

UNESCO and UNIDROIT Cooperation in the Fight Against Illicit Traffic in Cultural Property

CONFERENCE CELEBRATING THE 10TH ANNIVERSARY OF THE *UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS* – UNESCO, Paris (France) – 24 June 2005 – SUMMARY REPORT

In celebration of the 10th anniversary of the *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*, the United Nations Educational, Scientific and Cultural Organization (UNESCO) organized a Conference entitled “UNESCO and UNIDROIT – Cooperation in the Fight against Illicit Traffic in Cultural Property” at UNESCO Headquarters, Paris (France), on 24 June 2005.

As the elaboration process of the 1995 UNIDROIT Convention was initiated by UNESCO to complement the 1970 UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (hereinafter: “the UNESCO 1970 Convention”) from the point of view of private law, the 10th anniversary of the 1995 UNIDROIT Convention provided a timely occasion to acknowledge the progress made in the ratification and implementation of both Conventions over the last ten years, to review the situation of illicit trafficking and to discuss in detail the measures that must be taken to derail it. UNESCO invited to the Conference distinguished speakers and experts to address the topic from both the legal and practical standpoints.

The Conference was opened by UNESCO Director-General, Mr Koïchiro MATSUURA, who delivered the following address:

“Ladies and Gentlemen,

I am very pleased and honoured to welcome you all to this one-day Conference on ‘UNESCO and UNIDROIT – Cooperation in the Fight against Illicit Traffic in Cultural Property’ by which we are celebrating the 10th anniversary of the adoption of the *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*.

The speakers and participants gathered here today are drawn from both the legal and practical sides of this question. We are very appreciative of the willingness of the following persons to be our guest speakers: Professor Paul LAGARDE from the Université de Paris I, Mme Marina SCHNEIDER from UNIDROIT, Mr Karl-Heinz KIND from INTERPOL and Mr John ZVEREFF from ICOM. Also among us are participants and UNESCO partners from the European Commission, the U.S. State Department and the Federal Bureau of Investigation, the Italian Carabinieri, Europol, the Department of Canadian Heritage and a number of other specialists in this field. A warm welcome to you all.

The 10th Anniversary of the UNIDROIT Convention provides us with a valuable opportunity for fruitful exchange and discussion that will lead towards more effective action through increased cooperation. This phrase – ‘more effective action through increased cooperation’ – is the main theme of my remarks to you this morning.

Sadly, illicit trafficking in cultural property continues to grow worldwide. The theft, illegal exportation, pillaging and looting of cultural property are widespread; indeed, the scale of the problem is staggering.

While this situation is a sign that the nexus of supply and demand has not been broken, it does not mean that measures to counteract illicit trafficking are powerless or that no one

cares. The steady increase in the number of States Parties adhering to the relevant international conventions, the growing number of requests for the return or restitution of cultural property and the greater importance States are giving to the protection of their cultural heritage are positive trends from which we should take heart. In addition, there is growing public awareness of the problem, though more needs to be done in this area.

The removal of cultural property from its countries of origin is not a recent invention, but the creation of relevant international instruments is; indeed, it has taken place only in the last 50 years. It was UNESCO that brought these instruments into being. They include the *1954 Protocol to the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict*, the *UNESCO 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property*, and several pertinent Recommendations. Importantly, the *1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*, being the most recent instrument to grapple with today's genus of illicit trafficking, is the result of a fruitful cooperation between UNESCO and the International Institute for the Unification of Private Law – UNIDROIT.

The 1970 UNESCO Convention responded to the urgent need of countering thefts and illicit exports and imports that were escalating, particularly from the source countries of the South, whilst in the North, private collectors, museums and, sometimes, official institutions were increasingly being offered cultural objects of unidentified or doubtful origin. The Convention currently has 107 States Parties, including important art market States such as France, Italy, Switzerland, the United Kingdom, the United States and Japan.

