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*Introduction. The Renewed Attention  
for the Protection of the Cultural Expressions  
in Crisis Areas*

The military world, particularly the NATO doctrine and a more ambitious EU defence and security policy, specifically the new born PESCO (Permanent Structured Cooperation) have taken on stock the experiences, the so called “lessons learned”. It is a well-known structured method of analysis and improvement of the conduct of operations shared by the armed forces of the member states. *Historia magistra vitae*.

Giambattista Vico, an Italian philosopher and jurist of the 17<sup>th</sup>/18<sup>th</sup> century has taught us to recognize the importance of the political and military lessons from the past, with his cyclical vision of history, although in time perspectives, circumstances and alliances do change.

Obviously, in this methodological framework, every country has privileged some aspects linked to their own historical traditions.

For example, our Tunisian guest is going to discuss on “counterterrorism and protection of cultural heritage”, while the Omani guest will give a speech on “castles, fortifications and forts in the sultanate of Oman along with their military role as a defensive aspect”.

Italy, on the other hand, has always been a leader when promoting and disseminating the rules of humanitarian law and armed conflicts law in international organizations and fora.

The Italian delegations have constantly emphasized the central role of the respect and dignity of the human being in all individual and collective manifestations and expressions of thought, art and social life, which are formal and substantial liberties.

The legal protection strongly sustained within the International Criminal Tribunal for the former Yugoslavia (ICTY), against the systematic injuries to

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the ethnic, historical and social identity of minority groups has universally represented a distinctive feature of the Italian judges and jurists involved in criminal prosecutions of the high court.

Civil and common law are not the only legal systems that should be considered.

In the area of peace negotiations in the middle and Far East, or in the UN Security Council different sensitivities and interests confront and sometimes clash. Stabilization in crisis areas, reconstruction of the institutions, safeguard of populations oppressed by armed conflicts, are doctrinal formulas that can be implemented in many different ways pending encoded and shared standards.

International peace mandates and plans for the safeguard of communities should be shaped and applied in order to maintain the existing cultural pluralism in crisis areas, as cultural identities and expressions with more or less relevant artistic value.

In this field, the Italian military contingents have always operated with intelligence and effectiveness gaining appreciation in the international community, despite some difficulties caused by other contingents present in the international coalitions.

Defining and studying the fundamental elements and guidelines in this context is essential to comprehend the main operational principles and to circulate the rules applicable on the field.

Common advanced education, according to NATO and EU standards can be considered a fantastic opportunity to share and discuss within alliances.

However, the rapid evolution of the international scenarios requires even more precise and efficient intervention capabilities. Currently, operational theatres are more and more complex due to the presence of a number of international forces, a plurality of militarily organised groups and transnational terrorist cells.

High levels of efficiency and readiness can only be achieved by a top-notch level of operational capabilities acquired during a specific and aimed professional training.

These considerations precede the analysis of facts daily brought to our attention by the media like current and future humanitarian issues, migrations, ethnical conflicts originating from the neighbouring Mediterranean regions.

I am speaking about Syria, a current and emblematic case, close to us. Nowadays it is probably one of the most complex scenarios and one of the key challenges for international security; in fact, Syrian cities have been effected by violent battles. The severe humanitarian situation and the sizeable destruction of the territories are known worldwide.

The harsh reality of hatred and incomprehension has generated a spiral of violence and atrocity among factions that are undoubtedly rooted in the past. As previously said, *historia magistra vitae*.

The respect of human beings relies on respect of their past, present and mainly the future, their individuality, social dimension as members of a community rooted in a territory, with specific religious and popular beliefs, century old habits and artistic expressions.

For example, even the small mosque of the Rohingya population, on the run from Myanmar has a high cultural value and it is a symbol of being part of the community. Its destruction although not relevant under a strictly artistic point of view, is, from a humanitarian perspective, equivalent to the destruction of the ancient roman temple in Palmira.

Considering the present level of complexity of the Syrian scenario, apparently paradigmatic for the current and future difficulties of a humanitarian intervention, I would like to quote an important Italian diplomat and essayist ambassador Sergio Romano in his recently published *Atlante delle crisi mondiali*.

During the Ottoman Empire, great Syria included Palestine, Lebanon and was a religious melting pot of the Middle East. Muslims were predominant although subdivided in Sunnis, Alawites, Iranian and Ismaili Shiites.

The majority of Christians, mainly located in Lebanon, were Maronite, but this comprehensive framework included Orthodox, Armenian, Nestorian and Uniates, in other words members of all the churches who had preserved a close relation with the bishop of Rome. The vast majority of the population were Arab, in great Syria, but there were also big groups of Kurds, Armenians, Turkmens and Circassians. In 1926, during the French mandate, Joseph Kessel, a writer sent to Syria by a Paris newspaper, discovered that the best soldiers of the colonial troops were the Circassians. They had moved to ottoman Syria from the Caucasus after the tsarist conquest of the region, then faithfully served the sultan of Constantinople and later fought loyally for the French Republic. When France conquered Syria, under the mandate of the League of Nations, Lebanon was already enjoying a great independence. In the same spirit, the French government also gave a certain autonomy to the Alawites and druses in the Aleppo and Damascus provinces. Yet they were unable to prevent a great druses insurrection in 1925 that continued until 1927, a long negotiation with turkey for Alessandretta, the creation of the republic of Latakia in 1930 and the Kurdish uprising in 1937. History never repeats itself.

This comprehensive picture laid out by Sergio Romano emphasizes the patchwork of identities and cultures present in areas of ancient history.

The future challenge for the international community in those places is naturally not to repeat some mistakes of the past, and in particular not to flatten and cancel the profound differences between cultures and religious groups, with traditions sometimes dating back thousands of years.

It would be simplistic to assume a future stabilization action to be perfect and faultless.

Actually, considering the recent conflicts between the superpowers, it will be

a great result not to trigger new conflicts. Yet, the general principles of customary and conventional humanitarian law seem to impose an obligation of building measures to mitigate the effects of a forcibly lengthy recovery of the long-suffering religious communities, vulnerable people, ethnic identities and groups.

In particular, speaking about the rules of international law, Italy has to comply with, I would like to mention the Convention on the Protection and Promotion of the Diversity of Cultural Expressions, signed in Paris on 20 October 2005, (ratified by law n.19 of 19 February 2007), the International Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed in the Hague on 14 May 1954, (ratified by law n. 279 on 7 February 1958), as well as the Convention for the Safeguard of the Cultural Intangible Heritage signed in Paris on 17 October 2003 (ratified by law n. 167 on 27 September 2007). Therefore, the juridical instruments are already existent and binding, not only for Italy, but also for many European and Mediterranean countries.

Consequently, it appears mandatory to provide the personnel concerned, both planners and operational personnel, with basic anthropological and juridical knowledge, concerning the safeguard of the cultural heritage of the communities living in crisis areas, and not only limited to objects of historical and cultural nature. An opportunity to implement advanced education among neighbouring countries, in particular in and around the enlarged Mediterranean area. For centuries, the Mediterranean Sea has been considered a bridge between countries and not just an obstacle to a fruitful dialogue between peoples, identities, cultures and religious minorities.

This is why I consider fundamental to provide to all our attendees the ability to plan and operate the protection of the material and non-material culture of ethnic minorities, and to promote cultural pluralism.

This applies, in particular, in case of international and non-international armed conflicts, or after their conclusion, as well as after major environmental or manmade disasters.

The protection of the cultural pluralism existing prior to an armed conflict or to a major environmental disaster is key to enable the recovery of civilian and institutional life in the affected regions and the restoration of peace and international security. This should be a common aspiration for all of us.

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*Countering the Illicit Trafficking  
of Cultural Property.  
Implementation Experience in Argentina*

SUMMARY: 1. Introduction. – 2. International Framework: Conventions and Organisms. a) Conventions. b) Governmental organisms and NGOs. – 3. Illicit trafficking of cultural property. – 4. Implementation experience in Argentina. – 5. In conclusion.

1. *Introduction*

A community's cultural heritage represents its memory, its history and its identity. Cultural goods are the result of multiple social and political processes developed as time passed on at specific places and moments. Therefore, it is a legacy inherited from past generations and at the same time a legacy for the future of that particular community and for human beings as a whole. They are the expression of man's ideas and thoughts and for that reason, they can be neither replaced nor reproduced. Over the years, cultural property became of unfathomable value, due to its relevance for communities integration, sustainable development, innovation, creation and scientific research. Any damage affecting a cultural good is a damage affecting past, present and future of human beings. Illicit acts like destruction, damage, pillage, stole and illegal traffic of cultural goods can undermine human being's peace and dignity. For all the above expressed reasons, the protection and preservation of these particular goods constitutes a right and a shared liability of states and civil society.

The Second World War's devastating consequences set an inflexion point in the decision to wisely reinforce the protection of cultural property. Many worldwide conventions have emerged to take specific actions in the protection of cultural goods, with the intent of building respect towards Human Rights

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and International Humanitarian Law. UNESCO (United Nations Educational, Scientific and Cultural Organization), INTERPOL (International Criminal Police Organization), ICRC (International Committee of the Red Cross), many other governmental bodies and NGOs (Non-Governmental Organizations) have a leading role in achieving such a demanding task.

