



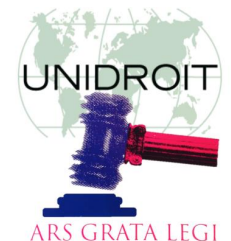
INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW
INSTITUT INTERNATIONAL POUR L'UNIFICATION DU DROIT PRIVE

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



UNESCO COMMITTEE OF EXPERTS - CONCLUSIONS 1983

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

PUBLIC LAW DOMAIN



ARTICLE 7 (b) (ii)

PRIVATE LAW DOMAIN

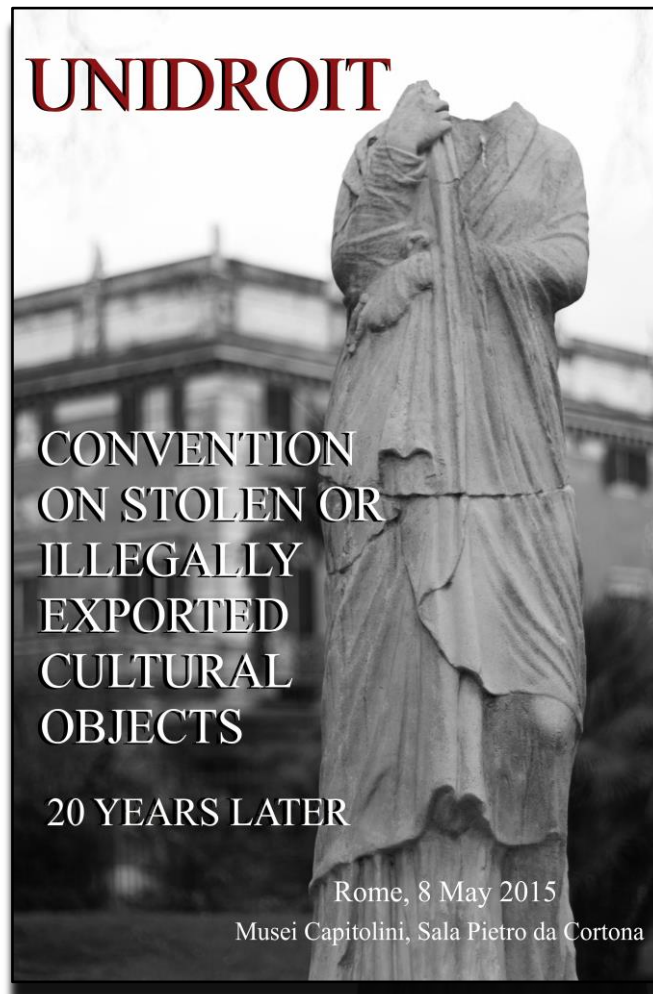


ARS GRATIA LEGI

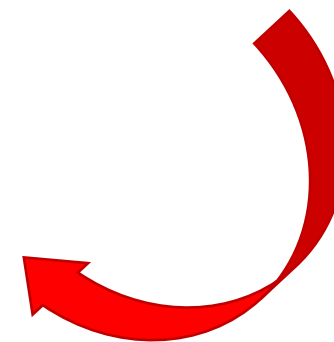
“REMEDYING WEAKNESSES, BUILDING ON STRENGTHS”



**Restitution
of stolen
cultural
objects**



**Return of
illegally
exported
cultural
objects**



DEFINITION OF CULTURAL PROPERTY

Specifically designated by the State



Not specifically designated by the State



CLAIMANT

State



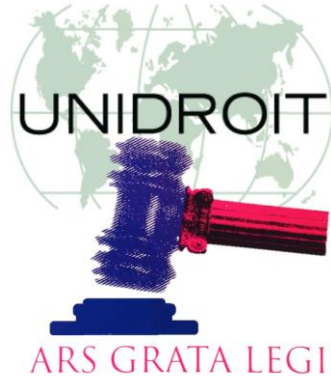
Theft: State + Private Person
Illegal Exportation: State

TIME LIMITATION

No rule



Theft: Art. 3(3) to 3(6)
Illegal Exportation: Art. 5(5)



COMPENSATION

GOOD FAITH

DUE DILIGENCE

Art. 7 (b) (ii)
No definition



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



IMPLEMENTATION



National implementation law needed

Self-executing treaty

Article 11 of the 1995 UNIDROIT Convention

(1) The 1995 UNIDROIT Convention remained open for signature
from 24 June 1995 until 30 June 1996.

