

THE 1995 UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS



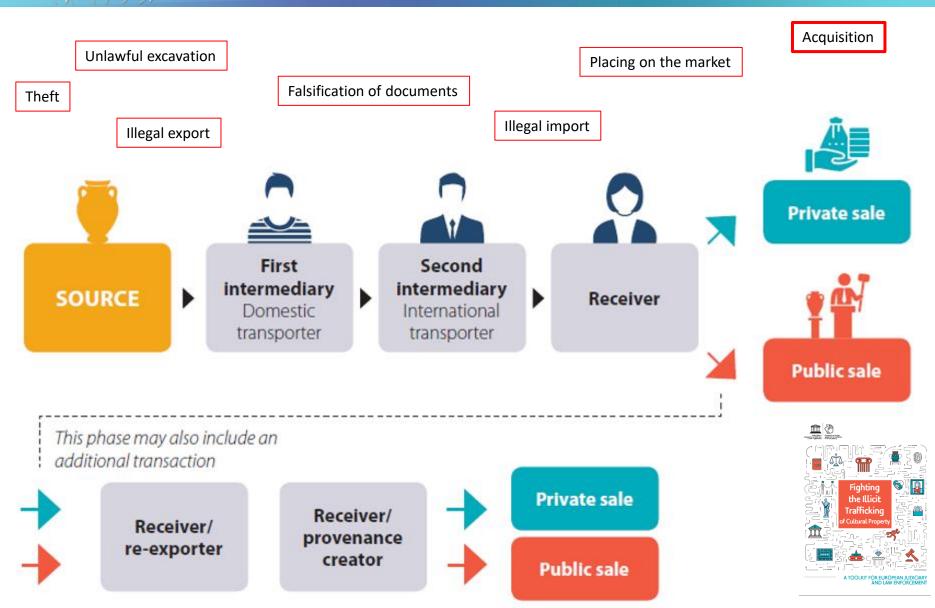
THE 2011 UNESCO – UNIDROIT MODEL PROVISIONS ON STATE OWNERSHIP ON UNDISCOVERED CULTURAL OBJECTS

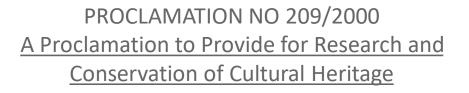


UNIDROIT International programme for Law and Development

Rome – 21 June 2023









JNIDROIT

24. Trading in Cultural Heritage

1/ No person may engage in the purchase and sale of cultural heritage for commercial purposes

Trade prohibited in Ethiopia but other countries allow for trade in cultural objects



THE ART MARKET legal legal and ethical



- line of legality - line of leg

THE BLACK MARKET

DAMAGE AND DESTRUCTION INTENTIONAL



THEFT AND LOOTING





MONEY LAUNDERING

ILLICIT TRAFFIC

TERRORISM-FINANCING

@Marina Schneider



UNIDROFT INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

<u>CHARTER OF THE UNITED NATIONS</u> CHAPTER VII: ACTION WITH RESPECT TO THREATS TO THE PEACE, BREACHES OF THE PEACE, AND ACTS OF AGGRESSION

February 12, 2015

LEGALLY BINDING FOR ALL UN MEMBER STATES

adopted the **Resolution 2199** that condemns the destruction of cultural heritage and asks Member States to adopt measures to <u>counter illicit trafficking</u> of antiquities and cultural objects from Iraq and Syria and <u>allow for their safe return</u> to the Iraqi and Syrian people.

December 17, 2015

adopted **Resolution 2253**, which builds on Resolution 2199 by highlighting the <u>importance of</u> <u>developing strong relationships with the private sector</u> in countering the financing of terrorism, the laundering proceeds of crime, and <u>strengthening due diligence processes</u>.

Links with the 1995 UNIDROIT Convention







United Nations Security Council adopted

Resolution 2347

March 24, 2017,



Condemns the unlawful destruction of cultural heritage, including the destruction of religious sites and artefacts, and the looting and smuggling of cultural property from archaeological sites, museums, libraries, archives, and other sites, notably by terrorist groups

7. Encourages all Member States that have not yet done so to consider ratifying the **Convention for the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954 and its Protocols**, as well as other relevant international conventions;

11. Urges Member States to develop, including, upon request, with the assistance of UNODC, in cooperation with UNESCO and INTERPOL as appropriate, **broad law enforcement and judicial cooperation** in preventing and countering all forms and aspects of trafficking in cultural property and related offences that benefit or may benefit organized criminal groups, terrorists or terrorist groups

19. Affirms that the mandate of United Nations peacekeeping operations, when specifically mandated by the Security Council and in accordance with their rules of engagement, may encompass, as appropriate, assisting relevant authorities, upon their request, in the protection of cultural heritage from destruction, illicit excavation, looting and smuggling in the context of armed conflicts, in collaboration with UNESCO, and that such operations should operate carefully when in the vicinity of cultural and historical sites;

20. Calls upon **UNESCO**, **UNODC**, **INTERPOL**, **WCO** and other relevant international organizations, as appropriate and within their existing mandates, to assist Member States in their efforts to prevent and counter destruction and looting of and trafficking in cultural property in all forms;



PROTECTION OF CULTURAL PROPERTY A shared vision and a joint responsibility



National legislations

Regional instruments

Bilateral agreements

International conventions

Code of ethics...



South Sudan, Constitution 2011 (revised 2013)

Article 38(e) - All levels of government shall: protect cultural heritage, monuments and places of national, historic or religious importance from destruction, desecration, unlawful removal or illegal export.

Rwanda's Constitution of 2003 with Amendments through 2015

Article 47. Safeguard and promotion of national culture

The State has the duty to safeguard and promote national values based on cultural traditions and practices so long as they do not conflict with human rights, public order and good morals.

The State also has the duty to preserve the national cultural heritage.

Constitution - Seychelles

Article 39(2) - The State undertakes to take reasonable steps to ensure the preservation of the cultural heritage and values of the Seychellois people.



Constitution of the Federal Democratic Republic of Ethiopia

Article 39. Rights of Nations, Nationalities, and Peoples

2. Every Nation, Nationality and People in Ethiopia has the right to speak, to write and to develop its own language; to express, to develop and to promote its culture; and to preserve its history.

Article 91. Cultural Objectives

2. Government and all Ethiopian citizens shall have the duty to protect the country's natural endowment, historical sites and objects.

3. Government shall have the duty, to the extent its resources permit, to support the development of the arts, science and technology.

Uganda, Constitution 1995 (amended in 2018)

Article XXV. Preservation of public property and heritage

The State and citizens shall endeavour to preserve and protect and generally promote the culture of preservation of public property and Uganda's heritage





ETHIOPIA – national law protecting

cultural property

Proclamation N.229 pf 1966 to provide for the protection and preservation of antiquities	1966	Protected Area or Good	Cultural Movable Heritage - Cultural Property	ARE CULTU
Proclamation n. 36/1989 to provide for the study and protection of antiquities	1989		Cultural Movable Heritage - Cultural Property	OBJECTS S PROPERTY CAN CULTU OBJECTS B PRIVATELY OWNED?
Proclamation 209/2000 to provide for research and conservation of cultural heritage	2000	Promotion and Development	 Cultural Immovable Heritage Cultural Movable Heritage - Cultural Property Intangible Cultural Heritage 	CENTRAL AUTHORITY CULTURAL HERITAGE DOES THE REQUIRE A INVENTORY
Proclamation No.373/2003 to acceed the Convention for the Protection of Cultural Property in the Event of Armed Conflict and its First Protocol	2003	Protected Area or GoodStatutes of limitation	Armed Conflict	IS EXCAVAT
Proclamation No.374/2003 to ratify the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property	2003	ExportationIllicit trafficImportation	Cultural Movable Heritage - Cultural Property	IS THERE A TRADE IN

Legal protection = rules that should dictate what should be protected and how

In cultural heritage, it is not possible always to predict circumstances which may arise in the future

Best practice is thinking carefully about the subject matter, the type of protection and the consequences of protection. In other words, careful planning of a comprehensive scheme is best practice and best approach



FOR CULT HERITAGE

CULTURA HERITAGE



Charter for African Cultural Renaissance, 2006



Article 26

African States should take steps to put an end to the pillage and illicit traffic of African cultural property and ensure that such cultural property is returned to their countries of origin.



Model Law on the Protection of Cultural Property and Heritage, 2018

Endorsed at the African Union 3rd Session of the Specialized Technical Committee on Youth, Culture and Sport (STC-YCS3) that took place in Algiers, Algeria from the 21st to 25th October 2018



AGENDA 2063

African Union vision adopted by African Heads of States.

"A united and prosperous Africa, at peace with itself and with the rest of the world, governed and built by its own citizens and representing a dynamic force on the international scene"



ARTS, CULTURE & HERITAGE:

Levers for Building the Africa we Want

5. An Africa with a strong cultural identity, common heritage, shared values and ethics





INIDRO

Extended until 30 June 2023

DECLARATION XII

ACP Declaration on the return or restitution of cultural goods

The ACP States call on the Community and its Member States, in so far as they recognise the legitimate right of the ACP States to cultural identity, to promote the return or restitution of cultural goods originating in the ACP States which are in the Member States. Parties: Comoros, Djibouti, Burundi, Eritrea, Ethiopia, Malawi, Madagascar, Mauritius, Mozambique, Kenya, Rwanda, Seychelles, Tanzania, Uganda, Zambia, Zimbabwe.

5TH MEETING OF THE ACP MINISTERS OF CULTURE

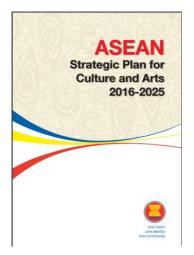
NIAMEY DECLARATION

20 October 2019

 Encourage all ACP countries to cooperate in the fight against the illicit trafficking of cultural objects, through the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit import, Export and Transport of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, which complements it;



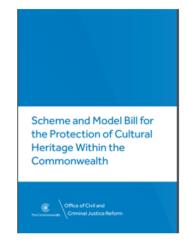




Priority Areas of Action

4.5.7. Continue mutual support and cooperation as a region in relation to Prevention of Illicit Transfer and Illicit Trafficking of Cultural Properties in ASEAN Region;





Scheme (Mauritius, 1993)

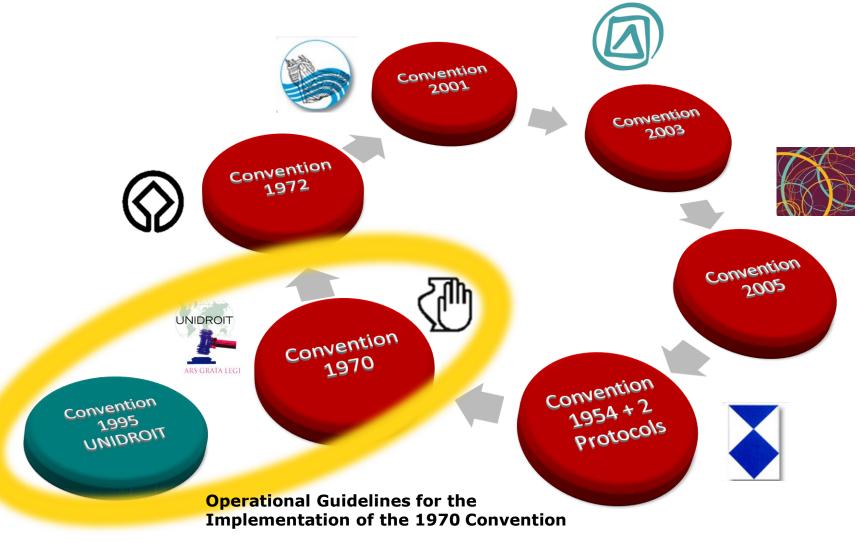
It complements work done by UNIDROIT and the European Community and contains **practical provisions relating to the export and import of objects** which take place after its adoption and implementation

Model Bill (Trinidad and Tobago, 1999) Model Bill that constitutes a **guide for countries to use when enacting the necessary legislation** for implementation of the Scheme

> Cameroon, Ghana, Kenya, Malawi, Mauritius, Nigeria, South Africa, Uganda, Tanzania, Zambia



UNESCO CULTURE CONVENTIONS







	UNESCO 1970	UNIDROIT 1995
Algeria	1974	2015
Burkina Faso	1987	2019
Burundi		
Cameroon	1972	
Egypt	1973	
Ghana	2016	2020
Kenya		
Liberia		
Malawi	2022	
Mauritania	1977	
Mauritius	1978	
Nigeria	1972	2006
Somalia		
South Africa	2003	2018
Tanzania	1977	
Uganda		
Zambia	1985	Signatory



European Convention of 20 April 1959 on Mutual assistance in Criminal Matters – applied several times in order to return as objects of criminal offences, cultural objects stolen or illegally excavated in the requesting foreign country.



