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**Item n° 12 on the agenda: International protection of cultural property - the  
25<sup>th</sup> anniversary of the 1995 UNIDROIT Convention on Stolen or Illegally  
Exported Cultural Objects and Project on the 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 2020-2022</i>
<i>Priority</i>	<i>- Promotion 1995 Convention - High - Private art collections – Low</i>
<i>Related documents</i>	<i>Annual Report 2019 - C.D. (99) B.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 UNIDROIT Convention entered into force in 1998 and, as of 19 August 2020, has 48 Contracting States. Since the 98<sup>th</sup> session of the Governing Council, two States have deposited their instruments of accession to the Convention with the Government of Italy: Montenegro (8 July 2019) and Ghana (20 September 2019). In addition, the ratification/accession procedure is under way in Benin, Côte d'Ivoire, Madagascar, Morocco, Togo and Yemen.

2. Furthermore, on 19 July 2019, Mr Boil Banov, Minister of Culture of Bulgaria, visited UNIDROIT to confirm his country's decision to accede to the 1995 UNIDROIT Convention, which had become a priority for his country.

3. On 17 July 2019, the Ministers of Culture of the Economic Community of West African States (ECOWAS) adopted the Action Plan 2019-2023 for the return of African cultural property to their countries of origin, which had been validated by the ECOWAS Ministers of Culture in Cotonou (Benin) in April 2019. The Action Plan calls on Member States to take the necessary steps as soon as possible to become party to the 1995 UNIDROIT Convention. Following a decision by the Council of Ministers, the National Assembly of Benin, at its plenary session on Monday 27 January 2020, examined and adopted the draft law authorising accession to the 1995 UNIDROIT Convention. Furthermore, on 10 July 2020, the Minister of Cultural Renaissance, Arts and Social Modernisation of the Republic of Niger announced his country's decision to become a Party and requested UNIDROIT's assistance in the accession procedure.

## **B. 25<sup>th</sup> anniversary of the 1995 UNIDROIT Convention**

4. UNIDROIT will celebrate the 25<sup>th</sup> anniversary of the 1995 Convention by organising an International Conference to be held on 8 and 9 October 2020 at the seat of the Institute in Rome (in person and through an online platform) entitled "The 1995 UNIDROIT Convention - Cultural Property at the Crossroads of Rights and Interests". This anniversary will provide an opportunity to reflect on the current status of the process set up by the Convention, which aimed to strengthen international cultural cooperation and to maintain a fair place for legitimate trade and inter-State agreements in cultural exchanges.

5. The programme of the Conference (to date) is set out in the Annexe to this document. The presentations will then be published in a book, which will also be supplemented by further papers.

6. UNIDROIT also plans to organise a joint online meeting for African countries with UNESCO, which shall be celebrating the 50<sup>th</sup> anniversary of the 1970 Convention this year, with the support of the African Union. This meeting should take place in the last quarter of 2020. The National Heritage Board of Latvia has planned an online meeting to celebrate the two anniversaries, which will be held online on 24 November with the participation of UNIDROIT.

7. Other institutions and universities had chosen to celebrate the 25<sup>th</sup> anniversary of the UNIDROIT Convention by means of conferences (often in conjunction with the 50<sup>th</sup> anniversary of the 1970 Convention) but these events have had to be cancelled, sometimes postponed to a later date, due to the COVID-19 pandemic and the closure of borders. Such events include, for example, the annual conference of the *Maastricht Centre for Arts and Culture, Conservation and Heritage (MACCH)*, which was originally scheduled in March 2020 in conjunction with the European Fine Arts Fair (TEFAF), entitled "Trust and Transparency in the World of Art and Heritage and its Practices"; the Second Brazilian Conference on Law and Art, to be held in João Pessoa from 20 to 22 May 2020, as well as the "Symposium on New Directions in the Fight against Cultural Property Crime", co-organized by the Criminal Justice Center of Queen Mary University in London, the Department of Sociology of the University of Virginia, the Division of Social Sciences of Mount Saint Mary College and the Centre for Heritage of the University of Kent, to be held on 13 and 14 July 2020 and postponed to 2021.

## **C. Academic Project on the 1995 UNIDROIT Convention**

8. As of August 2020, the [Academic Project](#) (UCAP) has 15 institutional partners, 33 individual partners, mainly academic experts in cultural heritage law, who formulate [project proposals](#) related to the Academic Project.

