



Model Provisions on the Prevention and Fight against the Illicit Trafficking of Cultural Property

Draft

This document presents the draft of the Model Provisions on the Prevention and Fight against the Illicit Trafficking of Cultural Property elaborated by the Drafting Committee and revised in accordance with the comments made by the Consultative Body on 11 July 2022.

I. CONTEXT

1. In accordance with Resolution 5.MSP 10 of the Fifth Meeting of States Parties to the 1970 Convention (May 2019), the Secretariat organized an online expert meeting on 28 and 29 April 2021 to propose draft Model Provisions on the prevention and fight against illicit trafficking of cultural property (thereafter, “the Model Provisions”), based on the 1970 Convention and its Operational Guidelines. In this regard, the Secretariat had sent a letter, on 5 March 2021, to each Chairperson of the six electoral groups of UNESCO inviting them to nominate, in consultation with the Member States of their group, two legal experts.
2. Twelve experts were thus selected, on the basis of their academic and operational expertise in the field of the fight against illicit trafficking in cultural property, to take part in the expert meeting (thereafter, referred to as the “Consultative Body” and whose composition can be found under Annex 1). More than 70 of the Permanent Delegations were connected and followed the discussions.
3. The objective of the meeting was to exchange views on the roadmap and methodology for the elaboration of the Model Provisions. The Consultative Body recommended the following roadmap for the elaboration of the Model Provisions:

- A small drafting committee will be established by the Secretariat. One of the experts of this committee should represent a country particularly affected by illicit trafficking in cultural property;
- Once established, the Drafting Committee will propose a first draft of the Model Provisions;
- The Secretariat will convene a second meeting of the Consultative Body to review the first draft of the Model Provisions;
- The Secretariat will consult the stakeholders, including civil society, the art market and UNESCO's partner organizations in the fight against illicit trafficking in cultural property, on the Model Provisions;
- The Secretariat will convene a third meeting of the Consultative Body to examine comments from the stakeholders;
- The amended Model Provisions will be reviewed by the Secretariat and the Drafting Committee prior to their submission to the Seventh Meeting of States Parties (2023) for possible adoption.

4. This roadmap was presented to the Sixth Meeting of States Parties to the 1970 Convention (May 2021). By Resolution 6.MSP 7, the Sixth Meeting of States Parties took note of the roadmap and method for the elaboration of the Model Provisions and requested the Secretariat to submit to the Seventh Meeting of States Parties, in 2023, the draft Model Provisions.
5. Subsequently and pursuant to the above-mentioned Resolution, the Secretariat of the 1970 Convention established the Drafting Committee of the Model Provisions, composed of six experts in the field of cultural property law (**Annex 2**) as well as the following timeline for the elaboration of the Model Provisions:

- The Drafting Committee will have until **13 June 2022** to submit to the Secretariat a first draft of the Model Provisions;
- The Secretariat will convene a second meeting of the Consultative Body on **11 July 2022** to review the first draft of the Model Provisions. At this meeting, the Chair of the Drafting Committee will be asked to present the work of the Drafting Committee;
- The Secretariat will then consult stakeholders, including civil society, the art market and UNESCO's partner organizations on the Model Provisions **between September and November 2022**;
- The Secretariat will convene a third meeting of the Consultative Body in **January 2023** to examine comments from the stakeholders.
- The Drafting Committee will review the draft taking into account the comments and recommendations of the Consultative Body as well as the results of the consultation and provide a final draft to the Secretariat by **26 February 2023**.
- A final draft will be presented to the Seventh Meeting of States Parties to the 1970 Convention for possible adoption in **May 2023**.

