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Item No. 11 on the agenda: International protection of cultural property

- (a) Follow-up activities and promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the Model Provisions on State Ownership of Undiscovered Cultural Objects**
- (b) Private art collections**

(prepared by the Secretariat)

<i>Summary</i>	<i>Report on follow-up activities and promotion of the 1995 UNIDROIT Convention and related instruments</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the activities reported</i>
<i>Mandate</i>	<i>Work Programme 2017-2019</i>
<i>Priority</i>	<i>- Promotion 1995 Convention - High - Private art collections – Low</i>
<i>Related documents</i>	<i>Annual Report 2017 (C.D. (97) (2))</i>

I. FOLLOW-UP ACTIVITIES AND PROMOTION OF THE 1995 UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS

A. Status of the Convention

1. The 1995 Convention entered into force in 1998 and on 22 March 2017 has 42 Contracting States. Since the last session of the Governing Council, 4 States have acceded to the Convention: Bosnia and Herzegovina (on 8 May), Lao People's Democratic Republic (on 18 May), Botswana (on 28 August) and South Africa (on 9 January 2018). Some States have finalised their internal procedure of ratification/accession to the Convention and UNIDROIT is waiting for the deposit of their instruments of accession with the Italian Government. Other States are in the process of acceding to the Convention.

B. Follow-up Activities and Institutional/Academic Partnerships

UNIDROIT, partner in the implementation of the UN Security Council Resolutions

2. UNIDROIT continued its collaboration with the Working Group set up by UNESCO (mainly with INTERPOL, UNODC and WCO) for the implementation of *Resolution 2199* of the UN Security Council adopted in February 2015, condemning the destruction of cultural heritage in Iraq and Syria, and adopting binding measures to combat the smuggling of antiquities and cultural objects from these countries¹. Likewise, the Working Group aims to implement UNSC *Resolution 2253*, in particular paragraph 24, which highlights the importance of developing strong relationships with the private sector in countering the financing of terrorism and calls upon Member States to engage with financial institutions and share information on terrorist financing risks. Finally, UNSC *Resolution 2347* was unanimously adopted in March 2017, the first ever Security Council resolution to focus on the protection of cultural heritage and to recognize the importance of heritage protection for peace and security. All Member States that have not yet done so are encouraged to consider ratifying the relevant international conventions.

Informal Ratification Task Force

3. The Task Force was established by UNIDROIT and the Missions of Cyprus and Italy to the UN on the occasion of the event on "*Promoting and Strengthening the International Legal Framework for The Protection of Cultural Heritage – The 1995 Convention*" that took place at UN Headquarters in New York, on 28 February 2017. It is due to meet once a year in New York under the auspices of UNIDROIT.

4. In February 2018, the Permanent Missions of Italy and Cyprus announced the creation of a "Group of Friends for the Protection of Cultural Heritage" as an important step toward the implementation of the international legal framework, aiming at raising awareness on the need to fight illicit trafficking, share best practices, promote their internationalization and strengthening connections among different legal sources. UNIDROIT and the Permanent Missions are considering how to coordinate the work of the two entities.

The 1995 UNIDROIT Convention Academic Project

5. In November 2017, UNIDROIT launched the 1995 UNIDROIT Convention Academic Project ("UCAP").² UCAP takes the form of an online platform of shared materials related to the 1995 UNIDROIT Convention, UNIDROIT/UNESCO Model Provisions on State Ownership of Undiscovered Cultural Objects and related international instruments. UCAP aims at raising awareness on UNIDROIT's instruments protecting the art market and cultural heritage from illicit conducts.

6. UCAP addresses students, scholars, universities and professionals working in the art field, which will be encouraged to cooperate in partnership with UNIDROIT to create a think tank on cultural heritage law themes.

7. As of March 2018, the Academic Project counts ten institutional partners, fifteen individual partners, mainly professors expert in the field of cultural heritage law, and sponsors such as UNESCO, INTERPOL and UNODC. In the past months UNIDROIT has received a great number of

¹ See "Report of the Secretary-General on the threat posed by ISIL (Da'esh) to international peace and security and the range of United Nations efforts in support of Member States in countering the threat" (UNSC document S/2016/92, 29 January 2016) recognizing the role of UNIDROIT (para. 53).

² <https://1995unidroitcap.org>

project proposals linked to UCAP.³ In the future, the 1995 UNIDROIT Convention Academic Project will feed the discussion of the Informal Ratification Task Force.

Maintaining and developing partnerships

8. Apart from the longstanding excellent cooperation UNIDROIT maintains with UNESCO, INTERPOL, UNODC, WCO and ICOM, it developed its cooperation with other partners. In particular with the *International Centre for the Study of the Preservation and Restoration of Cultural Property* (ICCROM), based in Rome, pursuant to the Memorandum of understanding signed in 2015. On 29 November – 1 December, UNIDROIT participated in the 30th General Assembly of ICCROM held in Rome.

9. UNIDROIT conducted preliminary exchanges with the *International Bar Association Art, Cultural Institutions and Heritage Law Committee* during the IBA Annual Conference in Sydney, Australia (8 to 13 October 2017). The members showed interest in the topics of countering illicit trafficking of cultural heritage, transfer of ownership of cultural property and issues related to private art collections and contacts are underway for a possible session to be organized during the IBA Annual Conference in Rome next October.

10. UNIDROIT strengthened the collaboration with the European Union (“EU”). In particular, UNIDROIT and UNESCO met with EU Commission’s representatives to comment on the European Regulation proposal on import of cultural goods and the consultation goes on with the European Parliament. UNIDROIT was also invited to join the European Union in the activities related to the European Year of Cultural Heritage (“EYCH”).

