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WHITE PAPER

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I. INTRODUCTION

1. One of the key objectives of UNIDROIT's Centenary in 2026 is to undertake a **comprehensive assessment of the Institute's work** over the past century, both to highlight its contribution to the progressive harmonisation and modernisation of private law and to identify priorities for its future activities. To this end, a number of thematic Workstreams have been established to examine the principal areas of UNIDROIT's mandate and to evaluate the impact of its instruments and projects.

2. Within this framework, the Workstream on Cultural Property (CP Committee) has been entrusted with the assessment of UNIDROIT's work in the field of the international protection of cultural objects. The Workstream covers the following instruments and projects:

- the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995);
- the UNESCO–UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects (2011); and
- the ongoing UNIDROIT project on Private Art Collections / Orphan Objects.

3. This White Paper provides an expert assessment of these instruments and projects, examining their **development, implementation and practical significance**. It also considers their **continuing relevance** considering evolving challenges affecting the international protection and circulation of cultural objects and identifies possible avenues for future work.

4. More broadly, the White Paper seeks to illustrate UNIDROIT's distinctive contribution to addressing legal questions involving cultural objects, particularly those arising from differences between national private-law systems and the international circulation of cultural objects. Its instruments and projects pursue a range of objectives, including facilitating restitution and return, clarifying ownership rights, promoting legal certainty, and encouraging responsible stewardship and circulation. Beyond the preparation of individual instruments, UNIDROIT has helped bridge legal traditions, reconcile competing interests, and develop practical private-law solutions. In doing so, its work both complements existing international frameworks for cultural heritage protection and addresses legal questions extending beyond protection alone.

5. The assessment of each instrument is based on **two complementary dimensions: implementation and engagement**. The implementation analysis examines the extent to which each instrument has been adopted, incorporated into domestic legal systems or otherwise influenced legislative and judicial practice. In this respect, a distinction is drawn between the formal incorporation of an instrument into domestic legal systems (through ratification or accession and, where necessary, legislative measures), its application or enforcement by courts and competent authorities where it is binding or otherwise applicable, and its wider influence on legislation and case law in States or situations to which it does not apply as such. Not every judicial reference to an instrument is therefore treated as an instance of implementation. The engagement analysis considers the broader reception and use of the instrument, including its influence on policy development, international cooperation, capacity-building activities, academic scholarship and professional practice. These dimensions provide a comprehensive basis for evaluating the effectiveness, impact and continuing relevance of UNIDROIT's work in this area. Where the White Paper refers to the impact or influence of an instrument, it seeks to identify the connection between each example and the relevant UNIDROIT instrument, and to distinguish demonstrated influence from parallel legal developments. The number of ratifications is not treated as the sole measure of an instrument's success.

6. By providing a structured analysis of UNIDROIT's achievements and identifying opportunities for future development, this White Paper contributes to the broader reflection undertaken in the context of the Institute's Centenary and reaffirms the continuing importance of uniform private law as a means of advancing the international protection of cultural objects.

II. SEVENTY YEARS OF UNIDROIT'S CONTRIBUTION IN THE FIELD OF THE INTERNATIONAL PROTECTION AND CIRCULATION OF CULTURAL OBJECTS [2]

A. Early participation: 1950 to 1995

7. At the Fifth Session of the UNESCO General Conference in 1950, UNIDROIT participated in the preparation of a **draft Convention for the protection of museums, monuments, and cultural objects in the event of armed conflict** through its President, Massimo Pilotti, and its Secretary-General, Mario Matteucci. Pilotti served both as an adviser to the Italian delegation and as a representative of the Institute,[3] while Matteucci had been appointed as an expert to the Italian delegation. The draft was subsequently presented by Pilotti on behalf of the Italian delegation.[4]

8. While building upon earlier initiatives, including the 1936 International Museum Office (IMO) draft treaty and the Hague Rules,[5] the draft Convention introduced a significant conceptual shift by treating cultural property not as a national asset, as under the 1907 Hague Convention (IV), but as the common heritage of humankind.[6] All belligerent parties were therefore required to protect and respect cultural property by refraining from attacking or using it for military purposes, taking the necessary precautions during hostilities, and avoiding its seizure, expropriation, or removal from the territory of a

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[2] *Note on terminology*: this document will primarily use the term "object" but when required by the context other terminology may be used (property, goods, heritage).

[3] UNIDROIT had been granted observer status.

[4] Pursuant to Resolution 6.42 adopted by the General Conference at its Fourth Session and draft Resolution 4.43 in the Programme for 1951, UNESCO, *Draft International Convention for the Protection of Monuments, Centres of Historic Interest, Cultural Institutions and Works of Art, in the Event of Armed Conflict: Proposal Presented by the Italian Government*, 22 May 1950, UNESCO Doc. 5C/11, p. 1. On UNIDROIT's involvement in the drafting process, *see* R. Monaco, "La contribution d'UNIDROIT à la protection internationale des biens culturels", in P. Lalive (ed.), *International Sales of Works of Art: Geneva Workshop, 11–13 April 1985*, Institute of International Business Law and Practice and Faculté de Droit de Genève, Geneva, 1988, p. 573. Matteucci described his work as being carried out under the "wise guidance of Massimo Pilotti", whom he referred to as the "defense attorney of the entire process". M. Matteucci, "Nota sulla Convenzione per la protezione dei beni culturali in caso di conflitto armato", *Rivista di diritto internazionale*, 1958, Vol. 41, p. 671. More generally, F. Cavalli observed that "The Italian delegation had the merit of presenting the first draft…"; *ibid*, "La Santa Sede e la Convenzione dell'Aja per la protezione dei beni culturali in caso di conflitto armato", *Rivista di studi politici internazionali*, 1960, Vol. 27(1), p. 128. For a comprehensive overview of the drafting process, *see* G. Giardini, "The Role of Italy and UNIDROIT in the Drafting of the First Protocol to the 1954 Hague Convention", *Santander Art and Culture Law Review*, 2024, Vol. 10(2), pp. 77–104; *ibid.,* "Squaring the Triangle of Cultural Property Law: Seventy Years of UNIDROIT's Work", *Santander Art and Culture Law Review*, 2023, Vol. 9(2), pp. 37–64; and, on the relationship between the 1954 Hague Convention and the 1995 UNIDROIT Convention, G. Giardini and A. F. Vrdoljak, "The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects", in I. Saloul and B. Baille (eds.), *The Palgrave Encyclopedia of Cultural Heritage and Conflict*, Springer Nature, 2026, pp. 1–13. Unless otherwise indicated, all translations from Italian into English are the author's own.

[5] R. Monaco, "La contribution d'Unidroit à la protection internationale des biens culturels", cit., p. 573.

[6] UNESCO Doc. 6 C/PRG/22, CL/484, Annex, Appendix I, p. 19.

contracting State,[7] regardless of its country of origin.[8] The draft included provisions on the restitution of cultural objects illegally removed during military occupation.[9] However, at the request of several States, these provisions were transferred to a separate Optional Protocol in order to facilitate a broader acceptance of the Convention.[10]

9. Following the transfer of these provisions to the Protocol, UNIDROIT was entrusted with studying "the law on restitution of cultural property which has changed hands during a military occupation".[11] To this end, in 1953 the Institute launched Study XXXVIII on the *Protection of Cultural Property in the Event of Armed Conflict*, which resulted in the *Remarks of the International Institute for the Unification of Private Law on the Restitution of Cultural Property Which Has Changed Hands During a Military Occupation* and a *Brief Comparative Survey on the Legal Protection Afforded to the Holder under the Law Governing the Transfer of Movable Property* (Appendix).[12] The Institute promptly identified several fundamental legal issues. First, it argued that the draft improperly "confound[ed] matters entirely different in nature",[13] namely, private and public law, by treating alike the restitution of stolen cultural property acquired in good faith and the return of illegally exported objects, notwithstanding the distinct legal interests involved.[14] Secondly, it observed that the draft failed to define standing clearly, leaving uncertain whether claims for the recovery of cultural property could be brought exclusively by States or also by private individuals. UNIDROIT's *Remarks,* together with a revised draft Protocol, were submitted to the Diplomatic Conference convened at The Hague on 21 April 1954.[15] Nevertheless, in order to facilitate ratification, the final draft deliberately avoided addressing both issues regarding the good-faith acquisition of movable cultural property and the enforcement of foreign export laws.

10. Overall, UNIDROIT's contribution played an important role in shaping the discussions surrounding the draft Hague Convention and, most importantly, its **First Protocol**. Many ideas developed in the early 1950s were ahead of their time and found fuller expression once the international legal framework had matured. UNIDROIT's involvement in the development of UNESCO's legal instruments, which began in 1949 with the UNIDROIT Secretariat's involvement in the **Universal Copyright Convention of 1952**,

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7 *Note on terminology:* As regards treaty status, the White Paper follows the terminology of the 1995 Convention, which refers to "Contracting States", and preserves it in quotations. Under Article 2(1)(f) and (g) of the 1969 Vienna Convention on the Law of Treaties, a "contracting State" is a State which has consented to be bound by the treaty, whether or not the treaty has entered into force, and a "party" is a State which has consented to be bound and for which the treaty is in force. Since the 1995 Convention has been in force since 1998, both terms refer to States that have ratified or acceded to it (subject to the period before the Convention enters into force for a newly ratifying or acceding State under Article 12(2)); States that have only signed the Convention are referred to as signatory States.

8 See footnote 6*,* p. 20.

9 UNESCO Doc. 6 C/PRG/22, CL/484, Annex, Appendix I, p. 22. See also the subsequent draft Convention of 31 October 1951, in the preparation of which Matteucci collaborated (UNESCO Doc. CL/561, pp. 7–8).

10 UNESCO Doc. CBC/6, p. 1; for the States' requests, see UNESCO Doc. 7 C/DR/93, pp. 1-2; UNESCO Doc. 7 C/PRG/38, pp. 1-2.

11 UNESCO, *Remarks of the International Institute for the Unification of Private Law on the Restitution of Cultural Property Which Has Changed Hands During a Military Occupation,* 5 March 1954, UNESCO Doc. CBC/6, p. 1. *See,* also, G. Giardini, "The Role of Italy and UNIDROIT in the Drafting of the First Protocol to the 1954 Hague Convention", cit., pp. 93 ff.

12 UNESCO Doc. CBC/6, p. 1.

13 *Ibid.*

14 *Ibid.,* p. 2-7.

15 *Ibid.,* p. 2.

continued throughout the following decades.[16] Since 1950, UNIDROIT has been permanently represented as an observer at the UNESCO General Conference.[17]

11. Building on the successful cooperation that led to the adoption of the 1954 Hague Convention, UNIDROIT continued to provide legal expertise to UNESCO on matters relating to cultural property. In particular, the Institute provided legal advice on the "technical and legal aspects of the preparation of international regulations to prevent the illicit export, import, and sale of cultural property", thereby contributing to the preparatory work of the *1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* (the 1970 Convention or the **1970 UNESCO Convention**).[18] UNIDROIT also contributed to the preparation of working papers that ultimately paved the way for the *1972 UNESCO Convention concerning the Protection of the World Cultural and Natural Heritage*.[19]

12. The 1970 UNESCO Convention is particularly relevant to UNIDROIT's work, as it was the first treaty to establish obligations under public international law requiring States to prevent the illicit import, export and transfer of ownership of cultural property, both in peacetime and during armed conflict. However, it largely leaves the private law consequences of illicit transactions – in particular the transfer of title, the position of good-faith acquirers and the time limits for claims – to national laws, which differ considerably across legal systems. It was to address these questions that UNESCO turned to UNIDROIT in the 1980s, building on the Institute's earlier work on cultural property and on the acquisition in good faith of corporeal movables (in particular the **1974 Draft Convention providing a Uniform Law on the Acquisition in Good Faith of Corporeal Movables (LUAB)**).[20] As will be showed in the following paragraphs, the 1995 UNIDROIT Convention therefore complements the 1970 UNESCO Convention by providing uniform private law rules under which claims for the restitution of stolen cultural objects and for the return of illegally exported cultural objects may be brought directly before the courts or other competent authorities of Contracting States. Claims may always be brought by a State, and, in the case of stolen objects, by private owners. The 2011 Model Provisions, prepared jointly by the two organisations, continued this cooperation.

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16 In particular, "a representative of the Institute attended the meeting of experts on copyright convened in 1951 and the Inter-governmental Conference in 1952 which adopted the UNESCO Universal Convention on Copyright". UNESCO Doc. 33 EX/25 (March 6, 1953), p. 1-3.

17 *Ibid.*, p. 3.

18 Doc. UNESCO/CUA/115 (April 14, 1962), p. 2; Doc. UNESCO 12 C/PRG/10, p. 7; UNESCO Doc. 78 EX/9 (April 22, 1968), p. 9.

19 In his capacity as Secretary-General of UNIDROIT, Mario Matteucci (Italy), together with Robert Brichet (France), prepared a working paper for the (second) *Meeting of Experts to Establish an International System for the Protection of Monuments and Sites of Universal Interest*, outlining practical steps towards "the possible establishment of an appropriate international system" (UNESCO Doc. SH/CS/27/8; UNESCO Doc. SHC/Conf. 43/5, 14 June 1969, p. 1). These preparatory studies paved the way for the 1972 UNESCO World Heritage Convention. Notably, the draft envisaged the protection of cultural property "irrespective of ownership", extending its safeguards to both public and private property (p. 5) It proposed a comprehensive regime for the protection of immovable cultural property, including criminal sanctions for the intentional destruction, mutilation, or damage of protected property, civil penalties for non-compliance with protective measures, incentives for private philanthropy (pp. 6-7), and, where private owners failed to fulfil their obligations, compulsory measures affecting property rights (pp. 7 ff.).

20 This expertise also drew on UNIDROIT's work on the Draft Convention providing a Uniform Law on the Acquisition in Good Faith of Corporeal Movables (LUAB), an initial version of which was prepared in 1968 and a revised text approved by the UNIDROIT Governing Council in 1974. The LUAB was never formally adopted as there was not sufficient consensus to convene a diplomatic Conference. See Draft Convention providing a Uniform Law on the Acquisition in Good Faith of Corporeal Movables, in Uniform Law Review, 1975, Vol. os-3(1), p. 69 ff., together with its Explanatory Report.

B. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995)

1. Development and adoption

13. In 1983, following a recommendation by a committee of experts established at the request of UNESCO's Executive Board, UNESCO invited UNIDROIT to cooperate on a range of legal issues concerning the recovery of illicitly transferred cultural objects. The committee had been tasked with examining criticisms of the drafting of the 1970 Convention, particularly concerns raised by certain countries regarding the pillaging of archaeological sites. UNESCO asked UNIDROIT to co-operate on issues such as good faith acquisition, choice of law, conflict of national laws, standing to sue, public policy and other differences between jurisdictions which made it difficult to recover cultural objects which had been illicitly transferred.

14. Following the completion of **two specific studies**,[21] it was decided to draft a new instrument that would build on the 1970 UNESCO Convention while also drawing on 25 years of reflection on the subject of illicit trafficking of cultural property, with the continuous support of UNESCO.

15. A **Study Group** composed of experts from different legal traditions[22] prepared a preliminary draft of the Convention over three sessions between 1988 and 1990. The composition of the Study Group was intended to bring together expertise from the principal legal systems, particularly civil law and common law, to address the differences in their rules regarding the transfer of title to movables and the protection of good-faith acquirers that the future Convention had to reconcile. In 1994, after revisions made during four meetings of a **Committee of governmental experts**, the UNIDROIT Governing Council submitted the text, together with a draft Explanatory Report, to the **Diplomatic Conference** for adoption.

16. The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (the 1995 UNIDROIT Convention) was adopted on 24 June 1995, at the conclusion of a diplomatic Conference convened by the Italian Government in Rome. Held from 7 to 24 June 1995, the diplomatic Conference was attended by 78 States, 7 inter-governmental organisations, 5 international non-governmental organisations, one

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[21] The Protection of Cultural Property. Study requested by UNESCO from UNIDROIT concerning the international protection of cultural property in the light in particular of the UNIDROIT draft Convention providing a Uniform Law on the Acquisition in Good Faith of Corporeal Movables of 1974 and of the UNESCO Convention of 1970 on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (prepared by Gerte Reichelt Univ. Dozent of the Vienna Institute of Comparative Law) – Rome, December 1986, and The International Protection of Cultural Property. Second study requested from UNIDROIT by UNESCO on the International protection of Cultural Property with particular reference to the rules of private law affecting the transfer of title to Cultural Property and in the light of the comments received on the first study (prepared by Gerte Reichelt, Univ. Dozent at the Vienna Institute of Comparative Law) – Rome, April 1988.

