

International Conference

THE NICOSIA CONVENTION: A CRIMINAL JUSTICE RESPONSE TO OFFENCES RELATING TO CULTURAL PROPERTY

THE NICOSIA CONVENTION IN 10 QUESTIONS AND ANSWERS

The Council of Europe Convention
on Offences Relating to Cultural Property

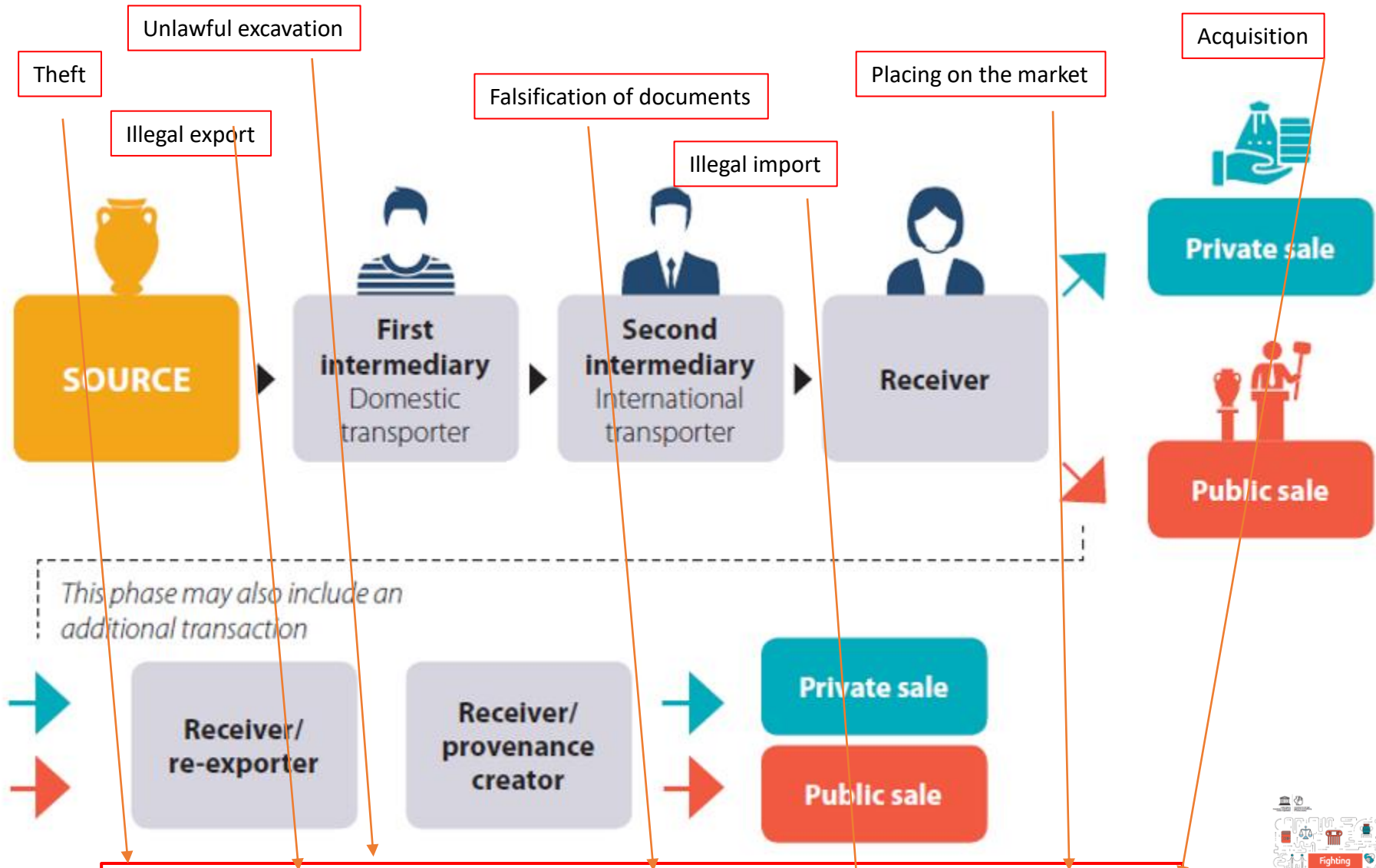


Session IV

INTERNATIONAL CO-
OPERATION IN
CULTURAL AND
CRIMINAL MATTERS

—

the 1995 UNIDROIT
Convention



“effective, proportionate and dissuasive sanctions, which take into account the seriousness of the offence”

THE ART MARKET legal legal and ethical



- line of legality - line of legality - line of legality - line of legality - line of legality - line of legality - line of legality - line of legality - line of legality - line of legality - line

THE BLACK MARKET

DAMAGE AND DESTRUCTION

INTENTIONAL



NATURAL



THEFT AND LOOTING



MONEY LAUNDERING

ILLICIT TRAFFIC

TERRORISM-FINANCING

UNESCO CULTURE CONVENTIONS



European Convention of 20 April 1959 on Mutual assistance in Criminal Matters – applied several times in order to return as objects of criminal offences, cultural objects stolen or illegally excavated in the requesting foreign country. Under this Convention, Parties agree to afford each other the widest measure of mutual assistance with a view to gathering evidence, hearing witnesses, experts and prosecuted persons, etc.

