of a subset of the Committee members or  
7 of such other members as the Chair determines appro-  
8 priate. At the discretion of the Chair, the provisions of  
9 the Federal Advisory Committee Act (5 U.S.C. App.) and  
10 section 552b of title 5 of the United States Code (relating  
11 to open meetings) shall not apply to activities of such sub-  
12 committees or taskforces.

13          (e) CONSULTATION.—The Committee shall consult  
14 with governmental and nongovernmental organizations,  
15 including the U.S. Committee of the Blue Shield, muse-  
16 ums, educational institutions, and research institutions on  
17 efforts to promote and protect international cultural prop-  
18 erty.

19 **SEC. 6. REPORTS ON ACTIVITIES TO PROTECT INTER-**  
20 **NATIONAL CULTURAL PROPERTY.**

21          Not later than 1 year after the date of the enactment  
22 of this Act and annually thereafter for the next 6 years,  
23 the Secretary of State, acting through the United States  
24 Coordinator for International Cultural Property Protec-  
25 tion, and in consultation with the Administrator of the

1 United States Agency for International Development, the  
2 Secretary of Defense, the Attorney General, and the Sec-  
3 retary of Homeland Security, as appropriate, shall submit  
4 to the appropriate congressional committees a report that  
5 includes information on activities of—

6 (1) the United States Coordinator and the Co-  
7 ordinating Committee on International Cultural  
8 Property Protection to protect international cultural  
9 property;

10 (2) the Department of State to protect inter-  
11 national cultural property, including activities under-  
12 taken pursuant to the Hague Convention for the  
13 Protection of Cultural Property in the Event of  
14 Armed Conflict, and other statutes, international  
15 agreements, and policies, including—

16 (A) procedures the Department has insti-  
17 tuted to protect international cultural property  
18 at risk of destruction due to political instability,  
19 armed conflict, or natural or other disasters;  
20 and

21 (B) actions the Department has taken to  
22 protect international cultural property in con-  
23 flicts to which the United States is a party;

24 (3) the United States Agency for International  
25 Development (USAID) to protect international cul-

1 tural property, including activities and coordination  
2 with other Federal agencies, international organiza-  
3 tions, and nongovernmental organizations regarding  
4 the protection of international cultural property at  
5 risk due to political unrest, armed conflict, natural  
6 or other disasters, and USAID development pro-  
7 grams;

8 (4) the Department of Defense to protect inter-  
9 national cultural property, including activities under-  
10 taken pursuant to the Hague Convention for the  
11 Protection of Cultural Property in the Event of  
12 Armed Conflict and other cultural property protec-  
13 tion statutes and international agreements, includ-  
14 ing—

15 (A) directives, policies, and regulations the  
16 Department has instituted to protect inter-  
17 national cultural property at risk of destruction  
18 due to political instability, armed conflict, or  
19 natural or other disasters; and

20 (B) actions the Department has taken to  
21 avoid damage to cultural property through con-  
22 struction activities abroad; and

23 (5) the Department of Homeland Security and  
24 the Department of Justice, including the Federal  
25 Bureau of Investigation, to protect both inter-

1 national cultural property abroad and international  
2 cultural property located in, or attempted to be im-  
3 ported into, the United States, including activities  
4 undertaken pursuant to statutes and international  
5 agreements, including—

6 (A) statutes and regulations the Depart-  
7 ment has employed in criminal, civil, and civil  
8 forfeiture actions to prevent and interdict traf-  
9 ficking in stolen and smuggled cultural prop-  
10 erty, including investigations into transnational  
11 organized crime and smuggling networks; and

12 (B) actions the Department has taken in  
13 order to ensure the consistent and effective ap-  
14 plication of law in cases relating to both inter-  
15 national cultural property abroad and inter-  
16 national cultural property located in, or at-  
17 tempted to be imported into, the United States.

18 **SEC. 7. AUTHORIZATION FOR FEDERAL AGENCIES TO EN-**  
19 **GAGE IN INTERNATIONAL CULTURAL PROP-**  
20 **ERTY PROTECTION ACTIVITIES WITH THE**  
21 **SMITHSONIAN INSTITUTION.**

22 Notwithstanding any other provision of law, any  
23 agency that is involved in international cultural property  
24 protection activities is authorized to enter into agreements  
25 or memoranda of understanding with the Smithsonian In-

1 stitution to temporarily engage personnel from the Smith-  
2 sonian Institution for the purposes of furthering such  
3 international cultural property protection activities.

4 **SEC. 8. EMERGENCY PROTECTION FOR SYRIAN CULTURAL**  
5 **PROPERTY.**

6 (a) **PRESIDENTIAL DETERMINATION.**—Notwith-  
7 standing subsection (b) of section 304 of the Convention  
8 on Cultural Property Implementation Act (19 U.S.C.  
9 2603) (relating to a Presidential determination that an  
10 emergency condition applies with respect to any archae-  
11 ological or ethnological material of any State Party to the  
12 Convention), the President shall apply the import restric-  
13 tions referred to in such section 304 with respect to any  
14 archaeological or ethnological material of Syria, except  
15 that subsection (c) of such section 304 shall not apply.  
16 Such import restrictions shall take effect not later than  
17 120 days after the date of the enactment of this Act.

18 (b) **ANNUAL DETERMINATION REGARDING CERTIFI-**  
19 **CATION.**—

20 (1) **DETERMINATION.**—

21 (A) **IN GENERAL.**—The President shall,  
22 not less often than annually, determine whether  
23 at least one of the conditions specified in sub-  
24 paragraph (B) is met, and shall notify the ap-

1           appropriate congressional committees of such de-  
2           termination.

3                   (B) CONDITIONS.—The conditions referred  
4           to in subparagraph (A) are the following:

5                           (i) The Government of Syria is in-  
6                           capable, at the time a determination under  
7                           such subparagraph is made, of fulfilling  
8                           the requirements to request an agreement  
9                           under section 303 of the Convention on  
10                          Cultural Property Implementation Act (19  
11                          U.S.C. 2602).

12                           (ii) It would be against the United  
13                          States national interest to enter into such  
14                          an agreement.

15                   (2) TERMINATION OF RESTRICTIONS.—The im-  
16           port restrictions referred to in subsection (a) shall  
17           terminate on the date that is 5 years after the date  
18           on which the President determines that neither of  
19           the conditions specified in paragraph (1)(B) are  
20           met, unless before such termination date Syria re-  
21           quests to enter into an agreement with the United  
22           States pursuant to section 303 of the Convention on  
23           Cultural Property Implementation Act, in which case  
24           such import restrictions may remain in effect until  
25           the earliest of either—

1 (A) the date that is 3 years after the date  
2 on which Syria makes such a request; or

3 (B) the date on which the United States  
4 and Syria enter into such an agreement.

5 (c) WAIVER.—

6 (1) IN GENERAL.—The President may waive  
7 the import restrictions referred to in subsection (a)  
8 for specified cultural property if the President cer-  
9 tifies to the appropriate congressional committees  
10 that the conditions described in paragraph (2) are  
11 met.

12 (2) CONDITIONS.—The conditions referred to in  
13 paragraph (1) are the following:

14 (A) The foreign owner or custodian of the  
15 specified cultural property has requested such  
16 property be temporarily located in the United  
17 States for protection purposes.

18 (B) Such property shall be returned to the  
19 foreign owner or custodian when requested by  
20 such foreign owner or custodian.

21 (C) Granting a waiver under this sub-  
22 section will not contribute to illegal trafficking  
23 in cultural property or financing of criminal or  
24 terrorist activities.

1           (3) ACTION.—If the President grants a waiver  
2           under this subsection, the specified cultural property  
3           that is the subject of such waiver shall be placed in  
4           the temporary custody of the United States Govern-  
5           ment or in the temporary custody of a cultural or  
6           educational institution within the United States for  
7           the purpose of protection, restoration, conservation,  
8           study, or exhibition, without profit.

9           (4) RULE OF CONSTRUCTION.—Nothing in this  
10          Act shall prevent application of the Act to render  
11          immune from seizure under judicial process certain  
12          objects of cultural significance imported into the  
13          United States for temporary display or exhibition,  
14          and for other purposes (22 U.S.C. 2459; Public Law  
15          89–259) with respect to archaeological or ethno-  
16          logical material of Syria.

17          (d) DEFINITIONS.—In this section—

18               (1) the term “archaeological or ethnological ma-  
19               terial of Syria” means cultural property of Syria and  
20               other items of archaeological, historical, cultural,  
21               rare scientific, or religious importance unlawfully re-  
22               moved from Syria on or after March 15, 2011; and

23               (2) the term “State Party” has the meaning  
24               given such term in section 302 of the Convention on

1 Cultural Property Implementation Act (19 U.S.C.  
2 2601).

○

## V. PRACTICAL RECOMMENDATIONS, PARTNERSHIPS, PROFESSIONAL CODES OF ETHICS

- A. Basel Art Trade Guidelines
- B. Model Export Certificate for Cultural Objects
- C. Act of Terror: Trafficking in Oil and Antiquities Benefiting the Islamic State of Iraq and the Levant (ISIL)
- D. Operational Guidelines for the Implementation of the 1970 Convention
- E. Codes of Ethics
  - 1. Art Dealers Association of America Code of Ethics and Professional Practices - About
  - 2. Art Dealers Association of California Code of Ethics
  - 3. ICOM Code of Ethics for Museums
  - 4. Association of Art Museum Directors Code of Ethics
  - 5. UNESCO International Code of Ethics for Dealers in Cultural Property
  - 6. World Archaeology Congress Code of Ethics
  - 7. Archeological Institute of America Code of Ethics



**Dr Thomas Christ**

**Claudia von Selle**

## **Basel Art Trade Guidelines**

Intermediary report of a self-regulation initiative

*GOVERNANCE*

BASEL INSTITUTE ON GOVERNANCE







## **Basel Institute on Governance**

The Basel Institute on Governance is an independent non-profit institution devoted to interdisciplinary research and policy advice in the areas of public, corporate and global governance, as well as international judicial cooperation and asset recovery. The Institute acts as a centre of competence by combining scientific methodology with hands-on practical experience to provide applied solutions to concrete problems. Based in Switzerland and associated with the University of Basel, the Institute comprises of internationally recognised academics as well as practitioners with long-standing experience in the field of anti-corruption and anti-money-laundering. Furthermore, it relies on a wide network of partners from around the world and works with all stakeholder groups concerned.

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### **Governance of Art Trade**

The art trade market is global, highly fragmented and complex, involving a great variety of operators. In light of this complexity, the current level of regulation and existing compliance efforts by individual operators has proven to be insufficient. With some competitors engaged in unethical or illegal behaviour, operating profitably while acting with integrity and ethics is increasingly difficult. As other industry sectors (e.g. the financial sector when faced with the challenge of effectively combating money laundering) have experienced, collective action by key market participants can be a highly effective way to systematically and comprehensively address such business practices and to ensure fair and efficient competition in a global market.

Thomas Christ, Claudia von Selle,

Januar 2012

Responsibility for the views expressed and for any errors of fact or judgment rests with the author alone.

Basel Institute on Governance, Steinenring 60, 4051 Basel, Switzerland

[www.baselgovernance.org](http://www.baselgovernance.org)

[info@baselgovernance.org](mailto:info@baselgovernance.org)



## History

The Art Trade Initiative was conceived at a global conference on ‘Governance of Cultural Property: Preservation and Recovery’, which took place in September 2009 in Basel, Switzerland and was organized by the Basel Institute on Governance. Amongst many other topics discussed, one focus of the conference’s initiators, Dr Thomas Christ and Claudia von Selle, was the role of the art market as a ‘*refuge de valeur*’ which may attract dubious players as well as art objects of doubtful origin and value.

As a result of these discussions, the participants expressed a strong interest in pursuing the idea of collective action, by establishing art trade ‘industry standards’, to address fundamental integrity issues in the sector.

Two subsequent meetings of committed key players, representing a major part of the global art market, took place in Basel and New York in 2010. In attendance were high-ranking representatives from several prestigious auction houses and various international art dealers’ associations as well as American and European lawyers. The Basel Institute on Governance organized the meetings and acted as facilitator.

## About the authors

Dr Thomas Christ is Managing Director of DHL Logistics in Switzerland. He studied Law and History of Art at the University of Basel and concluded his academic education with a PhD thesis on fundamental copyright questions in the film industry. Besides sporadic publications and lectures on professional topics in the field of cargo and data management he remains interested in various aspects of the Arts and has written several books on historical and contemporary topics.

Claudia von Selle is a German lawyer with 14 years of international practical experience in the protection and restitution of cultural objects in international institutions as well as counsel for French and German Governmental Commissions and in representing private persons. Since 2000 she has pursued her work in this field as a lawyer for legal firms in Berlin and Paris ([www.cvonselle.de](http://www.cvonselle.de)).



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## 1. Introduction

At first glance the global art trade, with an annual turnover of 30 to 40 billion Euros, seems comparable to other sectors of the global economy. Most of its typical activities, such as buying, selling and placing objects of art, are generally regulated by national commercial, civil and criminal legislation, applied and interpreted by local courts.

On closer inspection, however, certain characteristics emerge that are peculiar to the art trade. They are also crucial for the adequate understanding and appreciation of this sector's increased susceptibility to illegal activity.

- The art trade is an extremely diverse market area bringing together a wide range of highly diverse players. One half of the trade is dominated by a few auction houses, while the other half is an open playing field for a myriad of art-dealers. These in turn are organised in a variety of trade associations and subscribe to a great range of different ethical standards.
- The art trade largely operates independently of the financial markets and the fluctuations of share prices, yet displays comparable characteristics by exposing its trade objects to often dramatic and sometimes inexplicable changes in value.
- Akin to the real estate sector, the art trade has the reputation of a *refuge de valeur*, which means that the more tightly the international financial sector is regulated and controlled, the more copiously funds flow into the art world.
- In comparison with other trade sectors, the art market faces a higher risk of exposure to dubious trade practices. This is due to the volume of illegal or legally questionable transactions, which is noticeably higher in this sector than in other globally active markets. Far more serious than shady dealings in a legal grey area, the sector's shadow economy encompasses issues ranging from looted art, professional counterfeiting and fake certificates to the use of art sales for the purpose of money laundering.

However, the main difference between the art trade and neighbouring markets is found in the necessity to subject almost every transaction to two questions. Firstly: 'Is the ownership of an art object up for sale traceable (provenance of the object)?'; secondly: 'Are the buyers and their sources of funds identifiable (provenance of the funds)?' While the latter question has in the last few years increasingly been dealt with by the enactment of anti-money laundering legislation in a growing number of countries, the former still puts professional art dealers in a tight spot due to the conflicting priorities of transparency and discretion. If a dealer cannot prove the authenticity of an object beyond any doubt he should either retire from the transaction or disclose the identity of the vendor. However, the vendor may have very good and legitimate reasons why he/she does not want his/her identity as owner or heir of a given art collection to be known to the general public.

Some auction houses have addressed the looming reputational risks associated with this dilemma by subjecting themselves to a variety of workable in-house rules and guidelines. However, as a result of this unilateral approach, a transaction refused on such grounds by one house may well be picked up later by a competitor who feels committed to

different business standards. In particular, it is the formulation of non-disclosure agreements (and their legal exceptions) between agent and vendor that is a notorious bone of contention for lawyers and art dealers alike.

In this context, the need for collective action in the art market has repeatedly been emphasized at various art trade conferences. A so-called ‘self-regulation initiative’ has the advantage of pre-empting and potentially influencing formal regulation that is increasingly likely to be introduced in view of the general tightening of regulatory frameworks in related matters.

However, a breakthrough beyond joint statements of intent has not been achieved so far, let alone the formulation of universally agreed upon guidelines such as those proposed in this working paper. Productive initial discussions with some key representatives of the art trade have taken place with the assistance of the Basel Institute on Governance. They have revealed that there is still a gap to bridge between stakeholders’ deeper insights and their actual commitment to addressing the problem. There seems to be a tendency to discredit the pressure towards better regulation of the arts sector as mere media hype. This is, of course, a fallacy. One that the industry itself will hopefully be able to address from within, before national legislators step in; or before the whole sector slides into dubious market behaviour whilst dealing with questionable objects and thus loses its reputation as a respectable business sector.

## 2. Existing Guidelines and Regulations

After the ‘Hague Conventions’ of 1907 und 1954 ousted the looting and destruction of cultural properties in armed conflicts, the UNESCO Convention of 1970 regulated their illicit import, export or transfer of ownership at an inter-governmental level.

- |      |  |
|------|--|
| 1993 | European Commission Directive 93/7 on the return of cultural objects |
| 1995 | UNIDROIT Convention on stolen or illegally exported cultural objects |

Internationally binding agreements have been slow to translate into national law. Consequently, the variety of non-binding guidelines is so great that only a selection can be presented below:

- |      |   |
|------|---|
| 1986 | Code of Ethics for Museums (ICOM), revised in 2004  |
| 1998 | Washington Principles on Nazi-looted Art, followed by the Terezin Declaration in 2009         |
| 1999 | UNESCO International Code of Ethics for Dealers in Cultural Property                          |
| 2007 | Recommendations on the trade of cultural objects on the internet by INTERPOL, UNESCO und ICOM |

There are, furthermore, the ethics rules established by a variety of international trade associations such as:

**Antique Tribal Art Dealers Association (ATADA):** Trade Practices and Guarantee, Article X, Amended Bylaws of the Antique Tribal Art Dealers Association, Inc. (1997, amended 2007)

**Association of Art Museum Directors (AAMD):** New Report on Acquisition of Archaeological Materials and Ancient Art Issued by Association of Art Museum Directors (2008)

**Association of Art Museum Directors (AAMD):** Art Museums and the Identification and Restitution of Works Stolen by the Nazis (2007) - Position Paper (Not Guidelines)

**College Art Association (CAA):** A Code of Ethics for Art Historians and Guidelines for the Professional Practice of Art History (1995)

**College Art Association (CAA):** CAA Statement on the Importance of Documenting the Historical Context of Objects and Sites (2004)

**Confederation internationale des negociants en oeuvres d'art (CINOA):** International Support and Guidelines (1987, amended 1998 and 2005)

**International Association of Dealers in Ancient Art (IADAA):** Code of Ethics and Practice

**Museums Association (MA):** Code of Ethics for Museums: Ethical principles for all who work or govern museums in the UK (2002)

**World Archaeological Congress (WAC):** First Code of Ethics (1990)

Ethical rules have furthermore been established by national arts dealers' and museums' trade associations such as:

**British Art Market Federation (BAMF):** Principles of Conduct of the UK Art Market Adopted by the British Art Market Federation (2000)

**German Museum Association:** Code of Ethics

**J. Paul Getty Museum:** Acquisitions Policy for the J. Paul Getty Museum (2006)

**Metropolitan Museum of Art (MMA):** Collections Management Policy (2008)

**Society for American Archaeology (SAA):** Principles of Archaeological Ethics (1996)

**Swiss Association of Dealers in Arts and Antiques (SADDA):** Code of Ethics

At a national level, most countries nowadays have their own legislation governing the illegal export of cultural goods.

### **3. A Proposal for Global Guidelines**

These guidelines, the ‘Basel Art Trade Guidelines’ have been devised by the Basel Institute on Governance on the basis and as a result of what has been discussed among the key market players who participated at the Art Trade meetings held in Basel and New York in 2010. The guidelines are meant to be a first draft and proposal which has to be discussed further and is open to modification which the participants will deem as necessary or more appropriate. The guidelines considered in particular the already existing legal obligations of the art market participants, e.g. with regard to the questions of disclosure regulations and non-disclosure agreements. In art dealing the matter of disclosure and discretion belongs to the most sensitive challenges. The starting point for the creation of guidelines was therefore to be in line with national legal requirements and simultaneously to respect the requirements of a globally functioning art market. Finally the guidelines also offer a proposal on implementation procedures on the basis of experience in other industries. In this sense the guidelines reflect, harmonize and summarize the status quo and hence provide a common platform for self-regulation which the art market participants can develop if necessary.

#### **Basel Art Trade Guidelines**

##### **A. Preamble**

##### **B. Scope of the rules**

1. Art market operators
2. Art market objects

##### **C. Standards for art market operators**

3. Identification of the seller and the buyer
4. Due diligence before sale
5. Source of funds
6. After-sale responsibility
7. Conflict management

##### **D. Implementation**

8. Information and documentation
9. Implementation
10. Secretariat

##### **E. Recommendation**

## A. Preamble

The purpose of the Basel Art Trade Guidelines (BAT Guidelines) is to support the art market in its efficient and fair functioning. Art market participants are required to respect applicable laws and to adopt business practices that are not only ethical but also safeguard and promote the reputation and integrity of the art market as a whole.

The following Guidelines are understood to be applicable to all art market participants and aim to provide practical guidance for the sale of art objects.

Finding a definition of ‘the art market’ is difficult because today’s market is wide ranging in scope and covers not only art and antiquities but also a whole array of collectible objects. As a consequence, the various participants in this market are very diverse.

The art market has various very characteristic attributes that make it attractive but also vulnerable. These include its insider aspects and the hierarchy of knowledge and status, as well as the fact that art market participants can assume the multiple roles of auctioneers, dealers and collectors which, in other markets, would involve conflicts of interest. Furthermore, access to readily available information that directly affects market value and pricing patterns (for example the number of pieces available) is both unstructured and opaque. The art trade market is therefore susceptible to illicit practices and money laundering despite the existence of laws, international frameworks and soft law efforts to combat these crimes.

In this context, many international art market stakeholders have developed internal guidelines and compliance programmes to ensure lawful and ethical business practices, in particular to prevent corruption and minimise risks in their business activities. The adherence to such compliance programmes is difficult if competitors do not conduct their business according to the same high standards and instead engage in illicit behaviour.

Collective self regulatory action by market operators, designed to ensure that best practices are observed throughout the market, is the most efficient way to combat unethical business practices and will result in a level playing field and fair competition for all.

On the one hand the BAT guidelines propose due diligence requirements for contractual partners (namely seller and auction house or art dealer and buyer). On the other hand, they offer a guarantee of equal competitive conditions to participating market operators. Observance of the BAT Guidelines will mean that a competitive advantage can no longer be gained by disregarding due diligence obligations. These Guidelines therefore contribute to the creation of fair trade in what is currently a highly irrational and obscure market.

It is in the interests of all art market participants to adopt and implement these guidelines. Precisely because an art market operator may adopt interchangeable roles, proper due diligence conducted as

a seller will likely benefit that same operator when acting as a buyer.

These Guidelines do not seek to replace existing initiatives but rely on art market operators' full compliance with applicable national legislation, international conventions and relevant Codes of Ethics such as the IADAA, ICOM CINOA, CAA-Codes and others. These various instruments are, however, of limited application and effect as their respective scope will cover only certain countries, specific operators and at the same time often lack mechanism of enforcement and sanctioning. The overarching scope of the BAT Guidelines thus complements the existing range of standards and instruments and provides consistency and a level playing field to all participants.

## **B. Scope of the rules**

### **1. Art market operators**

Art market operators include, for example auction houses, galleries, museums, art fairs, experts, insurers, conservators, curators and restorers. Despite being subject to different regulations, they all face similar risks with regard to the provenance of the art object and the source of funds. As art market operators can assume different roles - for example when an art gallery or museum acts as either seller, buyer or intermediary - it is in their own interest to implement similar practices for all market operators. These Guidelines therefore apply to and address all art market stakeholders who are involved in the sale of art objects as professionals.

### **2. Objects of the market**

For the purposes of these Guidelines the art market is understood to be the trade of art objects. What constitutes an art objects is explained by the following two definitions of 'art objects' and 'collectable objects':

#### **2.1. Art objects**

According to international law art objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science.

#### **2.2. Collectable objects**

In addition to and going beyond this definition the BAT Guidelines also cover collectable objects, which are all objects handled by art market operators, or which, due to their unique selling and pricing pattern/condition, are usually dealt with by the same market participants.

## C. Standards for art market operators

### 3. The identification of seller and buyer

#### 3.1. Principle

Identifying the seller reduces the risks resulting from any ambiguity regarding provenance, illicit trade and forbidden exportation. Identifying the buyer reduces the risks of money laundering and illicit enrichment and serves to preserve the records on provenance of the art object. The art market operator therefore has to ensure full identification and documentation of the seller and the buyer ('know your customers' rule).

#### 3.2. Balancing interests

Some sellers and buyers may have reasonable grounds to prefer to remain anonymous to third parties (discretion) while the need to ensure clarity on the provenance of art objects and funds has to be adequately addressed (disclosure). In practice, this means that if the art market operator knows, or has reasonable suspicion to believe that the other party to a transaction is, in fact, acting on behalf of someone else (e.g. another buyer or seller), the art market operator must establish the identity of the true beneficial owner and the capacity in which the counterparty is representing this beneficiary. This identification of the beneficial owner should take place even if the identity is to ultimately remain unknown to third parties. It is essential to combine due diligence with a balanced disclosure and discretion approach at different levels as follows:

##### 3.2.1. Disclosure

The identity of the seller and the buyer must be known to each other, and to all intermediaries involved, including to third parties with a legitimate legal interest. Such a legitimate legal interest exists if a third party has a commercially justifiable or reasonable entitlement to the defined value of the object or to the object itself. Where such disclosure is granted, the third party may communicate the identity of the seller only in connection with the said third party's legitimate legal interest, and must confirm this in writing to the market operator before any such disclosure is made.

In general, the rules for the disclosure of the buyer's or seller's identities are in accordance with the applicable anti money laundering laws and regulations.

##### 3.2.2. Non-disclosure to third parties

Non-disclosure agreements should be avoided, but may be admissible when explicitly requested by the seller or the buyer. A request for non-disclosure to third parties can be granted if a market participant presents justifiable or reasonable grounds, such as the necessary and legally defensible protection of his privacy. A justifiable interest will not be recognised if the reason for non-

disclosure serves to circumvent applicable laws. Such non-disclosure requests only lead to enhanced due diligence obligations (see 4.4.1.). The art market operator acting for a seller who requests non-disclosure must provide a purchase back guarantee or equivalent and inform the latter about the possible consequences of non-disclosure.