[22] *Composition of the Study Group*: Members: Mr Riccardo MONACO, President of UNIDROIT, Chairman of the Study Group; Mr Joseph 'Bayo AJALA, Solicitor-General of the Federation of Nigeria and Director-General, Federal Ministry of Justice, Lagos; Mr Jean CHATELAIN, Professor Emeritus at the University of Paris I Panthéon-Sorbonne; Mr Richard CREWDSON, Chairman, Committee on Cultural Property of the International Bar Association; Mr Ridha FRAOUA, Scientific Assistant, Federal Office of Justice, Bern; Mr Manlio FRIGO, Assistant in International Law, Milan; Mr Pierre LALIVE D'EPINAY, Professor at the Faculty of Law of the University of Geneva; Mr Roland LOEWE, Honorary Professor at the Faculty of Law of the University of Salzburg, Former Director General of the Federal Ministry of Justice, Member of the Governing Council of UNIDROIT, Vice-Chairman of the Study Group; Mr John Henry MERRYMAN, Professor, Stanford Law School; H.E. Aldo PEZZANA CAPRANICA DEL GRILLO, Permanent Observer of the Sovereign Military Order of Malta to UNIDROIT, Rome; Ms Lyndel Vivien PROTT, Reader in International Law and Jurisprudence, Faculty of Law, University of Sydney; Mr Stefano RODOTA', Professor of Law, University of Rome, Member of the Italian Parliament, Member of the Parliamentary Assembly of the Council of Europe, Rome; Mr Jorge Antonio SÀNCHEZ CORDERO, Member of the Governing Council of UNIDROIT, Mexico D.F.; Ms Jelena VILUS, Professor, Institute of Comparative Law of Belgrade, member of the Governing Council of UNIDROIT, Belgrade. Observers: Italian Carabinieri; Commission of the European Communities; Hague Conference on Private International Law; Council of Europe; International Criminal Police Organization (INTERPOL); United Nations Educational, Scientific and Cultural Organization (UNESCO).

international professional association (the International Association of Dealers in Ancient Art - IADAA), and the Sovereign Military Order of Malta.[23] The participants at the diplomatic Conference had before them the draft UNIDROIT Convention and its accompanying Explanatory Report, prepared by the UNIDROIT Secretariat; the draft Final Provisions, together with explanatory comments by the UNIDROIT Secretariat; and proposals and comments submitted by Governments and international organisations.[24] Alongside the plenary sessions, some members of the diplomatic Conference met informally to reconcile diverging positions. These discussions resulted in a text acceptable to all delegations, which, together with a draft Preamble,[25] was submitted to the Conference and adopted.

17. The 1995 UNIDROIT Convention was opened to signature - and accession - at the close of the Conference on 24 June 1995. On the day of its adoption, the Convention was signed by ten States: Burkina Faso, Cambodia, Côte d'Ivoire, Croatia, France, Guinea, Hungary, Italy, Lithuania and Zambia. It remained open for signature in Rome (Italy) until 30 June 1996[26] and entered into force on 1 July 1998, following the deposit of the fifth instrument of ratification pursuant to Article 12(1) of the Convention.

18. The Explanatory report of the 1995 UNIDROIT Convention, prepared by the UNIDROIT Secretariat and published in 2001, analyses the individual clauses of the Convention, their *raison d'être*, how they took shape during the preparatory work, and how they may apply. The article-by-article structure provides a clear understanding of each provision. In subsequent years, further commentaries authored by major experts in the field of international cultural heritage law were published.[27]

2. Purpose

19. The 1995 UNIDROIT Convention complements the provisions of the 1970 UNESCO Convention by formulating common minimum legal rules governing the restitution and return of cultural objects. These uniform rules of private law and international procedure facilitate the application of certain principles set out in the UNESCO Convention. The 1995 UNIDROIT Convention was developed to reconcile two competing positions: that of advocates of the free movement of cultural objects worldwide, who sought to restrict the scope of the Convention and to preserve existing protections for good-faith purchasers, and that of

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[23] For the complete list of participants, see CONF. 9/INF. 1 FINAL, in *Acts and Proceedings of the Diplomatic Conference for the Adoption of the draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects*, Presidenza del Consiglio dei Ministri-Dipartimento per l'Informazione e l'Editoria, Rome 1996, pp. 392.

[24] The Acts and Proceedings (*supra* footnote 23) reproduce: the *draft UNIDROIT Convention on the International Return of Stolen or Illegally Exported Cultural Objects with explanatory Report prepared by the UNIDROIT Secretariat* (CONF. 8/3); the *draft Final Provisions Capable of Embodiment in the draft UNIDROIT Convention with explanatory Comments by the UNIDROIT Secretariat* (CONF. 8/4); the *Proposals and Comments of Governments and International Organizations on the draft UNIDROIT Convention* (CONF. 8/5 and Addenda, CONF. 8/6 and Addenda, CONF. 8/W.P. 1-7 and CONF. 8/C.$_1$/W.P. 1-82) and (*ibid.*) on the *draft Final Provisions Capable of Embodiment in the draft UNIDROIT Convention* (CONF. 8/C.$_2$/W.P. 1-25).

[25] Acts and Proceedings (*supra* footnote 23), CONF. 8/W.P. 6, 351 - Proposal submitted by the delegations of Australia, Cambodia, Canada, France, Greece, Italy, Mexico, the Netherlands, Spain, Switzerland, Turkey, the United States of America and Zambia.

[26] By 30 June 1996, the following States had signed the Convention: Bolivia, Burkina Faso, Cambodia, Côte d'Ivoire, Croatia, Finland, France, Georgia, Guinea, Hungary, Italy, Lithuania, Netherlands, Pakistan, Paraguay, Peru, Portugal, Romania, Russian Federation, Senegal, Switzerland and Zambia.

[27] L. Prott, Commentary on the UNIDROIT Convention, Institute of Art and Law, 1997; L. Prott, Commentary on the 1995 UNIDROIT Convention (second edition), with the collaboration of Thomas Adlercreutz, Ruth Redmond-Cooper and Marina Schneider, Institute of Art and Law, 2021; The 1970 UNESCO and the 1995 UNIDROIT Conventions on Stolen or Illegally Transferred Cultural Property, A Commentary, Oxford Commentaries on International Cultural Heritage Law, edited by Ana Filipa Vrdoljak, Andrzej Jakubowski, Alessandro Chechi.

proponents of cultural nationalism[28] who favoured a broader application of the principle of return in order to maximise the protection of cultural objects.

20. While the 1970 UNESCO Convention represented a major step forward, it did not resolve the legal uncertainties surrounding the restitution of cultural property. First, the Convention left important questions of private law concerning restitution unresolved, instead leaving them to national legal systems, which differ considerably in this area, particularly between common law and civil law jurisdictions. Second, the return of illegally exported cultural objects was complicated by the lack of recognition and enforcement of national export restrictions in foreign jurisdictions. Furthermore, while the 1970 Convention requires States to adopt procedures governing the authorised export of cultural objects, it does not provide a specific mechanism for securing the return of illegally exported objects to their country of origin.

21. The 1995 UNIDROIT Convention was therefore developed to address these gaps. It also went further by addressing other issues, such as time limits for commencing legal proceedings and jurisdiction.

22. The 1995 UNIDROIT Convention aims not only to combat illicit practices in the international trade in cultural objects but also to enhance legal certainty in their international circulation. The Convention seeks, *inter alia,* to influence the behaviour of art market participants by establishing an automatic restitution mechanism in the event of theft, introducing a standard of due diligence, and providing for the recognition of national export restrictions in cross-border claims for the return of illegally exported cultural objects.

3. Key content

23. The 1995 UNIDROIT Convention establishes ***uniform mechanisms for the restitution of stolen and the return of illegally exported cultural objects***. Critically, the Convention applies to claims of an international character regarding the restitution of stolen cultural objects from a State or a private person, as well as the return of illegally exported cultural objects.

24. Under the Convention, the possessor of a ***stolen cultural object*** must return it without conditions (Article 3(1)) and is entitled to compensation only if they neither knew nor ought reasonably to have known that the cultural object was stolen and can prove that they exercised due diligence at the time of acquisition (Article 4(1)). For the first time, the Convention explicitly articulates criteria for determining whether due diligence has been exercised (Article 4(4)).

25. In cases of ***illegal export***, including where cultural objects legally exported for purposes such as loans, restorations, fairs, or research, are not returned at the end of the authorised period, the State whose legislation has been violated may request the return of the object. However, the State must establish that its removal significantly impairs one or more of the interests listed in Article 5(3)(a)-(d), or that the object is of significant cultural importance to that State. Compensation may be awarded to a possessor who did not know that the object had been illegally exported.

26. The 1995 UNIDROIT Convention also contains provisions on ***time limitation for actions*** (Article 3(3-8) and Article 5(5)). Subject to the special rules applicable to certain categories of cultural objects, claims for the restitution of stolen cultural objects and requests for the return of illegally exported cultural

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[28] See J.H. Merryman, "Two Ways of Thinking About Cultural Property" (1986) 80 American Journal of International Law 831, p. 846 ff.; J.H. Merryman, "Cultural Property Internationalism" (2005) 12 International Journal of Cultural Property 11, p. 22. For a critical perspective, emphasising the link between cultural objects, their context of origin and the communities that produced them, as well as the harm caused by the illicit trade to the archaeological record, see (in general) P. Gerstenblith, "Identity and Cultural Property: The Protection of Cultural Property in the United States" (1995) 75 Boston University Law Review 559; P. Gerstenblith, "The Public Interest in the Restitution of Cultural Objects" (2001) 16 Connecticut Journal of International Law 197, p. 220 ff.

objects must be brought within three years of the date on which the claimant or requesting State, respectively, became aware of the location of the cultural object and the identity of its possessor. In any event, such claims must be brought within fifty years from the time of the theft or, in the case of illegally exported objects, within fifty years of the date of export or the date on which the object should have been returned under the relevant export permit.

27. The 1995 UNIDROIT Convention furthermore provides ***special protection*** for (1) products of clandestine archaeological excavations, as well as objects lawfully excavated but unlawfully retained (when consistent with the law of the State where the excavation took place), and (2) objects in use by a tribal or indigenous community.

28. The 1995 UNIDROIT Convention is ***not retroactive***. However, it expressly states that it does not in any way legitimise illegal transactions of any nature that took place before its entry into force, nor does it limit the right of a State or other person to make a claim for the restitution or return of a cultural object stolen or illegally exported before its entry into force, using remedies available outside the framework of the Convention.

29. Finally, the Convention also establishes ***procedures*** for resolving international disputes (Articles 8 and 16). Claims may be brought, through the channels declared by each Contracting State under Article 16, before the courts or other competent authorities of the State in which the cultural object is located (Article 8(1)). Provisional and protective measures may also be sought before those authorities (Article 8(3)), while the parties remain free to choose or agree upon another forum or to submit the dispute to arbitration (Article 8(2)).

30. One aspect of the Convention that has been regarded by some as a strength and by others as a weakness is its ***prohibition of reservations*** (Article 18). Some commentators[29] have argued that this absolute prohibition may deter would-be Contracting States from becoming Parties to the Convention by imposing an "all or nothing" approach, even where these States would seek to make only one or two reservations. Others[30] have argued that the Convention represents a consensus and that the absolute prohibition of reservations ensures uniformity of law among Contracting States, thereby strengthening the protection of cultural property and minimising the problems arising from inconsistent or incomplete regulation.

4. Implementation

31. The implementation analysis examines the extent to which the 1995 UNIDROIT Convention has been adopted, incorporated into domestic legal systems or otherwise influenced legislative and judicial practice. It distinguishes the incorporation of the Convention into national laws and its application or enforcement where it is binding from its wider influence on legislation and case law (see the Introduction above).

(a) Signature and ratification/accession to the 1995 UNIDROIT Convention

32. The 1995 UNIDROIT Convention entered into force in 1998 and currently has **56 Contracting States**.[31] Other States, notably Iraq, Mauritania and Mongolia, are well advanced in the process of acceding to the Convention, while others have initiated the process.

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[29] *See*, *e.g.*, J.H. Merryman, "The UNIDROIT Convention: Three Significant Departures from the *Urtext*." *International Journal of Cultural Property*, 5(1), pp. 11-18 (1996).

[30] *See, e.g.*, A. Love Levine, "The Need for Uniform Legal Protection against Cultural Property Theft: A Final Cry for the 1995 UNIDROIT Convention." 36 Brook. J. Int'l L. 751, 753 (2011).

[31] See the UNIDROIT website at: https://www.unidroit.org/instruments/cultural-property/1995-convention/status/ .

33. The Workstream Committee on Cultural Property notes that several countries have initiated the **process of ratification or accession** and, in some cases, have even obtained parliamentary approval, but have not formally deposited their instruments with the Italian Ministry of Foreign Affairs and International Cooperation, the Depositary of the 1995 Convention. As a result, these States are not yet able to benefit from the provisions of the treaty. Some instruments lack the compulsory declaration under Article 16(1) and the information required under Article 17.

34. **Key art market countries,** such as Switzerland and France, have signed but not yet ratified the Convention. Additionally, neither the United Kingdom nor the United States of America has ratified it, limiting the Convention's international reach. Indeed, many major market States were successfully pressured not to become Parties to the Convention because of concerns that it would hinder legitimate trade in antiquities or conflict with notions of cultural sovereignty.[32] This situation has created an imbalance: while many States of origin of cultural property are Parties, many States of destination are not. China, the world's third-largest art market,[33] is a notable exception, having been a Party to the 1995 UNIDROIT Convention since 1998.

35. It should be acknowledged, however, that many of the reasons previously advanced against ratification are no longer valid for European States, particularly following the adoption of the 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) (hereafter Directive 2014/60/EU) – discussed below – and the obligation for States to transpose this text into national law. Several reports and discussions in France, in particular,[34] suggest that ratification should now be seriously considered in concert with the other market States.

36. The Committee believes that the reluctance that persists is now largely due to a lack of familiarity with the instrument rather than to substantive objections. Several of the concerns traditionally raised have in fact been overtaken: the fear of retroactive application is answered by Article 10, which limits the Convention to objects stolen or illegally exported after its entry into force; the position of good faith purchasers is protected by the right to fair and reasonable compensation under Articles 4(1) and 6(1); and the due diligence standard, once perceived as an excessive burden on the market, is now essentially the same as that which EU Member States already apply under Article 10 of Directive 2014/60/EU. The criteria listed in Article 4(4), such as checking the circumstances of the acquisition, the character of the parties, the price paid, and any reasonably accessible register of stolen cultural objects, now reflect what has become standard practice in the art market, where provenance research and database checks are routinely carried out by auction houses, dealers and their advisers while doing their due diligence.[35]

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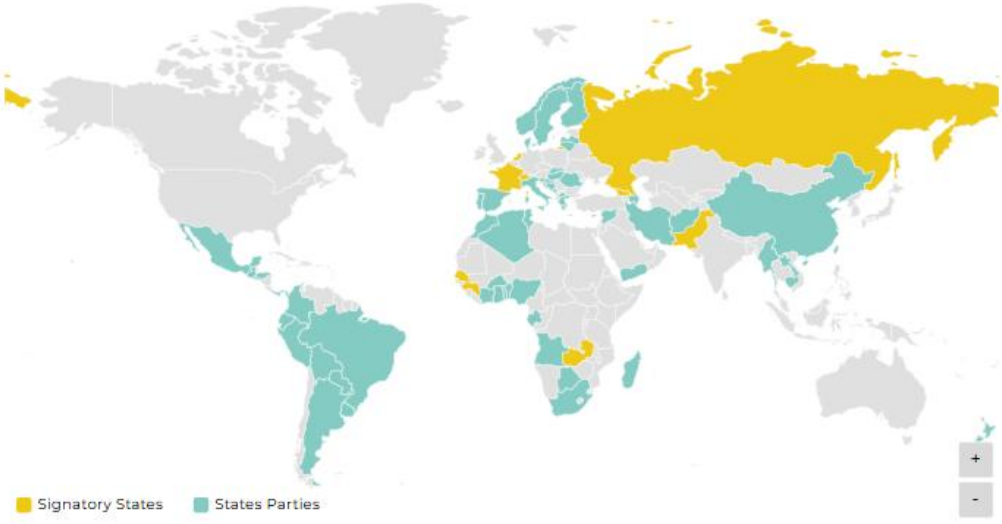
[32] F. Shyllon, "The Recovery of Cultural Objects by African States through the UNESCO and UNIDROIT Conventions and the Role of Arbitration," *Uniform Law Review*, Vol. 5(2) (2000), pp. 219–240, at p. 236.