2017 Council of Europe Convention on Offences Relating to Cultural Property – the criminal law provisions cover theft and other forms of unlawful appropriation / unlawful excavation and removal / illegal exportation and illegal importation / acquisition / placing on the market/falsification of documents / destruction and damage



The protection of cultural heritage is only possible if, in addition to national provisions of private law and administrative law in this field, there are rules of public international law and private international law in this field.

The **effectiveness of the protection** of cultural property at both the national and international levels **will require a balanced and harmonious interaction of all these rules**. Developments in recent years show that there will be an **increasing interdependence of the various instruments regulating the international transfer of cultural property**.

SYNERGIES

HOLISTIC VISION

**Co-operation between
organisations**



**Compatibility and complementarity
between instruments / tools**



REINFORCE IMPLEMENTATION



UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects

Recommendation

Unidroit Convention on stolen or illegally exported cultural property

REC 1372 26/05/1998 Download PDF



Other author: Parliamentary Assembly
Session: 1998 - Third part-session

REPORT
RECOMMENDATION N° 1372
REPLY TO RECOMMENDATION

Reply to Recommendation

Reply to Recommendation 1372 (1998) - Unidroit Convention on stolen or illegally exported cultural objects

Doc. 8250

28/10/1998

Download



AUTHOR
Committee of Ministers

Recommendation 1651 (2004)
Ending the plundering of African cultural objects

Deliberate destruction and illegal trafficking of cultural heritage

Doc. 14783

13/12/2018

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AUTHOR
Committee of Ministers

mittee of Ministers
- First part-session

ON N° 1372

MMENDATION

Doc. 14783 - 13 December 2018

Reply to Recommendation 2139 (2018)
Committee of Ministers

Other author: Committee of Ministers
Session: 2019 - First part-session

MOTION FOR A RESOLUTION

REPORT

RECOMMENDATION N° 2139

RESOLUTION N° 2234

REPLY TO RECOMMENDATION

UNIDROIT, with great skill and with Council of Europe assistance, drafted a convention with global coverage. The Committee of Ministers is therefore ready to do all it can to give political encouragement to the UNIDROIT Convention and to the systematic implementation of all its provisions.

6. The Committee of Ministers emphasises how **essential** it is **to work in close co-operation with the member States** to be in a position to deal more effectively with the transnational aspects of illegal trafficking of cultural heritage. In this context, it is also aware of the **need to discuss matters and co-operate with other relevant international partners** (UNESCO, UNIDROIT, European Union, INTERPOL), in order to take action along the lines recommended by the Assembly and hence to help counter the deliberate destruction and illegal trafficking of cultural heritage.

UNIDROIT's instruments on cultural property ...

- Strengthen the international legal framework
- Significantly influence acquirers' attitudes and professional ethics



Preamble of the 1995 UNIDROIT Convention

DETERMINED to contribute effectively to the fight against illicit trade in cultural objects by taking the important step of **establishing common, minimal legal rules for the restitution and return** of cultural objects between Contracting States, with the objective of improving the preservation and protection of the cultural heritage in the interest of all,

....

➔ **CONSCIOUS that this Convention will not by itself provide a solution to the problems raised by illicit trade**, but that it **initiates a process that will enhance international cultural co-operation** and maintain a proper role for legal trading and inter-State agreements for cultural exchanges,

➔ **ACKNOWLEDGING that implementation of this Convention should be accompanied by other effective measures** for protecting cultural objects, such as the **development and use of registers**, the **physical protection of archaeological sites** and **technical co-operation**,

Article 20 Nicosia Convention

States Parties should consider adopting legislative and other necessary (preventive) measures in view of achieving the purposes of the Convention.

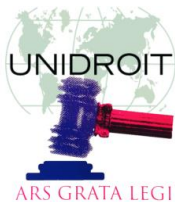
RECOGNISING the work of various bodies to protect cultural property, particularly the 1970 UNESCO Convention on illicit traffic and the **development of codes of conduct in the private sector**,

Strengthening the international legal framework



Non-criminal measures

States Parties are recommended to address non-criminal measures for **preventive purposes**, in order to reduce the likelihood of offences contained within the Convention from occurring, since the use of criminal sanctions, in line with the principle of *ultima ratio*, is understood as a means of last resort.



The aim of the 1995 UNIDROIT Convention is not to increase the number of claims for restitution or return – admittedly to facilitate them where appropriate – but to **change the behaviour of market players** to avoid claims

Strengthening the international legal framework

Restitution of stolen cultural objects

Article 3(1)

The possessor of a **cultural object** which has been **stolen** shall **return** it.

Article 4(1)

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.

Article 4(4)

Criteria to determine “due diligence”

Return of illegally exported cultural objects

Article 5(1)

Removal of the object ... **contrary to the law of the requesting State** regulating the export of cultural objects, and

Article 5(3)

The export significantly impairs a scientific or historic interest, [...] or the **object is of significant interest for the requesting State**

Article 6(1-3)

Compensation to the possessor who did not know the object was illegally exported / **physical return**

The 1995 UNIDROIT
Convention
on Stolen or Illegally
Exported
Cultural Objects



UNIFORM LAW - a transnational solution and no longer simply the determination of a national law competent to regulate disputes that transcend borders



Article 19 – International co-operation in criminal matters

1. The **Parties shall co-operate** with each other, in accordance with the provisions of this Convention and in pursuance of relevant applicable international and regional instruments and arrangements agreed **on the basis of uniform legislation or reciprocity and their domestic law**, to the widest extent possible, for the purpose of investigations or proceedings concerning the criminal offences referred to in this Convention, including seizure and confiscation.

Chapter III

**Illegal
export**

Chapter II

Theft

Jurisdiction

Art. 8

Art. 8(3)

**Provisional, including
protective, measures**



Applicable law

Uniform rules !!

Art. 2

Definition

“Cultural object”

**Reasonable
compensation**

Art. 4(1)
Art. 6(1)

Due Diligence

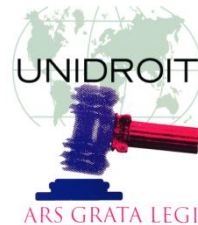
Art. 4(4)
Art. 6(2)

**Time limitation
of actions**

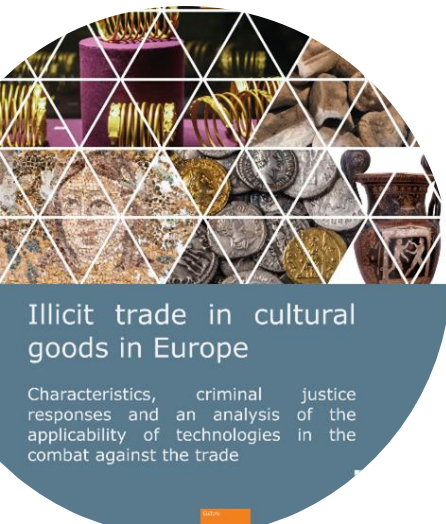
Art. 3(3)-(5), (8)
Art. 5(5)

Strengthening the international legal framework

IMPLEMENTATION AT THE NATIONAL LEVEL



Direct application (no need to have a
transposition law)



“The **1995 UNIDROIT Convention** The main obstacle to ratification seems to be its “all or nothing” approach, meaning the requirement to implement all of its provisions with **no possibility for reservations** (Love Levine 2011). Ironically, this approach is one of the main strengths of the Convention which ensures the creation of a uniform legal framework across States Parties. ”

NICOSIA Convention

Article 30 – Reservations

- 1 Any State may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, declare that it avails itself of one or more of the reservations provided for in **Articles 4, 5, 10 , 11 and 12, paragraph 3**, of this Convention. No other reservation may be made in respect of any provision of this Convention.

- ❑ Importance of the **reservations and declarations** to the Convention

Let us “give teeth” to the Nicosia Convention with “effective, proportionate and dissuasive sanctions, which take into account the seriousness of the offence”

- ❑ Importance of the **follow up mechanism** – Committee of the Parties (monitoring of the implementation of this Convention)

Significantly influencing acquirers'
attitudes and professional ethics

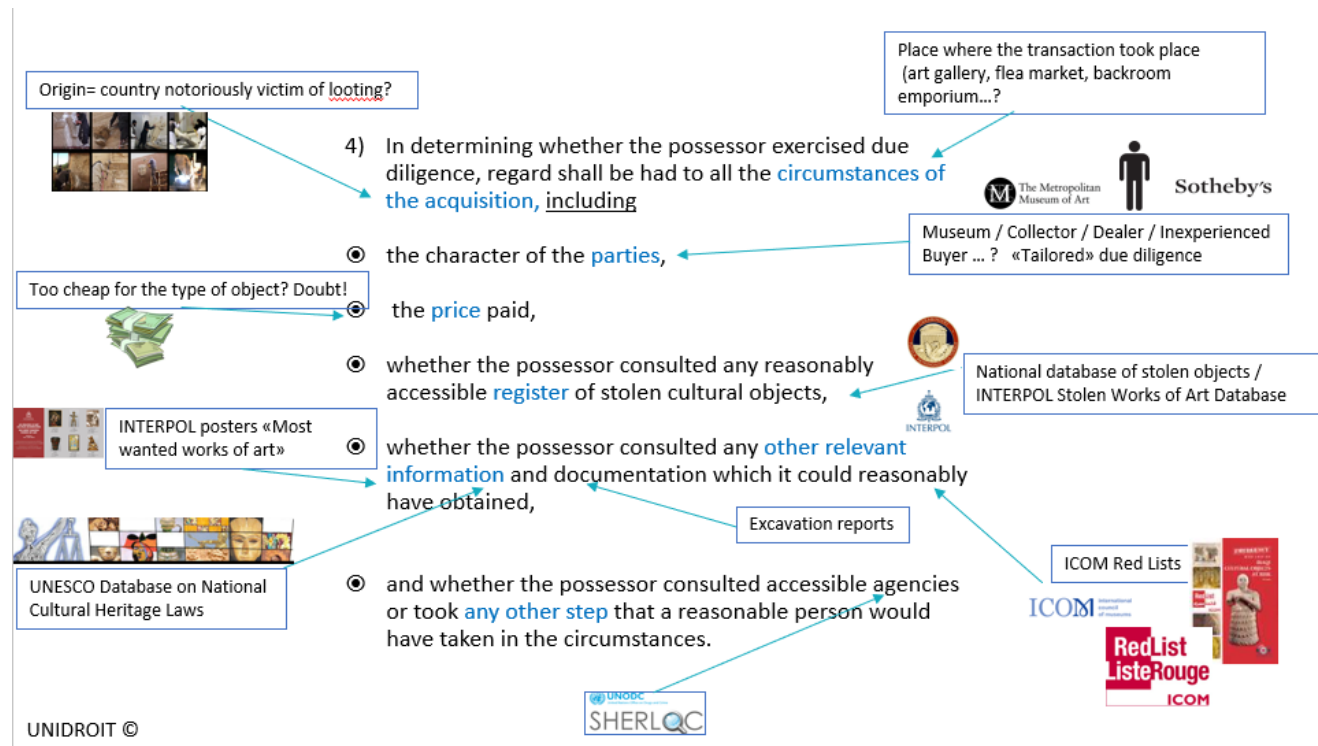
Due Diligence



Significantly influencing acquirers attitudes and professional ethics

DUE DILIGENCE

Criteria - Article 4(4)



The 1995 Convention **complements the due diligence rules** drafted by museums and dealers – rendering them binding - and promotes trust in the international trade. It **formalises** what has long been taken for granted by serious collectors, museum professionals and art dealers: **the need to verify the provenance of a cultural object offered for sale.**

Nicosia Convention

❑ Chapter II – Substantive criminal law

Article 7 – Acquisition

Each Party shall consider taking the necessary measures to ensure that the conduct described in paragraph 1 of the present article constitutes a criminal offence also in the case of a person who **should have known** of the cultural property's unlawful **provenance if he or she had exercised due care and attention in acquiring** the cultural property.

❑ Chapter IV – Preventive measures and other administrative measures

Article 20 – Measures at domestic level

- a. establish or develop inventories or databases of its cultural property
- c. **introduce due diligence provisions** for art and antiquity dealers, auction houses and others involved in the trade in cultural property

Due Diligence



“State Parties when considering measures under **Article 7 paragraph 2** [acquisition] could take inspiration from Article 4, paragraph 4 of the 1995 UNIDROIT Convention and Article 10, paragraph 2 of EU Directive 2014/60”.

THEFT

UNIDROIT
Article 4(4)

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,
- whether the possessor consulted 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.

ILLEGAL EXPORT

Directive 2014/60
Article 10.2

In determining whether the possessor exercised **due care and attention**, consideration shall be given to all the **circumstances of the acquisition**, in particular

- the documentation on the object’s provenance, the authorisations for removal required under the law of the requesting Member State,
- the character of the **parties**,
- the **price** paid,
- whether the possessor consulted any accessible **register** of stolen cultural objects and **any relevant information** which he could reasonably have obtained, or took **any other step** which a reasonable person would have taken in the circumstances.