2017 Council of Europe Convention on Offences Relating to Cultural

Property – the criminal law provisions cover theft and other forms of unlawful appropriation / unlawful excavation and removal / illegal exportation and illegal importation /acquisition / placing on the market/falsification of documents / destruction and damage





International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences, 2014 + **Practical Assistance Tool**, 2016.





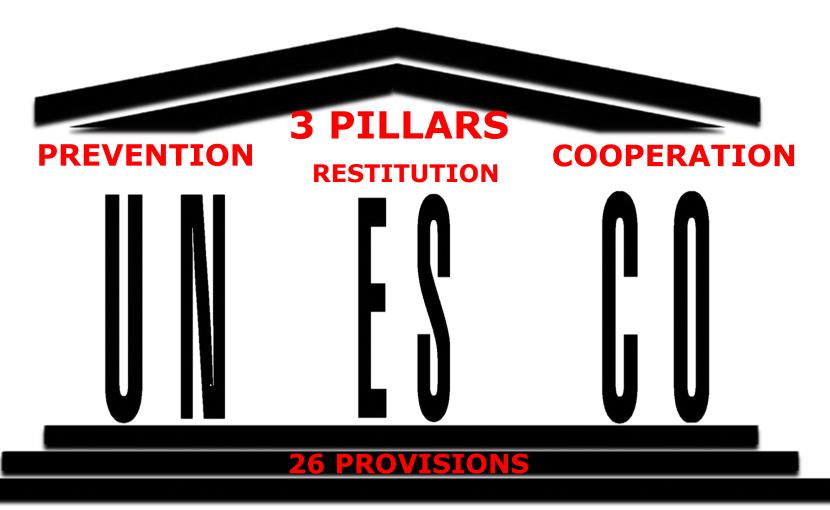
Importance to strengthen synergies among relevant Conventions and to ensure that these conventions reinforce each other and act as a unified corpus for the fulfilment of their complementary goals, reflecting a holistic vision.

Urgent need to enhance the integrated interpretation and implementation of the ...conventions





1970 UNESCO CONVENTION





1st **PILLAR - PREVENTIVE MEASURES**

States parties shall:

- Elaborate appropriate national legislation
- Establish national services for the protection of cultural heritage
- Promote museums, libraries, archives
- Establish national inventories
- Encourage adoption of codes of conduct for dealers in cultural property
- Implement educational programmes to develop respect for cultural heritage
- Introduce a system of export certificate
- Impose penalties or administrative sanctions
- Establish specialized police and customs forces

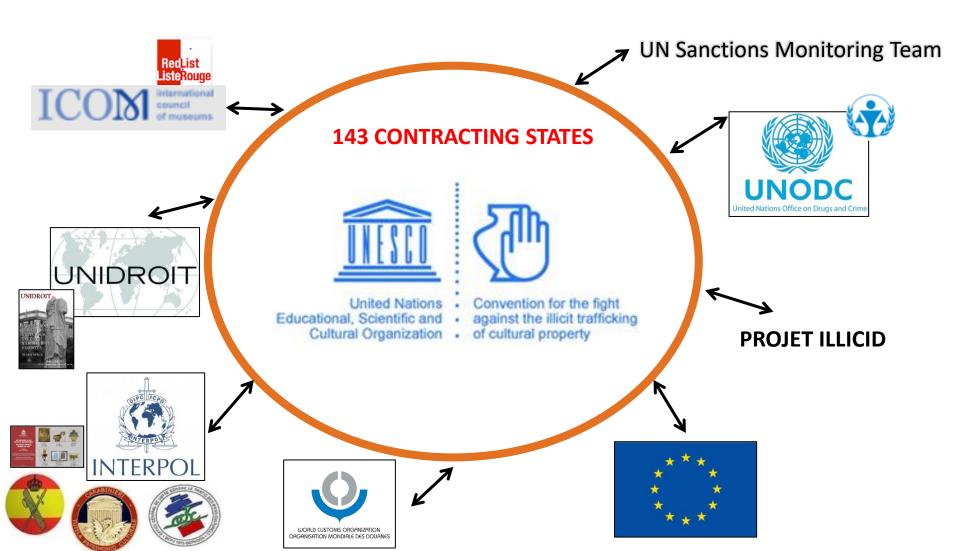






As of June 2023

2ND PILLAR – INTERNATIONAL COOPERATION



3RD PILLAR – RESTITUTION



JNIDROIT

Article 7(b)(ii)

Archaeological sites ?? Private house??

Restitution of cultural property **stolen in a museum or a religious** or secular public monument or similar institution...

Provided that **such property is documented as appertaining to the inventory** of that institution

States Parties undertake to take appropriate steps to (...) **return** any such property ... provided that the requesting State shall bay **just compensation** to an **innocent purchaser**...

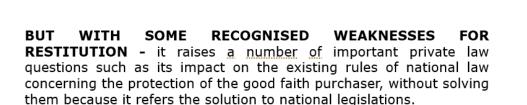
No mechanism

No inventory???

No criteria



STARTING POINT – 1970 UNESCO Convention = The foundations of a genuine international law of cultural property and an enunciation of certain values and principles.





THE 1970 CONVENTION NEEDS AN IMPLEMENTING LEGISLATION - many States have not enacted specific legislatives measures to implement the Convention.

UNESCO COMMITTEE OF EXPERTS -CONCLUSIONS 1983

4) That UNESCO undertake a joint study with UNIDROIT (the International Institute for the Unification of Private Law) concerning the rules of private law affecting the return to their country of origin of illicitly transferred cultural goods, with reference, inter alia, to the UNIDROIT Draft Uniform Law on the acquisition in good faith of corporeal movables.



PRIVATE LAW



PUBLIC LAW



The 1970 UNESCO Convention

- Consistency with national legislations of the States Parties
- The Convention is **basically conceived** as an instrument bound to spread its effects at a **diplomatic level**
- Non self-executing character of its rules (Italian Court of Cass. 24 Nov. 1995 - Cour d'Appel Paris 5 avril 2004, Cour de Cass., 20 September 2006, République féd. du Nigéria c. de Montbrison)
- Difficulties in granting judicial restitution when the applicable law gives protection to the *bona fide* purchaser (France, article 2279 c.c., Italy, article 1153 c.c.)
- 2015 Operational Guidelines for the Implementation of the Convention

The UNIDROIT 1995 Convention on Stolen or Illegally Exported Cultural Objects

UNIDROIT



DON'T TAKE PART IN THE THEFT AND ILLICIT TRADING OF ANTIQUITIES





sensitive and complex issues which involve conflicting yet legitimate interests





Belgium Returns Rwanda's Cultural Recordings

By Daniel Sabiiti November 01, 2021



Rwanda recently made an agreement with its former colonial occupier, Belgium. The deal included the sharing of digital copies of over 4,000 songs and other recordings kept at the Royal Museum for Central Africa outside Brussels.

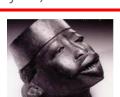
But the location of the remains of one of Rwanda's last kings, Yuhi Musinga, is a serious issue in the East African country. Many Rwandans believe the body of Musinga, who resisted the Belgians and died in Congo, was sent to Belgium.

Antoine Nyagahene is a professor of history at Rwanda's Gitwe University. He said there should be some justice in that case.

"We were robbed of our cultural values and, as you know, a people without **roots** are a people without a soul," he said.

Return of Makonde Mask from Switzerland to Tanzania: A Righteous Conclusion? (Folarin Shyllon)





SOUTH SUDAN: THE DIASPORA OF OBJECTS AND THE FUTURE OF TRADITION

Blogs | Tue, 08/01/2017

A Norman castle in the north-east of England may not seem an obvious place to discuss the cultural heritage of South Sudan. But the university library here—next door to Durham castle—is the location of the most significant archive of colonial-era documents outside Sudan and South Sudan. And in recent years Durham University has become a centre for research into Sudanese history, attracting scholars from Europe and America, and—perforce less often—from the Sudans themselves.



In July Durham played host to a meeting of curators and researchers concerned with the heritage of material culture taken from the lands now comprising South Sudan. These include items of jewellery, clothing, furniture, weaponry and sculpture bought, bartered or stolen sometime in the nineteenth or early twentieth centuries. Some of these articles were presented by chiefs to their colonial masters, some confisced as a punitive measure; some were looted by slavers; some purchased by explorers or early tourists. Now they are scattered in collections across Europe and Asia, the orphans of a violent history.

South Sudanese participants at the Durham meeting joined representatives of museums in France, Germany, Austria, Slovenia, Russia, Romania and the UK —key locations in this great diaspora of objects—to discuss, among other

questions, whether there could there be a long-term role for such artefacts—and the histories they embody—in delivering South Sudan from its present state of violence and despair.



"Repositioning the Uganda Museum" Project to Repatriate Objects from Cambridge to Kampala

Donation officielle du masque Makondé





Empty display cases symbolize the absence of Kenyan cultural assets at the Nairobi National Museum

Image: Christine Kinyanjui/DW

Looted art from Kenya: Empty display cases





Arts, Culture and Sport

Kenya is creating a database of plundered cultural artefacts and their current locations

June 24, 2019

While other African countries have been petitioning for decades and are actively moving towards the repatriation of cultural artefacts that were plundered during the colonial era, Kenya has only recently launched an investigation into which objects were removed from the East African nation, where in the West they are housed and who holds the agency to demand their repatriation.



©UNESCO

Co-operation between organisations

UNIDROIT

Compatibility and complementarity between instruments





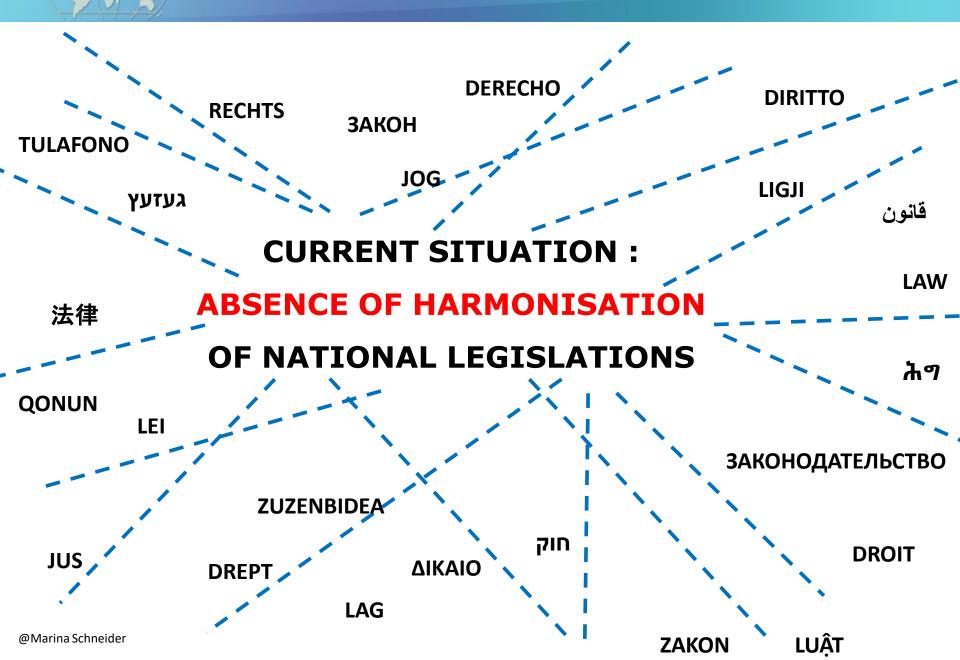


Ex. The object was acquired by a person in good faith

PROBLEM

Ex. The object has been licitly imported in another State

UNIDROI





* LACK OF HARMONISATION * OBSTACLES TO RESTITUTION

ACQUISITION IN GOOD FAITH

« POSSESSION VAUT TITRE »

« NEMO DAT QUOD NON HABET »