6. The Drafting Committee, chaired by Professor Vincent Négri, researcher at the French National Center for Scientific Research (CNRS), and assisted by the Secretariat of the 1970 Convention, met on three occasions from December to June 2022 to elaborate a preliminary draft of the Model Provisions. This preliminary draft, based on the recommendations of the Consultative Body, is articulated in 18 model provisions and presented in the same form as the 2011 UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects. The title and content of each model provision are in bold type, followed by a few lines of commentary that clarify or contextualize the wording of the provision and/or specify normative references or sources.
7. When elaborating the preliminary draft, the Drafting Committee acknowledged that the wording of the Model Provisions should propose a normative strategy that can be incorporated in all legal systems and that can strengthen the implementation of the 1970 Convention. Therefore, the Model Provisions shall not address all the questions raised on how States should implement the 1970 Convention. Rather, the Drafting Committee considered that the Model Provisions are designed to be applied, adapted and supplemented by more detailed rules, embedding the provision's content in the national legal system. Accordingly, when elaborating the preliminary draft, the Drafting Committee ensured that the wording of the Model Provisions is consistent with the different legal systems and traditions. The Drafting Committee did not try to duplicate a measure provided for by national laws, but rather, ensured that each model provision can be incorporated in all legal systems and, as such, strengthen the implementation of the 1970 Convention.
8. On 11 July 2022, the Chair of the Drafting Committee presented to the Consultative Body the preliminary draft of the Model Provisions and the methodology followed for its elaboration. Members of the Consultative Body reviewed the six chapters of the Model Provisions and expressed their appreciation for the work of the Drafting Committee. The Secretariat and the Chairman of the Drafting Committee then revised the preliminary draft in accordance with the comments of the Consultative Body. The revised project is as follows.

II. DRAFT OF THE MODEL PROVISIONS ON THE PREVENTION AND FIGHT AGAINST THE ILLICIT TRAFFICKING OF CULTURAL PROPERTY

Preliminary Chapter

Provision 1 (General Duty)

The State shall ensure the protection of cultural property in order to preserve cultural property for the present and future generations. It shall cooperate with other States and international organizations to prevent looting and illicit trafficking of cultural property and to promote the restitution of stolen cultural property and the return of illicitly exported cultural property.

Commentary: This first model provision defines, in a generic way, the responsibility of the State, by laying down a dual obligation regarding the protection of cultural property and the cooperation with other States and international organizations (including NGOs, eg. ICOM), in areas covered by the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (thereafter, the “1970 UNESCO Convention”).

This model provision thus takes the form of a general clause, mirroring the clause set forth in Provision 1 of the UNESCO-UNIDROIT *Model Provisions on State Ownership of Undiscovered Cultural Objects* adopted in 2011.

This model provision can reinforce the national legislation or be enacted at the level of the Constitution. To perform the implementation of this general duty, an alternative drafting of the first sentence can specifically refer to the State’s legal responsibility: **“The State is responsible for the protection of cultural property in order to preserve cultural property for the present and future generations”**.

The protection of cultural heritage and the fight against illicit trafficking constitute obligations of the State, which must, within the limits of its capabilities, make available the financial and human resources to meet these obligations. However, the State is not always in a position to assume on its own such vast and complex tasks as the preservation of cultural heritage and the fight against illicit trafficking. At the domestic level, inter-ministerial coordination and the involvement of civil society must be strengthened. At the international level, bilateral, regional and multilateral collaboration and support from non-governmental organisations reinforce State measures.

All responsibilities, on both national and international levels, are here to strengthen the principles of solidarity and collective responsibility in the protection of cultural property instilled by the 1970 UNESCO Convention, and echoes the words of its Preamble, in particular the premise of understanding between nations, as well as the increased knowledge of human civilization, the enrichment of the cultural life of all peoples and the feeling of mutual respect and appreciation. Concerning this issue, the 1970 UNESCO Convention lays the groundwork for recognizing cultural diversity.

**Provision 2
(Notion of cultural property)**

The term 'cultural property' means property with significance for archaeology, prehistory, history, literature, art or science and which forms part of the cultural heritage of a State.

Commentary: The definition of cultural property follows the general definition given in Article 1 of the 1970 UNESCO Convention and in Article 2 of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (thereafter, the "1995 UNIDROIT Convention"). It refers to the criterion of the value of cultural property without taking into account the criteria of age or the date of creation or discovery of the object. The reference to the notion of cultural heritage of the State refers to the categories set out in Article 4 of the 1970 UNESCO Convention.

It should be noted that references to archaeology, prehistory, history, literature, art or science, to define the notion of cultural property are not limitative. Depending on the cultural interests that States endeavour to defend or promote, other values or references to cultural significance can be added, such as palaeontology.

