

**THE MODEL TREATY FOR THE
PREVENTION OF CRIMES THAT
INFRINGE ON THE CULTURAL
HERITAGE OF PEOPLES IN THE FORM
OF MOVABLE CULTURAL PROPERTY**

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Key requirements – Article 2

1. (a) To **prohibit the import and export of MCP** which has been (i) **stolen** in or (ii) **illicitly exported** from the other State Party

(b) To **prohibit acquisition and dealing** of MCP in the above two categories

(c) To **legislate against international conspiracies** with respect to MCP

(d) To provide information on stolen MCP to **an international database** (to be agreed between the parties)

(e) To ensure that a **purchaser of stolen MCP listed on that database cannot be considered a BFP in law**

Key requirements – Article 2 (continued)

(f) To set up a **system of export licensing** for MCP which generates an export certificate

(g) To ensure that a **purchaser of MCP imported after the entry into force of the treaty without an export certificate cannot be considered a BFP in law**

(h) To use **all the means at its disposal**, including **fostering public awareness**, to combat the illicit market

2. At the request of the other State Party, to **recover and return** any MCP covered by the above

Key requirements – Articles 3 and 4

3. To impose **sanctions** on persons or institutions

(a) responsible for the **illicit import or export** of MCP

(b) that ***knowingly acquire or deal in stolen or illicitly imported MCP***
(my emphasis)

(c) that enter into **international conspiracies** with respect to MCP

4.1 Requests for recovery and return are to be made through **diplomatic channels** (as opposed, for example, to through the courts), and the requesting State Party shall furnish, at its expense, the documentation and other evidence, ***including the date of export***, necessary to establish its claim (my emphasis).

4.2 The requesting State Party must pay the expenses of return, and pay ‘**fair compensation**’ to a BFP (and a footnote suggests that States Parties may wish to consider whether these costs should be shared between them).

4.3 **No customs duties** to be levied on returned MCP.

4.4 The States Parties agree to make available to each other such **information** as will assist in combating crimes against MCP.

4.5 Each State Party shall provide information concerning laws which protect its MCP to an **international database** (to be agreed)

Protection measures – Model Treaty

- Can States **restrict import** only of a narrower category than subject to export control, if they wish?
- Article 4.1: must requesting States **furnish the date of export?** What if they do not know this?
- The provision on good faith which depends on sight of an export certificate: potentially powerful but needs to be specified with more care. The **UNESCO/WCO model export certificate** provides a harmonisation tool.
- The problem of **transit States**: the need for a **multilateral solution?**
- Sanctions for **‘knowing’ dealers** – these only work if the legal context is one where wilful blindness constitutes knowledge (i.e. where a dealer ‘ought to have known’).

Preventive measures

- ⦿ **Low-cost, effective procedures** for seizure and return of CP
- ⦿ **Specialist training for law enforcement** and criminalisation measures, especially to control demand – cf UNTOC.
- ⦿ Close off **tax relief loopholes**
- ⦿ **Educational campaigns**: but note the problem of ‘issues’ v ‘behaviour’
- ⦿ Support legitimate supply
 - Long term loans
 - Partage
 - Portable antiquities and other find-reporting models
- ⦿ Single access point to data: inventories, laws, missing object registries.

The market – fundamentals

- ⦿ No standardised documentary or other approach to proof of provenance
- ⦿ No harmonised approach to import/export certification for CP
- ⦿ Observable enforcement difficulties
 - Clandestine nature of the crime
 - Evasion of export controls
 - Mixing of licit and illicit streams of objects
 - Specialist knowledge required of police
 - Transnational police and judicial cooperation required