### 3.2.3. Disclosure procedures towards third parties

These Guidelines propose that even where non-disclosure has been requested the identity of the seller or buyer has to be communicated by the market operator to third parties with a legitimate legal interest using the following procedure: The market operator communicates the request for disclosure to the concerned party (seller/buyer) granting a reasonable time for response. If the latter opposes such a disclosure request explicitly and with a legitimate reason, the final decision will be determined by the Advisory Board (see 9.2.2) which will seek to balance the various interests at stake (*in camera* procedure). If the Advisory Board grants disclosure, the third party may communicate the identity of the seller/owner only in connection with the said third party's legitimate legal interest, and this must be confirmed in writing to the market operator before any such disclosure is made.

## 4. Due diligence before sale

### 4.1. Due diligence

Due diligence before sale is crucial to establishing transparency on provenance, including rights of disposal, third party rights, authenticity and, finally, the price of the art object. The identification of the art object is verified through due diligence and determines the commitments the seller has to the buyer, and the responsibilities of the art market operator in concluding the operation. In general, an art market operator's best efforts should be at least equal to the due diligence endeavours he would undertake when acting for his own account and responsibility (*diligentia quam in suis*).

### 4.2. Best efforts due diligence

#### 4.2.1. Principle

An undisputed and uninterrupted provenance history and proven authenticity of the art object is the aim in all transactions. In adopting and implementing these standards, art market operators commit to undertaking best efforts in conducting due diligence when preparing for selling, as described in the following:

#### 4.2.2. Research and evidence

The market players will invest sufficient time to research reasonable provenance and authenticity before finalising selling procedures. The art market operator acting on behalf of the seller is obliged to undertake provenance and authenticity research, making such efforts as are commercially reasonable and providing information on the art

object as well as its former owners. He is therefore obliged to use all sources of information which are, or can be, made available using justifiable and reasonable efforts. In particular, this includes:

- obtaining the provenance history of the object;
- requesting identification information from the seller,
- establishing credibility and plausibility references relating to the seller,
- referring to publicly available databases and listings relating to the parties to the transaction and the art object respectively;
- obtaining any relevant and available legal documents, witness declarations, expert opinions as the case may be, and
- checking the restoration history as appropriate and presenting circumstantial evidence when no direct documentation is available.

The market operator's obligations to obtain the evidence described above should be in proportion to the market value or the cultural/historical/religious importance of the object in question.

#### 4.2.3. Conflict of interest

An expert's opinion is invalid if the professional independence of the expert is in doubt. This is the case if the terms dictating his financial remuneration prevent the expert from fully disclosing relevant information (for example because of a success fee). At the request of the art market operator, the art expert will disclose his commercial or financial relationship with the seller, the buyer, the art dealer or the auction house.

#### 4.3. Incomplete provenance

Being in possession of an art object does not in itself provide sufficient evidence of ownership and the rights of disposal. In the absence of valid objections it is, however, reasonable to suppose that the possessor enjoys full ownership of the art object. In these and other cases where full evidence on the provenance of the art object could not be procured, but sufficient indications of legitimacy are available, the art object can still be sold, but only with full disclosure of the seller's identity and the respective findings.

#### 4.4. Enhanced due diligence

The art market operator must initiate enhanced due diligence if the seller requests non-disclosure of his identity to third parties or if the provenance or the authenticity of the art object itself raises serious doubts. Enhanced due diligence involves, at least, the following efforts: Obtaining additional independent expertise, consulting expert committees and gathering second/further opinions, checking of additional databases, registers and listings, professional background check on the seller, research on previous art trade activities involving the seller (possibly facilitated by the other participants in this initiative), and information requests to relevant law enforcement authorities. The claim that the above procedure would incur

unreasonable expenses has no legal basis under these circumstances.

#### 4.4.1. The cost of enhanced due diligence

Art market operators will inform the seller in advance that enhanced due diligence will take place as a result of the request for information to remain undisclosed, and will inform the seller of the procedure as well as the expenses incurred. The costs of increased due diligence will be borne by the seller.

#### 4.4.2. Residual doubts

##### 4.4.2.1. Unclear provenance

Should the enhanced due diligence procedure yield insufficient or inconsistent information (*non liquet*), the art market operator should propose to the seller full disclosure of these findings to the buyer and to provide a purchase back guarantee or its equivalent, to address the possible consequences of the unclear provenance. Should the seller refuse such disclosure and guarantee, the market operator will abstain from providing his services.

##### 4.4.2.2. Doubtful provenance

Should the enhanced due diligence or similar third party information lead to serious doubts or well founded suspicion that the art object was stolen, illegally imported or otherwise illicitly obtained, the art market operator must inform the appropriate local authorities. In such a case, the object in question has to be held in trust/custody by the art market operator until the respective law enforcement agency gives further instructions. The sellers of such ‘objects of doubtful provenance’ have to be informed by the operator regarding the potential opening of procedures and the operator’s cooperation with the respective authorities.

### 5. Source of funds

#### 5.1. Principle

The art market operator will endeavour to deal only with buyers whose source of funds can be established to be legitimate. To meet this obligation, the art market operator should undertake adequate and reasonable measures to establish the origins of the funds involved in the transaction. Such efforts could include obtaining an appropriate certification from a reputable financial institution regulated for anti-money laundering purposes in the country where the art market operator is located.

#### 5.2. Cash payments

In general, transfers in cash are to be discouraged altogether. Where they take place and if they exceed EUR 15 000 (or the equivalent in any other currency), the art market operator should conduct

enhanced due diligence on the buyer.

### 5.3. Beneficial owner of the funds

If the buyer is a domiciliary company, or acting as an intermediary or otherwise on behalf of a third party, the art market operator must establish the identification of the ultimate beneficial owner of the funds.

Where the source of funds gives rise to grounded suspicions of money laundering and in the absence of a plausible explanation, the art market operator must report those suspicions to the appropriate authorities. The art object may then be subject to legal orders, as required by local laws and regulations, and the transaction may be blocked.

The art market operator must establish record retention requirements for all documents relating to transactions involving art objects. The documents must be retained for a minimum of five years.

## 6. After-sale responsibility

### 6.1. Principle

The after-sale responsibility of the art market operator is directly proportional to the level of disclosure and due diligence exercised in the operation. The greater the level of disclosure and due diligence by the art market operator the lesser the responsibility after sale.

#### 6.2.1. Limited responsibility

If the identity of the seller and the buyer is disclosed (see 3 above), and due diligence duties have been properly observed (see 4 above), the art market operator will only be liable for those deeds that he is usually responsible for in the conduct of his own dealings (*diligentia quam in suis*; see 4.1.).

#### 6.2.2. Strict responsibility

If the seller's identity is not disclosed, or the market operator otherwise breaches his due diligence obligations, he will be liable to the buyer also in cases of unclear provenance or unresolved questions regarding the genuineness of the art object, provided the buyer acquired the object of art according to applicable laws and free of any legal impediments.

## 7. Conflict management

As disputes about art objects typically involve weighty economic interests, or arise through political, historical or cultural conflict, a non-judicial settlement of such cases is usually more appropriate and successful.

Besides seeking remedies from conventional courts, the BAT

Guidelines recommend taking recourse to out-of-court settlements, which include various Alternative Dispute Resolution (ADR) proceedings, such as:

- Arbitration
- Mediation
- Recourse to a Dispute Board (within ADR Proceedings)
- Adjudication

All signatory art market operators will receive a list of available ADR proceedings in conflict resolution. Umbrella cooperation agreements will be signed between the competent international and national institutions and the Advisory Board or the respective art dealers association, thus allowing the signatory art market operators to rely on and refer to a pool of experts when considering ADR proceedings.

The signatory art dealers' associations in cooperation with the Advisory Board will provide *ad hoc* guidance for the selection and application of appropriate ADR proceedings and will give general advice on conflict management.

#### **D. Implementation**

The proposed measures try to convert these Guidelines into a living document. The foreseen steps therefore have to be discussed, if necessary amended and agreed upon by the signatory parties.

#### 8. Information and documentation

##### 8.1. Information

In order to facilitate the implementation of the standards set out in these Guidelines, art market operators make a commitment that they will:

Publicly subscribe to the BAT Guidelines, either directly or through their respective art dealers association, and will report back on the measures undertaken to implement them.

All signatory parties will:

Publicly acknowledge their compliance with the BAT Guidelines, define internal measures to implement them or amend existing policies and procedures as may be necessary; retain all documentation that may be relevant to establishing the provenance of art objects in the future or to funds involved in transactions that have been either conducted or refused, for a minimum of five years starting from the date of receipt of such documentation.

##### 8.2. Databases

The art market operators will establish two databases, namely: A database of art objects whose provenance could not be fully

established; and a database of art objects whose provenance has been subject to a claim. These databases will be accessible to signatory parties, law enforcement officials and other authorities entitled to request such information.

## 9. Implementation action

Implementation of the BAT Guidelines involves:

### 9.1. Training programmes

The art market operators will engage in training and awareness raising programmes to support the implementation and dissemination of these Guidelines throughout the art market. Training activities may involve peer-to-peer exchanges of information as well as specific training programmes organised for example, by art trade associations and their members/signatories. Awareness raising programmes should include all relevant media, public and private sector firms and take place worldwide.

### 9.2. Monitoring

#### 9.2.1. Monitoring mechanism

The art market operators of this initiative will establish an independent monitoring mechanism to ensure compliance with the BAT Guidelines. Its main functions will be:

- to take the necessary steps towards the development of an auditing mechanism for art market operators committed to implementing the BAT Guidelines (i.e. through jury activities at international fairs);
- to create certification procedures through international art dealers associations;
- to control the effective use of the BAT Guidelines;
- to receive and address complaints of violations or non-compliance with the BAT Guidelines and impose sanctions for breaches of these Guidelines.

#### 9.2.2. Advisory board

Elections for the eight members of the Advisory Board will be held every five years. The composition of the Advisory Board will be in proportion to the art market operators' professions and the details to be defined in rules governing these elections. The Advisory Board will be responsible for monitoring compliance with the BAT Guidelines. In carrying out its duties, the Advisory Board is not bound by instructions.

#### 9.2.3. Sanctions

Sanctions may be recommended by the Advisory Board and imposed by signatory art dealers association boards only after a hearing has been held. Sanctions may include a warning, loss of signatory

association membership and/or, withdrawal of certification and will be proportionate to the gravity of the breach of the BAT Guidelines or the degree of culpability. A member of the Advisory Board is to be excluded from any decision to determine a sanction if the affected art market operator or a member of the Advisory Board expresses justifiable suspicion of bias or conflict of interest. Such an event generally arises if the Advisory Board member is either personally or economically linked to the affected art market operator or is a direct competitor. The discussion and decision as to whether a member of the Advisory Board will be excluded from proceedings under such circumstances, will take place in the absence of the said member.

The signatory art dealers' associations, in cooperation with the Advisory Board, will develop harmonised rules on sanction procedures, with the aim of fostering the successful implementation of these Guidelines.

9.3. The Advisory Board may transfer its decisions under this section (9.2) to an independent, non-partisan arbitrator who is bound by the rules of confidentiality.

#### 9.4. Ethics Group

The signatory art dealers' associations in cooperation with the Advisory Board may establish an Ethics Group that will work to improve the BAT Guidelines, give opinions on cases of conflict at the request of the signatory parties, and represent the signatories on a political level.

### 10. Secretariat

#### 10.1. Responsibilities

A secretariat will be set up in order to:

- coordinate the implementation and monitoring activities;
- support art market operators in the adaptation of their internal regulations and practices,
- compile a register of the art market operators who effectively implement the BAT Guidelines
- maintain and provide access to the expert pool; and
- provide assistance in the event of conflict and coordinate contacts with mediation and arbitration institutions.

#### 10.2. Location and financing

The secretariat will be located at the Basel Institute on Governance in Basel, Switzerland. The secretariat will be financed by signatories to the BAT Guidelines.

### **E. Recommendation**

The effective implementation of the BAT Guidelines will only be possible if there is considerable improvement in the accessibility to

archives and better cooperation with respect to existing registers of lost art works. The signatory parties therefore recommend the concerned bodies to engage in constructive collaboration and to develop rules that facilitate research by third parties. As far as possible all research and access to public archives should be free of charge.

## 4. Comments by Art Trade Representatives

The draft of the BAT Guidelines, as presented above, is based on consultations with representatives of the art trade as well as on existing guidelines of national and international art trade associations and organisations. Such ‘local’ rulings, however have very little impact on the actual conduct of day-to-day business, which is mainly due to their non-binding character and lack of sanctioning power.

At present, market leaders, such as the prestigious auction houses Christie’s and Sotheby’s, operate with their own in-house guidelines. Their guidelines typically differentiate between various types of problematic provenance, for instance by treating art looted by the Nazis differently from trophies carried off by the Allied forces during World War II. Guidelines then lead to radically diverging conclusions, as auction houses readily admit themselves. This is one of the reasons why, for example, in the case of Nazi looted art, they would welcome the creation of a unified sample catalogue containing clear definitions of what constitutes a ‘forced sale’. Even though the need for such a framework has also repeatedly been emphasized by American museum associations, no concrete steps towards a cooperative approach have been taken so far.

One of the main objectives of the draft BAT Guidelines was to find a way of harmonising a quantitatively and qualitatively diverse range of ethics and due diligence standards. One of the first steps was, therefore, the creation of instruments which would facilitate this process of harmonisation, based on regulations governing conflict resolution and control mechanisms in other business sectors. The aim was to create a framework which would hold up in court and not fall below legal standards already applied to market operations today. The art market is a business sector with traditionally high levels of commercial confidentiality. Talks with art trade representatives have uncovered a pronounced gap between their perceived personal entitlement to disclose or retain information pertaining to an art object, and the actual legal requirements protecting third party interests in such matters.

The three focal points listed below should therefore be regarded as the pillars of the BAT Guidelines, especially as they have not been formulated in this way in any of the international agreements or non-binding directives currently in existence

- rules on commercial confidentiality;
- procedures for alternative conflict resolution (ACR);
- an implementation and monitoring system.

For a better understanding of the diverse nature of this business sector, the issues at stake and the corresponding difficulties in coming to an agreement on content and typology, it has been decided to list comments received on individual draft guideline paragraphs below:

### A. The name ‘Basel Art Trade Rules / Guidelines’: comments

Strong opposition to the word ‘rules’, was expressed by the Anglo-Americans. They argued the term would indicate a binding nature of

the standard, which was contrary to the declared aim of the market operators consulted. The term ‘guidelines’, was perceived to more adequately express the spirit of the initiative.

## B. Scope of the rules: comments

### 1. Art market operators

Primarily, art market operators are buyers, vendors and intermediaries involved in the sale of an art object. Often, the same person or company may adopt any one of these three roles. Even though it might be more constructive to limit the BAT Guidelines’ scope of application to these three types of operators, the reality shows that the market is furthermore dominated by insurance companies, museum curators and expert evaluators. The central role of this last group is demonstrated very nicely by the infamous Jaeger/Beltracchi case (2011), where an entire forged collection changed hands in a million dollar deal made possible by the opinion of one respected expert evaluator, who had declared the works of art genuine. During the last working group meeting it was therefore decided to include these last named groups in the BAT Guidelines’ scope of application.

### 2. Objects of the art market

#### 2.1. Cultural objects

According to feed back, this paper cannot ultimately fall back on the Unidroit Convention for a definition of the term ‘art object’, as the Convention on the whole, appears to be unacceptable to art market participants. The BAT Guidelines have therefore decided to rely on the UNESCO definition. The same applies to the term ‘collectable object’ (cf. 2.2).

## C. Standards for art market operators: comments

### 3. Identification of buyer and seller

#### 3.1. Principle

Standardised ‘know your client’ (KYC) rules have already been initiated, developed and adopted by most major auction houses.

#### 3.2. ‘Balancing interests’

This article was rejected altogether by the Anglo-Americans, on the grounds that it fails to adequately take into account the specific conditions and circumstances of the art market, which they believe to be unable to function at all without the current levels of commercial confidentiality. However, the same individuals criticised the lack of in-depth rules on price fairness and ring behaviour. The authors are yet to receive constructive criticism on how to adequately address this dilemma.

As a matter of fact, the BAT Guidelines have been drafted along the lines of two fundamental principles of commercial as well as civil law:

1. A market operator's risk of liability is directly proportional to the amount of due diligence applied: the less diligence, the higher the risk.
2. As much transparency as necessary, as much freedom to act as possible.

The authors have decided to include a range of universally known legal terms such as 'evidence', 'residual doubt', and 'legitimate legal interest', so that market participants may apply criteria to their professional activities that could also be quoted in court.

As a basis for discussion, the proposed rules on disclosure do not, in any event, exceed the legal principles generally applicable today, such as the principle that unlawful behaviour is exempt from legal protection. It is the prerogative of art market operators themselves to establish more stringent rules or to enhance the general legal provisions with best-practices relating to their specific field of operation.

Newly introduced forms of legal procedure, like, for instance '*in camera* proceeding' have their roots in both European continental (i.e. German and French) and Anglo-American jurisdictions ('Freedom of Information Act').

#### 4. Due diligence before sale

Those without a legal background found it somewhat difficult to assess the various provisions regarding unclear or doubtful provenance and residual doubt. However, elucidation on this (and other) finer points of the BAT Guidelines will be a projected part of the implementation procedure.

Some criticism was directed at what was termed the 'excessive and unrealistic' scope of the Guidelines, especially with respect to the requirement of a second expert opinion. The authors hope that the example of the counterfeit Jäger/Beltracchi collection, which highlighted the need to apply scientific methods in the assessment of art objects, will heighten general awareness of the need to address this issue.

Opinions diverge widely across the sector regarding the various ways in which legal ownership of an art object can be proven. Under most continental European codes of civil procedure, documentation is only one kind of a whole range of evidence that may be produced. The BAT Guidelines therefore apply the far reaching fundamental principles of many civil procedure codes and include legal inspection, expert opinion and witness statements as well as any other evidence designed to prove ownership to the court.

The Guidelines' proposals on implementation matters attracted some criticism. Due to the heterogeneous nature of the art market the establishing of an the Advisory Board were declared unacceptable especially to the market-leading auction houses. However, no alternatives and no further discussions regarding the final version of these guidelines have taken place so far.

## 5. Conclusion

It can be assumed that the problem of illegal trafficking in art objects and measures taken to combat it are destined to become more significant over the next years. This tendency has already been witnessed since 2008. The latest example is the ‘Art and Cultural Heritage Mediation Program’ which was presented by ICOM (International Council of Museums) und WIPO (World International Property Organisation) in September 2011. Mediation of disputes over art objects is now open to members and non-members of ICOM. This organisation supplies a list of mediators and conducts specialist mediator training programmes.

Unfortunately, the art trade has shown a pronounced lack of interest in constructively dealing with the proposed draft BAT Guidelines and the issues it addresses. Reactions to a letter sent out to key representatives of the art trade industry by the Basel Institute on Governance in July 2011 were met with reservation and outright refusal to engage. Both the arbitrating role of the Institute and the Guidelines as such have remained unacceptable or unimportant to art market participants.

This, and the fact that even trials such as the Jäger/Beltracchi case go largely unnoticed in the USA, may point to the possibility that the art trade is simply not ready for self-regulation at this moment in time. As it happens, it may have to be the role of legislators and judges to form the framework for a better regulation of this particular business sector.

Nevertheless discussions with reputed exponents of the global art trade have shown that in principle market operators agree on the need to take self-regulatory action on matters discussed in this paper and in the BAT Guidelines, under the condition however that such collective action does not directly undermine the commercial interests of their trade. In other words, what seems legally and morally appropriate continues, at least at this present time, to be seen as economically harmful.

However, the authors of this paper are of the opinion that today’s deregulated art market risks being contaminated by doubtful or even criminal market players. It is therefore not the primary motivation of the BAT Guidelines to focus on single cases of trade with stolen or forged art objects. These matters are already taken care of by national jurisdiction and by specific legal provisions protecting the damaged parties and sanctioning the perpetrators. Rather, the BAT Guidelines seek to self-regulate two matters that have not yet been sufficiently addressed at a global level, namely the provenance of an art object and the provenance of the funds. If the BAT Guidelines address these matters, they do so with the intention of preventing the international flow of illicit funds and the trade in stolen or fake art objects. The latter might well be instigated or organised by the same dubious organisations or individuals involved in money laundering.

In addition to the financial value pertaining to these matters, the global art market should be seriously concerned with considerable reputational risks as again illustrated by the Jäger/Beltracchi case of 2011 which, according to the media, is the largest case of art forgery since the Second World War. It is interesting to note that in this case, the European media did not focus much on the person having forged the art

objects but much more on the doubtful role of the market operators, i.e. galleries and art experts who were involved. The large auction houses stress that illicit funds and art objects of dubious provenance, forged or extorted expert opinions continue to make up a small portion of the global art trade only. In this light, one would think that a self-regulation initiative as proposed by the authors of this paper is no threat to their operations and should be an ideal opportunity to position themselves in a positive light in the global market. However, it seems that despite an increasing number of relevant cases having recently come to light, no rethinking of this position has yet taken place.



United Nations Educational, Scientific and  
Cultural Organization  
Organisation des Nations Unies pour  
l'éducation, la science et la culture



World Customs Organization  
Organisation mondiale des douanes

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## MODEL EXPORT CERTIFICATE FOR CULTURAL OBJECTS

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### EXPLANATORY NOTES

#### 1. General

This model comprises five copies, which must be filled in legibly for each cultural object, without overwritten text, erasures or alterations. They should preferably be completed using a mechanical or electronic typewriter.

**Each heading must be completed, except headings 2, 12 and 18 if they do not apply. Areas not used must be barred or scored out in such a way that nothing can be added.**

In the multipart form, copies are identifiable by their number and function, located in the left margin. They are arranged in the following order :

- Copy No. 1 : Application to be retained by the issuing authority;
- Copy No. 2 : To be presented, in support of the export declaration, to the Customs export office and to be retained by the applicant requesting the exportation (or his representative);
- Copy No. 3 : To be presented to the Customs export office and then to accompany the consignment to the Customs office at the point of exit from the country. After endorsement by the Customs service, this copy is returned to the issuing authority by Customs, or by the applicant requesting the exportation or his representative.
- Copy No. 4 : To be retained by the Customs export office (or the Customs office at the point of exit from the country).
- Copy No. 5 : To be presented to the Customs export office and then to accompany the consignment to the Customs office at the point of exit from the country. After endorsement by the Customs service, it accompanies the cultural object and must be presented at importation in the country of destination to certify the legality of the export operation.

## 2. Headings

- Heading 1 : *Beneficiary applicant requesting the exportation* : Full name and address. The applicant requesting the export authorization (e.g. museum, art dealer, gallery or individual) may or may not be the owner of the cultural object (if the regulation so permits).
- Heading 2 : *Beneficiary applicant's representative* : Full name and address of the legal or authorized representative (e.g. carrier, forwarding agent, authorized agent or other). To be completed only when such a representative exists.
- Heading 3 : *Issuing authority* (heading for issuing authority only) : Name and full address of the competent authority issuing the authorization.
- Heading 4 : *Export license* (heading for issuing authority only) : Indicate the authorization number, its duration (in months or years), the date from which export is authorized and the country of destination.
- Heading 5 : *Initial consignee (and subsequent consignee(s) if known)* : Full name and address of the consignee(s) of the cultural object (e.g. museum, art dealer, gallery or individual). Continue on supplementary pages if necessary.
- Heading 6 : *Type of export* (heading for the issuing authority only) : Tick the appropriate heading. If it is a temporary export, the time limit for re-importation of the cultural object must be indicated.
- Heading 7 : *Owner of the cultural object* : name (e.g. museum, art dealer, gallery or individual) and full address.
- Heading 8 : *Photograph of the cultural object* (in colour and minimum 9 x 12 centimeters) : To be stuck on to the form. The issuing authority must validate the photo by signing and stamping it. The issuing authority is invited to request other photos, taken from different angles, for three-dimensional objects.
- Heading 9 : *Dimensions and net weight of the cultural object (possibly with its stand)* : The unit of measurement for these dimensions is in meters or centimeters, in the following order : height, width, depth and diameter if appropriate. For the net weight of the cultural object (possibly with its stand), the unit of measurement is kilograms or grams.
- Heading 10 : *Inventory number or other identification* : Tick the appropriate heading(s). Enter the inventory number of the cultural object within the establishment or collection of origin. If no inventory exists, specify this for the cultural object at issue and enter the number of any other existing specific or by category classification.

Heading 11 : *Description of the cultural object*. Apart from identification by number (inventory or other, see heading 10), describe the cultural object by:

- (a) Its precise nature (e.g. painting, statue, low-relief);
- (b) Its possible author or co-authors, if known and/or documented. If the author is unknown, indicate : name unknown. Specify if the work is signed (signature, monogram) and in what part;
- (c) Its precise title or, failing that, the subject matter it represents :

- Title : The title to be used is the official one, i.e. that listed in an inventory of cultural property or by the national heritage and cultural property authorities. The title should be given: (1) in the author's original language or, failing that, in the language of the catalogue; (2) in the language of the form.

Example : Painting by Munch from the museum in Oslo (Norway)

(1) In the original language : SKRIK

(2) In the language of the form (English) : The SCREAM.

It is very important to give the exact title, especially for books.

- Subject matter : for paintings, mention portrait, landscape, still life, etc. For furniture, specify: armchair, commode, wardrobe, etc. If it is a statue: dancer, bishop, musician, etc. For a religious or liturgical object: chalice, paten, ciborium, etc.

- (d) Its scientific name (especially for natural science collections and specimens), if one exists,
- (e) Its geographical origin,
- (f) Dating (as accurately as possible),
- (g) Any other useful information that could facilitate its identification. Specify, for example, if restoration work has been carried out, if certain elements or parts of the object are missing, damaged, cracked, etc. Indicate the issue number for bronze castings, sculptures and works such as lithographs and engravings.

For collections comprising several items forming a homogenous whole (e.g. archaeological finds with similar dates found during the same excavation), a general description of the above characteristics, together with a list of objects and/or a certificate from the competent scientific or archaeological organization or institute.

Continue on supplementary pages if necessary.