In addition to property in public collections, the term *cultural property* also refers to cultural property in private hands or in circulation in the art market.

Some cultural property need to be subject to higher protection (e.g., national treasures). The definition of cultural property subject to higher protection depends on several value criteria and may fall within the competence of national, regional or local institutions.

**Provision 3
(Notion of public collection)**

Public collections consist of cultural property belonging to the State, a local or regional authority, a religious institution or an institution recognised as serving the public interest and established for cultural, educational or scientific purposes.

Commentary: Public collections consist of property relating to or assigned to fulfil cultural, educational or scientific purposes by an institution recognised as serving the public interest. This definition of the notion of public collection is based on the definition set out in Article 3 (7) of the 1995 UNIDROIT Convention.

In addition, States can refer to the definition of public collections in Article 2 of Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State, which specifies that public collections are property of a State, of a local or regional authority within the State or of an institution situated in the territory of the State, such institution being the property of, or significantly financed by, the State or local or regional authority.

**Provision 4
(Notion of Indigenous cultural heritage)**

The cultural heritage of Indigenous communities includes property of cultural or spiritual interest to these communities. These objects are the expression of the customs and traditional, ritual or funerary uses of these communities.

Commentary: The heritage of indigenous communities is defined by reference to Articles 12, 13 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples, adopted by the United Nations General Assembly Resolution 61/295 on 13 September 2007, and reference to traditional or ritual uses of these communities in the 1995 UNIDROIT Convention.

**Provision 5
(Notions of State of origin and State of provenance)**

The State of origin of a cultural property refers to the national territory from which a cultural property was extracted, excavated, discovered or created. The State of origin has a cultural, historical or archaeological link to the cultural property.

The State of provenance of a cultural property is the State from which a cultural property was transferred, including in an irregular manner, either by misappropriation constituting theft or by illicit export in violation of national legislation on the movement of cultural property.

Commentary: The notion of State of origin refers to the cultural origin of the item. The notion is defined by reference to both the glossary of the International Observatory on Illicit Traffic in Cultural Goods (ICOM) and the statements of the 2001 UNESCO Convention on the Protection of the Underwater Cultural Heritage. The notion refers to the territory from which a cultural property was extracted, excavated, discovered or created. These four qualifiers – extracted, excavated, discovered or created – designate all circumstances in which cultural property is revealed. Reference to the term “created” means the act of creation from which the knowledge and use of the object ensue, regardless of any other circumstance linked to its extraction, excavation, or discovery.

In this definition of State of origin, the notion of national territory, as understood by international law, refers to the territory where the State exercises its sovereignty.

The notion of State of provenance, in the implementation of the provisions of the 1970 UNESCO Convention, refers to the illicit acts at the origin of the transfer of the cultural property from that State, whether the property was stolen or illicitly exported.

The State of provenance can also be the State of origin. The State of transit - a State on which territory a property has been imported and then re-exported - is a State of provenance.

Chapter 2 – National services and inventory

**Provision 6
(Competent authorities)**

The competent authorities are the public authorities that ensure the protection of cultural heritage. They are responsible for the prevention and, subject to the jurisdiction of the judicial authorities, the repression of illicit imports, exports and transfers of ownership of cultural property.

They exercise control over archaeological excavations and the conservation of archaeological sites and deposits. They ensure the development of scientific and technical institutions related to the conservation and research on cultural heritage, as well as research on the provenance of cultural property in public collections in collaboration with public institutions, including those depositaries of public collections; they monitor the art market and collect relevant data on illicit trafficking; they are involved in public information and awareness raising on the respect of cultural heritage and the fight against illicit trafficking of cultural property.

They ensure the establishment and updating of the national inventory of cultural property. They are responsible for examining and issuing export and import certificates. The same applies to licences to carry out a professional activity directly or indirectly related to the art market.

Commentary: This provision implements Article 5 of the 1970 UNESCO Convention, which requires States to set up on their territory one or more cultural heritage protection services to carry out the whole range of tasks for protecting cultural heritage, in particular for the prevention and fight against illicit trafficking of cultural property. The tasks enumerated in this provision are not exhaustive, they are minimal standards to implement cultural heritage protection services.