Notwithstanding the conventions in force and the states ratification thereof, there exist certain regulatory gaps identified as promoting the significant increase observed in illicit traffic of cultural property during the last years. This phenomenon has originated a kind of “cultural bleeding” in many countries and at the same time a “loss to the collective memory” of humankind. Having reached record numbers, this activity has become one of the most lucrative business worldwide, after illicit drugs and weapons trafficking.<sup>1</sup> This business expansion and diversification can be drawn from certain drivers, such as (i) global marketing growth through Internet; (ii) increasing levels of professionalism in worldwide criminal groups, where illicit traffic of cultural property has become the main financial source for their illegal activities; (iii) advances achieved in transport networks and opening borders; (iv) demand soaring in these goods and the resulting price increase thereof; (v) and a context of continuing political unrest in certain countries, mainly in Africa and Middle East. Therefore illicit traffic of cultural goods constitutes an “*intermestic and multidimensional affair*”. It is an intermestic affair since it goes beyond national boundaries and occurs at the domestic, regional and international level. It is a multidimensional affair since it is tightly linked to other illegal activities such as money laundering and those linked to organized armed groups. At the same time, other aspects like civil society unawareness and the numerous and different links in the process chain, depending on the cultural good involved, contributes to its complexity.

In the purpose of dealing with this situation, it is necessary to make a distinction between countries of origin, transit and destination involved in the process of illicit trafficking of cultural property. Every country, bearer of distinctive features, is affected in a different way. This means that international conventions and/or regulations, and measures or actions taken by worldwide or regional organizations are so significant as the specific geopolitical context and the legal framework in force in every country. Starting out from this premise, a general consideration of this issue is being made in first place. Following that, focus is being made in the case of Argentina, which is now emerging in the position of pioneer relating to the protection of cultural heritage in Latin America.

These presents intend to argue that protection, care and restoration of cul-

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<sup>1</sup> Clarín 2017: [https://www.clarin.com/suplementos/zona/trafico-bienes-culturales-claves-cuarto-comercio-ilegal-mundo\\_0\\_SJmYyaKix.html](https://www.clarin.com/suplementos/zona/trafico-bienes-culturales-claves-cuarto-comercio-ilegal-mundo_0_SJmYyaKix.html).

tural property should be a priority in National Agendas. Realizing that an immediate solution is not foreseen in short, we pledge for action. It is necessary to draw strategies in the short and medium terms, directed to generate a space for dialogue and consensus as a step to consolidate cooperation and coordination in the long term at international and intra-national level. It is substantial to achieve a joint and integrated action between different public and private actors (government, NGOs, academy, civil society, and so on) in the national, regional and international spheres. Concepts like human rights, respect, diversity, tolerance, dignity, ethics and morality should be the pillars supporting this long and winding path towards the building of a “Culture of Peace”. There is no doubt that illicit trafficking of cultural property is an extremely complex issue and for that reason, it requires a “multidisciplinary, global and joint” approach and action.

## *2. International Framework: Conventions and Organisms*

### *a) Conventions*

United Nations, in General Assembly and in Security Council Meetings have adopted numerous resolutions in relation to protection and restitution of cultural property. Notwithstanding that, there are two relevant international conventions sponsored by UNESCO providing specific regulations about illicit traffic of these goods: the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects.

The 1970 UNESCO Convention intends to answer concerns regarding the sustained and increasing theft of cultural objects during the 1960s. The Convention, entering in force in 1972 and with 134 state parties<sup>2</sup> up to now, was the first international agreement to provide measures for the protection of illegally trafficked cultural objects. Unlike the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict that sets a definition of cultural goods and takes into consideration various situations occurring only in the event of armed conflict, the 1970 Convention allows each country to set its own definition on those goods considered important to culture and humankind, regardless if it happens in peace or war time. On Article 1, it defines “cultural property” as the property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

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<sup>2</sup> <http://www.unesco.org/eri/la/convention.asp?KO=13039&language=S>.

- a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest;
- b) Property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- c) Products of archaeological excavations (including regular and clandestine) or archaeological discoveries;
- d) Elements of artistic or historical monuments or archaeological sites which have been dismembered;
- e) Antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- f) Objects of ethnological interest;
- g) Property of artistic interest, such as:
  - i. Pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
  - ii. Original works of statuary art and sculpture in any material;
  - iii. Original engravings, prints and lithographs;
  - iv. Original artistic assemblages and montages in any material.
- h) Rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- i) Postage, revenue and similar stamps, singly or in collections;
- l) Archives, including sound, photographic and cinematographic archives;
- m) Articles of furniture more than one hundred years old and old musical instruments.<sup>3</sup>

Another consideration of equal importance in 1970 Convention is expressed in Article 3: “the import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.”<sup>4</sup> In this respect, each State Party national legislation is crucial since, as Jiří Toman explains, “the local legal framework constrain the Convention enforcement, the decision upon the extent of prohibitions and therefore, the Convention success or failure (2004, p. 387).”

This Instrument adds three fundamental principles to guide State Parties action thereof:

– Preventive measures to deter illicit import or export of cultural property: “inventories, export certifications, control measures and approval requests of

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<sup>3</sup> See Article 1 1970 Convention. <http://www.unesco.org/new/es/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/text-of-the-convention/>.

<sup>4</sup> See Art. 3 1970 Convention. <http://www.unesco.org/new/es/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/text-of-the-convention/>.



parties involved, enforcement of criminal or administrative penalties, information efforts, etc.”<sup>5</sup>

– Restitution provisions to proceed for recovery and return of cultural property illegally removed from a State Party: in Article 7 subparagraph (b) (ii) it is stated that States Parties agree to “take appropriate steps to recover and return, at the request of the State party of origin, any such cultural property imported or stolen after the entry into force of this Convention for the States concerned, provided that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Also in Article 1, though in an indirect way and consistent with the laws of each State, there are provisions for restitution of cultural goods and cooperation between State Parties.”<sup>6</sup>

– International cooperation in order to strengthen the ties between State Parties: in case the cultural heritage of a State Party is in jeopardy from pillage, such State may call upon assistance from other State Parties. The Convention, in its Article 9, further provides the possibility of more specific actions, such as “the control of exports and imports”.<sup>7</sup>

Though it should be recognized the 1970 Convention value as the first international legal instrument to deter the illegal commerce of cultural property, its enforcement process bears certain limitations. One of them relates to the feature of not having retroactive effects. Therefore its provisions do not apply for any illicit acquisition, theft or pillage of a specific cultural property occurred before the entry into force of this Convention. Another controversial aspect relates to the scope of this Convention. It applies solely to disputes among States, excluding transactions made according to private law.

For the abovementioned reasons, at UNESCO request, UNIDROIT (International Institute for the Unification of Private Law) Convention was approved in 1995 in order to strengthen cooperation efforts between States regarding the illicit trafficking of cultural property. This Agreement, which entered into force in 1998 and up to now 41 State Parties<sup>8</sup> have adhered to it, is complementary to the 1970 Convention. Its main purpose is intended to “modernize, harmonize and coordinate Private Law provisions, in particular commercial law provisions, between States and group of States.”<sup>9</sup>

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<sup>5</sup> <http://www.unesco.org/new/es/culture/themes/illicit-trafficking-of-cultural-property/1970-convention/>.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Ibid.*

<sup>8</sup> See <http://www.unidroit.org/status-cp>.

<sup>9</sup> See <http://www.unesco.org/new/es/culture/themes/illicit-trafficking-of-cultural-property/1995-unidroit-convention/>.

Focus is made on restitution and return of stolen or illegally exported cultural objects – whether they are inventoried or otherwise identified. Requesting parties considered include natural or legal persons or States and claims can be filed before national courts. Under certain circumstances, it also calls for reasonable compensation to be paid. Article 4 subparagraph 1 states that “the possessor of a stolen cultural object required to return it shall be entitled, at the time of its restitution, to payment of fair and reasonable compensation provided that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised due diligence when acquiring the object.”<sup>10</sup>

The main controversial aspect of the UNIDROIT Convention is the low ratification rate of State Parties. Hereinafter it is deemed crucial the incorporation of UNESCO Conventions to national legal frameworks at worldwide level. Ratification and enforcement of this international instruments, which represents the more solid foundation to deter the illicit trafficking of cultural property, “pose numerous challenges but at the same time promote opportunities of cooperation in order to guarantee the preservation” of cultural heritage (set of items, p. 79). International and national legal frameworks should be harmonized, since it is deemed a *sine qua non* condition towards an efficient advance against the illicit trafficking of cultural property.

#### b) *Governmental organisms and NGOs*

Over time, different organisms have emerged in the international arena with the specific objective of protecting and preserving the States cultural heritage. Nevertheless, UNESCO, as the sole UN agency that is entitled to execute such a valuable task, plays a leading role and has evolved as a key actor in the international effort to deter the illicit trafficking of cultural property. Since its creation, this organization has worked hardly towards the building of a “Culture for peace” and an environment of sound logic in respect of Human Rights and International Humanitarian Law. Through a joint task executed with the help of other actors, whose specific functions will be dealt hereinafter, UNESCO promotes different initiatives relating to the dissemination of the importance and significance of these particular goods – by means of different meetings, workshops and seminars with the participation of experts in this issue – with the aim to generate awareness and sensitiveness in different spheres of civil society; training and specialization courses for public officials and agents, from police to customs agencies, oriented to know and manage the international legal framework; continuous information exchange between States and the permanent up-

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<sup>10</sup> See <http://www.unidroit.org/spanish/conventions/1995culturalproperty-convention-sp.pdf>.

date of data bases containing information about cultural goods from different countries.

In 1978 UNESCO created the “Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or its Restitution in case of Illicit Appropriation” (IPRCP), with the responsibility of facilitating bilateral negotiations between States in the process of restitution and return of cultural property. It is comprised of 22 UNESCO Member States,<sup>11</sup> including Argentina, mandated over a period of four years, with a meeting frequency every two years. However, this Committee does not perform a pure judicial function, it promotes a space for dialogue and discussion between parties, with the purpose of seeking ways and means of facilitating negotiations and, in this way, promoting multilateral and bilateral cooperation. In 1999 this Committee is awarded a special own Fund that aims to facilitate its function, particularly in the verification of cultural objects, transportation and training of museum professionals in the originating countries of cultural objects.

