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GOVERNING COUNCIL
98th session
Rome, 8 – 10 May 2019

UNIDROIT 2019
C.D. (98) 9
Original: French
April 2019

Item No. 9 on the agenda: International protection of cultural property

- (a) Follow-up activities and promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and the Model Provisions on State Ownership of Undiscovered Cultural Objects**
- (b) Private art collections**

(prepared by the Secretariat)

<i>Summary</i>	<i>Report on follow-up activities and promotion of the 1995 UNIDROIT Convention and related instruments</i>
<i>Action to be taken</i>	<i>The Governing Council is invited to take note of the activities reported</i>
<i>Mandate</i>	<i>Work Programme 2017-2019</i>
<i>Priority</i>	<i>- Promotion 1995 Convention - High - Private art collections - Low</i>
<i>Related documents</i>	<i>Annual Report 2018 (C.D. (98) (2))</i>

I. FOLLOW-UP ACTIVITIES AND PROMOTION OF THE 1995 UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS

A. Status of the Convention

1. The 1995 Convention entered into force in 1998 and as of 22 March 2019 has 46 Contracting States. Since the last session of the Governing Council, 4 States have acceded to the Convention: Syrian Arab Republic (on 27 April 2018), Myanmar (on 20 June 2018), Burkina Faso (on 2 October 2018) and Latvia (on 8 February 2019). Four States have adopted laws authorising ratification/accession (Ghana, Madagascar, Morocco and Togo); and other States are in the process of ratifying/acceding to the Convention (among them Côte d'Ivoire).

2. At the request of the President of France, the “Saar-Savoy Report on the Restitution of African Cultural Heritage – Toward a New Relational Ethics” was issued in November 2018 on the restitution of colonial objects.¹ The report recommends, *inter alia*, that African States requesting the return of objects should become Parties to the 1995 Convention in order to “inscribe the restitutions within a perspective of durability”. UNIDROIT is collaborating with a number of African States to implement this part of the report.

B. Follow-up Activities and Institutional/Academic Partnerships

(a) UNIDROIT, partner in the implementation of the UN Security Council Resolutions

3. UNIDROIT continued its collaboration with its partners for the implementation of **UN Security Council Resolutions: Resolution 2199** (2015) – cultural heritage in Iraq and Syria -, **Resolution 2253** (2015) – importance of developing strong relationships with the private sector in countering the financing of terrorism, and **Resolution 2347** (2017), the first ever Security Council resolution to focus on the protection of cultural heritage. All Member States that have not yet done so are encouraged to consider ratifying the relevant international conventions.

4. In particular to implement **Resolution 2253**, UNIDROIT was invited to a workshop organised by the European Commission’s Technical Assistance and Information Exchange Instrument (TAIEX) in collaboration with the Iraqi Federal Government and the Office of the European Union Counter-Terrorism Coordinator (“Workshop on Protecting Iraqi Cultural Heritage and Fighting Terrorism - Blood Antiquities”, Brussels 30 and 31 May 2018). The priorities of the workshop were to assess the challenges currently facing Iraq, discuss practical measures to improve the legal framework for its cultural heritage and raise awareness of this issue in Europe and elsewhere. The Deputy Minister of Foreign Affairs of the Republic of Iraq, H.E. Nazar Khairallah, confirmed that his country’s Parliament was considering accession to the 1995 UNIDROIT Convention.

5. **Resolution 73/130** “Return or restitution of cultural property to the countries of origin” adopted by the **United Nations General Assembly** on 13 December 2018² reaffirmed “the importance of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, (...)” and invited “Member States that have not already done so to consider becoming parties to the aforementioned conventions and protocols [including the 1995 UNIDROIT Convention] that specifically address the return and restitution of cultural property to the countries of origin”.

6. The resolution also acknowledged “the launch of the 1995 UNIDROIT Convention Academic Project and the creation of 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”.