I GROUP – ITALY II GROUP – FRANCE

III GROUP – UK, USA

Winkworth v. Christie Manson and Woods Ltd





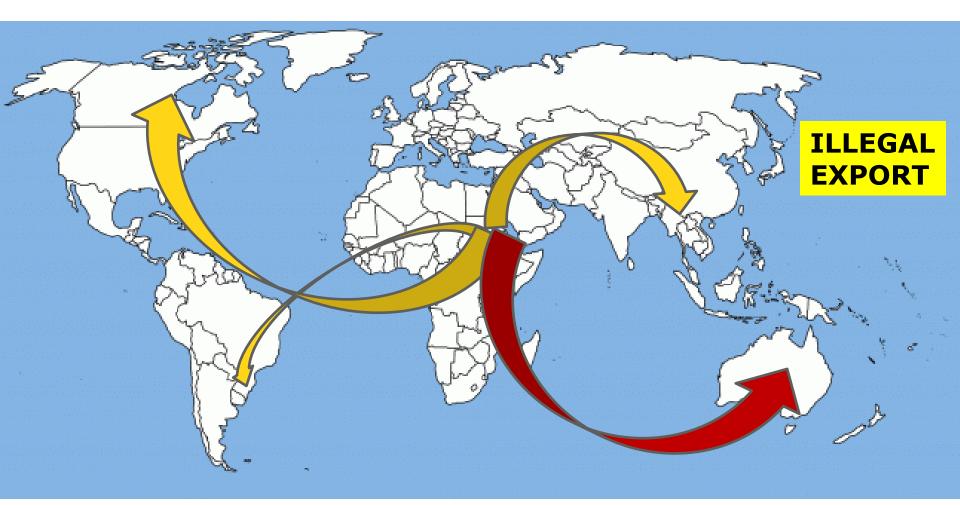


NO UNIFICATION OF NATIONAL LAWS (ACQUISITION IN GOOD FAITH) = UNCERTAINTY OF THE RESULT





NO COMPULSORY RECOGNITION ABROAD OF NATIONAL PROHIBITION OF EXPORT





Uniform law

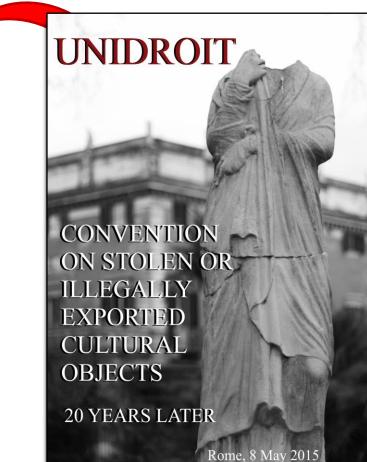


Choice of subjects requiring a transnational solution and no longer simply the determination of a national law competent to regulate disputes that transcend borders.

In the 1995 UNIDROIT Convention in particular this means that a pragmatic solution has been found for "good faith" between two conflicting but legitimate interests = due diligence



"BUILDING ON STRENGTHS, REMEDYING WEAKNESSES"



Rome, 8 May 2015 Musei Capitolini, Sala Pietro da Cortona

eturn of legally ported ultural objects



SCOPE OF APPLICATION

Article 1

This Convention applies to **claims of an international character** for:

(a) the restitution of stolen cultural objects;

(b) the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects for the purpose of protecting its cultural heritage (hereinafter "illegally exported cultural objects").



SOME COMMON FEATURES

UNESCO 1970 (art. 1) and UNIDROIT 1995 (art. 2) share the same definition (importance and categories)

Article 2

.... cultural objects are those which, on religious or secular grounds, **are of importance for** archaeology, prehistory, history, literature, art or science and belong to one of the categories listed in the Annex to this Convention.

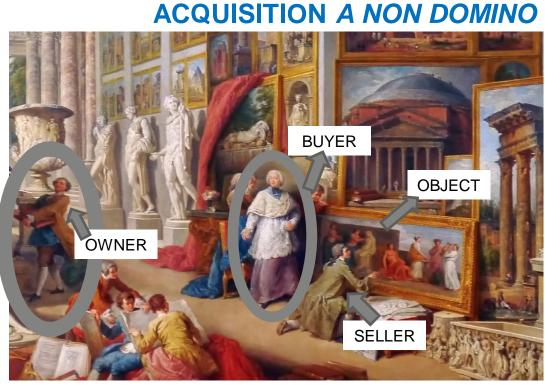
An important difference

objects benefit from the protection given by the 1995 Convention even if not "specifically designated" by the State ERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW TITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

CONMON

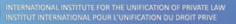
UNIDROIT

It is over-optimistic to assume a willingness on the part of the sovereign States to change their laws and accede to conventions solely for the propose of harmonisation [unification]...



CIVIL LAW

Views of Ancient Rome - Giovanni Pannini



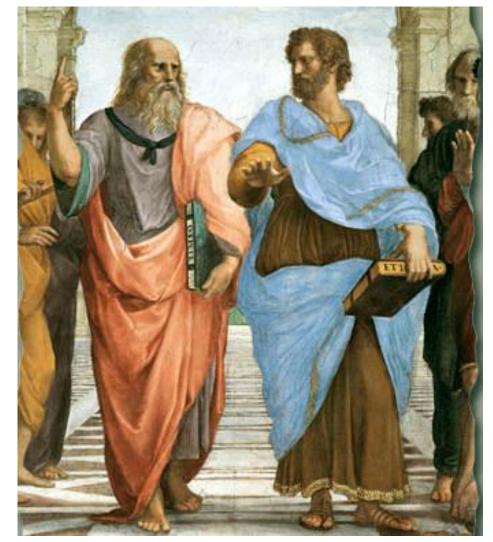
[unification] which can only be a mean to an end, not an end itself

RESTITUTION IN ANY CASE OF THE STOLEN OBJECT TO ITS RIGHTFUL OWNER

UNIDROIT



"NEMO DAT QUOD NON HABET"



The School of Athens - Raffaello Sanzio

"POSSESSION VAUT TITRE"

CIVIL LAW

COMPENSATION FOR THE LOSS CAUSED TO THE POSSESSOR WHO ACTED WITH DUE DILIGENCE JNIDROIT

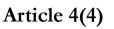


Article 3(1)

The possessor of a cultural object which has been stolen shall return it.

Article 4(1)

The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation **provided** that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised **due diligence** when acquiring the object.



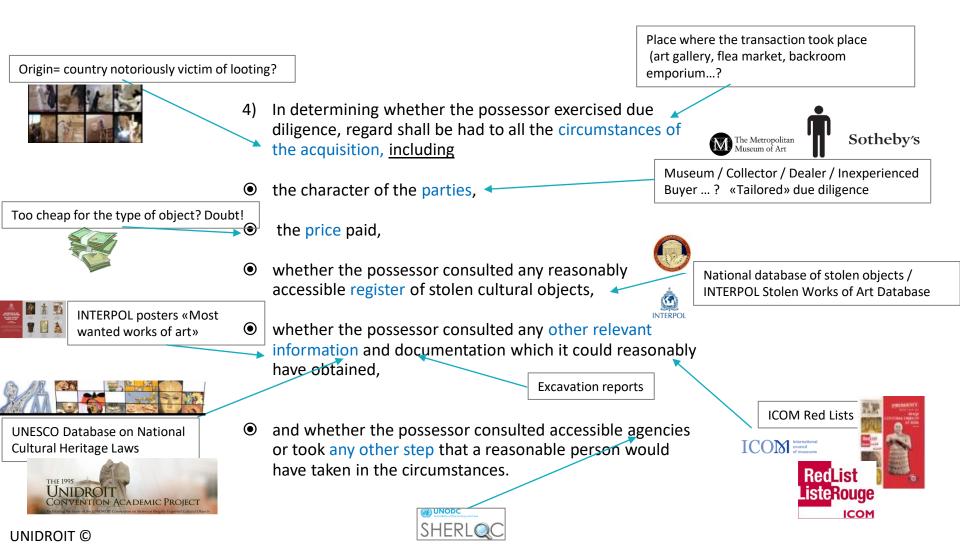
Criteria to determine "due diligence"







DUE DILIGENCE criteria – ARTICLE 4(4)





NTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW NSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE



Importance of the role of law enforcement in the efficiency of some tools for due diligence !

Example - Thefts must be reported by the dispossessed person but then also by police to INTERPOL so that the INTERPOL Stolen Works of Art Database is fed. Important to report thefts then to be inserted in the Database (one criteria of the due diligence in the 1995 UNIDROIT Convention)





ITERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE



ETHICS





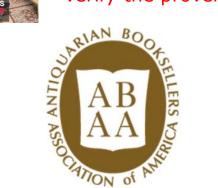
The 1995 Convention **complements the due diligence rules** drafted by museums and dealers – rendering them binding - and promotes trust in the international trade.



It **formalises** what has long been taken for granted by serious collectors, museum professionals and art dealers: the need to verify the provenance of a cultural object offered for sale.

International Code of Ethics for Dealers in Cultural Property

Code international de déontologie pour les négociants en biens culturels







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RNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW ITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

ICOM international council of museums

The cornerstone of ICOM is the *ICOM Code* of *Ethics for Museums*. It sets minimum standards of professional practice and performance for museums and their staff. In joining the organisation, ICOM members undertake to abide by this Code.

The ICOM Code of Professional Ethics was adopted unanimously by the 15th General Assembly of ICOM in Buenos Aires (Argentina) on 4 November, 1986. It was amended by the 20th General Assembly in Barcelona (Spain) on 6 July 2001, retitled ICOM Code of Ethics for Museums, and revised by the 21st General Assembly in Scoul (Republic of Korea) on 8 October, 2004.

First published in the three official languages of ICOM, the Code of Ethics has been translated into numerous other languages by ICOM's committees.

ICOM international council of museums



— VII — MUSEUMS OPERATE IN A LEGAL MANNER.

PRINCIPLE

Museums must conform fully to international, regional, national and local legislation and treaty obligations. In addition, the governing body should comply with any legally binding trusts or conditions relating to any aspect of the museum, its collections and operations.

LEGAL FRAMEWORK

7.1 National and Local Legislation

Museums should conform to all national and local laws and respect the legislation of other states as they affect their operation.

7.2 International Legislation

Museum policy should acknowledge the following international legislation that is taken as a standard in interpreting the *ICOM Code of Ethics for Museums:*

- Convention for the Protection of Cultural Property in the Event of Armed Conflict with Regulations for the Execution of the Convention ("The Hague Convention" First Protocol, 1954, and Second Protocol, 1999);
- Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (UNESCO, 1970);
- Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington, 1973);
- · Convention on Biological Diversity (UN, 1992);
- UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT, 1995);
- Convention on the Protection of the Underwater Cultural Heritage (UNESCO, 2001);
- Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO, 2003).





Article 7(b)(ii)



Articles 3 et 4

Restitution of cultural property **stolen in a museum** or a religious or secular public monument or similar institution... Stolen anywhere, including in a private house

Provided that **such property is documented as appertaining to the inventory** of that institution

Also objects not inventoried

States Parties undertake to take appropriate steps to (...) **return** any such property ... provided that the requesting State shall pay **just compensation** to an innocent purchaser...

To obtain compensation the possessor has the burden of proving he/she exercised due diligence



Compensation to good faith purchaser

First Protocol to the 1954 Hague Convention adopted in 1954 in response to the systematic pillage of cultural property of the occupied territories during the Second World War.

The States Parties to the First Protocol agree to return to the competent authorities of the previously occupied territory, cultural property which is in its territory, and <u>pay indemnity to the holders in good faith of any cultural property</u> which has to be returned.

• 1970 UNESCO Convention (Article 7(b)(ii))

States Parties undertake to take appropriate steps to (...) return any such property ... provided that the requesting State shall <u>pay just compensation to an innocent purchaser</u>...





Compensation to good faith purchaser

(who will pay under 1995 Convention)

Article 4

(1) The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object.

(2) Without prejudice to the right of the possessor to compensation referred to in the preceding paragraph, reasonable efforts shall be made to have the person who transferred the cultural object to the possessor, or any prior transferor, pay the compensation where to do so would be consistent with the law of the State in which the claim is brought.

(3) Payment of compensation to the possessor by the claimant, when this is required, shall be without prejudice to the right of the claimant to recover it from any other person.

(4) In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.

(5) The possessor shall not be in a more favourable position than the person from whom it acquired the cultural object by inheritance or otherwise gratuitously.