The “Subsidiary Committee to the Meeting of States Parties to the 1970 Convention” was also created upon request of UNESCO in 2013. It is comprised of 18 representatives<sup>12</sup> from the States Parties to the Convention; three representatives of each region on a geographical and equitable basis. Every mandate lasts four years and half of the total of representatives is renewed every two years with the provision that representatives are restricted to be appointed for two consecutive periods. This Committee’s main role is promoting the provisions agreed in the Convention through recommendations for their right enforcement. Furthermore, this body makes a revision of the national reports of the States Parties; identifies any controversy arising as of the Convention enforcement, particularly those related to the protection and return of cultural objects; facilitate the coordination with the Intergovernmental Committee in the effective adoption of measures to deter the illicit trafficking of cultural property; and report to every State Party about the implementation thereof.<sup>13</sup>

Jointly with UNESCO, the International Crime Police Organization (INTERPOL) is also actively involved in prevention of illicit trade of cultural goods. It was created in 1923 and nowadays it is comprised of 192 Member States, emerging as the biggest international organization in the world. Since 1947, INTERPOL efforts in this issue take the form of the development of different tools

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<sup>11</sup> See <http://www.unesco.org/new/es/culture/themes/restitution-of-cultural-property/intergovernmental-committee/members/#c284036>.

<sup>12</sup> See [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/normative/pdf/1970\\_SubsiaryCommitteeMembers\\_EN\\_2013.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/normative/pdf/1970_SubsiaryCommitteeMembers_EN_2013.pdf).

<sup>13</sup> See <http://www.unesco.org/new/es/culture/themes/illicit-trafficking-of-cultural-property/subsidiary-committee/#topPage>.

with the aim of facilitating to Member States the identification process of cultural objects by means of an efficient exchange of data.

In 1995, INTERPOL created a *Database of Stolen Works of Art* as a result of its effort to concentrate data generated and provided by different states in a sole digital platform and to disseminate this information worldwide. The database allowed restituting a huge amount of stolen objects – circa 2800 items up to 2015. This information is available for public officials, law enforcement and customs agents, and since 2009 any authorized individual is entitled to make requests to this platform.

In 2006, growing concern for lack of regulation in illicit trade of cultural objects over Internet forced UNESCO, INTERPOL and ICOM to define a list of *Basic Actions concerning Cultural Objects being offered for Sale over the Internet*. This initiative request to Member States of INTERPOL and UNESCO, and those with a National Committee in ICOM, to take the following steps:

– “Strongly encourage Internet Sales Platforms to post the following disclaimer on all their cultural objects sales pages: With regard to cultural objects proposed for sale, and before buying them, buyers are advised to: *i*) check and request a verification of the licit provenance of the object, including documents providing evidence of legal export (and possibly import) of the object likely to have been imported; *ii*) request evidence of the seller’s legal title. In case of doubt, check primarily with the national authorities of the country of origin and INTERPOL, and possibly with UNESCO or ICOM.”

– Request Internet Platforms to disclose relevant information to law enforcement agencies and to cooperate with them on investigations of suspicious sales offers of cultural objects;

– Establish a central authority (within national police forces or other) which is also responsible for the protection of cultural properties, in charge of permanently checking and monitoring sales of cultural objects vis the Internet;

– Cooperate with national and foreign police forces and INTERPOL as well as the responsible authorities of other States concerned, in order to:

- Insure that any theft and/or any illegal appropriation of cultural objects be reported to INTERPOL National Central Bureau, in order to enable relevant information to be posted on the INTERPOL Stolen Works of Art Database;
- Make information available about theft and/or any illegal appropriation of cultural objects, as well as about any subsequent sale of such cultural objects, from or to national territories, using the Internet;
- Facilitate rapid identification of cultural objects by:
  - i*) Ensuring updated inventories with photographs of cultural objects, or at least their description, for example through the Object ID Standard<sup>2</sup>;
  - ii*) Maintaining a list of recommended experts;

- Use all the tools at their disposal to conduct checks of suspicious cultural property, in particular the INTERPOL Stolen Works of Art Database and the corresponding INTERPOL DVD;
- Track and prosecute criminal activities related to the sale of cultural objects on the Internet and inform the INTERPOL General Secretariat of major investigations involving several countries;
  - Maintain statistics and register information on the checks conducted concerning the sale of cultural objects via the Internet, the vendors in question and the results obtained;
  - Establish legal measures to immediately seize cultural objects in case of a reasonable doubt concerning their illicit provenance;
  - Assured the return of seized objects of illicit provenance to their rightful owners.<sup>14</sup>

Later, in 2012, INTERPOL and the Italian Carabinieri Department developed a joint project for the protection of cultural property. This project codenamed *PSYCHE* (Protection SYstem for Cultural HERitage) receives financial support from the European Commission. The main aim for the development of this project was to further increase the contents of the Stolen Works of Art Database and promote the protection of cultural heritage worldwide. The objectives of *PSYCHE* can be summarized in the following:

- “Implement a formatted message system that enables member countries to directly insert data;
- Develop a service to transfer data directly from existing national works of art databases;
- Integrate an image comparison system to speed up searches;
- Develop training activities including e-learning courses, seminars, publication of a handbook to provide guidance and best practice examples.”<sup>15</sup>

The International Council of Museums (ICOM), created in 1946, is a non-governmental organization that represents and maintains formal relations with museums from different countries and the professionals thereof. This organization supports worldwide museums’ tasks in ensuring the conservation and protection of cultural goods, and takes action in generating awareness about the importance of these valuable goods for humankind. At present the ICOM network is comprised of more than 37,000 members. The organization’s structure is composed of 119 National Committees, 30 International Committees, 8 Standing Committees and Working Groups, 6 Regional Alliances and 23 Affiliated Organizations. National Committees represent members at a national level

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<sup>14</sup> See Basic Measures document.

<sup>15</sup> See [file:///C:/Users/facu/Downloads/DCO05\\_02\\_2015\\_SP\\_web.pdf](file:///C:/Users/facu/Downloads/DCO05_02_2015_SP_web.pdf).

within ICOM, as intermediaries between members and the General Secretariat of the Council; they ensure that the interests of the organization are managed in their respective countries and contribute to the implementation of the organization's programs. International Committees bring together professionals from different museums and constitute a meeting space for experts of museum specialties. Experts do research on cultural heritage, share professional experience and scientific information and develop recommendations with ICOM members. Standing Committees and Working Groups give advice and provide reports on essential aspects of the association and on subjects of importance for museums. They also make recommendations on the organization structure. While a Standing Committee is permanent, the mandate of a Working Group is focused on a specific subject, as may be the case. Regional Alliances are forums that promote dialogue and cooperation between the National Committees, museums and professionals of a given geographical area. Finally, the Affiliated Organizations are international associations or councils linked to museums of a particular geographical region. They are separate entities but have an active role in ICOM's activities and contribute to the influence of ICOM.

Since the aftermath of 1980s, ICOM has intensified action against illicit trafficking of cultural objects, developing nowadays a leadership role in this subject. One of the core instruments implemented by ICOM is the *Code of Ethics for Museums*, firstly adopted by the organization in 1986 and later revised in 2004. This deontological code constitutes the ethical reference for the community of museums at international level, sets out the rules of conduct and acceptable practices for museums and professionals thereof. Every Member, at the moment of affiliation to ICOM, commits to respecting principles and values defined in the Code; instrument also valuable in the process of developing additional policies relating to the protection of cultural property at national levels.

ICOM has also published a series of *Red Lists* including different categories of endangered cultural objects from several countries and/or regions, in order to prevent them to be illicitly trafficked. These Red Lists are drawn up from report from museum specialists and are intended to generate public awareness and prevent cultural goods from being illegally sold or exported. They help authorities, mainly law enforcement and customs officials, to identify the most vulnerable objects at risk. Furthermore, ICOM's series "*One Hundred Missing Objects*" also served to identify and restore several stolen cultural objects. The listed objects in these publications differ from those listed in the Red Lists since the former are stolen objects registered in the INTERPOL Database.

Another relevant step to deter the illicit trafficking of cultural property was the development of the "Object Identification"<sup>16</sup> (Object ID) project. It was initiated by the J. Paul Getty Trust in 1993 and officially launched in 1997.

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<sup>16</sup> Visit web site [http://archives.icom.museum/objectid/index\\_span.html](http://archives.icom.museum/objectid/index_span.html).

Getty Trust is one of the most relevant institutions at worldwide level due to the outstanding role performed in promoting art and protecting cultural property of several countries. Object ID, granted under license by ICOM to museums professionals, is an international standard for describing works of art, antiques and archaeological objects – stolen or at risk of being stolen –, register and share information in detail and images of those objects for purposes of identification. This instrument is the result of constant collaboration between different actors, like museums, police forces, customs agencies, the art trade, and the insurance industry, etc. ICOM, in cooperation with other international organizations like UNESCO and INTERPOL, holds workshops and training courses for governmental officials, particularly police forces and customs, on identification of standards settled in Object ID. INTERPOL has incorporated this standard to its Stolen Works of Art Database.

More recently, in 2013, ICOM created the *International Observatory on Illicit Traffic in Cultural Goods*. It is a collaborative platform for those involved, such as international organizations, law enforcement agencies and think tanks where experts perform specialized research work. This project, funded by the “Prevention and Fight against Crime Programme” of the European Commission’s Directorate-general Home Affairs, reflects the long-term commitment of ICOM in respect of fighting the illicit trade of cultural objects. In 2014, this Observatory launched its own web site that holds a huge database of information related to the illicit trafficking of cultural property. Since 2015, this organization published a Global Report every three years, providing articles and analysis with case studies and statistics for a better comprehension of this issue.

The World Customs Organization (WCO) is an independent and intergovernmental organization representing the global community of customs. It was created in 1952 under the WCO. It is acknowledged as the global center of customs expertise, where its members discuss, develop, and promote cooperation in customs agencies management and security and make recommendations relating to global trade regulations. The WCO is comprised of 182 Member States, representing more than 98% of all international trade. As regards its contribution against the illicit trafficking of cultural property, the WCO has jointly developed with UNESCO, the Model Export Certificate for Cultural Objects for the identification and localization of such objects. Both international organizations recommend adopting the model, in its entirety or in part, as the national export certificate specifically for cultural objects.

The International Centre for the Study of the Preservation and Restoration of Cultural Property (ICCROM) is an intergovernmental organization created in 1956 for the preservation of cultural heritage worldwide. It is comprised of 140 Member States,<sup>17</sup> working in permanent collaboration with governmental

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<sup>17</sup> <http://www.iccrom.org/about/overview/member-states>.

and non-governmental organizations, scientific institutions and universities. Its main objective is the development of initiatives in training, research, cooperation and advocacy for the preservation and restoration of cultural property.

Finally, the International Council of Monuments and Sites (ICOMOS) is a non-governmental organization associated to UNESCO created in 1965 as a result of Venice Charter. It is a professional association networking different specialties (architects, historians, archeologists, geographers, anthropologists, among others). This organization is a partner of the International Committee of the Blue Shield, which works to propose the cultural goods to be declared world heritage. ICOMOS also promotes theoretical applications, methodologies and scientific technologies for the preservation of the architectonic and archeological heritage. In the event of war, emergencies and natural disasters, experts from this organization take action in preservation and restoration of the affected heritage. At presents, it comprises 10.100 individual members from 153 countries, 320 institutional members, 110 national committees and 28 international scientific committees.

“Even though the commitment to protect cultural heritage should necessarily contain a national essence, it can and should concur or, even better, make progress in solidarity between the States. The only way to achieve a change in the present situation is through commitment since, for its own nature, is unable to fully satisfy all parties’ interests” (several articles, p. 26). Recognition must be granted to progress achieved in the last years due to the joint activities performed by these organizations; the accomplished results are far from being sufficient. Efforts should be intensified in promoting greater awareness at different social levels and generate a cultural change relating to the relevance of tasks such like protecting and preserving our cultural heritage. As stated by Maria Luz Endere, at present context is signed, among other factors, by new voices and a more active involvement of new social actors bearing an increasing political force, requesting a more efficient protection of cultural heritage. The complexity of illicit trafficking of cultural property calls for “the need for not only studying but discussing this issue in greater depth” (cultural heritage dilemmas, p. 51) and the emergence of these new and diverse voices offers an opportunity to consolidate and generate ever more spaces for dialogue in the future.

### 3. *Illicit trafficking of cultural property*

“Modern civilization is the sum of its parts” (UNESCO, 1969, p. 22). Cultural heritage represents the most real connection we have with our ancestors. It is the most truthful evidence of our roots and origins and it accounts for understanding and explaining who we are and why we are like that at present. For that reason, cultural goods are not mere objects; they are symbols bearing



the feature of generating cohesion or a sense of belonging in different societies.

The cultural heritage of a particular group allows to be classified in tangible or intangible assets, according to its materiality. Tangible goods can be movable assets or fixed assets. Archaeological, historical or artistic objects can be identified as movable assets since they can be easily moved from one place to another. Fixed assets may include archaeological sites, historical monuments and buildings that, due to its complex composition or to its fixed adherence to ground, cannot be moved. On the other way, intangible cultural heritage refers to immaterial or invisible objects and its relevance relies on its spiritual value. Examples of this particular type of heritage are, among them, languages, rituals, customs, traditions and the religion professed by a specific group. In 2003, when an UNESCO General Conference was held, parties thereof signed the Convention for the Safeguarding of the Intangible Cultural Heritage<sup>18</sup>, where Intangible Cultural Heritage is defined on its Article 2 as: “the practices, representations, expressions, knowledge, skills – as well as the instruments, objects, artefacts and cultural spaces associated therewith – that communities, groups and, in some cases, individuals recognize as part of their cultural heritage.”

Marcelo El Haibe, Police Superintendent in charge of INTERPOL-Argentina Cultural Heritage Division, states that the links involved in illegal trade of archaeological or paleontological objects, for instance, are not the same actors involved in the illicit trafficking of works of art. This affirmation gives an idea of the complex situation to address, since several difficulties arise in the process of identifying different persons involved.

Huaqueros are the first tier in the structure of illicit trafficking of archeological or paleontological objects. These individuals often are persons of low income but with sound knowledge about the location of these objects. Encouraged by their financial restraints, huaqueros remove pieces from their place of origin and sell them to the second tier, the middle-men, for any sum of money. Middle-men use to live in communities located near natural deposits, from where these valuable items are removed. Once they pay for the items they usually reserve them up to the moment when the third tier appears in scene: the trafficker, whose main responsibility is moving the removed pieces toward urban centers, either within borders or in foreign countries. Middle-men and traffickers get these items at a very low price with the aim of selling them to the fourth and last tier: the collectors, for a much higher value. Collectors are considered the main tier in the illicit trafficking of cultural objects.

As regards illicit trafficking of works of art, the first tier in the structure is the thief, either professional or occasional. Occasional thieves force their entry in private houses and take the most different and numerous objects as possible

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<sup>18</sup> See text of the Convention: <https://ich.unesco.org/es/convenci%C3%B3n#art2>.

(jewelry and works of art), notwithstanding the economic value thereof. Generally they lack knowledge about the item being stolen; otherwise the professional thief is well informed about the piece of arte he is intending to procure. Stolen objects by occasional thieves usually are found in art galleries of very low level profile. On the other way stolen objects by professional thieves have a particular purchaser waiting for the item before the illicit act is committed. In the event of absence of interested purchasers for the stolen items, they preserve them in warehouses till the right purchaser appears. Works of art's purchasers may fall into the category of innocent purchaser or bad faith purchaser if he has the specific intention to appropriate a particular cultural item by any means. At this moment it has to be recalled and underlined the statement in the Convention UNIDROIT, Article 4, subparagraph 1, relating to the persons or entities entitled to a "fair compensation" at the time of the restitution, provided "that the possessor neither knew nor ought reasonably to have known that the object was stolen and can prove that it exercised "due diligence" when acquiring the object." In determining whether the possessor exercised due diligence, regard shall be had to "all the circumstances of the acquisition, including the character of the parties, the price paid, whether the possessor consulted any reasonably accessible register of stolen cultural objects, and any other relevant information and documentation which it could reasonably have obtained, and whether the possessor consulted accessible agencies or took any other step that a reasonable person would have taken in the circumstances."<sup>19</sup>

Illicit trafficking of cultural goods has existed since Ancient Greece. Therefore, it is not a new phenomenon but we should admit it is nowadays more complex. Notwithstanding progress achieved recently, this activity has expanded, diversified and adapting to new conditions. Endere adds that this issue can be approached from two main elements. The first one is the increase of trading over the Internet, a platform serving as "a tool that may bring together the different tiers of the illegal structure (huaqueros, middle-men, trafficker, collector) or eliminate intermediaries, and opens up national or regional market at global scale (2016, p. 5)." The other and most relevant factor involved is the direct and deepening linkage between the illicit trafficking of cultural objects and organized crime, particularly related to other illicit activities like money laundry or terrorism financial support. Additionally there are other conditions helping to understand the present severity of this sensitive issue. Firstly, due to the particular features of scarcity and originality of these items, black market has evolved to be one of the most profitable illegal businesses at worldwide level. Jan Hladik, Chief of UNESCO Office of Treaties about Protection of Cultural Heritage, declares that "as long as there is demand on cul-

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<sup>19</sup> See Art. 4, Subparagraph 1, Convention of UNIDROIT. <http://www.unidroit.org/spanish/conventions/1995culturalproperty-convention-sp.pdf>.

tural objects; the market for these items shall continue to thrive”(set of articles, p. 17). In the same way, Jason Felch, researcher and specialized consultant in antiques traffic, believes that efforts have been always focused (excessively) on the offer side, when it is the demand – particularly from higher social classes – the main engine of this illicit market (2017). Secondly, borders’ opening and advancements in transport and technology have contributed to transform this issue in a transnational one to the point of consolidating a fully global market. Lastly, the long standing political unrest in different regions, mainly Middle East and Africa, turn cultural property of these regions vulnerable to robbery and illicit trafficking. Endere shares this view and adds “war events and domestic conflicts multiply the chances of increasing for this type of traffic (2016, p. 51).”

Even though it is very difficult to exactly grasp numbers linked to illicit traffic of cultural goods due to the lack of accurate data, global sales of these objects, “whether illicit or not, were estimated in 40 thousand millions dollars in 1993” and this amount had soared to 60 thousand millions dollars in 2013 (set of articles, p. 21). In the same way, the illicit trade of cultural property has adapted to new conditions, evolving to a global multidimensional issue, so strategies to deter this activity shall adapt. Quoting Endere “neither the scope of the problem to be addressed can be assessed nor its probable evolution in the future can be forecasted” (cultural heritage dilemma, p. 53). Nevertheless, it is evident that “illicit trafficking of cultural property is an epidemic that should be eliminated” (set of articles, p. 79) and this paramount task should not be in the sole responsibility of State Nations, since the whole society should commit to it.

#### 4. *Implementation experience in Argentina*

Argentina has ratified every international Conventions related to specific regulation on pillage and illicit trafficking of cultural property, both in public and private sectors. However it should be noted that the country issued in 1913 the first legal instrument in respect of the protection of cultural property, when Law N°9080 was approved. This norm set the national ownership of ruins and archeological/paleontological deposits aiming to regulate scientific research on objects over the entire national territory. The first setback related its application relies on the requirement by which this law should be regulated by the National Executive Power – through a regulatory decree – and that provision was accomplished eight years later, in 1921, and even though after that its applicability was not reflected in practice until later.