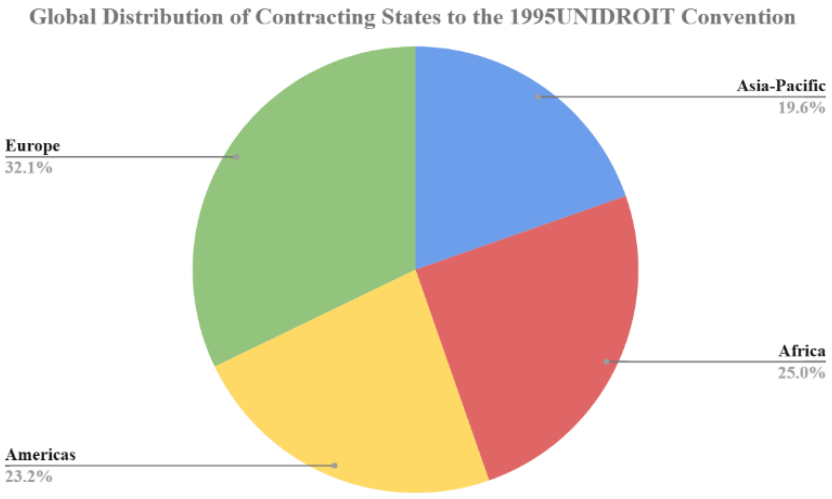
[33] According to the most recent Art Basel and UBS Global Art Market Report, China is the world's third-largest art market, accounting for 14% of global sales by value in 2025 (approximately USD 8.5 billion), behind the United States (44%) and the United Kingdom (18%). C. McAndrew, The Art Basel and UBS Global Art Market Report 2026 (Art Basel and UBS, 12 March 2026), available at https://www.artbasel.com/stories/the-art-basel-and-ubs-global-art-market-report-2026.

[34] As an example, the 2022 Rapport Labourdette "Améliorer la sécurité des acquisitions des musées nationaux" at https://www.culture.gouv.fr/espace-documentation/rapports/rapport-de-mission-ameliorer-la-securite-des-acquisitions-des-musees-nationaux or the question raised by Senator Pierre Ouzoulias to the French Minister of Culture on the ratification of the 1995 UNIDROIT Convention (Question écrite n°08253 - 17e legislature, published on 2 April 2026.

[35] See for example Art Basel, *Art Market Principles and Best Practices* (adopted 1 September 2017), Best Practice Guidelines, §§ 1.2–1.3 (providing for due diligence concerning the origin and authenticity of works offered for sale and the verification of title); TEFAF, "Vetting", sections "Due Diligence" and "Art Loss Register" (stating that exhibitors are expected to investigate provenance and title before offering objects for sale and that exhibited objects are checked against the Art Loss Register); Christie's, "Cultural Stewardship", section "Cultural Property and Provenance" (describing provenance research and Art Loss Register screening); Sotheby's, "Guide for Buyers", section

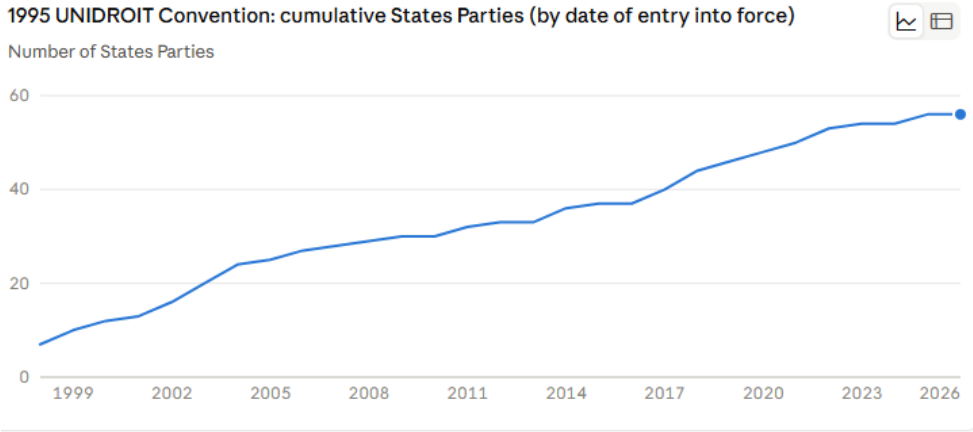
37. Despite the growing recognition of the 1995 UNIDROIT Convention as a key instrument in the international legal framework against the illicit trafficking of cultural objects, **ratification remains uneven across regions**. In several parts of the world, the number of Contracting States is still limited (see map and diagram below), leaving significant gaps in the harmonisation of private law rules governing the restitution and return of cultural objects (Central and East Asia, Pacific, East Africa…). Continued outreach, technical assistance, and engagement with governments and regional organisations are therefore essential to promote wider adherence to the Convention and to strengthen international cooperation in the protection of cultural heritage.

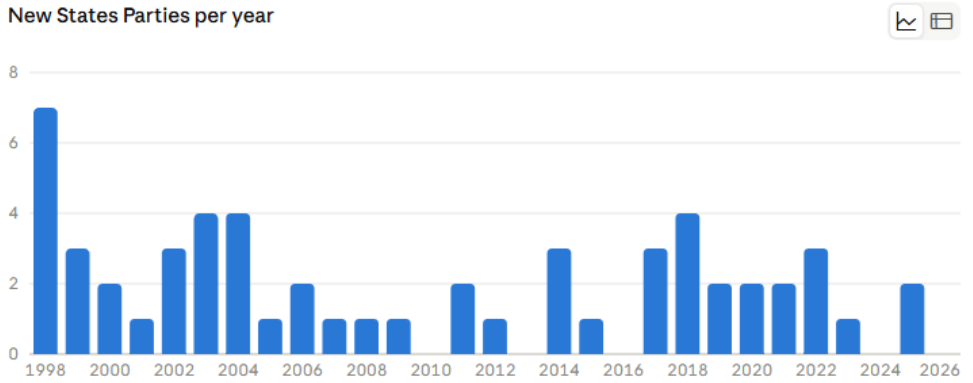




"The Art Loss Register" (describing checks of uniquely identifiable items valued above US$1,500 against the database of lost or stolen objects).

38. Beyond the ratification rate, it is worth underlining that the 1995 Convention is open to all States, whether Member States of the Organisation or not. Indeed, out of the 56 States Parties to the 1995 Convention, 28 are not Member States of UNIDROIT.





39. Wider ratification of the Convention would significantly enhance the effectiveness of international cooperation by expanding the number of jurisdictions applying the same legal standards. A broader network of Contracting States would reduce opportunities for forum shopping and the laundering of illicit cultural objects through jurisdictions with weaker legal protections. Overall, the Convention contributes not only to the restitution and return of cultural objects, but also to the development of a more coherent, predictable, and trustworthy international legal order for the protection of cultural heritage.

(b) Impact on legislative and judicial practice

(i) National legislation of States not Parties to the Convention

40. Other States, notably States that signed the Convention by 30 June 1996 but have not ratified it, have nevertheless adapted their **national legislation** to reflect the Convention's provisions. For example, the Netherlands and Switzerland became Parties to the 1970 UNESCO Convention after their signing of the 1995 UNIDROIT Convention and included the concept of due diligence in their implementing legislation.

41. In **Switzerland**, Article 16 of the Federal Act on the International Transfer of Cultural Property (CPTA) establishes due diligence obligations for persons active in the art trade and auctioneering. The

CPTA also introduced a thirty-year limitation period for claims concerning cultural property.[36] In the **Netherlands**, the implementing Act introduced a provision into the Civil Code under which a possessor required to return a cultural object is entitled to compensation only if they exercised the necessary care at the time of acquisition.[37] Although **Germany** did not sign the Convention, its legislation similarly imposes due diligence obligations: §§ 40–48 of the Act on the Protection of Cultural Property (*Kulturgutschutzgesetz*) establish general and enhanced due diligence obligations for persons placing cultural property on the market.[38] In each case, the connection with the 1995 Convention lies in the adoption of an objective standard of diligence, assessed by reference to the circumstances of the acquisition in terms comparable to those of Article 4(4), including the character of the parties, the price paid, the consultation of registers of stolen cultural objects and other relevant information. It also lies in the requirement that the acquirer demonstrate compliance with that standard.

42. The **Republic of Korea** has adopted a different approach, but one that leads to a comparable result. Article 249 of the Civil Act protects the good-faith acquisition of movable property. Article 87(5) of the Act on the Conservation and Utilization of Cultural Heritage[39] disapplies that rule to transactions involving three categories of cultural heritage, including cultural heritage publicly announced as stolen or lost. For these objects, an acquirer cannot rely on good faith to defeat the owner's claim. The only exception applies where the object was purchased in good faith at auction or from a cultural heritage dealer. Even in these circumstances, the owner may still recover the object but must reimburse the acquirer for the purchase price. The connection with the 1995 Convention lies in the principle of Article 3(1) that a stolen cultural object must be returned regardless of the possessor's good faith, and in Article 4(1), which links the payment of compensation to the circumstances of the acquisition.

(ii) Regional legislation: the European Union

43. The 1995 UNIDROIT Convention has notably influenced **EU secondary legislation** in the field of cultural property. Following the adoption of Council Regulation (EEC) No 3911/92 of 9 December 1992 *on the export of cultural goods,* Council Directive 93/7/EEC of 15 March 1993 *on the return of cultural objects unlawfully removed from the territory of a Member State* (hereafter the Directive 93/7/EEC) established a mechanism for the return of cultural objects illegally exported from the territory of a Member State. As noted above, the Directive 93/7/EEC, adopted while the UNIDROIT Convention was still being negotiated, drew on the then draft Convention but differed from it in important respects. In particular, its scope was limited to cultural objects illegally exported from the territory of an EU Member State and classified as "national treasures". Moreover, as regards the protection of good-faith possessors, the Directive 93/7/EEC referred to the applicable national legislation, thus relying on the mutual recognition of national laws rather than on the uniform rules subsequently established by the UNIDROIT Convention (Article 9(2)).

44. In 2013, the EU institutions (Commission, Council, European Parliament) sought to strengthen the mechanisms available to Member States for securing the return of unlawfully removed national treasures, as the existing legislation had proved insufficiently effective in achieving their recovery. The Commission indicated that "a possible abrogation could be analysed only in a context where all Member States would become parties to the UNIDROIT Convention. In such a context, benefits of the Directive

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[36] Articles 934(1bis) of the Civil Code and 196a of the Code of Obligations.

[37] 1970 UNESCO Convention (Implementation) Act (*Uitvoeringswet UNESCO-verdrag 1970 inzake onrechtmatige invoer, uitvoer of eigendomsoverdracht van cultuurgoederen*), 12 June 2009; Federal Act on the International Transfer of Cultural Property (CPTA), effective 1 June 2005.

[38] Act on the Protection of Cultural Property (*Kulturgutschutzgesetz – KGSG*), which entered into force on 6 August, 2016.

[39] Act on the Conservation and Utilization of Cultural Heritage, Article 87(5), as amended on 28 January 2014, 8 August 2023 and 13 February 2024; Civil Act, Article 249.

93/7/EEC for the return would be less than those offered by the Convention".[40] This process culminated in the recasting of Directive 93/7/EEC as Directive 2014/60/EU,[41] which expanded the concept of "due care and attention" (due diligence under the UNIDROIT Convention), reversed the burden of proof on the possessor using the same language as the UNIDROIT Convention, and extended the time limitation for action.

45. Article 13(3) of the Convention allows Contracting States that are members of organisations of economic integration or regional bodies to declare that, in their relations with each other, they will apply the internal rules of those organisations or bodies instead of the provisions of the Convention whose scope of application coincides with those rules. Not all EU Member States that are Parties to the Convention have made such a declaration.[42] The clause is significant because it allows EU Member States to apply, in their mutual relations, the regime of Directive 2014/60/EU, which provides for the return of unlawfully removed national treasures without requiring proof that their removal impairs specific interests (Article 5(3) of the Convention), and makes compensation conditional on the possessor having exercised due care and attention. The Directive thus extends to unlawfully removed objects a level of protection comparable to that which the Convention affords to stolen objects, thereby strengthening the Convention's objectives.

46. The 1995 UNIDROIT Convention has also an influence on policy development and serves as a tool for implementing a number of resolutions, declarations and other instruments (see below under "Engagement: *Influence on recent policy development*", para. 58).

(iii) Case law: direct application and wider judicial influence

47. Several **judicial decisions** have referred to, and in some instances been clearly influenced, by the 1995 UNIDROIT Convention.[43] However, reported decisions in which the courts of Contracting States have directly applied the Convention remain limited in number. A distinction should therefore be drawn between decisions in which the Convention was applied as binding law by the courts of a Contracting State and those in which courts referred to it, despite it not being binding or otherwise applicable, as evidence of international standards or as an aid to the interpretation of domestic law. Most of the decisions discussed below fall into the latter category. Moreover, reported judgments do not capture the full extent of the practical influence of UNIDROIT instruments, which may inform pleadings, prosecutorial submissions or negotiated returns without being mentioned in the final judgment (see also the section on the Model Provisions below).

48. *Switzerland*: In a landmark case decided on 1 April 1997,[44] the Swiss Supreme Court considered the restitution to the French judicial authorities of a painting by Desportes that had been stolen from a castle in France. The case concerned mutual judicial assistance in criminal matters, and the principal question was whether the present possessor in Switzerland could be considered to have acted in good faith. Applying Swiss substantive law, the court held that the possessor had not established his good faith. In an *obiter dictum*, the Court observed that its decision was consistent with both the 1970 UNESCO and the 1995 UNIDROIT Convention, although Switzerland had not ratified either Convention at the time.

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

[41] For the full text of the 2014 Directive, see https://eur-lex.europa.eu/eli/dir/2014/60/oj/eng.

[42] See https://www.unidroit.org/instruments/cultural-property/1995-convention/status/133-2/ .

[43] See the analytical overview by G. Giardini, "The Evolving Influence of the 1995 UNIDROIT Convention – Thirty Years On: Shaping the Law and the Art Market" in S Vigneron and AF Vrdoljak (eds), Reimagining Public and Private Law in Cultural Property Trafficking (BA conference proceedings, Liverpool University Press, forthcoming).

[44] ATF 123 II 134 (L. v. Indictment Chamber of the Canton of Geneva), translated in English in Lyndel Prott (ed.) Witnesses to History – A Compendium of Documents and Writings on the Return of Cultural Objects, UNESCO Publishing, Paris 2009, pp. 34-36.

The Supreme Court stated that "*these standard-setting texts, drawing on the same source, all give expression to an existing or emerging international public policy*".[45] This approach was subsequently confirmed by the Swiss Supreme Court in a decision of 8 April 2005 concerning two important antique Mughal gold coins, although the claim was rejected in that case.[46]

49. *The United Kingdom*: In 2007, the English Court of Appeal also referred to the Convention in its decision in *Attorney General of the Islamic Republic of Iran v. Barakat Galleries Ltd.*[47] The case concerned whether antiquities illegally excavated in the Jiroft region of Iran, which had subsequently reached a gallery in the United Kingdom and been seized at Iran's request, should be returned. Different complex legal issues were raised, but the main aspect of the decision of the English Court of Appeal is that the legal status of the antiquities was to be determined according to Iranian public law, which could be taken into consideration by an English Court. In explaining this departure from earlier practice, the Court referred to both to the 1970 UNESCO Convention, which the United Kingdom ratified in 2002 (but which is non-retroactive), and to the 1995 UNIDROIT Convention, which the United Kingdom had not ratified. The court held that "*none of these instruments directly affects the outcome of this appeal, but they do illustrate the international acceptance of the desirability of protecting national heritage.*"[48]

50. *Italy*: Of the many relevant Italian cases where the UNIDROIT Convention was influential, in particular because the Convention has been effective in Italy since its ratification in 1999,[49] one recent case clearly deserves to be singled out: the decision of 18 February 2022 by the Italian Court of Cassation.[50] This case concerned the ownership of Chilean and Peruvian pre-Columbian tapestries. The Court applied the principle of international public policy in the field of cultural heritage, favouring the protection of cultural heritage and encouraging the restitution of the antiquities to their legitimate owners. In addition, the Court expressly applied Article 4(1) and (4) of the UNIDROIT Convention in its interpretation of the concept of "good faith" under Italian law (art. 1153 of the Italian Civil Code).