UNESCO also played a key role in the adoption of the *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects* (1995). While UNESCO does not administer the 1995 UNIDROIT Convention, we strongly support it. Indeed, after having observed the implementation and impact of the 1970 Convention over a twenty-year period, UNESCO commissioned UNIDROIT to study the private law aspects of return and restitution. The resultant UNIDROIT Convention is complementary to the UNESCO 1970 Convention.

The UNIDROIT Convention, still relatively young, currently has 24 States Parties, which is a good result after ten years of existence in a field where art lobbies are active and sometimes powerful. The UNIDROIT Convention expands the possibilities for the return or restitution of stolen or illegally exported cultural objects to the original owners – be they States or individuals.

UNESCO is also the source of important measures complementary to the 1970 and 1995 Convention, including the adoption and promotion of the *International Code of Ethics for Dealers in Cultural Property*. In addition, UNESCO runs regional workshops to discuss implementation of the 1970 and 1995 Conventions, and provides governments with the necessary data on networks and partners in order to return stolen property and, more importantly, deter traffickers.

However, despite all these efforts and government attempts to control the phenomenon and rouse public opinion, illicit trafficking continues to thrive. The culprits range from simple villagers digging in ancient burial grounds at night to members of well-organized criminal rings; at the same time, auction houses, museum curators, dealers, collectors or amateurs are on the lookout for whatever they can find, sometimes overlooking the questionable provenance of the item.

While no country is entirely free of this problem, conflict and post-conflict situations leave cultural heritage especially vulnerable. States unable to enforce adequate controls and security measures make easy prey for looters and middlemen. Local populations who have lost their usual livelihoods are desperate for income and easily turn to marketable items of cultural heritage in order to provide for their families.

This scenario is a familiar one in such countries as Cambodia, Afghanistan and Iraq. Indeed, you may note that today is the third and final day of the second meeting of the International Coordination Committee for Safeguarding of the Cultural Heritage of Iraq being held here at UNESCO Headquarters. The problem of illicit trafficking of Iraqi cultural property and how to devise and implement effective measures to combat it have figured prominently in the Committee's deliberations.

UNESCO is convinced that greater emphasis needs to be placed on heritage education to enable all generations, especially the young, to understand what is at stake and, with that knowledge, to become active and committed defenders of the heritage. This is a task of UNESCO, its Member States and partners, including the media. The global media coverage of the looting of the Baghdad Museum brought home the fact that it was not just Iraq's heritage that was being pillaged and stolen but the heritage of the whole world. This media coverage helped to create the context in which the United Nations Security Council decided to adopt a specific Resolution 1483 which in part directly addresses the issue. But the media's role, along with that of other partners, must be proactive and diligent. Through cooperation, our separate efforts and resources can be multiplied several times over.

Diligence and cooperation need adequate channels and mechanisms in order to get results. UNESCO is encouraging its Member States to integrate into their national policies on culture the essential practical measures needed to effectively combat illicit trafficking – such as inventories, the Object ID standard, control legislation and export certificates, museum security, specialized police and customs networks and training, and registration and monitoring of dealers. We need to work together to make the most of these tools, several of which will be discussed in this conference. In addition, actions by States should include enacting good laws and enforcing strong sanctions; developing bilateral and multilateral agreements; establishing regional cooperation networks; and increasing collaboration with organizations such as INTERPOL (International Criminal Police Organization), ICOM (International Council of Museums) and WCO (World Customs Organization).

In conclusion, let me stress that UNESCO - through its standard-setting action carried out in parallel with its operational action – has endeavoured to alert decision-makers to the compelling need to ratify existing international instruments as an essential condition to ensure the sustainable development of peoples and societies.

International cooperation will be made truly meaningful through a worldwide network united in the purpose of assuming shared responsibility for a common heritage.

I wish you every success in your deliberations during this conference, which I now declare open.

Thank you."

Mr Matsuura's address was followed by a presentation by UNESCO Assistant Director-General for Culture, Mounir BOUCHENAKI. Here, the importance of increasing public awareness of the problem of illicit trafficking as well as ratification and improved implementation of the two Conventions were emphasized, as was the need for diligence and cooperation in the struggle. UNESCO's support and promotion of the UNIDROIT Convention was especially highlighted.

Thereafter Professor Paul LAGARDE, Professor Emeritus, Université de Paris I (Panthéon-Sorbonne), presented the legal difficulties generally encountered at the international level in cases to recover stolen or illicitly exported cultural property where the UNESCO and UNIDROIT Conventions do not apply. This presentation made clear the added value of these two Conventions for the cause of restitution of property of an illicit provenance. Professor Lagarde provided an overview of relevant cases and demonstrated the wide variety of outcomes that

private (international) law litigation produces in this field, notably since national laws are not uniform and stolen cultural property usually – and illegally exported property always – crosses borders, thereby bringing an international dimension to the factual and legal stances of each case. This international factor benefits sophisticated criminals who act with a view to: (i) hindering the efforts of law enforcement agencies in gathering relevant evidence from a criminal law perspective; and (ii) selecting a country where the applicable legislation would facilitate the sale of the property in that, from a private law perspective, innocent (good faith) purchasers are protected and acquire title while the original owners are not and lose title. Cases referred to by Professor Lagarde included *Attorney-General of New Zealand vs. Ortiz and Others*, *Republic of Ecuador vs. Danusso and Others*, *Koerfer vs. Goldschmidt*, *Kunstsammlungen zu Weimer vs. Elicofon*, and *Winkworth vs. Christie, Mason & Woods Ltd. and Another*.

The next presentation was by Guido CARDUCCI, Chief of the UNESCO International Standards Section, on the UNESCO 1970 Convention and the related UNESCO and European Union instruments. Following on Professor Lagarde's presentation which demonstrated the lack of a uniform outcome in private international law cases, Mr Carducci discussed the value of the UNESCO 1970 Convention – the first specific international normative instrument that, where applicable and for certain provisions, provides a uniform response to this issue. Building on the historical developments in this field, Mr Carducci first covered the 1954 Hague *Convention for the Protection of Cultural Property in the Event of Armed Conflict*. He particularly emphasized its First Protocol, which specifically addresses the removal, export and restitution of cultural property from and to parties to an armed conflict or during occupation.

The dual preventive/cooperative measures (inventories, export certificate etc. ...) and return aspects encompassed in the UNESCO 1970 Convention were then reviewed. Mr Carducci specifically mentioned that under the Convention, the recovery and return of objects stolen from a museum or a religious or secular public monument or similar institution occurs via diplomatic channels between States Parties and is limited to objects documented as appertaining to the inventory of the institution involved; in this connection, he called attention to the importance of inventorying collections.

Mr Carducci discussed the 1993 Council of the European Communities *Directive 93/7 on the return of cultural objects unlawfully removed from the territory of a Member State*, and the 1992 European Union Council *Regulation 3911 on the export of cultural goods*. He stressed the value of regional initiatives such as these to fight illicit trafficking in cultural objects, recalling, however, that only genuinely international and not regional instruments can effectively limit such trafficking, which is definitively international in nature. He also pointed out that the Directive is limited to national treasures unlawfully exported from the territory of a Member State rather than covering all, or a broader range of, cultural objects stolen or illegally exported. Finally, he explained how UNESCO, after observing the application of the 1970 Convention for nearly two decades, invited the International Institute for the Unification of Private Law (UNIDROIT) to initiate the elaboration of an instrument to address the private law aspects of return and restitution, which are not covered by the UNESCO 1970 Convention.

Ms Marina SCHNEIDER from UNIDROIT then went on to explain the specific aspects of the UNIDROIT 1995 Convention which, she announced, now has 25 States Parties. Her presentation began with how the negotiations on the Convention's text were initially based on that of the UNESCO 1970 Convention, as well as on the need to find a compromise position between those preferring not to hamper free trade and those wishing to protect the rights of original owners who had lost possession of cultural objects (the two regimes being distinct).

Concerning stolen cultural property, Ms Schneider highlighted the clear position of the UNIDROIT Convention that restitution must be made of stolen objects, including objects unlawfully excavated or lawfully excavated but unlawfully retained, if the law of the State where the excavation took place considers such objects stolen. However, claims for return or restitution must be made within the set prescription periods. She further explained the criteria that a judge could refer to when determining, in a case of stolen or illegally exported cultural property, whether the possessor should receive fair and reasonable compensation when surrendering the object (in the case of stolen objects, whether due diligence was exercised when acquiring the object).

Finally, the procedure to file a claim under the Convention was discussed, clarifying that States (Parties) as well as individuals (in the case of a stolen object) may have recourse through the UNIDROIT Convention, and that claims for return may be brought before the courts or other competent authorities of the Contracting State where the cultural object is located. As far as illicitly exported objects are concerned, only a State can claim their return under specific conditions (Article 5).

In the next two presentations, both Mr Carducci and Ms Schneider gave a very informative overview of the complementarity of the UNESCO 1970 and the UNIDROIT 1995 Conventions, and of the reality and the misleading readings of both instruments. It was pointed out that both Conventions use the same definition and categories of cultural objects and both do not operate retroactively. The UNESCO 1970 and the UNIDROIT 1995 Conventions in no way limit licit trade in cultural objects and address only objects of illicit provenance.

The fact was stressed that the UNIDROIT Convention provides for the restitution of all stolen cultural objects, not only those that have been inventoried (as in the 1970 Convention), and that it makes provision for the return of illegally exported cultural objects under specific conditions (the 1970 Convention does not provide for this *per se*). The possibility for individuals, States or entities to bring claims under the UNIDROIT Convention was discussed, and it was pointed out that although under the UNESCO 1970 Convention States Parties can request the return of objects primarily through the diplomatic channel (Article 7(b)), the 1970 Convention does make allowance for States Parties to admit actions for recovery of stolen items brought by or on behalf of the rightful owner if consistent with the laws of the States concerned (Article 13).¹

In the afternoon, Mr Carducci gave an overview of the current exceptional international legal framework for the restitution of Iraqi cultural property. He pointed out that neither the United States nor the United Kingdom were States parties to the 1954 Hague Convention and this instrument was therefore not applicable *ex se*. He focused on two international and European *ad hoc* measures that confirm the possible interactions at different levels of the international community to protect cultural property. These are the United Nations Security Council Resolution 1483 of 22 May 2003,² and the EU Council Regulation 1210/2003 of 7 July 2003.

¹ For a more complete comparison between the two Conventions, see the Information Note available on the UNESCO web site: <http://www.unesco.org/culture/laws/illicit>

² Paragraph 7 of UN Security Council Resolution 1483 (2003) reads:

“7. Decides that all Member States shall take appropriate steps to facilitate the safe return to Iraqi institutions of Iraqi cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from the Iraq National Museum, the National Library, and other locations in Iraq since the adoption of resolution 661 (1990) of 6 August 1990, including by establishing a prohibition on trade in or transfer of such items and items with respect to which reasonable suspicion exists that they have been illegally removed, and calls upon the United

Mr Karl-Heinz KIND from INTERPOL delivered a presentation on illicit trafficking in cultural property from a police perspective. He reviewed the INTERPOL network of National Central Bureaus that centralize all information of international interest, and emphasized the difficulty of obtaining national statistics on art theft committed in each INTERPOL Member State. Mr Kind discussed the various tools used by INTERPOL to circulate information, including a telecommunications network, posters of the most wanted Works of Art, a computerized works of art database, the "Stolen Works of Art" CD Rom, and the INTERPOL website (<http://www.interpol.int>). Cooperation between UNESCO and INTERPOL in this field, Mr Kind stressed, remains very close; he highlighted in particular the joint efforts taken on behalf of the cultural heritage of Afghanistan and Iraq.