- Heading 12 : *Number of cultural objects in the collection* : If the cultural objects presented at export form a homogenous whole making up part of a collection, specify their number and the number of other objects in the collection not presented at export (if applicable).
- Heading 13 : *Copy, attribution, period, studio and/or style* : If they are copies, indicate the author or authors copied. If the work is simply attributed to one author, indicate “attributed to ....”
- Attributed to : Followed by an author’s name, guarantees that the work was produced during the lifetime of the author mentioned and that there are serious reasons for believing he was the author.
- If the author is unknown, indicate the studio, school, style and period (e.g. Velasquez’s studio, Venetian school, Louis XV or Victorian style, Ming period, etc.). For printed documents, indicate the editor’s name.
- Studio : Followed/preceded by the author’s name, indicates that the work was produced in his studio or under his leadership.
- School : Expression which, when followed by the author’s name, indicates that the author was a pupil of the master. These terms may only be applied to a work produced during the author’s lifetime or within 50 years of his death.
- Heading 14 : *Material(s) and technique(s)* : Great care should be taken when completing this heading; indicate the materials used and specify the technique employed (e.g. oil painting, woodcut, charcoal or pencil drawing, low wax casting, nitrate films, etc.).
- Heading 15 : *Value of the cultural object in the country of exportation* : Indicate the actual values or, failing that, an estimated value on the basis of reasonable criteria, in the national or reference currency (in this case, indicate the currency).
- Heading 16 : *Legal status and use* : Specify whether the cultural object presented at export has been sold, loaned, exchanged or other, and whether it is being exported for an exhibition, appraisal, research, repair or any other use.
- Heading 17 : *Attached documents/Specific methods of identification* : Tick the relevant heading.
- Heading 18 : *Supplementary pages* : Indicate the number of supplementary pages used, if any.

- Heading 19 : For copy (1) : Application : Must be completed by the applicant requesting the exportation or his representative, who undertakes to provide accurate information in the application and the attached supporting documents.  
For copies (2), (3), (4) and (5) : Endorsement by the Customs export office: to be completed by the Customs export office. This means the office where the export declaration is presented and the export formalities are completed.
- Heading 20 : Signature and stamp of issuing authority : To be completed by the competent authority, specifying the place and date on the five copies of the authorization.
- Heading 21 : Endorsement by the Customs exit office: For copies 3, 4 and 5 only. To be completed by the Customs exit office, bearing the date. Customs exit office means the last Customs office prior to the exit of the objects from the country.

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## MODEL EXPORT CERTIFICATE FOR CULTURAL OBJECTS

**Each heading must be completed, except headings 2, 12 and 18 if they do not apply**

<b>1</b>      <b>Application</b>	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address )
	3. Issuing authority (name and address)	4. Export authorization No. Duration: _____ From : ___ / ___ / ___ Country of destination :
	5. Initial consignee (and subsequent consignee(s)) if known (name and address)	6. Type of export  Permanent export  Temporary export Time limit for re-importation : ___ / ___ / ___
	7. Owner of the cultural object (name and address)	
8. Photograph of the cultural object : 9 x 12 centimeters minimum		
		
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp )		

<p>9. Dimensions and net weight of the cultural object (possibly with its stand)</p>	<p>10. Inventory number or other identification</p> <p><input type="checkbox"/> Inventory : No.</p> <p><input type="checkbox"/> No existing inventory</p> <p><input type="checkbox"/> Other classification : No.</p> <p><input type="checkbox"/> No other existing classification</p>
<p>11. Description of the cultural object</p> <p>(a) Type : (e) Geographical origin :</p> <p>(b) Author /co-author: (f) Dating :</p> <p>(c) Title or, failing that, subject matter : (g) Other information for identification purposes:</p> <p>(d) Scientific name if there is one:</p>	
<p>12. Number of cultural objects in the collection</p> <p>Presented :</p> <p>Not presented :</p>	<p>13. Copy, attribution, period, studio and/or style</p>
<p>14. Material(s) and Technique(s)</p>	
<p>15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :</p>	
<p>16. Legal status and use of the cultural object</p> <p>Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (please specify) :</p> <p>Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) :</p>	
<p>17. Attached documents /special identification methods</p> <p><input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) :</p> <p><input type="checkbox"/> List <input type="checkbox"/> Catalogue</p> <p><input type="checkbox"/> Seals <input type="checkbox"/> Valuation documents</p>	
<p>18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)</p>	
<p>19. Application</p> <p>I hereby apply for an export authorization for the cultural object described above and declare that the information in this application and the supporting documents is true.</p> <p>Place and date : Signature :</p> <p>(Position and name of signatory)</p>	<p>20. Signature and stamp of issuing authority</p> <p>Place and date :</p>

## MODEL EXPORT CERTIFICATE FOR CULTURAL OBJECTS

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<b>2</b>	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
Applicant's copy	3. Issuing authority (name and address)	4. Export authorization No. Duration: _____ From : ___ / ___ / ___ Country of destination :
	5. Initial consignee (and subsequent consignee(s)) if known (name and address)	6. Type of export  Permanent export  Temporary export Time limit for re-importation : ___ / ___ / ___
	7. Owner of the cultural object (name and address)	
8. Photograph of the cultural object: 9 x 12 centimeters minimum		
<div style="border: 1px solid black; width: 80%; margin: 0 auto; height: 200px;"></div>		
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp)		

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<p>18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)</p>	
<p>19. Endorsement by Customs Export Office</p> <p style="text-align: center;">Signature and stamp :</p> <p>Customs office :</p> <p>Country :</p> <p>Export document No. :</p> <p>Dated:</p>	<p>20. Signature and stamp of issuing authority</p> <p style="text-align: center;">Place and date :</p>

## MODEL EXPORT CERTIFICATE FOR CULTURAL OBJECTS

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<b>3</b>	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
Issuing authority's copy	3. Issuing authority (name and address)	4. Export authorization No. Duration: _____ From : ___ / ___ / ___  Country of destination :
	5. Initial consignee (and subsequent consignee(s)) if known (name and address)	6. Type of export  Permanent export  Temporary export Time limit for re-importation : ___ / ___ / ___
	7. Owner of the cultural object (name and address)	
8. Photograph of the cultural object: 9 x 12 centimeters minimum		
		
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp).		

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<p>21. Customs exit office</p> <p>Stamp and date :</p>	

## MODEL EXPORT CERTIFICATE FOR CULTURAL OBJECTS

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<b>4</b>	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
Copy for Customs authorities at exportation	3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From : ___ / ___ / ___  Country of destination :
	5. Initial consignee (and subsequent consignee(s) if known) (name and address)	6. Type of export  Permanent export  Temporary export Time limit for re-importation : ___ / ___ / ___
	7. Owner of the cultural object (name and address)	
8. Photograph of the cultural object : 9 x 12 centimeters minimum		
<div style="border: 1px solid black; width: 80%; margin: 0 auto; height: 200px;"></div>		
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<b>5</b>	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
Copy for authorities at importation	3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From : ___ / ___ / ___  Country of destination :
	5. Initial consignee (and subsequent consignee(s) if known) (name and address)	6. Type of export  Permanent export  Temporary export Time limit for re-importation : ___ / ___ / ___
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# Act of Terror

## Information that leads to the significant disruption of...



## Trafficking in Oil and Antiquities Benefiting the Islamic State of Iraq and the Levant (ISIL)

The Rewards for Justice program is offering a reward of up to \$5 million for information leading to the significant disruption of the sale and/or trade of oil and antiquities by, for, on behalf of, or to benefit the terrorist group Islamic State of Iraq and the Levant (ISIL), also known by its Arabic acronym as DAESH.

Terrorist groups such as ISIL rely on financing and support networks to sustain operations and launch attacks. ISIL's illicit oil operations and trafficking in looted archaeological material from Syria and Iraq are key sources of revenue, helping the terrorist organization to generate millions of dollars in hard currency and enabling ISIL to carry out its brutal tactics and oppress innocent civilians. ISIL's damage to and looting of cultural and historical sites in Iraq and Syria have destroyed irreplaceable evidence of ancient life and society.

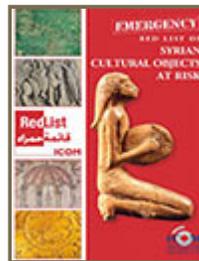
Ancient and historical coins, jewelry and carved gems, plaques, sculptures, containers, and cuneiform tablets are among the types of Syrian and Iraqi cultural objects that ISIL is seeking. The Emergency Red Lists of Cultural Objects at Risk, developed by the International Council of Museums with support from the U.S. Department of State, provide a comprehensive list of the types of items looted and trafficked from Syria and Iraq and are linked [here](#) and [here](#).

With the goal to counter ISIL's financing, the U.S. Department of State hopes this reward generates information regarding individuals or entities engaged in the production, facilitation, processing, smuggling, distribution, sale, and trade of oil and antiquities that benefit ISIL, as well as information regarding smuggling networks, methods, and routes underlying these activities.

<http://eca.state.gov/video/conflict-antiquities-panel-1-video>

<http://eca.state.gov/video/conflict-antiquities-panel-2-video>

## Antiquities





# The Operational Guidelines for the implementation of the 1970 Convention

The third Meeting of States Parties, which was held on 18-20 May 2015, adopted the Operational Guidelines for the implementation of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property ([Resolution 3.MSP 11](#)).

Consult the **Operational Guidelines** to the 1970 Convention:

[EN](#) | [FR](#)



**Operational Guidelines for the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, Paris, 1970)**

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### **List of proposed annexes**

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## Introduction

1. Cultural heritage is among the priceless and irreplaceable inheritance, not only of each nation, but also of humanity as a whole. The loss, through theft, damage, clandestine excavations, illicit transfer or trade, of its invaluable and exceptional contents constitutes an impoverishment of the cultural heritage of all nations and peoples of the world and infringes upon the fundamental human rights to culture and development.
2. To ensure, as far as possible, the protection of their cultural heritage against the illicit import, export and transfer of ownership, the Member States of UNESCO adopted the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (hereafter referred to as the “1970 Convention” or the “Convention”) on 14 November 1970, at the 16th Session of the General Conference of UNESCO. The 1970 Convention constituted a step forward to stop and reverse the erosion of the cultural heritage by, inter-alia, damage, theft, clandestine excavation, and illicit transfer and trade. It raised hopes that cultural heritage and traditions would be duly protected for the benefit of all nations and peoples of the world and for the better education of all. However, the number of States Parties has increased slowly and its effective implementation has been lacking. Moreover, worrisome trends, such as the proliferation of pillage and clandestine excavations of archaeological and paleontological sites and related sales on Internet, are posing further challenges to the protection of cultural heritage. At the same time, during the last decades new approaches and attitudes for strengthened partnership to protect cultural heritage have evolved, creating the potential of higher forms of understanding and international cooperation to combat the illicit traffic of cultural property. To date, more than 125 UNESCO Member States have become Parties to the Convention and thus it can be considered as generally accepted by the international community. However, further efforts are needed to increase its acceptance as well as to strengthen its implementation by its States Parties.
3. The first Meeting of States Parties to the 1970 Convention took place in October 2003 in order to examine issues concerning the effective implementation of the Convention (CLT-2003/CONF/207/5). In accordance with 187 EX/Decision 43 and in consideration of the discussions held at the meeting held on the occasion of the 40<sup>th</sup> anniversary of the 1970 Convention, the Executive Board convened a second Meeting of States Parties to examine in depth the impact of measures taken by States Parties to the Convention to optimize its implementation, appraise its effectiveness with particular regard to new trends in trafficking in cultural property, and reflect on possible modalities for ensuring its effective and regular application and follow-up.
4. The Second Meeting of States Parties took place in June 2012. At that occasion, the Meeting of States Parties decided to convene its meetings every two years. The Meeting of States Parties adopted its own Rules of Procedure. The Meeting of States Parties also decided to establish a Subsidiary Committee of the Meeting of the States Parties of the Convention of 1970 to support the strengthening of the implementation of the Convention (hereafter referred to as the “Subsidiary Committee”), to be convened every year.
5. Following that Second Meeting of States Parties, UNESCO’s Executive Board approved the holding of an Extraordinary Meeting of States Parties in 2013, to proceed with the establishment of the Subsidiary Committee (190 EX 190/43). At the Extraordinary Meeting, held on 1 July 2013, the Subsidiary Committee was duly elected. The Subsidiary Committee held its First Meeting on 2-3 July 2013 and adopted its own Rules of Procedure.
6. In accordance with Article 14.6 of its Rules of Procedure, the functions of the Subsidiary Committee are:

- To promote the purposes of the Convention, as set forth in the Convention;
  - To review national reports presented to the General Conference by the States Parties to the Convention;
  - To exchange best practices, and prepare and submit to the Meeting of the States Parties recommendations and guidelines that may contribute to the implementation of the Convention;
  - To identify problem areas arising from the implementation of the Convention, including issues relating to the protection and return of cultural property;
  - To initiate and maintain co-ordination with the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (hereafter referred to as the "ICPRCP") in relation to capacity building measures combating illicit traffic in cultural property;
  - To report to the Meeting of States Parties on the activities it has carried out.
7. In accordance to its mandate, and with the commitment of fully supporting the achievement of higher forms of understanding and international cooperation to combat the illicit traffic of cultural property, the Subsidiary Committee submitted these Operational Guidelines for the implementation of the UNESCO 1970 Convention by States Parties, for their adoption at the Third Meeting of States Parties of the Convention in 2015. The present guidelines may be subsequently amended by the Meeting of States Parties either on the recommendation of the Subsidiary Committee or on its own initiative.

### **Purpose of these guidelines**

8. The Operational Guidelines of the UNESCO 1970 Convention (hereafter referred to as the Operational Guidelines) aim to strengthen and facilitate the implementation of the Convention to minimize risks related to disputes over the interpretation of the Convention as well as to litigation, and thus to contribute towards international understanding. The Convention was adopted by the General Conference on 14 November 1970. Building upon improved shared understandings and experience, the Operational Guidelines are intended to assist States Parties in implementing the provisions of the Convention, including by learning from the best practices of States Parties geared to enhance the effective implementation of the Convention, and also to identify ways and means to further the achievement of the goals of the Convention through strengthened international cooperation.

### **Purpose of the Convention**

9. The reciprocal responsibilities and obligations agreed in the Convention have the purpose of enabling the international community to protect cultural property against damage, theft, clandestine excavations, illicit import, export and transfer of ownership, trafficking, to implement preventive measures and raise awareness of the importance thereof, to establish a moral and ethical code for the acquisition of cultural property to provide a platform among State Parties to the Convention for facilitating the recovery and return of stolen, illicitly excavated or illicitly exported cultural property, and to promote international cooperation and assistance.
10. The Preamble to the Convention proclaims that the exchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of humanity; enriches the cultural life of all peoples and inspires mutual respect

and appreciation among nations; that cultural property constitutes one of the basic elements of civilization and national culture and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting; that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of damage, theft, clandestine excavation, and illicit export; that, to avert these dangers, it is essential for every State Party to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations; that, as cultural institutions, museums, libraries and archives should ensure that their collections are built up in accordance with universally recognized moral principles; that the illicit import, export and transfer of ownership of cultural property is an obstacle to that understanding between nations which it is part of UNESCO's mission to promote by recommending to concerned States, international conventions to this end; and that the protection of cultural heritage can be effective only if organized both nationally and internationally among States working in close cooperation. These agreed general principles should guide the interpretation of the provisions of the Convention.

### Definition of cultural property for the purposes of the Convention (Article 1)

11. In drafting the 1970 Convention, UNESCO Member States concluded that it was desirable for all States Parties to apply a common definition of cultural property for the purposes of the Convention, in order to adequately address the issue of exports and imports of such property. Thus, Article 1 states that, for the purposes of the Convention, the term “cultural property” means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the categories identified in the same Article.
12. States Parties are encouraged to keep such designation up to date. Among the categories of cultural property, as enumerated in Article 1 of the Convention, three categories pose special challenges in terms of their specific designation, as follows:

Products of archaeological and paleontological clandestine excavations: Regarding archaeological and paleontological finds clandestinely excavated, States are unable to produce any specific inventories. To avoid the problem of specifically identifying an object of archaeological or paleontological significance, it has been demonstrated that one useful approach is to make a clear assertion of State ownership of undiscovered objects, so that the State Party can request its return under the provisions of the 1970 Convention and/or by recourse to any other relevant means. This is particularly important in the case of an undisturbed archaeological site that has not yet been looted: every object in that site, still to be found, is important for the preservation of cultural heritage and the understanding and knowledge of the archaeological site's full meaning and context. Consequently, States Parties are encouraged to follow best practice in designating the cultural property that is protected under their national law in accordance with these characteristics and all States Parties are encouraged to recognize this sovereign assertion for the purposes of the Convention.

Elements of artistic or historical monuments or archaeological sites which have been dismembered: The specific designation of objects severed or torn from artistic or historical monuments or archaeological sites which have not yet been inventoried also pose a serious challenge. States Parties are invited to define these types of objects that are susceptible to pillage.

Objects of ethnological interest and items of indigenous communities: A special concern is posed by the increasing traffic of objects of ethnological interest that

have special anthropological significance in festive or ritual customs and traditions, among others. State Parties are invited to draw and appropriately update lists by type of such significant objects in order to support the fight against their illicit traffic. Another important concern is the return of objects from indigenous communities whose absence has deprived them of significant cultural items necessary for the continuance of their culture, education of their children and respect for their traditions. Items of spiritual importance in all cultures have also been the subject of increased concern. For instance, while human remains are not necessarily covered under the 1970 Convention, many indigenous communities feel strongly about the return of human remains originating in their communities for traditional burial or other ceremonies in their home country. These returns are not regarded as taking place in accordance with the 1970 Convention, since it uses the phrase “cultural property” and most indigenous communities do not accept that human remains can be regarded as “property”. States Parties are encouraged to take this into full account and thus to establish legislation, where necessary, that provides for the return of grave objects associated with burials, in view of the anthropological knowledge on the importance of burial practices to such communities and to conform with the wishes of those communities in accordance with the principles of the United Nations Declaration on the Rights of Indigenous Peoples 2007 and the Principles & Guidelines for the Protection of the Heritage of Indigenous People (drafted 1993 and revised 2000).

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

13. Article 2 and 3 state the fundamental principles of the Convention. The first principle is the recognition of “illicit import, export and transfer of ownership of cultural property” as “one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international cooperation constitutes one of the most efficient means of protecting each country’s cultural property” against these dangers. The second principle is a solemn undertaking by States Parties to fight these practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices and by helping to make necessary reparations.
14. Trafficking of cultural property has many causes. Ignorance and poor ethics are at its very root and therefore the critical role of education and awareness raising must not be disregarded. Lack of capacity to protect cultural heritage is an important weakness in many countries, which also has to be remedied as much as possible, taking into account that in many instances it is materially impossible to adopt exhaustive measures of physical security and surveillance of all relevant cultural heritage, particularly regarding archaeological and paleontological sites. Moreover, the market has to be better regulated. Law enforcement and customs controls both at export and import points require to be strengthened with rigorous and efficient mechanisms, as well as educating and utilizing an active judiciary in order to confer effective protection to cultural heritage. Moreover, information on trade exchanges should be fully and readily available to States Parties concerned, to enabling them to better confront illicit trafficking. As long as demand remains high there will be an incentive to supply any goods. The trade of archaeological and paleontological objects not only trivializes the invaluable nature of such objects but also may create incentives for looting. In direct relation to the aforementioned, it should be further noticed that objects of recent manufacture are regularly introduced into the market and sold at high prices as genuine archaeological artifacts. This circumstance may further incentivize pillaging and trafficking. Special attention is required in these regards.
15. Clandestine excavations of archaeological sites are among the most pernicious practices within the cycle of illicit trafficking. The damage caused by clandestine excavations of

archaeological sites goes well beyond the theft of important archaeological pieces, as it destroys the unity of meaning of the whole archaeological monument and archaeological context of the site, depriving the nations and peoples of the world of the opportunity to understand and learn from their irreplaceable cultural heritage. This pernicious practice should be fully stopped.

16. The recovery and return of stolen, illicitly excavated and illicitly exported cultural property, to countries of origin remains a top priority. All efforts should be made to proceed with this required reparation in fairness to the affected nations and peoples of the world.
17. To advance on all these fronts, States Parties are encouraged to reinforce the promotion of the effective implementation of the fundamental principles of the Convention through appropriate legislation and their full enforcement, as well as through education and awareness raising, capacity building and a strengthened international cooperation.

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

18. Article 4 (a) to (e) sets out categories of cultural property that can form part of the cultural heritage of a State, either owned by the State itself or a private individual. States Parties to the Convention are required to recognize a link between those categories and the relevant State where the object concerned has been created by an individual or by the “collective genius” of nationals, foreign nationals or stateless persons resident within its territory; found within its national territory; acquired by archaeological, ethnological or natural science missions with the consent of the competent authorities of that country; the subject of a freely agreed exchange; or received as a gift or legally purchased with the consent of the competent authorities of that country.
19. The Convention does not attempt to establish priorities where more than one State may regard a cultural object as part of its cultural heritage. Competing claims to such items, if they cannot be settled by negotiations between the States or their relevant institutions or by special agreement (see paras. 113-115 below), they should be regulated by out of court resolution mechanisms, such as mediation (see para. 104 below) or good offices, or by arbitration. There is no strong tradition for the judicial settlement of such differences in cultural matters. State practice would suggest a preference for mechanisms that allow consideration for legal, as well as cultural, historical and other relevant factors. States Parties are encouraged to exhaust all options provided by the Convention before entering into arbitration or litigation. States Parties are encouraged to cooperate to ensure that appropriate arrangements are established to allow the interested States to realize their interests in a compatible way through, *inter alia*, loans, temporary exchange of objects for scientific, cultural and educational purposes, temporary exhibitions, joint activities of research and restoration.

#### **National services for the protection of cultural heritage (Article 5, 13(a; b), 14)**

20. To ensure the effective implementation of the Convention, Article 5 requires that States Parties undertake, as appropriate for each country, to set up one or more national services for the protection of cultural heritage, with sufficient staff and adequate budget to carry out the following functions:
  - Contributing to the drafting of legislation (Art. 5(a); paras. 24-32 below);

- Establishing and updating a list of cultural property whose export would constitute an impoverishment of the cultural heritage of the country (Art. 5(b); paras. 33-38 below);
  - Promoting the development or the establishment of scientific and technical institutions required to ensure preservation and presentation of that cultural property (Art. 5(c); paras. 39-41 below);
  - Organizing the supervision of archaeological excavations and ensuring the preservation *in situ* of certain cultural property (Art. 5(d); paras. 42-48 below);
  - Establishing rules “in conformity with the ethical principles set forth in this Convention” and taking steps to ensure their observance (Art. 5(e), paras. 49-51);
  - Taking educational measures to develop respect for the cultural heritage of all States and spreading knowledge of the principles of the Convention (Art. 5(f); paras. 52-53 below);
  - Arranging appropriate publicity for the disappearance of any item of cultural property (Art. 5(g) paras. 54-55 below);
21. States Parties should also ensure that their national services support adequately other functions entrusted to them, such as the ones stipulated in Article 13(a; b):
- Preventing transfers of ownership of cultural property likely to promote the illicit import or export of such property
  - Ensuring cooperation between their competent services to facilitate restitution of illicitly exported cultural property to its rightful owner.
22. In this context, since previous experiences have proven their efficacy, States Parties are also encouraged to create “specialized police and customs units” or “law enforcement agencies” such as a pool of prosecutors or experts specialized in art-crime investigations, dedicated to the protection of cultural property and the recovery of stolen cultural property under constant cooperation with all the relevant authorities from the different branches and levels of government of the States Parties. States Parties should promote cooperation between such units created in different States, as well as with UNODC, INTERPOL and WCO, and are encouraged to exchange good practice and if possible technical support on all the relevant means and methods used for the prohibition and prevention of the illicit import, export and transfer of cultural property, with special attention to the fight against clandestine excavations of archaeological sites. States Parties are encouraged to enhance police activities to prevent illicit excavations or research in archaeological, paleontological and underwater sites, adopting for their surveillance, in accordance with the particular situations, the appropriate physical and technological measures. States Parties should also promote the exchanges of police and law enforcement experiences, taking into account the relevant investigating experience by specialized units having multi-year practice in the specific sector.
23. Article 14 states that each State Party should, as far as it is able, provide the national services responsible for the protection of its cultural heritage with an adequate budget. If necessary a fund should be set up for this purpose. States Parties are encouraged to ensure that their national services support adequately all of the functions given to them. States Parties are also encouraged to strengthen international cooperation in support of these national efforts.

### **Legislation (Article 5(a))**

24. Article 5(a) requires States Parties to adopt appropriate legislation for the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of cultural property. States Parties may seek assistance or advice for the making of such legislation from UNESCO. States Parties are encouraged to review their

legislation periodically to ensure that it integrates the relevant international legal framework and best practice.

