

**UNITED STATES OF
AMERICA**

**NATIONAL REPORT ON THE
IMPLEMENTATION OF THE 1970 CONVENTION
ON THE MEANS OF PROHIBITING AND
PREVENTING THE ILLICIT IMPORT, EXPORT
AND TRANSFER OF OWNERSHIP OF
CULTURAL PROPERTY**

2011 – 2015

United States of America

Response to UNESCO CL/4102 of March 23, 2015
on implementation of the 1970 Convention on the Means of Prohibiting and Preventing the
Illicit Import, Export and Transfer of Ownership of Cultural Property

ANNEX I

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

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

I. Information on the implementation of the UNESCO Convention of 1970 (with reference to its provisions)

1. Ratification of the Convention

(a) Has this Convention already been ratified?

The United States is a state party to the 1970 Convention.

(b) If not, please indicate, where applicable:

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term);
- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;
- the extent to which UNESCO can assist in completing the process?

2. Implementation in the national legal system and in the organization of services

(a) Give the references of the principal national regulations adopted in order to implement the 1970 Convention?

The *Convention on Cultural Property Implementation Act*, (19 United States Code 2601 et seq) is the U.S. law that implements Articles 7(b)(i) and 9 of the Convention.

(b) A definition of “cultural property” agreeing with the definition proposed by the 1970 Convention is important in order to increase the effectiveness of international cooperation. State what definition is used by the national laws of the country concerned.

For purposes of implementing Article 7 (b)(i) of the Convention, U.S. law adopts the definition of cultural property found in Article I of the Convention itself.

For purposes of implementing Article 9 of the Convention, U.S. law defines the archaeological and ethnological material that may become subject to specific U.S. import restrictions. The definition for these two categories can be found in the law (19 U.S.C. 2601).

(c) Have specialized units been established in order to prevent and combat trafficking and ensure international cooperation for the protection of cultural heritage? Within the Heritage Department? In other government departments (police, customs)?

The United States has law enforcement officers specially trained in cultural property crime within various agencies of the U.S. government, including the Department of Homeland Security, Department of Justice, and Department of the Interior. The Department of State provides expertise on international issues.

(d) Describe briefly the administrative coordination of the activities of these specialized units, especially with the police and customs authorities.

Each of these entities has independent status and separate jurisdictional authorities. The entities coordinate in training and investigation as appropriate.

(e) Are working meetings held to enable police officers, customs officials and ministerial representatives to meet and coordinate their activities?

Working group and inter-agency meetings are called as appropriate.

3. Inventories and identification

(a) State briefly the extent to which inventories provide for the risks of misappropriation and theft.

The development of carefully compiled inventories by individual institutions, acting independently, is an integral part of professional responsibility among all museums and all national and regional entities with responsibility to protect archaeological sites. Such information mitigates the loss of cultural property due to looting of sites or theft from museum collections.

(b) Specify the degree of precision, at the national level, of the definition of “cultural property” covered by international conventions (see above I.2(b)). State whether “national treasures” are identified in an official, tentative or exhaustive list.

The United States has multiple laws that define cultural property covered by international instruments at the Federal level, including the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001–3013), Archaeological Resources Protection Act (16

U.S.C. 470aa-470mm), National Historical Preservation Act (16 U.S.C.470), and the Convention on Cultural Property Implementation Act (19 U.S.C. 2601 et seq.). Additional laws are in place at the state and local levels.

(c) To what extent is the Object ID standard used? Is the standard adapted to the State's needs?

The United States believes that the Object ID standard is a useful tool for inventories of cultural objects. The United States encourages, but does not mandate, its use.

(d) Are there systems to combat theft and to train museum staff and have specific measures been adopted for libraries, archival and manuscript repositories, and any specialized units established to monitor them?

Yes. In the United States there are many such institutions that are non-governmental. Each is responsible for taking appropriate measures consistent with the recommendations of professional associations, boards of directors, and other responsible bodies. Professional associations, in particular, play an integral role in developing standards and guidelines.

4. Archaeological excavations

(a) Summarize the basic principles of the regulations on archaeological excavations and on the monitoring of excavations in force in the country.

U.S. law provides for governmental oversight of archaeological excavations on Federal and Tribal land and, in some limited circumstances, on privately owned land. Additional laws and regulations are in place at the state and local levels.

(b) Is there a recurrent problem of illegal excavations? If so, what are the reasons and when did it begin? What steps have been taken to combat this scourge?

The United States has a recurring problem of illegal excavations, primarily impacting Native American sites, that has been ongoing for decades.

