



CONCEPT NOTE

*Promoting and Strengthening the international legal framework
for the protection of cultural heritage – the 1995 UNIDROIT Convention*

28 February 2017, 10.30 a.m.

UN Headquarters, New York, Conference Room 5

Context

The tragic episodes of destruction, looting, pillage and trafficking of cultural property in recent years, particularly in countries affected by armed conflicts – such as currently in Iraq and Syria, have exposed the links between damage to cultural sites, organized crime and terrorism financing. The international community is now acutely aware of the need to better protect cultural property and to combat and prevent the trafficking of stolen and illegally exported artefacts.

Indeed, it is now known that terrorist groups are generating income from engaging directly or indirectly in the looting and smuggling of cultural heritage which is being used to support their recruitment efforts and strengthen their operational capability to organize and carry out terrorist attacks.

Resolution 2199 adopted by the United Nations Security Council on 12 February 2015 explicitly acknowledges that illicit trafficking is among the sources of financing of terrorism and prohibits cross-border trade in Iraqi and Syrian cultural property illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011.

Security Council and General Assembly resolutions

On 12 February 2015, the UN Security Council, acting under Chapter VII of the UN Charter, adopted Resolution 2199 to respond to the threat posed by the Islamic State in Iraq and the Levant (ISIL), as well as the Al Nusra Front (ANF) and other groups associated with Al-Qaida (AQ). The resolution aims at curbing ISIL and ANF's operational capabilities by a range of measures, including sanctions and other binding mechanisms. The resolution targets in particular networks through which terrorist groups channel funds from oil smuggling, looting of antiquities, kidnapping for ransom and other illicit activities.

As regards cultural heritage, resolution 2199 inter alia condemns the destruction of cultural heritage in Iraq and Syria, including targeted destruction of religious sites and objects and requires all Member States, assisted by UNESCO, INTERPOL and other international organizations to take appropriate steps to prevent the trade in Iraqi and Syrian cultural property and other items of archaeological, historical, cultural, rare scientific, and religious importance illegally removed from Iraq since 6 August 1990 and from Syria since 15 March 2011, including by prohibiting cross-border trade in such items. UNIDROIT can play a very significant role in this regard.

The fight against illicit trafficking is thus a key element in any strategy to dry the sources of financing of terrorism. Criminal prosecution, customs and border controls are indispensable, but so are also preventive measures to block laundering of looted objects through art markets, including a proper framework for restitution. Indeed, besides the threat of criminal prosecution, a powerful tool to prevent illicit traffic is a legal framework in which dealers and collectors have an absolute duty to thoroughly investigate the provenance of objects and risk forfeiting any item of illicit origin.

In this regard, ratifying and duly implementing international instruments such as the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and in particular the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects on issues concerning restitution, is crucial for an effective fight against illicit trafficking in cultural property.

The 1970, the *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* was the first international instrument granting cultural heritage protection during peacetime and wartime. It sought to achieve wide international cooperation to ensure the protection of national cultural property by setting out important measures for preventing and prohibiting the illicit trafficking in arts. The text aimed to safeguard the cultural property “specifically designated” by the State and belonging to any of the categories listed in Article 1. The joint provisions of Article 7(b)(ii) and Article 13 provide for the return of stolen and illegally exported cultural objects subject to just compensation to an innocent purchaser.

UNESCO's efforts were complemented by the 1995 *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*, which arises from a reflection on the need for the harmonization of private law topics touched by the 1970 Convention, such as the rules governing good faith acquisitions of stolen property, which vary among countries. The *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*, adopted in 1995, is a self-executing treaty. It establishes procedures for the return or restitution of stolen or illegally exported cultural goods falling into the categories listed under Article I and the Annex of the Convention. The text aims to reduce trafficking by encouraging gradual but fundamental changes in the behaviour of all actors in the market. In fact, the strict provision of Article 3(1), enshrines the principle that the purchaser of a stolen cultural object must return it whatever the circumstances, coupled with the possibility of compensation for the buyer who can prove that he/she acted “with *due diligence*” (Article 4(1)). The innovative due diligence standard set by Article 4(4) has become a fundamental principle in international law with regard to the acquisition of cultural property.

Implementation of those Conventions would also respond to the appeal made by the General Assembly in resolution 70/76 to member States that have not already done so to

ratify the UNESCO 1970 Convention, as well as the UNIDROIT 1995 Convention. The Convention has currently 37 Contracting States.

Objectives of the meeting

The main objectives of the meeting are to:

Exchange views on and identify the main loopholes and differences in domestic legal regimes applying to cultural objects trade that hinder effective restitution of illicitly traded artefacts and *discuss possible appropriate legislative reforms* that could be undertaken to eliminate such loopholes and differences,

Discuss the synergies between international instruments and emphasize the benefits of ratifying the 1995 UNIDROIT Convention and other international instruments.

Establish a Task Force to promote the ratification of the UNIDROIT Convention and other instruments and to raise awareness as to the tools offered by the international instruments in the global effort to stop the looting of cultural property:

1. The purpose of the Task Force will be to promote further ratification of the UNIDROIT Convention.
2. It will operate under the supervision of the Secretary General of UNIDROIT.
3. The Task Force will be open for participation by interested States.
4. States will be represented by one representative/contact point designated from their Permanent Mission in New York.
5. The Task Force will convene once a year in New York, and on a more regular basis if need be, to review the situation as to the status of ratification of the UNIDROIT Convention and other international legal instruments pertaining to the protection of cultural heritage, to organize its outreach activities and to exchange views on other relevant matters.