25. In fulfilling their duty to protect cultural heritage, several States have enacted explicit laws on State ownership of certain cultural property, even when it remains officially undiscovered or is otherwise unrecorded. State ownership laws constitute the first barrier against looting and should prevent laundering and international trade in undocumented cultural property.
26. State ownership laws cannot fulfill their protective purpose or facilitate the return of cultural property if the removal of the relevant cultural property from the territory of the concerned State without its express consent as rightful owner is not internationally regarded as theft of public property. Thus, when a State has declared ownership of certain cultural property, States Parties are, in the spirit of the Convention, encouraged to consider the illicit removal of that cultural property from the territory of the dispossessed State as theft of public property, where such demonstration of ownership is necessary in order to allow for its return.
27. In this context, it is important to recall that, following the UNESCO Recommendation on International Principles Applicable to Archaeological Excavations (1956) and the ECOSOC Resolution 2008/23 on the need for States to assert State ownership of the archaeological subsoil, and as requested by the ICPRCP at its 16<sup>th</sup> session in 2010, the UNESCO and UNIDROIT Secretariats convened a group of experts from all different regions of the world and mandated them to draft a text that would appropriately address the subject. The document was finalized and adopted at the ICPRCP at its 17<sup>th</sup> session in 2011.
28. These Model Provisions are intended to assist domestic legislative bodies in the establishment of a legislative framework for heritage protection, in States concerned, in order to adopt effective legislation for the establishment and recognition of the State's ownership of undiscovered cultural objects with a view to facilitating return in case of unlawful removal and to ensure that courts will have full knowledge of the relevant legal provisions abroad. The Model Provisions and their explanatory guidelines are included in Annex 1.
29. Consequently, States Parties may consider, as appropriate for each country, to apply in their legislation the six Model Provisions on State ownership drafted by the UNESCO/UNIDROIT Working Group and adopted by the UNESCO/ICPRCP in 2011.
30. States Parties are encouraged to also consider becoming Parties of the UNIDROIT Convention on Stolen or Illicitly Exported Cultural Objects 1995. Significant provisions which complement the 1970 Convention are among others a duty to return a stolen object, a clear test for due diligence in checking provenance and specific provisions for the return of illegally exported cultural objects.
31. It is important that all relevant national legislation be appropriately publicized so that collectors, dealers, museums and other concerned stakeholders with the movement of cultural objects are fully aware of the precise national provisions they should comply with. To ensure, as far as possible, this publicity and visibility of the laws/rules concerning the protection of cultural property, UNESCO has established a Database of National Cultural Heritage Laws, a source of information easily and freely accessible (hereafter referred to as the "UNESCO Database"). The development of this innovative tool was approved by the UNESCO General Conference in 2003 and launched in 2005 by the 13<sup>th</sup> session of the ICPRCP.

32. The UNESCO database encompasses numerous types of national standard-setting instruments and related materials as well as information on the national authorities responsible for the protection of the cultural heritage and addresses of the official national websites dedicated to the protection of the cultural heritage. States Parties are encouraged to provide all relevant legislation, including their export and import laws and the legislation on criminal and administrative sanctions, to the UNESCO Secretariat translated into English or French which are the working languages of UNESCO, for inclusion on the UNESCO Database and especially to keep it updated.

### **Inventories, inalienability and State ownership (Article 5(b))**

33. A key step in the protection of States Parties' cultural property against illicit import, export and transfer of ownership is establishing and keeping up to date, on the basis of a national inventory of protected cultural property, a list of important public and private cultural property whose export would constitute an impoverishment of the national cultural heritage.
34. These lists can include cultural property identified either by individual description or by category, considering that, in developing and recognizing inventories of such protected cultural property inventories, States Parties should bear in mind the specific characteristics of cultural property, as defined in Article 1, in particular regarding clandestinely excavated archaeological sites and other cultural property that poses special challenges in terms of their specific designation (see para. 12 above).
35. States Parties have the indefeasible right to classify and declare certain cultural property as inalienable and, to enact State ownership laws on cultural property. In the spirit of the Convention and unless evidence of the contrary, States Parties are encouraged, for restitution purposes after the entry into force of the Convention as appropriate, to consider cultural property forming part of the cultural heritage of a State as appertaining to the relevant official inventory of the owner State. There is a need to develop a common methodology based on existing methods and databases to ensure that such inventories are fully integrated into the international procedures now available for tracking lost and stolen cultural objects in support of full compliance with and enforcement of the Convention. This common methodology may allow for the granting of a unique identity number not only to every object found in archaeological and paleontological sites and displayed or stored in museums but also to categories of types of cultural objects claimed by a State Party to be deriving from clandestine excavations, which may be categorized by region and epoch or any other suitable archaeological or paleontological reference.
36. Regarding movable cultural property in museums and religious or secular public monuments or similar institutions, including legally excavated archaeological sites and objects of ethnological interest, the usage of the Object-ID Standard is recommended. The Object-ID Standard facilitates rapid transmission of basic information on lost and stolen cultural objects. The Standard provides for eight key identifying elements which, together with a photograph, make the identification of an object and its tracking much simpler. States Parties which do not have extensive inventories and need to elaborate them quickly to make use of the international procedures now available for tracking cultural objects are encouraged to use the Object-ID Standard. Other methods may be proposed, as appropriate, in order to facilitate the use of the international procedures now available for tracking lost and stolen cultural objects in support of full compliance with and enforcement of the Convention. States Parties which have communities which, on religious or other grounds, are unwilling to photograph items used in sacred rituals are encouraged to discuss this issue with a view to improving the recovery of religious objects.
37. To facilitate the work of customs officers dealing with the import of cultural objects, it is imperative that they have precise information about protected cultural property and export bans in other States Parties. This can be done in two ways: either by means of an itemized

list in case of documented protected cultural property or, in case of protected cultural property that cannot be itemized, by means of a list of categories with descriptive explanations with as much detail as possible. Such list(s) should be made readily available for the customs authorities of other States Parties and other relevant authorities and entities.

38. The UNESCO database should be the first point of call for a customs service supervising imports because it will provide them with the legislation on the definition of what is a controlled export, what is an illegal export, and what needs to be discussed with the authorities of the country of export. It is therefore important to also have the legislation in an accessible language. National heritage services should be encouraged to publicize their protected cultural property nationally as well as to other States Parties so as to facilitate cooperation.

### **Expert institutions (Article 5(c))**

39. In accordance to Article 5(c), States Parties have undertaken to promote the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops, etc.) required to ensure the preservation and presentation of cultural property.
40. States Parties are encouraged to establish national specialized institutions where circumstances permit or to make arrangements for access to specialist institutions outside their own country where necessary. Such institutions should be well staffed, well funded and well provisioned with appropriate infrastructure, including security infrastructure.
41. States Parties are also encouraged to cooperate in the development or the establishment of scientific and technical institutions, including training workshops, capacity-building programs and infrastructure projects and share specialized scientific and technical expertise related to the protection of cultural property through methods such as trainings, internships and publication researches.

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

42. States Parties are encouraged to protect by legislation and, if necessary, by other specific measures, sites of archaeological interest, including their movable items. Concerning the legislation, the relevant provisions of the section "Legislation" (see paras. 24-32 above) should be followed.
43. Specific activities should be established to protect the archaeological heritage in accordance with the principles contained in the UNESCO Recommendation on International Principles Applicable to Archaeological Excavations (1956), as appropriate. The following principles of that Recommendation are relevant to efforts to prevent clandestine excavation:
  - The purpose of archaeological research lies in the public interest from the point of view of history or art or science. Excavation should not take place for other purposes, except in the case of the extraordinary circumstances described in the UNESCO Recommendation concerning the Preservation of Cultural Property Endangered by Public or Private Works (1968) and subject to the preventive and corrective measures prescribed in para. 8 of that Recommendation.
  - Protection should be extended to all objects belonging to a given period or of the minimum age fixed by law.
  - Each State Party should make archaeological explorations and excavation subject to prior authorization of the competent heritage authority.
  - Authority to carry out excavations should be granted only to institutions represented by qualified archaeologists or to persons offering unimpeachable scientific, moral

and financial guarantees that the excavations will be completed in accordance with the terms of the contract.

- The contract should include provision for guarding, maintenance, restoration and conservation of both the objects recovered and the site during and on completion of work.
  - An excavator or finder and the subsequent holders should be required to declare any object of archaeological character whether movable or immovable.
  - Objects recovered during the course of the work should be immediately photographed, registered and kept in a secure structure.
44. State Parties are encouraged, within the framework of applicable rules and existing mechanisms, to conduct archaeological surface surveys for different purposes, including for preventive purposes, and to enhance the inventory of national archaeological sites.
45. States Parties are also encouraged to establish provisions on the use of methods of ground-penetrating analysis such as the use of metal detectors. States are encouraged to prohibit, as appropriate, unauthorized use of such equipment for purposes of undertaking clandestine excavations on archaeological sites.
46. States directly affected are also encouraged to carefully guard archaeological sites and all States Parties are encouraged to take sanctions against any person involved in theft and clandestine excavations of such sites.
47. States Parties should acknowledge that participation by individuals or groups of individuals belonging to local communities in unauthorized excavations and looting of sites cannot be considered in isolation from the larger socio-economic conditions that those communities find themselves in. In protecting known archaeological sites from unauthorised excavation and pillage, States Parties are invited to encourage local communities, as appropriate, to cooperate in the protection of cultural heritage. State Parties are encouraged to raise awareness among local communities of the importance of safeguarding the cultural heritage as well as emphasizing to those communities the potential long-term economic benefits of such preservation – through such means as cultural tourism – over the short-term, limited economic benefits of participating in unauthorised excavation activities.
48. States Parties are encouraged to establish specific means to protect underwater archaeological remains from looting and illicit traffic, including the reporting of discoveries to the competent authorities and the regulation of salvage and accidental finds. States Parties are encouraged to cooperate in providing technical capacity in this regard.

#### **Rules in conformity with the ethical principles set forth in the Convention (Article 5(e))**

49. In accordance with Article 5(e), States Parties have undertaken to set up national services which have as a function establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in the Convention; and taking steps to ensure the observance of those rules.
50. Such rules may be developed on a national, regional, international, or professional level. Anthropologists, archaeologists, auctioneers, conservators, curators, dealers, restorers and all professional staff working with cultural objects are obliged to conform to these rules based on ethical principles which refuse service for cultural objects whose provenance appears faulty or dubious and should notify relevant authorities of this kind of artefacts when they have been asked to provide such service. The rules to be developed regarding acquisitions should be equally applied to collectors, dealers, curators, and others involved in the trade in cultural property so as not to disadvantage or exempt any single group. Also, such rules should be internationally standardized to ensure maximum effectiveness.

51. In this regard, States Parties are encouraged to use codes of ethics developed by national and international bodies. These include the International Code of Ethics for Dealers in Cultural Property adopted by the ICPRCP in 1999. This Code incorporates the principles developed in the 1970 Convention and subsequently in the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995). This Code also takes into account the experience of various national codes, the Code of the Confédération Internationale des Négociants d'Oeuvres d'Art (CINOA) as well as the Code of Professional Ethics of the International Council of Museums (ICOM). States Parties are encouraged to ensure that all dealers abide by this Code, both by imposing appropriate compulsory measures and by offering incentives to those dealers who do undertake to abide by its provisions, such as tax concessions. States Parties are encouraged to monitor the success of such efforts and to continue developing, strengthening and enforcing appropriate rules for the benefit of curators, collectors, antique dealers, and others concerned, in conformity with the ethical principles set forth in this Convention.

### **Education (Articles 5(f); 10)**

52. In accordance with Article 10, States Parties should use all appropriate means to prevent the movement of cultural property illegally removed from any State Party through education, awareness rising, information and vigilance. In particular, educational means and awareness rising and should be used to help local communities and the public in general to appreciate the value of cultural heritage and the threat to it from theft, clandestine excavations and illicit trafficking as well as its relation to the cultural identity and history of the local communities and mankind.
53. In accordance with Article 5(f) the national services for the protection of the cultural heritage should take educational measures to stimulate and develop respect for the cultural heritage of all States and should also spread knowledge of the provisions of the Convention. In particular, States Parties are encouraged to strengthen educational measures within their countries, with the cooperating services and with the public in other countries This includes adequate coordination with educational institutions at primary, secondary, tertiary level and lifelong learning programs to include teaching and research on cultural heritage issues in their own curricula; through awareness-raising, capacity building and training programs targeted at judges, prosecutors, customs officers, police, museums, dealers and others concerned; and through mass-media, museum, library, and other outreach programs.

### **Publicizing the disappearance of cultural objects (Article 5(g))**

54. In accordance with Article 5(g), the national services for the protection of the cultural heritage should see that appropriate publicity is given to the disappearance of cultural property. Publicity through mass communication can help investigation efforts, make an object untradeable, and can result directly in its recovery. Recognizing this situation, States Parties should publicize thefts and other forms of illegal conduct against cultural property and to make use of the mass media to publicize lost and stolen cultural objects.
55. States Parties are encouraged to support and use databases and other mechanisms that have been established to share information internationally about stolen works of art, including the INTERPOL Stolen Works of Art Database. States Parties are also encouraged to disseminate ICOM Red Lists to all stakeholders involved in the protection of cultural property, especially police and customs services.

### **Prohibition and Prevention of Illicit Import, Export, and Transfer of Ownership of Cultural Property (Articles 6, 7(a, b (i)), 8, 10(a); 13(a))**

## **Export certificates (Article 6(a, b))**

56. In accordance with Article 6(a), States Parties have undertaken to introduce an appropriate certificate in which the exporting State would specify that the export of an item of cultural property is authorized, which should accompany all items of cultural property exported in accordance with the relevant legislation. In accordance to Article 6(b), States Parties have also undertaken to prohibit the exportation of any cultural property from their territory unless accompanied by such a certificate. Customs authorities should check the export certificate both at the moment of export and import.
57. The certificate is an official document issued by the exporting country certifying that it has authorized the export of the cultural object. This document is essential for effective control, and implies cooperation between national services for the protection of cultural heritage and customs authorities of all countries involved in the movement of protected cultural property, including countries of transit. States Parties that apply import certificates should distribute such import certificates only for the cultural objects that have export certificates. Holding an import certificate without a corresponding export certificate should not be considered as a proof of good faith or title of ownership.
58. To ensure that such export certificates fulfill their intended purpose, in the spirit of the Convention State Parties should prohibit the entering into their territory of cultural property, to which the Convention applies, that are not accompanied by such export certificate. Consequently, the prohibition of the export of cultural property without its corresponding export certificate should make illicit the import of that cultural property into another State Party, as the cultural property has not been exported legally from the country affected.
59. Export certificates should carry at least the following information: the name of the owner if appropriate; photographs of the item; a description of the item; its dimensions; its characteristics; the validity period of the export certificate; the State of destination; and the signature of the competent authorities. States Parties issuing export certificates should maintain searchable records of such certificates, in the event that forgeries or unauthorized alterations are identified during import in a foreign State, and the issuing state is called upon to confirm whether the permit is genuine and accurate. In order to avoid forgeries States Parties are encouraged to make available model forms of their export certificates to the relevant authorities of other states as well as to send, whenever feasible, copies of the issued export certificates to the relevant authorities of other States Parties. The States concerned are encouraged to establish the appropriate channel of communication.
60. All cultural objects forming part of the cultural heritage of a State according to its legislation appearing in the art market of another State, exported from the territory of the former and imported into the territory of the latter after the entry into force of the Convention for both States, have to have an export certificate issued by the State of origin. In these cases, the exportation of said cultural objects without an export certificate will be considered illicit and as the basis for reporting to the competent authorities of the State of origin.
61. States Parties may also introduce special provisions for certificates for temporary export. Such temporary export certificates may be issued for exhibitions and return, for study by specialized research institutions or for any other reason such as conservation or restoration purposes. An export in violation of the conditions provided in a temporary export certificate should be considered as an illicit export.
62. States Parties are encouraged to give particular attention to the issue, form and security of the export certificate and to ensure close liaison between the customs authorities, heritage managers and police officers for its control and reliability. The Model Export

Certificate for Cultural Objects, developed jointly by the UNESCO and the WCO Secretariats, is a useful operational tool for the fight against illicit trafficking of cultural property (Annex 2). It has been specially adapted to the growing phenomenon of cross-border movements of cultural objects and is useful to the law enforcement agencies and customs services, enabling them to combat trafficking in cultural property more effectively. States Parties are encouraged to use or adapt the model export certificate and to consider whether a temporary export certificate would suit their protective scheme. The Model Export Certificate may be improved if need be.

### **Prohibition of importing stolen cultural property (Article 7(b)(i))**

63. In accordance with Article 7(b)(i), States Parties have undertaken to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution.

There are two important considerations to be made regarding this prohibition:

First, evidently, the implementation of this prohibition could be facilitated by making compulsory the requirement of an export certificate from the State of origin in order to make licit the import of any cultural property (see paras. 56-62 above). Moreover, States Parties are encouraged to collaborate, especially via their customs authorities, as required and to diligently revise all their relevant regulations in accordance with best practice to ensure effective import controls best practice at all entry points to protect cultural heritage items and prevent smuggling. Furthermore, to assist State Parties to effectively implement this prohibition, it is important that all known thefts and other forms of illegal conduct against cultural property are promptly publicized and reported to relevant law enforcement agencies as well as to INTERPOL.

Second, this prohibition should recall the specific characteristics of cultural property, as defined in Article 1, especially in regard to clandestinely excavated archaeological sites and other cultural property that poses special challenges in terms of their specific designation (see para. 12 above). In these cases, States Parties' right to classify and declare certain cultural property inalienable which should therefore not be exported (as stated in Article 13(d)), should be fully respected.

### **Penalties and administrative sanctions (Articles 6(b), 7(b); 8)**

64. In accordance with Article 8, States Parties undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under Articles 6(b) and 7(b) of the Convention. In any such case, if documentary proof of legal export cannot be provided to the competent authorities for cultural property to which the Convention applies, such a cultural property should be retained by such authorities and returned to the State Party concerned, according to the relevant national legal procedures.
65. As the Convention does not specify what sort of sanctions are to be applied, States Parties are encouraged to introduce in their national legislation, as appropriate, specific penal or administrative sanctions against all those who commit acts prohibited by the Convention. In addition, States Parties are encouraged to penalize offences against cultural property, committed in violation of the Convention, by introducing penal sanctions against the perpetrators of such offences. The said national legislations should be included and timely updated in the UNESCO database.
66. States Parties to the 1970 Convention that are also States Parties to the UN Convention against Transnational Organized Crime (UNTOC) are encouraged to make offences

related to trafficking in cultural property a serious crime, as defined in article 2 of the UNTOC, in particular with regard to the relevant penalties.

67. Due to their relevance for the development and strengthening of crime prevention and criminal justice policies, strategies, legislation and cooperation mechanisms to prevent and combat trafficking in cultural property and related offences in all situations, States Parties are encouraged to duly take into consideration, in implementing the 1970 Convention, the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences, as submitted to the United Nations General Assembly, following an intergovernmental process facilitated by the United Nations Office on Drugs and Crime (UNODC) in consultation with Member States and in close cooperation with UNESCO, UNIDROIT and other relevant international organizations.

### **Sales on internet**

68. At the time of the drafting of the 1970 Convention, Internet was not a channel for sales. The exponential growth of the use of the Internet to sell or traffic cultural objects which are stolen, clandestinely excavated from archaeological sites, or illegally exported or imported cultural objects, is a matter of serious concern and constitutes a major threat to cultural heritage.
69. Some States Parties are not sufficiently organized to supervise and quickly follow-up offers on the Internet that appear to be advertising protected cultural property. Most national cultural administrations do not have sufficient resources to continually check offers on the Internet. Further, such websites advertise cultural property for a limited time, sometimes only a few hours, hence hindering the ability of the owner States to track such cultural property and to take the necessary actions. In addition, some websites play the role of intermediary in selling cultural property and consequently, they are not in possession of the cultural property offered for sale and cannot verify the validity of the documentation envisaged under the Convention for such cultural property. There is a need to explore ways and means to thoroughly screen all websites throughout the world to determine where offers of cultural property falling under the scope of the protection of the 1970 Convention are made and create an alert method of notifying the relevant State Parties on a daily basis. National authorities are encouraged to marshal the support of all Internet providers and promote the supervision by the public (specialists or other individuals interested in particular cultures) to be vigilant concerning Internet offers and to inform the administration when it appears that an object of national heritage not previously known is being offered on a website or when an object of foreign heritage origin is offered with a local address. Such notifications should be examined immediately by the cultural administration; if necessary, using experts (from universities, museums, libraries and other institutions) to verify the nature and importance of the item(s) being offered. In all the above-mentioned efforts, special attention should be given to the screening of Internet auctions. When the evidence justifies it, the national authorities should undertake prosecutions and enforce all appropriate provisions of the 1970 Convention and national legislation.
70. Following a recommendation adopted by the third annual meeting of the INTERPOL Expert Group on Stolen Cultural Property (7-8 March 2006, INTERPOL General Secretariat), INTERPOL, UNESCO and ICOM have developed a list of Basic Actions to counter the Increasing Illicit Sale of Cultural Objects through the Internet. States Parties are encouraged to incorporate the Basic Actions as a tool within their national context. The Basic Actions currently developed are presented in Annex 3. There is a need to consider ways and means to keep improving the Basic Actions, in order to ensure the effective implementation of the Convention, in coordination with the ICPRCP, or exploring other ways to contribute to countering the illicit sale of cultural property through the Internet.

## **Sales in auctions**

71. Sales in auctions of cultural property claimed to have been subject to illicit trafficking have greatly affected the cultural heritage of many countries whose requests for return have not been met and have sometimes been used as a means to launder cultural property of illicit provenance. States where auctions are held are encouraged to give special attention to such sales, including by introducing national legislation, where appropriate, to ensure that the cultural property involved has been licitly imported, as documented by a legally issued export certificate, to inform the State of origin of the properties of any doubts in this regard, and to put in place the appropriate interim measures. In addition, on the petition of affected States, when an auction of protected cultural property is intended to take place, the Director General of UNESCO is invited to consider issuing a public statement concerning such commercial activity, highlighting the negative effects of such practices for the protection of world cultural heritage.

## **Preventing transfers of ownership likely to promote illicit import or export, controlling trade by registers, and establishment of rules in conformity with ethical principles (Articles 13(a); 10(a); 7(a); 5(e))**

72. Although this is a basic aim of the Convention described by the 1969 Preliminary Report on the Means of Prohibiting and Preventing the Illicit Import, Export, and Transfer of Ownership (SCH/MD/3), there is no information in the Convention itself as to which such transfers are likely to promote illicit import or export of cultural property. However, it is illuminating to recall that the 1969 Report indicated that lack of information about the origin of the item, the names and addresses of the supplier, description and price of each item sold, as well as lack of information provided to the purchaser about an object's possible export prohibition, might well be a transaction likely to promote illicit trafficking of cultural property. In accordance with Article 10(a), the States Parties to this Convention undertake, as appropriate for each country, to oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording such essential information. Control of such registers by the national services for the protection of cultural heritage would make it possible to follow up an item of cultural property and perhaps retrace an item that has disappeared after being lost or stolen.
73. The drafters of the preliminary version of the Convention text in 1969 also pointed out: "It is essential that the new rules to be worked out for acquisitions shall place collectors and dealers on the same footing as curators; otherwise museums would be restrained for the sole benefit of illicit trade in cultural property." States Parties are encouraged to ensure that equally constraining rules, whether legislative or ethical, include the same provisions for collectors and dealers as those being observed by museums or other similar institutions, particularly those concerning the provenance of the cultural property.
74. In accordance with Article 7(a), States Parties undertake to take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after the entry into force of the Convention in the States concerned and, whenever possible, to inform the State of origin Party to the Convention of an offer of such cultural property illegally removed from that State after the entry into force of the Convention in both States.
75. States Parties establishing tax incentive regimes, benefits or government subsidies to encourage the acquisition of cultural property by public institutions should take appropriate steps to ensure that such measures do not inadvertently facilitate the private collection, and subsequent acquisition by institutions, of material that has been the subject of illicit activity as defined by the provisions of the Convention.

76. In accordance with Article 5(e), States Parties are also required to establish ethical rules and ensure their observance by curators, collectors, dealers and other similar actors.
77. Consequently, States Parties are encouraged to strengthen the supervision of the activities of dealers and museums through effective policies and regulations and to use all appropriate means to prevent illicit transactions.
78. States Parties are encouraged to explore further possible avenues for preventing transfers of ownership likely to promote illicit import or export. For instance, specific regulations can be enacted to ensure that cultural property such as archaeological objects that are claimed by the States of origin or that are subject to inalienability laws may not be transferred by purchase or assignment from public museums and institutions to private collectors, museums, institutions or businesses.
79. States Parties are also encouraged to undertake studies on the size and nature of illicit activities in the field of cultural property, and establish risk analysis with customs to prevent the illicit import and export of cultural property, as well as exchange information and best practices among each other.
80. States are encouraged as well to make further use of all existing controls over markets and fairs where items of cultural property may be transferred and subsequently exported and to strengthen such controls as necessary to ensure the fulfilment of the purposes of the Convention.
81. The true value of cultural property remains to some degree unrecognized. This fact, added to dissociation from the cause- effect relationship between an ever-increasing demand for numerous types of cultural property and its trafficking, as well as lack of knowledge of the adverse effects of trafficking, hampers protective efforts. Therefore, different educational strategies may also be put in use to diminish the looting, trafficking and the demand for archaeological and paleontological objects, such as education in museums and exhibitions to explain the importance of the damage done to the heritage by clandestine excavation, illicit trade and theft. With a view towards restitution, the States Parties are encouraged to adopt appropriate national legal and policy frameworks to ensure that museums and other cultural institutions, whether public or private, do not exhibit or keep for other purposes imported cultural property that do not have a clear provenance and place of origin. The stylistic or aesthetic qualities of a cultural property can never compensate the loss of its context.

**Cooperation on recovery and return of cultural property (Articles 7(b)(ii); 13(b, c, d); 15)**

82. In accordance with Article 7(b)(ii), the States Parties have undertaken, at the request of the State Party of origin, to take appropriate steps to recover and return any stolen cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices and shall be furnished, at the expense of the requesting Party, with the documentation and other evidence necessary to establish the corresponding claim.
83. Also, in accordance with Article 13 (b,c,d), the States Parties have undertaken, consistent with laws of each State, to ensure that their competent services cooperate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner; to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners; and to recognize the indefeasible right of each State Party to this

Convention to classify and declare certain cultural property as inalienable which should therefore not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

84. Furthermore, Article 15 provides that nothing in this Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned.
85. The above-referred provisions indicate the actions that States Parties should pursue for the restitution, recovery and return after an illicit import, export or transfer of ownership has taken place in spite of prohibition and prevention efforts. A number of issues should be clarified:
  - Request of State Party
  - Evidence to establish a claim
  - Just compensation and due diligence
  - Cooperation for earliest possible restitution
  - Admission of legal actions for recovery of lost or stolen cultural property
  - Non-retroactivity of the 1970 Convention, entry into force of the Convention, and resolution of claims
  - Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP)

#### **Request of State Party (Article 7(b)(ii))**

86. In accordance with Article 7(b)(ii), the request of a State Party to recover cultural property and have it returned under the provisions of the 1970 Convention shall be made through diplomatic offices. This is without prejudice to any other recourse that may contribute to the recovery or return under other relevant legal instruments or any other procedures for international legal assistance, which may be used in the course of criminal law proceedings. In this regard, States Parties should consider providing each other with the widest possible legal assistance in investigations, prosecutions and judicial proceedings in relation to cultural property offences, also in order to ensure effectiveness and speediness in the procedures. The provision of spontaneous information between the competent authorities should be encouraged.

