



United Nations  
Educational, Scientific and  
Cultural Organization



Convention for the fight  
against the illicit trafficking  
of cultural property

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## **"The Fight against the Illicit Traffic of Cultural Property: The 1970 Convention: Past and Future"**

**UNESCO, Paris, 15-16 March 2011**

### **Report of the Meeting**

#### **Introduction and context**

1. 14 November 2010 marked the 40th anniversary of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. On the 4<sup>th</sup> decade of this international treaty, UNESCO revisited the history of the Convention, and took stock of its accomplishments, its strengths and its weaknesses and examined its principal challenges.
2. This event took also place pursuant to Recommendation n°7 adopted by the 16<sup>th</sup> Session of the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation (September 2010). In this Recommendation, the Committee, noting the discussions about the challenges concerning the implementation of the 1970 Convention as well as of the 1995 Convention, taking note also of the necessity to evaluate in particular their effectiveness and their implementation with regard to the new trends in illicit trafficking of cultural heritage, in particular the growing threats to archaeological and paleontological heritage, considered the 40<sup>th</sup> anniversary of the 1970 Convention as an opportunity to conduct such evaluations and as a chance to reinforce its effectiveness and elaborate strategies in particular for its better application.
3. Hence, the Director General of UNESCO decided to organise, on Tuesday 15 and Wednesday 16 March 2011, this celebration of under the format of a public, media and scientific event. It included a round table open to public and the press on the fight against the illicit traffic of cultural property, a press conference and a forum for reflection, intended for UNESCO Member States and leading experts, on the 1970 Convention and the illicit trafficking of the archaeological properties from illegal excavations. Both events took place at UNESCO Headquarters in Paris and were attended by 400 to 500 participants during two days. These participants were representatives of Member States and Observers to UNESCO, specialists and experts in the field of law, archaeology, history, students and searchers as well as public at large and numerous journalists from all over the world. The anniversary was organized with the financial support of the Federal Office of Culture of the Swiss Confederation, Mexico, the Banco di Sicilia Foundation, the Dev.tv Company and the logistical support of VMF – Patrimoine Historique, a non-governmental organization (NGO).

## **Summary of meeting**

### **Public debate (Tuesday 15 March)**

4. At the invitation of the Director-General of UNESCO Irina Bokova, the public debate held on the first morning (15 March 2011) in Room I of UNESCO HQ, gathered several high rank experts representing source and destination countries, international organisations, the museum community and the art market (Jorge Sanchez Cordero, Advisor to the National Institute of Anthropology and History of Mexico; Stéphane Martin, President, musée du quai Branly; Bernd Rossbach, Director, Specialized Crimes and Analysis, INTERPOL; Ridha Fraoua, Lawyer and archaeologist and Jane Levine, Worldwide Compliance Director and Senior Vice President, Sotheby's). The discussions were moderated by the journalist Louis Laforge from France Télévision.

5. The various issues which might be expected were covered, including the significance of illicit traffic in current attitudes, the importance of police action, the vulnerability of certain countries with very large areas of protected heritage and very strong tourism, the damage done to cultural heritage over several hundred years in some countries, the importance of ongoing collection in countries which have long museum traditions and the possibility of changing attitudes, particularly through the art market, through increased supervision and provenance searching.