(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

8 May 2017

Afghanistan, Algeria, Angola, Argentina, Azerbaijan, Bolivia, **Bosnia and Herzegovina**, Brazil, Cambodia, China, Colombia, Croatia, Cyprus, Denmark, Ecuador, El Salvador, Finland, Gabon, Greece, Guatemala, Honduras, Hungary, Iran, Italy, Lithuania, New Zealand, Nigeria, Norway, Panama, Paraguay, Peru, Portugal, Romania, Slovenia, Slovakia, Spain, Sweden, The former Yugoslav Republic of Macedonia, **Tunisia**

2 March 2017

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 to time as appropriate.



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.

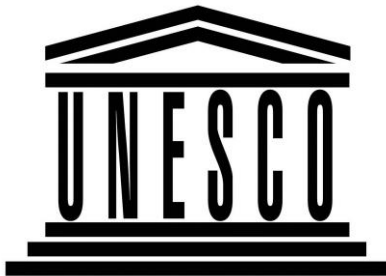
Article 14, paragraphs 1 and 2: if a Contracting State has two or more territorial units, it may declare that this Convention is to extend to all its territorial units or only to one or more of them (express declaration). This declaration can also be made at the time of signature.

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





<http://www.unidroit.org/instruments/cultural-property/1995-convention>

مؤتمر يونيدرويت حول المواد الثقافية المسروقة أو المصدرة بشكل غير قانوني:

تقرير توضيحي

تم تحضيره من قبل سكرتير يونيدرويت*

1. سبب إيفاد المؤتمر والمسودة التاريخية
الحماية الدولية للمواد الثقافية

النقل المحظور للأعمال الفنية ليست ظاهرة جديدة بأسس تشكلها الأشكال، وليست محصورة بأي جزء معين من العالم. كمثل من أشكال الجريمة، من ناحية أخرى، فإن تنوع بسرعة حول العالم، وظهور عوامل جديدة مثل إنفتاح منافذ جديدة ونمو الطلب في الدول المتقدمة بالذات، والسهولة الأكبر في الإتصال والتأكد الزيادة الملحوظة في قيمة الأعمال الفنية نتيجة لتدفق رأس المال إلى السوق لا يبشر بالخير لأي محاولة لوقف تدفق المد، أو إدارته لا أكثر.

بينما يتم الاعتراف بملحة هذا الوضع دولياً، فإن الإستجابة من حيث التدخلات البشرية والمالية والحماية القانونية قد أخفت كثيراً فيما هو مطلوب. القوانين الوطنية الخاصة بهذا الموضوع تختلف بشكل كبير ولقد استخدم التجار هذا الاختلاف بشكل جيد، وكذلك المجال الإقليمي المحدود (وطني بشكل تام) لمحظورات التصدير المحددة من قبل الدول منفردة: الخطوات المتبعة في دولة ما لحماية أعمالها الفنية لا تُطبق في دول أخرى، لا تزيد عن كونها قوانين مالية أو جزائية أو إدارية، ما لم يكون هنالك إتفاقيات دولية مُتجزئة بعكس ذلك.

تنظر معظم الأمم حتى هذا اليوم إلى حماية ميراثها الثقافي على أنه تركيز أساسي في سياساتها لحماية التراث الثقافي، هذا يعني ميراثها الثقافي الخاص ولكن يتضمن أيضاً إحترام ما يخص الدول الأخرى. من ناحية أخرى وبمفاهيم قانونية تماماً، التعاون الدولي لحماية الميراث الثقافي الوطني من التجارة المحظورة تميل إلى أن تكون في الغالب ممارسة من جهة واحدة، بما أنها في الواقع تطلق فقط بما تسمى الدول "المصدرة". معظم الأمم "المستوردة" بقيت بعيدة بمعزل عن مخططات التعاون الدولي هذه حيثما وجدت. قامت الدول المعرضة أكثر لخطر السرقة أو التصدير الغير قانوني لميراثها الثقافي بالندفاع عن نفسها بإتخاذ خطوات قانونية قاسية مثل إصدار أحكام قضائية بتحريم التصدير كاملاً، منح حالة "ملكية عامة" لمواد ثقافية معينة (متضمنة، على سبيل المثال، لا توجد فترة تحديد، المصادرة في حال التصدير الغير قانوني، إلخ). دولياً، من ناحية أخرى، يمكن أن