Concerning the research on the provenance of property in public collections, it should take place in particular at the time of the acquisition of the property, by means of purchase, gift, loan, bequest, or exchange, and it is backed up by an obligation of due diligence, to ensure that the cultural property has not been illegally obtained (or illicitly exported). It should be noted that Article 4.5 of the ICOM Code of Ethics for Museums specifies that museums should avoid displaying or otherwise using material of questionable origin or lacking provenance and should be aware that such displays – or other uses – can be seen as contributing to the illicit trafficking of cultural property.

Provision 7 (Inventory)

A national inventory of cultural property is established. This inventory can include all the inventories of public collections kept in museums or in any other cultural or scientific institution, and the inventories of cultural property of importance for archaeology, prehistory, history, literature, art or science and which are part of the cultural heritage of the State.

The inventory also refers to important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage.

The national inventory of cultural property is under the responsibility of the competent authorities which ensure its regular updating.

Commentary: The establishment of a national inventory of cultural property is a cardinal obligation on the State in the establishment of their policy for the prevention and combat of illicit trafficking of cultural property. This obligation is laid down under Article 5 (b) of the 1970 UNESCO Convention.

This provision interprets the notion of national inventory as a generic notion that refers to all inventories of public collections kept in museums or in any other cultural or scientific institution.

The inclusion of a cultural property in the inventory of a museum or a religious or secular public monument, or similar institution, is a primary condition for proving the provenance of the cultural property in case of theft (Article 7 (b) (i) of the 1970 UNESCO Convention).

In federal States, the competence to establish an inventory of cultural property can be expanded to the federate States or institutions. The notion of a national inventory should not be taken in the strict sense. The notion also includes inventories established by the federated States. In certain federal constitutions, the competence to protect cultural heritage and, consequently, the competence to establish the inventory of cultural property falls within the competence of the States or federated entities.

Chapter 3 – Movement of cultural property

Provision 8 (Movement)

Cultural property, unless otherwise provided under the second paragraph, shall not be exported from the national territory without an export certificate.

The export of public collections, of cultural property that is of national interest, as well as items of the heritage and human remains of indigenous communities is prohibited. Exemptions to this export prohibition may be granted in particular for temporary exports for the purposes of exhibition, loan or deposit in a cultural institution, restoration or exceptional scientific analysis.

The prohibition of export does not apply in case of export for return and restitution of cultural property as well as items of the heritage and human remains of indigenous communities, based in particular on the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property or on the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

Commentary: This provision establishes a dual principle regarding the regulation of the movement of cultural property. One principle concerns a restriction: an export subject to the issuance of an export certificate. The other principle concerns a prohibition: a permanent export ban on public collections, as well as on items of the heritage and human remains of indigenous communities. For the latter categories of cultural property and heritage subject to a permanent export ban, only temporary export may be authorized and on limited grounds.

The prohibition of export does not prevent actions for return and restitution in particular based on illicit trafficking.

**Provision 9
(Export certificate)**

An export certificate accompanies all cultural property authorized to leave the territory. This permission to leave the territory is issued by the competent authority and is expressly mentioned on the certificate.

The export certificate includes a detailed description of the cultural property, its provenance, the identity of the owner and the reasons for the export.

A temporary permission to leave the territory may be issued for cultural property for which export is prohibited in accordance with § 2 of Provision 8 for the sole purpose of exhibition, loan or deposit in a cultural institution, restoration or exceptional scientific analysis. The temporary permission specifies the date by which cultural property must be returned to the territory of the State that issued the permission to leave the territory.

Commentary: This provision considers the export certificate as the lock on the control of the movement of cultural property, in accordance with Article 6 of the 1970 UNESCO Convention. Issuance of an export certificate is equivalent to an authorization to leave the national territory. The certificate may authorize temporary export for public collections, cultural property that is of national interest and items of the heritage of indigenous communities for the sole purpose of exhibition, loan or deposit in a cultural institution, restoration or exceptional scientific analysis.

This characteristic of the export certificate as a means of controlling the movement of cultural property is based on the principle that cultural property and items of the heritage of indigenous communities is prohibited from leaving the national territory without an export certificate.