5. Monitoring of the export and import of cultural property

(a) Give an estimate of the scale of the illicit export or import of cultural property. Are up-to-date statistics compiled on the theft of cultural property?

The United States does not have a reliable estimate of the scale of illicit export or import of cultural property.

(b) Is the illicit export of cultural property a recurring problem? If so, for which reasons (lack of financial and human resources, shortcomings in the legal supervision framework, etc.)?

In general, the United States does not control the export of cultural property.

(c) What are the main rules (administrative and legal) for monitoring the export and import of cultural property (existence of an export certificate, public information about the rules in force)? What categories of cultural property are covered by the rules?

To regulate illicit import of cultural property, the United States implements Article 9 of the Convention through the promulgation in the U.S. Federal Register of Designated Lists of categories of the types of archaeological or ethnological material restricted from entering the U.S. unless accompanied by an export certificate issued by the country of origin or other appropriate documentation. Promulgation of such import restrictions is contingent upon the existence of a bilateral agreement that has entered into force between the United States and another State Party to the Convention seeking such restrictions because its cultural patrimony is in jeopardy from pillage and also upon certain statutory requirements having been met, pursuant the *Convention on Cultural Property Implementation Act*. Under certain circumstances, other U.S. laws may be used to recover illicitly imported cultural property.

The United States does not issue export permits for cultural property.

(d) Do the rules provide for the restitution of illicitly imported cultural property?

If there is a violation of an import restriction or other applicable U.S. law, items may be seized, forfeited, and returned to the country of origin in accordance with administrative procedures.

(e) What are the main obstacles encountered in securing the restitution of illicitly exported cultural property? What type of obstacles are they (administrative, legal or political) and why do they arise (legal loopholes, unwillingness by importing countries, lack of international cooperation, etc.)?

In recovering U.S. cultural property, particularly that of U.S. Indian Tribes, in other countries, the United States believes that there is a general lack of knowledge of and respect for U.S. laws protecting such cultural property.

(f) If the country has succeeded in securing the restitution of a stolen cultural object, describe the circumstances and state whether that involved legal proceedings, arbitration or alternative dispute resolution.

Cultural property returned to the United States has been recovered primarily through private transactions and legal actions.

6. System for trade-in, acquisition, ownership and transfer of cultural property

(a) Give a brief description of the cultural goods market in the country (financial volume of the market, number and turnover of auction houses including via the Internet).

Reliable statistics on the size of the cultural goods market in the United States are not available. The legal market in cultural goods, including auction houses, dealers, online vendors and others, is sizeable.

(b) What are the main rules governing trade in cultural goods? Are control measures in place for such trade (maintenance of a police register), in particular through the Internet (for example, reference to the basic measures proposed by UNESCO, INTERPOL and ICOM)?

The legal trade in cultural goods must abide by U.S. law applicable to the sale of any commodity, including laws related to stolen property, taxation, and fraud, among others. The United States also has cultural property laws that protect U.S. archaeological resources and Native American human remains, sacred/ceremonial, and communally owned items in certain cases of commercialization.

(c) Do measures exist to control the acquisition of cultural property (for example, mechanisms to prevent museums and similar institutions from acquiring cultural property exported illegally from another State)?

The majority of museums in the United States are non-governmental institutions that are established under the law of their resident states and exist in the public trust as non-profit institutions. Such museums are not regulated by the federal government. The professional museum associations in the United States have adopted guidelines with respect to acquiring cultural property that recognize 1970 as the threshold year after which they will require documented provenance. Under certain circumstances, U.S. law may allow for the recovery of cultural property acquired by a museum or similar institution.

(d) Specify the existing legal system concerning ownership of cultural property:

- Is the principle of inalienability applied to cultural items in national collections and objects originating in heritage sites?

The United States does not use the term “inalienability” to refer to its cultural property.

- What is the status of yet unfound cultural objects, of cultural items found by chance and archaeological artefacts found during legal or illegal excavations?

The status of the cultural objects depends upon the circumstances of its discovery and other factors.

- Are there any due diligence requirements in place?

Due diligence is a factor that is considered when claims are heard in a court of law.

- What are the rules governing the search of provenance?

(e) Are there special rules on the transfer of title deeds in respect of cultural property? If so, please summarize their content.

7. Bilateral agreements

(a) List the bilateral agreements concluded with other countries on the import, export and return of cultural property and comment briefly on their results.

The United States has bilateral agreements with: Belize, Bolivia, Bulgaria, Cambodia, China, Colombia, Cyprus, El Salvador, Greece, Guatemala, Honduras, Italy, Mali, Mexico, and Peru. The United States also imposes import restrictions on all Iraqi cultural property.

