



## **Questionnaire on the practical operation of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects**

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (hereinafter: the "UNIDROIT Convention") was adopted in Rome on 24 June 1995 and is currently in force between 32 States (see the Appendix to this document). The Convention was the culmination of a lengthy process initiated at the request of UNESCO in an attempt to fill a gap in the *1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (hereinafter: the "1970 UNESCO Convention") relating to the private law aspects of the restitution and return of stolen or illegally exported cultural property.

The two Conventions are, of course, compatible and, above all, complementary, but they are not substitutes for one another. The UNIDROIT Convention strengthens the provisions of the 1970 UNESCO Convention and supplements them by formulating minimum rules in terms of restitution and return of cultural objects. It guarantees the rules of private international law and of international procedure that allow the principles embodied in the 1970 UNESCO Convention to be applied.

Seventeen years after the adoption of the UNIDROIT Convention, the President of UNIDROIT intends, in accordance with Article 20 of the UNIDROIT Convention, to convene the first meeting of the special committee in order to assess the functioning of the Convention in practice. This meeting will provide an opportunity to recapitulate the solutions offered by this instrument and to take stock of the implications of its adoption, on the one hand, and for States to exchange views, to compare practical experiences and to discuss any difficulties they may have encountered in implementing the Convention in practice, on the other hand.

With this in mind, the UNIDROIT Secretariat would welcome information on the States' practical experience (implementing regulations, case law, repercussions on the art market, as well as any other steps taken to apply the Convention). States not Parties to the Convention are also invited to put questions and to make comments, to which the special committee will do its best to reply.

*We wish to thank you in advance for your co-operation and hope that you may be able to return the completed questionnaire to us **before 31 May 2012**.\**

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For further information on the Convention, in particular the Explanatory Report, see the UNIDROIT Internet website at <http://www.unidroit.org/english/conventions/1995culturalproperty/main.htm>.

## **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:**

- *Were implementing regulations required, and if so, in respect of which points?*
- *Did ratification/accession pose any particular difficulties and if so, what were these difficulties, and how were they resolved?*
- *Did the use of the legal concepts employed in the Convention create any problems?*

**(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?*

### **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?*

### **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, ...)?

**(b) Claims for restitution of stolen cultural property** brought under the Convention

- *Has your country (or have any of its nationals) ever brought such a claim for restitution? What results were obtained (please enclose the relevant decision)?*
- *Has your country (or have any of its nationals) ever been the subject of such a claim for restitution? What results were obtained (please enclose the relevant decision)?*

**(c)** Did your country's courts **encounter any difficulties** in applying the concepts enshrined in the Convention when called upon to apply the UNIDROIT Convention? If so, which?

**(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?*
- *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?*

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

**(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?*
- *At the time of ratification/accession, did your country make such a declaration or did it envisage doing so?*

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

#### **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)?*

**(b)** Article 17 of the Convention requires Contracting States to provide the Depositary with **written information** in one of the official languages of the Convention (English and French) **concerning the legislation regulating the export** of its cultural objects, and to update that information from time to time.

- *Did your country provide the Italian Government (the Depositary of the Convention) with the text of your country's relevant legislation or a summary thereof, within six months of ratification or accession, and has that information been updated since that time?*

**(c) Requests for the return** of illegally exported cultural objects **brought under the Convention**

- *Has your country (or have any of its nationals) ever brought such a request for the return of an illegally exported cultural object? What results were obtained (please enclose the relevant decision)?*
- *Has your country (or have any of its nationals) ever been the subject of such a request for the return of an illegally exported cultural object? What was the procedure chosen? What results were obtained?*

**(d)** Did your country's courts **encounter any difficulties** in applying the concepts enshrined in the Convention (for example, "significantly impairs" an interest, "significant cultural importance") when called upon to apply the UNIDROIT Convention – Article 5(3))?

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

**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?*

**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.*
- *If you are a State Party to the UNIDROIT Convention and have entered into such an agreement, did you send a copy of that agreement to the Depositary (please enclose a copy if appropriate)?*

**(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.*

**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?*

**(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?

**(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*

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