**Provision 10
(Policy on the acquisition of cultural property
by museums and other public cultural institutions)**

Museums and other public cultural or religious institutions shall not acquire or exhibit cultural property which:

- a. has been stolen or is the product of illicit excavation;**
- b. has been illegally exported from the territory of the State of origin or provenance.**

Museums and institutions to which such property is offered shall inform the competent authority without delay.

Commentary: This provision establishes an obligation for museums to draft and adopt a policy on acquisitions of cultural property. It set a responsibility for museums in the prevention and fight against illicit trafficking of cultural property. Such a policy, implemented by museums and other public, cultural or religious institutions, contributes to the preservation of cultural heritage and the fight against illicit trafficking.

Stripping an owner of its property by means of misuse of will or vitiated consent should be considered as theft.

When it comes to their acquisition policy, museums must check for an export certificate from the State of origin and, if need be, from the State of provenance. An export certificate delivered by the State of provenance may not be equivalent to the certificate delivered by the State of origin.

Provision 11
(Prevention of irremediable injury
to the cultural heritage of another State)

The State may conclude an agreement with a State whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials, with a view to provide for and implement all measures to prevent irremediable injury to its cultural heritage. These measures shall include administrative and judicial cooperation, exchange of information and import prohibitions.

Commentary: This provision implements Article 9 of the 1970 UNESCO Convention which establishes a principle of cooperation between a State whose archaeological and ethnological heritage is exposed to a risk of irremediable injury due to pillage - a source of illicit trafficking - and another State Party to the 1970 UNESCO Convention, which is the country of transit or destination of the illicit traffic.

Chapter 4 – Return and restitution of illegally imported/exported cultural property

Provision 12
(Return and restitution)

When the State of provenance provides evidence of the theft or illicit export of a cultural property, the restitution or return of cultural property to that State shall be granted as a matter of right, subject to the control of the judicial or administrative authority of the requested State.

The judicial or administrative authority shall, in its decision, apply the law of the State of origin or provenance on the control of the movement of cultural property and on the ownership of cultural property.

Where the State of origin provides evidence of the cultural, historical or archaeological link of the cultural property with its territory, the claim to the object shall be processed by the competent authority within the meaning of Provision 6.

The prohibition of export of public collections, cultural property that is of national interest, as well as items of the heritage and human remains of indigenous communities shall not apply in the case of the return or restitution of cultural property to the State of provenance or State of origin.

Commentary: The implementation of Articles 7 and 13 of the 1970 UNESCO Convention leads to the adoption of measures of seizure, confiscation, ..., the content of which, and the possibility for their

establishment, vary according to the legal systems. To consider this diversity of legal measures and their relationship with property rights, the model provision establishes, in its §1, a key principle for measures which may be defined in the legal system of each State.

In addition to the principle that the restitution or return of cultural property to the State of provenance is mandatory, subject to requirements of proof and control by the judicial or administrative authority of the requested State, this model provision is inspired by and updates, in its §2, the principle laid down in Article 2 of the Resolution of the Institute of International Law adopted in 1991 on The International Sale of Works of Art from the Angle of the Protection of the Cultural Heritage, which provides that "the transfer of ownership of works of art belonging to the cultural heritage of the country of origin shall be governed by the law of that country".

§3 of the model provision introduces a principle of cooperation between the requested State and the State of origin that provides proof of a cultural, historical or archaeological link of the cultural property claimed with its territory. This principle of cooperation concerns both cultural property transferred after the entry into force of the 1970 UNESCO Convention and those transferred before that entry into force, the return or restitution of which is within the competence of the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation.

§4 links the obligation of return and restitution of cultural property with §2 and §3 of Provision 8.

Provision 13 **(Occupation of a country by a foreign power)**

In the case of an occupation of the territory of the State of provenance by a foreign power, the violation of the sovereignty of the State of provenance constitutes evidence of the theft or illicit export of cultural property, provided that such violation is recognised by a resolution of the Security Council based on Chapter VII of the United Nations Charter.

Cultural property removed from the occupied territory of the State of provenance by a foreign power in violation of the sovereignty of the State of provenance is presumed to have been stolen or illicitly exported.

Commentary: This provision implements Article 11 of the 1970 UNESCO Convention and sets out the threshold for proving the theft or illicit export of cultural property removed from the territory of a State occupied by a foreign power.

Provision 14 **(Good faith and obligation of due diligence)**

In assessing the good faith of the possessor or acquirer of a cultural property claimed by the State of origin or provenance, consideration shall be given to the circumstances of the acquisition or entry into possession of the cultural property, the character of the parties and the price paid.

The possessor or acquirer must also prove that he has exercised due diligence by having, as appropriate in each case, consulted the

documentation on the provenance of the object, checked the export certificate or the authorization to leave the territory of the State of origin and provenance, consulted any accessible register of stolen cultural property and sought any relevant information which he could reasonably have obtained, or took any other step which a reasonable person would have taken in the circumstances.

Commentary: The notion of good faith and its corollary, the obligation of due diligence, are determined by reference to the 1995 UNIDROIT and Article 10 of Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State.

The provenance, as mentioned in §2 of the provision, includes a description of the full history of the item, including its ownership rights, from the time of its discovery (or creation), through which authenticity and ownership are determined. This notion of provenance is defined by reference to the International Council of Museums (ICOM) Code of Ethics for Museums.

The obligation of due diligence is henceforth incumbent on the acquirer who invokes his or her good faith; this obligation and the reversal of the burden of proof make it possible to relativise the rule regarding the presumption and protection of good faith in the substantive law of several States. Moreover, the good faith possessor or acquirer should no longer be able to rely on his or her good faith when the law of the State of origin or provenance excludes the possession or acquisition in good faith of the cultural property which is the subject of the action for restitution.

Chapter 5 – Regulation of the art market

Provision 15 (Regulation of the art market)

Only private individuals or legal entities, holders of a license issued by the competent authority, can exercise a professional activity directly or indirectly related to the art market.

They establish the identity of the supplier and the seller and require from them a written declaration on their right to dispose of the cultural property.

They inform their clients of the import and export regulations in force in the States of provenance and acquisition.

They maintain a register recording all movements and transactions of cultural property, whether they are acting as seller or agent to the seller.

Commentary: This provision lays down the principle of regulation of art market dealers. In addition to the licence, required to exercise a professional activity directly or indirectly linked to the art market, an obligation to keep a register of movements and transactions of cultural property is laid down by reference to Article 10 (a) of the 1970 UNESCO Convention, according to which, such a register shall mention the provenance of each item of cultural property, the names and addresses of the supplier, a description and the price of each item sold.

Provision 16
(Duty of care of art market professionals)

Art market professionals may only authorise the transfer of a cultural object on the art market, at an auction or in an Internet sale (or online sale) if they can guaranty, in view of the circumstances, that the object:

- a. has not been stolen, illicitly excavated or illicitly exported;**
- b. has not been illicitly imported.**

Commentary: This provision lays down an obligation on art market professionals to ensure the legal provenance of cultural property before any transfer on the art market, at an auction or in an Internet or online sale. Just like museums and other public, cultural or religious institutions (see Provision 10), art market professionals must also act with diligence and thus contribute to the fight against illicit trafficking in cultural property.

Chapter 6 – Civil, criminal and administrative sanctions

Provision 17
(Criminal Offence)

Theft, illicit export and illicit import of cultural property, as well as the violation of the rules relating to the export certificate, are criminal offences.

The exercise of a professional activity directly or indirectly related to the art market, without the license authorizing this activity, constitutes a criminal offence.

Criminal sanctions are imposed without prejudice to compensation measures for the damages and losses suffered, at the expense of the perpetrator of the sanctioned acts.

Commentary: The sanctions in the event of breaches of the obligations set out in the Model Provisions depend on the different national legal systems. The model provision lays down a principle in the form of an obligation for the State to introduce specific offenses into its domestic law and confers on the national legislator the responsibility of qualifying offenses and determining the sanction regimes in accordance with its principles of criminal law, including remedial measures which may be subject to civil action.

States can also refer to the Council of Europe Convention on Offenses relating to Cultural Property, adopted in 2017. This international treaty specifically deals with all the criminalization of the illicit trafficking of cultural property.

