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International Conference “The 1995 UNIDROIT Convention: Cultural objects of the crossroad of rights and interest” to celebrate the 25th anniversary of the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, 8–9 October 2020, Rome, Italy

In 1995 the International Institute for the Unification of Private Law (UNIDROIT) drafted one of the most important documents that laid the legal framework for the restitution and return of cultural objects – the Convention on Stolen or Illegally Exported Cultural Objects¹. The main goal of the 1995 Convention was to equate private and public law in the pursuit of establishing a framework for cross-national cooperation in the field of returning stolen or illegally exported cultural objects. Simultaneously, the UNIDROIT Convention strengthened the provisions of the 1970 UNESCO Convention² by addressing its weaknesses on issues of private law.

Now, in 2020, UNIDROIT organized an international conference to celebrate the 25th anniversary of the Convention that was held at the UNIDROIT headquarters in Rome and remotely via Zoom. The objective of the conference was to take stock of the achievements of the 1995 Convention, raise awareness of the importance of uniform laws for the restitution and return of cultural objects, strengthen synergies among other international instruments and other areas of UNIDROIT’s work, and present future steps and projects to be developed.

Day 1, Session 1

Welcoming speakers and participants, Maria Chiara Malaguti, President of UNIDROIT and chairman of the opening session, summed up 25 years of the 1995 UNIDROIT Convention. Short speeches about the 25th anniversary and the current problems the international community has to deal with were presented by Webbe Ndoro (ICCRROM), H.E. Salim AlMalik (ICESCO), Ernesto Ottone Ramirez (UNESCO), and Alberto Garlandini (ICOM).

¹ Convention on Stolen or Illegally Exported Cultural Objects, 24 June 1995, 2421 UNTS 457.

² Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 November 1970, 823 UNTS 231.

The first session was chaired by Manlio Frigo (University of Milan) and concerned the issue of the protection and circulation of cultural objects. Toshiyuki Kono (Kyushu University and ICONOS) gave a short introduction on the issue of the restitution and return of cultural goods and the strength of uniform law. The speaker focused on the problem of notable tensions between private international law and uniform law in the case of restitution of cultural goods and sought an answer as to which scheme, uniform law or private international law, is more beneficial for the protection of cultural property. He also added another layer of uniform law, mentioning the possibility of making private international law uniform in the field of cultural heritage according to the 1995 UNIDROIT Convention.

Marie-Sophie de Clippele (Saint-Louis University, Brussels) spoke about striking a fair balance between the protection of cultural heritage and private ownership through shared responsibility. She began her considerations by weighing up interests and rights in two cases: in the case of theft and in the case of illicit export. The speaker also referred to the problem of treating cultural object as a common good when several rights and interests coexist with regard to one object. She postulated a transition from an exclusive model of cultural heritage interest vs. ownership right to an inclusive model of "cultural property of shared interest" and "shared responsibility toward cultural heritage."

Marc-André Renold (University of Geneva) provided an analysis of the core question of due diligence. As he explained, pursuant to art. 4 of the 1995 Convention the possessor, to exercise due diligence, has to read any reasonably accessible register of stolen cultural objects and any other accessible documentation, which can be difficult in the case of private collections, because registering and documenting such collections is a fairly rare phenomenon. The measures according to which due diligence exists and is interpreted in various legal systems are not universal. The issue of determining the ultimate solution to establishing due diligence proves to be most controversial and should be unified, and since due diligence is treated as a key determinant of good faith, it is desirable to provide a clear definition encompassing the differences in each State.

Ana Filipa Vrdoljak (University of Technology, Sydney) introduced the regulation of online sales of cultural goods and the role of cooperation on the international arena in this field, because the 1995 UNIDROIT Convention entered into force before the changes made by the development of the Internet and the advent of online space.

Andrzej Jakubowski (Institute of Law Studies and University of Opole) spoke about making the resolution of cultural heritage disputes more effective in relation to the issue of time limitations under the UNIDROIT Convention. The speaker provided an in-depth analysis of provisions in this regard and also focused on special categories of objects distinguished by the Convention, especially indigenous and tribal cultural objects that are sacred or communally important cultural objects. A notable contribution of the 1995 UNIDROIT conventional regime for these objects was raised, resulting in, among other aspects, provisions of qualified time limitations and the protection of living cultures.

Patty Gerstenblith (DePaul University College of Law) discussed state ownership of undiscovered cultural objects from the perspective of the UNIDROIT Convention and model provisions. Model provisions are intended to assist national legislative bodies in adopting effective legislation for the establishment and recognition of the State's ownership of undiscovered cultural objects with a view to facilitating restitution in cases of unlawful removal and thus protect the archeological cultural heritage of origin countries. Unique to the 1995 UNIDROIT Convention, model provisions on state ownership of undiscovered cultural objects were demonstrated to provide steps that can be taken to fill potential gaps between the countries of origin and market countries in the field of ownership, which the speaker discussed briefly.

Day 1, Session 2

The second session was moderated by Marina Schneider and focused on the interplay and interdependence of rules and cultural instruments between the 1995 UNIDROIT Convention and various international actors and legal solutions.