51. *Other examples of national case law (Spain and the Netherlands):* In some instances, the UNIDROIT Convention has been relevant to judicial decisions despite having only an indirect influence on their outcome. This was the case in a Spanish decision of 2008 and a Dutch decision of 2023. In its 2008 decision, the *Audiencia Provincial* of Barcelona interpreted the 1970 UNESCO Convention by reference to Article 5(1) of the UNIDROIT Convention, even though the claimant State, Egypt, had not ratified the UNIDROIT Convention.[51] Similarly, in 2023, the High Court of the Netherlands relied on Article 5(2) of the UNIDROIT Convention when interpreting the Dutch Heritage Act to determine what constituted an illegal export.[52]

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45 *Ibid*., p. 35.

46 ATF 131 III 418 (Union de l'Inde contre Crédit Agricole Indosuez (Suisse) SA); Marc-André Renold, "Une importante décision suisse en matière de transfert international de biens culturels: l'arrêt du Tribunal fédéral sur les pièces d'or anciennes du 8 avril 2005", 2006 (XI) Uniform Law Review, p.399.

47 [2007] EWCA Civ 1374; first instance: [2007] EWHC 705 (QB).

48 [2007] EWCA Civ 1374, para 163; See also D. Fincham, *Iran v. Barakat*: Iran Wins Barakat Appeal reproduced in: Prott (*supra* footnote 44), 388 ff. See also G. Giardini, *supra* footnote 43, p. 14, who refers to another English case referring somewhat indirectly to the UNIDROIT Convention: Iran v. Berend (2007) EWHC 132.

49 One might for example refer to the numerous decisions relating to the *Victorious Youth* statue, see G. Giardini, *supra* footnote 43 pp. 16-18.

50 Cass.civ., Sez II, decision of 18 February 2022 N° 5349. For a detailed presentation and analysis of this decision see Giuditta Giardini, "Taming the Italian "Trojan Horse": the *a non domino* sales of cultural objects, 2023 (28) Uniform Law Review, pp. 1-19.

51 *Supra* footnote 43, pp. 15-16.

52 This case is the well-known *Scythian Gold* case. *Supra* footnote 43, pp. 7-8, the reference to Art. 5.2 of the UNIDROIT Convention had been the argument of Ukraine in the first instance.

52. *The European Court of Human Rights* (ECtHR): The final example concerns the case law of the European Court of Human Rights (ECtHR). In the well-known dispute between Italy and the Getty Trust concerning the ancient statue of the *Victorious Youth*, the issue related to the ownership of the statue, which had been found in the sea by Italian fishermen and subsequently acquired by the Getty Trust.[53] Following more than 12 years of proceedings before the Italian courts, the case was brought before the ECtHR. In its judgment, the ECtHR referred to the 1995 UNIDROIT Convention as an important benchmark for determining the standards of due diligence expected in the art market. The Court explicitly noted that high standards of diligence "are nowadays enshrined in Article 4 of the 1995 UNIDROIT Convention".[54] The Court did not, however, apply the 1995 Convention as such: Italy's obligations were assessed under the European Convention on Human Rights, and the Convention was not applicable to the acquisition of the statue. The judgment is therefore an example of the Convention's wider judicial influence rather than of its direct application.

53. In conclusion, the 1995 Convention has clearly influenced the case law of national courts, both in States Parties and in non-Contracting States, and international courts. The due diligence standard set out in Article 4(4) has also had a considerable practical impact: the relevant actors in the art market now routinely refer to due diligence when assessing the provenance of objects. These developments raise the question of whether certain principles of the Convention may, at least to some extent, carry normative weight as customary international law. To assess the Convention's impact more fully, the Committee recommends further research into the extent to which its principles may be reflected in customary international law (see para. 150).

54. Identifying a rule of customary international law can be a lengthy process, since it requires "evidence of a general practice accepted as law".[55] Such a rule rests on two elements: a sufficiently general, consistent and coherent State practice, and *opinio juris*, that is, the belief that this practice reflects a legal obligation. In the field of cultural heritage, a customary rule in favour of the protection of national cultural heritage may be emerging. Some court decisions[56] point to an international public policy in this area. While they are not in themselves sufficient to establish a customary rule, they are useful evidence of its possible formation, alongside the international conventions and their influence on State practice. Although the existence of such a rule remains to be demonstrated, its consolidation would, over time, help harmonise practice in the restitution and return of cultural property and in the compensation of the good-faith possessor.

(c) Governance

55. **Article 20** of the 1995 UNIDROIT Convention expressly provides that the President of UNIDROIT *"may at regular intervals"* convene a special committee to review the practical operation of the Convention,[57] while also providing that such a committee may be convened at any time at the request of five Contracting States. The two avenues are deliberately distinct: the Convention does not make the convening of the Committee dependent upon a request by States. Indeed, the reference to regular intervals reflects the intention of the diplomatic Conference that the Convention should have an active follow-up mechanism capable of accompanying its implementation and evolution. UNIDROIT's Governing

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53 J. Paul Getty Trust and Others v. Italy, App. No. 35271/19, ECtHR, 2 May 2024.

54 J. Paul Getty Trust and Others v. Italy, App. No. 35271/19, ECtHR, 2 May 2024, para 382.

55 Article 38(1)(b) of the Statute of the International Court of Justice.

56 *L. contre Chambre d'accusation du canton de Genève, 1997,* BGE 123,124; Union de l'Inde contre Crédit Agricole Indosuez (Suisse) SA, 8 April 2005, para. 3.2.2; *Republic of Iran v. Barakat Galleries* [2007] EWCA Civ 1374, paras*.,* 131 ff.

57 Such bodies already exist in the framework of several instruments drawn up for example by UNESCO, the Hague Conference on Private International Law (the "special commissions" in its legal and administrative assistance conventions) and by the Council of Europe ("permanent committees" or "Convention committees").

Council had already noted in 2011 that the time had come to convene the Committee and that the Convention envisaged an active role for UNIDROIT in its follow-up work. The Special Committee, first convened in 2012 on the proposal of the President,[58] subsequently reaffirmed this understanding.

56. Against this background, the fact that Contracting States have not themselves requested a meeting under Article 20 should not be understood as an indication that no meeting is needed. It may instead reflect the fact that States do not always perceive the initiative to convene the Committee as resting with them, particularly given the separate power expressly entrusted to the President of UNIDROIT. More regular meetings would provide an institutional opportunity to examine national implementation, exchange practical experience, identify interpretative or operational difficulties, consider developments in the international fight against illicit trafficking, and discuss how the Convention interacts with related instruments and mechanisms. They would also give States Parties a structured forum in which to articulate their needs and priorities rather than requiring five States to take the initiative independently. In this sense, regular meetings should be viewed not as an additional procedural burden, but as an integral part of ensuring that the Convention remains a living and effective instrument.

57. UNIDROIT also organised a conference on 8 May 2015 in Rome to celebrate the **20th anniversary** of the Convention and another on 8 and 9 October 2020 in Rome for the **25th anniversary** of the Convention in October 2020 with limited in-person attendance owing to COVID-19, as well as online participation, followed by a publication entitled "25 years later… The 1995 UNIDROIT Convention – Cultural objects at the crossroad of rights and interests".[59]

5. Engagement

58. The engagement analysis considers the broader reception and use of the 1995 UNIDROIT Convention, including its influence on policy development, international cooperation, capacity-building activities, academic scholarship and professional practice. These forms of engagement differ in nature and are examined in turn below: the Convention's influence on policy development; cooperation with international and regional organisations, institutions and other bodies; capacity-building; academic activities; and professional practice.

(a) Influence on (recent) policy development

59. The priorities pursued by the **G7**[60] and **G20** in the field of culture have increasingly converged with the objectives of the 1995 UNIDROIT Convention. Over the past decade, both fora have repeatedly recognised that combating the illicit trafficking of cultural property is essential not only for safeguarding cultural heritage, but also for addressing transnational organised crime, money laundering, and the financing of terrorism. The G7 has consistently identified the fight against illicit trafficking in cultural property as a priority and has promoted stronger international legal cooperation. The G20 has provided the clearest political endorsement of the 1995 UNIDROIT Convention. In its 2021 Rome Declaration, the G20 Culture Ministers[61] called upon the international community to ratify the relevant international conventions and expressly recognised UNIDROIT among the organisations whose standards should be further implemented.

60. The 2022 **UNESCO MONDIACULT** Declaration marked a significant political endorsement of the 1995 UNIDROIT Convention by expressly including and identifying it among the principal international

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58 See https://www.unidroit.org/instruments/cultural-property/1995-convention/follow-up/ .

59 See the publication at https://www.unidroit.org/wp-content/uploads/2024/09/Order-Form-25-Years.pdf .

60 G7 Ministers of Culture in Italy 2017 and G7 Ministers Meeting on Culture, Naples, September 2024.

61 G20 Rome Declaration of Culture Ministers (Rome, 29–30 July 2021), G20 "Kashi Culture Pathway" (India, 2023), G20 Ministers of Culture Salvador da Bahia Declaration (Brazil, 2024) and KwaDukuza Declaration of the G20 Ministers of Culture (South Africa, 2025).

legal instruments governing the protection of cultural heritage. The Declaration calls for the effective implementation of the Convention alongside the UNESCO cultural conventions and links its implementation to the fight against illicit trafficking in cultural property, organised crime, and the financing of terrorism. The Conference demonstrated broad political support for expanding participation in the Convention and strengthening its implementation as a key component of the international legal framework for the protection and restitution of cultural property in the 2022 MONDIACULT Declaration.[62]

61. On 6 December 2024, the **United Nations General Assembly** adopted - by consensus and with the co-sponsorship of 146 UN Member States, including all 27 European Union Member States - a resolution on the "Return or restitution of cultural property to the countries of origin,"[63] which reaffirms the importance of the 1995 UNIDROIT Convention along with other international conventions, and invites Member States that are not yet Parties to consider it.[64]

62. The 1995 UNIDROIT Convention is also an **important tool for helping States implement**, among others, the **Security Council resolutions**, the **UN Sustainable Development Goals**,[65] the **African Union Agenda 2063** (Aspiration 5), the **ASEAN Strategic Plan 2026-2035** (under the overarching ASEAN Community Vision 2045), the Regional Culture Strategy: investing in Pacific cultures 2010-2020[66] and **other national Action Plans**. Wider ratification and effective implementation of the Convention would therefore constitute a concrete contribution to achieving the objectives repeatedly endorsed by these international fora, strengthening the global legal architecture for the protection of cultural heritage and fostering greater certainty and trust in the international art market.

63. Several European Union measures and initiatives also encourage EU Member States to become Parties to the 1995 UNIDROIT Convention. Particularly noteworthy are the 2011 Council Conclusions concerning measures to prevent and combat crime against cultural goods, which specifically recommended that Member States consider ratifying both the 1970 UNESCO Convention and the 1995 UNIDROIT Convention;[67] the *2012 Resolution on the creation of an informal network of law enforcement authorities and expertise competent in the field of cultural goods* (EU CULTNET);[68] the *EU Action Plan against Trafficking in Cultural Goods*; and the *2023 Council Conclusions on the fight against trafficking in cultural goods*, which reaffirmed the importance of combating illicit trafficking in cultural objects and explicitly invited EU Member States to explore measures aligned with the 1995 UNIDROIT Convention to facilitate the restitution of stolen objects to their lawful owners.[69]

(b) International cooperation and synergies between organisations and instruments

64. The 1995 UNIDROIT Convention plays a pivotal role in **strengthening international cooperation** by providing a harmonised private law framework for the restitution of stolen cultural objects and the return of illegally exported cultural objects. As the illicit trafficking of cultural property is inherently transnational, effective responses require more than criminal sanctions and administrative

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[62] For the full text of the 2022 MONDIACULT Declaration, see https://www.unesco.org/sites/default/files/medias/fichiers/2022/10/6.MONDIACULT_EN_DRAFT%20FINAL%20DECLARATION_FINAL_1.pdf.

[63] Since the adoption of the 1995 UNIDROIT Convention, each of such resolutions called States to become a Party to the said Convention.

[64] For the full text of the Resolution, see https://docs.un.org/en/A/RES/79/133.

[65] See the part of the White Paper of the Workstream Committee on Sustainable Development (the SD Committee) relating to "Protecting cultural heritage".

[66] Developed by the Council of Pacific Arts and Culture and the Secretariat of the Pacific Community (SPC) to integrate culture into regional and national sustainable development.

[67] Council of the European Union, ENFOPOL, 415,cult 111, ENFOCUSTOM 143, UD 337, 30 November 2011.

[68] Council of the European Union, ENFOPOL 292, CULT 116, ENFOCUSTOM 93, 4 October 2012.

[69] Council of the European Union, ENFOPOL, 269, ENFOCUSTOM 66, COSI 106, CULT 71, JAI 780, 8 June, 2023.

controls; they depend on compatible legal rules that enable States, courts, museums, collectors, and market participants to cooperate across jurisdictions. The Convention fills this gap, thereby reducing legal uncertainty and promoting predictable outcomes in cross-border disputes.

65. Together, the 1970 UNESCO Convention and the 1995 UNIDROIT Convention create a coherent legal architecture that enables States to cooperate more effectively in combating the illicit trafficking of cultural property.[70]

66. Notably, several States Parties to the 1995 UNIDROIT Convention have carried its principles, directly or indirectly, into their broader frameworks for international cooperation. They also have incorporated these principles into **bilateral agreements** – the conclusion of which is encouraged by Article 13(2) of the 1995 Convention between Contracting States. Examples include the 2023 *Cultural Agreement between the Government of the Republic of Brazil and the Government of the Republic of Ecuador on Stolen or Illegally Exported Cultural Objects,* as well as the *agreement between Italy and Croatia.* Some States have done so even in bilateral agreements with States that have not yet ratified or acceded to the Convention. In particular, Italy's bilateral agreements with Albania, Algeria, Estonia, Ethiopia, Germany, India, Kuwait, Moldova, Japan, Malta, or Uzbekistan refer to the UNIDROIT Convention by name.[71] Interestingly, these countries are not a Party to the UNIDROIT Convention, so the reference to its principles is particularly significant as it shows that the Convention's principles operate as a reference standard beyond the circle of its Parties. States that have not joined it are nonetheless prepared to accept its principles in their bilateral relations, which suggests that their reluctance to ratify does not stem from substantive objections.

67. The Convention also promotes **cooperation among judicial authorities** by establishing common standards that can be applied irrespective of the legal tradition of the forum State. Harmonised rules on due diligence, good-faith acquisition, and restitution reduce the need to resort to conflict-of-law rules and facilitate the resolution of cross-border disputes. This legal certainty encourages voluntary settlements, enhances mutual trust among States, and contributes to more efficient judicial cooperation.

68. Beyond relations among States, the Convention fosters **collaboration among museums, law enforcement agencies, customs authorities, provenance researchers, art market players, and private collectors**. Its due diligence requirements encourage the systematic exchange of provenance information, consultation of databases of stolen cultural objects, and greater transparency in commercial transactions. These practices improve the traceability of cultural objects and facilitate the identification and recovery of unlawfully displaced heritage.

69. At institutional level, UNIDROIT continues to develop and strengthen its **close collaboration with a range of organisations, institutions and bodies** active in this field. These include (i) international and regional organisations, such as UNESCO, INTERPOL, the World Customs Organization (WCO), the United Nations Office on Drugs and Crime (UNODC), the International Centre for the Study of the

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[70] UNESCO also adopted documents for a better implementation of the 1970 Convention making many references to the importance of the 1995 UNIDROIT Convention (see the *2015 Operational Guidelines for the Implementation of the 1970 Convention* and the more recently adopted *Model Provisions on the Prevention and Fight Against the Illicit Trafficking of Cultural Property*. The *Council of Europe Convention on Offences Relating to Cultural Property* adopted in 2017 also builds on the 1995 UNIDROIT Convention. Additionally, the Commonwealth has established a *Scheme for the Protection of Cultural Heritage*, which facilitates returns between member countries and proposes a model law for the harmonisation of national legislation. These regional frameworks take up and reinforce the principles of the 1995 Convention, demonstrating their practical feasibility.

[71] The text of the provision usually reads "the Parties agree to cooperate in order to fight the illicit trade in objects of cultural heritage with preventive, repressive, and remedial measures, in compliance with their respective national legislations, in conformity with the obligations provided for in the 1970 UNESCO Convention, and taking into account the principles of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects." See https://www.esteri.it/en/temi/diplomazia_culturale/protocolli-e-progetti/elencoprotocolliesecutiviculturali/ .

Preservation and Restoration of Cultural Property (ICCROM, in Rome, Italy and Sharjah, United Arab Emirates), ICESCO, ASEAN, the European Union, the Council of Europe and NATO; (ii) professional and non-governmental bodies, such as the International Council of Museums (ICOM) and the Antiquities Coalition; and (iii) specialised national authorities, such as the Italian Carabinieri Special Brigade for the Protection of Cultural Heritage. Several of these organisations, institutions and bodies have incorporated principles consistent with the Convention into their capacity-building programmes, guidelines, operational tools and policy recommendations. As a result, the 1995 UNIDROIT Convention has become not only a binding legal instrument for its Contracting States but also an influential benchmark for professional practice and ethical conduct across the global cultural heritage community. Institutional cooperation of this kind is distinct from the capacity-building and academic activities addressed below.

70. The **relationship between cultural heritage protection and sustainable development** provides a further opportunity for cooperation between UNIDROIT and other international organisations. In this context, the International Decade of Sciences for Sustainable Development (2024–2033), proclaimed by the United Nations General Assembly in Resolution A/RES/77/326 of 25 August 2023 to be implemented by UNESCO, provides a broader framework for promoting interdisciplinary research, knowledge-sharing and international cooperation in support of sustainable development. Although not specifically directed towards cultural property law, the Decade's objectives are consistent with efforts to strengthen research, international cooperation and evidence-based approaches to cultural heritage protection. This connection also reflects the broader contribution of UNIDROIT's cultural property instruments to sustainable development, as examined by the Workstream Committee on Sustainable Development (see the section on "Cultural Property" in its White Paper).[72]

71. **Synergies between international organisations and instruments** are very important. In the Americas, the Inter-American Juridical Committee concluded that a new inter-American convention would not help, given how much regulation already exists. Because illicit trafficking is a worldwide problem, it must be dealt with globally, with the cooperation of the main market States. Instead of drafting a new regional instrument, the Committee recommended that Member States ratify the existing treaties (among which the 1995 UNIDROIT Convention), strengthen their national legislation and develop cooperation mechanisms. The OAS system therefore takes on the UNIDROIT Convention as part of a single global framework instead of competing with it.

72. Another very interesting example of such synergies is given in the *Practical Assistance Tool to assist in the implementation of the International Guidelines for Crime Prevention and Criminal Justice Responses with Respect to Trafficking in Cultural Property and Other Related Offences*[73] prepared by UNODC with contributions from UNESCO, the World Customs Organization, UNIDROIT and INTERPOL. Its Annex I shows how closely the instruments of these organisations fit together. Instead of presenting each regime separately, it links selected provisions to the specific Guidelines they support. These instruments include the 1995 UNIDROIT Convention and the UNESCO-UNIDROIT Model Provisions which provide the uniform private-law rules on restitution, return and the due diligence of acquirers on which the Guidelines' provisions on recovery and return rely. The Annex thus makes clear that the Guidelines build on existing instruments rather than creating a new regime. Effective prevention, prosecution and return therefore depend on States joining and applying all of them together.

73. Under the ECOWAS Action Plan 2019-2023, adopted to facilitate the return of ECOWAS Member States' cultural goods to their countries of origin, UNIDROIT participated in the meetings of the Regional Monitoring Committee responsible for overseeing the Action Plan's implementation. UNIDROIT also

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[72] See also UNESCO, Strategic Plan: International Decade of Sciences for Sustainable Development (2024–2033) (2025) at https://unesdoc.unesco.org/ark:/48223/pf0000391869.

[73] https://www.unodc.org/documents/organized-crime/Publications/16-05585_eBook_English_UPDATED.pdf .

supported ECOWAS Member States in their efforts to ratify the 1995 UNIDROIT Convention, one of the objectives of the Action Plan, alongside ratification of the 1970 UNESCO Convention.[74] The ECOWAS experience demonstrates the potential of such a model: regional political advocacy can be combined with country-specific technical assistance to help States move from an expression of interest to the completion of their domestic procedures for accession. As a result of this cooperation, 5 States became Parties to the 1995 Convention: Burkina Faso, Ghana, Côte d'Ivoire, Benin and Togo.

74. The "**Rome Statement on Art Market Integrity**", adopted by participants at the High-Level Workshop held at UNIDROIT in June 2026, further illustrates the importance of synergies between international instruments addressing cultural heritage protection and financial crime prevention. The Statement contains a series of non-binding conclusions aimed at promoting awareness, international cooperation and the dissemination of best practices. In particular, it underlines that cultural heritage protection and financial crime prevention can no longer be addressed separately, calling for greater coordination in the implementation of existing international instruments and standards, including UNESCO, UNIDROIT and UNODC conventions and FATF standards.[75]

75. The Workstream Committee on Cultural Property suggests strengthening cooperation or start new cooperation with other institutions (see 'Recommendations' below).

(c) Capacity-building

76. Capacity building is essential to support the effective implementation of the 1995 UNIDROIT Convention. Beyond encouraging ratification, **targeted training and technical assistance** help legislators, judges, law enforcement authorities, customs officials, prosecutors, museum professionals, and market participants understand the Convention's legal mechanisms and apply them consistently in practice. Strengthening institutional and professional capacities is therefore a key element in ensuring that the Convention achieves its intended objectives.

77. Capacity-building initiatives also provide an opportunity to promote synergies between the 1995 UNIDROIT Convention and other international and regional instruments addressing the protection of cultural heritage. By highlighting the complementary nature of these frameworks—particularly with the 1970 UNESCO Convention and relevant instruments adopted by organisations such as UNESCO, UNODC, the Council of Europe—training programmes can foster coordinated implementation, facilitate cross-border cooperation, and contribute to a more coherent international response to the illicit trafficking of cultural objects.

78. UNIDROIT therefore regularly participates in national and regional capacity-building seminars organised by its partners to combat illicit trafficking in cultural property, including seminars organised upon specific request by States to improve their understanding of the 1995 UNIDROIT Convention, with a view to ratification/accession.[76]

79. UNIDROIT's instruments on cultural property are already part of the syllabus of the UNIDROIT International Programme for Law and Development (IPLD), both for Africa – IPLD Africa Plus – and for

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[74] This Action Plan was adopted in the aftermath of the Declaration made by President Macron in 2017 in Ouagadougou, and the 2018 Sarr-Savoy report which called for the ratification of the 1995 UNIDROIT Convention by France and African States to "inscribe the restitutions within a perspective of durability".

[75] Joint Conclusions of Participants to the High-Level Workshop "Balancing the Protection of Cultural Heritage and the Prevention of Financial Crime" (Rome Statement on Art Market Integrity (2026)), UNIDROIT – International Institute for the Unification of Private Law, 4–5 June, Rome, *See* https://www.unidroit.org/wp-content/uploads/2026/06/Rome-Statement-on-Art-Market-Integrity-June-2026.pdf.

[76] For more information on the implementation activities organised or attended by UNIDROIT, see the Annual Reports on the activity of UNIDROIT at https://www.unidroit.org/about-unidroit/overview/annual-reports-on-the-activity-of-unidroit/ .

the Balkans, Eastern Partnership, Central Asia, and the Caucasus (BEPCAC). They are presented there alongside UNIDROIT's other instruments on private law. While these programmes help raise general awareness of the cultural property instruments, they do not address the specialised training needs of national authorities and professionals working in this field. As the custodian of the 1995 Convention, UNIDROIT is best placed to promote its ratification and effective implementation and should therefore take the initiative to develop, as a complement to the IPLD, a dedicated capacity-building strand on its cultural property instruments. This training could be jointly designed and delivered with other international organisations active in this field, targeting national authorities and professionals directly involved in the protection and circulation of cultural property, while avoiding duplication and widening the pool of participants.

80. UNIDROIT helped shape a capacity-building methodology through its membership of the Review Committee for *Countering Illicit Trafficking of Cultural Objects in South-East Asia: Capacity-Building Guide and Methodologies* (UNESCO Bangkok, 2019).[77] The 1995 UNIDROIT Convention is therefore included in the Guide's training framework alongside the 1970 UNESCO Convention, and the practitioners trained learn about the private law tools for restitution and return as an integral part of the response to illicit trafficking. This approach could be replicated in other regions.

Some UNIDROIT capacity-building activities on the 1995 Convention by region, September 2021 – early 2026

Table 1 – Activities by organiser and region

Organiser	Africa	Arab States and Gulf	Asia	Europe and Caucasus	Latin America	Total
UNESCO	9	–	4	2	2	**17**
Italian Carabinieri / Italian MFA	4	–	2	1	–	**7**
EU–UNESCO	–	–	–	5	–	**5**
Qatar National Library	–	5	–	–	–	**5**
ECOWAS	3	–	–	–	–	**3**
National authorities	1	–	1	–	1	**3**
Abu Dhabi Department of Culture and Tourism	–	2	–	–	–	**2**
European Union	–	–	–	2	–	**2**
African Union	1	–	–	–	–	**1**
ICCROM	–	1	–	–	–	**1**
International Council on Archives	–	–	–	–	–	**1**
UNIDROIT	1	–	–	1	–	**2**
Not specified	2	–	–	–	–	**2**
Total	**21**	**8**	**7**	**11**	**3**	**50**

(d) Academic activities

81. The **1995 UNIDROIT Convention Academic Project (UCAP)** aims to raise awareness and deepen understanding of the 1995 UNIDROIT Convention, as well as to promote and create ties between relevant national and international research initiatives undertaken by universities and other institutions active in the field of cultural heritage law. As of October 2026, 16 universities (from Azerbaijan, Argentina, Australia, Brazil, China, Hungary, Italy, the Netherlands, Poland, Switzerland, and the United States of America), the Law Schools Global League (an association of 31 top law schools from all five continents), and the European Students' Association for Cultural Heritage (ESACH) had joined UCAP as institutional partners, while 44 professors, researchers, lawyers, PhD candidates, etc., had joined as individual partners.

[77] https://unesdoc.unesco.org/ark:/48223/pf0000372955 .

82. Several partners have organised courses or conferences to promote UNIDROIT instruments in this field (in particular the Universidad Externado de Colombia, campus of Sevilla, organised a virtual seminar, "Challenges in the Restitution of Cultural Property: 30th Anniversary of the 1995 UNIDROIT Convention" on 24 June 2025). Within the framework of UCAP, UNIDROIT has been invited to deliver lectures on its instruments relating to cultural property at many universities, as detailed in the UNIDROIT Annual Reports.

83. The General Assembly of the United Nations, in its resolution 76/16 adopted on 6 December 2021 (and recalled in its resolution A/RES/79/133 adopted on 6 December 2024)[78] "acknowledges the 1995 UNIDROIT Convention Academic Project and the Informal Ratification Task Force as a platform for the exchange of views, information and assistance on issues such as the ratification and implementation of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects".

(e) Influence on the public attitude and professional practice

84. Beyond its direct legal effects, the 1995 UNIDROIT Convention has had a significant normative influence on **professional practice** in the cultural heritage sector. By introducing internationally recognised standards for the restitution of stolen cultural objects, the return of illegally exported cultural objects, and the exercise of due diligence by purchasers, the Convention has contributed to reshaping expectations of responsible conduct among both **public and private stakeholders**.

85. One of the Convention's most enduring contributions has been the development of the concept of due diligence as an objective legal standard. Article 4(4) identifies a non-exhaustive set of factors to be considered in determining whether a possessor exercised due diligence which have become an important point of reference for museums, auction houses, dealers, collectors, financial institutions, insurers, and legal practitioners when assessing the legitimacy of acquisitions and transactions involving cultural objects.

86. The International Council of Museums (ICOM) has developed the Red Lists, which are an important tool not only because they raise awareness of the fight against illicit trafficking, but because they constitute a valuable tool for conducting provenance research and exercising due diligence, just as described in Article 4(4) of the Convention, together with, for example, the INTERPOL of Stolen Works of Art Database (created in 1995) or the UNESCO Database of National Cultural Heritage Laws (CultNatLaws Database).

87. The Convention's Preamble recognises the importance of the adoption and revision of **professional codes of ethics and institutional policies** in achieving the aims of the treaty. Historically, the ICOM Code of Ethics for Museums (2004) listed the 1995 UNIDROIT Convention, together with the 1970 UNESCO Convention and other instruments, among the international legislation to be taken as a standard in interpreting the Code (Principle 7.2), and its provisions on acquisition, provenance and due diligence reflected principles consistent with the Convention. The revised 2026 ICOM Code of Ethics reflects a broader move away from detailed references to legal instruments and has a different focus; this does not diminish the Convention's historical contribution to museum ethics and collecting practice. Many museums, market participants, and cultural institutions have strengthened provenance research requirements, documentation standards, acquisition procedures, and internal compliance mechanisms in order to align with internationally recognised best practices. Although these measures are not always adopted pursuant to a legal obligation arising from the Convention itself, they reflect the Convention's broader normative influence on the governance of the art market.

[78] https://docs.un.org/en/A/RES/79/133 .

88. The impact of the Convention extends to **judicial and administrative practice**. Courts and competent authorities in both Contracting and non-Contracting States have increasingly referred to the principles embodied in the Convention when resolving disputes concerning cultural objects or interpreting domestic legislation. Likewise, the Convention has informed legislative reforms at the national and regional levels, including provisions governing due diligence, limitation periods, restitution procedures, and the burden of proof.

89. More broadly, the Convention has contributed to a **shift in market culture**. Good faith alone is no longer regarded as sufficient to justify the acquisition of cultural objects of uncertain provenance. Instead, responsible market behaviour increasingly requires proactive verification of provenance, transparency throughout the chain of transactions, and effective risk management. In this respect, the Convention has helped establish due diligence as an internationally accepted professional standard, fostering greater confidence, legal certainty, and integrity in the international circulation of cultural property.

90. The EU Working Group on Dialogue with the Art Market is an official sub-group of the European Commission's expert group on Cultural Heritage Forum, established to exchange information on policies, legislation, and the protection and trade of cultural goods within the EU single market. Launched in December 2023 under the EU Action Plan against trafficking in cultural goods, it brings together industry stakeholders, law enforcement, and policymakers. The membership comprises both individual experts and international organisations, including UNIDROIT, which has participated in the four meetings held. The main goals of the sub-group are: i) to facilitate open dialogues between the European Commission and the art market professionals concerning regulatory developments; ii) to provide expert reports and analysis on EU funding programmes, policies and trade legislation; iii) to enhance crime prevention, provenance tracking and awareness among market players to fight against illicit trafficking; and iv) to promote shared ethical standards and compliance strategies across the sector.

6. Recommendations of the Committee for the future

91. UNIDROIT promotes and implements the 1995 Convention and the Model Provisions on State ownership of Undiscovered Cultural Objects as complementary instruments within a coherent international framework for the protection of cultural objects. Because these two instruments are intended to operate together and reinforce one another, the discussion of future recommendations is presented only after the analysis of the Model Provisions. This structure reflects UNIDROIT's integrated approach and allows the recommendations to address the combined contribution and future development of both instruments.

C. UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects (2011)

1. Development and adoption

92. The UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in Case of Illicit Appropriation (the UNESCO Intergovernmental Committee) – at its 17th session in July 2011 – and the UNIDROIT Governing Council - at the 91st session in May 2012 – took note of the finalisation of the Model Provisions on State Ownership of Undiscovered Cultural Objects.[79]

[79] For the full text of the Model Provisions, see https://www.unidroit.org/instruments/cultural-property/2011-model-provisions/ .

93. During the session of the UNESCO Intergovernmental Committee held in Seoul in 2008, it was noted that **national legislation regarding undiscovered antiquities was often vague**, and that this lack of precision in legislation was frequently penalised by courts in cases involving restitution. A proposal was then put forward concerning the preparation of model provisions to protect cultural property against illicit traffic, to be submitted to States as a model that could be integrated into their own body of law. In 2009, the UNIDROIT Governing Council agreed to work in principle with UNESCO in drafting an instrument that would facilitate the implementation of the 1970 UNESCO Convention and the 1995 UNIDROIT Convention as well as their ratification by as many States as possible.

94. The UNESCO and UNIDROIT Secretariats set up an Expert Committee[80] to draft the Model Provisions. The Committee met formally on three occasions in Paris in September 2010, March 2011, and June 2011. Several exchanges among the members of the Committee also took place via e-mail.

95. The Model Provisions are neither a binding legal text nor a normative instrument, as they have not been submitted to States for formal approval. The Provisions constitute a model offered to States that may require it, alongside other legal tools whose implementation the UNESCO and UNIDROIT Secretariats are tasked with promoting.

2. Purpose

96. States and other stakeholders often face significant challenges in protecting cultural heritage, particularly regarding undiscovered cultural objects that may be found within their territories. Effective and uniform legal frameworks are necessary to ensure the preservation and rightful ownership of such cultural objects, and to prevent illicit trafficking and loss of cultural heritage.[81]

97. In line with the 1956 UNESCO Recommendation on International Principles Applicable to Archaeological Excavations[82] (which encouraged UNESCO Member States to establish clear state ownership laws for all undiscovered archaeological objects) and ECOSOC Resolution 2008/23[83] (which encouraged UN Member States to establish clear State ownership laws for subsoil cultural property), the Model Provisions encourage States to adopt clear and uniform ownership laws over all undiscovered cultural objects within their territory. The implementation of such laws avoids ambiguities that have, in the past, led foreign courts to refuse to recognise a State's claim of ownership,[84] and allows State ownership to be expressed and enforced in a way citizens from all States can understand.

98. The UNESCO-UNIDROIT Model Provisions of 2011 are **designed to strengthen implementation** of the 1970 UNESCO Convention (notably Article 13(d)) and in particular of Article 3(2) of the 1995 UNIDROIT Convention which provides that "a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, *when consistent with*

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80 *Composition of the Expert Committee*: *Co-chairs*: Prof. Marc-André RENOLD, Professor of Law, Université de Genève, Switzerland, and Dr. Jorge SÀNCHEZ CORDERO, Centro de Derecho Uniforme, Mexico; *Members*: Mr Thomas ADLERCREUTZ, Real Estate Attorney, National Fortifications Administration, Sweden (representing ICOMOS); Prof. Manlio FRIGO, Professor of International Law, University of Milan, Italy; Prof. Patrick O'KEEFE, Honorary Professor, Australia; Dr Vincent NÉGRI, Researcher at the National Center for Scientific Research, France; Dr James DING, Senior Government Counsel, Hong Kong; Prof. Norman PALMER, Barrister, Chair, Treasure Valuation Committee, United Kingdom; Prof. Folarin SHYLLON, Ibadan University, Nigeria. Secretariats of UNESCO and UNIDROIT.

81 UNESCO- UNIDROIT Expert Committee, Model Provisions on State Ownership of Undiscovered Cultural Objects, Explanatory Report, 2012.

82 The full text of the Recommendation can be accessed on the UNESCO website: https://www.unesco.org/en/legal-affairs/recommendation-international-principles-applicable-archaeological-excavations.

83 The full text of the Resolution can be accessed on the United Nations Office on Drugs and Crime website: https://ecosoc.un.org/sites/default/files/documents/2023/resolution-2008-23.pdf.

84 See, e.g., *Republic of Turkey v. Christie's, Inc. and Michael Steinhardt*, 62 F. 4th 64 (2nd Cir. 2023); *U.S. v. McClain*, 545 F.2d 988 (5th Cir. 1977).

the law of the State where the excavation took place". The relevant domestic law must therefore be clearly drafted, and the Model Provisions are intended to assist States in this regard. The underlying rationale is practical: to facilitate the recovery of cultural objects. Where an object has been clandestinely excavated, the State of origin can rarely show that it was stolen from an identified owner or possessor; its claim abroad will usually depend on establishing that the object belonged to it by operation of its own law. Foreign courts have been prepared to recognise such a proprietary claim where domestic legislation clearly vests ownership in the State, but not where it merely restricts export or regulates excavation, since foreign export restrictions are generally not enforced outside the framework of Article 5 of the 1995 Convention or other applicable instruments. Ownership and export control must therefore be distinguished, and clear domestic drafting of State ownership is a condition of effective recovery, both under Article 3(2) and in proceedings beyond the Convention's framework.

99. Case law outside the Convention illustrates the point, although the decisions serve different purposes and are neither examples of the application of the 1995 Convention nor, in every case, of successful restitution. In *United States v. McClain* (5th Cir. 1977), concerning pre-Columbian objects from Mexico, the court accepted that a clear declaration of national ownership could render objects "stolen" under United States law, but found that earlier Mexican legislation did not clearly vest ownership in the State. In *United States v. Schultz* (2d Cir. 2003), concerning antiquities from Egypt, Egyptian legislation clearly vesting ownership in the State was given effect. In England, Iran's claim in the *Barakat* case was rejected at first instance, but the Court of Appeal recognised Iran's proprietary rights under Iranian law. In Republic of Turkey v. Christie's Inc. (2d Cir. 2023), a case concerning the Guennol Stargazer, Türkiye's claim ultimately failed on the equitable ground of laches rather than on the merits of its title, while the 1906 Ottoman Decree was treated as the law capable of vesting ownership of antiquities in the State.

100. The Model Provisions are designed to promote harmonisation of legal standards internationally,[85] improve the protection of cultural heritage, and facilitate cooperation between States in the recovery and restitution of cultural objects, thereby supporting the objectives of both institutions in safeguarding cultural property.[86]

3. Key content

101. The Model Provisions consist of an introduction followed by **six provisions**:

- Provision 1 details the general duty of States to protect undiscovered cultural objects located within their territory, emphasising the State's responsibility as the primary guardian of its archaeological and cultural heritage, including objects found on land and underwater.

- Provision 2 offers a broad definition of "undiscovered cultural objects" based on the definitions of the 1970 UNESCO and 1995 UNIDROIT Conventions which includes objects of archaeological, historical, artistic, or scientific importance located in soil, underwater, or other environments, while allowing States flexibility to adapt the definition to their legal systems.[87]

- Provision 3 establishes the principle of State ownership before the moment of discovery, unless prior ownership exists to facilitate protection and restitution efforts.

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[85] Manlio Frigo, *Model Provisions on State Ownership of Undiscovered Cultural Objects: Explanatory Report*, International Journal of Cultural Property, Vol. 19, Issue 4, 2012, pp. 477-486.

[86] https://www.unidroit.org/english/documents/2012/study70a/s-70a-main-e.pdf.

[87] UNIDROIT & UNESCO Expert Committee, *Model Provisions on State Ownership of Undiscovered Cultural Objects with Explanatory Guidelines*, 2011.

- Provision 4 requires States to adopt protective measures for undiscovered cultural objects, including regulating excavation, export, and trade to prevent illicit trafficking and ensure preservation. This supports enforcement mechanisms consistent with international standards.
- Provision 5 addresses the restitution and return of unlawfully removed undiscovered cultural objects, encouraging international cooperation between States to facilitate recovery and repatriation.
- Provision 6 sets out enforcement mechanisms and legal remedies available under domestic law to uphold State ownership rights and ensure compliance with the Model Provisions. It encourages States to integrate these provisions into their legal systems to strengthen protection and enforcement.

102. The Model Provisions are accompanied by explanatory guidelines that give further information and assist legislators and policy makers to adapt the provisions to their national contexts. They promote harmonisation and standardised understanding of State ownership of cultural property internationally.

4. Implementation and engagement

103. The **implementation and promotion** of the UNIDROIT–UNESCO Model Provisions on State Ownership of Undiscovered Cultural Objects are systematically pursued alongside the 1995 UNIDROIT Convention, as the two instruments are designed to operate in a mutually reinforcing manner: the Model Provisions assist States in establishing clear legislative rules on State ownership of undiscovered cultural objects, while the Convention provides the private law mechanisms that facilitate the recognition and enforcement of those ownership rights in cross-border situations. Their combined application offers States a comprehensive legal framework to prevent the illicit excavation and trafficking of archaeological objects and to facilitate their recovery and return.

104. Accordingly, future implementation and engagement activities should continue to integrate both instruments as part of a single, coherent capacity-building and technical assistance strategy. Legislative assistance, judicial and law enforcement training, and outreach to museums, the art market, and cultural heritage professionals should consistently demonstrate the complementary functions of the Model Provisions and the 1995 UNIDROIT Convention, while also highlighting their relationship with the 1970 UNESCO Convention and other relevant international tools. Presenting these instruments as an integrated legal package strengthens national implementation, promotes greater legal certainty, and enhances international cooperation in the protection of archaeological heritage and the fight against the illicit trafficking of cultural objects.

105. States are free to choose any suitable method to incorporate the Model Provisions into their national legal systems, whether through the enactment of specific legislation, the adaptation of general principles of law, or the removal of legal obstacles to the protection and enforcement of State ownership of undiscovered cultural objects. The Model Provisions serve as a tool for States to drive reforms and enhance the protection of cultural objects. Additionally, States can extend the scope of protection beyond the minimum harmonisation provided by the Model Provisions, tailoring the Provisions to their particular legal traditions and policy objectives.

106. The Model Provisions were the inspiration for Articles 3 and 18(2) of the African Union Model Law on the Protection of Cultural Property and Heritage adopted in 2022.[88] They also have had an impact on the drafting of the UNESCO Model Provisions on the Prevention and Fight Against the Illicit Trafficking of Cultural Property recently adopted (in particular in Provision 1).[89]

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[88] African Union, https://au.int/es/node/40132 .

[89] UNESCO, *Model Provisions on the Prevention and Fight Against Illicit Trafficking of Cultural Property*, 2025.

107. The Workstream Committee wished to emphasise the relationship between State ownership and the interests of Indigenous Peoples and other communities, also raising questions that merit further debate, research and consultation, including with Indigenous Peoples themselves. These concern both State ownership of undiscovered cultural objects located on Indigenous lands and the allocation of objects after their return, since return to a State does not necessarily restore an object to the community or collective owner most closely connected to it. The Committee also raised difficulties of international enforcement, including for cross-border communities and as regards the legal personality and standing of communities and the enforceability of their interests. Article 41 of the United Nations Declaration on the Rights of Indigenous Peoples, which calls upon intergovernmental organisations to contribute to the full realisation of the Declaration, is relevant in this respect. Comparative research on consultation standards could usefully precede the choice of any toolkit, commentary or other normative response, including possible commentary on, or changes to, the Model Law. See comment 5 to Provision 1 of the UNESCO Model Provisions on the Prevention and Fight Against the Illicit Trafficking of Cultural Property.[90]

108. The UNESCO and UNIDROIT Secretariats are actively promoting the Model Provisions at relevant international, regional and national events, encouraging their dissemination and usage by States. A pertinent example of a practical usage of the Model Provisions is Peru's constitutional amendment concerning State ownership of undiscovered cultural property. On 19 July 2021, the Peruvian Congress adopted an amendment revising Article 21 of its Constitution to address this issue.[91] Model Provisions 2 and 3 were incorporated into the revised Article, which states that undiscovered cultural objects, including those located underground or underwater, are owned by the State.[92]

109. However, there is no mechanism for States to formally approve the Model Provisions, and lawmakers and courts rarely disclose information about whether or when the Model Provisions have been utilised by States to craft legislation. It is therefore difficult for UNIDROIT to pinpoint the number of States that have used the Model Provisions in drafting or amending their domestic legislation, or in their judicial decisions. For the same reason, later ownership legislation should not automatically be attributed to the Model Provisions; influence should be asserted only where a connection can be documented. Conversely, the Model Provisions may be used in practice without this being apparent from legislation. This has been the case, for example, in the matter of a Roman sarcophagus, illicitly excavated in Perge, Türkiye, and returned by Switzerland after it had been brought there illegally.[93] Further study of the influence of the Model Provisions would be a useful research direction.

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[90] "The content of this model provision should not be interpreted as conferring the State an exclusive responsibility to preserve the cultural heritage; in addition to the obligations incumbent on the State, every person has the right to engage, in a personal capacity or on behalf of civil society organizations, with the cultural heritage of their choice, while respecting the rights and freedoms of others, as an aspect of the right to freely participate in cultural life enshrined in the United Nations Universal Declaration of Human Rights (1948) and guaranteed by the International Covenant on Economic, Social and Cultural Rights (1966) and International Covenant on Civil and Political Rights (1966), and recalled in UN Declaration on the Rights of Indigenous Peoples (2007)".

[91] Congreso de la República del Perú, Ley N° 31304, *Ley de Reforma Constitucional que Refuerza la Protección del Patrimonio Cultural de la Nación*, 23 July 2021, art. único, available at https://busquedas.elperuano.pe/dispositivo/NL/1975869-3.

[92] UNIDROIT, Annual Report 2021, Rome, 2022, p. 32, available at https://www.unidroit.org/wp-content/uploads/2022/11/C.D.-101-2-Annual-Report-2021.pdf.

[93] Vanessa Vuille, Ece Velioglu Yildizci, Marc-André Renold, "Affaire Sarcophage romain – I. SA c. Ordonnance de restitution et Turquie," Plateforme ArThemis, Centre du droit de l'art, Université de Genève.

III. UNIDROIT PROJECT ON 'ORPHAN CULTURAL OBJECTS' (PRIVATE ART COLLECTIONS) (ONGOING)

1. Development and adoption

110. The UNIDROIT General Assembly endorsed a recommendation of the Governing Council to include legal issues related to private art collections in the Work Programme for the 2017-2019 triennium (with low priority).[94] Several conferences were held to discuss the issue, including: "Private Collections: Historical and Legal Perspectives" hosted by UNIDROIT in Rome in March 2017, co-organised with the International Society of Research and Cultural Heritage Law (ISCHAL), the Institut des sciences sociales du politique (CNRS-ENS Cachan-Université Paris-Nanterre) and BonelliErede law firm, and "Provenance of cultural objects" organised by ISCHAL in Geneva in March 2018, which dedicated a session to the provenance of collections with the participation of lawyers, museum directors and collectors.

111. In February 2021, UNIDROIT organised a colloquium with the University of Geneva and the *Fondation Gandur pour l'Art* in Geneva entitled "What prospects for 'orphan works'? Reflections on Cultural Goods without Provenance", which provided an opportunity for collectors, gallerists, lawyers, historians, archaeologists, academics, and museums to come together virtually and share their ideas and perspectives on the ever-growing debate around orphan objects.[95] In March 2022, another conference on "Due diligence, Digital Databases and Cultural Property Law and Policy" was held by the Harry Radzyner Law School of Reichman University in Herzliya, which featured a specific panel on the topic of orphan objects.

112. On a proposal by the Secretariat, endorsed by the Governing Council in 2022, the General Assembly enhanced the level of priority given to the project focusing on 'orphan cultural objects' to a medium priority activity in the Work Programme 2023-2025 which permitted the convening of a Working Group. Before the formal Working Group[96] was established, an Exploratory Expert Group convened in

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94 UNIDROIT, Private Art Collections. Background.

95 See the publication of the Acts and Proceedings.

96 *Current Composition of the Working Group*: Mr Jorge A. SÁNCHEZ CORDERO, Director of the Mexican Center of Uniform Law, Vice President of the International Academy of Comparative Law; Public Notary, Member of the UNIDROIT Governing Council, *Chairman of the Working Group; Members:* Mr Sanjay ADHIKARI, Team Lead, Namuna Foundation, Executive Director, Prakash Mani Sharma Academy For Public Interest Law, Board Member, The Jane Goodall Institute Nepal; Prof. Kristen CARPENTER, Distinguished University Professor & Council Tree Professor, Director, American Indian Law Program, University of Colorado Law School; Mr Eric COTTIER, Ancien Procureur Général du canton de Vaud; Mr Maxence GARDE, Curator, Antiquities Collection, Calouste Gulbenkian Museum, Calouste Gulbenkian Foundation; Prof. Patty GERSTENBLITH, Distinguished Research Professor of Law, Former Faculty Director, Center for Art, Museum & Cultural Heritage Law, Emeritus DePaul University College of Law; Ms Corinne HERSHKOVITCH, Avocate à la Cour, Paris; Prof. LEE Keun-Gwan, Professor International Law, Seul National University; Prof. Amnon LEHAVI, Atara Kaufman Professor of Law, Academic Director, G City Real Estate Institute, Harry Radzyner Law School, Reichman University (IDC Herzliya); Mr Marc-André RENOLD, Honorary Professor at the University of Geneva, UNESCO Chair in international law on the protection of cultural property, Co-Director Art-Law Centre of the University of Geneva; Mr Jacques SCHUHMACHER, Executive Director of Provenance Research, Art Institute of Chicago; Ms Isabelle TASSIGNON, Consultant, Fondation Gandur pour l'Art, Geneva;Prof. Marcilio TOSCANO FRANCA FILHO, Professor, Federal University of Paraiba; Ms Joanna VAN DER LANDE, Chairman, Antiquities Dealers' Association, United Kingdom; Mr Till VERE-HODGE, Solicitor (England & Wales) and Deputy Director of the Commission for Looted Art in Europe; Prof. Ana Filipa VRDOLJAK, UNESCO Chair in International Law and Cultural Heritage, Co-coordinator UNESCO-UNITWIN Network on Culture in Emergencies, Faculty of Law - University of Technology, Sydney; Prof. ZHANG Jianhong, Professor of Archives, The Palace Museum, Beijing. *Institutional Observers*: ICCROM, UNESCO, ICOM, International Confederation of Art and Antique Dealers' Associations (C.I.N.O.A.); Conseil des maisons de vente, France; *Observers*: Mme Marie DUFLOT, PhD candidate, Ecole des Hautes Études en Sciences Sociales (EHESS) and associated to the Centre Georg Simmel; Mr Angelo ESTRELLA FARIA, Secretary General of the Comité Maritime International, Former Secretary General of UNIDROIT, Dr. Henrietta Erika GALAMBOS, Head of Legal Department, Museum of Fine Arts Budapest; Ms Giuditta GIARDINI, Chair of the Legal Affairs Committee of ICOM; Ms Janet ULPH, Professor Emeritus of Commercial Law, Research Handbook on Art, Culture and Heritage Law, Leicester Law School, University of Leicester.

2022 and 2023, including legal experts in art law, cultural heritage protection and museum institutions, private collectors, and the art market.[97] The project is undertaken in partnership with the Art-Law Centre of the University of Geneva and the Fondation Gandur pour l'Art.[98]

113. A selection of members and observers for the Working Group was made based on their expertise in art law, collection management, provenance research, and restitution mechanisms.[99] The Working Group has convened six times to date with the task of drafting preliminary non-binding guidelines.

114. The main goal of the Orphan Cultural Objects project is to develop and publish a set of non-binding principles to provide guidance on handling orphan cultural objects. Further sessions of the Working Group are anticipated before the final draft is presented to the UNIDROIT Governing Council for consideration and possible adoption. The General Assembly raised the priority of the subject to "high" in the Work Programme 2026-2028.

2. Purpose

115. So-called 'orphan' works, in other words cultural property with no proven provenance or with significant gaps in its provenance, are the source of many legal, ethical, archaeological and historical questions. This is a central issue for today's art market, collectors and museums, at a time when provenance issues are becoming increasingly significant.

116. The project aims to develop internationally recognised non-binding guidelines to assist in the identification, management, and protection of "orphan cultural objects", promoting stewardship and legal clarity. More ambitiously, the project aims to draft the legal conditions that allow 'orphan' cultural objects to remain accessible, responsibly documented, legitimately transferred where appropriate, and capable of being transmitted to future generations.

117. Participants reaffirmed that the Guidelines should enhance transparency and the restitution framework without contradicting the 1995 UNIDROIT Convention. Rather, the overarching objective is to strengthen the 1995 Convention. Broad support was expressed for the integration of ethical and practical standards within a framework that remains sufficiently flexible to accommodate differences across jurisdictions. The Working Group broadened its representation, in particular to include Indigenous Peoples and provenance researchers.

3. Key content

118. Currently, the project contains six guidelines:

- *Guideline A – Definition of an [orphan cultural object] [and scope of the Guidelines]*: significant debate centred around the terminology used to describe objects with incomplete or no provenance . Members stressed the importance of clarity, inclusiveness and sensitivity, especially to source communities. The Working Group currently defines an 'orphan cultural object' as: "a movable cultural object of importance, as defined in Article 2 of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, which has [no or] incomplete provenance."

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97 UNIDROIT, Annual Report 2023.

98 *Uniform Law Review*, Volume 28, Issue 3-4, December 2023, pp. 462–509. UNIDROIT News. *Actualités d'UNIDROIT*.

99 UNIDROIT, Annual Report 2024, Sections on ongoing projects and future planning for the orphan cultural objects instrument.

- *Guideline B* – *Due diligence*: the current text clarifies when due diligence should be performed, extending beyond commercial transactions to include changes in ownership, possession or physical location, and identifies the parties responsible for undertaking it. It refers to the criteria set out in Article 4(4) of the 1995 UNIDROIT Convention, addresses continued provenance research where gaps remain, and introduces heightened due diligence requirements for sensitive categories of cultural objects.
- *Guideline C* – *Provenance research*: the current text defines provenance research, its scope and objectives, the expertise required to conduct it, and the extent to which complete provenance can reasonably be established. It also addresses the participation and consultation of Indigenous Peoples, local communities, and diaspora communities in research concerning sensitive objects, the documentation of findings and provenance gaps, and the need to revisit research as new information becomes available.
- *Guideline D* – *Provenance documentation, information and transparency*: the current text addresses the recording, retention, and preservation of due diligence and provenance research documentation, which should accompany the object and be transmitted upon any transfer of the object. It clarifies that the absence of conclusive provenance information does not necessarily indicate inadequate research efforts, provided these are appropriately documented. It also addresses the sharing of information in good faith outside transfer circumstances with parties demonstrating a legitimate interest, while recognising potential legal, contractual and ethical limitations on disclosure.
- *Guideline E* –Public access: the current text encourages possessors of cultural objects to provide public access to provenance and other relevant information, including through publicly accessible databases or the physical or virtual presentation of objects on dedicated platforms. The question of respect to be given to the sensitivity of certain cultures was central.
- *Guideline F* – *Facilitation of dialogue and dispute resolution*: the current text encourages parties to consider alternative dispute resolution mechanisms, including negotiation, mediation and arbitration, alongside judicial procedures available under national law. It emphasises the exchange of relevant information and documentation, dialogue between the parties, and the pursuit of just and fair solutions to disputes concerning orphan cultural objects.

4. Engagement, Expected Impact, Challenges and the Way Forward

119. As the Orphan Objects Project remains under development, its practical effects and longer-term impact cannot yet be fully assessed. Its significance, however, is already apparent in the legal and professional questions it raises and in the framework it seeks to establish for addressing cultural objects whose provenance is incomplete, uncertain or insufficiently documented. The project reflects UNIDROIT's broader contribution to the development of practical legal tools capable of responding to contemporary challenges in the circulation and protection of cultural property.

(a) Engagement

120. UNIDROIT's engagement in the Orphan Objects Project is grounded in its mandate to examine ways of harmonising and coordinating private law rules and to develop modern legal instruments and guidance responding to emerging needs in international commerce and cultural property protection. Objects with incomplete or unsatisfactory provenance present precisely such a challenge: they sit at the intersection of legal obligations, professional standards, evidentiary questions and legitimate interests in access to and circulation of cultural objects.

121. The project has therefore been conceived as a **multidisciplinary and consultative exercise**, bringing together legal experts and professionals with experience in museums, collections, provenance research, the art market and related fields. The Working Group and wider consultations have provided an opportunity to examine the issue from different perspectives and, importantly, to identify areas where legal concepts and professional practices do not yet provide sufficiently clear or consistent answers.

122. The project also illustrates the distinctive value of UNIDROIT's approach: rather than seeking to establish a single substantive rule applicable to every situation, it examines how **legal principles, professional practice and practical mechanisms can interact** to improve decision-making in respect of objects with incomplete provenance. In this regard, the project complements the 1995 UNIDROIT Convention and contributes to the Organisation's continuing role in developing tools for the responsible circulation and protection of cultural property.

(b) Expected impact

123. The expected impact of the project is both **practical and legal**. At the practical level, the Guidelines are intended to assist relevant actors in dealing with incomplete provenance in a more structured, transparent and responsible manner. In particular, they may contribute to strengthening due diligence and provenance research practices, while assisting in drawing a distinction between the absence of information and evidence indicative of an unlawful history. This distinction is of considerable importance: a gap in provenance should not, in itself, be treated as determinative of the legal status of an object, but neither should it be disregarded where further research or clarification is reasonably available.

124. Greater transparency and access to relevant information could also facilitate more informed decision-making by collectors, dealers, researchers and other stakeholders. In turn, this may support responsible transactions, by making it easier to identify questions requiring further investigation before an object is acquired, transferred, exhibited or otherwise dealt with.

125. The project may also bear relevance to dispute prevention and resolution. Improved documentation, a clearer allocation of responsibilities and greater transparency at an earlier stage may reduce misunderstandings and facilitate the assessment of competing claims. Where disputes nevertheless arise, more systematic recording of information and documentation could assist negotiation, mediation or other forms of dispute resolution.

126. While the elimination of provenance gaps through rigorous due diligence and provenance research remains the ideal, it must be recognised that in many cases this will not be achievable. The broader objective is therefore to improve the way legal and professional frameworks respond to such gaps where they persist.

(c) Challenges

127. The project has also demonstrated that the concept of an "orphan object" raises significant conceptual, legal and practical questions.

128. A first challenge concerns **terminology and scope**. An incomplete provenance may result from many different circumstances and may have very different legal significance. The terminology must therefore avoid suggesting that every object lacking a complete provenance is necessarily illicit, disputed or legally problematic. At the same time, it should not obscure situations in which gaps in documentation warrant further investigation. As to the scope, the Working Group agreed to incorporate the provision into Guideline A or the preamble rather than establishing a separate Guideline, while leaving the precise formulation and treatment of privately owned museums, foundations and other institutions subject to professional standards open for further consideration.

129. A second challenge is the **inherent incompleteness of historical information**. Provenance research is often dependent on fragmented archives, changing standards of documentation and information that may no longer be accessible. The Guidelines must consequently recognise that provenance can be progressively reconstructed without implying that a definitive history can always be established.

130. A further challenge concerns the **allocation of responsibilities**. Different actors possess different information and have different capacities to undertake research. Questions therefore arise as to what may reasonably be expected from owners, sellers, buyers, museums, researchers, intermediaries and other relevant actors, and how those responsibilities should be differentiated having regard to the circumstances of each case.

131. The project has also highlighted challenges concerning **data quality and verification**. Making information available does not necessarily make it reliable. A useful mechanism must distinguish, as far as possible, between documented facts, research findings, assumptions, unresolved questions and allegations. At the same time, requirements concerning privacy, confidentiality, commercially sensitive information and the protection of legitimate interests must be considered. Finally, there is unlikely to be a single universally applicable mechanism. Different legal systems, institutional practices, categories of objects and historical contexts may require different responses. The challenge is therefore to develop a sufficiently coherent framework to promote consistency and transparency while retaining the flexibility necessary to accommodate legitimate differences.

132. Questions concerning the **public sharing of research findings**, including confidentiality and other sensitivities, as well as concerning the appropriate means and extent of **public access**, remain under discussion.

(d) Way forward

133. The immediate priority is to consolidate and refine the Guidelines, drawing on the experience of the Working Group and on further consultations with the professional, legal and institutional communities concerned. Their practical usefulness should ideally be tested against concrete scenarios, including different types of provenance gaps and different institutional and transactional contexts.

134. Further work could also examine whether digital tools or platforms can facilitate access to information, the structured presentation of provenance data and communication between relevant stakeholders. Such tools would need to be designed with particular attention to data reliability, verification, identity, privacy and confidentiality. Their purpose should be to facilitate research and transparency, rather than to create an authoritative determination of title or provenance.

135. Capacity-building will be equally important. The effectiveness of any framework will depend not only on the availability of guidance, but also on the capacity of institutions and professionals to apply it consistently. Cooperation with organisations possessing complementary expertise—including relevant international organisations, museums and professional networks—should therefore remain an integral part of the project.

136. In the longer term, the experience gained through the project may inform consideration of the appropriate legal or institutional follow-up. This could include further guidance, cooperative mechanisms, digital infrastructure or, where justified by the development of practice, consideration of whether additional legal work is warranted.

137. The principal contribution of the project may ultimately lie in shifting the approach to incomplete provenance from a binary question—whether an object has a complete provenance history or not—towards a more structured process of inquiry: what is known, what is unknown, what can reasonably be

investigated, who should undertake that investigation, how the resulting information should be assessed and shared, and what decisions can responsibly be taken in light of the evidence available. This approach is consistent with UNIDROIT's broader objective of bridging legal principles and practical mechanisms for the responsible protection and circulation of cultural property.

IV. CONCLUSIONS

138. After more than 30 years, the 1995 UNIDROIT Convention remains a seminal text whose full potential has yet to be explored. Its forward-looking principles (including the restitution of stolen cultural property, due diligence on the part of purchasers, and the protection of archaeological and other culturally significant objects) are today widely recognised as necessary components of the fight against illicit trafficking. At the same time, their effective implementation depends not only on political commitment, but also on the capacity of States, lawmakers, and practitioners to make full use of the Convention's legal framework. In particular, the Convention's non-reservable provisions and self-executing character may, in certain legal systems, necessitate extensive legislative reform, while also requiring from authorities and practitioners to understand how its provisions interact with existing domestic law.

139. Experience has shown that coordination with regional instruments, such as the Directive 2014/60/EU and the Commonwealth Scheme, as well as the mobilisation of market participants, can play a positive role in disseminating these principles. UNIDROIT could build on this experience by placing greater emphasis on the practical and legal implementation of the Convention. This could include assisting States in assessing the interaction between the Convention and their existing legislation, facilitating consultation among relevant stakeholders, and strengthening international judicial cooperation.

140. There is also considerable scope for UNIDROIT to address judges and practitioners directly, by developing concrete tools for the preparation and conduct of cases involving the restitution/return of cultural property. Practical guides, model legal approaches, training programmes and comparative materials could demonstrate how the Convention can be used in conjunction with existing instruments and procedures across different legal systems. Such tools would help practitioners identify complementary avenues for action rather than treating the Convention as a stand-alone instrument.

141. By emphasising the Convention's complementarity with existing legal frameworks, while making its practical mechanisms more accessible to legislators, judges, lawyers, law-enforcement authorities and market participants, UNIDROIT can help unlock the Convention's still largely unexplored potential, encourage further States to become Parties, and make the 1995 Convention an even more effective instrument in the fight against the illicit trafficking of cultural property.

142. Taken together, the three initiatives examined in this White Paper illustrate UNIDROIT's distinctive contribution to addressing the private-law dimensions of cultural property. They demonstrate the Institute's capacity to reconcile different legal traditions and competing interests while developing practical approaches to restitution and return, legal certainty, responsible stewardship, and legitimate circulation. UNIDROIT's enduring contribution lies not only in the individual instruments and projects it has developed, but also in its ability to connect legal principles with their practical application and to respond to evolving legal and institutional challenges.

V. RECOMMENDATIONS

143. The Workstream Committee on Cultural Property suggests developing (and/or continuing) various activities to **promote universal participation in the 1995 Convention and Model Provisions** consistent with the objectives of the 1995 UNIDROIT Convention and the Model Provisions, including the following.

A. Encourage States that have not yet done so to become a Party to the Convention

144. UNIDROIT should continue to encourage States that have not yet done so to become a Party to the Convention, particularly in regions where participation remains limited. The Committee recommends the following actions:

- Continue **diplomatic outreach campaigns** (*e.g.*, directly or during events with regional and global partners) and highlight positive examples of implementation. UNIDROIT should increase this type of advocacy particularly in the Asia-Pacific region – with the cooperation of the Liaison Office in Hong Kong and the Asian Transnational Law Center –, and in Central Asia, in collaboration with UNESCO, ASEAN, ICESCO and other institutions. Outreach should be tailored to the situation of each State, distinguishing between States that object to particular aspects of the Convention, States that consider their domestic or regional law sufficient, and States that have not prioritised accession. Each requires a different combination of legal explanation and diplomatic engagement, including practical arguments addressed to national decision-makers.

- **Strengthen cooperation with (other) international organisations.** Continue collaboration with UNESCO, INTERPOL, the World Customs Organization (WCO), UNODC, ICCROM, ICESCO, ICOM, and other relevant bodies to ensure complementary actions in prevention, restitution, and capacity building, and strengthen cooperation with other institutions. The 1995 UNIDROIT Convention is at the crossroads of culture and trade, thus opening the field for mutually beneficial cooperation between UNIDROIT and other relevant international organisations. From this perspective, the exemplary cooperation that already exists with some institutions should be extended to other relevant international bodies, where appropriate such as the Human Rights Council (UNHRC), the World Trade Organization (WTO), the United Nations Conference on Trade and Development (UNCTAD), the World Intellectual Property Organization (WIPO) or the Organization of African, Caribbean and Pacific States (OACPS).

- **Pursue the regional approach to complement, rather than replace, national action.** Building on its successful cooperation with regional organisations such as ECOWAS in Western Africa, UNIDROIT could intensify its engagement with the African Union and with the Regional Economic Communities in Central and Eastern Africa, in particular the East African Community (EAC), the Economic Community of Central African States (ECCAS), the Common Market for Eastern and Southern Africa (COMESA) and the Intergovernmental Authority on Development (IGAD). Such cooperation could provide a regional framework for promoting accession to the 1995 Convention, facilitating exchanges between national authorities and providing targeted technical assistance on ratification and implementation. The approach would be particularly relevant given that the EAC Treaty itself calls for cooperation in combating illicit cross-border trade in cultural property and for accession to and ratification of relevant international cultural conventions. UNIDROIT could seek to

organise, in cooperation with the AU and the relevant RECs, regional technical meetings bringing together ministries responsible for culture, justice and foreign affairs, customs authorities and other relevant stakeholders.

- **Hold regular (hybrid) meetings of the Informal Ratification Task Force**. This network promotes discussion on obstacles perceived to accession and the sharing of best practices. Moreover, UNIDROIT must in general organise additional meetings dedicated to the 1995 Convention.[100] The Task Force would bring together and assist States in the process of ratification/accession (including with explanations of mandatory and optional declarations, and the procedure in general), play a crucial role in helping States to conclude the final steps in the process and promote a consistent understanding and application of the Convention.

- Encourage the (unofficial) **translation of the Convention**[101] **and its Explanatory Report** into as many languages as possible. It is essential for local stakeholders to appropriate the Convention.

B. Facilitate a better implementation of the UNIDROIT instruments (Accession Kit)

145. For the 1970 UNESCO Convention and the Directive 2014/60/EU to be effective, States have the obligation to adopt a national law or to transpose the text into the national framework. When implementing such instruments, States often find it useful to elaborate on them or guide courts and practitioners. Although the 1995 UNIDROIT Convention is self-executing, an **Accession Kit** (guide to enactment or model provisions) could do so in four areas.

- *Due diligence.* Building on Article 4, some States impose general due diligence duties on sellers and dealers (e.g. Article 16 of the Swiss *Loi sur le transfert des biens culturels* and §§ 40-48 of the German *Kulturgutschutzgesetz*), extending the Convention's preventive effect beyond concrete claims. A guide could help States introduce similar obligations to enhance market transparency and confidence.

- *Interpretation* of central provisions: the notions of "stolen" (Articles 3 and 4) and of "sacred" and "communally important" objects (Article 3); the evidence needed to show "importance" (Article 5(3)); alternatives to compensation, such as long-term loans, "virtual return" or swaps (Article 6(3)); and the scope of "more favourable rules" (Article 9(1)), drawing on proposals discarded during the negotiations as too detailed for a treaty.

- *Coordination* with the regimes of undiscovered cultural objects (e.g. through combined enactment with the Model Provisions) and of public collections, including State ownership and decommissioning for return.

- *Sensitive objects*, notably human remains and objects from a colonial context. The latter were already contemplated in Article 10(3), which preserves claims regarding earlier "illegal transactions", and guidance would give that provision concrete content. Recent national laws and guidelines diverge on the criteria for return (e.g. duress or violence,[102] involuntary loss of

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[100] Since the adoption of the Convention, the only such meetings have been the first (and, to date, only) meeting of the Special Committee to Review the Practical Operation of the Convention, which took place in June 2012 just prior to a statutory meeting on the 1970 UNESCO Convention, along with the conferences celebrating the 20th and 25th anniversaries of the Convention, held on 8 May 2015 at the Capitoline Museum and 8-9 October at the seat of UNIDROIT, respectively.

[101] Beyond the existing translations which can be found on the UNIDROIT website at https://www.unidroit.org/instruments/cultural-property/1995-convention/other-languages/ .

[102] Belgium, Loi du 03/07/2022 *reconnaissant le caractère aliénable des biens liés au passé colonial de l'État*

possession,[103] theft, looting or coerced transfer[104]), on whether return is possible without proof of illicit acquisition,[105] [106] on their scope, on the binding nature of decisions and on the role of the State of origin. While solutions cannot be generalised, guidance on options and best practices, including the involvement of Indigenous, religious and ethnic communities, would benefit holding States and countries of origin alike.

C. Strengthen the governance

146. The Committee recommends the following actions:

- **Regularly convene the special committee provided for in Article 20 of the Convention**, which the President of UNIDROIT "may at regular intervals" convene, as a platform for exchanging experience and best practices, identifying implementation challenges, discussing emerging issues, coordinating capacity-building and outreach activities with other international organisations and developing practical guidance. The Committee recommends that meetings be held more frequently than has been the case to date, that their composition and working methods be specified. The Committee also suggests that such meetings be held in conjunction with meetings of other organisations on similar issues to enhance participation.
- **Encourage States Parties to report on national implementation** (national reports) as a mechanism for maintaining the Convention's relevance and encouraging exchanges between States (elaborate on what national reporting might involve, how information would be shared, and how regular participation could strengthen implementation).
- To facilitate contacts with the Secretariat and between States, and obtain information, UNIDROIT should ask States Parties to **designate focal points** for the 1995 Convention **and** also **lawyers** to assist in the implementation.

D. Develop (academic) research/projects

147. The Committee recommends undertaking **(academic) research** to better understand the impact and influence of the 1995 UNIDROIT Convention for all States. This work should be done within the framework of the Academic Project on the 1995 UNIDROIT Convention (**UCAP**) and in coordination with the **UNIDROIT Asian Transnational Law Centre**, the **UNIDROIT Nordic Law Centre** and the future **Law Centre for the MENA region**. Here are examples of possible research to be developed.

belge et déterminant un cadre juridique pour leur restitution et leur retour, article 4.

[103] Netherlands, *Policy vision on collections from a colonial context*, January 2021, pp. 4-5 (available at https://committee.kolonialecollecties.nl/documents/2021/01/01/policy-vision-on-collections-from-a-colonial-context).

[104] France, Code du patrimoine, article L. 115-10 (introduced by *Loi no 2026-351 du 9 mai 2026 relative à la restitution de biens culturels ayant fait l'objet d'une appropriation illicite*).

[105] E.g. acquisition "no longer legally or ethically justifiable": Germany, *Erste Eckpunkte zum Umgang mit Sammlungsgut aus kolonialen Kontexten der Staatsministerin des Bundes für Kultur und Medien, der Staatsministerin im Auswärtigen Amt für internationale Kulturpolitik, der Kulturministerinnen und Kulturminister der Länder und der kommunalen Spitzenverbände*, p. 7 (available at https://www.bundesregierung.de/resource/blob/974430/1589206/85c3d309797df4b2257b7294b018e989/2019-03-13-bkm-anlage-sammlungsgut-data.pdf?download=1).

[106] Netherlands, *Policy vision*, p. 5 (objects of particular significance to the country of origin).

1. Function and scope of uniform law in the field of cultural heritage protection:

148. Since 2010, when Toshiyuki Kono's edited volume *The Impact of Uniform Laws on the Protection of Cultural Heritage and the Preservation of Cultural Heritage in the 21st Century* was published, there has been a clear trend towards harmonising cultural property law. It shows in the UNESCO–UNIDROIT Model Provisions (2011), the Commonwealth Model Bill (2017), the African Union Model Law (2022), the ICRC Model Law (2024), the UNESCO Model Provisions on the 1970 Convention (2025) and Regulation (EU) 2019/880. At the same time, the State's role as sole standard-setter is increasingly being questioned, and more stakeholders are taking part. The 2010 study described the common features of these laws but did not examine the function of uniform law in heritage protection, nor how it is made.

149. The Committee therefore proposes research on three questions, each of which also raises the question of whether unification should be regional or global. First, how do model instruments meet a need for legal certainty? Second, what does universalism mean in cultural heritage law today? Third, can heritage protection become a meeting point between uniform law and legal pluralism, rather than a field of competing claims? The research would also classify the various types of instrument, from conventions and model laws to operational guidelines and professional codes, and assess how effective each is at unifying the law.

2. Assessment of the 1995 Convention and Customary International Law:

150. A full assessment of the impact of the 1995 Convention cannot stop at its 56 States Parties. Treaty obligations bind only the Parties, but rules of customary international law apply to States generally. Whether some of the Convention's principles have entered, or are entering, general international law is therefore directly relevant to measuring how far the Convention reaches. Under the ILC's 2018 Conclusions on Identification of Customary International Law, a treaty may codify an existing customary rule, contribute to the crystallisation of an emerging one, or give rise to a general practice accepted as law (Conclusion 11). Several principles of the Convention could usefully be examined in this light: the restriction of the bona fide purchaser rule for stolen cultural objects (Article 3), the special protection of sacred or communally important objects used by a tribal or indigenous community (Article 3(8)), and the requirement that a possessor seeking compensation show it exercised due diligence (Article 4(1) and (4)).

151. The Convention's influence must, however, be kept separate from the existence of customary obligations. Domestic laws that adopt the due diligence criteria of Article 4(4), court decisions that refer to the Convention, and market practice around provenance all show that the Convention's influence is considerable. Influence of this kind does not in itself show that States regard these principles as legally binding independently of the treaty. Practice by States Parties implementing their treaty obligations, or by EU Member States applying Directive 2014/60/EU, says little about *opinio juris* in general international law. Many national courts refer to an "international public policy" rather than to customary rules. The practice of specially affected States, in particular the major art market States that have not joined the Convention, would also need careful examination.

152. The Committee therefore recommends further academic work to examine whether, and to what extent, particular principles of the 1995 Convention reflect or are generating rules of customary international law. Such a study should follow a strict methodology which could be the methodology of the ILC's 2018 Conclusions. It would assess separately the two constituent elements of State practice and *opinio juris*, give particular weight to the practice of non-Party States, and treat resolutions of international organisations, notably the recurring UN General Assembly resolutions on the return or restitution of cultural property, and national case law as evidence to be weighed rather than as conclusive proof (Conclusions 12 and 13).

3. Develop Model Clauses for transactions in cultural objects:

153. UNIDROIT's contract law instruments, from the UNIDROIT Principles of International Commercial Contracts (UPICC) and the Model Clauses for their use to the Conventions on International Financial Leasing and Factoring, the Model Law on Leasing and the legal guides prepared with FAO and IFAD, have developed largely in parallel with its cultural property instruments. The Committee considers that bringing them together would give market participants practical tools to implement the standards of the 1995 Convention in their day-to-day transactions.

154. Due diligence has become the central standard in this field. Under Article 4(1) and (4) of the 1995 Convention, the possessor of a stolen object is entitled to compensation only if it can prove due diligence, assessed in light of the character of the parties, the price paid, the consultation of reasonably accessible registers and agencies, and any other information and steps a reasonable person would have taken. Article 6(2) applies a comparable test to illegally exported objects, expressly including the absence of an export certificate. The standard has since been incorporated in national legislation, in professional codes of ethics and in anti-money laundering legislation applicable to art market participants. Regulation (EU) 2019/880 has further extended the inquiry by requiring importers of certain categories of goods to demonstrate or declare their lawful export from the country where they were created or discovered. Due diligence therefore now reaches beyond title and provenance to the lawfulness of the object's export and import history. Contractual practice, however, has not kept pace. Sale, consignment and loan agreements remain highly heterogeneous, and the allocation of due diligence obligations and of the risks arising from a later claim is often unclear.

155. The Committee therefore recommends that UNIDROIT develop Model Clauses for transactions in works of art and cultural objects. The UPICC would provide the general contract law framework, notably good faith and fair dealing (Article 1.7), mistake and fraud (Articles 3.2.2 and 3.2.5), contracts infringing mandatory rules (Articles 3.3.1 and 3.3.2), public permission requirements relevant to export licences (Articles 6.1.14 to 6.1.17) and hardship (Article 6.2.2). The 1995 Convention would provide the substantive standards specific to transactions in cultural objects, first among them due diligence. It could also serve as the starting point for Model Clauses on the specific issues arising in these transactions (*e.g.* the allocation between the parties of the obligation to carry out and document the due diligence inquiries required under Articles 4(4) and 6(2), representations and warranties on title, provenance and the lawfulness of export and import, and the allocation of risk where the object later becomes the subject of a claim for restitution or return).

156. The Model Clauses could be drafted for the main types of transactions in the art market: private sales, sales by dealers, auction consignments, loans for exhibitions (including clauses on return addressing the situation contemplated in Article 5(2) of the 1995 Convention) and agreements using works of art as collateral (see also the recommendation on an Art Protocol below). Like the Model Clauses for the Use of the UPICC, they would be non-binding and freely adaptable by the parties.

4. Explore an additional (or standalone) "Art Protocol" to the Cape Town Convention on works of art used as collateral:

157. The use of works of art as collateral lies at the intersection of UNIDROIT's work on cultural property and its work on secured transactions. It raises the same questions that underpin the 1995 Convention: certainty of title over cultural objects, the protection of good-faith purchasers, the due diligence expected of those who deal in such objects, and the impact of national export restrictions on cross-border transactions. Art-secured lending has grown considerably over the past two decades, with outstanding

loans estimated at between US$33.9 and 40 billion in 2025.[107] It remains, however, largely concentrated in the United States, where Article 9 of the Uniform Commercial Code (UCC) allows borrowers to retain possession of the pledged work and gives public notice of the security interest through filing. In most other jurisdictions, the diversity of national rules on the transfer of ownership, the acquisition of movables in good faith and the perfection of security interests produces significant legal uncertainty. A lender can usually protect itself only by taking physical possession of the work, which borrowers are reluctant to give up, and which is often impractical for objects kept in third-party storage or freeports, or lent to exhibitions abroad during the term of the loan. [108]

158. The consequences are illustrated by the case of Gerrit Adriaensz Berckheyde's The Bend in the Herengracht. A private collector pledged the painting to a U.S. bank and later sold it to the State of the Netherlands for the Rijksmuseum. No record of the security interest was available, so the State was considered a good-faith purchaser under Dutch law and retained the work, and the lender's claim was settled out of court.[109] Even the UCC system does not exclude such risks. Filings are made under national law, are indexed by debtor rather than by asset, and do not reveal rights created in other jurisdictions. In the litigation over Jean-Michel Basquiat's Humidity, a specialised lender that had duly filed a financing statement in New York saw its security interest set aside. The dealer who had granted it had already sold and encumbered shares in the same work to other parties.[110] Such outcomes are the predictable result of incompatible national regimes applied to a market that is inherently transnational. They expose lenders, as well as purchasers including public collections, to undisclosed encumbrances. Market participants have repeatedly identified the absence of uniform rules as a major obstacle to the development of art-secured lending outside the United States.[111]

159. The Cape Town Convention on International Interests in Mobile Equipment (2001) offers a tested model for addressing this gap. It provides an international, asset-based registry of interests in uniquely identifiable, high-value assets, priority rules based on registration, and harmonised remedies on default. It has been extended through asset-specific Protocols, most recently the Protocol on Matters Specific to Mining, Agricultural and Construction Equipment (2019). An international register of cultural objects used as collateral, inspired by the Cape Town model, has already been advocated in the legal literature.[112] The Committee therefore recommends that UNIDROIT undertake a feasibility study on an additional Protocol to the Cape Town Convention on matters specific to works of art, or on a stand-alone instrument based on the same model if the scope of the Convention, currently limited to categories of mobile equipment, cannot accommodate it. The study should consider in particular: which cultural objects should be eligible as collateral and how they can be uniquely identified; whether registration should be limited to certain categories of debtors, for instance to avoid interference with national consumer lending laws; the relationship between the international registry and existing national and private art market registries; the needs of market participants, to be assessed through targeted consultation of lenders, borrowers, galleries and heritage institutions.

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107 Deloitte & ArtTactic, Art & Finance Report 2025, p. 344.

108 G. Giardini, "Art-Secured Lending: Obstacles and Proposed Solutions", Santander Art and Culture Law Review, 2021, Vol. 7(2), pp. 99-122, at pp. 116-118.

109 *Ibid.* See also CODART, "JPMorgan Chase & Co lays claim to a painting by Berckheyde recently acquired by the Rijksmuseum", 17 April 2009, https://www.codart.nl/?p=422 (last accessed 2 November 2026); DutchNews, "Disputed painting can stay at Rijks museum", September 2009, https://www.dutchnews.nl/2009/09/disputed_painting_can_stay_at (last accessed 2 November 2026).

110 *Athena Art Finance Corp. v. That Certain Artwork by Jean-Michel Basquiat Entitled Humidity, 790 F. Supp. 3d 247 (S.D.N.Y. 2025),* appeal pending (2d Cir.); for a similar outcome concerning Amedeo Modigliani's *Cariatide rouge sur fond noir*, see *Overton v. Art Finance Partners LLC*, 166 F. Supp. 3d 388 (S.D.N.Y. 2016).

111 Deloitte & ArtTactic, Art & Finance Report 2017, p. 154, and 2019, p. 10; TEFAF & ArtTactic, Art Dealer Finance Report 2018; G. Giardini, *supra* footnote 110, pp. 100-101.

112 G. Giardini, *supra* footnote 110, pp. 118-120.