6. Mr Rossbach (INTERPOL) recalled to the assembly that the illicit trafficking of cultural objects is a very specific crime and, therefore, it is fundamental that specialized partners such as UNESCO or WCO work together with INTERPOL in order to take efficient action. The protection of cultural heritage is everyone's duty and intergovernmental organizations have to develop training programs for the purpose of professionals involved in the circulation of cultural goods. The need of training was supported by the Director-General of ICCROM, Mr Bouchenaki, who stressed also the importance of awareness raising campaigns for general public. Ms Zaki, an archaeologist from Egypt, took the floor to emphasize this aspect and recalled to the assembly that the national heritage of her country was threatened by the looting of archaeological sites. She expressed the emergency of a better international cooperation in this field. Because the illicit trafficking of cultural objects is not only a matter vested to national authorities and because the economic issues are huge, as recalled by Mr Fraoua, the entire involvement of the international community is inescapable. The Director-General of UNESCO, Ms Irina Bokova, supported these statements particularly the need of international cooperation when emergency situations arise and restated the fact that UNESCO must be the coordinator of these initiatives. Mr Sanchez Cordero, from Mexico, referred to the problems experienced by many countries for the return of their archaeological objects, particularly those coming from illicit excavations. He mentioned that the 1970 Convention only protects those objects that are duly registered, which creates inadequacies and difficulties to recover those who are not part of an inventory. In this context, he stressed that UNESCO needs to assume the leadership in the fight against illicit trafficking of cultural goods and work on follow-up mechanisms of the 1970 Convention. These will allow systematizing the resolutions and international sentences so that is possible to identify the flaws in cases of restitution, as well as those aspects of national legislations that have to be adjusted accordingly<sup>1</sup>.

7. Considering also the fact that the fight against illicit trafficking of cultural objects is not only a matter which relies on international organizations and the public, but also on national museums and actors of the art market. Mr Martin, from the musée du quai Branly explained that museums, in France, respected the dispositions of the 1970 Convention. As a representative of the art market, Ms Levine, from Sotheby's, reported to the participants that they saw a change

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<sup>1</sup> The text of Mr Sanchez Cordero's intervention was provided by the Permanent Delegation of Mexico (20 July 2011).

in the last years in the art market behavior particularly on the questions of ownership and the origin of the objects but not only from the individuals. Indeed, there is also an increasing interest showed by the countries regarding their heritage. Ms Levine explained also that Sotheby's make the systematic check of the background of cultural objects in the existing databases. Nonetheless, it is unrealistic to expect that every participant of the art market log on the every individual museum database in the world. For this reason, centralized databases should be more used especially now that internet impacted all the markets as well as the art market. According to Mr. Sanchez Cordero, from Mexico, the international community is experiencing the raise of a new consciousness regarding the need of protecting cultural heritage, which is not linked to cultural nationalism, but rather to the need of safeguarding universal knowledge.

### **Press conference (Tuesday 15 March)**

8. The press conference which immediately followed was attended by almost 100 journalists<sup>2</sup> and participants and further expanded these issues and questions were asked about the effectiveness of UNESCO action. Answers were given by the Director-General, the Assistant Director-General for Culture and three selected experts, Professor Lyndel V. Prott, Dr Jorge Sanchez Cordero and Mr Bernd Rossbach from INTERPOL. The disparity of resources devoted to the 1972 World Heritage Convention, the 2003 Intangible Cultural Heritage Convention and the 1970 Illicit Traffic Convention was notably emphasized. Questions were equally raised about UNESCO response to attacks and side-damages to cultural heritage in Egypt, Tunisia and Libya.

### **Round Tables (Tuesday 15 March)**

9. The afternoon session was structured in two panels, one devoted to the international legal framework for the fight against illicit traffic of cultural property, and the other one to the question of the protection of the archaeological heritage. Ms Maria Vicien-Milburn, UNESCO Director of the Office of International Standards and Legal Affairs, opened officially the discussions by recalling the normative role of the Office, the fundamental standard setting function of UNESCO, in particular in the field of cultural heritage, and the importance to ratify and apply in full extent the dispositions of the already existing instruments.

10. The first round table on "The legal instruments employed for the fight against the illicit trafficking of cultural property", chaired by the Assistant Director-General for Culture Francesco Bandarin, raised a number of points which are of importance for further discussion. These included of the significance of the UNESCO 1970 pioneer and influential instrument (Ms. Prott) as well as the 1995 UNIDROIT Convention on Stolen or Illicitly Exported Cultural Objects (Mr. Estrella Faria), and of criminal proceedings (Mr. Ferri), the importance of judicial international co-operation (Mr. Roma Valdés), the actual legal framework with a focus on the situation in the European Union with the insufficient application of the 1993 European Directive (Ms. Cornu) and the experience in the implementation of the Convention on International Trade in Endangered Species of Wild Flora and Fauna 1973 (Mr Scanlon, Secretary-General, CITES Convention), a Convention with a number of similarities to the 1970 Convention of UNESCO on illicit traffic. Highlight was particularly put on the priority to be given to the universal ratification and full implementation of existing instruments (in particular the 1970 Convention) before drafting new ones and to the importance of harmonising the different national systems to counter more efficiently the illicit traffic of cultural objects, facilitate their restitution through a uniform legal regime and discourage the traffickers. The role and responsibility of the art market was emphasized in contributing to the diminution of the illicit traffic, as well as the consideration of developing or not penal measures in this domain and to expand the conclusion of bilateral agreements in compliance with the international normative framework.