See also the Explanatory Report (pp. 516-520) at https://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-explanatoryreport-e.pdf



Return of illegally exported cultural objects

Article 5(1)

Removal of the object ... contrary to the law of the requesting State regulating the export of cultural objects, and

+

Article 5(3)

The export significantly impairs a scientific or historic interest, [...] or the object is of significant interest for the requesting State



Article 6(1-3)

Compensation to the possessor who did not know the object was illegally exported / physical return

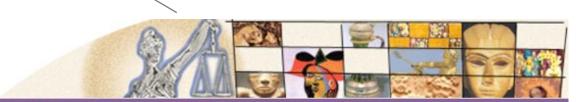


ILLEGAL EXPORT

Article 6

(2) In determining whether the possessor knew or ought reasonably to have known that the cultural object had been illegally exported, regard shall be had to the circumstances of the acquisition, including the absence of an **export certificate** required under the law of the requesting State.





UNESCO Database of National Cultural Heritage Laws





SHARING ELECTRONIC RESOURCES AND LAWS ON CRIME



Antiquities Act, 1964

Articles 14, 15, 17

TANZANIA

🖹 Original Text

Article 14:

(1) No person shall export from Tanganyika any-

(a) relic discovered in Tanganyika;

(b) monument or part thereof; or

(c) protected object,

except under and in accordance with a licence issued by the Commissioner.

Provided that-

(i) the Commissioner shall not withhold his licence, the case of any relic disclaimed by him in accordance with the provisions of section 8; and

(ii) the Commissioner and any person acting on his instructions may export any such relic, monument, or part thereof, or protected object for the purposes of exhibition, or of repair, examination, study or other scientific purpose.

(2) Any person who exports or attempts to export any relic, any monument or part thereof, or any protected object m contravention of subsection (1) shall be guilty of an offence against this Act.

TANGANYIKA



No. 10 of 1964

I ASSENT. Julius K. Ayeure

An Act to provide for the Preservation and Protection of Sites and Articles of Palaeontological, Archaeological, Historical, or Natural Interest and for matters connected therewith and incidental thereto

ENACTED by the Parliament of Tanganyika.

 This Act may be cited as the Antiquities Act, 1964, and shall come Short title into operation on such day as the Minister shall, by notice in the measurement Gazette, appoint.

2.—(1) In this Act, unless the context otherwise requires— tampe "relic." means any movable object made, shaped, painted, carved, inscribed or otherwise produced or modified by human agency before the year 1863, whether or not it shall have been modified, added to or restored at a later date, and any human or other vertebrate faunal or botanical fossil remains or impressions;

"appointed day" means the day appointed by the Minister in accordance with section 1:

"Commissioner" means the Commissioner for National Culture;

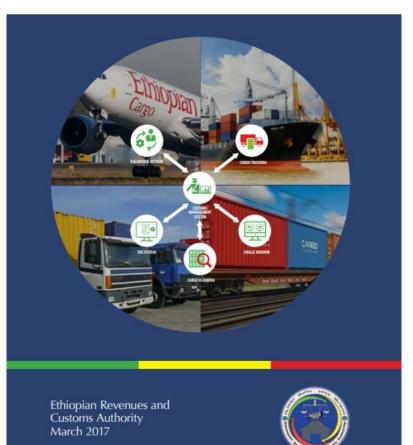
"Conservator" means the person for the time being appointed to perform the functions of Conservator of Antiquities;

"discovery" means the finding on or under land, or in anything growing on the land, or attached to or within the fabric or foundations of any structure of any object, site or structure the preserce of which was previously unknown to the owner thereod, but does not include the recognition or identification as a relic, or as a relic of a particular description, of any movable object previously in the known possession of any preston, unless such object was so found;

"Honorary Antiquities Warden" means a person appointed by the Commissioner under section 22; NTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE



Ethiopian Customs Guide



8.3.2 Temporary Exportation

Temporary exportation is the exportation of goods that the declarant specifies as intended for re-importation. To facilitate the reimportation at a later stage, Customs may take identification measures on the goods.

In Ethiopia, temporary exportation may be authorized for the following goods and purposes:

• vehicles, equipment and machinery taken out by a person for the purpose of carrying out his work abroad;

• goods exported for trade fair, exhibition or cultural show.



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Due Diligence





THEFT - A State and a private owner may make Who can claim? a claim directly in a foreign court for the restitution of a stolen object.

> ILLEGAL EXPORT - A State can make a claim for the return of an illegally exported object.

Time limitation of actions

Relative and absolute periods

(3 years as from the time the possessor and the location of the object are known to the claimant / 50 years as from the theft or the illegal export)

No time limitation for action (except the 3 years) relating to cultural objects forming an integral part of an identified monument or archaeological site, or belonging to a public collection, or a cultural or religious institution, and sacred or communally important cultural objects belonging to and used by a tribal or indigenous community)



The Persistence of Memory - Salvador Dalì



IMPLEMENTATION AT THE NATIONAL LEVEL





Obligation to have a transposition law which implements the provisions of the 1970 Convention Self executing (no need to have a transposition law)



PREAMBLE

DETERMINED to contribute effectively to the fight against illicit trade in cultural objects by taking the important step of **establishing common, minimal legal rules for the restitution and return of cultural objects between Contracting States**, with the objective of improving the preservation and protection of the cultural heritage in the interest of all,

CONSCIOUS that this Convention will not by itself provide a solution to the problems raised by illicit trade, but that it initiates a process that will enhance international cultural co-operation and maintain a proper role for legal trading and inter-State agreements for cultural exchanges,

ACKNOWLEDGING that implementation of this Convention **should be accompanied by other effective measures** for protecting cultural objects, such as the development and use of registers, the physical protection of archaeological sites and technical co-operation,



Nothing in this Convention shall prevent a Contracting State from applying any rules more favourable to the restitution or the return of stolen or illegally exported cultural objects than provided for by this Convention. (1995 UNIDROIT - art. 9(1)



States Parties may <u>enter into agreements</u> with one or more States Parties with a view to improving the application of this Convention in their mutual relations. *(1995 UNIDROIT - art.13)*



The combined multiple action

Bilateral Conventions: (articles 9, 15 1970 UNESCO Convention)

- U.S.- Peru 1997, amended 2002
- U.S.- Canada, 1997
- U.S. Mali, 1997
- U.S.- Bolivia, 2001, renewed 2007
- U.S.- Italy, 2001, renewed 2006
- U.S. Nicaragua,2000, renewed 2005
- U.S.- Cyprus, 2002
- U.S.- Egypt, 2016, renewed 2021
- U.S.- Algeria, 2019
- U.S.- Nigeria, 2022
- Switzerland Peru, 2006
- Switzerland Italy, 2006
- Switzerland Greece, 2006
- Cambodia Thailand, 2000
- Italy China, 2006

58

- France South Korea, 2010
- Germany Turkey, 2011





Uniform **mechanisms** in place but which **procedure** for international claims ? Article 16(1)

Claims brought by a State may be submitted under one or more of the following procedures:

(a) directly to the courts or other competent authorities of the declaring State

(b) through an authority designated by that State to receive the claim and forward it to the court

(c) through diplomatic or consular channels

Compulsory declaration

Article 8(2)

Possibility to bring the claim before the courts or other competent authorities of the State where the cultural object is located (in addition to authorities otherwise having jurisdiction under the rules in force in Contracting States)

Recognition and enforcement of judgments



Declarations No reservations

1995 UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS

Declarations made by States at the time of ratification/accession (as of 12 May 2022)

STATE PARTY	ARTICLE 3(5) Time limitation	ARTICLE 13(3) Deconnexion clause	ARTICLE 14 Territorial application	ARTICLE 16(1)(a) * Courts or other authorities	ARTICLE 16(1)(b) * Authority	ARTICLE 16(1)(c) * Diplomatic channels	ARTICLE 16(2) Designated competent court or authority	ARTICLE 17 ** Export legislation
Algeria					v	√		v
Angola						V		√
Benin					v	V		√
Botswana				√				√
Burkina Faso				√	v	√		√
Côte d'Ivoire						√		√
Gabon								
Ghana					v	√		۷
Madagascar						√		v
Nigeria								
South Africa						√		√
Тодо				√		√		۷
Tunisia				√		√		√

Article 18

No reservations are permitted except those expressly authorised in this Convention.



«Conformément au Paragraphe 1 de l'article 16 de la convention, les demandes de restitution ou de retour de biens culturels peuvent être soumises selon les procédures suivantes :

- a) Directement aux autorités algériennes en charge de la protection du patrimoine culturel ;
- b) Par les voies diplomatiques ou consulaires.

Ghana

Burkina Faso

 Déclaration du Burkina Faso en vertu de l'article 16 de la Convention d'UNIDROIT sur les biens culturels volés ou illicitement exportés (Rome 24 juin 1995)

Le Burkina Faso déclare :

Les demandes de retour ou de restitutions des biens culturels introduites par un Etat en vertu de l'article 8 devront lui être soumises, soit directement auprès des tribunaux ou toutes autres autorités compétentes, soit par les voies diplomatiques ou consulaires.

Algeria

Pursuant to Article 16 of the above Convention, the Government of Ghana through the Ministry of Foreign Affairs and Regional Integration hereby declares that claims for the restitution, or requests for the return, of cultural objects brought by a State under Article 8 of the Convention may be submitted:

- 1. directly to designated competent authorities, or
- 2. through diplomatic or consular channels.

Botswana

AND FURTHER DECLARE that claims for the restitution or requests for the return of cultural objects brought by a State under Article 8 be submitted to the competent authorities of the Republic of Botswana;

La dichiarazione relativa all'art. 16, par. 1 recita: « les demandes de retour ou de restitution de biens culturels introduites par un Etat en vertu de l'article 8 peuvent être soumises : 1) par le biais du Ministère chargé de la Culture du Bénin qui le transmettra aux tribunaux ou aux autres autorités competéntes ; 2) par le biais des représentations diplomatiques et consulaires accréditées auprès de cet Etat ou par le Ministère chargé des Affaires étrangères du Bénin ». Benin

Tunisią

Déclarons également que conformément au paragraphe 1 de l'article 16 de la Convention, les demandes de restitution ou de retour de biens culturels peuvent être soumises selon les procédures indiquées dans les alinéas a et c,



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Home / Instruments / Cultural Property / 1995 Convention / Status / 16

16

UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS

Declarations made by States at the time of ratification / accession

under Article 16

Afghanistan

The Government of Afghanistan hereby declares that in accordance with paragraph 1 of Article 16 of the Convention, claims for the restitution or requests for the return of cultural objects may be submitted directly to the courts or other competent authority (Article 16(1)(a)) or through an authority or authorities designated by the State (Article 16(1)(b)).

Algeria

(Translation). In accordance with Article 16, paragraph 1 of the Convention, claims for restitution and requests for return may be submitted a) directly to the Algerian authorities in charge of the protection of the cultural heritage; b) through diplomatic or consular channels.

Angola

(Translation). In accordance with Article 16, paragraph 1 of the Convention, claims for restitution and requests for return may be submitted through diplomatic or consular channels.

Argentina

(Translation) The Argentine Republic declares that the requests for the return, or claims for the restitution, of acquired cultural objects, brought by a State under article 8, shall be submitted through the diplomatic or consular channels provided for in article 16 (I) (c).

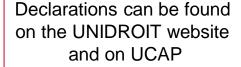
https://www.unidroit.org/instruments/cultural-property/1995-convention/status/16-2/

1995 CONVENTION Overview Overview ES Other Languages Explanatory Report / Info Follow-up States Parties Becoming a Party

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National Implementation

National Implementation of the 1995 UNIDROIT Convention

The 1995 UNIDROIT Convention is self-executing.

A Convention is self-executing when it can be given effect automatically at a specified time without the aid of domestic legislation or other actions of enforcement. Nevertheless, some States have enacted implementing legislation.

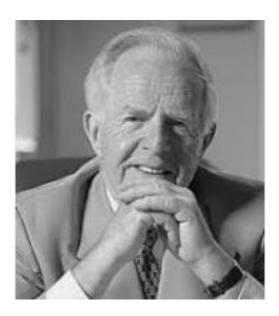
The Convention allows for no reservations (Article 18).

At the time of ratification/accession States are requested to make declarations under Articles 16 and 17. Other declarations are optional. See http://www.unidroit.org/english/conventions/1995culturaloropertv/formalities-e.pdf.

https://1995unidroitcap.org/national-implementation-material/

Article 8(2)

The parties may agree to submit the dispute to any court or other competent authority or to **arbitration**.