First, Lazare Elondou Assomo (UNESCO) and Folarin Shyllon (Ibadan University) discussed relations between the 1995 UNIDROIT Convention and the 1970 UNESCO Convention on Illicit Traffic in Cultural Property. The speakers presented some differences between the two conventions. The UNESCO Convention is founded on the philosophy of Government action and therefore requires cultural objects to have been designated as such by the State requesting return, while the UNIDROIT Convention as a scheme under private law, does not require a cultural object to have been designated by the State for it to be covered by the Convention. African states are among the most vulnerable to the illicit trade in cultural property, but still the majority of African states are not parties to either convention. Becoming a party to both conventions is an important step toward combating illicit trade; therefore, all African countries should sign and implement the provisions of the conventions. This is also important for the repatriation of African cultural objects that were looted in colonial times.

Hans Ingles (EU Commission) and Sophie Vigneron (University of Kent) provided a rich presentation of EU legal instruments that can be used against the illicit trafficking of cultural property in connection with the 1995 UNIDROIT Convention. Ingles emphasized not only the European but even the global significance of the Convention. The most important were Council Directive 93/7/EEC, which established a mechanism for the return of cultural objects that had been unlawfully removed from the territories of European Union countries, and Directive 2014/60/UE, which recast Directive 93/7/EEC and introduced many innovative provisions. Currently, the European Union is focusing on stronger cooperation among Member States and the implementation of common good practices through modern solutions such as a digital cultural goods platform. Vigneron spoke on the differences between the UNIDROIT Convention and UE regulations, such as dealing with issue of ownership of cultural objects, time limitations, adoption of the return of cultural objects, and the limited concept of due diligence.

Matjaž Gruden (Council of Europe) and Jérôme Fromageau (ISCHAL) introduced some Council of Europe cultural conventions and their links to the 1995 UNIDROIT Convention. Gruden spoke on the Nicosia Convention of 2017, which is a new international instrument to fight against the illicit trade of cultural objects by obliging its State Parties to implement common standards in their domestic criminal law in relation to cultural property. The effectiveness of the Nicosia Convention's provisions depends on the readiness of States to sign and implement its regime, which is why cooperation plays a central role, not only for the protection of cultural property, but also for people and their identity. Fromageau stressed the active role of the Council of Europe in fighting against cultural heritage crimes, even before the European Union implemented its policy, which is founded, among others, on the Florence Convention, the Faro Convention, and the Nicosia Convention and also many soft law instruments. As the speaker said, the idea of the important Nicosia Convention was born to address the problem of existing differences in criminal legislation regarding illegal trafficking in cultural objects, and since the 1995 UNIDROIT Convention could not solve all the problems posed by the unlawful transfer of these goods, this is why the international community had to search for a new, more effective mechanism of cooperation in criminal matters in this field.

Angela Martins (Social Affairs Department African Union Commission) spoke on the relationship between the 1995 UNIDROIT Convention and African Union instruments. African States appear to be the most vulnerable of any group of countries to the illicit trade in cultural property; however, not a single African country is a State Party to the 1995 UNIDROIT Convention. National legislation in the African Union for the protection and preservation of cultural goods are either general or particular, depending on the country. For example, Egyptian Law 117 prohibits the private ownership, possession, or trade in antiquities and imposes sanctions for violations including prison terms with hard labor. Most of these countries operate the Convention's provisions through other acts without the implementation of the 1995 UNIDROIT Convention.

Irini Stamatoudi (University of Nicosia) discussed the place of the UNIDROIT Convention in out-of-court settlements of cultural property disputes. As the speaker pointed out, cultural property disputes differ from other types of disputes, because these are usually interstate with special legislation (including national, EU, international, and also bilateral agreements), they involve not only legal but also ethical and moral issues, and they concern cultural objects that are unique and carry special values, and often they have no substitutes. The 1995 UNIDROIT Convention provides for parties agreeing to submit disputes to any court or other competent authority or to arbitration. The speaker presented the remaining types of arbitration and also discussed the advantages and disadvantages of these forms of dispute resolution.

Jorge Sanchez Cordero Davila (International Academy of Comparative Law) spoke on the work that remains to be done regarding private collections. The 1995 UNIDROIT Convention confers to private collectors the active legal right to claim within international jurisdictions the return of stolen cultural objects. This provision broke the cultural hegemony that the UNESCO Convention conferred on national states by granting

them the power to determine which objects should be protected according to their cultural importance. Private collections and the engagement of private actors are at the core of the future cultural heritage protection model and only by involving private actors in equal dialogue in the cultural property debate can it lead to success. UNIDROIT has a very important role to play in enhancing and encouraging this arena of cooperation.

Day 2, Session 3

On the second day of the conference, the third session was chaired by Ignacio Tirano (UNIDROIT). The first speaker, Austin Lazar (University 1 Dicembrie 1918), spoke about the impact of the 1995 UNIDROIT Convention on Romanian access to justice in the case of the so-called Romanian Treasure, which is a continuing problem for this state to recover the gold that Romania sent to Russia for safekeeping during the First World War. The speaker stressed that UNIDROIT provides official international instruments that can be applied to fight illicit trafficking and can be used not only by states but also by individuals.