(b) UNIDROIT and the European Union

European Parliament resolution on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars (2017/2023(INI))

7. On the basis of a report from its Committee on Legal Affairs, the European Parliament adopted a Resolution on 17 January 2019 on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars³ in which Member States were called upon to become a party to the 1995 UNIDROIT Convention and the Commission, in its future work, to take into account or incorporate the principles set out in the 1995 UNIDROIT Convention on questions

¹ <http://restitutionreport2018.com>

² https://www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/73/130

³ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2019-0037+0+DOC+XML+V0//EN>

relating to rules of provenance, the register of documents or transactions, cooperation with third countries and the establishment of effective partnerships to promote the return of cultural property, etc.

European Parliament legislative resolution of 12 March 2019 on the proposal for a regulation of the European Parliament and of the Council on the import of cultural goods

8. UNIDROIT was invited to participate in discussions in Brussels with European parliamentarians and representatives of the art market on the proposal for a European regulation on the import of cultural goods. The text was adopted by the European Parliament on 12 March and the procedure continues with the approval of the Council of the European Union and publication in the Official Journal.

(c) *Informal Ratification Task Force on the ratification of the 1995 UNIDROIT Convention*

9. The Task Force was established by UNIDROIT and the Missions of Cyprus and Italy to the UN on the occasion of the event on "*Promoting and Strengthening the International Legal Framework for The Protection of Cultural Heritage – The 1995 Convention*", that took place at UN Headquarters in New York, on 28 February 2017. It has not been possible since then to organise a second meeting of the Working Group (an annual meeting is planned) for scheduling reasons, but the 1995 Convention will be discussed at the next meeting of the "Group of Friends of the United Nations for the Protection of the Cultural Heritage",⁴ which will meet next May to raise awareness of the fight against illicit trafficking, sharing best practices, promoting their internationalization and strengthening the links between the various legal sources.

(d) *The 1995 UNIDROIT Convention Academic Project*

10. In November 2017, UNIDROIT launched the 1995 UNIDROIT Convention Academic Project ("UCAP")⁵ which takes the form of an online platform of shared materials related to the 1995 UNIDROIT Convention, UNIDROIT/UNESCO Model Provisions on State Ownership of Undiscovered Cultural Objects and related international instruments. UCAP addresses students, scholars, universities and professionals working in the art field, which will be encouraged to cooperate in partnership with UNIDROIT to create a think tank on cultural heritage law themes.

11. As of March 2019, the Academic Project counts 14 institutional partners, 19 individual partners, mainly academic experts in the field of cultural heritage law, and sponsors such as UNESCO, INTERPOL and UNODC. In the past months UNIDROIT has received a great number of project proposals linked to UCAP.⁶ The 1995 UNIDROIT Convention Academic Project also aims at feeding into the discussions of the Informal Ratification Task Force.

12. Since the last session of the Governing Council, UNIDROIT has also signed two Memoranda of Understanding with universities whose activities relating to cultural property will take place under the auspices of UCAP:

- the first agreement has been signed with the University of Opole in Poland (UNESCO Chair on International Law on Cultural Heritage) and a conference will be organised in Gdansk on 6 and 7 June 2019, the first day of which will aim to support Poland's accession to the 1995 UNIDROIT Convention (the procedure is ongoing) and the second will focus on private art collections;

⁴ See document UNIDROIT 2018, C.D.(97) 11, p. 2.

⁵ <https://1995unidroitcap.org>

⁶ <https://1995unidroitcap.org/getinvolved/>

- the second agreement was signed with the University of Nicosia in Cyprus, with which UNIDROIT is planning an international conference in 2020 and the establishment of online courses.

13. UNIDROIT will contribute, for the third consecutive year, to a course held by the Geneva Summer School of International Cultural Heritage Law - University of Geneva, in June 2019. Other universities have solicited UNIDROIT for presentations/lectures (for example University of Turin, *Master in Cultural Property Protection in Crisis Response*; China University of Political Science and Law (CUPL), School of International Law at CUPL).

(e) *Maintaining and developing partnerships*

14. UNIDROIT has developed its collaboration with **UNESCO** by being closely associated with the training courses organised in collaboration with the European Commission to strengthen the participation of the art market in the protection of cultural heritage and the fight against illicit trafficking (Paris, March 2018) and to involve law enforcement and judicial authorities (UNIDROIT has also contributed to the specific Toolkit prepared ⁷). This opportunity enabled UNIDROIT to strengthen its links with judges from different countries, which will help the Institute in particular to collect case law on the Convention.