INIDROIT

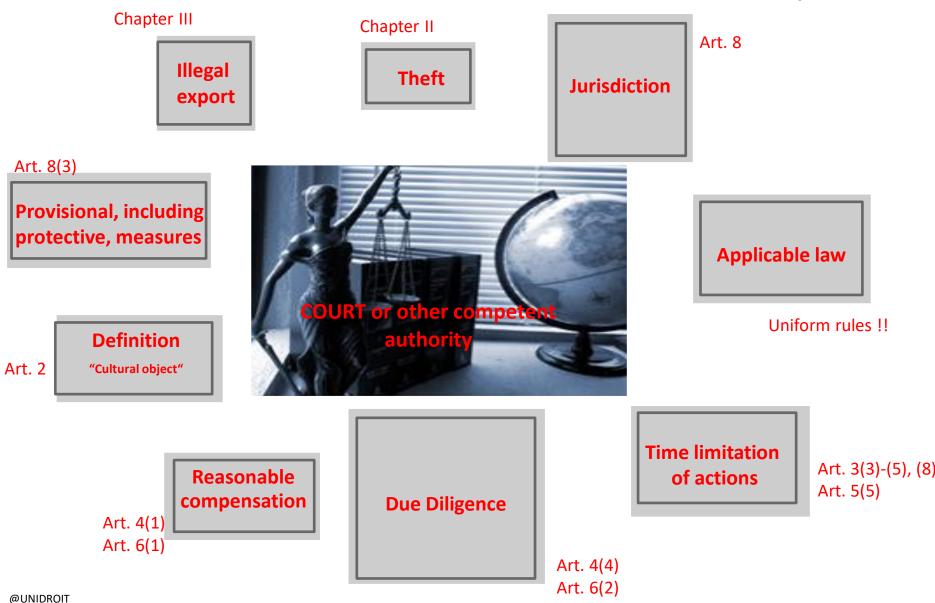
Professor Pierre LALIVE

- Such a choice was regarded as a matter of procedural freedom which if omitted would have dissuaded some States from ratifying the Convention
- Would solve a potential problem in the application of the Convention, the issue of State immunity
- Argued that recourse to arbitration should be not only allowed but encouraged (confidential, swift and neutral)
- Enable experts to be arbitrators, bringing to the proceedings expertise in relation to the type of object under dispute



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RESTITUTION / RETURN





SPECIAL PROTECTION



PRODUCTS OF CLANDESTINE ARCHAEOLOGICAL EXCAVATION

- Illicit excavation = theft (Art. 3(2))
- Not time limitation: "a claim for restitution of an object forming an integral part of an identified monument or archaeological site [...] shall not be subject to time limitations" unless the possessor and location are known

OBJECTS IN USE BY TRIBAL OR INDIGENOUS COMMUNITIES

- Importance stressed in Preamble
- No time limitation to action, unless the possessor and location are known.
- Illegal export impairs the traditional or ritual use by a tribal or indigenous community (Art. 5(3)(d))

Products of clandestine archaeological excavations



UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects



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Most countries regulate and monitor archaeological excavations but faces recurrent problem of illicit/clandestine excavations



FIGURE 2. Excavation of the archaeological deposit.



IGURE 3. View of the destruction of the site.



Cultural object stolen or unlawfully exported - the State victim may want to recover it if found in another country

▶ need to have a legal system giving it the best possible arguments for return, i.e. an ownership right to be recognised by the courts in the other country

Particularly important when an unknown object is removed from the ground and taken out of the country. The State needs a basis on which to claim the return other than the mere fact that it was found on its territory.



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UNIDROIT 1995

Archaeological objects Specific provisions, for example

Illicit excavation = theft

...., a cultural object which 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))

No time limitation to action

[...] a claim for restitution of an object forming an integral part of an **identified** monument or archaeological site [...] shall **not be subject to time limitations other than** a period of three years [...]



INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

Has the legislation claiming State ownership really the effect claimed, in particular for undiscovered archaeological objects?





dailynewsegypt.com

smithonianmag.com

Republic of Iran v. Barakat Galleries - 2007

Iran sued the Barakat Gallery Ltd. in England courts to recover the antiquities **it claimed had come from South Est Iran.**



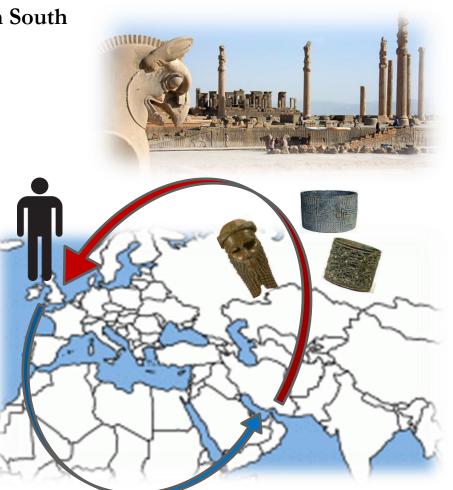
he

High Court: although Iran had a body of law regulating the discover and handling of antiquities, there was no law specifically indicating Iran was the owner of these antiquities.



Court of Appeal: found that Iran's rights were so extensive and exclusive that they should be regarded as giving ownership.

"Importantly, the Court of Appeal noted that "it is important to bear in mind that it is not the label which foreign law gives to the legal relationship, but its substance, which is relevant. If the rights given by Iranian law are equivalent to ownership in English law, then English law would treat that as ownership for the purposes of the conflict of laws"



A CLEAR PIECE OF LEGISLATION WOULD HAVE MADE ALL THIS UNNECESSARY OR AT LEAST REDUCED THE EXPENDITURE!



2011 UNESCO – UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects

Those provisions are made available to States to consider in the drafting or strengthening of their national legislations

Model offered to States which might need it in order to succeed in the recovery of their undiscovered cultural property, to be completed and adapted by each State

Not adopted by States – the ICPRCP took note of their finalisation (17th session in 2011) as well as the UNIDROIT Governing Council

Not a binding legal text or













Proclamation 209/2000 to Provide for Research and Conservation of Cultural Heritage

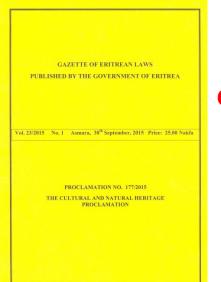
PART TWO - MANAGEMENT OF CULTURAL HERITAGE

14. Ownership of Cultural heritage

1/ Cultural heritage may be owned by the state or by any person. 2/ Notwithstanding the provisions of Sub-Article (1) of this Article, Cultural heritage discovered in accordance with the provisions of Part Three herein **may be held** in ownership only of the state.

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እር.ት	CONTENTS Preciamation No. 209/2080 Research and Conservation of Cultural Hemiage Proclamation Page 134							
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ERITREA

Cultural and Natural Heritage Proclamation 177/2015

PART II OWNERSHIP AND USE OF CULTURAL AND NATURAL HERITAGE RESOURCES

Article 4 Ownership and Transfer

1) Without prejudice to the provisions under sub-Article (2) of this Article, ownership of all Cultural and/or Natural Heritage resources located on or under the surface of Eritrean territorial sovereignty shall be vested in the State of Fritrea.



THE NATIONAL MUSEUMS AND HERITAGE ACT [Rev. 2009] **Part VIII** - Antiquities and Protected Objects 46. (1) All antiquities which are lying in or under the ground, or on the surface of any land already protected under any law as a monument or being objects of archaeological, paleontological or cultural interest are discovered in a part of Kenya after the commencement of this Act, shall be the property of the Government.

KENYA

(2) The Minister may, on the recommendation of the National Museums, by notice in the Gazette, disclaim the ownership of any such antiquity.



Act n° 94-022/AF on the Protection of National Cultural Heritage (Loi n° 94-022/AF portant protection du patrimoine culturel national) - Articles 1; 2; 4; 10 and 11.

COMOROS



Constitution (2002) - Article 35

1. The ownership of natural resources located in the soil and the subsoil, in interior and territorial waters, on the continental shelf, and in the exclusive economic zone is vested in the State.

2. The public domain of the State shall also include:

a) the maritime zone; b) the airspace;

c) archaeological heritage; d) nature conservation zones;

MOZAMBIQUE e) hydro-power resources; f) energy resources; g) other property and assets classified as such by law.





« Draft » African Union Model Law on the Protection of Cultural Property and Heritage

Article 18 – Ownership

- (1) Ownership of cultural property and heritage shall be vested in the State or any authorized person.
- (2) All undiscovered cultural property and heritage are owned by the State.

(3)

Objects used by tribal or indigenous communities



traditional or ritual use of the object by a tribal or indigenous community

Preamble

DEEPLY CONCERNED by the illicit trade in cultural objects and the irreparable damage frequently caused by it, both to these objects themselves and to the cultural heritage of national, tribal, indigenous or other communities, and also to the heritage of all peoples, ...

Article 3(8)

... a claim for restitution of a sacred or communally important cultural object belonging to and used by a tribal or indigenous community in a Contracting State as part of that community's traditional or ritual use, shall be subject to the time limitation applicable to public collections.

Breach of the law + impairs an interest

Article 5(3)(d)

... the removal of the object from its territory significantly impairs one or more of the following interests:

(d) the traditional or ritual use of the object by a tribal or indigenous community,

Article 7(2)

the provisions of this Chapter shall apply where a cultural object was made by a member or members of a tribal or indigenous community for traditional or ritual use by that community and the object will be returned to that community.







No retroactive application



The Convention only applies to objects stolen or illegally exported after its entry into force

BUT

it **in no way** confers any approval or legitimacy upon illegal transactions of whatever kind which may have taken place before the entry into force of the Convention

nor limits any right or claim outside the framework of the Convention for the restitution or return (bilateral agreement, agreements between institutions, UNESCO Intergovernmental Committee ...)



N°2018-26

Felwine Sarr Bénédicte Savoy

The Restitution of African Cultural Heritage. Toward a New Relational Ethics

November 2018

with the assistance of

Isabelle Maréchal Inspector General of Cultural Affairs

MINISTÈRE DE LA CULTURE

Vincent Négri Jurist and researcher at the Institut des sciences sociales du politique

UMR 7220 (CNRS – ENS Paris Saclay – Université Paris Nanterre)

Translated by Drew S. Burk

http://restitutionreport2018.com/sarr_savoy_en.pdf



Guaranteeing the Permanence of the Restitutions and Reinforcing the Fight against Illicit Trafficking

This imbalance between applicable law within the circle of European States, on the one hand, and the principles that the judge opposes to the extra-European States on the other, affects the future of restitutions. The compensation for this imbalance and the writing of a common law of restitution between France and Africa requires that both the France and the African States concerned ratify the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects adopted on June 24, 1995. This Convention puts in place an automatic mechanism of restitution for any future claims.

This Convention is the only juridical tool capable of compensating for the present imbalance and thereby establishing a common law for restitution as well as insuring the permanence of the process undertaken for the cultural objects stockpiled during the colonial period.

In other words, the ratification of the 1995 UNIDROIT Convention will inscribe the restitutions within a perspective of durability.