	Time limitation	Deconnection clause	Territorial application	Courts	Authority	Diplomatic Channels	Competent authority	Export legislation.
Afghanistan				✓	✓			
Algeria					✓			
Angola						✓		✓
Argentina						✓		
Azerbaijan				✓	✓		✓	
Bolivia					✓			
Brazil				✓				
Cambodia						✓		
China	✓			✓	✓			✓
Colombia						✓		✓
Croatia						✓		✓
Cyprus								✓
Denmark			✓					✓
Ecuador	✓							✓
El Salvador						✓		✓
Finland		✓		✓	✓		✓	
FYR of Macedonia				✓				
Gabon								✓
Greece		✓			✓		✓	
Guatemala	✓				✓		✓	

MATRIX OF DECLARATIONS

DRAFT MODEL INSTRUMENT OF ACCESSION
to the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects¹

THE HEAD OF STATE
or
THE PRIME MINISTER
or
THE MINISTER OF FOREIGN AFFAIRS
OF [name of country]

Whereas the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects has been open for signature in Rome on 24th June 1995,

Whereas the Convention according to its Article 11(3) is subject to accession by all States which are not signatory States as from the date it is open for signature,

Whereas the [Government, Parliament...] of [name of country] by its decision n°XXXX acceded to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects,

The Government of [name of country] hereby declares that in accordance with paragraph 1 of Article 16 of the Convention, claims for the restitution, or requests for the return, of cultural objects brought by a State under Article 8 may be submitted to it under the following procedure: [a]; [choose between a), b) or/and c)].

The Government of [name of country] hereby declares that in accordance with Article 17 of the Convention, the Ministry of Culture (or Justice, or Foreign Affairs) shall, no later than six month following the [ratification] [acceptance] [approval] of the Convention, present to the Government of the Italian Republic, in one of the official languages of the Convention, the laws and other statutory acts of the of [name of country], regulating the export of cultural objects,

Whereas the instrument of accession, according to Article 21 of the Convention, shall be deposited with the Government of the Italian Republic,

Now therefore the Government of [name of country] formally declares the accession of the said Convention and undertakes faithfully to perform and carry out the stipulations therein contained.

IN WITNESS THEREOF, I have signed and sealed this instrument.

Done at this day of 20..

Seal

Signature

¹ This model only contains reference to the compulsory declarations which are to be made under the Convention.



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NEXT STEPS ...



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UNIDROIT at the first G7 on Culture Florence (Italy), March 2017





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Private Collections

Historical and Legal Perspectives

Voiture Bugatti Type 35B. Collection Schlumpf, Cité de l'automobile, Mulhouse, France. Dontpanic [GFDL ou CC-BY-SA-3.0]. Source : Wikimedia Commons.

16-17 March 2017

Rome

UNIDROIT - Via Panisperna, 28

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

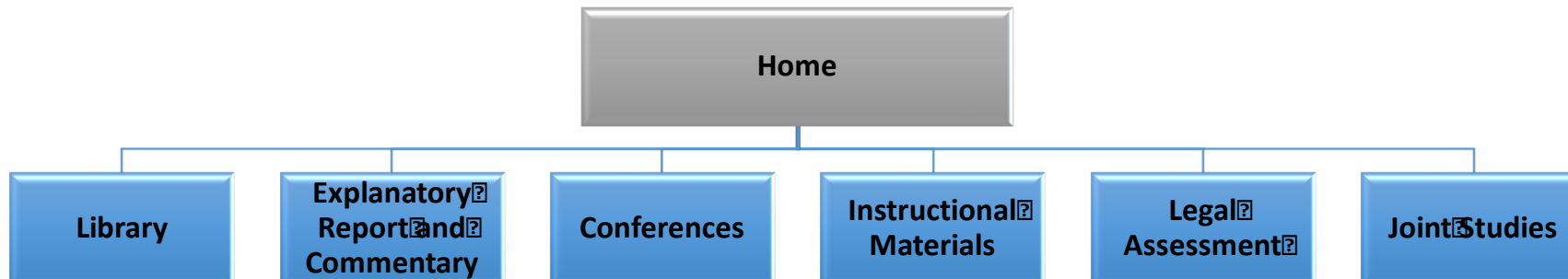


Assisted by the 1995
UNIDROIT Academic Project



THE 1995 UNIDROIT CONVENTION ACADEMIC PROJECT

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





About the Project

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, adopted in 1995, ...
(background info)

The 1995 UNIDROIT Convention Academic Project ("Project") seeks to assist scholars, students, practising lawyers, judges, other government officials, as well as art market players, such as art collectors, dealers, auction houses, and museums by providing information about the Convention.

The Project is a joint undertaking between the University of xxxxxxx and the University of xxxxxxx...
(network description).

Project's Main Activities:

- ◆ **Library**
Creating a comprehensive, digitalised, and searchable library of primary and secondary materials on the 1995 UNIDROIT Convention, the preparatory works leading to its adoption, its implement case law and national laws, relevant case law and administrative action.
- ◆ **Explanatory Report/Commentary**
Providing fundamental material such as the Secretariat's Explanatory Report and Prof. Prott Commentary.
- ◆ **Conferences**
Holding annual academic conferences, follow-ups, seminars, workshops and trainings on the Convention.
- ◆ **Instructional Materials**
Creating instructional materials on the 1995 UNIDROIT Convention.
- ◆ **Legal Assessment**
Furthering legal assessment of the 1995 UNIDROIT Convention.
- ◆ **Joint Studies**
Collecting studies conducted by UNIDROIT together with other partners.

Legal Assessment

The Project establishes a platform for assessing the **legal impact** of 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.

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

Legal Assessment Activities

Legal Advisory Group:

- Members
- Activities

National Focal Points:

- List of national bureaus

1995 UNIDROIT CONVENTION ACADEMIC PROJECT

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.

The Material

Educational material

Material describing the Convention, which may be used for self-education, as background for a general course on the 1995 UNIDROIT Convention or the modules below and in professional seminars and training.

List of courses in partnership with UNIDROIT (the following links open Universities' webpages)

- Comparative law
- Conflict of law
- Cultural heritage law
- International art law
- International criminal law
- Art market
- Market player deontology and codes of ethics (i.e. Sotheby's and Christie's).

International Conference on "the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects: 20 Years Later", Rome, 8 May 2015.

- Programme
- Opening session and Session 1
- Session 2
- Session 2 (cont.) and Session 3
- Round table on due diligence

Follow-ups

- The First Meeting of the Special Committee to Review the Practical Operation of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. UNESCO Headquarters in Paris, 19 June 2012
- Programme and presentations
- List of Speakers
- Information document of the Secretariat
- Questionnaire on the practical operation of the Convention
- Questionnaire answers from States

Seminars/Workshops

Workshop titled "Moving SADC forward by combating the Illicit Trafficking of Cultural and Natural Heritage in Southern Africa", organized by the Southern African Development Community Heritage Association (SADCHA), Gaborone, March 2015. (link)

Trainings

- Capacity-building training workshop for Officials of the Government of Bosnia and Herzegovina, organized by the UNESCO Regional Bureau for Science and Culture in Europe (Venice) and the Comando Carabinieri Tutela Patrimonio Culturale (TPC), Rome, 21-25 November 2016. (link)
- Training workshop "Building capacities and raising awareness on the fight against illicit trafficking of cultural objects", invited by Government of Oman, Muscat, May 2014. (link)

2017 - Agenda

- January
- February
- March
- April
- May
- June
- July
- August
- September
- October
- November
- December

UNIDROIT Scholarships Programme for lawyers / Legal assistance



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APRIL 2017

90th REGULAR SESSION

6-10 March 2017, Rio de Janeiro, Brazil

OAS

More rights for more people

EDITION 8

AT WORK

Department of International Law



THE INTER-AMERICAN JURIDICAL COMMITTEE CONCLUDES ITS 90TH
REGULAR SESSION

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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Contact

Ms Marina SCHNEIDER

UNIDROIT Senior Legal Officer and Treaty
Depositary

m.schneider@unidroit.org



ARS GRATA LEGI