15. Apart from the longstanding excellent cooperation with UNESCO, INTERPOL, UNODC, WCO and ICOM, UNIDROIT developed its cooperation with other partners.

16. Within the framework of the Memorandum of Understanding signed with the International Centre for the Study of the Preservation and Restoration of Cultural Property (**ICCROM**) in 2015, UNIDROIT participated in the second expert meeting organised by the ICCROM Bureau in Sharjah (United Arab Emirates) on the strengthening of the institutional and legal frameworks for the protection of the cultural heritage of the region through regional cooperation and national capacity building in Arab countries. A meeting of partners (ICCROM, UNESCO, UNIDROIT and INTERPOL) will be held in Rome in mid-May 2019 to define the operational phase to be implemented within the respective mandates of each organization.

17. UNIDROIT has had preliminary exchanges with the **Commonwealth Secretariat** with a view to raising awareness among Member States of the instruments elaborated by the two Organisations in the field of international protection of cultural heritage in the coming months.

18. Finally, the **Parliamentary Assembly of the Council of Europe** adopted on 29 June 2018 Resolution 2234 (2018) ⁸ and Recommendation 2139 (2018) ⁹ entitled "*Deliberate destruction and illegal trafficking of cultural heritage*", calling on Member States to engage in co-operation activities with the Council of Europe, UNESCO, UNIDROIT and other relevant organisations with a view to developing the strategies required for the protection of threatened heritage in archaeologically sensitive potential combat zones and, if feasible, provide technical and financial assistance to their effective implementation". The two Secretariats are working on a possible follow-up of these instruments.

19. UNIDROIT also welcomes students who are doing **internships** on the international protection of cultural property. In particular, UNIDROIT receives each year students from (1) the Tulane-Siena Institute for International Law, Cultural Heritage and the Arts - a joint cooperation project between the Faculty of Law of the University of Siena and the Faculty of Law of Tulane

⁷ <https://unesdoc.unesco.org/ark:/48223/pf0000266098>

⁸ <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=25019&lang=EN>

⁹ <http://assembly.coe.int/nw/xml/XRef/Xref-DocDetails-EN.asp?FileID=25022&lang=EN>

University, (2) Master 2 in Cultural Heritage Law at the Jean Monnet Faculty of Law of the University of Sceaux, as well as (3) students from the Master 2 art market courses (Ecole du Louvre). In 2018, an agreement was also concluded with Columbia Law School under which UNIDROIT will host students each year (one student will come in May 2019 for a two-month internship).

C. Seminars, Conferences, Workshops

20. UNIDROIT is regularly invited to participate in conferences, seminars and workshops to present its work in this field and to provide assistance with a view to ratification/accession to the 1995 Convention. The objective of these seminars is to provide representatives of the institutions concerned with tools and reference frameworks that will be useful to them in developing capacities to prevent and combat illicit trafficking in cultural property and the restitution of stolen or illegally exported property, as well as to develop networks at the local, national and regional levels to ensure a general awareness of the dramatic consequences of trafficking in cultural property. For more information on the events held in 2018, see the Annual Report (C.D. (98) 2). For the first half of 2019, we can note:

- National capacity-building and awareness-raising workshop on illicit trafficking in cultural property in Kuwait - (UN House, Mishref, 18 and 19 February 2019);
- Greater Mekong Sub-regional Symposium of Ministerial Executives on International Cooperation to Protect Antiquities and Art Objects, organised jointly by UNESCO and the Royal Thai Government (Cambodia, China, Lao PDR, Myanmar, Thailand and Viet Nam). The Symposium aims to create a high-level network among decision-makers and executives from 6 GMS and increase executive's understanding on the importance of multi-national, inter-agency, legal and practical mechanisms to implement the 1970 UNESCO Convention and the 1995 UNIDROIT Convention as well as to achieve genuine, long-term impacts (Bangkok, 10-13 June 2019);
- Technical workshop to raise awareness of international conventions and bring together all stakeholders to encourage the development of safeguarding measures and strengthen synergies for the protection of Seychelles' cultural property, organised by the Ministry of Youth, Sports and Culture, in collaboration with UNESCO (Seychelles, 24 to 26 July 2019).