Restitution and return: the revival of the question

«Je veux que d'ici cinq ans les conditions soient réunies pour des restitutions temporaires ou définitives du patrimoine africain en Afrique» Emmanuel Macron, Ouagadougou, Burkina Faso, 29 novembre 2017



Forum Patrimoines Africains Paris, 4° July, 2019

«France will examine all requests presented by African Nations» but do not «focus on the sole issue of restitution» Franck Riester, French Minister of Culture





Cameroun

(page 1 sur 1039, 7 objets sur 7838)

Malawi (page 1 sur 6, 7 objets sur 38)

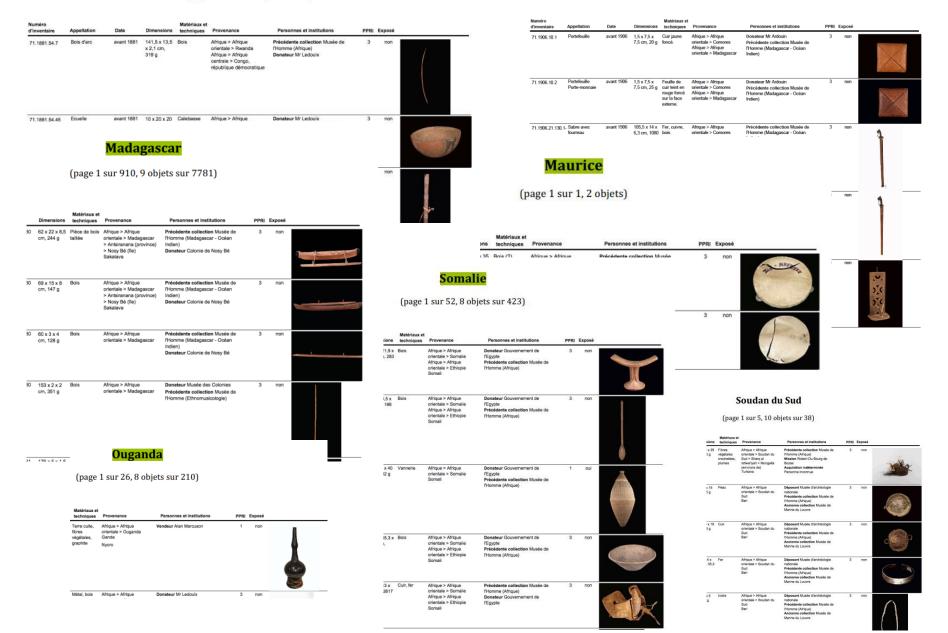
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Comores

(page 1 sur 19, 8 objets sur 175)

Rwanda

(page 1 sur 6, 9 objets sur 47)





Parigi, 9 November 9, 2021

restitution treasure Kingdom of Abomey



E. Macron, P. Talon Ceremony restitution 26 items to Benin



Decolonizing Heritage – The Return of Cultural Objects to Africa : An International Law Perspective

The 1995 UNIDROIT Convention and colonial heritage



Geneva, 24 September 2021

... so how is the 1995 UNIDROIT Convention relevant as regards the return of cultural objects taken from Africa in colonial times ?





FACULTY OF LAW GLOBAL STUDIES INSTITUTE







Guaranteeing the Permanence of the Restitutions and Reinforcing the Fight against Illicit Trafficking

Two parallel actions are needed

 Reflect on a strategy and policy for the restitution of property that left during the colonial period or prior to the conventions



it is reasonable to envisage the creation of a legal relationship in which both parties are motivated by the desire to achieve cultural benefits

 Prevent what remains in the country from being plundered and make visible the will of States to secure the legal status of returned cultural property

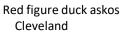


Negotiating with International Museums

(Agreements Italy - Foreign Museums 2006-2016)

- \rightarrow Metropolitan Museum (2006)
- \rightarrow Boston MFA (2006)
- \rightarrow Getty Museum (2007)
- \rightarrow Princeton University (2007)
- \rightarrow Cleveland MFA (2008)
- \rightarrow Dallas Museum of Art (2012)
- → Tokyo Fuji Art Museum (2012)
- \rightarrow Carlsberg Glyptothek Copenhagen (2016)





The Euphronios Krater - MET



Campanian bird askos Cleveland



Venus of Morgantina Getty



NEGOTIATING WITH PRIVATE ENTITIES

Agreement Italy – Tokyo Fuji art Museum (2012)



ITALY: «Responsibility for institutional protection of the *national collective memory*»

Met: «The interests of the public are served by art museums around the world working to preserve and interpret our *shared cultural heritage*»



UNIDROIT

Agreements/contracts of cultural cooperation:

- Use of the alternative instruments for the settlement of disputes = uncertain outcome of litigation
- No implications from the diplomatic standpoint
- No assumptions of responsibility
- Statement of the good faith principle in the implementation of the agreements
- Statement of ethical principles
- MUTUALLY BENEFICIAL REPATRIATION AGREEMENTS





41	Botswana	01-02- <mark>2018</mark>	Accession	Arts. 16, 17
42	South Africa	01-07-2018	Accession	Arts. 16, 17
43	Syrian Arab Republic	01-10-2018	Accession	Arts. 16, 17
44	Myanmar	01-12-2018	Accession	Arts. 3(5), 16
45	Burkina Faso	01-04- <mark>2019</mark>	Ratification	Arts. 16, 17
46	Latvia	01-08-2019	Accession	Art. 16
47	Montenegro	01-01- <mark>2020</mark>	Accession	Art. 16
48	Ghana	01-03-2020	Accession	Arts. 16, 17
49	Côte d'Ivoire	01-06- <mark>2021</mark>	Ratification	Arts. 16, 17
50	Benin	01-07-2021	Accession	Arts. 16, 17
51	Тодо	01-03-2022	Accession	Arts. 16, 17
52	Madagascar	01-06-2022	Accession	Arts. 16, 17

+ Morocco in 2022



PARTIES UNIDROIT Convention 1995

NIDROI

Gabon (2004) Nigeria (2006) Angola (2014) Algeria (2015) Tunisia (2017) South Africa (2018) Botswana (2018) Burkina Faso (2019) Ghana (2019) Côte d'Ivoire (2020) Benin (2021) Togo (2021) Madagascar (2021) **Morocco** (2022)



SIGNATORIES

Guinea (24.6.95) Zambia (24.6.95) Senegal (<u>29.6.96</u>)



Procedure accession finalised ... waiting for the deposit

+ Central African Republic, Mauritania

Accession announced

Niger, Kenya...



STATES PARTIES

Adoption: Place: Rome Date: 24.06.1995

Entry into force: 01.07.1998 (Art. 12)

Contracting States : 54

Several States have almost finalised the internal procedure of accession

Afghanistan, Algeria, Angola, Argentina, Azerbaijan, Benin, Bolivia, Bosnia and Herzegovina.
Botswana, Brazil, Burkina Faso, Cambodia, China, Colombia, Côte d'Ivoire, Croatia, Cyprus, Denmark,
Ecuador, El Salvador, Finland, Gabon, Ghana, Greece, Guatemala, Honduras, Hungary, Iran (Islamic
Republic of), Italy, Lao People's Democratic Republic,
Latvia, Lithuania, Madagascar, Mexico, Montenegro,
Morocco, Myanmar, New Zealand, Nigeria, North Macedonia, Norway, Panama, Paraguay, Peru,
Portugal, Romania, Slovenia, Slovakia, South Africa, Spain, Sweden, Syrian Arab Republic, Togo, Tunisia

Others have taken the decision to accede and start the process

UNIDROIT



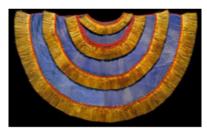
In **1999**, **Finland** ratified both the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. Under the Decree to ratify the UNESCO Convention, "the Government of Finland **declares** that it shall implement the regulations of Article 7, paragraph b, subparagraph ii of the [1970 UNESCO] Convention in accordance with the obligations set by the UNIDROIT Convention".

BEST PRACTICES

The specific reference to Article 7 (b) (ii) for Finland focuses on the restitution of cultural objects and the compensation to "an innocent purchaser", relying more on the UNIDROIT Convention than the UNESCO Convention over all for this specific element of implementation.







The Prime Minister stressed the interest of her country, although not a UNIDROIT member State, for the work of the organisation. She indicated her pleasure that, in her capacity of Minister of Arts, Culture and Heritage, she had been able to spearhead the implementation of both the 1995 UNIDROIT Convention and the 1970 UNESCO Convention in her country, stressing the complementarity between the two instruments which will be extremely important for the protection of New Zealand cultural artefacts.

The deposit of the two instruments of ratification was done for a contemporary entry into force of both Conventions (1 May 2007)!



AFRICAN STATES - CALLS FOR ACCESSION / RATIFICATION OF THE 1995 UNIDROIT CONVENTION

OLOLADE OLAKITAN SHYLLON Prepared under the Supervision of Prof. Andreas Eshete At the Faculty of Law, University of Addis Ababa, Ethiopia

2007

There is no doubt that for an international mechanism to be effective, it must have binding force on States who are party to it. However, the problem with this reality is that states which have more to loose by its application can limit this effectiveness by refusing to be party to such instrument. Whilst the UNESCO Convention which is based on return of cultural objects mainly through diplomatic means has 113 signatories to date,¹⁴³ the UNIDROIT Convention which provides greater protection especially by allowing for litigation by both governments and private owners of cultural objects, and places an unequivocal obligation for the return of stolen cultural objects and a limited obligation in cases of those illegally exported has merely 29 State parties.¹⁴⁴ This is so, despite the non retroactive nature of the UNIDROIT Convention and its arbitration provisions, which could serve as a middle ground between litigation and voluntary return.

Report of the EU and African experts meeting in Lisbon, Portugal, 4/5 October 2007, on the issue of Cultural Goods

4) The group agreed to encourage all African and EU countries to sign and ratify all relevant international conventions on cultural goods [among which the 1995 UNIDROIT Convention].



AFRICAN STATES - CALLS FOR ACCESSION / RATIFICATION OF THE 1995 UNIDROIT CONVENTION

IMPLEMENTATION OF THE 1970 UNESCO CONVENTION BY AFRICAN STATES: THE FAILURE TO GRASP THE NETTLE

Prof. Folarin Shyllon

Second Meeting of States Parties to the 1970 UNESCO Convention

2012

Becoming a Party to the UNESCO 1970 and UNIDROIT 1995 Conventions is an important step towards inclusion in the community of States combating the rising tide of theft and pillage of cultural objects all over the world. The twenty seven African countries that have not joined the UNESCO Convention, and the fifty-two African nations that are yet to become States Parties to the UNIDROIT Convention are hereby enjoined to ratify or accede to the Conventions as a mark of their determination to fight a major scourge of our time - trafficking in cultural property. The moral impact of fifty four-African countries acceding to both Conventions should not be under-estimated. It would be a clear signal to the community of nations that Africans are saying that something grave is happening to their cultural heritage, so grave that they are collectively calling in aid the concept of the comity of nations, which the Judge in the English case of Bumper Development Corp. Ltd v. Commissioner of Police of the Metropolis³² used, inter alia, to justify his decision that the idol "Siva Nataraja" should be returned to India.



AFRICAN STATES - CALLS FOR ACCESSION / RATIFICATION OF THE 1995 UNIDROIT CONVENTION

The failure of all African States to join the 1970 UNESCO and 1995 UNIDROIT Conventions for the protection of cultural goods and illicit traffic in them several years and even decades after they came into operation is inexplicable. The Director General of UNESCO at the time of the adoption of the UNIDROIT Convention, hailed it as "a breakthrough international framework to combat private-sector transactions in stolen art and cultural property" and as "a watershed in our common struggle to defend cultural property."

The critics of the UNIDROIT Convention are unhappy because it closed many of the loopholes that had prevented courts from combating more forcefully the illicit trafficking of cultural objects. It is precisely because of this that all African countries must warmly embrace the Convention and unanimously pass a vote of confidence in the instrument by acceding to it. Such advantages as the relaxation of strict inventories rule; permission of private claims in addition to Government to Government claims; choice of the forum to pursue claims either in the country of the putative owner or where the cultural object is located; restricting the operation of the good faith purchaser rule by the insertion of the due diligence test; specific protection of ethnographical objects; and extending the time for limitation of action all make the Convention a potent instrument for good. <u>Those African countries that are Parties to the 1970 UNESCO Convention must also join the 1995 UNIDROIT Convention as non-membership of the latter undermines their membership of the former.</u>

Consultancy Services to undertake a Study on the Establishment of the on-going Cooperation activities between European Union and Africa with regard to Cultural Goods (Final report, 2014)









STATEMENT

REGIONAL MINISTERIAL ROUNDTABLE ON STRENGTHENING SYNERGIES FOR CULTURAL HERITAGE PROTECTION IN EASTERN AFRICA AND THE ADJACENT INDIAN OCEAN ISLAND STATES

20 July 2017 Balaclava, Republic of Republic of Mauritius







We, the Ministers and the Heads of Delegations from the State of Eritrea, Federal Democratic Republic of Ethiopia, Republic of Djibouti, Republikan'i Madagasikara (Madagascar), Republic of Mauritius, Republic of Seychelles, Federal Republic of Somalia and Republic of South Sudan together with representatives from Union of Comoros, Republic of Kenya, United Republic of Tanzania, Republic of Uganda, responsible for the safeguarding and promotion of Cultural Heritage in Eastern Africa and the adjacent Indian Ocean Island States, together with representatives from the Democratic Republic of Congo from the Central Africa Region and Regional Economic Communities (IGAD, EAC), and other partners, on the occasion of the Ministerial Roundtable to Strengthen Synergies for the Protection of Cultural Heritage in the region, organized in Balaclava, Republic of Mauritius, on 20 July 2017, by UNESCO in collaboration with the Government of the Republic of Mauritius,

Recognizing the importance of becoming party to and implementing the international legal instruments for the protection of cultural heritage (UNESCO 1954, 1970, 1972, 2001, 2003, 2005 and UNIDROIT 1995)





The representative of Kenya indicated at the ICPRCP Discussion Forum on Return and Restitution, mid May 2022 that the Cabinet of Kenya had approved accession to the 1995 UNIDROIT Convention on 12 May 2022 and that the matter was now going to Parliament

Somalia – Accession to the 1995 UNIDROIT Convention is part of the Strategic Plan for the Safeguarding and Promotion of Cultural Heritage in Somalia (consultation meeting , May 2021)



The impact of the 1995 Convention

Bilateral agreements European law National legislation of non States Parties Case law





Clause inserted in Executive programmes under cultural agreements signed between Italy and other States not Parties indicating that

"The Parties agree to cooperate in order to counter illicit trade in works of art with measures in accordance to the respective national legislations, and taking into account the principles of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects"

(States not Parties to the 1995 Convention which I signed such agreements: Iraq, Rep. of Korea, Pakistan, Ukraine, Uzbekistan, Vietnam, Mongolia, Russian Fed., India, Germany, Austria, Estonia, Malta, ..., Qatar)





Recast of the 1993 European Directive

Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012 (Recast)



from *mutual recognition* of national legislations (Directive 93/7/EEC of 15 March 1993) to a general tendency towards adoption of European *rules of uniform law* (Directive 2014/60/EU of 15 May 2014)

"A possible abrogation could be analyzed only in a context where all Members States would become parties to the UNIDROIT Convention. In such a context, benefits of the Directive 93/7/EEC for the return would be less than those offered by the Convention."

