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Item No. 13 on the agenda: Draft Triennial Work Programme 2017-2019 –

Proposal relating to a Return of Cultural Objects Dispute Resolution Model

(prepared by dr hab, Piotr Stec, professor extraordinarius, Opole University)

<i>Summary</i>	<i>Proposal to convene a working group to create an uniform body of rules on dispute resolution regarding the return of cultural objects connected with the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects</i>
<i>Action to be taken</i>	<i>To take note of the proposal for a possible insertion of the subject in the Work Programme 2017-2019</i>
<i>Related document</i>	<i>1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects</i>

1. After the publication of documents C.D.(95) 13 Add. and Add. 2 containing comments submitted on the draft Work Programme for the triennium 2017-2019 (cf. UNIDROIT 2016 – C.D.(95) 13), the UNIDROIT Secretariat received a proposal submitted by Professor Wojciech Popiołek, member of the Governing Council, which is reproduced in the Annex to this document.

2. *The Governing Council is invited to take note of the proposal received by the Secretariat in view of a possible insertion of the subject in the Work Programme 2017-2019.*

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Katowice, 18.04.2016

Mr José Angelo Estrella Faria
Secretary – General
of the UNIDROIT
Via Panisperna 28
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Dear Sir,

Acting as a member of the Governing Council of the UNIDROIT I would like to ask you to consider recommending to the General Assembly the inclusion of the work programme of the Institute of a project concerning return of cultural goods dispute resolution models.

The purpose of the proposed working group will be to create an uniform body of rules on dispute resolution regarding return of cultural goods within the UNIDROIT system of international protection of cultural property. This proposal is connected with 1995 UNIDROIT convention on stolen or illegally exported cultural objects and with UNIDROIT work on international civil procedure. In particular the proposed project is strongly connected with art. 16 of the 1995 UNIDROIT convention, which, according to L. V. Prott, has never been thoroughly analysed, despite its importance for proper functioning of the return procedure (cf. L. V. Prott, *Commentary on the UNIDROIT Convention 1995*, Leicester 1997, p. 84).

I also enclose a short memorandum prepared by prof. Piotr Stec explaining scope, goals and objectives of the proposed project.

Sincerely yours



Professor Wojciech Popiołek
member of the UNIDROIT Governing Council

ANNEX**A PROPOSAL FOR CREATION OF THE UNIDROIT WORKING GROUP ON
RETURN OF CULTURAL GOODS DISPUTE RESOLUTION MODEL**

dr hab. Piotr Stec
professor extraordinarius
Opole University

I. Background and connection with the UNIDROIT mandate

The 1995 UNIDROIT Convention is an important tool aimed at safeguarding return of illegally exported or stolen cultural goods and is an instrument supplementing the 1970 UNESCO Convention, with the latter focusing more on setting minimal standards of prevention of illegal trafficking of cultural goods in national legal systems and on return of cultural property by diplomatic means. Neither UNESCO nor UNIDROIT Convention contains provisions on methods of dispute resolution and enforcing claims for return of cultural goods.

This otherwise precise and well-thought international system of combatting trafficking of cultural goods is incomplete in this particular aspect.

The 1995 UNIDROIT Convention contains however in Article 8(1) the possibility to bring an action to the court where the object is located, avoiding the necessity of exequatur; also in Article 8(2) it refers to arbitration. These two provisions form a starting point for future work on creating an uniform cultural dispute resolution system.

The purpose of the proposed working group is to create an uniform body of rules on dispute resolution regarding restitution/return of cultural goods, which will form the “third pillar” of the UNIDROIT-UNESCO system of international protection of cultural property. Working group’s research will also be connected with other stream of UNIDROIT activities, namely transnational civil procedure. Cultural property disputes are transnational by nature so future outcomes of the working group’s research will rely on UNIDROIT Principles of Transnational Civil Procedure.

II. Short Project description

Scope and objective: The project will deal with one of the most important problems of the cultural property law and practice. Although existing rules for the return of cultural goods have been sufficiently analysed, and there is a sound body of literature on the subject, enforcement of cultural claims, especially in an international setting is still a challenge. Relatively low number of cases and potentially high legal risks involved in cultural property litigation make it difficult to enforce the claim. Although there are some preliminary studies on the subject, this area of law remains largely unexplored. There is some evidence that different perceptions of fundamental concepts, like the good faith or jurisdiction may influence the outcome of restitution/return of cultural goods cases, and there is a general belief that courts in different countries will tend to decide differently in similar cases because of the aforementioned differences. This hypothesis has never been thoroughly tested, nor a full size study of enforcement of claims has ever been conducted. The objective of the working group will be to analyse current body of knowledge on enforcement of cultural claims, to identify weak points of the existing system and to propose a solution taking form of a model legal provisions on return of cultural goods dispute resolution.

Public awareness: The working group actions will raise public awareness of the 1995 UNIDROIT convention and of the need to introduce means to enforce effectively cultural property claims. This will be done with various methods, addressed at different stakeholders. In case of public authorities, art dealers and art lawyers it will be done by promoting dispute resolution models by organising a conference presenting results of the research, publication and dissemination of the results, especially model legislative solutions. In case of the general public it will be done through social media and preparation of short online presentations explaining how the new model of dispute resolution will help to protect cultural heritage and what is the role of the UNIDROIT in this enterprise.

III. Research Themes

Choice of jurisdictions and legal claims: The working group will focus on cases that will fall within the scope of three important and interrelated acts: the UNESCO 1970 Convention, the UNIDROIT cultural goods Convention and the EU Directive on return of cultural goods. A sample of cases from different jurisdictions will be used for analysis. It is assumed that the following categories of states will be included in the sample: a) countries that are Parties to UNESCO and UNIDROIT conventions and EU Member States, b) EU Member States that are Parties to the UNESCO Convention but not to the UNIDROIT, c) non-EU countries Parties to the UNESCO and UNIDROIT Convention and d) countries Parties to the UNESCO Convention only.

State-of-the-art: On theoretical level the working group will analyse existing body of literature on enforcement of cultural claims and dispute resolutions, focusing on theoretical justifications of introduction of special regimes of adjudication and enforcement of cultural claims. This part of the study will focus on relevant international law, national legal systems and private international law of selected countries. This phase of the study will allow to determine not only what we know on the subject, but also identify potential loopholes in the theoretical background. It will also allow preliminary testing of hypotheses.

Analytical level: At the analytical level the working group will analyse existing practice relating to dispute resolution and enforcement of cultural claims. It will be done at four different levels: *level one:* analysis of known case law on cultural claims both on national and international level; *level two:* analysis of the known cases of alternative dispute resolutions especially by means of mediation and compromise; *level three:* a questionnaire analysis of preferred methods of dispute resolution by various stakeholders; *level four:* an analysis of hypothetical cases based on the 1995 UNIDROIT Convention to be solved by lawyers from various jurisdictions. This will help to test the hypothesis on unpredictability of judgements in cultural property cases, since all participating lawyers will be confronted with the same set of facts.

IV. Practical outcomes

Both theoretical and analytical research phases will serve as a basis for formulation of potential policy and legislative solutions. At this stage three possible models are to be considered: creation of a specific international cultural claims tribunal, creation of model rules of procedure to be applied in national legal systems or model rules of procedure of cultural goods arbitration and mediation or any combination of the above.