Provision 18
(Administrative sanctions)

Any breach, by an individual or legal entity, of the provisions protecting cultural property and preventing the illicit trafficking of such property, established by decision of the judicial authority, entails an inability for this individual or legal entity to continue the professional activity at the origin of the imposed sanction.

Absence or incompleteness of the information provided in the register in which all the movements and transactions of cultural property are recorded entails the definitive withdrawal or the provisional suspension, by the competent authority, of the license authorizing the exercise of the professional activity directly or indirectly linked to the art market.

Commentary: When an individual or legal entity commits, in the exercise of the professional or legal activity, a breach of the provisions protecting cultural property and preventing the illicit trafficking of such property, the judicial decision establishing and sanctioning this infringement may be accompanied by a prohibition to pursue this activity. In the case of a regulated profession, this prohibition takes the form of a withdrawal of the authorization to exercise this profession.

Breaches by actors in the art market of the obligation to maintain a register in which all movements and transactions involving cultural property are recorded entails, depending on the degree of seriousness of the breach, the definitive withdrawal or the provisional suspension, by the competent authority, of the license authorizing the exercise of their professional activity.

Annex 1: Consultative Body of the Model Provisions on the Prevention and Fight against the Illicit Trafficking of Cultural Property

Group	Country	Expert	Title
Group I	Cyprus	Dr Despo Pilides	Curator of Antiquities, Department of Antiquities
Group I	Spain	Álvaro Gallego López	Commander of the Technical Unit of the Spanish Judicial Police (Guardia Civil)
Group II	Slovakia	Andrej Jaroš	Ministry of Culture
Group II	Czechia	Ondřej Kasparik (28 April)	Lawyer within the Independent Department for the Protection of Cultural property, Ministry of Culture
	Czechia	Magda Němcová (29 April)	Head of the Independent Department for the Protection of Cultural property, Ministry of Culture
Group III	Venezuela (Bolivarian Republic of)	Dr Dinorah Cruz Guerra	President of the Cultural Heritage Institute
Group III	Argentina	Dr Jose Luis Garrido	Legal Advisor of the Argentine Museum of Natural Sciences "Bernardino Rivadavia"
Group IV	Japan	Ren Yatsunami	Associate Professor at Kyushu University
Group IV	Republic of Korea	Keun-gwan Lee	Professor at Seoul National University
Group Va	Kenya	Dorcas Marwa	Permanent Delegation of Kenya
Group Va	Senegal	Doudou Diene	Legal expert

Group Vb	Iraq	Saba Ahmad Shafa Ihsan Al- Omari	Senior chief translator, State Board of Antiquities and Heritage
Group Vb	Mauritania	Nami Mohamed Kaber Salihy	National Curator of Heritage and Culture

Annex 2: Drafting Committee of the Model Provisions on the Prevention and Fight against the Illicit Trafficking of Cultural Property

BIOGRAPHIES

Vincent Negri (Chair of the Drafting Committee), PhD, is an accredited research director (HDR) at the *Institut des Sciences sociales du Politique*, Ecole normale supérieure Paris-Saclay. His work focuses on comparative law and international law of culture and heritage, as well as on the interactions between norms and cultures. He is an expert for UNESCO, ICOM, ICCROM and ECOWAS. He has published numerous works and researches, among which the most recent, as editor, are: *Archéologie & bien commun. Figures de la propriété et du préjudice archéologiques*, Research Report, Mission de recherche Droit & Justice, 2021; *La diversité dans la gouvernance internationale*, éd. Bruylant, 2016; *Le patrimoine archéologique et son droit*, éd. Bruylant, oct. 2015; and with Isabelle Schulte-Tenckhoff: *Normer l'oubli*, coll. Les voies du droit, éd. PUF/IRJS, 2019; *MIMESIS, Towards International Normativity – Between Mimeticism and Dissemination*, éd. Pedone, mars 2016. He co-supervises, with Isabelle Schulte-Tenckhoff, the editorial series *Confins*, for anthropology of international law, at Pedone publishing.