(European Commission, Impact analysis, p. 128 – SWD(2013) 189 final)



Directive 2014/60/EU as against 1995 UNIDROIT Convention

Recital 10 - Member States should be encouraged to sign and ratify the 1970 UNESCO Convention and the 1995 UNIDROIT (extension beyond the scope of the Directive)

UNIDROIT, 1995

Relative period - **3 years** Absolute period - **50 years** No limitation for archaeological objects, public collections, except....

Time limitations for initiating return proceedings

Directive 93/7

Relative period - **1 year** Absolute period - **30 years** Extension for public collections and ecclesiastic objects

> Directive 2014/60 Relative period - 3 years

compensation to the possessor who neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object (art. 4(1))

Burden of proof ("good faith") for the purpose of compensation on the possessor

THEFT

Article 4(4) In determining whether the possessor exercised due diligence, regard shall be had to all the

UNIDROIT

- · the character of the parties,
- the price paid,
- whether the possessor consulted any reasonably accessible register of stolen cultural objects,

circumstances of the acquisition, including

- whether the possessor consulted any other relevant information and documentation which it could reasonably have obtained,
- and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.

Criteria for "due diligence / due care and attention"

Directive 2014/60

Adoption of a uniform rule = compensation but burden of proof on the possessor who exercised due care and attention

HIEGAL Directive 2014/60 Article 10.2

In determining whether the possessor exercised due care and attention, consideration shall be given to all the circumstances of the acquisition, in particular

- the documentation on the object's provenance, the authorisations for removal required under the law of the requesting Member State,
- the character of the parties,
 the price paid,
- the price paid, whether the possessor consulted any accessible register of stolen cultural objects and any relevant information which he could reasonably have obtained or took any other step which a reasonable person would have taken in the circumstances.



UNIDROIT 1995

Article 4

(1) The possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object.

(2)

(3)

(4) In determining whether the possessor exercised due diligence, regard shall be had to all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances.

(5) The possessor shall not be in a more favourable position than the person from whom it acquired the cultural object by inheritance or otherwise gratuitously.

EU Directive 2014/60

Article 10

Where return of the object is ordered, the competent court in the requested Member State shall award the possessor fair compensation according to the circumstances of the case, provided that the possessor demonstrates that he exercised due care and attention in acquiring the object.

In determining whether the possessor exercised due care and attention, consideration shall be given to all the circumstances of the acquisition, in particular the documentation on the object's provenance, the authorisations for removal required under the law of the requesting Member State, the character of the parties, the price paid, whether the possessor consulted any accessible register of stolen cultural objects and any relevant information which he could reasonably have obtained, or took any other step which a reasonable person would have taken in the circumstances.

In the case of a donation or succession, the possessor shall not be in a more favourable position than the person from whom he acquired the object by those means.





Regulation N. 1215/2012 of the European Parliament and of the Council of 12 Dec. 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters

(entered into force on 10 January 2015)

The owner of a cultural object as defined in Article 1(1) of Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State should be able under this Regulation to initiate proceedings as regards a civil claim for the recovery, based on ownership, of such a cultural object in the courts for the place where the cultural object is situated at the time the court is seized. Such proceedings should be without prejudice to proceedings initiated under Directive 93/7/EEC.

= UNIDROIT Convention, Article 8(1)



UNIDROIT is not the Depositary of the 1995 Convention but UNIDROIT is the guarantor of the treaties that are adopted by States under its aegis



Advocacy and technical assistance to States



Awareness raising and capacity building





Research





G20 Culture 2021

ROME DECLARATION OF THE G20 MINISTERS OF CULTURE

30 July 2021

15. We reiterate our deepest concern for the growing looting and illicit trafficking of cultural property and threats to intellectual property, including through digital and social platforms, and other organised crimes committed globally against cultural heritage and cultural institutions. We call on the international community to take strong and effective measures, including:



(a) Ratification of relevant international agreements and Conventions and progress on further development and better implementation of international standards, in strong cooperation with relevant international organisations including UNESCO, ICCROM, ICOM, ICOMOS and UNIDROIT;











Four priority areas of India's CWG

- 1. Protection and Restitution of Cultural Property
- 2. Harnessing Living Heritage for a Sustainable Future
- 3. Promotion of Cultural and Creative Industries, and Creative Economy
- 4. Leveraging Digital Technologies for Protection and Promotion of Culture







Mondiacult 2022 México



Stepping up the fight against illicit trafficking in cultural property

In the Declaration, governments also commit to intensify the fight against illicit trafficking in cultural goods with increased international cooperation.



14. We reiterate our call for the protection of cultural heritage, tangible and intangible, as well as cultural expressions, notably in times of crisis, [...], and condemn actions that target culture in the context of armed conflicts and the use of cultural properties or its surroundings for military purposes, and <u>we support efforts for the effective implementation of norms and standards of international law in this field</u>, in particular the UNESCO 1954 Convention and its two Protocols (1954 and 1999), the UNESCO 1970 [...], as well as the UNIDROIT 1995 Convention [...] by bringing together all concerned international institutions and organisations and the existing technical and financial mechanisms related to the UNESCO Conventions in the field of culture, with a view to supporting countries in their protection efforts, international solidarity and national recovery strategies;

https://www.unesco.org/sites/default/files/medias/fichiers/2022/10/6.MONDIACULT_EN_ DRAFT%20FINAL%20DECLARATION_FINAL_1.pdf



Council Conclusions on the fight against trafficking in cultural goods, approved by the Council (Justice and Home Affairs) at its 3995th meeting held on 8 June 2023

ACKNOWLEDGING that trafficking in cultural goods is a lucrative business for organised crime and has a devastating and irreversible impact on cultural heritage within and beyond the EU, and therefore requires a tailor-made response at EU level,

STRESSING the need to organise our response around an improved crime prevention and detection by market participants and cultural heritage institutions, stronger law enforcement and judicial capabilities, better international cooperation and increased support of other key stakeholders, as proposed in the Action Plan by the Commission,

CALLS ON THE MEMBER STATES TO

- Consider signing, ratifying and implementing the <u>Council of Europe Nicosia Convention</u> on "Offenses relating to Cultural Property", or implementing its principles where this is considered more appropriate;
- Consider signing and ratifying the <u>1970 UNESCO Convention</u> on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the <u>1995 UNIDROIT</u> Convention on Stolen or Illegally Exported Cultural Objects;

Advocacy Technical assistance

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

NDROIT



Economic Community of West African States (ECOWAS)



ECOWAS 2019/2023 action plan for the return of African cultural property to their countries of origin

The ECOWAS Commission organised, on 18 March 2021, a virtual meeting of the Directors General in charge of cultural heritage of Member States to review the legal framework of Member States to enable them to accelerate the ratification of international texts relating to the restitution and return of cultural property, notably the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

On 4 May 2021, prior to the meeting of the ECOWAS Culture Commissioner and the Minister of Culture and Tourism of **Togo**, a technical meeting of the UNIDROIT Secretariat with the Togolese authorities was held to help finalise the procedure for accession to the 1995 Convention.

On 26 July 2021, technical meeting of the UNIDROIT Secretariat with the authorities of **Guinea-Bissau** in the margins of the visit of the ECOWAS Culture Commissioner.

Other technical meetings (Niger, Gambia, Senegal....).

From 29 June to 1st July 2021, UNIDROIT was invited to attend the first meeting of the **Regional Monitoring Committee on the ECOWAS Action Plan** for the Return of Cultural Property to their Countries of Origin, organised in Cotonou (Benin).



TECHNICAL ASSISTANCE TO STATES

WORKING GROUP IN **EGYPT** – following a UNESCO training held in Cairo in 2017, an inter ministerial Working Group was set up to study the 1995 Convention

WORKING GROUP IN **LEBANON** – assessment of national legislation and its compatibility with the 1995 UNIDROIT Convention (partnership with UNESCO)

Visit to **MONGOLIA** to assess the legislation on the protection of cultural property in view of the accession to the 1995 UNIDROIT Convention

Meetings (remote) with officials from the Ministries of Culture of **GAMBIA**, **MADAGASCAR** and **TOGO** to assist in the finalisation of the process of accession to the 1995 UNIDROIT Convention









ECOWAS 2019/2023 action plan for the return of African cultural property to their countries of origin



Plan d'action régional 2019/2023 de la CEDEAO pour la restitution des biens culturels africains à leurs pays d'origine

Partnership



INTERNATIONAL SYMPOSIUM ON RESTITUTION

20 - 22 March 2023

In partnership with the Government of Senegal



DECLARATION DE DAKAR

II. À LA CEDEAO

. . . .

 Continuer le Plaidoyer auprès des Etats membres pour le renforcement du cadre juridique, notamment l'élaboration ou la révision de leur législation nationale, ainsi que la ratification de la Convention UNESCO de 1970 et la Convention d'UNIDROIT de 1995;

III. AUX ÉTATS AFRICAINS

ii. Ratifier les Conventions UNESCO de 1970 et d'UNIDROIT de 1995 pour ceux qui ne l'ont pas encore fait ; International Symposium on Approaches to the Restitution of African Cultural Property to its Countries of Origin,

Museum of Black Civilizations





ECOWAS 2019/2023 action plan for the return of African cultural property to their countries of origin





Formation des Juristes des Etats membres sur les démarches de restitution et validation du Plan d'action 2019-2023 de la CEDEAO sur le retour des biens culturels par les DG du patrimoine

10 au 13 juillet 2023: Formation des juristes

14-15 juillet 2023 : Revue et validation du Plan d'action de la CEDEAO



The syllabus of the International Programme for Law and Development 2023

ERNATIONAL PROGRAM > Introduction to the role of transnational law and unification;

 International commercial contracts: UNIDROIT Principles of International Commercial Contracts (UPICC) and the Model Clauses for the Use of the UNIDROIT Principles of International Commercial Contracts;

> Private Law and sustainable agriculture: Legal Guides on Contract Farming and on Agricultural Land Investment Contracts;

> Access to finance: Cape Town Convention and relevant Protocols on Aircraft Equipment; Railway Rolling Stock; Space Assets; Mining, Agricultural and Construction Equipment; UNIDROIT'S work on Warehouse Receipts Financing; Factoring; UNIDROIT'S work on Enforcement;

> Law of cultural property: Convention on Stolen or Illegally Exported Cultural Objects; Model Provisions on State Ownership of Undiscovered Cultural Objects;

> Procedural law and enforcement;

> Law and technology.