9. For the activities carried out in the framework of UCAP (by UNIDROIT or its partners), see Annual Report 2019 (C.D. (99) B.2)

10. After the celebration of the 25<sup>th</sup> anniversary of the Convention, UNIDROIT intends to set up the *Legal Advisory Group* of UCAP and to launch projects such as the elaboration of a comparative document between the various instruments dealing with restitution of cultural property.

11. The UNIDROIT Foundation has expressed its intention to support the work carried out by UNIDROIT in the field of the protection of cultural property, and the UCAP in particular, whose website it has financed. The Foundation actively raises funds to carry out certain activities, such as organising an annual conference hosted by an academic partner on the themes of the Convention. It has also proposed to finance feasibility studies on new tools that could enrich the international community and protect the art market. For example, a student is currently working on a feasibility study on the development of a voluntary electronic register on transactions involving cultural property (methodology, purpose, maintenance, cost, benefits, challenges, etc.). The first conclusions of this study may be presented at the 4<sup>th</sup> workshop on Best Practices of Electronic Registry Design and Operation (in the framework of the BPER Project on Collateral Registries of the Foundation) to be held in Rome on 9 September 2020.

12. UNIDROIT continues to welcome students who carry out internships on the international protection of cultural property. In particular, every year UNIDROIT welcomes students from (1) the Tulane Siena Institute for International Law, Cultural Heritage and the Arts - a joint co-operation project between the Faculty of Law of the University of Siena and the Faculty of Law of Tulane University, (2) Master 2 in Cultural Heritage Law at the Jean Monnet Faculty of Law of the University of Sceaux, as well as (3) students of the Master 2 *Parcours marché de l'art* (Ecole du Louvre). The students' [internship reports](#) are generally posted online on the UCAP website.

#### **D. UNIDROIT and its partners**

13. UNIDROIT has continued its co-operation with its usual partners. Thus, UNIDROIT has been closely involved in the statutory meetings relating to the 1970 UNESCO Convention (5<sup>th</sup> Assembly of States Parties and 7<sup>th</sup> Subsidiary Committee of the Meeting of States Parties - UNESCO Headquarters, 21-23 May 2019) as well as in the capacity-building events that UNESCO has organised on the fight against illicit traffic in cultural property in several regions of the world (see Annual Report 2019, (C.D. (99) B.2).

14. UNIDROIT has also contributed to the finalisation of a guide on a methodology for future training workshops on the fight against illicit trafficking of cultural objects at the sub-regional and national levels in South-East Asia ("[Countering illicit trafficking of cultural objects in Southeast Asia: Capacity-building guide and methodologies](#)") published in 2020. The publication contains modules on various topics related to the fight against illicit trafficking to assist interested agencies in developing content-rich and methodologically effective training programmes and workshops.

15. Finally, on 26 June 2020, UNIDROIT was invited to participate in the *Expert Meeting on Illegal Excavations and Online Trade during Covid-19*, the objectives of which were to better understand (a) illicit trafficking in cultural property during the current Covid-19 crisis; (b) the process of online trade and how to better regulate it; (c) the measures taken by the different actors to strengthen the fight against illicit trafficking in cultural property; and (d) the possible contributions of each actor to fight against this scourge in the future.

16. UNIDROIT has continued its collaboration with ICCROM (more particularly with the ICCROM Office in Sharjah, United Arab Emirates) in the framework of the project on the strengthening of legal and institutional frameworks for the protection of cultural heritage in the region, through the

development of regional co-operation and national capacity building, in particular by working on the development of online courses and webinars.

17. UNIDROIT was invited to participate in the *International Virtual Conference on the Fight against Illicit Traffic in Cultural Property and its Restitution*, held on 28 July 2020 by the Islamic World Educational, Scientific and Cultural Organization (ICESCO), in cooperation with the Egyptian Ministry of Tourism and Antiquities, to discuss the seriousness of trafficking in cultural property and the upsurge in online sales of stolen property. Ministers in charge of heritage in several countries stressed the need to update national laws and better implement international agreements to better respond to the contexts of conflict and instability in some countries of the Islamic world. A follow-up conference will be organized at the invitation of Egypt in the coming months.

18. UNIDROIT has strengthened its links with the judiciary in various countries and in particular in Latin America, by associating itself with a webinar organised on 16 June 2020 by the [EL PAaCTO](#) programme on the theme “Illicit Trafficking in Cultural Property in Latin America” and attended by representatives of the public prosecutors’ offices of eleven partner countries of the programme (Argentina, Bolivia, Chile, Costa Rica, Ecuador, El Salvador, Mexico, Panama, Paraguay, Peru and Uruguay), as well as by the Public Prosecutor’s Office of Spain. The Secretary-General of UNIDROIT participated in the opening session and Mr Jorge Sánchez Cordero, member of the Governing Council, participated in the entire online meeting.

19. The webinar included the presentation of a research and analysis paper entitled “Diagnosis of the situation and tools in the fight against offences related to illicit trafficking in cultural property”, including the 1995 UNIDROIT Convention. Among the conclusions of the webinar, particular emphasis was placed on (1) the need to develop common rules to protect cultural heritage with unified types of crimes between countries that allow for the international restitution of objects, which has been very complicated so far, (2) the need to improve mechanisms for international judicial cooperation, (3) the need to strengthen cooperation networks, both formal and informal, (4) the need, because of the link between this traffic and money laundering, to oblige certain parties involved in the purchase and sale of works of art to report themselves to the competent authorities. On this basis, El PAaCTO undertakes to update the “Diagnosis” by expanding the number of countries analysed and adding the relevant national and international court decisions on the subject.

20. UNIDROIT was invited to participate in the conference organised to celebrate the 50<sup>th</sup> anniversary of the [Comando Carabinieri Tutela Patrimonio Culturale](#) entitled “International Conference on the Protection of Cultural Heritage - 50 Years of Experience Looking to the Future” (Rome, 24 and 25 October 2019). The Conference analysed the results and successes achieved through surveys, cultural diplomacy and international instruments such as the 1995 UNIDROIT Convention, and the cooperation of other international police forces.

21. Finally, UNIDROIT was invited to participate in various capacity-building workshops or other expert meetings organised by its partners in 2019 (see Annual Report 2019, C.D. (99) B.2). In 2020, UNIDROIT participated in a regional seminar organised by UNESCO in Jamaica (2 to 5 March 2020) in the presence of representatives of the Bahamas, Barbados, Belize, Grenada, St. Kitts and Nevis, St. Lucia and Suriname. Jamaica reiterated its intention to accede to the 1995 Convention.

## **II. PRIVATE ART COLLECTIONS**

22. As this topic, which is included in the Work Programme 2020-2022 with low priority, is closely linked to the 1995 UNIDROIT Convention, UNIDROIT has continued to examine the subject and to raise awareness among private collectors about ethical acquisition.

23. UNIDROIT was invited to participate in the “Exclusive collector forum 2019: what to look for when buying a work of art” organised by a leading auction house, The River City Bangkok, in co-operation with UNESCO. The event was organized on the eve of a major auction of Asian works of art.

24. The Conference organised by the University of Opole (UNESCO Chair in Cultural Property Law), the University of Gdansk and UNIDROIT in Gdansk devoted a specific session, on 7 June 2019, to “Private Collections: Historical and Legal Perspective” in which the very notion of collection (and the importance of integrity) was discussed, as well as the legal framework in Brazil, Germany, Spain, Northern Macedonia and Poland. The proceedings of this conference are still work in progress.

25. There is an increasing interest in the question of archaeological and ethnographic objects, and more broadly works of art, present in collections well before the 1970s, but for which there are neither archives nor material evidence of their existence in those collections before that date. While it is understood that any acquisition of this type of property must be made in accordance with national laws and international conventions, what should be done with works without archives, what should be done with them if their holders wish to move, sell or lend them, and what should be envisaged for the future in this regard are all questions that merit consideration.

26. Given that, in the event of a sale in particular, the collector will prefer a discreet solution, i.e. by private sale, which encourages the clandestine market and results in a total lack of transparency detrimental to the objects, reflection should be initiated and a reasonable solution found for the presently unsatisfactory situation. This is why the University of Geneva, UNIDROIT and the Fondation Gandur pour l’Art are to organise a colloquium in Geneva in February 2021 on the subject of “Orphan Works”. On the basis of the conclusions of this first meeting, a follow-up could be envisaged in Rome, at the end of 2021, with the setting up of a working group on “Orphan Works”.

### **III. ACTION TO BE TAKEN**

27. *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.*

## ANNEXE



**The 1995 UNIDROIT Convention –  
Cultural objects at the crossroad of rights and interests**

**THURSDAY 8 OCTOBER 2020**  
**9.30 – 17.30**

**OPENING SESSION**

**INTRODUCTION – RESTITUTION AND RETURN, THE STRENGTH OF UNIFORM LAW**

***Impact of Uniform Laws on the Protection of Cultural Property – the 1995 Convention***

**Prof. Toshiyuki Kono** | Distinguished Professor, Kyushu University, President of the International Council of Monuments and Sites (ICOMOS)

**SESSION I – CULTURAL OBJECTS: PROTECTION AND MARKET**

***Striking a fair balance between cultural heritage protection and private ownership through shared responsibility***

**Marie-Sophie de Clippele** | Postdoctoral Researcher F.R.S.-FNRS and Lecturer at Université Saint-Louis – Brussels, Faculty of Law

***The core question of “due diligence”***

**Marc-André Renold** | Professor of art and cultural heritage law and holder of the UNESCO Chair on “The International Law of the Protection of Cultural Heritage” at the University of Geneva, Director of the Art-Law Centre

***The regulation of online sales***

**Ana Filipa Vrdoljak** | Professor, Faculty of Law, University of Technology Sydney / UNESCO Chair of International Law and Cultural Heritage, President, International Cultural Property Society

***Making the resolution of cultural heritage disputes more effective - time limitations under the UNIDROIT Convention***

**Andrzej Jakubowski** | Assistant Professor at the Institute of Law Studies, University of Opole (Poland), Chair of the ILA Committee on Participation in Global Cultural Heritage Governance

***The need for effective patrimony laws – the Model Provisions on State Ownership of Undiscovered Cultural Objects***

**Patty Gerstenblith** | Distinguished Research Professor, Director, Center for Art, Museum and Cultural Heritage Law, DePaul University College of Law (De Paul)

***Non retroactivity but no legitimacy***

**Vincent Negri** | Senior Researcher at the Institute of Politics Social Sciences, Ecole Normale Supérieure Paris-Saclay

**Q & A  
& Lunch Break**

**SESSION II –  
INTERPLAY AND INTERDEPENDENCE OF RULES AND CULTURAL INSTRUMENTS**

***The 1995 UNIDROIT Convention and .....***

***... the UNESCO 1970 Convention and other UNESCO cultural conventions***

**Folarin Shyllon** | Professor, Ibadan University

***... the EU Law Instruments against the Illicit Trafficking of Cultural Property***

**Sophie Vigneron** | Director Centre for Heritage, Co- Director Graduate Studies (taught), Reader, Kent Law School, Eliot College, University of Kent

***... the Council of Europe - Nicosia Convention and other Council of Europe cultural conventions***

**Jérôme Fromageau** | President of the International Society for Research on Art and Cultural Heritage Law (ISCHAL)

***..... the African Union instruments***

**Angela Martins** | Head of Culture Division, Social Affairs Department African Union Commission

***... out-of-court settlement of cultural property disputes***

**Irini Stamatoudi** | Professor, University of Nicosia, Cyprus

***The role of UNIDROIT and the oversight mechanism***

**Marina Schneider** | Principal Legal Officer and Treaty Depositary, UNIDROIT

**Q & A**

**FRIDAY 9 OCTOBER 2020**

**9.30 – 13.00**

**SESSION III – CHALLENGES AND FUTURE STEPS**

***The 1995 UNIDROIT Convention and access to justice***

**Augustin Lazăr** | Professor, University “1 Decembrie 1918”, Alba Iulia, Former Prosecutor General of Romania

***The 1995 UNIDROIT Convention and immunity for seizure***

**Mariachiara Malaguti** | Full Professor of International law at Università Cattolica Sacro Cuore (Milan/Rome), Attorney at law

***The enforcement of the 1995 UNIDROIT Convention in China – achievements and shortcomings***

**Wang Yunxia** | Professor, Director, Institute of Cultural Heritage Law, School of Law, Renmin University of China

***The work that remains to be done, private collections***

**Jorge Sanchez Cordero Davila** | Director of the Mexican Center of Uniform Law, Vice President of the International Academy of Comparative Law

***The Antiquities Trade: A reflection on the past 25 years***

**Joanna van der Lande** | Chairman, Antiquities Dealers’ Association  
**Martin Wilson** | Chief General Counsel, Phillips, London

***The 1995 UNIDROIT Convention and the role of the civil society***

**Lynda Albertson** | Chief Executive Officer, Association for Research into Crimes against Art (ARCA)

***The international community must remain vigilant and the political will must keep growing***

**Gilles de Kerchove** | EU counter terrorism coordinator [tbc]  
**Ignacio Tirado** | Secretary General, UNIDROIT

**Q & A**

**CLOSING SESSION**

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**[The 1995 UNIDROIT Convention Academic Project](#)**