#### **Evidence to establish a claim (Article 7(b)(ii))**

87. Also in accordance with Article 7(b)(ii), requests for recovery and return shall be furnished, at the expense of the requesting State Party, with the documentation and other evidence necessary to establish the corresponding claim. In this regard, States Parties should bear in mind the specific characteristics of cultural property protected by the requesting State, as defined in Article 1, in particular regarding clandestinely excavated archaeological and paleontological sites and other cultural property that poses special challenges in terms of their specific designation and their implications in terms of inventories (see paras. 12; 24-30; 33-35; 37; 100-103; 108).
88. The considerations made regarding the prohibition of importing stolen cultural property stipulated in Article 7(b)(i) and in the spirit of Article 2 are also fully relevant for the request of States Parties for recovery and return (see para. 63 above).
89. States Parties should bear in mind the implications of the prohibition of the export of a cultural property without its corresponding export certificate. The import of that object should be considered illicit, as it has not been exported legally from the country affected. Consequently, a State Party should be able to introduce a request for items of cultural

property that have been clandestinely excavated from archaeological and paleontological sites or which pose special challenges in terms of their specific designation where the possessor or holder does not provide the necessary export certificate of the cultural objects exported after the entry into force of the Convention for both States concerned.

90. When a State has enacted laws on State ownership of certain cultural property in the spirit of the Convention, States Parties are, for recovery and restitution purposes, encouraged to duly take into account these laws.
91. States Parties may support their requests for the recovery and return of cultural property which is unlawfully excavated or lawfully excavated but unlawfully retained in another State Party to the Convention, with reasonable scientific reports, results of scientific analysis or experts' evaluations on provenance of the unlawfully excavated property. Considering the difficulties of conducting research for retrospective evidence, States Parties are strongly encouraged to consider accredited scientific studies and analysis as evidence.
92. Furthermore, States Parties sharing a particular culture with archaeological remains in more than one country are encouraged to consider joint actions for recovery. All States Parties are encouraged to consider such cooperative efforts positively. Requesting States sharing a particular culture are encouraged to reach appropriate agreements on the cultural property recovered, considering solutions such as loans, exchanges of properties, etc.

#### **Just compensation and due diligence (Article 7(b)(ii))**

93. The question of compensation is one area where there has been a significant development of approaches. The 1970 Convention stipulates (Art. 7 (b) (ii)) "that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property." Developments since then have demonstrated that many States appreciate further the relevance of returning cultural property. They are also aware that States of origin very much resent requirements to pay for objects that they regard as owned by them and that many of them are unable to pay large sums for their return. In addition, States are now much more aware of the importance of cultural matters in their foreign relations. Recent practice suggests little use of the compensation provision of the Convention. Some States Parties have made reservations which, among others, exempt other States Parties from having to pay just compensation. It is also important to note that the issue of compensation is not mentioned in Article 9 of the 1970 Convention and in many States it has not been raised in the context of illegally imported cultural objects.
94. In the spirit of the Convention, States Parties should use the criteria of due diligence in assessing purchaser innocence and validity of titles. In this regard, States Parties which seek compensation are encouraged to adopt recent best practice which can include the UNIDROIT standard of due diligence. Article 4.1 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects stipulates that the possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object.

#### **Cooperation for earliest possible restitution (Article 13(b))**

95. In accordance with Article 13(b), States Parties have undertaken, consistent with laws of each State, to ensure that their competent services cooperate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner.

96. In this context, and also considering the provision contained in Article 13(d), when a State Party, including those that have enacted laws on State ownership, is dispossessed of cultural property and seeks to recover it, States Parties are encouraged to resort to and to exhaust all means at their disposal to provide the fullest cooperation. In order to expeditiously grant requests for the restitution of stolen public property to its rightful owner, such cooperation should include pondering, as appropriate, the requesting State's ownership laws. Moreover, due to the clandestine nature of the pillage of cultural property, States Parties are encouraged to take into consideration that it may be materially impossible for dispossessed States to offer concrete data concerning thefts of State-owned cultural property. Therefore, State Parties are encouraged to attempt as far as possible to facilitate restitutions of State-owned cultural property even when the plundered sites remain unknown.
97. When it is impossible to furnish documentation and evidence concerning theft of State-owned cultural property, and without prejudice to the considerations presented above, State Parties are encouraged to explore the possibility of reaching an agreement by diplomatic channels concerning the expeditious admissibility and processing of the relevant restitution requests.
98. If the States concerned by the recovery have a specialized law enforcement unit in charge of the protection of cultural heritage, this unit should play an essential role in international cooperation, in particular through the National Central Bureaux of INTERPOL.

#### **Admission of legal actions for recovery of list or stolen cultural property (Article 13 (c))**

99. In accordance with Article 13(c), consistent with the laws of each State, the States Parties are required to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owner(s). If no such action is available in a State Party, this Article requires it to create one. States Parties are therefore encouraged to check that there exists, in their national system, a legal proceeding available to an owner of lost or stolen items of cultural property, and, if there is none, to institute one. The relevant information should be incorporated in a timely manner and kept updated in the UNESCO database.

#### **Non-retroactivity of the 1970 Convention, entry into force of the Convention and resolution of claims (Article 21)**

100. The general rule of public international law embodied in Article 28 of the Vienna Convention on the Law of Treaties does not provide for retroactive application of treaties. The provisions of the 1970 Convention entered into force on 24 April 1972, three months after the date of deposit of the third instrument of ratification, acceptance or accession. For the other Signatory States, the Convention entered into force three months after the deposit of the instrument of ratification, acceptance or accession.
101. In accordance with the provisions of the 1970 Convention, especially Article 7, a State Party can seek the recovery and return of any illegally exported, illegally removed or stolen cultural property imported into another State Party only after the entry into force of this Convention in both States concerned.
102. However, the Convention does not in any way legitimize any illicit transaction of whatever nature which has taken place before the entry into force of this Convention nor limit any right of a State or other person to make a claim under specific procedures or legal remedies available outside the framework of this Convention for the restitution or return of a cultural object stolen or illegally exported before the entry into force of this Convention.

103. For items of illegally exported, illegally removed or stolen cultural property imported into another State Party before the entry into force of the Convention for any of the States Parties concerned, States Parties are encouraged to find a mutually acceptable agreement which is in accordance with the spirit and the principles of the Convention, taking into account all the relevant circumstances. States Parties may also call on the technical assistance of the Secretariat, particularly good offices, to help reaching a solution mutually acceptable by them.

#### **Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation (ICPRCP)**

104. In cases where neither the 1970 UNESCO Convention nor any bilateral or multilateral agreement can be applied and the bilateral discussions have failed or are suspended, UNESCO Member States may submit a request to the ICPRCP for the return or restitution of cultural property of “fundamental significance from the point of view of the spiritual values and cultural heritage of the people of a Member State or Associate Member of UNESCO and which has been lost as a result of colonial or foreign occupation or as a result of illicit appropriation” (ICPRCP Statute Article 3(2)), that they consider as having been wrongfully taken. In order to resolve disputes on cultural property, States may also use the Rules of Procedure for Mediation and Conciliation procedure adopted by the ICPRCP at its 16<sup>th</sup> session in 2010.

#### **Pillage of Archaeological and Ethnological materials (Article 9)**

105. In accordance with Article 9, any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State. UNESCO and all relevant cooperating partners may also contribute, upon same request, to such a concerted international effort.
106. It is important to note that the conclusion of a bilateral or multilateral agreement is not required for a State Party to call upon another State Party for assistance. Such special agreements are not in any way a precondition for the fulfillment of the obligations arising under the Convention but may be entered into following a request for assistance under Article 9. States Parties, UNESCO and all relevant cooperating partners are encouraged to respond expeditiously, with all possible means, to the call of the requesting State Party whose cultural property is in jeopardy. In particular, States Parties shall take provisional measures to the extent feasible to prevent irremediable injury to the cultural heritage of the requesting State. This obligation should be adequately incorporated into national laws and best practices. The relevant information should be incorporated into the UNESCO database.
107. In applying Article 9, State Parties should consider, as appropriate, categorical lists as representing the protected cultural patrimony of another State Party. A categorical or representative list describes general types of cultural patrimony rather than specific objects. Categorical lists are particularly useful for describing types of objects that are typically found in clandestine excavation, trafficked, and therefore not documented in their country of origin.

108. As a complementary measure and without prejudice to the above, bilateral or multilateral agreements may be reached to stimulate more effective and broad collaborative responses based on a better understanding of the pillaged States Parties' particular situation, as well as to enhance support and financial and technical assistance to improve capacity-building, training and protection on site. There is a need to explore ways and means to strengthen international cooperation in the implementation of Article 9.
109. States Parties are encouraged to make full use of the provisions of Article 9 in addressing the challenges posed by clandestine excavations of their archaeological sites or in cases of natural disasters or conflict.

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

110. Article 11 of the Convention specifies that the export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit. States Parties must apply this principle when implementing provisions of the Convention and if required under their respective system of national laws, States Parties should make this obligation clear in their legislation. The relevant information should be incorporated in the UNESCO Database.
111. As appropriate, synergies should be explored with the efforts undertaken under the Hague Convention of 1954, its First and Second Protocols and by the Committee established by the Second Protocol.

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

112. In accordance with Article 15, nothing in the 1970 Convention prevents States from concluding special agreements among themselves on the restitution of cultural property removed, for whatever the reason, or from continuing implementing agreements already established before the Convention was adopted. The increasing globalization of offences that affect cultural heritage calls for a stronger and more systematic regional and interregional cooperation.
113. States Parties are encouraged to incorporate into bilateral or regional agreements the highest level of protection developed in the 1970 UNESCO Convention, the 1995 UNIDROIT Convention, the 2001 Convention on the Protection of the Underwater Cultural Heritage and in the 2000 UN Convention against Transnational Organized Crime so as to ensure that such agreements embody the best protection for their cultural objects.
114. As indicated in para. 101 above, bilateral or multilateral agreements may be reached to achieve strengthened international cooperation in the implementation of Article 9.

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

115. States Parties are required to submit reports to the UNESCO General Conference on the legislative and administrative provisions they have adopted and other action they

have taken for the application of the Convention, including the details of the experience acquired in this field.

116. Periodic reporting is valuable for the exchange of information on the manner in which different national systems are dealing with the question of illicit traffic and can assist other States Parties in implementing the provisions of the Convention. Periodic reporting also serves the important function of strengthening the credibility of the implementation of the Convention.
117. Reports on the implementation of the 1970 Convention must be submitted every four years. To assist the national authorities, a simplified and practical questionnaire is at the disposal of the UNESCO Member States to ensure that their reports contain sufficiently precise information on the ratification process and legal and operational implementation of the 1970 Convention.
118. In order to facilitate assessment of information, States Parties shall submit reports in English or French. States parties are encouraged, whenever possible, to submit their reports in both languages. These reports have to be sent in electronic as well as in printed form to:

Secretariat of the 1970 Convention  
7, place de Fontenoy  
75352 Paris 07 SP  
France  
E-mail: [convention1970@unesco.org](mailto:convention1970@unesco.org)

#### **Secretariat to the 1970 Convention and to the Subsidiary Committee (Article 17)**

119. The Secretariat of the 1970 Convention is appointed by the Director-General of UNESCO and is provided by the Organization's Culture Sector. The Secretariat assists and collaborates with the States Parties, the Meeting of States Parties and the Subsidiary Committee to the Meeting of States Parties. The Secretariat works in close cooperation with other Sectors and Field Offices of UNESCO, as well as with other international partners in the fight against the illicit traffic of cultural and archaeological property.
120. States Parties are encouraged to seek advice and assistance from the Secretariat in the implementation of the Convention, particularly with regard to information and training; consultation and expert advice; coordination and good offices.
121. Among other contributions, the Secretariat may assist the State Parties by creating standard procedures to be followed when informed about clandestine excavations, illicit import, export and transfer of cultural property. These standard procedures may include the immediate publication of the incident and the cultural property involved on UNESCO's website. The Secretariat may also assist the State Parties by creating mechanisms of direct communication with the art market in order to prevent trafficking of cultural property (e.g. auction houses, e-commerce). If necessary, States Parties may call for the technical assistance of the Secretariat to support the presentation of requests for recovery and restitution of cultural property.
122. At the request of at least two States Parties that are engaged in a dispute over the implementation of the Convention, the Secretariat may extend its good offices to reach a settlement between them. Such good offices may include technical assistance, negotiations, checking due diligence, etc. In the case in which it is only one of the States which asks for support, the Secretariat will offer its assistance to that State and may send

a written request to the other State party to ask for its acquiescence or refusal for the Secretariat to exercise good offices for the settlement of the dispute. The good offices of the Secretariat also may be brought to bear in disputes over the implementation of the Convention with auction houses and e-commerce sponsors. It may also seek to enhance dialogue and cooperation with the art market in the fight against the illicit traffic of all kinds of cultural property, with special concern for objects of archaeological and ethnological significance.

123. The Secretariat's main tasks are:

- Organizing of the statutory meetings;
- Providing legal and technical assistance to States Parties in the implementation of the 1970 Convention;
- Promoting the 1970 Convention through advocacy and good offices, the organization of policy and prospective dialogues and forums, the dissemination of information to States Parties, the specialized public and the general public, and through the organization of capacity-building programs (regional or national);
- Cooperating with partner Organizations; and,
- Assisting in the preservation of movable cultural heritage in case of emergency situations caused by natural disaster or conflict, upon the request of the concerned State(s).

124. The Secretariat may, on its own initiative or on the initiative of the Committee:

- Conduct research and publish studies on matters relevant to the illicit traffic of cultural property;
- Call on the cooperation of any competent, and recognized by UNESCO and State Parties, non-governmental organization; and,
- Make proposals to States Parties for the implementation of the Convention.

### **States Parties to the 1970 Convention (Articles 20 and 24)**

125. UNESCO Member States are encouraged to become Parties to the Convention. Model instruments for ratification/acceptance and accession are included as Annex 4. The original signed version of the instrument shall be deposited with to the Director-General of UNESCO.

126. The Director General is invited to highlight the information about new ratifications/acceptances and accessions and to actively promote the broadest participation in the Convention.

### **Reservations**

127. A "reservation" means a unilateral statement, however phrased or named, made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State (Vienna Convention on the Law of Treaties-1969 (Art. 2 (d))).

128. States Parties which have lodged reservations to the Convention are encouraged to withdraw any kind of reservations.

### **Cooperating partners in the fight against illicit trafficking of cultural property**

129. Partners for the fight against illicit trafficking of cultural property may be intergovernmental or non-governmental organizations which have an interest, involvement and appropriate competence and expertise in the protection of cultural objects and are formally recognized by UNESCO as having specialized appropriate skills and proven track records. These partners include INTERPOL, UNIDROIT, UNODC, WCO and ICOM. Relevant information on each of these five cooperating partners and its specific links to the 1970 Convention is provided in Annex 5.
130. States Parties are invited to make use of the tools offered by all international partners, as possible, in the implementation of the 1970 Convention in the fight against the illicit traffic of cultural and archaeological property and against the clandestine excavations of archaeological sites.
131. Other partners may include local, regional or international organizations such as ICOMOS, ICCROM, Europol and national specialized police and customs bodies.

### **Conventions relating to the protection of cultural property**

132. The 1970 Convention has important complementary relationship with other UNESCO Culture Conventions, as well as to the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the United Nations Convention against Transnational Organized Crime. Relevant information on each of these Conventions and its specific links to the 1970 Convention is provided in Annex 6.
133. States Parties are encouraged to actively strengthen the synergies of these instruments in support of the fight against the illicit traffic of cultural property and against the clandestine excavations of archaeological and paleontological sites.

## List of proposed annexes

- |         |   |
|---------|---|
| Annex 1 | Model Provisions on State Ownership of Undiscovered Cultural Objects                |
| Annex 2 | UNESCO/WCO Model Export Certificate for Cultural Objects                            |
| Annex 3 | Basic Actions concerning Cultural Objects being offered for Sale over the Internet  |
| Annex 4 | Model instruments for ratification/acceptance and accession to the Convention       |
| Annex 5 | Cooperating partners for the fight against illicit trafficking of cultural property |
| Annex 6 | Links to other Conventions related to the 1970 Convention                           |



United Nations  
Educational, Scientific and  
Cultural Organization

Organisation  
des Nations Unies  
pour l'éducation,  
la science et la culture

Organización  
de las Naciones Unidas  
para la Educación,  
la Ciencia y la Cultura

Организация  
Объединенных Наций по  
вопросам образования,  
науки и культуры

منظمة الأمم المتحدة  
للتربية والعلم والثقافة

联合国教育、  
科学及文化组织

## ANNEX 1



International Institute for the Unification of Private Law

Institut international pour l'unification du droit privé

### Model Provisions on State Ownership of Undiscovered Cultural Objects<sup>1</sup>

#### **Provision 1 – General Duty**

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

#### **Provision 2 – Definition**

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

#### **Provision 3 – State Ownership**

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

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

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

#### **Provision 5 – Inalienability**

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

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

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

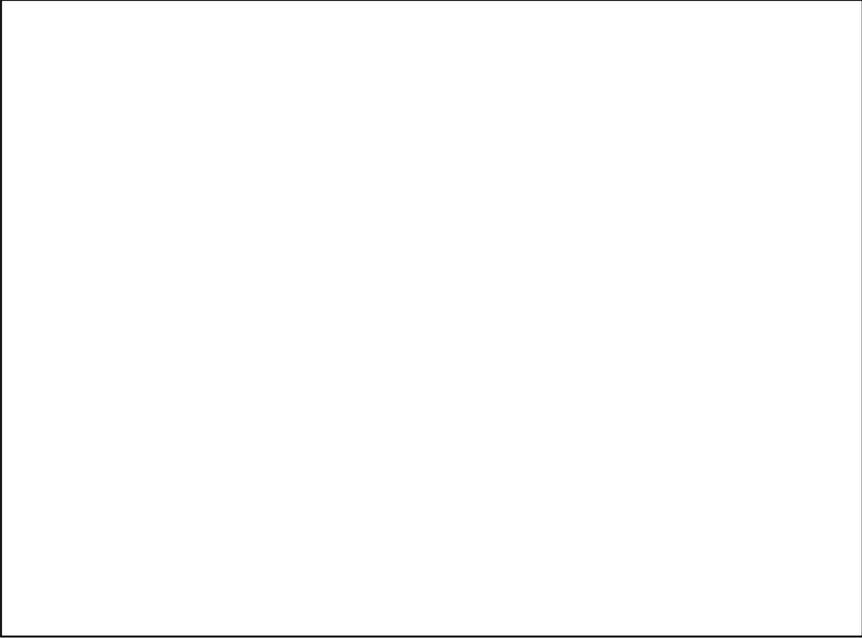
<sup>1</sup> For further information please refer to:

[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)

**ANNEX 2**

**Model Export Certificate For Cultural Objects**

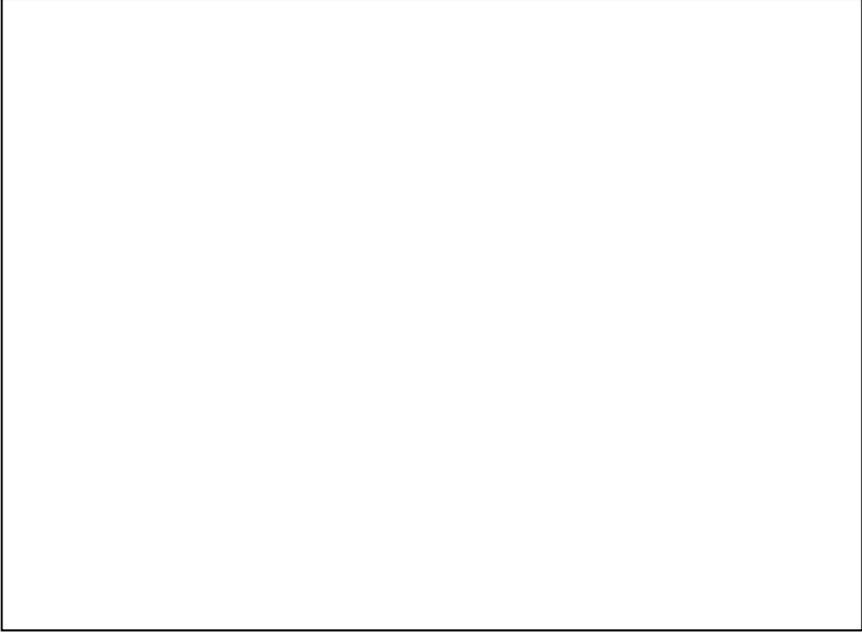
**Each heading must be completed, except headings 2, 12 and 18 if they do not apply**

<b>Application</b>	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address )
	3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From : ___ / ___ / ___ Country of destination :
	5. Initial consignee (and subsequent consignee(s)) if known (name and address)	6. Type of export <input type="checkbox"/> Permanent export <input type="checkbox"/> Temporary export Time limit for re-importation : ___ / ___ / ___
	7. Owner of the cultural object (name and address)	
8. Photograph of the cultural object : 9 x 12 centimeters minimum		
		
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp )		

<p>9. Dimensions and net weight of the cultural object (possibly with its stand)</p>	<p>10. Inventory number or other identification</p> <p><input type="checkbox"/> Inventory : No.</p> <p><input type="checkbox"/> No existing inventory</p> <p><input type="checkbox"/> Other classification : No.</p> <p><input type="checkbox"/> No other existing classification</p>
<p>11. Description of the cultural object</p> <p>(a) Type : (e) Geographical origin :</p> <p>(b) Author /co-author: (f) Dating :</p> <p>(c) Title or, failing that, subject matter : (g) Other information for identification purposes:</p> <p>(d) Scientific name if there is one:</p>	
<p>12. Number of cultural objects in the collection</p> <p>Presented :</p> <p>Not presented :</p>	<p>13. Copy, attribution, period, studio and/or style</p>
<p>14. Material(s) and Technique(s)</p>	
<p>15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :</p>	
<p>16. Legal status and use of the cultural object</p> <p>Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (please specify) :</p> <p>Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) :</p>	
<p>17. Attached documents /special identification methods</p> <p><input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) :</p> <p><input type="checkbox"/> List <input type="checkbox"/> Catalogue</p> <p><input type="checkbox"/> Seals <input type="checkbox"/> Valuation documents</p>	
<p>18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)</p>	
<p>19. Application</p> <p>I hereby apply for an export authorization for the cultural object described above and declare that the information in this application and the supporting documents is true.</p> <p>Place and date : Signature :</p> <p>(Position and name of signatory)</p>	<p>20. Signature and stamp of issuing authority</p> <p>Place and date :</p>

**Model Export Certificate For Cultural Objects**

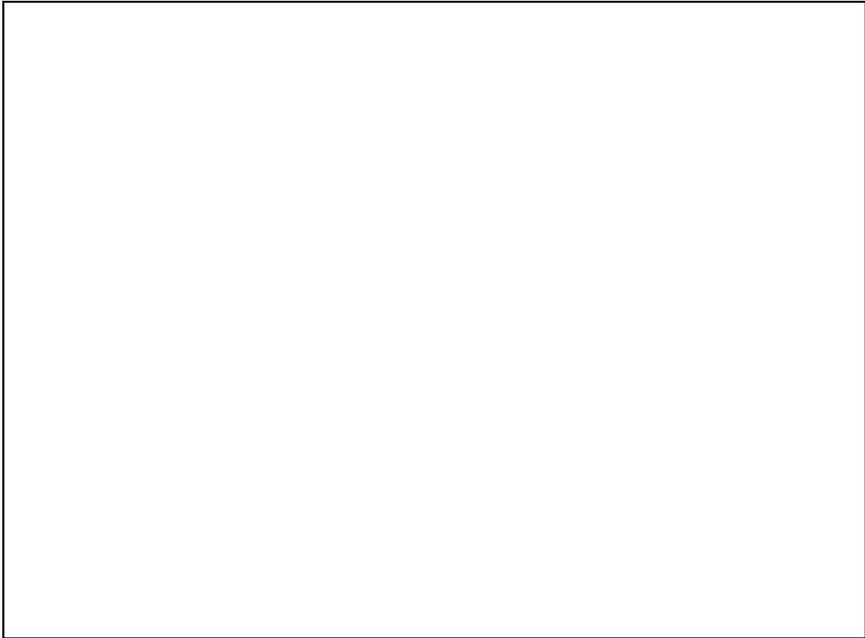
**Each heading must be completed, except headings 2, 12 and 18 if they do not apply**

<b>Applicant's copy</b>	<b>2</b>	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
		3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From : ___ / ___ / ___ Country of destination :
		5. Initial consignee (and subsequent consignee(s)) if known (name and address)	6. Type of export <input type="checkbox"/> Permanent export <input type="checkbox"/> Temporary export Time limit for re-importation : ___ / ___ / ___
		7. Owner of the cultural object (name and address)	
8. Photograph of the cultural object: 9 x 12 centimeters minimum			
			
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp)			

<p>9. Dimensions and net weight of the cultural object (possibly with its stand)</p>	<p>10. Inventory number or other identification</p> <p><input type="checkbox"/> Inventory : No.</p> <p><input type="checkbox"/> No existing inventory</p> <p><input type="checkbox"/> Other classification : No.</p> <p><input type="checkbox"/> No other existing classification</p>
<p>11. Description of the cultural object</p> <p>(a) Type : (e) Geographical origin :</p> <p>(b) Author /co-author: (f) Dating :</p> <p>(c) Title or, failing that, subject matter : (g) Other information for identification purposes:</p> <p>(d) Scientific name (if there is one):</p>	
<p>12. Number of cultural objects in the collection</p> <p>Presented :</p> <p>Not presented :</p>	<p>13. Copy, attribution, period, studio and/or style</p>
<p>14. Material(s) and Technique(s)</p>	
<p>15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :</p>	
<p>16. Legal status and use of the cultural object</p> <p>Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (please specify) :</p> <p>Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) :</p>	
<p>17. Attached documents /special identification methods</p> <p><input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) :</p> <p><input type="checkbox"/> List <input type="checkbox"/> Catalogue</p> <p><input type="checkbox"/> Seals <input type="checkbox"/> Valuation documents</p>	
<p>18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)</p>	
<p>19. Endorsement by Customs Export Office</p> <p style="text-align: center;">Signature and stamp :</p> <p>Customs office :</p> <p>Country :</p> <p>Export document No. :</p> <p>Dated:</p>	<p>20. Signature and stamp of issuing authority</p> <p style="text-align: center;">Place and date :</p>

**Model Export Certificate For Cultural Objects**

**Each heading must be completed, except headings 2, 12 and 18 if they do not apply**

<b>Issuing authority's copy</b>	<b>3</b>	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
		3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From : ___ / ___ / ___  Country of destination :
		5. Initial consignee (and subsequent consignee(s)) if known (name and address)	6. Type of export  <input type="checkbox"/> Permanent export  <input type="checkbox"/> Temporary export Time limit for re-importation : ___ / ___ / ___
		7. Owner of the cultural object (name and address)	
		8. Photograph of the cultural object: 9 x 12 centimeters minimum	
			
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp).			

<p>9. Dimensions and net weight of the cultural object (possibly with its stand)</p>	<p>10. Inventory number or other identification</p> <p><input type="checkbox"/> Inventory : No.</p> <p><input type="checkbox"/> No existing inventory</p> <p><input type="checkbox"/> Other classification : No.</p> <p><input type="checkbox"/> No other existing classification</p>
<p>11. Description of the cultural object</p> <p>(a) Type : (e) Geographical origin :</p> <p>(b) Author /co-author: (f) Dating :</p> <p>(c) Title or, failing that, subject matter : (g) Other information for identification purposes:</p> <p>(d) Scientific name (if there is one):</p>	
<p>12. Number of cultural objects in the collection</p> <p>Presented :</p> <p>Not presented :</p>	<p>13. Copy, attribution, period, studio and/or style</p>
<p>14. Material(s) and Technique(s)</p>	
<p>15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :</p>	
<p>16. Legal status and use of the cultural object</p> <p>Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (please specify) :</p> <p>Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) :</p>	
<p>17. Attached documents /special identification methods</p> <p><input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) :</p> <p><input type="checkbox"/> List <input type="checkbox"/> Catalogue</p> <p><input type="checkbox"/> Seals <input type="checkbox"/> Valuation documents</p>	
<p>18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)</p>	
<p>19. Endorsement by Customs Export Office</p> <p style="text-align: center;">Signature and stamp</p> <p>Customs office : Country : Export document No.: Dated:</p>	<p>20. Signature and stamp of issuing authority</p> <p>Place and date :</p>
<p>21. Customs exit office</p> <p>Stamp and date :</p>	

**Model Export Certificate For Cultural Objects**

**Each heading must be completed, except headings 2, 12 and 18 if they do not apply**

<b>Copy for Customs authorities at exportation</b>	<b>4</b>	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
		3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From : ___ / ___ / ___  Country of destination :
		5. Initial consignee (and subsequent consignee(s) if known) (name and address)	6. Type of export  <input type="checkbox"/> Permanent export  <input type="checkbox"/> Temporary export Time limit for re-importation : ___ / ___ / ___
		7. Owner of the cultural object (name and address)	
8. Photograph of the cultural object : 9 x 12 centimeters minimum			
			
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp).			

<p>9. Dimensions and net weight of the cultural object (possibly with its stand)</p>	<p>10. Inventory number or other identification</p> <p><input type="checkbox"/> Inventory : No.</p> <p><input type="checkbox"/> No existing inventory</p> <p><input type="checkbox"/> Other classification : No.</p> <p><input type="checkbox"/> No other existing classification</p>
<p>11. Description of the cultural object</p> <p>(a) Type : (e) Geographical origin :</p> <p>(b) Author /co-author: (f) Dating :</p> <p>(c) Title or, failing that, subject matter : (g) Other information for identification purposes:</p> <p>(d) Scientific name (if there is one):</p>	
<p>12. Number of cultural objects in the collection</p> <p>Presented :</p> <p>Not presented :</p>	<p>13. Copy, attribution, period, studio and/or style</p>
<p>14. Material(s) and Technique(s)</p>	
<p>15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :</p>	
<p>16. Legal status and use of the cultural object</p> <p>Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (to be specified) :</p> <p>Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) :</p>	
<p>17. Attached documents /special identification methods</p> <p><input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) :</p> <p><input type="checkbox"/> List <input type="checkbox"/> Catalogue</p> <p><input type="checkbox"/> Seals <input type="checkbox"/> Valuation documents</p>	
<p>18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)</p>	
<p>19. Endorsement by Customs Export Office</p> <p style="text-align: center;">Signature and stamp</p> <p>Customs office : Country : Export document No. : Dated:</p>	<p>20. Signature and stamp of issuing authority</p> <p>Place and date :</p>
<p>21. Customs exit office</p> <p>Stamp and date :</p>	

**Model Export Certificate For Cultural Objects**

**Each heading must be completed, except headings 2, 12 and 18 if they do not apply**

<b>5</b> <b>Copy for authorities at importation</b>	1. Beneficiary applicant requesting the exportation (name and address)	2. Beneficiary applicant's representative (name and address)
	3. Issuing authority (name and address)	4. Export authorization No. _____ Duration: _____ From : ___ / ___ / ___  Country of destination :
	5. Initial consignee (and subsequent consignee(s) if known) (name and address)	6. Type of export  <input type="checkbox"/> Permanent export  <input type="checkbox"/> Temporary export Time limit for re-importation : ___ / ___ / ___
	7. Owner of the cultural object (name and address)	
8. Photograph of the cultural object : 9 x 12 centimeters minimum		
		
(Continue on supplementary pages if necessary. Validate with the issuing authority's signature and stamp).		

<p>9. Dimensions and net weight of the cultural object (possibly with its stand)</p>	<p>10. Inventory number or other identification</p> <p><input type="checkbox"/> Inventory : No.</p> <p><input type="checkbox"/> No existing inventory</p> <p><input type="checkbox"/> Other classification : No.</p> <p><input type="checkbox"/> No other existing classification</p>
<p>11. Description of the cultural object</p> <p>(a) Type : (e) Geographical origin :</p> <p>(b) Author /co-author: (f) Dating :</p> <p>(c) Title or, failing that, subject matter : (g) Other information for identification purposes:</p> <p>(d) Scientific name (if there is one):</p>	
<p>12. Number of cultural objects in the collection</p> <p>Presented :</p> <p>Not presented :</p>	<p>13. Copy, attribution, period, studio and/or style</p>
<p>14. Material(s) and Technique(s)</p>	
<p>15. Actual value of the cultural object or, failing that, estimated value based on reasonable criteria in the country of exportation :</p>	
<p>16. Legal status and use of the cultural object</p> <p>Status: <input type="checkbox"/> Sold <input type="checkbox"/> Loaned <input type="checkbox"/> Exchanged <input type="checkbox"/> Other (to be specified) :</p> <p>Exported for: <input type="checkbox"/> Exhibition <input type="checkbox"/> Appraisal <input type="checkbox"/> Research <input type="checkbox"/> Repair <input type="checkbox"/> Other (please specify) :</p>	
<p>17. Attached documents /special identification methods</p> <p><input type="checkbox"/> Photograph (colour) <input type="checkbox"/> Bibliography <input type="checkbox"/> Other (please specify) :</p> <p><input type="checkbox"/> List <input type="checkbox"/> Catalogue</p> <p><input type="checkbox"/> Seals <input type="checkbox"/> Valuation documents</p>	
<p>18. Supplementary pages : number of supplementary pages if applicable (in figures and letters)</p>	
<p>19. Endorsement by Customs Export Office</p> <p style="text-align: center;">Signature and stamp</p> <p>Customs office : Country : Export document No. : Dated:</p>	<p>20. Signature and stamp of issuing authority</p> <p>Place and date :</p>
<p>21. Customs exit office</p> <p>Stamp and date :</p>	

## ANNEX 3

### **Basic Actions concerning Cultural Objects being offered for Sale over the Internet**



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Organisation des Nations Unies  
pour l'éducation, la science et la culture  
7 place Fontenoy  
75732 Paris Cedex 15  
France

Tél. : +33 (0)1 45 68 44 04  
Télécopie : +33 (0)1 45 68 55 96  
Courriel : [e.planche@unesco.org](mailto:e.planche@unesco.org)

ICPO-INTERPOL  
200, Quai Charles de Gaulle  
69006 Lyon  
France

Tél. : +33 (0)4 72 44 7000  
Télécopie : +33 (0)4 72 44 7632  
Courriel : [woa@interpol.int](mailto:woa@interpol.int)

Conseil international des musées  
Maison de l'UNESCO  
1, rue Miollis  
75732 Paris Cedex 15  
France

Tél. : +33 (0)1 47 34 05 00  
Télécopie : +33 (0)4 43 06 78 62  
Courriel : [secretariat@icom.museum](mailto:secretariat@icom.museum)

As cultural property is a unique testimony to the culture and identity of a people and an irreplaceable asset for its future, INTERPOL, UNESCO and ICOM are concerned by the ongoing increase of illicit trafficking in such property. In particular, as recently confirmed by an INTERPOL survey carried out in 56 Member States, it has been internationally recognized that the illicit trade in cultural objects via the Internet is a very serious and growing problem, both for countries of "origin" (where the theft has occurred) and destination countries.

It is well known that the significance, provenance and authenticity of the cultural objects offered for sale on the Internet vary considerably. Some have historical, artistic or cultural value, others do not; their origin can be legal or illicit, and some are genuine, while others are forgeries. Most countries do not have the means to review all Internet sales nor to investigate all offers of a suspicious nature. However, all countries should attempt to respond to the illicit trade in cultural objects via the Internet by taking the appropriate measures.

These issues were discussed at the third annual meeting of the *INTERPOL Expert Group on Stolen Cultural Property* held at the INTERPOL General Secretariat on 7 and 8 March 2006.

The participants agreed that monitoring the Internet poses a number of challenges due to:

- (a) the sheer volume and diversity of items offered for sale;
- (b) the variety of venues or platforms for the sale of cultural objects on the Internet;
- (c) missing information that hinders proper identification of objects;
- (d) the limited reaction time available owing to short bidding periods during a sale;
- (e) the legal position of the companies, entities or individuals serving as platforms for the trade in cultural objects over the Internet;
- (f) the complex issues related to jurisdiction concerning these sales; and
- (g) the fact that the objects sold are often located in a country different from that of the Internet platform.

Following a recommendation adopted by this meeting, INTERPOL, UNESCO and ICOM have therefore developed the subsequent list of **Basic Actions to counter the Increasing Illicit Sale of Cultural Objects through the Internet**<sup>1</sup>.

The Member States of INTERPOL and UNESCO and the States with ICOM National Committees are invited to:

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

*"With regard to cultural objects proposed for sale, and before buying them, buyers are advised to: i) check and request a verification of the licit provenance of the object, including documents providing evidence of legal export (and possibly import) of the object likely to have been imported; ii) request evidence of the seller's legal title. In case of doubt, check primarily with the national authorities of the country of origin and INTERPOL, and possibly with UNESCO or ICOM"*

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

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<sup>1</sup> The above-mentioned Basic Actions are neither "Recommendations", nor "Declarations, Charters and similar standard-setting instruments" adopted by the General Conference of UNESCO, nor "Resolutions" adopted by the General Assembly of Interpol.

4. Cooperate with national and foreign police forces and INTERPOL as well as the responsible authorities of other States concerned, in order to:
  - (a) Insure that any theft and/or any illegal appropriation of cultural objects be reported to INTERPOL National Central Bureau, in order to enable relevant information to be posted on the INTERPOL Stolen Works of Art Database;
  - (b) Make information available about theft and/or any illegal appropriation of cultural objects, as well as about any subsequent sale of such cultural objects, from or to national territories, using the Internet;
  - (c) Facilitate rapid identification of cultural objects by:
    - i) ensuring updated inventories with photographs of cultural objects, or at least their description, for example through the Object ID standard<sup>2</sup>;
    - ii) maintaining a list of recommended experts;
  - (d) Use all the tools at their disposal to conduct checks of suspicious cultural property, in particular the INTERPOL Stolen Works of Art Database and the corresponding INTERPOL DVD;
  - (e) Track and prosecute criminal activities related to the sale of cultural objects on the Internet and inform the INTERPOL General Secretariat of major investigations involving several countries.
5. Maintain statistics and register information on the checks conducted concerning the sale of cultural objects via the Internet, the vendors in question and the results obtained;
6. Establish legal measures to immediately seize cultural objects in case of a reasonable doubt concerning their licit provenance;
7. Assure the return of seized objects of illicit provenance to their rightful owners.

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<sup>2</sup> The Object ID, which is an international standard for describing art, antiques, and antiquities, as well as a version with supplementary information (endorsed by ICOM, Getty and UNESCO), are available on the ICOM website (<http://icom.museum/object-id>).

## ANNEX 4

### Model instruments for ratification/acceptance and accession to the Convention

#### INSTRUMENT OF RATIFICATION

Whereas the ... (*title of the Convention*) ... is open to ratification by ... (*name of the country*) ..., under the terms of its Article ... (*number of applicable Article*),

Now therefore the Government of ... (*name of the country*) ... having considered the aforesaid Convention hereby ratify the said Convention and undertake faithfully to carry out the stipulations therein contained.

IN WITNESS THEREOF, I have signed and sealed this instrument.

Done at ... (*place*) ..., this day of ... (*date*) ...

(*Signature*)

*Head of State or Head of Government or Minister of Foreign Affairs*

(*Seal*)

## ANNEX 5

### Cooperating partners for the fight against illicit trafficking of cultural property

UNESCO constantly strengthens the International cooperation in the fight against illicit traffic in cultural property with its partners. All have a crucial role in prevention by providing information, education, training, but also in the development and implementation of tools to facilitate the return and restitution of cultural property and the improvement of international assistance in these objectives.

Therefore, UNESCO works regularly and closely with its partners, in particular when dealing with matters of theft and illicit export of cultural property across the world, as well as the modalities for such property's return. This cooperation is also reflected by regular technical and practical meetings and produces tangible results, such as the restitution of cultural property and improvements to the legal and operational framework in the fight against looting and the illicit transfer of cultural property.

Partners for the fight against illicit traffic in cultural property may be intergovernmental or non-governmental organizations that have an interest, involvement, and relevant competence and expertise in the protection of cultural objects and are recognized by UNESCO as having appropriate specialized skills and proven track records. They are particularly invited to participate in expert studies and regional meetings and workshops organized by UNESCO.

These partners include principally UNIDROIT, INTERPOL, UNODC, WCO, and ICOM, with which the 1970 Secretariat works on a daily basis. Other partners may include local, regional or international organizations such as ICOMOS, ICCROM, Europol and national specialized police and customs bodies, or other partners for ad hoc projects.

With the support of the Subsidiary Committee, States Parties are encouraged to explore ways and means of contributing to this cooperative network. They are also invited to make use of the tools offered by all international partners, as possible, in the implementation of the 1970 Convention in the fight against the illicit traffic of cultural and archaeological property and particularly against the clandestine excavations of archaeological sites

	<p><b>INTERPOL</b> I.C.P.O. – INTERPOL, General Secretariat <b>Works of Art Unit</b> Drugs and Criminal Organizations Sub-directorate 200, quai Charles de Gaulle 69006 Lyon France <a href="mailto:woa@interpol.int">woa@interpol.int</a></p> <p>Concerning stolen works of art, INTERPOL provides a number of tools that facilitate the global exchange of information on criminal actions involving works of art, the details of the stolen artworks and the individuals involved. In this area, INTERPOL serves as a central repository for this data, providing analysis to</p>
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	<p>identify trends in art thefts such as the proliferation of counterfeit, faked or forged works; or the use of the Internet for selling works of dubious background.</p> <p>Among the most important tools and services available to law enforcement, cultural agencies and the public are: website alerts and media releases, posters of the most wanted works of art, as well as the Stolen Works of Art Database.</p> <p>The specific role of INTERPOL in relation to the 1970 Convention is described in the Cooperation Agreement between UNESCO and INTERPOL signed in 1999. This Cooperation Agreement contains provisions on mutual consultations, exchange of information, reciprocal representation and technical cooperation. In addition, in 2003, in accordance with Article 4(4) of this Cooperation Agreement, UNESCO and INTERPOL entered into a Special Agreement with regard to the protection of Iraqi cultural property.</p>
	<p><b>UNIDROIT</b>  International Institute for the unification of Private Law  28, Via Panisperna  00184 Roma  Italy  <a href="mailto:info@unidroit.org">info@unidroit.org</a></p> <p>The International Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental Organization. Its purpose is to study needs and methods for modernising, harmonising and co-ordinating private law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives.</p> <p>The specific role of UNIDROIT in relation to the 1970 Convention includes: working on the private law aspects of the fight against illicit traffic in cultural objects (on the basis of an Agreement entered into between UNESCO and UNIDROIT in 1954 containing provisions specifically on mutual consultations, exchange of information, reciprocal representation and technical cooperation), monitoring and promoting the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995) (hereafter referred to as the “UNIDROIT Convention”), participating in expert studies and co-organizing with UNESCO regional meetings or workshops for the fight against illicit trafficking of cultural property.</p>
	<p><b>UNITED NATIONS OFFICE ON DRUGS AND CRIME (UNODC)</b>  Vienna International Centre  PO Box 500  A 1400 Vienna  Austria  <a href="http://www.unodc.org">http://www.unodc.org</a></p> <p>UNODC is mandated to assist Member States in their struggle against drug trafficking, crime and terrorism. In the Millennium Declaration, Member States also resolved to intensify efforts to fight transnational crime in all its dimensions, to redouble the efforts to implement the commitment to counter the world drug problem and to take concerted action against international terrorism. The United Nations Economic and Social Council (ECOSOC), in its resolutions 2010/19 and 2011/42, and the General Assembly, in its resolution 66/180, requested UNODC, within its mandate, in consultation with Member States and in close cooperation, as appropriate, with UNESCO, INTERPOL and other competent international organizations, to include in its work the possibility of developing specific guidelines for crime prevention and criminal justice responses with respect to</p>

	<p>trafficking in cultural property. The specific role of UNODC in relation to the 1970 Convention includes: working on the criminal aspects of the fight against illicit trafficking of cultural property and strengthening crime prevention and criminal justice responses to protect cultural property.</p>
	<p><b>WCO</b>  World Customs Organization  Rue du marché, 30  B-1210 Brussels  Belgium  <a href="mailto:information@wcoomd.org">information@wcoomd.org</a>  <a href="mailto:communication@wcoomd.org">communication@wcoomd.org</a></p> <p>WCO provides leadership in Customs matters at the international level and advises customs administrations worldwide on management practices, tools and techniques to enhance their capacity to implement efficient and effective cross-border controls along with standardized and harmonized procedures to facilitate legitimate trade and travel and to interdict illicit transactions and activities. The specific role of WCO in relation to the 1970 Convention includes: being a partner of UNESCO in the fight against illicit trafficking of cultural property as border control is the front line defence against illicit traffic of arms, drugs, currency but also cultural property. Indeed, alert customs officials play a key role in identifying and holding cultural objects which are falsely declared or identifiable as a result of looting.</p>
	<p><b>ICOM</b>  International Council of Museums  General Secretariat  UNESCO House  1, rue Miollis  75732 Paris cedex 15  <a href="http://icom.museum/">http://icom.museum/</a></p> <p>ICOM is the only international organization representing museums and museum professionals. ICOM assists members of the museum community in their mission to preserve, conserve and share cultural heritage. The specific role of ICOM in relation to the 1970 Convention includes: providing advice to UNESCO on museum matters, training museum staff to protect the cultural objects by offering tools to make inventories of the collections and publishing international guidelines of security, publicizing endangered heritage (particularly by means of the Red Lists, see paragraphs 133-134) or stolen works of art (particularly by means of the One Hundred Missing Objects collection).</p>

## ANNEX 6

### Links to other Conventions related to the 1970 Convention

The Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970 Convention) has important complementary relationships with **other UNESCO Culture Conventions**, as well as to **the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects**, and the **United Nations Convention against Transnational Organized Crime**. The Convention also interacts **with the General Agreement on Trade and Tariffs and the Vienna Convention on the Law of Treaties**.

#### Major interaction with other international agreements:

- One interaction of the 1970 Convention with other international agreements is with the other UNESCO culture conventions. One of these, **the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict (Hague Convention) and its First Protocol (1954) and Second Protocol (1999)**, lay out rules to protect cultural heritage during times of war. The Hague Convention essentially attempts to safeguard cultural heritage on the front end while the 1970 Convention establishes procedures for the return of stolen or illegally exported cultural objects once they have been removed from the possession of their rightful owner. Another UNESCO cultural convention that the 1970 Convention is linked to is **the 2001 Convention on the Protection of the Underwater Cultural Heritage (2001 Convention)**. The 2001 Convention complements the 1970 Convention by expanding the area of protection of cultural heritage to underwater heritage, as well. Additionally, by encouraging member States to integrate the protection of the cultural and natural heritage into regional planning programmes, setting up staff and services at their sites, undertaking scientific and technical conservation research, **the 1972 UNESCO World Heritage Convention** contributes to assert the preventive measures enshrined in the 1970 Convention.
- The second and one of the most significant links of the 1970 Convention to another international agreement is with **the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (the 1995 Convention)**. UNESCO asked UNIDROIT to draft the 1995 Convention to compliment the 1970 Convention and provide a model for uniform treatment of restitution for stolen or illegally exported objects. Convention covers all stolen cultural objects, not just inventoried and declared ones. The 1995 Convention strengthens the provisions of the 1970 Convention of by formulating common minimum rule and standards on restitution and return of cultural property. These minimum standards help ensure the fulfillment of the object and purpose of the 1970 Convention. (<http://www.unesco.org/new/en/culture/themes/illicit-trafficking-of-cultural-property/1995-unidroit-convention/>).  
The UNIDROIT Convention represents a middle road between diametrically opposed positions: one favouring maximum freedom of trade and the other the protection of national heritage. The aim of the UNIDROIT Convention is twofold: first, it seeks to deal with the technical problems resulting from differences among national rules and to draw upon the progress that has been permitted by the evolution of ideas; second, it is intended to contribute to the fight against the increase of the illicit traffic in cultural objects and to show how the national protection of cultural heritage may be adapted to, or accompanied by, enhancing solidarity between States.  
This UNIDROIT Convention also settles serious difficulties that could not be dealt with in the 1970 Convention. The main principles are the following: Undiscovered antiquities

should be treated as stolen where the State of origin has claimed ownership in its legislation;

A clear test of 'due diligence' is given, which establishes a standard test for 'good faith'; some special provisions on time limitations for claims are settled. The States Parties to the 1970 Convention, convinced of the necessity of protecting the cultural heritage and willing to further develop its protection are encouraged to become Parties to the UNIDROIT Convention.

- Third, the 1970 Convention interacts with **the United Nations Convention against Transnational Organized Crime (TOC Convention)**, which is the main international instrument in the fight against transnational organized crime. The TOC Convention obligates States that ratify it to commit themselves to taking a series of measures against transnational organized crime, including the creation of domestic criminal offences; the adoption of new and sweeping frameworks for extradition, mutual legal assistance, and law enforcement cooperation; and the promotion of training and technical assistance for building or upgrading the necessary capacity of national authorities. These efforts overlap with the 1970 Convention when the transnational organized crime involves the theft or illegal export of cultural property. (<http://www.unodc.org/unodc/en/treaties/CTOC/>)

#### **Interaction with other international agreements:**

- While not explicitly linked, the **1970 Convention and the General Agreement on Trade and Tariffs (GATT)** are connected due to the former's use of import restrictions to combat the illicit traffic of cultural property. Generally, non-tariff trade barriers or restrictions are prohibited within the GATT regime. However, Article XX of the GATT allows for various exceptions to this ban on non-tariff barriers. Subsection (f) of the Article allows for restrictions that are "imposed for the protection of national treasures of artistic, historic or archaeological value" so long as they do not violate the *chapeau* of the Article. Even if an action fits within an exception of Article XX, it still violates the GATT if "such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or [such action is] a disguised restriction on international trade." The 1970 Convention and the subsequent national legislation implementing the obligations of the Convention generally fall within the subsection (f) exception of Article XX. It should be noted, though, that if any aspect of the 1970 convention or related national implementing legislation were deemed to be international trade restrictions under the guise of cultural heritage protection, the implementing country could be subject to a dispute under the Dispute Settlement Body of the World Trade Organization (WTO) and possible retaliation or cross-retaliation under the WTO regime. ([http://www.wto.org/english/docs\\_e/legal\\_e/gatt47\\_02\\_e.htm#articleXX](http://www.wto.org/english/docs_e/legal_e/gatt47_02_e.htm#articleXX))
- Similar interplay is also possible with various free trade agreements, such as the **North American Free Trade Agreement**, if all parties involved are members of the free trade agreement.
- The 1970 Convention is interpreted by the methods laid out **in the Vienna Convention on the Law of Treaties** and codified as customary international law.



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## Code of Ethics and Professional Practices

The Art Dealers Association of America, (“ADAA”) was founded in 1962 with the stated purpose of promoting the highest standards of connoisseurship, scholarship and ethical practices within the art dealing profession. It is the responsibility of each Member to conduct business in a manner that reflects these standards. Each Member must, of course, comply with all applicable laws and regulations. Beyond this basic standard, however, each Member is expected to conduct business professionally, fairly, with integrity and with the courtesy and respect due to artists, clients, colleagues, other Members, and the general public.

The ADAA has value to its Members where membership in the organization is regarded as an affirmation of integrity and fair dealing. Where a Member acts in a way that is not consistent with this Code of Ethics, it tarnishes the organization and its other Members, and brings disrepute to the art market more generally. Members therefore understand the fundamental importance of this Code of Ethics.

### I. Clients

#### A. Buyers

(1) ADAA Members are expected to provide an accurate description of all objects that they offer for sale. A buyer should be provided with a written invoice containing that description, which should include the identity of the artist, the dimensions and medium of the work, and other relevant information. A Member’s invoice is a warranty that the work is the authentic work of the artist named in the invoice, that clear and unencumbered title is passed to the buyer, and that any other material portion of the description is accurate.

(2) Members exercise due diligence in verifying the authenticity of works of art that they offer for sale.

(3) Members do not knowingly buy, sell or exhibit works of art that are not authentic works of art by the artists to whom they are attributed.

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

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

#### B. Consignors

(1) A Member understands that he or she acts as an agent of a consignor of a work of art and therefore owes a fiduciary responsibility to the consignor

(2) A Member should enter into a written consignment agreement that contains a description of each work consigned (artist, title, medium, dimensions), the term of the consignment, the commission to the dealer or the net price to be paid to the consignor, responsibility for expenses, and any other significant term of the

transaction. Where a net price is quoted, the Member should make clear to the consignee that the Member will retain any amount received from a buyer that is in excess of the net price. The consignee is expected to warrant that the work is the genuine work of the artist identified in the agreement and that clear and unencumbered title will pass when the work is sold by the Member. It also is expected that the consignee will indemnify the Member against any claim of breach of any express or implied warranty made by the consignee.

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

(4) A Member's communications with the consignee regarding any aspect of the consignment are expected to be accurate, and must never be intentionally inaccurate or misleading.

(5) A Member should notify the consignee when payment is received for a consigned work, and make timely payment to the Consignee, as agreed.

(6) Members do not knowingly sell works of art that they are not authorized to sell. Nor do Members sell works of art on terms that are not authorized by the consignee.

## **II. Artists**

A Member understands that he or she acts as an agent for artists that the Member represents and therefore owes a fiduciary responsibility to each artist. Further, a Member representing an artist has responsibilities to the artist extending beyond selling the artist's works. Those responsibilities may be divided into the (A) advisory, custodial and archival, and (B) financial.

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

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

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

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

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

### *B. Financial*

(1) A Member and an artist are expected to agree on the terms of the representation, including such expenses as shipments, insurance, photography, storage, framing and restoration. Under no circumstances should an artist be charged for the use of a Member's gallery space for the exhibition of his or her art.

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

(3) The Member and the artist are also expected to agree in advance on when and how the Member should account to and pay the artist after a sale is made and payment is received by the dealer. A Member is always expected to pay the artist his or her full portion of the proceeds of the sale of the artist's work on a timely basis, and to take such steps as are necessary or required by law to assure that the artist's share of the proceeds of the sale of a work of art is protected.

(4) A Member may never use work by one of its artists that is on consignment with the Member as collateral for any form of financing.

(5) A Member is expected to act in an honest and trustworthy manner in dealing with an artist and the works consigned by the artist.

## **III. Artists' Estates**

A Member has the same responsibilities to the estate of an artist as to a living

artist. This includes the advisory, custodial and financial responsibilities listed above. Members are expected to be mindful that the artist no longer can be his or her own advocate and work actively to develop and foster the market for the artist's works.

#### **IV. Auctions**

- A. A Member who has an ownership interest in a work may not consign that work for auction with the intention of acquiring the work at the auction at a publicly enhanced price.
- B. A Member who owns or guarantees a work consigned to auction, or has any other financial interest in the sale of the work, is expected to disclose that fact to potential bidders on that work before he or she offers any advice about the work.
- C. A Member may not bid, or agree with others to refrain from bidding on a work at auction, solely for the purpose of enhancing or depressing the price.

#### **V. Dealers**

- A. Members should seek to further mutual respect and enhance the public's trust in art dealers. To that end, Members are expected to exercise care in making negative comments about other art dealers for the purpose of denigrating their reputations.
- B. When a work is jointly owned with another art dealer, the Member should enter into a clear agreement concerning the price to be obtained, the terms of sale, insurance, and the sharing of costs.
- C. When a Member consigns a work to another dealer the Member is expected to assure that (i) the consignment is consistent with the Member's agreement with the owner of the work, (ii) the compensation to be paid to the other dealer is consistent with the Member's agreement with the owner of the Work, (iii) the other dealer is aware of and has agreed to comply with any terms of the Member's agreement with the owner of the Work that may affect the means or terms by which the other dealer may sell the work of art.
- D. In any transaction in which another art dealer, advisor or other agent is acting for the counterparty to the transaction, a Member is expected to assure that it is clear who is being represented by the Member and who is being represented by the other art professional so that each professional may satisfy his or her responsibility to his or her client.
- E. A Member does not seek or accept compensation from any party where such compensation would create a conflict with the Member's responsibility to its principal in the transaction, unless such compensation has been disclosed to and approved by the Member's principal.

#### **VI. Art Fairs**

The provisions of this Code of Ethics apply to Members with respect to all of their transactions, including their participation in art fairs.

#### **VII. Gallery Management**

Members are expected to treat their staff with courtesy and respect, and to comply with all applicable employment laws, including laws relating to any form of discrimination.

#### **VIII. Enforcement**

- A. Recognizing the importance to all Members of protecting the reputation of the ADAA, every Member is expected to respond receptively and cooperatively to good faith concerns raised by other Members with respect to works of art that are being offered for sale by the Member or other matters related to this Code of Ethics.
- B. Claims that a Member has acted in violation of these guidelines should be made in writing to the Executive Director, who will cause each such claim to be investigated and will proceed in accordance with such rules as have been adopted by the Board of Directors. Violation of any provision of this Code may be grounds for censure, suspension or expulsion from the ADAA, or such other penalty as the

ADAA, acting through its Board of Directors, may deem to be appropriate.

MAILING LIST



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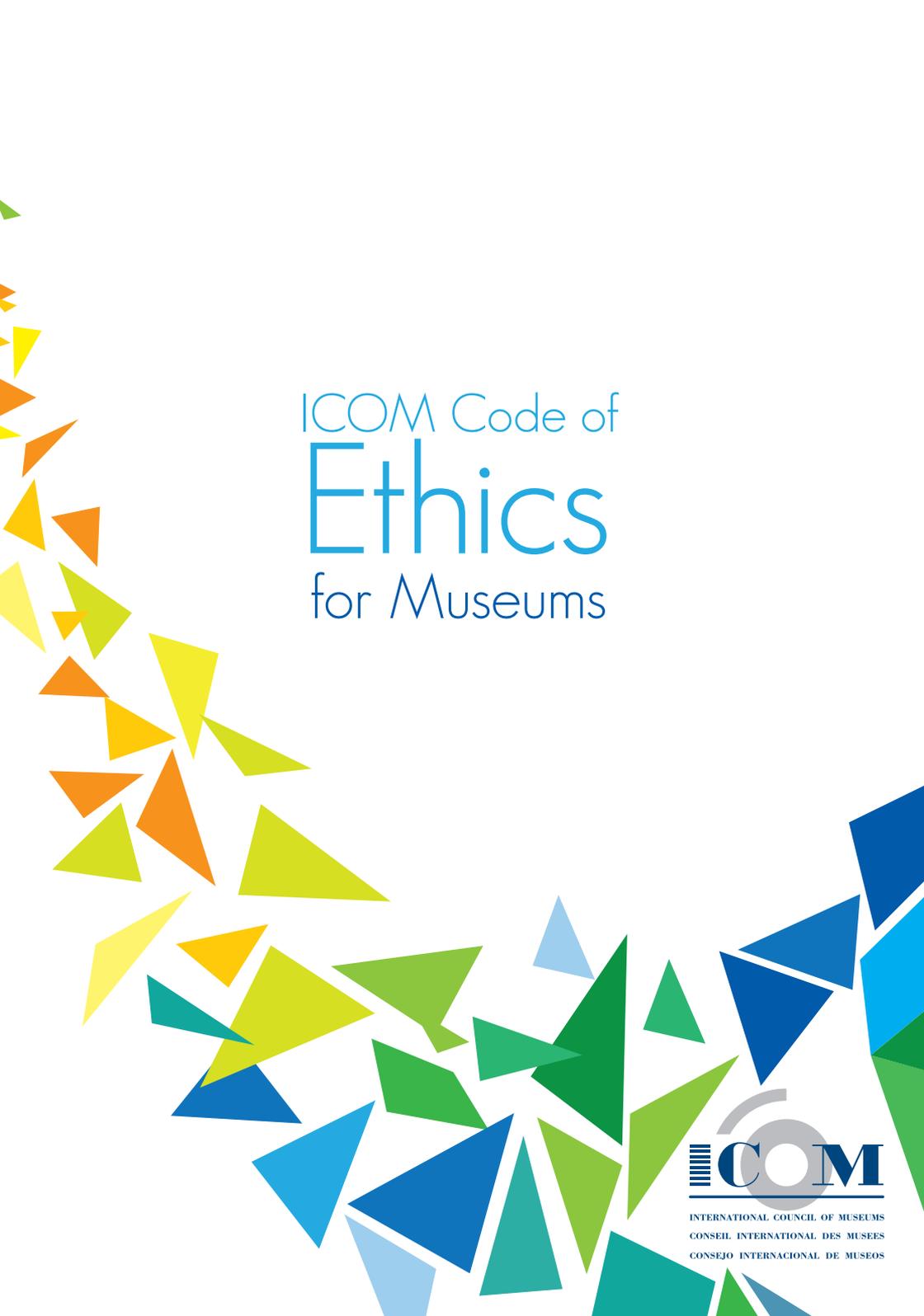
## Code of Ethics

The Conduct of an art dealer can affect the public's attitude toward everyone in the field. ADAC has therefore established the following Code of Ethics, designed to promote and maintain standards benefitting everyone who seeks to deal honestly. Each member dealer is expected to:

- Respect and protect the privacy of clients.
- Maintain knowledgeability in his or her chosen field.
- Fully disclose to clients the precise nature of all items to be sold. This includes furnishing in writing the exact conditions of originality or attribution, provenance, state, and other conditions that clearly set forth the exact status of each work.
- Treat discreetly, responsibly and judiciously information obtained by virtue of his or her professional relations.
- Work to protect the community against those who would engage in unethical or illegal actions. This includes cooperating with fellow members of the Association in enforcing this code by reporting or testifying about unethical or unfair practices to the officers of the organization.

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ICOM Code of  
**Ethics**  
for Museums



## ICOM CODE OF ETHICS FOR MUSEUMS

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

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

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

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## PREAMBLE

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

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

### A Minimum Standard for Museums

The ICOM Code represents a minimum standard for museums. It is presented as a series of principles supported by guidelines for desirable professional practice. In some countries, certain minimum standards are defined by law or government regulation. In others, guidance on and assessment of minimum professional standards may be available in the form of 'Accreditation', 'Registration', or similar evaluative schemes. Where such standards are not defined, guidance can be obtained through the ICOM Secretariat, a relevant National Committee of ICOM, or the appropriate International Committee of ICOM. It is also intended that individual nations and the specialised subject organisations connected with museums should use this Code as a basis for developing additional standards.

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

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



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# 1. MUSEUMS PRESERVE, INTERPRET AND PROMOTE THE NATURAL AND CULTURAL INHERITANCE OF HUMANITY.

## Principle

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

## INSTITUTIONAL STANDING

### 1.1 Enabling Documentation

The governing body should ensure that the museum has a written and published constitution, statute, or other public document in accordance with national laws, which clearly states the museum's legal status, mission, permanence and non-profit nature.

### 1.2 Statement of the Mission, Objectives and Policies

The governing body should prepare, publicise and be guided by a statement of the mission, objectives and policies of the museum and of the role and composition of the governing body.

## PHYSICAL RESOURCES

### 1.3 Premises

The governing body should ensure adequate premises with a suitable environment for the museum to fulfil the basic functions defined in its mission.

### 1.4 Access

The governing body should ensure that the museum and its collections are available to all during reasonable hours and for regular periods. Particular regard should be given to those persons with special needs.

### 1.5 Health and Safety

The governing body should ensure that institutional standards of health, safety and accessibility apply to its personnel and visitors.

### 1.6 Protection Against Disasters

The governing body should develop and maintain policies to protect the public and personnel, the collections and other resources against natural and human-made disasters.

### 1.7 Security Requirements

The governing body should ensure appropriate security to protect collections against theft or damage in displays, exhibitions, working or storage areas and while in transit.

### 1.8 Insurance and Indemnity

Where commercial insurance is used for collections, the governing body should ensure that such cover is adequate and includes objects in transit or on loan and other items that are the responsibility of the museum. When an indemnity scheme is in use, it is necessary that material not in the ownership of the museum be adequately covered.



## FINANCIAL RESOURCES

### 1.9 Funding

The governing body should ensure that there are sufficient funds to carry out and develop the activities of the museum. All funds must be accounted for in a professional manner.

### 1.10 Income-generating Policy

The governing body should have a written policy regarding sources of income that it may generate through its activities or accept from outside sources. Regardless of funding source, museums should maintain control of the content and integrity of their programmes, exhibitions and activities. Income-generating activities should not compromise the standards of the institution or its public. (See 6.6).

## PERSONNEL

### 1.11 Employment Policy

The governing body should ensure that all action concerning personnel is taken in accordance with the policies of the museum as well as the proper and legal procedures.

### 1.12 Appointment of the Director or Head

The director or head of the museum is a key post and when making an appointment, governing bodies should have regard for the knowledge and skills required to fill the post effectively. These qualities should include adequate intellectual ability and professional knowledge, complemented by a high standard of ethical conduct.

### 1.13 Access to Governing Bodies

The director or head of a museum should be directly responsible, and have direct access, to the relevant governing bodies.

### 1.14 Competence of Museum Personnel

The employment of qualified personnel with the expertise required to meet all responsibilities is necessary. (See also 2.19; 2.24; section 8).

### 1.15 Training of Personnel

Adequate opportunities for the continuing education and professional development of all museum personnel should be arranged to maintain an effective workforce.

### 1.16 Ethical Conflict

The governing body should never require museum personnel to act in a way that could be considered to conflict with the provisions of this Code of Ethics, or any national law or specialist code of ethics.

### 1.17 Museum Personnel and Volunteers

The governing body should have a written policy on volunteer work that promotes a positive relationship between volunteers and members of the museum profession.

### 1.18 Volunteers and Ethics

The governing body should ensure that volunteers, when conducting museum and personal activities, are fully conversant with the ICOM Code of Ethics for Museums and other applicable codes and laws.

## 2 MUSEUMS THAT MAINTAIN COLLECTIONS HOLD THEM IN TRUST FOR THE BENEFIT OF SOCIETY AND ITS DEVELOPMENT.

### Principle

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

### ACQUIRING COLLECTIONS

#### 2.1 Collections Policy

The governing body for each museum should adopt and publish a written collections policy that addresses the acquisition, care and use of collections. The policy should clarify the position of any material that will not be catalogued, conserved, or exhibited. (See 2.7; 2.8).

#### 2.2 Valid Title

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

#### 2.3 Provenance and Due Diligence

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

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

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

#### 2.5 Culturally Sensitive Material

Collections of human remains and material of sacred significance should be acquired only if they can be housed securely and cared for respectfully. This must be accomplished in a manner consistent with professional standards and the interests and beliefs of members of the community, ethnic or religious groups from which the objects originated, where these are known. (See also 3.7; 4.3).



## 2.6 Protected Biological or Geological Specimens

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

## 2.7 Living Collections

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

## 2.8 Working Collections

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

## 2.9 Acquisition Outside Collections Policy

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

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

Special care is required in considering any item, whether for sale, as a donation,

or as a tax-benefit gift, from members of governing bodies, museum personnel, or the families and close associates of these persons.

## 2.11 Repositories of Last Resort

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

# REMOVING COLLECTIONS

## 2.12 Legal or Other Powers of Disposal

Where the museum has legal powers permitting disposals, or has acquired objects subject to conditions of disposal, the legal or other requirements and procedures must be complied with fully. Where the original acquisition was subject to mandatory or other restrictions these conditions must be observed, unless it can be shown clearly that adherence to such restrictions is impossible or substantially detrimental to the institution and, if appropriate, relief may be sought through legal procedures.

## 2.13 Deaccessioning from Museum Collections

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

## 2.14 Responsibility for Deaccessioning

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

## 2.15 Disposal of Objects Removed from the Collections

Each museum should have a policy defining authorised methods for permanently removing an object from the collections through donation, transfer, exchange, sale, repatriation, or destruction, and that allows the transfer of unrestricted title to any receiving agency. Complete records must be kept of all deaccessioning decisions, the objects involved, and the disposal of the object. There will be a strong presumption that a deaccessioned item should first be offered to another museum.

## 2.16 Income from Disposal of Collections

Museum collections are held in public trust and may not be treated as a realisable asset. Money or compensation received from the deaccessioning and disposal of objects and specimens from a museum collection should be used solely for the benefit of the collection and usually for acquisitions to that same collection.

## 2.17 Purchase of Deaccessioned Collections

Museum personnel, the governing body, or their families or close associates, should not be permitted to purchase objects that have been deaccessioned from a collection for which they are responsible.

# CARE OF COLLECTIONS

## 2.18 Collection Continuity

The museum should establish and apply policies to ensure that its collections (both permanent and temporary) and associated information, properly recorded, are available for current use and will be passed on to future generations in as good and safe a condition as practicable, having regard to current knowledge and resources.

## 2.19 Delegation of Collection Responsibility

Professional responsibilities involving the care of the collections should be assigned

to persons with appropriate knowledge and skill or who are adequately supervised. (See also 8.11).

## 2.20 Documentation of Collections

Museum collections should be documented according to accepted professional standards. Such documentation should include a full identification and description of each item, its associations, provenance, condition, treatment and present location. Such data should be kept in a secure environment and be supported by retrieval systems providing access to the information by the museum personnel and other legitimate users.

## 2.21 Protection Against Disasters

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

## 2.22 Security of Collection and Associated Data

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

## 2.23 Preventive Conservation

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

## 2.24 Collection Conservation and Restoration

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



procedures should be documented and as reversible as possible, and all alterations should be clearly distinguishable from the original object or specimen.

### 2.25 Welfare of Live Animals

A museum that maintains living animals should assume full responsibility for their health and well-being. It should prepare and implement a safety code for the protection of its personnel and visitors, as well as of the animals, that has been appro-

ved by an expert in the veterinary field. Genetic modification should be clearly identifiable.

### 2.26 Personal Use of Museum Collections

Museum personnel, the governing body, their families, close associates, or others should not be permitted to expropriate items from the museum collections, even temporarily, for any personal use.

## 3. MUSEUMS HOLD PRIMARY EVIDENCE FOR ESTABLISHING AND FURTHERING KNOWLEDGE.

### Principle

Museums have particular responsibilities to all for the care, accessibility and interpretation of primary evidence collected and held in their collections.

### PRIMARY EVIDENCE

#### 3.1 Collections as Primary Evidence

The museum collections policy should indicate clearly the significance of collections as primary evidence. The policy should not be governed only by current intellectual trends or present museum usage.

#### 3.2 Availability of Collections

Museums have a particular responsibility for making collections and all relevant information available as freely as possible, having regard to restraints arising for reasons of confidentiality and security.

academic standards and applicable national and international laws and treaty obligations. Fieldwork should only be undertaken with respect and consideration for the views of local communities, their environmental resources and cultural practices as well as efforts to enhance the cultural and natural heritage.

#### 3.4 Exceptional Collecting of Primary Evidence

In exceptional cases an item without provenance may have such an inherently outstanding contribution to knowledge that it would be in the public interest to preserve it. The acceptance of such an item into a museum collection should be the subject of a decision by specialists in the discipline concerned and without national or international prejudice. (See also 2.11).

### MUSEUM COLLECTING & RESEARCH

#### 3.3 Field Collecting

Museums undertaking field collecting should develop policies consistent with

### 3.5 Research

Research by museum personnel should relate to the museum's mission and objectives and conform to established legal, ethical and academic practices.

### 3.6 Destructive Analysis

When destructive analytical techniques are undertaken, a complete record of the material analysed, the outcome of the analysis and the resulting research, including publications, should become a part of the permanent record of the object.

### 3.7 Human Remains and Materials of Sacred Significance

Research on human remains and materials of sacred significance must be accomplished in a manner consistent with professional standards and take into account the interests and beliefs of the community, ethnic or religious groups from whom the objects originated, where these are known. (See also 2.5; 4.3).

### 3.8 Retention of Rights to Research Materials

When museum personnel prepare material for presentation or to document field investigation, there must be clear agreement

with the sponsoring museum regarding all rights to such work.

### 3.9 Shared Expertise

Members of the museum profession have an obligation to share their knowledge and experience with colleagues, scholars and students in relevant fields. They should respect and acknowledge those from whom they have learned and should pass on such advancements in techniques and experience that may be of benefit to others.

### 3.10 Co-operation Between Museums and Other Institutions

Museum personnel should acknowledge and endorse the need for cooperation and consultation between institutions with similar interests and collecting practices. This is particularly so with institutes of higher education and certain public utilities where research may generate important collections for which there is no long-term security.



## 4. MUSEUMS PROVIDE OPPORTUNITIES FOR THE APPRECIATION, UNDERSTANDING AND MANAGEMENT OF THE NATURAL AND CULTURAL HERITAGE.

### Principle

Museums have an important duty to develop their educational role and attract wider audiences from the community, locality, or group they serve. Interaction with the constituent community and promotion of their heritage is an integral part of the educational role of the museum.

### DISPLAY & EXHIBITION

#### 4.1 Displays, Exhibitions and Special Activities

Displays and temporary exhibitions, physical or electronic, should be in accordance with the stated mission, policy and purpose of the museum. They should not compromise either the quality or the proper care and conservation of the collections.

#### 4.2 Interpretation of Exhibitions

Museums should ensure that the information they present in displays and exhibitions is well-founded, accurate and gives appropriate consideration to represented groups or beliefs.

#### 4.3 Exhibition of Sensitive Materials

Human remains and materials of sacred significance must be displayed in a manner consistent with professional standards and, where known, taking into account the interests and beliefs of members of the community, ethnic or religious groups from whom the objects originated. They must be presented with great tact and respect for the feelings of human dignity held by all peoples.

#### 4.4 Removal from Public Display

Requests for removal from public display of human remains or material of sacred significance from the originating communities

must be addressed expeditiously with respect and sensitivity. Requests for the return of such material should be addressed similarly. Museum policies should clearly define the process for responding to such requests.

#### 4.5 Display of Unprovenanced Material

Museums should avoid displaying or otherwise using material of questionable origin or lacking provenance. They should be aware that such displays or usage can be seen to condone and contribute to the illicit trade in cultural property.

### OTHER RESOURCES

#### 4.6 Publication

Information published by museums, by whatever means, should be well-founded, accurate and give responsible consideration to the academic disciplines, societies, or beliefs presented. Museum publications should not compromise the standards of the institution.

#### 4.7 Reproductions

Museums should respect the integrity of the original when replicas, reproductions, or copies of items in the collection are made. All such copies should be permanently marked as facsimiles.

## 5. MUSEUMS HOLD RESOURCES THAT PROVIDE OPPORTUNITIES FOR OTHER PUBLIC SERVICES AND BENEFITS.

### Principle

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

### IDENTIFICATION SERVICES

#### 5.1 Identification of Illegally or Illicitly Acquired Objects

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

#### 5.2 Authentication and Valuation (Appraisal)

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



## 6. MUSEUMS WORK IN CLOSE COLLABORATION WITH THE COMMUNITIES FROM WHICH THEIR COLLECTIONS ORIGINATE AS WELL AS THOSE THEY SERVE.

### Principle

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

### ORIGIN OF COLLECTIONS

#### 6.1 Co-operation

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

#### 6.2 Return of Cultural Property

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

#### 6.3 Restitution of Cultural Property

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

prompt and responsible steps to cooperate in its return.

#### 6.4 Cultural Objects from an Occupied Country

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

### RESPECT FOR COMMUNITIES SERVED

#### 6.5 Contemporary Communities

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

#### 6.6 Funding of Community Activities

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

## 6.7 Use of Collections from Contemporary Communities

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

## 6.8 Supporting Organisations in the Community

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

# 7. MUSEUMS OPERATE IN A LEGAL MANNER.

## Principle

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

## LEGAL FRAMEWORK

### 7.1 National and Local Legislation

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

### 7.2 International Legislation

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

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

## 8. MUSEUMS OPERATE IN A PROFESSIONAL MANNER

### Principle

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

### PROFESSIONAL CONDUCT

#### 8.1 Familiarity with Relevant Legislation

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

#### 8.2 Professional Responsibility

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

#### 8.3 Professional Conduct

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

#### 8.4 Academic and Scientific Responsibilities

Members of the museum profession should promote the investigation, preservation, and use of information inherent in collec-

tions. They should, therefore, refrain from any activity or circumstance that might result in the loss of such academic and scientific data.

#### 8.5 The Illicit Market

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

#### 8.6 Confidentiality

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

#### 8.7 Museum and Collection Security

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

#### 8.8 Exception to the Obligation for Confidentiality

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

## 8.9 Personal Independence

While members of a profession are entitled to a measure of personal independence, they must realise that no private business or professional interest can be wholly separated from their employing institution.

## 8.10 Professional Relationships

Members of the museum profession form working relationships with numerous other persons within and outside the museum in which they are employed. They are expected to render their professional services to others efficiently and to a high standard.

## 8.11 Professional Consultation

It is a professional responsibility to consult other colleagues within or outside the museum when the expertise available in the museum is insufficient to ensure good decision-making.

## CONFLICTS OF INTEREST

### 8.12 Gifts, Favours, Loans, or Other Personal Benefits

Museum employees must not accept gifts, favours, loans, or other personal benefits that may be offered to them in connection with their duties for the museum. Occasionally professional courtesy may include the giving and receiving of gifts, but this should always take place in the name of the institution concerned.

### 8.13 Outside Employment or Business Interests

Members of the museum profession, although entitled to a measure of personal independence, must realise that no private business or professional interest can be wholly separated from their employing institution. They should not undertake other paid employment or accept outside commissions that are in conflict, or may be viewed as being in conflict, with the interests of the museum.