(Second edition of the International Summer School) 5 June to 7 July 2023





Ministero degli Affari Esteri e della Cooperazione Internazionale









Partnership



- National Training Workshop on Building Capacities on the Fight against Illicit Trafficking of Cultural Objects: Protection, Mitigation & Recovery in Emergency 24 to 28, October 2022, Adama, Ethiopia
- Two UNESCO workshops train some 70 professionals from 23 African countries to fight against the illicit trafficking of cultural property

Kenya and Gabon, 5 to 16 December 2022



Dunesco

ATELIER SOUS REGIONAL « Musées et Lutte contre le trafic illicite de biens culturels en Afrique centrale » Libreville, 12 – 16 décembre 2022

Réunion des ministres en charge du Patrimoine, de la Culture et des Arts de l'Afrique centrale Akanda, le 15 décembre 2022

DECLARATION DE LIBREVILLE

Des Ministres en charge du Patrimoine, de la Culture et des Arts des pays de l'Afrique centrale sur les musées, la circulation, la lutte contre le trafic illicite, le retour et la restitution des biens culturels.

NOUS, MINISTRES EN CHARGE DU PATRIMOINE, DE LA CULTURE ET DES ARTS DES PAYS DE L'AFRIQUE CENTRALE,

2. <u>Nous nous engageons</u> à soutenir les États de l'Afrique centrale qui ne l'ont pas encore fait, à ratifier la Convention UNESCO de 1970 concernant les mesures à prendre pour interdire et empêcher l'importation, l'exportation et le transfert de propriété illicites des biens culturels et la Convention UNIDROIT de 1995 sur les biens culturels volés ou illicitement exportés ;





Galar Atalona Juba Atalo Gatar Kational Ubrary Qatar National Ubrary Marks International Day Against Illicit Trafficking of Cultural Property

> UNIDROIT's contribution to the fight against illicit traffic in cultural property



مكتبة قطر الوطنية Qatar National Library Implementation of the 1970 UNESCO Convention on illicit traffic in cultural property and related instruments Extern current and review Auternet

> ۱. ۲

الخبراء

THE 1995 UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS



THE 2011 UNESCO – UNIDROIT MODEL PROVISIONS ON STATE OWNERSHIP OF UNDISCOVERED CULTURAL OBJECTS

اتفاقية المعهد الدولي لتوحيد القانون الخاص (بيونيدروا) بشأن القطع الثقافية المسروقة أو المصدّرة بطرق غير مشروعة (روما، 24 حزيران/ يونيو 1995)



Aseel Aljaied

The International Conference on Cultural Property Protection: The Prevention of the Illicit Trafficking of Cultural Properties-An ASEAN Perspective

5-8 September 2022, Siem Reap, Cambodia

25 ANTIQUITIES COALITION



Partnership

International Conference

THE NICOSIA CONVENTION: A CRIMINAL JUSTICE RESPONSE TO OFFENCES RELATING TO CULTURAL PROPERTY

June 2023









INTERPOL



AWARENESS RAISING AND CAPACITY BUILDING



United Nations Educational, Scientific and Cultural Organization



Bureau régional de l'UNESCO Dakar

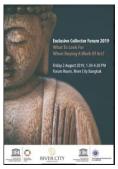
- Engaging the **European art market** in the fight against illicit traffic of ٠ cultural property and
- Training the European judiciary and law enforcement officials on the ٠ fight against the illicit trafficking in cultural property
- Training with the **Ecole du patrimoine africain** for heritage ٠ professionals





IL PATRIMOTA

Opening of the 2019 Judicial year in Milan



«Ethics of collections and fight against illicit traffic of cultural heritage in the GCC» Abu Dhabi, 2 to 4 April 2017

Exclusive Collector Forum 2019: Bangkok, August 2019





Italian Association for Arbitration (AIA) and the German Arbitration Institute (DIS)







National or regional capacity building workshops in Ethiopia, Kuwait, Jordan, Mauritania, Sudan, Jamaica, Seychelles, Comoros, Djibouti, Somalia....

Workshops in Rome for Chili, CARICOM countries, Jordan, Romania, Moldova, Serbia, African Union countries ... Unite4Heritage Task Force

Training for the Carabinieri Squad for the Protection of Cultural Property and for army forces





Project on "Enhancing Legislative and Institutional frameworks of Cultural Heritage Protection" in Arab countries (in cooperation with UNESCO and INTERPOL)



1995 UNIDROIT CONVENTION - Need to raise awareness, involve academics and practitioners, and gather information on its implementation







DUE DTI TGENCE



Convention Text Status

National Implementation Explanatory Report and Commentaries Preparatory Work Follow-up

Informal Ratification Task Force Related Instruments





TIME LIMITATION

OBJECTS

Blackboard



Library

The Library is an accessible electronic storage of materials relating to the 1995 Convention on Stolen or Illegally Exported Cultural Objects.

The Library includes documents provided by UNIDROIT, consisting of case law, case comments, as well as articles prepared by scholars, and valuable papers submitted by students of affiliated Universities and UNIDROIT's interns.

This section also contains self-instructional material and material useful for professionals and law enforcement authorities.

The Library is organised by categories of material. The list to the right of the page contains additional information about the documents and links to access them.

Reporting of Judicial/Extraiudicial activity Containing documents associated with judicial actions related to the Convention (case-law). Scholarly Articles Containing scholarly articles on the 1995 UNIDROIT Convention.

> Students' Papers Containing papers and notes prepared by UNIDROIT's interns and students.

Self-instructional materials Comprehensive educational materials for individuals needing information about the Convention.

Materials for Professionals Containing materials intended for art lawyers, judicial authorities, customs agents and police units.



The fresco pictured above adorns the walls of the Hall of the Horatii and Curiatii (Musei Ca to signature on June 24, 1995. The fresco decoration Antiquities Coalition

the beginning of the XVII century. Two monumental in marble and was carried out by Bernini and his pup













The Convention



Academic institutions



Is the legal protection currently granted to cultural heritage satisfactory under international law? What kind of legal solutions can be provided to the foreseen and unforeseen changes affecting cultural heritage?







University lectures

AIDC COMPANY



- IACL

AIDC IACL ACADÉMIE INTERNATIONALE DE DROIT COMPARÉ

INTERNATIONAL ACADEMY OF COMPARATIVE LAW

CONFÉRENCE - CONFERENCE - CONFERENCIA "CULTURE ET DROIT" / "CULTURE AND LAW" / " CULTURA Y DERECHO"

INIDRO

EDUCATION – University lectures









Education is a key tool in protecting cultural property and combating illicit traffic and UCAP is meant to *increase the* awareness and knowledge about the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. It aims at promoting and linking pertinent (inter)national research made by entities and Universities holding courses in the field of cultural heritage law, in particular on the 1995 UNIDROIT Convention. It also works at promoting the development of specific programs or modules.



UNIDROIT and its activities relating

ALMED - ASERI

Rome 21 April 2021



PRIVATE (AND PUBLIC) ART COLLECTIONS ORPHAN OBJECTS

UNIDROIT Work Programme 2023 – 2025 – focus on orphan objects and priority raised from low to medium

- 2 meetings of the Exploratory Experts Group
 - 1 meeting sub-group on definitions

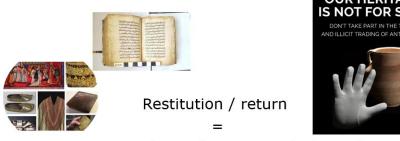
Strong input from art market

Working Group to be created and convened in autumn 2023





The Convention establishes common, minimal legal rules for the restitution and return



sensitive and complex issues which involve conflicting yet legitimate interests



Art. 9(1) Nothing in this Convention shall prevent a Contracting State from applying any rules more favourable to the restitution or the return of stolen or illegally exported cultural objects than provided for by this Convention.

The analysis of the Convention shows that, **from an international perspective**, the compromise reached at the Rome Diplomatic Conference represents a **balanced solution**.

Not only does it effectively **combat abuses** committed in the international trade in cultural goods, but it also **contributes to increasing legal certainty in the circulation and trade** of cultural goods worldwide.

The UNIDROIT Convention complements the due diligence rules laid down by museums and art dealers, while at the same time fostering confidence in international trade. It provides for an obligation to which collectors, museums and serious art dealers already subject themselves: the obligation to duly inquire about the origin of a cultural property offered for sale.

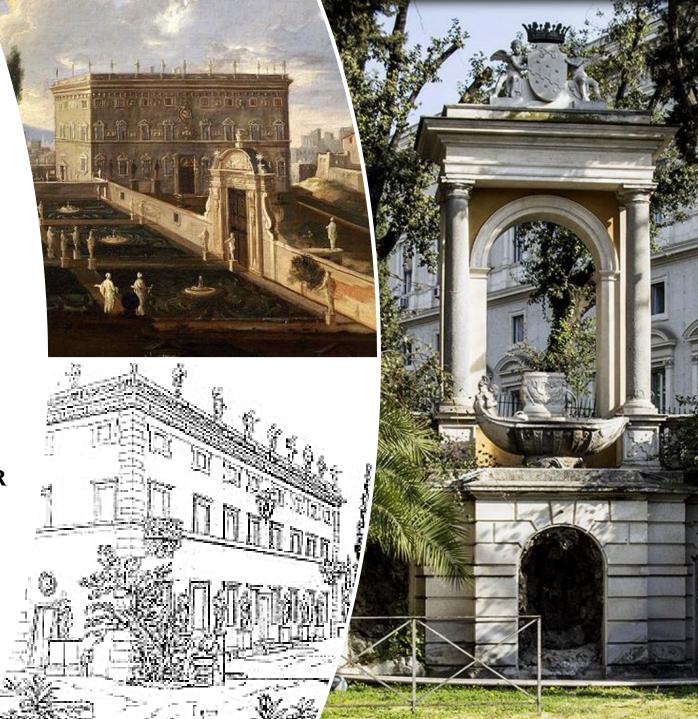
For international art traffickers, however, it is undeniably an obstacle: it will be increasingly difficult to exploit the differences between national laws in order to obtain a valid title to cultural property stolen or otherwise removed from its owner.



Marina SCHNEIDER

UNIDROIT Principal Legal Officer & Treaty Depositary

m.schneider@unidroit.org



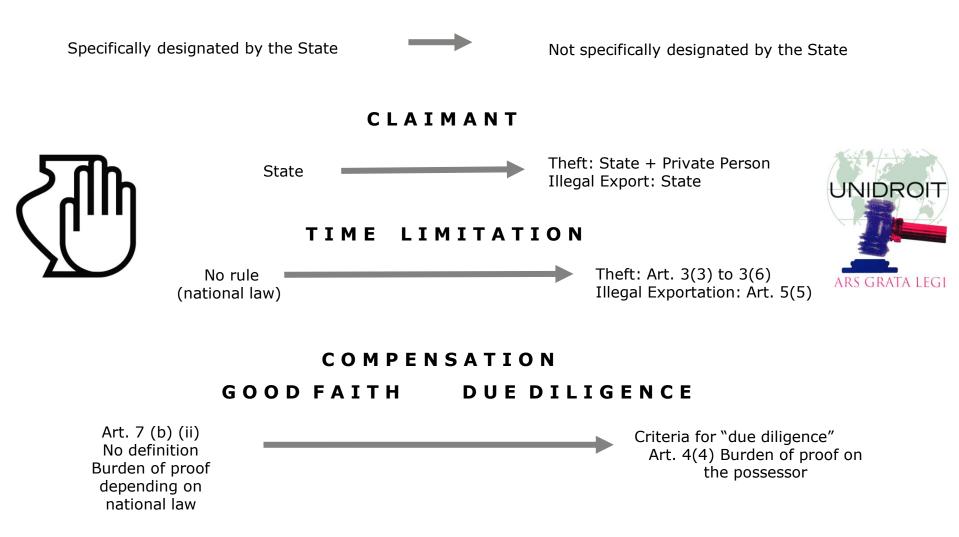


SUMMARY – Complementarity with 1970 UNESCO Convention





DEFINITION OF CULTURAL PROPERTY





PRODUCTS OF CLANDESTINE ARCHEOLOGICAL EXCAVATION

Art. 7 (b) (ii): ONLY cultural property stolen from a museum or a religious or secular public monument or similar institution (...) documented as appertaining to the inventory of that institution + Art. 9 calls on States Parties if patrimony is in jeopardy from pillage of archaeological materials .

Special Protection of Archaeological objects:

- Illicit excavation = theft (Art. 3(2))
- No time limitation to action
- Art. 5(3) (a) (b) (c)

2011 UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects

