

PRACTICAL OPERATION OF THE 1995 UNIDROIT CONVENTION

HONDURAS

I. Information regarding the application of the UNIDROIT Convention (referring to the provisions of the Convention)

1. Ratification, approval, acceptance or accession

(a) Is your country a Party to the UNIDROIT Convention? **If so:**

No. Honduras is not a Party State to the UNIDROIT Convention.

(b) **If not** (please indicate, as appropriate):

- *What stage has the ratification/accession procedure in your country reached (close to ratification/ accession), active preparation, not envisaged in the short, medium or long term)?*
- *What are the counter-arguments advanced, and which are the obstacles or difficulties encountered in steering the ratification/accession process (in legal, political or practical terms), as well as the measures taken to overcome them?*
- *How can UNIDROIT assist in bringing this process to a successful conclusion?*

Regarding the stage of the process, this has not started; the ratification has not been discussed.

There are doubts regarding the restitution claims of stolen cultural property (time limitations for instance), how it would be established that the possessor of a cultural object (who according the Convention needs compensation in case of restitution) did not know the object was stolen?

2. Definition

In order to benefit from the system set in place by the UNIDROIT Convention, "cultural objects" need not be designated by the State, as is on the contrary required under the 1970 UNESCO Convention.

- *Which is the definition retained in your country's legislation?*

Any cultural object that possesses anthropological and historical values to the Honduran State. This is established on our main legal instrument for cultural heritage: Ley para la Protección del Patrimonio Cultural de la Nación (Decreto 220-97).

3. Theft

(a) **How many cultural objects are stolen** in your country each year, and where do most of these thefts occur (percentage) (museums, places of worship, private homes, archaeological sites, ...)?

Three or four each year. Almost a 100% of cultural objects are stolen from churches; however, we ignore the amount of objects that are looted from archaeological sites.

(d) **Claims for restitution** of stolen cultural property **brought in accordance with other procedures**

- *Has your country (or have any of its nationals) ever brought such a claim for restitution? What was the procedure chosen? What results were obtained?*

No

- *Has your country (or have any of its nationals) ever been the subject of such a claim for restitution? What was the procedure chosen? What results were obtained?*

No

(e) A **cultural object that has been unlawfully excavated** (or lawfully excavated but unlawfully retained) shall be **considered stolen** when consistent with the law of the State where the excavation took place (Article 3(2)).

- *Does your legislation provide for State ownership of such objects? Please specify*

Our legislation indicates that any archaeological object (excavated legally or illegally) is part of the Honduran cultural heritage.

- *Has your country encountered difficulties in obtaining recognition of such ownership in restitution proceedings brought before foreign courts? Please provide examples.*

We have not been subject to restitution proceedings.

(f) Claims for restitution of some objects (Article 3(4)) shall not be subject to **time limitations** other than a period of three years, unless a Contracting State makes a declaration to the contrary (Article 3(5)).

- *Does your legislation provide for such a time limitation? If so, what is that limitation and to what type of property does it apply?*

No, our legislation does not provide a time limitation.

(g) The concept of “**due diligence**” on the part of the possessor of the cultural object and the criteria applied in determining such (Article 4(1) and 4(4).

- *Can you indicate any decisions handed down in your country as to the “diligence” exercised, or that should have been exercised, by a possessor (in particular in terms of the character of the parties), and as to the proof adduced?*

Private collection of cultural objects are forbidden according to Honduran Law.

The last private collections were admitted in 1998. The collections that were not registered then are considered illegal, and our current legislation (*Ley para la Protección del Patrimonio Cultural de la Nación (Art. 21, Decreto 220-97)*) does not allow the inscription of new collections. See also Art. 14, *Ley para la Protección del Patrimonio Cultural de la Nación, Decreto Legislativo 220-97*.

- *Does your country operate a “reasonably accessible register of stolen cultural objects”? Please specify*

Yes, the Honduran State has a reasonably accessible register of stolen objects: it can be consulted online (www.ihah.hn).

4. Illegal export

(a) The conventional mechanism is based on breach of **national legislation** prohibiting the export of (certain) cultural objects.

- *Does your country have such legislation and if so, what type of object does it cover (please specify any references, where applicable)?*

Our legislation prohibits the illegal export of all objects considered cultural heritage of the country.

(e) Requests for the return of illegally exported cultural objects **in accordance with other procedures**

- *Has your country (or have any of its nationals) ever brought such a request for return? What was the procedure chosen? What results were obtained?*

We have requested to the United States of America the return of illegally exported Honduran objects within our bi-national agreement (MOU), and we successfully recovered the objects.

II. Other legal, judicial and administrative measures taken by States – impact of Convention

1. More favourable rules

(a) The purpose of the Convention is to establish “**common, minimal legal rules** for the restitution and return of cultural objects between Contracting States” (Preamble) and it does not “prevent a Contracting State from applying any rules more favourable” to such restitution or return (Article 9(1)).

- *Does your country apply any other, or more favourable, rules in this field and if so, which?*

We have found very useful the establishment of bi-national or multi-national agreements.

2. Bilateral or multilateral agreements

(a) The Convention “initiates a process that will **enhance international cultural cooperation**” (Preamble) and offers the opportunity to States of entering into “**agreements** with one or more Contracting States, **with a view to improving the application of this Convention in their mutual relations**” (Article 13(2)).

- *Has your country entered into such agreements, or is it planning to do so? Please specify.*

We have a bilateral agreement with the United States of America, and multilateral agreements with Central American countries regarding prohibiting and preventing illicit import and export of cultural objects.

(b) States not Parties to the UNIDROIT Convention

- *Has your State become a Party to another international instrument for the protection of the cultural heritage since the UNIDROIT Convention was adopted? Please specify.*

We have become Party to international instruments previous to the UNIDROIT Convention (the 1970 UNESCO Convention, and the 1976 OEA Convention).

3. Impact of the UNIDROIT Convention

(a) Has the adoption of the UNIDROIT Convention resulted in any **practical changes** in the way your country protects its cultural property (whether you are a Contracting State or not)?

- *For example, has the Convention had a positive impact on the fight against illegal trafficking of cultural objects? Has its adoption affected the extent of trafficking in your country or of the transit of such objects through your territory?*

We have not ratified or applied the UNIDROIT Convention.

(b) If your country is not a Party to the UNIDROIT Convention but is a Party to the 1970 UNESCO Convention: does the implementing legislation for the latter instrument contain **rules inspired by the UNIDROIT Convention** and, if so, which?

The question is not clear.

(c) Since the Convention was first adopted, **non-binding instruments** have been developed relating to **"due diligence"**, such as "codes" for art dealers and auctioneers in the United Kingdom, or UNESCO's International Code of Ethics for Dealers in Cultural Property.

- *Does your country have such an instrument? Please specify*

We participated in the drafting of the *Lista Roja de Bienes Culturales en Peligro de Centroamerica y Mexico*, which is directed to art dealers, museum directors, etc.