Maria Chiara Malaguti (UNIDROIT, Università Cattolica Sacro Cuore Milan/Rome) moved to the notion of temporary transport of cultural goods and four different approaches to immunity from seizure. The speaker also presented some examples of specific issue of immunity from the United Kingdom, Germany, the United States, and Australia, which, she said, had introduced the best solutions in this field by addressing two important issues for the Australian community, namely protecting cultural objects while they are on temporary exhibition in Australia and introducing classes that enjoy immunity.

Wang Yunxia (Renmin University of China) presented the application and enforcement of the 1995 UNIDROIT Convention in China. The legal status of international treaties is not clear in China's legal system since the Constitution does not mention the relationship between international and domestic law, and there is no principle provision on how international treaties should be implemented in China. This results in some degree of randomness in the implementation of the 1995 convention. The speaker mentioned which rules have been introduced into China's domestic laws (e.g., the prohibition of trading cultural objects of illegal origin) and which have not (e.g., the rule of the *bona fide* possessor).

Joanna van der Lander reflected on the antiquities trade over the past 25 years. She focused on the imprecise definitions of antiquities, cultural goods, legitimate, illicit, and provenance in relation to the 1970 UNESCO Convention and the 1995 UNIDROIT Convention. The speaker also underscored the current problems of the lack of provenance and the lack of the Convention's definition of archeological artifacts, which are objects on the antiquities market, and how to regulate the antiquities market legally to serve both past and present owners.

Martin Wilson (General Counsel, London) spoke on the impact of legal measures in the fight against illicit trade according to the conventions and the law in the United

Kingdom. The 1970 UNESCO Convention bore some compromises and signing the provisions by market countries was a milestone in fighting illegal trade, but in fact the 1995 UNIDROIT Convention was a more significant step in this field as it built on what UNESCO initiated. The speaker also presented the UK's achievements in fighting illegal trade and previewed possible future solutions.

Lynda Albertson (ARCA) focused on the role of civil society in the adoption of the 1995 UNIDROIT Convention and the promotion of its ratification and implementation globally. Civil society organizations can bring citizens' concerns to public authorities, monitor policy and program implementation, play the role of watchdog, as well as contribute to the achievement of greater transparency and accountability in the governance of culture. Actions taken by civil society, among others developing and publishing information tools to facilitate the understanding of the Convention and raising the visibility of the Convention by organizing training and forums or disseminating information to stakeholders play key roles in strengthening the international legal framework for the protection of cultural heritage.

Marina Schneider presented the role of UNIDROIT and the oversight mechanism. The speaker provided examples of actions taken by UNIDROIT, many in cooperation with UNESCO and ICOM, such as creating working groups in Egypt and Lebanon, organizing many capacity building workshops, engaging the European art market in the fight against the illicit traffic of cultural property, and training the European judiciary and law enforcement officials in this field. Activities for the near future were also announced, such as launching the process for strengthening the conventional body and founding the legal Advisory Group of UCAP.

Gilles de Kerchove (EU Counter-Terrorism Coordinator) spoke on tragic episodes of destruction, looting, pillage, and the trafficking of cultural property in recent years, particularly in countries affected by armed conflicts, such as Iraq and Syria, which have exposed the links between damage to cultural sites, organized crime, and financing terrorism. The fight against illicit trafficking is a key element in any strategy to eliminate sources of financing terrorism, and implementing international instruments such as the 1995 UNIDROIT Convention by most states is crucial to effectively fight illicit trafficking in cultural property.

The final speech was delivered by Ignacio Tirado, who stressed the important role of collaboration to achieve this common goal and the effort to strike a balance between domestic and international frameworks in the fight against illicit trafficking.

The end of the conference featured two statements by a representative of the Greek Ministry of Foreign Affairs and a representative of China's National Cultural Heritage Administration, who presented the impact of the 1995 UNIDROIT Convention on these two countries. The significance of the Convention was also emphasized in short speech made by the Ambassador of Mongolia and Yashar Huseynli, the Head of the Cultural Property Supervision and Registers Division at the Ministry of Culture of the Republic of Azerbaijan.

During the closing session, Ingrida Velitute (Vice-Minister of Culture, Lithuania) shared the story of the successful retrieval of a Gothic sculpture smuggled in 2000–01

following a ten-year legal struggle between Austria and Lithuania. Giorgio Marrapodi (Ministry of Foreign Affairs and International Cooperation, Italy) spoke about the effective role of UNIDROIT and the balance between protecting and maintaining a fair place for the art trade. The Italian commitment to protecting cultural heritage was also appreciated in the field of fighting the illegal trade and safeguarding galleries and museums. Marina Schneider expressed her gratitude to the conference participants and stressed that 25 years is a very important moment for UNIDROIT and still many things must be done. Ignacio Tirado thanked all the participants for joining the conference and guaranteed continued cooperation with benefits for the world.