Prevention and Fight Against Illicit Traffic of Cultural Goods in Southern Africa

Current Situation and Way Forward

14 and 15 September 2011

Safari Hotel, Windhoek, Namibia

UNESCO’S ACTION IN THE FIGHT AGAINST ILLICIT TRAFFICKING IN CULTURAL PROPERTY

THE 1970 CONVENTION

on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property
1st international instrument dedicated to the fight against illicit trafficking of cultural objects

Adopted at UNESCO in November 1970

120 States Parties

Arab States: 14 States (77.77%)
Africa: 22 States (47.72%)
Latin America and Caribbean: 22 States (66.66%)
Asia-Pacific: 21 States (44.68%)
Europe North America: 40 States (76.29%)

STATUS of RATIFICATIONS
INCLUDING

South Africa, Zambia and Zimbabwe

What about Botswana, Lesotho, Malawi, Namibia, Swaziland?

A clear LEGISLATION

1. Defining cultural property:

(a) Rare collections and specimens and objects of paleontological interest;
(b) Property relating to history, to the life of national personalities and to events of national importance;
(c) products of archaeological excavations (including regular and clandestine);
(d) elements of artistic or historical monuments or archaeological sites dismembered;
(e) antiquities more than one hundred years old;
(f) objects of ethnological interest;
(g) property of artistic interest.
2. Establishing **State’s ownership** on cultural heritage

- in particular archaeological heritage
- specially when not yet or illicitly excavated from the national territory.

➢ **one tool:**

the UNESCO-UNIDROIT Model Provision

3. Regulating archaeological excavations:

- Specialised services
- Authorisations and permits
- Regulation of finds, storage etc.
- Metal detectors

4. Establishing national **inventory** system
   (use of the **Object ID** standard form)

5. Training police and customs

6. Education campaigns
STATES PARTIES ALSO UNDERTAKE:

1. To introduce a system of export certificate

   export of cultural objects not accompanied by such an export certificate is prohibited (Article 6)

UNESCO-WCO
MODEL EXPORT-CERTIFICATE
for Cultural Objects

To serve States and Customs officials in combating illicit trafficking in cultural property

Available at
www.unesco.org/culture/laws/illicit
2. **Prevent museums**
   from acquiring cultural property originating in another State Party and *illegally exported after the entry into force* of the Convention in the States concerned (Article 7, paragraph a)

3. **Prohibit import of cultural property**
   - *stolen* from museum, religious or secular public monument or institution
   - in another State Party
   - *after the entry into force* of the Convention for the States concerned
   - provided that such property is *documented* as appertaining to the inventory of that institution

   (Article 7 b(i))
4. Take steps, at the request of the State of origin, to recover and return any such cultural property imported

- after the entry into force of the Convention in both States concerned
- provided that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property (Article 7b(ii))

5. Impose penalties or administrative sanctions when:

   exportation without export certificate

   or

   when importation of cultural property from museums, religious or secular public monument or institution in another State party (Article 8)
STATES ARE ALSO REQUIRED TO COOPERATE

at regional and international levels in the prevention and fight against illicit traffic

(diplomatic, legal, educational, administrative, penal cooperation…)

Example 1 of cooperation:

Import ban of artefacts

Any State party:

whose archaeological or ethnological cultural heritage is in danger because of pillage may ask other States Parties to adopt the corresponding measures including an import ban of artefacts originating in that State (Article 9)
Example 2 of cooperation:

**BILATERAL AGREEMENTS**

States Parties can conclude special agreements among themselves or continue to implement agreements already concluded regarding the restitution of cultural property removed from its territory of origin before the entry into force of this Convention (Article 15)

However, it is necessary to stress that all those obligations are NOT RETROACTIVE
Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (22 States Members)

Negociation forum for the restitution of cultural property with a particular significance

- ARGENTINA
- BELARUS
- BURKINA FASO
- CHINA
- GUATEMALA
- GREECE
- INDIA
- IRAQ
- ITALIA
- LIBYA
- UNITED STATES of AMERICA
- JAPAN
- MEXICO
- MONGOLIA
- NIGER
- NIGERIA
- PERU
- REPUBLIC of KOREA
- ROUMANIA
- CZECH REPUBLIC
- SENEGAL
- ZIMBABWE

Mandate until October 2011

Mandate until October 2013

RULES OF PROCEDURE
FOR MEDIATION AND CONCILIATION

Article 4
The Committee shall be responsible for:

1. seeking ways and means of facilitating bilateral negotiations for the restitution or return of cultural property to its countries of origin. In this connection, the Committee may also submit proposals with a view to mediation or conciliation to the Member States concerned, it being understood that

-> mediation implies the intervention of an outside party to bring the concerned parties to a dispute together and assist them in reaching a solution,

-> while under conciliation, the concerned parties agree to submit their dispute to a constituted organ for investigation and efforts to effect a settlement.