II. PRIVATE ART COLLECTIONS

A. Background

21. At its 95th session (Rome, 18-20 May 2016), the Governing Council decided to recommend that the topic of "private art collections" be included in the UNIDROIT Work Programme for the 2017-2019 triennium, and the General Assembly endorsed such recommendation at its 75th session (Rome, 1 December 2016). At its 96th and 97th sessions (Rome, 2017 and 2018), the Governing Council took note of the cautious attitude of the Secretariat in relation to private art collections and encouraged the Secretariat to continue this way.

22. Two conferences were organised by ISCHAL (International Society of Research on Art and Cultural Heritage Law), one with UNIDROIT in March 2017 on "Private collections - Historical and legal approaches" and a second one held in Geneva in 2018 on the theme "Origin of cultural objects" which devoted a whole session to the provenance of collections, with the participation of lawyers, museum directors and collectors. The Acts of such conferences are to be published soon.

B. Recent Developments and Further Steps

23. UNIDROIT has continued to monitor developments relating to private art collections and to gather information. For example, research on the subject has been conducted by three persons (two interns and a research assistant) over the past year:

- "Private collections - Historical and legal perspectives", Giuditta Giardini: ¹⁰ this introductory document examines the definition of public and private collections and collectors; a comparative analysis (France, Italy and the United States) of national legislation that bases the public protection of private collections on the concept of public interest; the status of private collections in European and international law;

- "The public interest in the protection of cultural heritage in private collections under United States law", Madeline Flores; ¹¹ the public interest in heritage preservation, the public interest and moral rights (California, Massachusetts, New York) and the public interest as justification for private collection protection legislation;

- "Private collections in the United States, Mexico and Colombia: legal challenges, the role of private actors and proposed solutions", Claudia Quiñones. ¹²

24. To further develop this, UNIDROIT, the University of Gdansk and the University of Opole (UNESCO Chair in Cultural Property Law) - with the support of ISCHAL (International Society of Research on Art and Cultural Heritage Law) - are organising a symposium in Gdansk on 6 and 7 June 2019 on the accession and implementation of the 1995 Convention in Poland (first day) and on private art collections (second day) with a focus on the issues raised by Professor Moustaira in her study submitted to the Governing Council in 2017 ¹³.

25. The capacity-building conference entitled "Engaging the European art market in the fight against illicit trafficking in cultural property", held at UNESCO in March 2018, aimed to strengthen due diligence in the art trade in Europe, particularly among collectors. Another workshop in the Gulf countries specifically dedicated to collectors is due to take place (2019 or 2020). Finally, UNESCO invited UNIDROIT to a forum co-organised with River City Bangkok, Thailand's oldest auction house, entitled "Exclusive Collector Forum 2019: What To Look For When Buying A Work Of Art?", to be held on the eve of a major auction with some 100 major buyers. Thailand is preparing to become a Party to the 1970 UNESCO and 1995 UNIDROIT Conventions.

26. Finally, it has not been possible so far to convene a small study group but the question remains open for 2019-2020 on the basis of the work of the Gdansk conference and the participation of the Universities of Gdansk and Opole.

III. ACTION TO BE TAKEN

27. *The Governing Council is invited to take note of (a) the follow-up activities and promotion of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects and (b) of the further work to be done on private art collections.*

¹⁰ Then UNIDROIT Assistant Researcher, currently LL.M. Candidate 2019, Columbia Law School.

¹¹ J.D. Candidate Tulane University 2018.

¹² (LUISS Guido Carli School of Government (Rome, Italy), Universidad Complutense (Madrid, Spain), Institute of Advanced Legal Studies (London, United Kingdom) 2017-2019; EUPADRA Joint Master (M.A./LL.M.) in Parliamentary Procedures and Legislative Drafting).

¹³ UNIDROIT 2017 – C.D. (96) 9, Annexe II, p.10