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<sup>2</sup> Articles and communiqués relating to the 40th anniversary of the 1970 Convention are available at: <http://www.unesco.org/new/en/culture/themes/movable-heritage-and-museums/illicit-traffic-of-cultural-property/40th-anniversary-of-the-1970-convention/press/>

11. The second round table, chaired by the Director of the Swiss Federal Office for Culture, Mr Jean-Frédéric Jauslin, dealt more specifically with the universal problem of the trafficking of archaeological objects and the problem of repatriating pieces of undiscovered provenance. The experiences of Greece, Peru and Mali, all source countries, and of the United States, a destination country, were discussed (Ms. Andreadaki-Vlazaki, H.Exc. Ms. Bakula, Mr. Sidibe and Ms. Gerstenblith respectively) as well as that experience of the International Council of Museums (ICOM) and of the World Customs Organization (WCO) and the current international legal provisions available for protection (Mr. Fraoua). The problem of inventories requested in the 1970 Convention was lengthily discussed as well as the responses brought by the UNIDROIT Convention to this specific weakness. Several experts insisted upon the necessity to enhance the degree of education (towards the art market and provenance countries), trainings, capacity-building, awareness-raising, adaptation of legislations and conclusion of bilateral agreements.

### **Discussions between Member States (Wednesday 16 March)**

12. Under the chairmanship of H. Exc. Mr Davidson L. Hepburn, President of the General Conference of UNESCO, the second day of the meeting was devoted to discussions between Member States and with the support of some selected experts on the future of the 1970 Convention. It raised a number of important issues.

13. The representative of Italy, one of the most looted countries in the world, recalled that the 1970 Convention is the first one which recognised that cultural objects are not ordinary tradable goods. Another expert recalled that the Convention constituted a real turn in the international regulation and protection of cultural heritage by dealing with notions such as bona fide purchaser, research of provenance etc.

14. While underlining that the 1970 Convention, closely associated with the 1995 Treaty, has an irreplaceable role in structuring the international cooperation and developing legal and practical tools to fight against the illicit traffic of cultural objects (legislations, inventories, databases, registries, bilateral agreements, awareness raising, code of ethics, certificates, export and import controls, training of police and customs officers etc.), some Member States stressed the complexities of the traffic today (circulation on internet, armed conflicts, increased price on the market) and insisted upon the necessity to enhance the traceability of all objects, in particular of an archaeological nature. Guatemala insisted upon the multi dimensions of the illicit traffic in the world today: ethical, political, legal but also economical aspects are fundamental. In this context, some participants insisted upon the necessity to reinforce the work of UNESCO on this subject and particularly to provide the Secretariat with resources in order to explore new possibilities and new forms of international cooperation (Brazil and Mexico) but also to develop some databases of best practices in order to promote them (Cambodia, Croatia, Republic of Korea). Italy proposed also to share the existing databases and open them to everybody to foster the transparency. Some Member States as Cambodia, Colombia and Republic of Korea reminded the extreme necessity of workshops and the increasing of capacity building.

15. Facing the emergency of developing the international cooperation, not only between national authorities but also between all the actors, the necessity of improving the collaboration with the art market has been recalled by some participants as Croatia. The representative of this country insisted also upon the fight of the illicit traffic on internet and on the urgent duty to control the movement of cultural objects and ensure their traceability through systematic inventories and registries.

16. Some representatives thought that it was important to criminalise acts of illegal export and to intensify provisions concerning criminal organizations. In pursuance of that latter aim the suggestion was made to add a new Protocol to the United Nations Convention against Transnational Organized Crime 2000 (the Palermo Convention) to specify illicit traffic in cultural objects by organized criminal groups as subject to the international regime of that Convention.

17. Other participants (Belgium and France) objected to the Intergovernmental Committee for Promoting the Return of Cultural Property to Its Countries of Origin or Its Restitution in Case of Illicit Appropriation having recommended that this two-day meeting be organized by the UNESCO Secretariat, since they took the view that this body had no organic connection with the 1970 Convention. However, it was pointed out that the Committee's mandate was to promote the return of cultural property and that one of the ways that returns took place was under the 1970 Convention: the Secretariat had, therefore, the responsibility to report to the Committee on returns under that Convention. In addition, the creation of another separate inter-governmental committee, solely for the purpose of supervising the 1970 Convention, would be a further and undesirable absorption of scarce resources. After discussions on that matter, some representatives asked the Secretariat to organize a meeting of States Parties to the 1970 Convention in order to discuss all the problematic points that had been underlined during these two days, in a framework gathering specifically the States to the Convention.

18. An important number of speakers<sup>3</sup>, mainly from Latin America (Mexico, Peru, Guatemala, Cuba, Bolivia, El Salvador, Costa Rica) but also China, Turkey and Zimbabwe expressed their frustration regarding the fight against illicit traffic of cultural objects. They stressed the difficulties to achieve the return of cultural objects through the use of the 1970 Convention, and in particular the return of archaeological objects which have not been inventoried and come from illegal excavations or are discovered, removed and trafficked by looters. These countries mentioned the limitations of the 1970 Convention in these particular cases: the time limitations to claims, the need for claims to show an established legal link with the object being claimed and the need of States concerned to prove the "ownership" of their cultural objects. For these speakers, there is a direct relation with the looting of cultural objects and the increasing demand of these objects which are increasingly sold in the international market, including through auctions, art galleries and the Internet. While these countries called for amending the current international normative framework in order to resolve these problems, other countries (Argentina and Romania) called for the need to develop a Protocol to the 1970 Convention in order to include those areas that are not yet covered by this normative instrument. Meanwhile, other countries, especially France and United States of America, insisted upon the fact that the problem was not a lack of standard setting instruments but rather a question of ratifications (on this matter the representative of Monaco informed the participants that her country has decided to ratify the Convention) and better application of the existing ones. Some countries as China, Germany, Italy, Peru, Republic of Korea, Turkey and United States, insisted upon the importance and efficiency of bilateral agreements on this subject. Some of these states considered as destination-markets, such as Canada and the United States, pointed out that they had been responsible for the return of many hundreds of archaeological objects in accordance with the provisions of the Convention or in virtue of dispositions of bilateral agreements established in the framework of this Convention. One of the experts stated that the enhanced provisions of the 1995 UNIDROIT Convention greatly increased the possibility of achieving the return of archaeological objects according to its provision (Article 3 (2)) that an archaeological object which has been unlawfully excavated or unlawfully retained is to be considered stolen.

### **Recommendations**

19. From the discussions which took place on the two days of the meeting, several recommendations and action plans are proposed to UNESCO and its Member States as a follow up and improvement of the fight against illicit traffic of cultural heritage and of the return of cultural property. These steps are proposed for implementation at UNESCO's level, in cooperation with its Member States but also for the individuals.

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<sup>3</sup> The text of these interventions was provided by the Permanent Delegation of Mexico (20 July 2011).

### ***UNESCO should***

- Organise a meeting of States Parties to the 1970 Convention;
- Reaffirm its leading and formal role and mount a more effective international cooperation and campaign for State ratification and participation in the 1970 Convention and the 1995 UNIDROIT Convention, by all means, including the of holding more regional workshops (possibly in conjunction with National Commissions, ICOM and UNIDROIT, INTERPOL and WCO) at legal, operational and educational levels;
- Continue to publish helpful materials for Member States which have difficulties in implementing the Convention;
- Intensify its efforts to raise international awareness
  - a. in the citizens of States where the movable cultural heritage is in peril,
  - b. in transit States and
  - c. especially in States where dealers and collectors accumulate substantial amounts of imported cultural material and where there is a need to continually address public attitudes.

