STATUS OF THE 1995 UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS

Fourth Meeting of States parties to the 1970 Convention (4.MSP)
Paris, 15-16 May 2017
(4) That UNESCO undertake a joint study with UNIDROIT (the International Institute for the Unification of Private Law) concerning the rules of private law affecting the return to their country of origin of illicitly transferred cultural goods, with reference, inter alia, to the UNIDROIT Draft Uniform Law on the acquisition in good faith of corporeal movables.
DEFINITION OF CULTURAL PROPERTY

Specifically designated by the State → Not specifically designated by the State

CLAIMANT

State → Theft: State + Private Person
Illegal Exportation: State

TIME LIMITATION

No rule → Theft: Art. 3(3) to 3(6)
Illegal Exportation: Art. 5(5)

COMPENSATION

GOOD FAITH

Art. 7 (b) (ii)
No definition

DUE DILIGENCE

Criteria for “due diligence”
Art. 4(4) and Art. 6(2)


**Products of Clandestine Archeological Excavation**

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

Special Protection of Archaeological objects:
- Illicit excavation = theft (Art. 3(2))
- No time limitation to action
- Art. 5(3) (a) (b) (c)

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

**Non Retroactivity**

National implementation law needed

Self-executing treaty
STATUS MAP OF THE 1995 UNIDROIT CONVENTION – as of 8 May 2017

States Parties

Signatory States
Article 11 of the 1995 UNIDROIT Convention


(2) Signatory States: the Convention is subject to Ratification or Acceptance or Approval.

(3) Not signatory States: the Convention is open for Accession.

(4) Ratification, acceptance, approval or accession is subject to the deposit of a formal instrument to that effect with the depositary.
STATES PARTIES

Adoption: Place: Rome
Date: 24.06.1995

Entry into force: 01.07.1998 (Art. 12)

Contracting States: 39

Several States have finalised the internal procedure of accession .... deposit expected!

+ Morocco
+ Laos
+ Syria
+ ..... 

Others are in the process of acceding to the Convention
SIGNATORY STATES

Burkina Faso, Côte d'Ivoire, France, Georgia, Guinea, Netherlands, Pakistan, Russian Federation, Senegal, Switzerland, Zambia

To enter into force, the Convention is subject to Ratification or Acceptance or Approval

Burkina Faso is about to «perfect» its instrument of ratification (add the compulsory declaration under Art. 16(1))

Zambia is actively working at ratification
INSTRUMENTS IN DUE FORM

Two States have deposited their instrument of accession which could not be accepted by the Depositary

Some other States delay the deposit

WHY?

lack of the compulsory declaration under Art. 16(1)
COMPULSORY DECLARATIONS

at the time of ratification or accession

Article 16, paragraph 1: indicate the procedure(s) under which the claims for the restitution or the requests for the return of cultural objects may be submitted according to Article 8:
   (a) directly to the courts or other competent authorities;
   (b) to courts through a designated authority(ies);
   (c) through diplomatic or consular channels.

no later than six months following the date of deposit of the instrument of ratification or accession

Article 17: any Contracting State provide the depositary with written information in one of the official languages of the Convention (English, French) concerning the legislation regulating the export of its cultural objects. This information shall be updated from time to time as appropriate.

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OPTIONAL DECLARATIONS
at the time of ratification or accession

**Article 3, paragraph 5:** any Contracting State may declare that a claim for the restitution of a cultural object forming an integral part of an identified monument or archaeological site, or belonging to a public collection is subject to a *time limitation* of 75 years or such longer period as is provided in its law.

**Article 13, paragraph 3:** in their relations with each other, Contracting States which are Members of organisations of economic integration or *regional bodies* may declare that they will apply the internal rules of these organisations or bodies and will not therefore apply as between these States the provisions of this Convention the scope of application of which coincides with that of those rules.

**Article 14, paragraphs 1 and 2:** if a Contracting State has two or more *territorial units*, it may declare that this Convention is to extend to all its territorial units or only to one or more of them (express declaration). This declaration can also be made at the time of signature.