## 8.14 Dealing in Natural or Cultural Heritage

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

## 8.15 Interaction with Dealers

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

## 8.16 Private Collecting

Members of the museum profession should not compete with their institution either in the acquisition of objects or in any personal collecting activity. An agreement between the museum professional and the governing body concerning any private collecting must be formulated and scrupulously followed.

## 8.17 Use of the Name and Logo of ICOM

The name of the organisation, its acronym or its logo may not be used to promote or endorse any for-profit operation or product.

## 8.18 Other Conflicts of Interest

Should any other conflict of interest develop between an individual and the museum, the interests of the museum should prevail.



## GLOSSARY

### Appraisal

The authentication and valuation of an object or specimen. In certain countries the term is used for an independent assessment of a proposed gift for tax benefit purposes.

### Conflict of interest

The existence of a personal or private interest that gives rise to a clash of principle in a work situation, thus restricting, or having the appearance of restricting, the objectivity of decision making.

### Conservator-Restorer

Museum or independent personnel competent to undertake the technical examination, preservation, conservation and restoration of cultural property. (For further information, see ICOM News, vol. 39, n°1 (1986), pp. 5-6.)

### Cultural Heritage

Any thing or concept considered of aesthetic, historical, scientific or spiritual significance.

### Dealing

Buying and selling items for personal or institutional gain.

### Due diligence

The requirement that every endeavour is made to establish the facts of a case before deciding a course of action, particularly in identifying the source and history of an item offered for acquisition or use before acquiring it.

### Governing Body

The persons or organisations defined in the enabling legislation of the museum as responsible for its continuance, strategic development and funding.

### Income-generating activities

Activities intended to bring financial gain or profit for the benefit of the institution.

### Legal title

Legal right to ownership of property in the country concerned. In certain countries this may be a conferred right and insufficient to meet the requirements of a due diligence search.

### Minimum Standard

A standard to which it is reasonable to expect all museums and museum personnel to aspire. Certain countries have their own statements of minimum standards.

### Museum \*

A museum is a non-profit making permanent institution in the service of society and of its development, open to the public, which acquires, conserves, researches, communicates and exhibits, for purposes of study, education and enjoyment, the tangible and intangible evidence of people and their environment.



## Museum professional\*

Museum professionals consist of the personnel (whether paid or unpaid) of museums or institutions as defined in Article 2, paras. 1 and 2, of the ICOM Statutes, who have received specialised training, or possess an equivalent practical experience in any field relevant to the management and operations of a museum, and independent persons respecting the ICOM Code of Ethics for Museums and working for museums or institutions as defined in the Statute quoted above, but not persons promoting or dealing with commercial products and equipment required for museums and museum services.

## Natural Heritage

Any natural thing, phenomenon or concept, considered to be of scientific significance or to be a spiritual manifestation.

## Non-profit organisation

A legally established body - corporate or unincorporated - whose income (including any surplus or profit) is used solely for the benefit of that body and its operations. The term "not-for-profit" has the same meaning.

## Provenance

The full history and ownership of an item from the time of its discovery or creation to the present day, through which authenticity and ownership are determined.

## Valid title

Indisputable right to ownership of property, supported by full provenance of the item since discovery or production.

*\* It should be noted that the terms "museum" and "museum professional" are interim definitions for use in interpreting the ICOM Code of Ethics for Museums. The definitions of "museum" and "professional museum workers" used in the ICOM Statutes remain in force until the revision of that document has been completed.*

The International Council of Museums (ICOM), created in 1946, is the world organisation representing museums and museum professionals, committed to the promotion and protection of natural and cultural heritage, present and future, tangible and intangible. With more than 30,000 members in 136 countries, ICOM is a unique network of museum professionals acting in a wide range of museum- and heritage-related disciplines.

#### Leading international actions

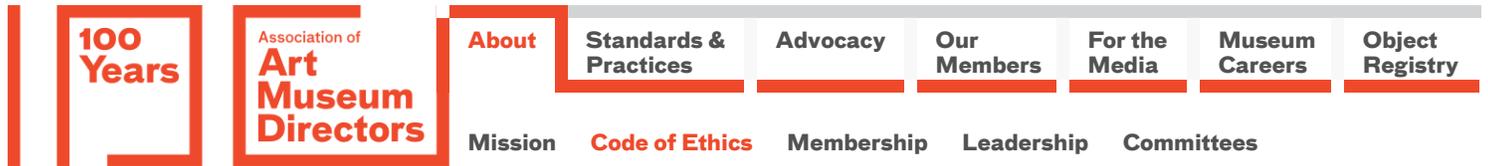
Maintaining formal relations with UNESCO and a consultative status within the United Nations Economic and Social Council, ICOM also partners with entities such as the World Intellectual Property Organization, INTERPOL and the World Customs Organization, in order to carry out its international public service missions, which include fighting illicit traffic in cultural goods and promoting risk management and emergency preparedness to protect world cultural heritage in the event of natural or man-made disasters.

#### A centre for reflection

ICOM's commitment to culture and knowledge promotion is reinforced by its 31 International Committees dedicated to a wide range of museum specialities, who conduct advanced research in their respective fields for the benefit of the museum community. ICOM has the ability to mobilise experts in cultural heritage worldwide in response to the challenges museums face around the globe.

A decorative graphic on the left side of the page, consisting of several overlapping triangles in various shades of yellow, orange, and green, arranged in a cluster that points towards the right.

International Council of Museums (ICOM)  
Maison de l'UNESCO  
1, rue Miollis 75732 Paris cedex 15 - France  
Telephone: +33 (0) 1 47 34 05 00  
Fax: +33 (0) 1 43 06 78 62  
Email: [secretariat@icom.museum](mailto:secretariat@icom.museum)  
Website: <http://icom.museum>



## Code of Ethics

**Adopted by the membership of the AAMD, June 1966;  
amended 1971, 1973, 1974, 1991, 2001, and  
2011.**

The position of a museum director is one of trust. The director will act with integrity and in accordance with the highest ethical principles. The director will avoid any and all activities that could compromise his/her position or the institution. The professional integrity of the director should set a standard for the staff. A museum director is obligated to implement the policy of the governing board for the benefit of the institution and the public. The director is responsible for ensuring that the institution adopt and disseminate a code of ethics for the museum board, staff, and volunteers.

It is unprofessional for a museum director to use his or her influence or position for personal gain. A director shall not deal in works of art or be party to the recommendation for purchase by museums or collectors of works of art in which the director has any undisclosed financial interest. The director shall not accept any commission or compromising gift from any seller or buyer of works of art.

If the director collects art, extraordinary discretion is required to assure that no conflict of interest arises between the director's personal collecting activity and the concerns of the museum. If there is perception of a conflict, the museum's governing board should be granted first option in acquiring for the museum the work or works in question. Gifts of works of art to the director by artists whose work is or may be shown or acquired by the museum can compromise the position of the director and of the institution and should be accepted only in special circumstances and with full disclosure. In such cases where there is the possibility of a perception of conflict of interest, the museum's governing board must be granted first option to accept these gifts for the museum. (Also see Paragraph 26, p. xx; and Appendix B, III-E, p. xx).

A museum director shall not provide-for a fee or on a retainer-any certificate or statement as to the authenticity or authorship of a work of art, or any statement of the monetary value of a work of art.

A museum director should not knowingly acquire or allow to be recommended for acquisition any object that has been stolen, removed in contravention of treaties or international conventions to which the United States is a signatory, or illegally imported in the United States.

A museum director shall not dispose of accessioned works of art in order to provide funds for purposes other than acquisitions of works of art for the

collection (in accordance with Paragraph 25, p. xx).

AAMD members who violate this code of ethics will be subject to discipline by reprimand, suspension, or expulsion from the Association. Infractions by any art museum may expose that institution to sanctions, such as suspension of loans and shared exhibitions by AAMD members.

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## Values

The Association of Art Museum Directors believes in the power of art and the responsibility of art museums to serve and educate the public through collection, research, preservation, exhibition, and the advancement of knowledge about works of art. The AAMD is guided by a set of values that form the foundation from which its members carry out their professional responsibilities. These values are the basis for the services AAMD provides to its members and, through them, to the general public.

*Commitment to Mission:* AAMD's members are dedicated, first and foremost, to the fulfillment of their museums' missions to serve the public through art and art education.

*Professional Practice:* AAMD's members are committed to establishing and upholding the highest standards of professional practice and ethical conduct.

*Professional Support:* AAMD's members are committed to promoting an atmosphere of mutual support, respect, engagement and learning within the art museum community. It is through the exchange of ideas, information and experiences that best practices are further improved, and that common issues and challenges are best addressed.

*The Public Trust:* AAMD's members hold their collections in public trust. Commensurate with this responsibility and recognizing their accountability to their institutional missions, their trustees, and their communities, AAMD's members perform their professional duties with honesty, integrity, and transparency.

AAMD and its members are also guided by these fundamental principles:

*Artistic Excellence:* AAMD members are committed to the highest standards in selecting and presenting works of art.

*Education:* AAMD's members are committed to encouraging curiosity and increasing knowledge about art, and to excellence in art education.

*Artistic Expression:* AAMD's members believe that art museums play a constructive role in society and that art conveys the rich complexity of human experience. AAMD's members champion a breadth of artistic expression and the role that art museums play in exploring diverse artistic perspectives.

*Diversity:* AAMD's members are committed to fostering diversity - in their governing authorities and staff, among the individuals within or entering into the art museum profession, in the perspectives reflected in their museums' collections and programs, and in the range of audiences they serve.

*Outreach & Community Service:* AAMD's members are committed to providing the broadest possible audience with accessible and engaging artistic experiences and to being responsive to the needs of their respective communities.

# UNESCO International Code of Ethics for Dealers in Cultural Property

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

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

The International Code of Ethics for Dealers in cultural property has been adopted by the UNESCO intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation at its Tenth Session, January 1999 and endorsed by the 30th General Conference of UNESCO, November 1999.

Text of the [International Code of Ethics for Dealers in Cultural Property](#)

Study on an international code of ethics for dealers in cultural property for the purpose of more effective control of illicit traffic in cultural property : [EN](#) | [FR](#)

Feasibility of an international code of ethics for dealers in cultural property for the purpose of more effective control of illicit traffic in cultural property; a report for UNESCO by P.O'Keefe : [EN](#) | [FR](#)

International Code of Ethics  
for Dealers in Cultural Property  
Code international de déontologie  
pour les négociants en biens culturels





United Nations  
Educational, Scientific and  
Cultural Organization

Organisation  
des Nations Unies  
pour l'éducation,  
la science et la culture

Organización  
de las Naciones Unidas  
para la Educación,  
la Ciencia y la Cultura

Организация  
Объединенных Наций по  
вопросам образования,  
науки и культуры

منظمة الأمم المتحدة  
للتربية والعلم والثقافة

联合国教育、  
科学及文化组织



CLT/CH/INS-06/25 rev  
Adopted in 1999

## International Code of Ethics for Dealers in Cultural Property

Code international de déontologie pour les négociants  
en biens culturels

Código Internacional de ética para marchantes de  
bienes culturales

Международный кодекс профессиональной этики  
для торговцев культурными ценностями

国际文化财产商职业道德准则

المدونة الدولية للأخلاقيات المهنية لتجار الممتلكات الثقافيّة

## International Code of Ethics for Dealers in Cultural Property

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

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

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

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

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

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

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

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

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

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

# Code of Ethics

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The following are codes of ethics have been adopted by WAC:

Dead Sea Accord

## Dead Sea Accord

The World Archaeological Congress announces the adoption of the Dead Sea Accord. ~~Click here for an introductory letter accompanying the Accord.~~

The full-text of the Dead Sea Accord can be found below, [or at this link](#). (PDF)  
**WAC Accord on the Protection of Cultural Property in the Event of Armed Conflict**

Preamble:

The World Archaeological Congress expresses its concern for the damage and destruction caused by armed conflict. In adopting this Accord, the Congress acknowledges the unquestionable priority of human life but asserts that the expression and preservation of culture, both tangible and intangible, are basic human rights. This Accord reflects the particular expertise, competencies and focus of the scholarly, professional and avocational lives of the WAC membership. The Congress adopts this Accord while recognizing the pressing need for both universal acceptance of the existing international legal provisions for the protection of cultural property during armed conflict and improvements in that international legal and treaty regime.

Whereas: Cultural heritage informs our many identities, reflects our distinct histories and experiences and creates shared bonds to a common past, standing as a tangible reminder of the millennia of human experience. Cultural heritage can play an integral role in post-conflict reconciliation and its preservation may promote such reconciliation. The destruction of cultural heritage therefore presents humanitarian, preservation, social, and economic concerns, elevating the need to address the protection of the world's cultural fabric.

Whereas: As a community of scholars, heritage professionals, and affected groups including in particular descendant communities, archaeologists, anthropologists and other cultural heritage specialists, WAC's area of primary scholarly and professional expertise involves the study of human cultures and

interactions as embodied in the physical remains of the past and the relationship of humans to those remains.

Whereas: In numerous conflicts, cultural heritage has been damaged and destroyed, WAC expresses its serious concern at the ongoing disregard by States and other parties involved in armed conflicts for the preservation of cultural heritage, the instruments of international humanitarian law, and accompanying principles, which have the goal of protecting the human rights to culture and cultural heritage.

Whereas: WAC believes that the intentional destruction of cultural property – constituting a basic tangible aspect of cultural heritage and identity – is increasingly becoming a central element in armed conflicts, and the elimination of the cultural remains (including sites, historic structures, religious centers, and repositories of movable cultural property) of whole regions has become an instrument of warfare and ethnic cleansing, which may be considered a crime under international humanitarian law.

WAC adopts the following Accord:

1. WAC calls on all States to ratify the instruments of international humanitarian law that protect cultural heritage, above all the Convention for the Protection of Cultural Property in the Event of Armed Conflict (The Hague 1954) and its two Protocols (1954 and 1999), as well as the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (Paris 1970); to implement them swiftly and efficiently into national legislation and in accord with their spirit and overarching goal to preserve cultural heritage, and to observe and enforce them. WAC further notes that the principle of cultural property protection in the event of armed conflict is also embedded in the First and Second Additional Protocols (1977) to the Geneva Conventions (1949).
2. WAC calls on States and non-state actors involved in armed conflict to observe the portions of the Hague Convention applicable to them and the broader principles of customary international law requiring the safeguarding of and respect for their own cultural heritage and that of others, and to refrain from negligently or intentionally destroying or damaging cultural heritage during armed conflict.
3. WAC reminds States, non-state actors and all individuals involved in armed conflict that the intentional and unexcused destruction of cultural heritage is a violation of international humanitarian law and has served as a basis for

criminal tribunal prosecutions following both World War II and the Balkan Wars; the unexcused destruction of cultural heritage during armed conflict will continue to serve as a basis for criminal prosecution.

4. WAC calls on States deploying military forces, private security companies, militias or other contractors in armed conflict to take responsibility for ensuring that such forces, entities, companies and individuals observe the principles of international law in general and the specific principles of international law concerning cultural property protection.

5. WAC calls on all nations, the United Nations and international regional organizations under whose auspices national, multi-national or private forces may be deployed, including peacekeeping operations, to incorporate the principles of cultural property protection in the authorization of any forces deployed under their mandate or authority; to ensure that cultural property protection is integrated into all Rules of Engagement of such forces; to incorporate cultural property protection into all pre-conflict, conflict and post-conflict stabilization planning; to require pre-deployment training in cultural property protection of such forces in general, and of their officers in particular; and to create and maintain the position of expert/liaison officers for cultural property protection in such forces.

6. Considering Article 9 of the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, WAC calls on all States and non-state actors, as well as its membership, to refrain from archaeological excavation in occupied territory, save where this is strictly required to safeguard, record or preserve cultural heritage, and to refrain from any change to or use of cultural heritage which is intended to conceal or destroy cultural, historical or scientific evidence.

7. WAC calls on all nations and actors to respect the pluralistic religious and cultural heritage of any territory under their control and, in particular, to preserve historic structures, religious buildings and other forms of cultural heritage of all groups within those territories.

8. Considering the First Protocol to the Convention for the Protection of Cultural Property in the Event of Armed Conflict and Article 11 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, WAC calls on all nations to prohibit the import of cultural objects illegally removed from areas subject to armed conflict and military occupation. WAC calls on the United Nations Security Council to explicitly prohibit trade in cultural materials illegally removed from all areas of conflict and occupation (as it did during the 2003 Gulf War).

10. WAC calls on all States to continue and all States that suspended their funding to resume their funding of UNESCO, which constitutes the basic requirement for the fruitful and peaceful work of UNESCO in general and its cultural heritage work in particular.

11. WAC calls on all Parties to the Second Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict to meet their obligation to contribute to the Fund for the Protection of Cultural Property in the Event of Armed Conflict established in Article 29 of the Second Protocol.

12. WAC calls on all scholars and heritage professionals, in particular its members and other educators, to become familiar with the instruments of international law that protect cultural heritage; to consider them in their scholarly and educational work; where appropriate, to promote as well as to critique them within their communities, with other stakeholders, and with the governmental authorities in their home countries, and to use and refer to them responsibly.

13. WAC invites all scholars and heritage professionals, in particular its members, to become involved in work fostering cultural heritage protection whenever and wherever feasible and appropriate, as well as through the Blue Shield and Blue Shield national committees, the International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM), the International Council on Monuments and Sites (ICOMOS), the International Council of Museums (ICOM), International Union for the Conservation of Nature (IUCN), UNESCO, and others as appropriate.

The work on this Accord started as a consequence of discussions at the WAC-6 (June 29-July 4, 2008, Dublin, Ireland). Focused discussions on the topic of this Accord took place at the WAC-IC Vienna (April 6-10, 2010, Vienna, Austria). A draft of this Accord was originally proposed at WAC-7 (January 13-18, 2013, Dead Sea, Jordan); the final text was produced at the WAC-IC Rome (May 21, 2014, Rome, Italy). The initiators thank all colleagues who contributed to this Accord by submitting written statements or contributing during the discussion in the past seven years.

Patty Gerstenblith (Chicago) and Friedrich Schipper (Vienna).

The Vermillion Accord on Human Remains

## **The Vermillion Accord on Human Remains**

Adopted in 1989 at WAC Inter-Congress, South Dakota, USA.

1. Respect for the mortal remains of the dead shall be accorded to all, irrespective of origin, race, religion, nationality, custom and tradition.
2. Respect for the wishes of the dead concerning disposition shall be accorded whenever possible, reasonable and lawful, when they are known or can be reasonably inferred.
3. Respect for the wishes of the local community and of relatives or guardians of the dead shall be accorded whenever possible, reasonable and lawful.
4. Respect for the scientific research value of skeletal, mummified and other human remains (including fossil hominids) shall be accorded when such value is demonstrated to exist.
5. Agreement on the disposition of fossil, skeletal, mummified and other remains shall be reached by negotiation on the basis of mutual respect for the legitimate concerns of communities for the proper disposition of their ancestors, as well as the legitimate concerns of science and education.
6. The express recognition that the concerns of various ethnic groups, as well as those of science are legitimate and to be respected, will permit acceptable agreements to be reached and honoured.

The Tamaki Makau-rau Accord on the Display of Human Remains and Sacred Objects

## **The Tamaki Makau-rau Accord on the Display of Human Remains and Sacred Objects**

Proposed in November, 2005 at WAC Inter-Congress, Auckland, New Zealand. Adopted by WAC Council in January, 2006, WAC Inter-Congress, Osaka, Japan

In recognition of the principles adopted by the Vermillion Accord, the display of human remains and sacred objects is recognised as a sensitive issue. Human remains include any organic remains and associated material. Sacred objects are those that are of special significance to a community. Display means the presentation in any media or form of human remains and sacred objects, whether on a single occasion or on an ongoing basis, including conference presentations or publications. Community may include, but is not limited to, ethnic, racial, religious, traditional or Indigenous groups of people.

WAC reiterates its commitment to scientific principles governing the study of the human past. We agree that the display of human remains or sacred objects may serve to illuminate our common humanity. As archaeologists, we believe that good science is guided by ethical principles and that our work must involve consultation and collaboration with communities. The members of the WAC council agree to assist with making contacts within the affected communities.

Any person(s) or organisation considering displaying such material or already doing so should take account of the following principles:

1. Permission should be obtained from the affected community or communities.
2. Should permission be refused that decision is final and should be respected.
3. Should permission be granted, any conditions to which that permission is subject should be complied with in full.
4. All display should be culturally appropriate.
5. Permission can be withdrawn or amended at any stage and such decisions should be respected.
6. Regular consultation with the affected community should ensure that the display remains culturally appropriate.

Code Of Ethics For The Amazon Forest Peoples

## **Code Of Ethics For The Amazon Forest Peoples**

NEW DELHI, INDIA, DECEMBER 4, 1994

1. Seeing that Amazon forest peoples are on the brink of extinction.
2. That these peoples have minimal or no contact with the developed or developing world.
3. That such contact even as recently as 1993 has been responsible for massacres of entire villages loss of territories, epidemic diseases and devastation of crops.
4. That measures so far taken by national governments to protect these cultures does not suffice to halt these peoples decline.

5. Admitting that uncontrolled occupation of the territories of these peoples by alien intruders forces them to work under oppressive conditions.
6. Seeing that such exploitation causes loss of culture and destruction of family and community.
7. An urgent action' be undertaken if these forest peoples and cultures are to survive into the 21st century.

## ACTION PLAN

Seen the magnitude of the threats weighing on Amazon forest peoples the international community accepts immediate responsibility to protect these remaining populations from recrimination massacres and death threats.

1. Realistic and definite international demarcation of Indian territories and accurate recognition of traditional land rights be enshrined in law.
2. Recognition at the highest level of authority of Amazonian and forest peoples rights on such traditional lands.
3. That funds contributed by World Bank be allocated to ensure the demarcation of such territories.
4. That all intruders regardless of their origin such as colonisers, miners, forestry companies, religious groups be removed from these territories immediately.

## RECOMMENDATIONS

1. We recommend that both national and international laws for the protection of these peoples be universally respected and implemented.
2. That massacre of forest peoples be denounced and investigated immediately as an act against humanity and a violation of the Universal Declaration of Human Rights.
3. That the guilty parties be judged without impunity.
4. That any imprisoned person of forest ethnic origin be allowed contact with his or her family, chief or advisor, treated humanely according to his or her ethnic need.
5. That survivors of massacres and atrocities be fully protected by law or security forces, specifically when called upon or wishing to bear witness.

6. That Amazon chiefs, shamans, captains and communities be consulted with on all issues concerning their forest environment rivers, lakes, faunas and floras upon which their survival depends.

7. Each nation in the region establish a permanent judicial commission to ensure the implementation of the above recommendations.

## NOTE

The WAC “Code of ethics for indigenous peoples” and the “Vermillon Accord” be followed in the case of research and that research should not be conducted without the prior consent of peoples and that they be informed of the results of such research.

## First Code of Ethics

### **First Code of Ethics**

Adopted by WAC Council in 1990 at WAC-2, Barquisimeto, Venezuela

#### Principles to Abide By:

Members agree that they have obligations to indigenous peoples and that they shall abide by the following principles:

1. To acknowledge the importance of indigenous cultural heritage, including sites, places, objects, artefacts, human remains, to the survival of indigenous cultures.
2. To acknowledge the importance of protecting indigenous cultural heritage to the well-being of indigenous peoples.
3. To acknowledge the special importance of indigenous ancestral human remains, and sites containing and/or associated with such remains, to indigenous peoples.
4. To acknowledge that the important relationship between indigenous peoples and their cultural heritage exists irrespective of legal ownership.
5. To acknowledge that the indigenous cultural heritage rightfully belongs to the indigenous descendants of that heritage.

6. To acknowledge and recognise indigenous methodologies for interpreting, curating, managing and protecting indigenous cultural heritage.
7. To establish equitable partnerships and relationships between Members and indigenous peoples whose cultural heritage is being investigated.
8. To seek, whenever possible, representation of indigenous peoples in agencies funding or authorising research to be certain their view is considered as critically important in setting research standards, questions, priorities and goals.

#### Rules to Adhere to:

Members agree that they will adhere to the following rules prior to, during and after their investigations:

1. Prior to conducting any investigation and/or examination, Members shall with rigorous endeavour seek to define the indigenous peoples whose cultural heritage is the subject of investigation.
2. Members shall negotiate with and obtain the informed consent of representatives authorized by the indigenous peoples whose cultural heritage is the subject of investigation.
3. Members shall ensure that the authorised representatives of the indigenous peoples whose culture is being investigated are kept informed during all stages of the investigation.
4. Members shall ensure that the results of their work are presented with deference and respect to the identified indigenous peoples.
5. Members shall not interfere with and/or remove human remains of indigenous peoples without the express consent of those concerned.
6. Members shall not interfere with and/or remove artefacts or objects of special cultural significance, as defined by associated indigenous peoples, without their express consent.
7. Members shall recognise their obligation to employ and/or train indigenous peoples in proper techniques as part of their projects, and utilise indigenous peoples to monitor the projects.

The new Code should not be taken in isolation; it was seen by Council as following on from WAC's adoption of the Vermillion Accord passed in 1989 at the South Dakota Inter-Congress.

## Code of Ethics

December 29, 1997



*The following Code of Ethics was approved by the Council at its December 29, 1990 meeting, and amended at its December 29, 1997 meeting.*

The Archaeological Institute of America is dedicated to the greater understanding of archaeology, to the protection and preservation of the world's archaeological resources and the information they contain, and to the encouragement and support of archaeological research and publication.

In accordance with these principles, members of the AIA should:

1. Seek to ensure that the exploration of archaeological sites be conducted according to the highest standards under the direct supervision of qualified personnel, and that the results of such research be made public;
2. Refuse to participate in the trade in undocumented antiquities and refrain from activities that enhance the commercial value of such objects. Undocumented antiquities are those which are not documented as belonging to a public or private collection before December 30, 1970, when the AIA Council endorsed the UNESCO Convention on Cultural Property, or which have not been excavated and exported from the country of origin in accordance with the laws of that country;
3. Inform appropriate authorities of threats to, or plunder of archaeological sites, and illegal import or export of archaeological material.