The outcome of the mediation and conciliation process is not binding on the Member States concerned, so that if it does not lead to the settlement of a problem, it shall remain before the Committee, like any other unresolved question which has been submitted to it.
2. promoting multilateral and bilateral cooperation with a view to the restitution and return of cultural property to its countries of origin;

3. encouraging the necessary research and studies for the establishment of coherent programmes for the constitution of representative collections in countries whose cultural heritage has been dispersed;

4. fostering a public information campaign on the real nature, scale and scope of the problem of the restitution or return of cultural property to its countries of origin;

5. guiding the planning and implementation of UNESCO’s programme of activities with regard to the restitution or return of cultural property to its countries of origin;

6. encouraging the establishment or reinforcement of museums or other institutions for the conservation of cultural property and the training of the necessary scientific and technical personnel;

7. promoting exchanges of cultural property in accordance with the Recommendation on the International Exchange of Cultural Property;

8. reporting on its activities to the General Conference of UNESCO at each of its ordinary sessions.
Basic Actions concerning Cultural Objects being offered for SALE OVER THE INTERNET
States of INTERPOL, UNESCO and ICOM National Committees are invited to:

1. **Post this disclaimer on cultural objects sales pages:**
   
   “With regard to cultural objects proposed for sale, and before buying them, buyers are advised to:

   => 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;

   => 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) also responsible for protection of cultural properties, in charge of permanently checking and monitoring sales of cultural objects via the Internet;
4. **Cooperate with national and foreign police** forces and INTERPOL and responsible authorities of other States concerned, in order to:

a) Insure that any theft and/or illegal appropriation be reported to INTERPOL National Central Bureaux, in order to post information on the INTERPOL Stolen Works of Art Database;

b) **Make information available** about theft and/or illegal appropriation and any subsequent sale of cultural objects, from or to national territories, using the Internet;

c) Facilitate **rapid identification** of cultural objects by:
   
   i) ensuring **updated inventories** with photograph, or description (through the Object ID standard);

   ii) maintaining a **list of experts**;
d) Use tools such as the INTERPOL Stolen Works of Art Database and the corresponding INTERPOL DVD to conduct checks of suspicious cultural property;

e) **Track and prosecute** criminal activities related to sale of cultural objects on Internet and inform 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.
The UNESCO’s partners in the fight against illicit traffic of cultural objects

• International Organizations as INTERPOL, WCO and UNIDROIT

• Specialized polices as Carabinieri

Awareness-raising projects

• UNESCO Films on the actions of the Organisation and its partners in the fight against illicit traffic of cultural property

• Sensitization clips
UNESCO Database of National Cultural Heritage Laws

- Offers access to national legislation relating to the cultural heritage in general, in other words the laws on the main categories of heritage;

- **2400 texts from 180 States**

[www.unesco.org/culture/natlaws](http://www.unesco.org/culture/natlaws)

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**Object-ID Formular**

- An international standard for describing cultural objects
- Result of years of research
- Through the collaboration of the museum community, international police units, customs agencies, the art trade, insurance industry, and experts.

[http://www.object-id.com/](http://www.object-id.com/)
UNESCO International Code of Ethics for Dealers in Cultural Property

http://unesdoc.unesco.org/images/0012/001213/121320m.pdf

ICOM Code of Ethics for Museums

http://icom.museum/ethics.html

LISTES ROUGES ICOM

- Red List of African Archaeological Cultural Objects
- Lista Roja de bienes culturales latinoamericanos en peligro
- Emergency Red List of Iraqi Antiquities at Risk
- Afghanistan Antiquities at Risk
- Lista Roja de antigüedades peruanas en peligro
- Red List of Central America and Mexico Endangered Cultural Properties
- Red List of Cambodian Antiquities at Risk
- Red List of Chinese Cultural Objects at Risk
- Red List of Colombian Culturla Objects at Risk
- The Emergency Red List of Haitian Cultural Objects at Risk
Compendium

« Witnesses to History
Documents and writings on the return of Cultural Objects »

- 440 pages of reliable information from some of the world’s leading experts in the field of return and restitution of cultural objects
- Outline of the historical, philosophical, and ethical aspects of the return of cultural objects
- Examples of past and present cases
- Analyse of legal issues

For more information:

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www.unesco.org/culture/fr/illicittrafficking