**Article 16, paragraph 2:** any Contracting State may *designate the courts* or other authorities competent to order the restitution or return of cultural objects under the provisions of Chapters II and III.
Article 19 (2) The instruments of ratification or acceptance shall be deposited with
the Director-General of UNESCO

Article 21 (1) This Convention shall be deposited with
the Government of the Italian Republic

1. **MATRIX OF DECLARATIONS**

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NEXT STEPS ...
UNIDROIT at the first G7 on Culture
Florence (Italy), March 2017
New subject on UNIDROIT’s Work Programme 2017 – 2019

Private art collections

UNESCO workshop on the ethics of collections and fight against illicit traffic of cultural heritage in the GCC, Abu Dhabi, March 2017
New York Meeting - On 28 February 2017, a special event on “Promoting and Strengthening the International Legal Framework for The Protection of Cultural Heritage – The 1995 Convention” co-organized by UNIDROIT and the Missions of Cyprus and Italy to the UN, took place in New York, UN Headquarters.

RESULT

Establishment of an INFORMAL RATIFICATION TASK FORCE
Open to all States wishing to participate Meeting on an annual basis in New York
Sharing information, best practices / national implementation, synergies with other conventions...

Coordinated by UNIDROIT Assisted by the 1995 UNIDROIT Academic Project
THE 1995 UNIDROIT CONVENTION
ACADEMIC PROJECT

Facilitating the study of the UNIDROIT Convention on
Stolen or Illegally Exported Cultural Objects

@Marina Schneider
Legal Assessment

The Project establishes a platform for assessing the legal impact of the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects in both countries that have ratified and have not ratified the Convention, but have taken steps in its direction.

A legal advisory group and national focal points have been formed to set in matters relating to the legal assessment of the Convention.

Educational Material

Educational material on the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects is prepared by UNIDROIT Secretariat, Universities, scholars, professionals and students.

The material includes comprehensive, educational materials for individuals needing information about the Convention. Such material may serve as background information for general courses on the Convention.

A legal advisory panel is established to supervise achieved results, work done and papers submitted by applicants.

Calls for papers are sought for conferences, meetings, as well as to describe original research, analysis, and practice in the field covered by the 1995 UNIDROIT Convention.

UNIDROIT Scholarships Programme for lawyers / Legal assistance

UNIDROIT Scholarships Programme for lawyers / Legal assistance

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REPORT: CULTURAL HERITAGE ASSETS

ANALYSIS OF LEGAL INSTRUMENTS ON PROTECTION OF CULTURAL HERITAGE ASSETS AT THE GLOBAL AND AMERICAN LEVELS

among which 18 multilateral treaties prepared under the auspices of UNESCO, UNIDROIT, the OAS, and the Council of Europe, many of which have received limited ratifications.

"a new inter-American convention would not contribute to solving the problems of protection of cultural property, fighting illegal trafficking in it, and restitution, given the extensive regulations already in place"

CONCLUSIONS

4.1 The preceding analysis shows clearly the existence of international instruments that cover the most complex aspects of protection of cultural property.

4.3 The first step should be to ensure that the legally binding instruments have all been ratified. The international community should go on appealing for the pertinent treaties to be ratified.

4.5 Furthermore, the American States should adopt legislation in keeping with the standards set down in the treaties that allow them to protect their cultural heritage and, if necessary, cooperate with other States in recovering any illegally transferred cultural assets.

4.7 The region could contribute by drafting a Practical Guidelines for Users for the purpose of showing regional experience in the matter, besides proposing mechanisms of regional cooperation. This Guide also could be used to orientate national entities in making their national legislation more robust.

CJI/RESOLUTION 233 (XCI-O/17) - CULTURAL HERITAGE

THE INTER-AMERICAN JURIDICAL COMMITTEE, (...) RESOLVES:

2. To urge the Member States that have still not ratified or adhered to the various treaties on the matter to do so...
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