In 1940 the National Commission of Museums, Monuments and Historical Sites was created, by virtue of Law n° 12665. This Commission should de-

clare and protect cultural property in national territory. At present this organism is designated National Commission of Historical Monuments, Sites and Goods (under the jurisdiction of the Secretariat of Cultural Property in the National Ministry of Culture), after the modification introduced by Law N° 27103/2015 and is responsible for:

- “Make a list of National Historical Monuments, in different categories, through an executive order to be signed by the National Executive Power;
- Exert the direction and management over every declared cultural property, being responsible of authorizing all proposed interventions on them;
- Exert the custody and conservation of every declared cultural property, jointly with local authorities thereof and of those national goods more than 50 years old.
- Agree with monuments’ owners on a cooperative process to assure the patriotic objectives provided in the aforementioned law;
- Maintain a public registry of every declared cultural property;
- Provide technical assistance to national, provincial or local authorities and individuals in respect of the best practice in conservation and restoration of cultural property;
- Give advice to National Congress on draft legislation over declaration of national monuments.”<sup>20</sup>

After the integral amendment of National Civil Code in 1968, many provinces began to issue its own normative related to the protection of cultural heritage. The abovementioned amendment set on its Article 2339 that archeological ruins and deposits of scientific interest belong to National or Provincial governments “according to the division of powers stated in the National Constitution”. In 1972 Argentina ratified – through Law N° 19943 – the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and in 1978 ratified – by Law N° 21386 – the 1972 Convention Concerning the Protection of the World’s Cultural and Natural Heritage. Notwithstanding that, Argentina enforced no required transformation to accomplish the duty – as regards identification, inventory and protection of cultural property – to which it had committed in the abovementioned Conventions (Endere and Rolandi, 2007).

A more practical boost, mainly from a legal perspective, to this issue can be traced to 1983, with the return to democracy. Upon amendment of the National Constitution in 1994, several significant provisions were incorporated. Article 41 states that “Nation shall issue rules containing minimum assumptions of protection, and Provinces shall issue the necessary rules to comple-

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<sup>20</sup> See <https://www.cultura.gob.ar/institucional/organismos/museos/comision-nacional-de-museos-y-de-monumentos-y-lugares-historicos/>.

ment them, providing the former may not affect the local jurisdictions;” therefore provinces started to play a more active role through the issuing of specific regulations for the protection of cultural property on their respective jurisdiction.

In recent years, Argentina has ratified most international Convention related to the protection of cultural goods.<sup>21</sup> Specifically concerning pillage and illicit trafficking of cultural property, once ratified the 1970 Convention, the country ratified the Convention of UNIDROIT – by Law N° 25257 – in 1995. Two years later it was ratified – in the Organization of American States (OAS) – the 1976 Convention of San Salvador,<sup>22</sup> by Law N° 25568. In this way, both cooperation and joint action with other Latin-American countries<sup>23</sup> were intensified. This year Argentina was the first country in the world to create a stolen works of art database (set of articles, 2013) and then was set the Section National Centre for Protection of Cultural Heritage in INTERPOL Department, with the following tasks:

- “Register every stolen cultural objects from national territory;
- Keep a register of museums, galleries and other buildings exhibiting objects under the “category of Cultural Heritage”;
- Keep statistics on thefts and findings of cultural objects;
- Issue seizure requests on notified stolen goods;
- Propose agreements with public and private entities;
- Provide information to public opinion about the accomplished tasks and make recommendations to deter this type of crime;
- Keep a record of issued notices from OIPC INTERPOL about stolen cultural goods in State Members;
- Update the INTERPOL Department web site in everything related to protection of cultural heritage; and
- Make investigative efforts on crimes linked to the cultural heritage, either public or private (control on catalogues and web pages and of art galleries, auction sites, etc.).”<sup>24</sup>

Within this encouraging context, in 2003 the country make further progress with the issue of Law N° 25743, that derogated old Law N° 9080 and define a new legal framework for the protection of cultural heritage. One of the most rel-

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<sup>21</sup> See Endere, p. 35.

<sup>22</sup> Also known as Convention on Defense of Archeological, Historical and Artistic Heritage of American Nations.

<sup>23</sup> See joint training activities at regional level: <http://www.unesco.org/new/es/culture/themes/illicit-traffic-of-cultural-property/capacity-building/latin-america-the-caribbean>.

<sup>24</sup> EL HAIBE MARCELO DANIEL., *Cultura & Desarrollo, No al tráfico Ilícito de Bienes Culturales*, cap. Interpol Argentina, p. 32, UNESCO, La Habana.2013.

evant aspects of the new legislation is the greater scope of archeological heritage – before that, this concept was solely restricted to objects linked to indigenous tribes which inhabited on national territory before America’s discovery. Further in its Article 2 added “movable or fixed assets or traces of any nature found on surface, underground or submerged in jurisdictional waters, which can provide information about the social and cultural groups inhabiting on national territory since pre-Columbian to recent historical times.” In doing so, not only several cultural goods of scientific interest were included but it overcame the existing dichotomy among pre-Hispanic and historical archeology (Endere 2013). At the same time, this norm regulates in a concrete way which are the powers and responsibilities of the National Government, Provinces and Buenos Aires Autonomous City relating Protection of Cultural Heritage. Besides the setting of provincial powers relating to ownership and jurisdiction over cultural heritage, the National Government was granted the sole responsibility of exert legal protection of archeological and paleontological heritage at national level and the custody and defence thereof at international level, by means of the enforcement of prevention measures and sanctions to counter criminal activities.

In 2003, by National Executive Power Decree N° 1166, the Argentine Committee against Illicit Trafficking of Cultural Goods was created. This Committee is comprised of the National Direction of Heritage and Museums; Direction of Visual Arts; National Institute of Anthropology and Latin American Thought; Direction of international Organizations from the Ministry of International Relations, Commerce and Religion; Argentina National Commission of Cooperation at UNESCO; Gendarmerie National Direction; National Direction of Security in Airports, Argentine Naval Guard coast; Argentine Federal Police INTERPOL Department; and General Customs Direction of the Federal Agency of Public Incomes. This Committee also has permanent consultants and other available experts as the case may be. The principal functions of this organism are the following:

- “Determine the proper proceedings to prevent and counter the illicit traffic of cultural goods;
- Promote awareness campaigns for public opinion
- Draw the “Argentina’s Red List” on cultural property at risk of being illicit trafficked.
- Propose a training programme for all the citizenship
- Communicate proceedings for prevention and countering action against illicit trafficking of cultural property;
- Propose any measure intended to deter illicit trafficking of cultural goods;
- Draw and apply a training programme on prevention and counter action against illicit traffic of these goods;

– Coordinate the participation of the different organisms forming part of this Committee by means of information exchange and interinstitutional training.”<sup>25</sup>

It is undoubtedly noticed that, since the beginning of S. XXI Argentina has made huge progress towards leveraging the protection of cultural heritage at national level (through the design of a specific legal framework), regional (by means of increasing cooperation and coordinated actions with other Latin American countries), and international (by entangling International Conventions’ regulations to national legislation). Even though national legislation is far from being an ideal one, actions taken till now “set a solid baseline to counter the illicit trafficking of cultural property.” (Endere, p. 39) Different actions taken in practice evidence a positive change indeed, resulting in a major and better coordination between national and provincial authorities and organisms.

“Since wars begin in the minds of men, it is in the minds of men that the defences of peace must be constructed,” as stated in the Preamble to the Constitution of UNESCO (United Nations Educational, Scientific and Cultural Organization), this international organization is granted the responsibility to “contribute to peace and security by promoting collaboration among nations, through education, science and culture in order to further universal respect for justice, for the rule of law and for the human rights and fundamental freedoms for the peoples of the world, without distinction of race, sex, language or religion” and in doing so “promote conservation, progress and knowledge sharing, ensuring the conservation and protection of universal heritage on books, work of arts and monuments of historical or scientific interest, and recommend involved nations the adherence to necessary international conventions intended to accomplish that purpose.”

As a consequence of the provisions contained in the Constitution Chart of UNESCO, the “Convention for the Protection of Cultural Property in the Event of Armed Conflict” was adopted at The Hague on May 14<sup>th</sup> 1954, within a purposeful Intergovernmental Conference called by the UNESCO Executive Council. High Contracting Parties to it committed by this act to safeguard and respect cultural property in the event of an armed conflict with the purpose of granting protection in the face of the increasing threat of destruction thereof as a result of developments in warfare technologies since, as it is also stated in Preamble, “damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world.”

Merit shall be credited to 1954 Convention in that all goods under the umbrella thereof are named “cultural goods”, a wider and more comprehensive

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<sup>25</sup> See ppt. Cabouli (National Direction of Cultural Goods and Sites).

term than those in use up to that moment. Not only works of art or religion sites are included, but all those goods that represent a cultural manifestation of a specific group and, by virtue of its own relevance, shall be preserved from war effects. Such protection is granted to all these goods with the utmost purpose of deter peoples de-culturization process.

At the end of S. XX UNESCO started an upgrade effort of the international legal framework for protection of cultural goods in the event of armed conflict, resulting in a call to the Diplomatic Conference on Second Protocol of The Hague Convention for the Protection of Cultural Property in the event of Armed Conflict, organized by the government of Netherlands from 15 to 26 of March of 1999 in The Hague.

Within that Diplomatic Conference, Members adopted an international treaty designated officially Second Protocol to The Hague Convention of 1954 for the Protection of Cultural Property in the Event of Armed Conflict.

The Preamble of the Second Protocol set, as one of the objectives thereof, “the need to improve the protection of cultural property in the event of armed conflict and to establish an enhanced system of protection for specifically designated cultural property.”