20. To do this the Secretariat must be given adequate resources, both highly qualified personnel and adequate budget, which are currently quite insufficient for the degree of activity which Member States clearly desire. Such issue shall be brought to the attention of the Director General and General Conference of UNESCO. Both shall be aware of the worked carried on by the Secretariat, of the expectations formulated by the States and of the means available to implement such tasks.

### ***Member States of UNESCO should***

- hold national workshops to carry on the work of UNESCO's regional workshops to train administrators, museum curators, archaeologists, anthropologists and other cultural professionals in the principles of the Convention and in solving problems by consulting on specific national issues relating to the illegal traffic in cultural objects;
- ensure close co-operation between cultural administrators, police and customs officials within the State and between regional administrations within the State;
- use regional bodies to emphasise the importance of the Convention and to invite neighbour States, particularly transit States, who are not yet party to the 1970 and 1995 Conventions, to ratify them;
- evaluate the effectiveness of their own national legislation on illicit traffic and, where desirable, update it;
- deposit their relevant legislation with the UNESCO database of cultural legislation, thus providing information widely on the unlawfulness of trafficking in the jurisdiction and preventing claims that their national rules are not clear;
- share information on implementation by submitting periodic reports on their practice or on the difficulties they have in ratifying or implementing the Convention;
- participate in the work of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Country of Origin or its Restitution in Case of Illicit Appropriation, a body which actively supervises the problems of illicit traffic both past and present;
- consider the outposting of specialists in this field to the UNESCO Secretariat;
- ensure a close relationship with INTERPOL, so that losses are rapidly reported to that body.

### ***What individuals can do***

Individuals have been very influential in promoting the 1970 Convention in the following ways:

- concerned museum curators can act to make better acquisition policies to ensure that their museums do not acquire, or retain, cultural objects which have been stolen or otherwise wrongfully trafficked;
- to promote and update ethical codes for museum staff;

- archaeologists should push for better ethical standards and their application and should create or maintain an effective lobby group to ensure that their country becomes party to the Convention and carries out its obligations under the Convention;
- tourists who have come into contact with such activists, or have themselves noted the depletion of museums and sites, in developing countries in particular, should become active in promoting the proper handling of cultural objects and in dissuading other tourists from illegally removing objects from the areas they visit;
- others can support non-governmental organizations, in particular, ICOM and its regional and national groups, in promoting informative materials (such as ICOM's Red Lists and "100 Missing Objects" series).

### ***Other proposals***

21. Considering proposals to revise the 1970 Convention or to draft a Protocol to it could be a diversion of resources from the above important activities for the following reasons:

- there is at present no indication that "art market States" (such as the United States of America, United Kingdom, France, Germany, China, Belgium, Austria, Switzerland) are prepared to accept any such new instrument, which would take considerable time and resources to prepare;
- the 1995 UNIDROIT Convention has the effect of a Protocol in that it deals with the gaps felt to be in the 1970 Convention (detailed provisions on "good faith" acquisition; the status of archaeological objects, time limitations on action, ability of non-State owners to sue);
- the 1995 UNIDROIT Convention reached, after some 7 years of expert and inter-State negotiations a compromise which received the signature of States of opposed interests and is slowly acquiring ratifications.

22. The proposal to add a Protocol on illicit traffic to the United Nations Convention against Transnational Organized Crime 2000 (the Palermo Convention) would not, neither, substantially assist in stopping illicit traffic in cultural objects, since many States already have internal legislation which can be used for the pursuit and penalisation of criminal gangs and because some other States who have such legislation are still not prepared to use it in the context of illicit traffic. It will have little effect unless "art market" (see above paragraph 21) and transit States (such as Israel, United Arab Emirates, Singapore, Thailand) are prepared to ratify such a Protocol. Careful consultation with such States seems essential to establish whether such a Protocol would be effective.

23. Finally, the proposal to organize a meeting of States Parties to the 1970 Convention in order to pursue the discussions on the implementation of the Convention and the future of this international instrument, have to be transmitted to the Director General of UNESCO for further consideration and decision.