(b) What conditions are set by the importing country with regard to the admissibility of requests for restitution from a country of origin?

(c) Apart from these agreements, is there administrative aid or any other type of cooperation with neighbouring countries, particularly in respect of police and customs services?

II. Code of ethics, awareness raising and education

Ethical standards

(a) Are the UNESCO International Code of Ethics for Dealers in Cultural Property and that of ICOM for museums known to the professionals concerned (in particular, curators, antique dealers, merchants and collectors)? How is their observance checked?

For the most part, the professional communities in the United States are aware of these documents. No U.S. law enforces compliance with these documents.

Awareness raising and education

(b) Are the “One hundred missing objects” series and the ICOM Red Lists disseminated and read?

ICOM Red Lists, many of which are funded by the United States, are disseminated to the U.S. law enforcement community.

(c) Briefly describe activities carried out to raise the awareness of the authorities and educate the public, children in particular, regarding the serious damage that can be caused by illegal excavations, theft of cultural property and illegal export. How far can UNESCO contribute to these activities?

Various U.S. government and non-governmental entities carry out awareness-raising activities in the United States.

III. Cooperation with other international and regional agencies

Police

(a) What is the state of national cooperation with INTERPOL? What specialized police services can heritage officials call on for enquiries, legal proceedings and punitive measures?

The United States has a National Central Bureau – INTERPOL that is the facilitator of communication between U.S. law enforcement and INTERPOL.

(b) If a cultural object is stolen, is the INTERPOL database on stolen objects checked? Is information on the persons implicated in the theft of cultural property transmitted to INTERPOL?

U.S. law enforcement officers that are trained in cultural property crime are made aware of the INTERPOL database.

(c) Do members of police services follow a specific training programme?

The United States has law enforcement officers specially trained in cultural property crime within various agencies of the U.S. government, including the Department of Homeland Security, Department of Justice, and Department of the Interior.

(d) Do criminal law provisions allow for the punishment of fraud and theft related to cultural property? Are judges specialized in this field?

U.S. law does provide for criminal prosecution of certain cultural property crimes. U.S. judges do not specialize in this manner.

(e) Does cooperation exist with the United Nations Office on Drugs and Crime (UNODC)?

The United States participates in the activities of UNODC.

Customs

(f) What is the status of cooperation with the World Customs Organization and which specialized customs services can assist heritage officials in preventing the illicit export of cultural property?

The United States government cooperates with the World Customs Organization, including on cultural property issues.

(g) Do members of the customs administration follow a specific training programme?

The United States has law enforcement officers specially trained in cultural property crime within various agencies of the U.S. government, including the Department of Homeland Security, Department of Justice, and Department of the Interior.

(h) Is the UNESCO-WCO Model Export Certificate for Cultural Objects used?

No. The United States does not impose export controls on cultural property.

European Union

Have particular measures been adopted to apply the Council of the European Communities Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State.

IV. Emergency situations and heritage at risk

(a) What is the strategy in place in your country to face emergency situations for heritage in case of natural disaster or conflict?

The United States has various administrative, regulatory, and legal procedures in place to address natural disaster and conflict situations. The United States is also a party to the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict.

(b) More particularly, what are the measures undertaken to implement UNSC Resolution 2199 (paragraph 17, 12 February 2015) for the protection of Syrian and Iraqi cultural heritage?

The United States strongly supported UN Security Council Resolution 2199. The United States is engaging with various governments and private sector stakeholders, such as museum officials, to counter the trafficking of looted objects from Iraq and Syria.

V. Other legislative, legal and administrative measures taken by the State

1. Accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

(a) Has this Convention been ratified, in addition to that of 1970?

The United States is not a party to the 1995 UNIDROIT Convention.

(b) If not, please indicate, where applicable:

- the stage of the ratification process reached by the State concerned (close to ratification, under way, actively under preparation, not considering ratification in the short, medium or long term) ;
- obstacles or difficulties encountered in completing the ratification process (whether legal, political or practical) and the means of overcoming them;
- the extent to which UNESCO can assist in completing the process.

2. Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation

Describe the extent to which the State concerned is following the work of the UNESCO Intergovernmental Committee (observer, member, State concerned by a case under discussion, etc.).

The United States is an observer to this Committee.

3. UNESCO Database of National Cultural Heritage Laws

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

The United States strongly supports the UNESCO Database and funded its development. To the best of our knowledge, all applicable U.S. laws and agreements are included in the database. U.S. authorities regularly use the database.