## 5. *In conclusion*

International community face the challenge of coordinating an effective response to similar cases occurring in the future, either related to the illicit trafficking of cultural property or the destruction of such goods, like the events in Palmira. Nevertheless, if the current scenario is analyzed there appear three elements inspiring an optimistic point of view.

First, it is worth stressing the increasing involvement of UNESCO in this issue, particularly under the direction of Irina Bokova, who has undertaken an active role in the condemnation of “cultural cleansing” acts, requesting international organizations shall adopt effective measures. In the future, actions taken by this organization shall be relevant for the report to the Security Council and the enforcement of United Heritage, though its success shall be subject to political and financial support from nation States.

The approval of United Nations Security Council (UNSC) 2199 and 2347 Resolutions constitutes the second pillar. As it has been already outlined, the first UNSC Resolution contributes to the identification of theft and illicit trafficking of cultural property as a severe threat to the international peace and security, while the second UNSC Resolution explicitly introduces the concept of “war crime” related to the pillage, destruction and smuggling of cultural property in the event of Armed Conflict. Closing this framework and connected to the second pillar abovementioned, the third pillar makes focus on enforcement



of the concept of war crime for damage or destruction of cultural property at the International Criminal Court in the case of Mali.

The third pillar implies that every State Party commit to develop in advance, in peace times, the necessary measures of protection concerning the identification and signaling of national cultural property and the proper communication and formation.

With reference to the identification and signaling of national cultural property situated within their own territory, it is recommended to perform them as they consider appropriate against the foreseeable effects of an armed conflict. Concerning the duty of respect for cultural heritage in case an armed conflict takes place, it is an obligation to refrain from action applicable to the all Parties involved as stated in Article 4.

The State Party's obligation related to the cultural property situated within its own territory consists in refraining from "any use of the property and its immediate surroundings or of the appliances in use for its protection for purposes which are likely to expose it to destruction or damage in the event of armed conflict," that is, every State Party involved shall preserve cultural property from being affected by any act of hostility directed against such property, refraining from any action causing damage or destruction to it.

The 1954 Convention on its Article 25 refers to the duty of dissemination thereof. The High Contracting Parties undertake, in time of peace as in time of armed conflict, to "disseminate the text of the present Convention and the Regulations for its execution." They also undertake, in particular, "to include the study thereof in their programmes of military and, if possible, civilian training, so that its principles are made known to the whole population, especially the armed forces and personnel engaged in the protection of cultural property."

The obligation to disseminate also appears in The 1999 Second Protocol on its Article 30: "The Parties shall disseminate this Protocol as widely as possible, both in time of peace and in time of armed conflict," adding two specific objectives to this informative duty of States; One wide and generic objective related to "endeavor by appropriate means, and in particular by educational and information programmes, to strengthen appreciation and respect for cultural property by their entire population;" and the other more specific: "Any military or civilian authorities who, in time of armed conflict, assume responsibilities with respect to the application of this Protocol, shall be fully acquainted with the text thereof." To this extent, States shall as appropriate make up to three different types of actions linked to the undertaking of dissemination: military standardization, human resources formation and training and international communication.

As regards education, Article 7 in 1954 Convention sets under "Military Measures" that Parties undertake "to introduce in time of peace into their military regulations or instructions such provisions as may ensure observance of

the present Convention, and to foster in the members of their armed forces a spirit of respect for the culture and cultural property of all peoples” and “to plan or establish in peace-time, within their armed forces, services or specialist personnel whose purpose will be to secure respect for cultural property and to co-operate with the civilian authorities responsible for safeguarding it.”

Finally, in Argentina the Ministry of Defence’s National Direction of Human Rights and International Humanitarian Law jointly with an interministerial committee created to that end, continue to take actions and reinforce the undertaken commitments, achieving a noticeable progress in the last year, not only in reference to the quantity and diversity of identified cultural property at national level, but also to the wide dissemination activities. These activities are performed in cooperation with the Federal System of Media and Public Content, Radio and TV Argentina, Audiovisual Hub, the Red Cross International Committee and UNESCO regional representative, who strengthen and reinforce the task accomplished by means of increasing the audience range, broadcasting a direct message of effective enforcement of the International Humanitarian Law and building a national culture for peace.

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## SESSION 1

### *Protecting Cultural Heritage to Maintain International Peace and Security: Key Points*



| Marina Schneider\* |

*The 1995 UNIDROIT Convention on Stolen  
or Illegally Exported Cultural Objects,  
an Indispensable Instrument to Fight Looting  
and Smuggling of Cultural Property*

SUMMARY: 1. UNIDROIT as an Organisation. – 2. The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. – 2.1. Why a new Convention? – 3. The 1995 UNIDROIT Convention. – 4. A clear influence. – 5. Status of the 1995 Convention. – 6. Awareness raising. – 7. What does the future hold?

On Saturday 27 May 1997, troops entered Kinshasa and looting started very quickly. In addition to the presidential palace, the headquarters of the Institute of National Museums of the then Zaire was visited from top to bottom, many objects were broken and many were removed after being, it seems, carefully chosen. The most beautiful pieces, many times exhibited and reproduced in publications, which had been concealed with care, have vanished. The most recent “Most Wanted Works of Art” poster from INTERPOL (June 2018) lists six recently stolen objects in Germany, the United Kingdom, Sweden, France, Egypt and Spain.

These events testify – if need be – to the continued development of theft and illegal exports. Although it is true that there are some cases of restitution which are in keeping with the ethical and legal standards upheld by UNESCO – in particular in its 1970 Convention<sup>1</sup> – it is nevertheless clear that human and financial resources available, just as the legislative or regulatory ramifications at the national level are unfortunately insufficient – in terms of implementation – in the face of recognized emergencies.

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<sup>1</sup> Convention on the Means of Prohibiting and Preventing the illicit Import, Export and Transfer of Ownership of Cultural Property, UNESCO, Paris 14 November 1970. See [http://portal.unesco.org/en/ev.php-URL\\_ID=13039&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=13039&URL_DO=DO_TOPIC&URL_SECTION=201.html).

For many years considered collateral damage of conflict, the cultural heritage has become the very target, which can be explained as the result of the changing nature of conflicts. Since 2015, the United Nations Security Council has adopted several resolutions condemning the destruction of cultural heritage, advocating the fight against illicit trafficking and the return of goods resulting from this traffic. The Council also reaffirmed the mandate of protecting cultural property and sites during peacekeeping operations. In October 2016, Ahmad al-Faqi al-Mahdi was sentenced to nine years in prison by the judges of the International Criminal Court for his part in the destruction of ten historical and religious monuments between June and July 2012 in Timbuktu, Mali, and on 17 August 2017, the same court issued its first compensation order for damages related to the conviction for war crimes. Things are changing and the armed forces are increasingly called upon to participate in the protection effort.

The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, adopted in Rome on 24 June 1995, is one of the States' intended responses to stop this trafficking. But experience shows that it is one thing to adopt an international convention and another to guarantee its application. Indeed, the current legal situation with regard to the international protection of national cultural heritages in the face of illicit traffic can be described as limited cooperation provided that it is essentially the exporting countries that participate in it.

## 1. *UNIDROIT as an Organisation*

UNIDROIT<sup>2</sup> – one of the three universal organisations specifically created to promote harmonisation and unification of private law rules<sup>3</sup> – began cooperation with UNESCO many years ago, resulting in successful international instruments in the field of international protection of cultural property such as the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict,<sup>4</sup> the 1995 Convention, and more recently the Model

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<sup>2</sup> UNIDROIT, which currently has 63 Member States, was established under the auspices of the League of Nations in 1926 and re-established in 1940 following the demise of the League. UNIDROIT has worked in various areas, such as agency and sales law, transport law, security interest in mobile equipment, international leasing and factoring contracts, international wills, stolen or illegally exported cultural objects, and principles of international commercial contracts. See UNIDROIT: An Overview, <http://www.unidroit.org/dynasite.cmf?dsmid=103284>.

<sup>3</sup> With the Hague Conference of Private International Law and the United Nations Commission on International Trade Law (UNCITRAL).

<sup>4</sup> See the text of the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted on 14 May 1954, on the UNESCO at <http://www.unesco.org/new/en/culture/themes/movable-heritage-and-museums/armed-conflict-and-heritage/text-of-theconvention-and-its-1st-protocol/#c284179>.



Provisions on State ownership of undiscovered cultural objects.<sup>5</sup> UNIDROIT also closely collaborates with the Hague Conference,<sup>6</sup> UNCITRAL<sup>7</sup> or FAO,<sup>8</sup> among others, in commercial matters.

## 2. *The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*

### 2.1. *Why a new Convention?*

Even with the best possible protection, during conflicts or not, following natural disasters or due to intentional damage, objects are stolen and/or illegally exported. When they reappear on the market, their return to the rightful owner must be secured. When it comes to international claims in respect of cultural objects, the common law offers no satisfactory solutions, and the existing convention texts either do not cover, or do so only in part, the private law aspects of cultural property protection (one of the chief obstacles to the international recognition by some States of rules in this area being the protection of the good faith buyer). UNESCO therefore asked UNIDROIT to draft a new instrument that would take its cue from the 1970 UNESCO Convention but would also incorporate 25 years of reflection on the subject of illicit trafficking (following an upsurge of this threat worldwide, States were just beginning to re-thing their positions on this subject and becoming more willing to co-operate in this field).

The UNIDROIT Convention<sup>9</sup> underpins the provisions of the 1970 UNESCO

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<sup>5</sup> See the text of the Model Provisions on State ownership of undiscovered cultural objects, as well as the explanatory guidelines (2011) on the Unidroit website at page <http://www.unidroit.org/english/documents/2012/study70a/s-70a-report-e.pdf> and on the UNESCO website at [http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/UNESCOUNIDROIT\\_Model\\_Provisions\\_en.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CLT/pdf/UNESCOUNIDROIT_Model_Provisions_en.pdf).

<sup>6</sup> The Hague Conference of Private International Law, which currently has 69 Member States, had been active since 1893 and received a statute in 1955. See More About HCCH, [http://www.hcch.net/index\\_en.php?act=text.display&tid=26](http://www.hcch.net/index_en.php?act=text.display&tid=26).

<sup>7</sup> The United Nations Commission on International Trade Law (UNCITRAL) is a subsidiary body of the U.N. General Assembly with the general mandate to further the progressive harmonisation and unification of the law of international trade. There are 60 full members of UNCITRAL, but its proceedings are open to all 192 Member States of the United Nations. For information about UNCITRAL, see [http://www.uncitral.org/uncitral/en/about\\_us.html](http://www.uncitral.org/uncitral/en/about_us.html).

<sup>8</sup> The Food and Agricultural Organization of the United Nations (FAO) was founded in 1945 and has 191 Member Nations, two associate members and one member organisation, the European Union. Its Headquarters is in Rome. FAO's mandate is to raise levels of nutrition, improve agricultural productivity, better the lives of rural populations and contribute to the growth of the world economy. For more information about FAO, see <http://www.fao.org>.

<sup>9</sup> For the text of the 1995 UNIDROIT Convention, see <http://www.unidroit.org/instruments/cultural-property/1995-convention>.

For the Explanatory Report of the Convention, see <http://www.unidroit.org/english/conventions/1995culturalproperty/1995culturalproperty-explanatoryreport-e.pdf>.

Convention, supplementing them by formulating minimal legal rules on the restitution and return of cultural objects. It guarantees the rules of private international law and international procedure which make it possible to apply the principles set down in the UNESCO Convention. The two Conventions are at once compatible and complementary.

### 3. *The 1995 UNIDROIT Convention*

As soon as negotiations got underway, two more or less homogeneous camps confronted one another. One grouped supporters of the free movement of cultural objects worldwide, while the other campaigned for national protection of the cultural heritage. The former group was aiming at limiting the future Convention's scope of application to the utmost and at safeguarding the protection afforded to the good faith buyer within their jurisdictions. Their opponents on the contrary wished to extend the principle of restitution of stolen or illegally exported cultural objects as far as possible, thereby ensuring optimal protection of the national cultural heritage on the international stage. It took six years of negotiating to bring these antagonistic views closer together and to produce a Convention that was adopted at a diplomatic Conference held in Rome on 24 June 1995 and attended by 78 States. The Convention entered into force on 1 July 1998.

When a museum has reason to believe that a cultural object has been illegally exported from its country of origin, it is prevented from buying it by the ICOM Code of Ethics.<sup>10</sup> If the object in question is bought on the international art market by a person or institution acting in good faith, the country of origin presently has no option but to buy it back. While some countries can afford to do so, many others do not have so much money to spend on buying back rare objects belonging to their national cultural heritage. Now, however, with the advent of the UNIDROIT Convention, a dispossessed person or institution or State of origin can claim the object in accordance with procedures that differ depending on whether the object was stolen or illegally exported.

The real purpose of the Convention is not to enable or trigger a certain number of restitutions or returns (of which perforce there will be relatively few) through the courts or by private agreement, but to reduce illicit trafficking by gradually, but profoundly, changing the conduct of the actors in the art market and of all buyers.

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<sup>10</sup> ICOM Code of Ethics, 2006. Art. 7.2 (International Legislation) provides that "Museum policy should acknowledge the following international legislation that is taken as a standard in interpreting the ICOM Code of Ethics for Museums" among which the 1995 *UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects*. See <https://icom.museum/wp-content/uploads/2018/07/ICOM-code-En-web.pdf>.

If a cultural object has been stolen, it must be returned – restitution is an absolute duty unless the limitation period has expired. The only question that arises is whether compensation must be paid.

Probably the most important provision in the entire Convention is its Article 3(1),<sup>11</sup> which enshrines the principle that the possessor of a cultural object that has been stolen must return it, whatever the circumstances. Rather than a moral judgment or choice between the two systems, which would imply penalizing either the original owner or the good faith buyer since they cannot both be given equal protection, a pragmatic solution was worked out: which rule was most likely to curb illicit trafficking? The answer was to compel the buyer, on pains of having to return the object, to check that the object was being lawfully traded. This principle, coupled with the possibility of compensation for the buyer who can prove that he acted “with due diligence” (Article 4(1)), constitutes one of the most important legal rules in the fight against illicit trafficking in cultural objects. Its effect on the art market, which has tended to be reluctant to reveal the origin of cultural objects and where buyers are not unduly curious, will be immediate.

Indeed, it is of prime importance to strike at one of the key links in the chain of international traffickers in cultural objects by taking a fresh look at the problem of how to protect the good faith buyer in the light of the principles governing the protection of the cultural heritage. This Convention will, when it will gain wide acceptance, make it possible to shift the responsibility onto the only person likely to be caught: the final purchaser, who so far has been able to hide behind the diversity and incoherence of existing legal systems in order to appropriate stolen objects or objects the illegal origin of which he is bound to suspect. The underlying principle holds since the sums involved and the special nature of the objects in question can leave no doubt that the so-called good faith buyer must have experience. Moreover, to be effective any method adopted must recognise the principle that supply is inexorably linked to demand and that as in the case of drugs, lasting results can only be obtained by cracking down on illicit trafficking.

The exporting countries’ argument that a dispossessed owner is not always in a financial position to pay compensation to the good faith buyer and may therefore not be able to get the object back anyway, may be countered by recalling that the Convention refers to “fair” compensation, not to reimbursement of the sum paid, and that the criteria of “due diligence” are such (Article 4(4)) that it will always be more difficult for owners to prove that they acted with due diligence and are therefore entitled to compensation.

The return of an object after it has been illegally exported is, for its part, subject to one condition: it must be shown significantly to impair the preservation

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<sup>11</sup> Art. 3(1) – The possessor of a cultural object which has been stolen shall return it.

of scientific information or that the cultural object in question is “of significant cultural importance”. Requests for its return may only be made by the State whence the object was illegally exported – the Convention considers an object that was removed under a temporary export permit for an exhibition and not returned in accordance with the terms thereof as having been illegally exported.

The 1970 Convention was the first serious attempt at international level to address this problem, but the duty on States Parties to ensure the return of illegally exported cultural objects to their countries of origin was severely restricted by its Article 7. The UNIDROIT Convention is going go much further in securing the return of cultural objects to their countries of origin in many more cases.

Since it proved well-nigh impossible to agree on export bans that would be both recognised and applied, the drafters of the Convention ultimately opted for a series of interests that all States agreed should be protected (Article 5(3)). The Convention does not recognise national export bans issued on political or economic grounds, and requires evidence of a significant impairment of chiefly cultural, but also scientific or historical interests. It should be recalled that the list provided is not exhaustive, since each Contracting State is free to apply more favourable rules to the return of an illegally exported cultural object than those provided by the Convention (cf. Article 9) and indeed to take into account other interests than those listed in Article 5.

Where stolen or illegally exported cultural objects are transmitted by way of inheritance or succession, the beneficiary has the same duties as a good faith possessor who acquired the object by transfer. This is important, in particular in museum practice, where it is quite common for private persons to make donations or bequests to museums or similar institutions of objects the origin of which may be doubtful.

Another type of cultural object covered by the UNIDROIT Convention that must be mentioned is the products of archaeological excavations, which are only covered by the 1970 Convention to the extent of the interpretation given by some States to its Article 9. The UNIDROIT Convention for its part contemplates the possibility of an action being brought on the basis of its provisions in respect either of theft or of illegal export: an object is considered stolen “when consistent with the law of the State where the excavation took place” (Article 3(2))<sup>12</sup> or when subparagraphs (a), (b) or (c) of Article 5(3)

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<sup>12</sup>This national legislation must be in place before the theft or unlawful export and must have the effect claimed when the object is claimed abroad. This means that the requesting State must have ownership recognised by the courts of the requested State. Recent cases have shown that this is not always the case, in particular for archaeological objects. This is why UNESCO and UNIDROIT have elaborated the *UNESCO-UNIDROIT Model Provisions on State Ownership of Undiscovered Cultural Objects* which are a non binding instrument intended to assist domestic legislative bodies in the establishment of a legislative framework for heritage protection, to adopt effective legislation for the establishment and recognition of the State’s ownership of undiscovered cultural objects with

apply, which refer to the objects from archaeological sites. The type of proceeding chosen will depend on how difficult it is to adduce proof (is the object a product of excavation or has it been illegally exported?).

Other rules laid down in the Convention show how the compromise which it embodies accommodates different legitimate concerns. On the one hand, there is the matter of legal security for market operators, and for public and private collections. This need is met by requiring payment of compensation where due and by the clarity of the non-retroactivity clause (Article 10). The drafters of the Convention opted for a solution resting on the general principle (Article 10(1) and (2)) which states that the Convention will apply solely to cultural objects stolen after the Convention entered into force in respect of the State where the request was brought, as well as to objects illegally exported after the entry into force of the Convention in respect of the requesting State and of the State where the request was brought. In addition, paragraph 3 specifies that the Convention “does not in any way legitimise any illegal transaction of whatever which has taken place before the entry into force of this Convention» and does not “limit any right of a State or other person to make a claim under remedies available outside the framework” of the Convention.

The need for legal security is likewise met by the provision of a relatively short limitation period. The time limitation is three years from the time when the claimant knew the location of the cultural object and the identity of its possessor (and this applies also to public and suchlike collections that may have no limitation period attached).

On the other hand, the text takes into account the material and moral interests of “exporting” States and, more generally, those of public collections (defined by Article 3(7) for the purposes of the Convention), religious and cultural institutions, and the protection of the archaeological heritage and historic monuments; it does so by creating a group of cultural objects subject to a very long time limitation (75 years) and, in some cases, no time limitation at all. That same special regime extends to sacred objects or objects of significant cultural importance for indigenous communities. These provisions translate a concern for a more balanced dialogue of cultures.

Finally, the “reasonable efforts” referred to in Article 4(2) to ensure that it is the person(s) responsible for the illegal trafficking who pays compensation rather than the owners or the requesting States also evidence a concern for the interests of the exporting States.

The text of the UNIDROIT Convention is the outcome of a compromise, and as with all compromises, it does not completely satisfy all of everyone’s

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a view, *inter alia*, to facilitating restitution in case of unlawful removal. <https://www.unidroit.org/instruments/cultural-property/model-provisions>.

needs. However, a closer look at the Convention shows that none of the parties concerned by the Convention suffers unfairly. The Convention is evidence of the very real efforts made by legal scholars to marry justice to realism and to try, to the extent possible, to establish a foundation to build on in the years to come. Experience has shown, however, that it is one thing to adopt an international Convention, and quite another to guarantee its effective application. Now, therefore, is the time to address the legitimate concerns expressed by some – yet it would be a great pity if the effort made were not understood as such by those interested in the cultural heritage or otherwise involved in the preservation and protection of cultural objects.

#### 4. *A clear influence*

Beyond the mandatory implementation of States Parties to the Convention of 1995, the principles expressed by the 1995 UNIDROIT Convention, especially the notion of due diligence, have been adopted or recognized by the jurisprudence and incorporated into national legislation of States that are not Parties to the Convention, as is the case in Switzerland (Articles 16 and 24 of the Federal Act on the International Transfer of Cultural Property of 2003, or CPTA), the Netherlands (new Article 3:87 of the Dutch Civil Code) and in Germany (Act on the Protection of Cultural Property, 2016). These first two States signed the Convention but did not subsequently ratify it mainly due to resistance from the art market. This has been called ‘the Convention of 1970 plus option’.

At the European Union level, the Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 relating to the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (UE) No. 1024/2012, incorporate, twenty years later, several features from the UNIDROIT Convention. Among the most significant features, the burden of proof regarding the exercise of due diligence to the possessor, as well as the criteria for due diligence, are taken almost word for word from Article 10 of the UNIDROIT Convention. The 28 Member States of the European Union enacted domestic legislation in compliance with the Directive. This should remove one of the principal arguments raised by critics of the UNIDROIT Convention.<sup>13</sup> The proposal of a *Regulation from the European Parliament and the Council on Import of Cultural Goods* currently discussed in Brussels in the framework of the European Agenda on Security of 2015

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<sup>13</sup> S. DELEPIERRE-M. SCHNEIDER, *Ratification and Implementation of International Conventions to Fight Illicit Trafficking of Cultural Property*, in F. DESMARAIS (ed.), *Countering Illicit Traffic in Cultural Goods: The Global Challenge of Protecting the World's Heritage*, ICOM International Observatory on Illicit Traffic in Cultural Goods, Paris, 2015, pp. 129-140.

and the Action Plan 2016 is also strongly inspired by the 1995 UNIDROIT Convention and in particular its definition.<sup>14</sup>

## 5. *Status of the 1995 Convention*

As of July 2018, the Convention has 44 Contracting States.<sup>15</sup> At the time of its adoption, the Convention was subject to strong opposition from a part of the art market, reluctant to accept what it called a “market intrusion” because of the obligation for the future purchaser to exercise due diligence at the risk of losing the good in case of wrongful origin without being able to claim compensation. This explains why some market countries such as Switzerland, France or the Netherlands, which had signed the Convention, thus showing their commitment, were then unable to ratify it because of the opposition of the art market.

In recent years, some States have seen their heritage become the target of damage or destruction in conflicts and have realized how difficult it is to obtain restitution of property found in another country because of differences in legislation, particularly on the issue of acquisition of good faith. The 1995 UNIDROIT Convention made sense for them, and despite hesitations in the past, often based on a misunderstanding of the Convention, they started the accession process, understanding that procedures had to be put in place for the objects, which might leave the country in the future. This was notably the case of the Syrian Arab Republic, which acceded to the Convention in 2018, and Iraq, which has seized Parliament.

Today the question of the restitution and return of cultural property – especially those who left the continent at the time of colonization – also arises with force in Africa. Long worn by the countries of the continent, it was relaunched by French President Macron during his visit to Ouagadougou in November 2017. However, if the UNIDROIT Convention does not have retroactive application, becoming a Party shows the commitment of African countries to no longer depend on the goodwill of the recipient countries to obtain the restitution of cultural property that might leave their country in the future.

To enhance the implementation of the UNIDROIT Convention, an informal *Ratification Task Force* was established by UNIDROIT and the Missions of Cyprus and Italy to the UN on 28 February 2017 at the UN Headquarters in New York during a special event on “Promoting and Strengthening the International Legal Framework for The Protection of Cultural Heritage – The 1995 Convention.” This *Task Force* is open to all States wishing to participate and

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<sup>14</sup> See Commission Impact Assessment 2017, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52017SC0262>.

<sup>15</sup> <https://www.unidroit.org/status-cp>.

aims at the promotion of the wider ratification of the 1995 UNIDROIT Convention. The *Task Force* is coordinated by UNIDROIT, assisted by the 1995 UNIDROIT Convention Academic Project (UCAP),<sup>16</sup> and should be convening on an annual basis in New York. Its aim is to provide a platform for the exchange of views on issues such as the state of ratifications of the 1995 UNIDROIT Convention, for the promotion of activities aimed at awareness, information and best practices sharing, and for training and education to assist on the accession, ratification and implementation of the 1995 UNIDROIT Convention.

## 6. *Awareness raising*

For a good understanding of the text and effective implementation, UNIDROIT has been working for many years with its partners in the fight against the illicit trafficking of cultural property, in particular UNESCO, INTERPOL, WCO, ICCROM, the Council of Europe, the European Union or ICOM, to train the various actors on all continents.

The allocation of cultural heritage protection in the mandate of a MINUSMA peace operation provided for by UN Security Council Resolution 2100/2013 (extended by Resolution 2364/2017 and recalled in Resolution 2347/2017) has brought a new partner in the fight against the illicit trafficking of cultural property. Support for the preservation of heritage and sites can prevent their destruction and damage and keep property in the territory. Another force involved in preservation is the “Unite4Heritage Task Force” created by Italy in 2016 with UNESCO in accordance with an agreement to establish an operational force of cultural heritage experts within the framework of the World Coalition UNESCO “United4Heritage” thanks to which UNESCO will be able to ask the Italian Government to request experts from the Task Force to deploy them on cultural heritage assets affected by crises. This is the direct implementation of the strategy adopted by UNESCO Member States to strengthen UNESCO’s action for the protection of cultural heritage and the promotion of cultural and cultural diversity and pluralism. Member States have developed this strategy in response to systematic, large-scale destruction and looting of cultural sites. It also responds to attacks on cultural diversity and cultural and religious minorities that undermine their human rights and security. Strengthening UNESCO’s capacity to respond to current challenges relies on international legal tools and broadens the scope of their application. Training, including on legal protection instruments, has thus been extended to the military.

Tools have also evolved and with a view to involve scholars and college students to raise awareness on instruments aiming at protecting cultural herit-

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<sup>16</sup> [www.1995unidroitcap.org](http://www.1995unidroitcap.org).



age from illicit conduct, UNIDROIT recently launched the 1995 UNIDROIT Convention Academic Project (“Academic Project”) which involves, in first instance, universities holding courses in the field of cultural heritage law or art law, which are encouraged to hold courses in partnership with UNIDROIT to create an academic network. The Academic Project 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 their synergy with other related instruments. Its main focus is to assist scholars, students, practicing lawyers, judges, other governments officials as well as art market players (such as museums, foundations, auction houses, dealers and collectors) by providing information about the 1995 UNIDROIT Convention, its undertones and fields of application. Universities would then use such information as a basis for academic activities (analysis, studies, research, etc.). Periodic calls for papers will stimulate participation and research on generic topics falling within the scope of the 1995 UNIDROIT Convention. UNIDROIT will also be able to assess the legal impact of the UNIDROIT Convention in States parties to the Convention and States not yet party. National focal points will be formed to assist in matters relating to the national legal assessment of the Convention. Finally, recent studies and new case law could feed the discussions at the newly established *Ratification Task Force* on the 1995 UNIDROIT Convention which will meet annually in New York.

## 7. *What does the future hold?*

While conventions are accepted as the foundation for concrete and productive international cooperation on the part of States directly, a number of experts have raised questions on their future sustainability. Some consider that international law combating the illicit trafficking of cultural property as it stands needs to evolve and that the framework of international agreements requires the reinforcement of a new legally binding multilateral instrument. The idea of a single text that would combine the Conventions of 1970 and 1995, overcoming the problematic wording and multiple interpretations of the former, while bringing it up to date, seems compelling for some. The question is to implement well the existing tools rather to draft a new one and the reality remains that there are 137 States Parties to the Convention of 1970, and 44 to the Convention of 1995, with a further handful of States at various stages of considering ratification of these treaties. It is essential to encourage them, and to universalize these conventions to create the common foundation that has proved so difficult to achieve.<sup>17</sup>

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<sup>17</sup> *Ibid.* footnote 13.

To conclude, I wish to recall that “a convention which is looking for legally binding solutions should not start from the maximum expectations of those who will gain from it, but from an acceptable minimum, thanks to the understanding and to political pressure, by the presumed losers.”<sup>18</sup>

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<sup>18</sup> Professor Detlev Christian Dicke, University of Freiburg (Switzerland), thirteenth Colloquy on European law on International legal protection of cultural property, Delphi, 20-22 September 1983.