Marie Cornu is a legal specialist in culture and cultural goods law. After defending her PHD on "The cultural law of property: the legally protected cultural interest", she joined the CNRS, where she has since worked as a research director. She directs her research at the *Institut des sciences sociales du politique* (ISP). She is a member of the French National Commission for UNESCO. In 1999, she created with Jérôme Fromageau a research group on cultural and natural heritage law, which led to the publication in 2012 of the "Comparative Dictionary of Cultural Heritage" (CNRS Editions, with J. Fromageau and C. Wallaert, currently being reproduced), a comparative study of heritage protection systems in several European countries. In 2012, she began her work on the common goods, which will lead to the publication of the Dictionary of the common goods (PUF, 2017, with F. Orsi and J. Rochfeld). She piloted a comparative study on the means of "preventing and fighting illicit trafficking in cultural goods in the European Union" (final report, October 2011, Contract No. Home/2009/ISEC/PR/019-A2, European Commission).

Ridha Fraoua, Doctor of Law, worked at the Federal Office of Justice in Switzerland where he headed the Legislation Unit. After defending his PhD in international law at the University of Fribourg, Switzerland, "The illicit traffic of cultural property and its restitution: analysis of national and international regulations, criticisms and proposals", he carried out several missions for UNESCO, the European Union, the Council of Europe and the World Bank, on the protection of cultural property and illicit trafficking in cultural property. Mr Fraoua was a member of the Committee of Independent Experts and the Committee of Governmental Experts on the preparation of the 1995 UNIDROIT Convention. As an international expert, Mr Fraoua has carried out numerous legal assistance and evaluation missions in the field of the protection, management and presentation of cultural heritage. Mr Fraoua was the general rapporteur of the November 2009 Beirut Regional Workshop organised by the European Commission and UNESCO on "Preventing and Fighting Illicit Traffic in Cultural Property".

Jorge A. Sanchez Cordero is a legal practitioner and public notary in Mexico. He has represented the Government of Mexico in several diplomatic conferences. M. Sánchez Cordero is a member of the American Law Institute, the European Law Institute, the International Institute for the Unification of Private Law (where he is Vice-President of the Governing Council and Member of the Permanent Committee), and the International Academy of Comparative Law (of which he was formerly Vice-President). He is the Vice-President of the Governing Council of the International Association of Legal Science (UNESCO), an Honorary Member of the Royal Spanish Academy of Honorary Academics for the Royal Academia of Legislation and Jurisprudence and the Director of the Mexican Center of Uniform Law. He is a scientific member of the International Society for Research on Art and Cultural Heritage Law (ISCHAL) and a member of the Board of Directors of the International Cultural Property Society. He is a member of the Committee on participation in global cultural heritage governance of the International Law Association, an emeritus consultant to the Mexican Ministry of Foreign Affairs and a cultural advisor to the Mexican federal Ministry of Culture. He is also the author and editor of various books available in several languages and has published articles and essays in Mexican and international reviews.

Ana Filipa Vrdoljak is the UNESCO Chair in International Law and Cultural Heritage. She is President of the International Cultural Property Society (U.S.) and Management Committee, International Journal of Cultural Property (Cambridge University Press). Ana Filipa Vrdoljak is the author of *International Law, Museums and the Return of Cultural Objects* (Cambridge University Press, 2006 and 2008, forthcoming 2nd edition 2021) and editor of *Oxford Handbook on International Cultural Heritage Law* with Francesco Francioni (Oxford University Press 2020), and *International Law for Common Goods: Normative Perspectives in Human Rights, Culture and Nature* with Federico Lenzerini (Hart Publishing, 2014), and *Oxford Commentary on the 1970 UNESCO and 1995 UNIDROIT Conventions* with Andrzej Jakubowski and Alessandro Chechi (Oxford University Press, forthcoming 2022).

Huo Zhengxin is Professor of Law at the China University of Political Sciences and Law. He is a member of the China Law Society, a Vice Chairman of Law Committee of China Society of Museum. He is also an associate member of the Centre for Private International Law at the University of Aberdeen Law School and an associate member of the International Academy of Comparative Law. He is a practicing lawyer in China. His teaching and research interests include Private International Law, Comparative Law and International Culture Property Law. He has published, in this field, a number of articles and books both in English and Chinese, including an article on “Legal protection of cultural heritage in China: a challenge to keep history alive” (*International Journal of Cultural Policy*, 2016).