11. UNIDROIT is also welcoming students for internships on the subject of international protection of cultural property and some universities regularly send candidatures. In particular The Tulane – Siena Institute for International Law, Cultural Heritage and the Arts which is a joint project of cooperation between the University of Siena Facoltà di Giurisprudenza and Tulane University Law School is sending students every year. The goal of the Institute is to offer a program for the study of the complex and fascinating relationship between international law, and art and cultural property.

C. Seminars, Conferences, Workshops

12. UNIDROIT is very often invited to attend conferences, seminars and workshops to present its activities in this field. States intending to become a Party to the Convention are willing to have seminars *in loco* to involve the national stakeholders and communities. For the events which took place in 2017, see the Annual Report (C.D. (97) 2, page 24). For the first months of 2018, the following can be noted:

- the International Training Seminar on Reduction of Shadow Economy Related to Illegal Turnover of Cultural Objects, organised by the Latvian School of Public Administration, in cooperation with the Italian Carabinieri TPC, INTERPOL, UNESCO, UNODC, UNIDROIT and other institutions (Riga, Latvia, 23 and 24 January 2018);
- the capacity-building conference on “Engaging the European art market in the fight against the illicit trafficking of cultural property” which brought together representatives from EU Member States’ governments and the art market and sensitized relevant stakeholders on the topic of due diligence in particular (UNESCO HQ, 20-21 March 2018); UNIDROIT also participated in a UNESCO podcast together with the Managing Director of a German auction house;

³ <https://1995unidroitcap.org/getinvolved/>

- UNESCO Regional training program “Countering Antiquities Trafficking in the Levant: a training program for specialists working to deter cultural property theft and the illicit trafficking of antiquities” – Beirut, 16-20 April 2018;
- UNESCO Workshop on “Building Capacities in the Fight against Illicit Trafficking of Cultural Objects in Ethiopia: Prevention, Cooperation, Restitution” - Addis Ababa, 24-26 April 2018;
- Conference entitled “The New Peacekeeping Operations as a Stabilizing Factor for the EU”, organized and hosted by the Italian Center for Higher Defence Studies – Rome, 7–11 May 2018;
- UNIDROIT will contribute, for the second consecutive year, to a course of the Geneva Summer School of International Cultural Heritage Law – University of Geneva in June 2018.

II. PRIVATE ART COLLECTIONS

A. Background

13. At its 95th session (Rome, 18-20 May 2016), the Governing Council decided to recommend that the topic of “private art collections” be included in the UNIDROIT Work Programme for the 2017-2019 triennium and the General Assembly endorsed such recommendation at its 75th session (Rome, 1 December 2016).

14. At its 96th session (Rome, 10-12 May 2017), the Governing Council took note of the cautious attitude of the Secretariat in relation to private art collections, of the conference hosted in Rome in 2017 and encouraged the Secretariat to continue to investigate the feasibility of possible future work on the topic.

B. Recent Developments and Further Steps

15. Pursuant to the low level of priority, UNIDROIT has continued to monitor developments relating to private art collections and to gather information relating to studies prepared on collections in the past (UNESCO, Council of Europe,...). The specific issue of private art collections was also inserted in the Academic Project (UCAP) to gather more material.

16. A conference organized by ISCHAL (the International Society of Research on Art and Cultural Heritage Law) took place in Geneva on 1-2 March 2018 entitled “Provenance of cultural objects” dedicated a whole session on the provenance of collections with the participation of lawyers, museum directors and collectors.

17. As mentioned, UNIDROIT conducted preliminary exchanges with the IBA Art, Cultural Institutions and Heritage Law Committee in order to ascertain, *inter alia*, the difficulties collectors face as viewed by practicing lawyers. Moreover, the issue of model art contracts for collectors might also be at stake. Artists, gallerists and collectors still often conclude contracts with a handshake on the basis of trust and mutual good faith. Such informal agreements do not prevent the takeover of a supplementary system of rules with a general vocation, especially in civil law countries. Therefore, private law provisions, which are not tailored for the art market, end up being applied to those informal relationships, with the result that the parties are bound on terms not agreed in advance. Model contracts or guidelines for art collectors inspired by the international practice and applicable to the situations described could be studied and developed. A feasibility study consisting of compiling a list of the most common contracts and shared principles of law could be carried out so as to find general principles to be inserted in model contracts for art collectors.

18. The aforementioned capacity-building conference on “Engaging the European art market in the fight against the illicit trafficking of cultural property” which took place at UNESCO in March 2018 aimed at reinforcing due diligence conducted in the European art trade, in particular among collectors. The due diligence of the 1995 Convention was recognised as the standard.

19. The kind of instrument UNIDROIT would end up with cannot be decided yet, it could be model provisions, guidelines or simply a “catalogue” of recommendations to collectors or/and States (establishment of national electronic registries of those collections; guidelines on responsible collecting; rules or principles designed to reduce anonymity in the transactions of pieces of art (sales contracts), in order to bolster transparency and diminish illicit trade in cultural property).

20. In 2018, UNIDROIT will welcome three interns working exclusively on private art collection’s issues to further explore the potential of the topic.

21. Finally, UNIDROIT is considering, subject to the availability of financial resources, the creation of a restricted study group to identify those private law aspects concerning the regulation of private art collections that fall within its mandate.

III. ACTION TO BE TAKEN

22. *The Governing Council is invited to take note of (a) the follow-up activities and promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and (b) of the further work to be done on private art collections.*