Mr John ZVEREFF, Secretary-General of the International Council of Museums (ICOM), spoke next and presented the UNESCO-endorsed "Object ID Standard", a recognized standard facilitating the inventorying of collections as well as the identification of cultural objects by means of core criteria to be used to assist the tracing of stolen or lost cultural property. UNESCO and ICOM distribute the Object ID checklist of 9 categories in a variety of languages, and additional information can be found on the ICOM web site (<http://www.icom.org>). Mr Zvereff also discussed related work carried out by ICOM in the fight against illicit trafficking, such as ICOM's "Red List" and "100 Missing Objects" publication series, and the ICOM revised "Code of Ethics for Museums". He terminated with a round-up of progress made with the production of an "Afghanistan Red List" publication.

Ms Rochelle ROCA-HACHEM from UNESCO, after stressing UNESCO's support of the Object ID standard, went on to present the UNESCO "Cultural Heritage Laws Database" (www.unesco.org/culture/natlaws) – a new development to fight against illicit trafficking by making available to the public a website where the national legislation protecting cultural heritage of all States, including their import/export regulations, can be consulted. Illicit trafficking being an international problem, it is essential that the relevant national legislation be readily available to organizations, institutions, private entities or individuals having a legal question concerning an object that may have been stolen or pillaged, and/or illegally exported, imported or acquired. In such a case, speedy consultation of the current laws of the source State is imperative (for example, to determine whether the source State requires an export certificate for such cultural objects, or vests ownership upon the State of as yet unexcavated – or illicitly excavated – cultural property).

Ms Roca Hachem stressed that States, law-makers, lawyers, police and customs officers as well as art and antiquities dealers, especially in the international art market, will benefit from the Database, since it will facilitate the checking of the legal background of cultural objects for good faith purchasers, while persons engaging in illicit traffic will find it more difficult to claim ignorance or non-availability of the legislation in force. In addition to the legislation, contact information and web links are also provided for each State. Ms Roca Hachem informed her audience that the Database currently has legislation from 25 States posted on it and is regularly updated. She also urged Member States to make their legislation available in electronic format for inclusion in the Database, and particularly emphasized the need for official translations of legislation into English and/or French.

The meeting was concluded by a presentation by Mr Carducci of the "Model Export Certificate for Cultural Objects" developed by UNESCO and the World Customs Organization.

Nations Educational, Scientific, and Cultural Organization, Interpol, and other international organizations, as appropriate, to assist in the implementation of this paragraph."

The provision in the UNESCO 1970 Convention concerning the introduction of an appropriate export certificate was mentioned, as was the need for exports certificates to be harmonized as much as possible to facilitate the work of customs agents in all countries. This Model Export Certificate was specifically devised for cultural objects and is modelled in part on the certificate elaborated by the European Union. A joint UNESCO-WCO letter is being issued to UNESCO and WCO Member States with a CD-Rom containing the Model Export Certificate and its Explanatory Notes in six languages.³ States are invited to adopt the Model Export Certificate in whole or in part.

The Conference was well and actively attended by representatives from the various permanent delegations at UNESCO, the European Commission, the U.S. State Department and the Federal Bureau of Investigation, the Italian *Carabinieri*, Europol, the Department for Culture, Media and Sport in the United Kingdom, the Department of Canadian Heritage, and others. States already Parties to either, or both, of the Conventions were reminded of their functioning, while participants from States not yet Parties to them had an opportunity to obtain relevant information to facilitate ratification. No recommendations were adopted.

Rochelle Roca-Hachem *

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³ Also available on the UNESCO web site: <<http://www.unesco.org/culture/laws/illicit>> under Section III Action of other Nature.