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Stepping up the fight against illicit trafficking in cultural property

In the Declaration, governments also commit to intensify the fight against illicit trafficking in cultural goods with increased international cooperation.



14. We reiterate our call for the protection of cultural heritage, tangible and intangible, as well as cultural expressions, notably in times of crisis, [...], and condemn actions that target culture in the context of armed conflicts and the use of cultural properties or its surroundings for military purposes, and we support efforts for the effective implementation of norms and standards of international law in this field, in particular the UNESCO 1954 Convention and its two Protocols (1954 and 1999), the **UNESCO 1970** [...], as well as the **UNIDROIT 1995 Convention** [...] by **bringing together all concerned international institutions and organisations and the existing technical and financial mechanisms related to the UNESCO Conventions in the field of culture**, with a view to supporting countries in their protection efforts, international solidarity and national recovery strategies;

16. We mark our commitment to fight against the illicit trafficking of cultural property by ensuring the effective implementation of the UNESCO 1970 Convention and its associated mechanisms, and by **strengthening international cooperation with all relevant partners**, including INTERPOL, the World Customs Organization (WCO), UNIDROIT, the International Council of Museums (ICOM) and the United Nations Office on Drugs and Crime (UNODC), as well as with the art market; and we request UNESCO to scale up its response on a global scale, by (i) strengthening advocacy and action concerning the impact of illicit trafficking on the memory, identity and future of peoples; (ii) **encouraging the introduction of penal or administrative sanctions in national legislations**; (iii) promoting the development of national and local capacities in all countries; (iv) fostering increased and effective cooperation with art market actors, notably with regard to reinforcing the codification of the certificate of origin of cultural property and preventing the acquisition of unprovenanced objects, for museums and private collectors; and (v) ensuring the engagement, mobilisation and coordination of all stakeholders, as well as the public at large, including through digital technologies and online platforms, taking into account the increase in the online trade of cultural property, and supporting awareness-raising



Four priority areas of India's CWG

1. Protection and Restitution of Cultural Property
2. Harnessing Living Heritage for a Sustainable Future
3. Promotion of Cultural and Creative Industries, and Creative Economy
4. Leveraging Digital Technologies for Protection and Promotion of Culture





Recommendation: *To combat the cross-border crime of illicit trade in cultural goods, genuine international cooperation is of paramount importance. An essential element of it—for all countries—is the ratification and effective national implementation of the 1970 UNESCO Convention, the 1995 UNIDROIT Convention and, especially relevant in the context of criminal justice responses, the Nicosia Convention.*



What Member States can do

Ratify and transpose in the national law the **UNESCO Convention**, the **UNIDROIT Convention** and the **Nicosia Convention** to reduce legal loopholes

**Council Conclusions on the fight against trafficking
in cultural goods,**
approved by the Council (Justice and Home Affairs)
at its 3995th meeting held on **8 June 2023**

ACKNOWLEDGING that trafficking in cultural goods is a lucrative business for organised crime and has a devastating and irreversible impact on cultural heritage within and beyond the EU, and therefore requires a tailor-made response at EU level,

STRESSING the need to organise our response around an improved crime prevention and detection by market participants and cultural heritage institutions, stronger law enforcement and judicial capabilities, better international cooperation and increased support of other key stakeholders, as proposed in the Action Plan by the Commission,

CALLS ON THE MEMBER STATES TO

27. Consider signing, ratifying and implementing the Council of Europe Nicosia Convention on “Offenses relating to Cultural Property”, or implementing its principles where this is considered more appropriate;
28. Consider signing and ratifying the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects;

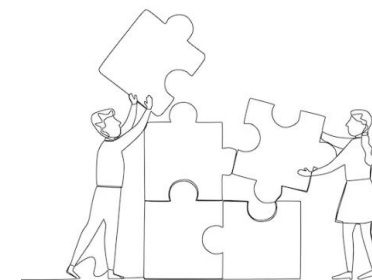


State or International Organisation	Signature	Ratification	Entry into Force	Notes	R.
Members of Council of Europe					
Cyprus	19/05/2017	07/12/2017	01/04/2022		
Greece	19/05/2017	02/03/2021	01/04/2022		R.
Hungary	05/10/2021	02/12/2021	01/04/2022		R.
Italy	24/10/2017	01/04/2022	01/07/2022		
Latvia	22/02/2018	30/04/2021	01/04/2022		R.
Non-Members of Council of Europe					
Mexico	19/05/2017	06/09/2018	01/04/2022		

All States are also States Parties to the 1970 and 1995 Conventions

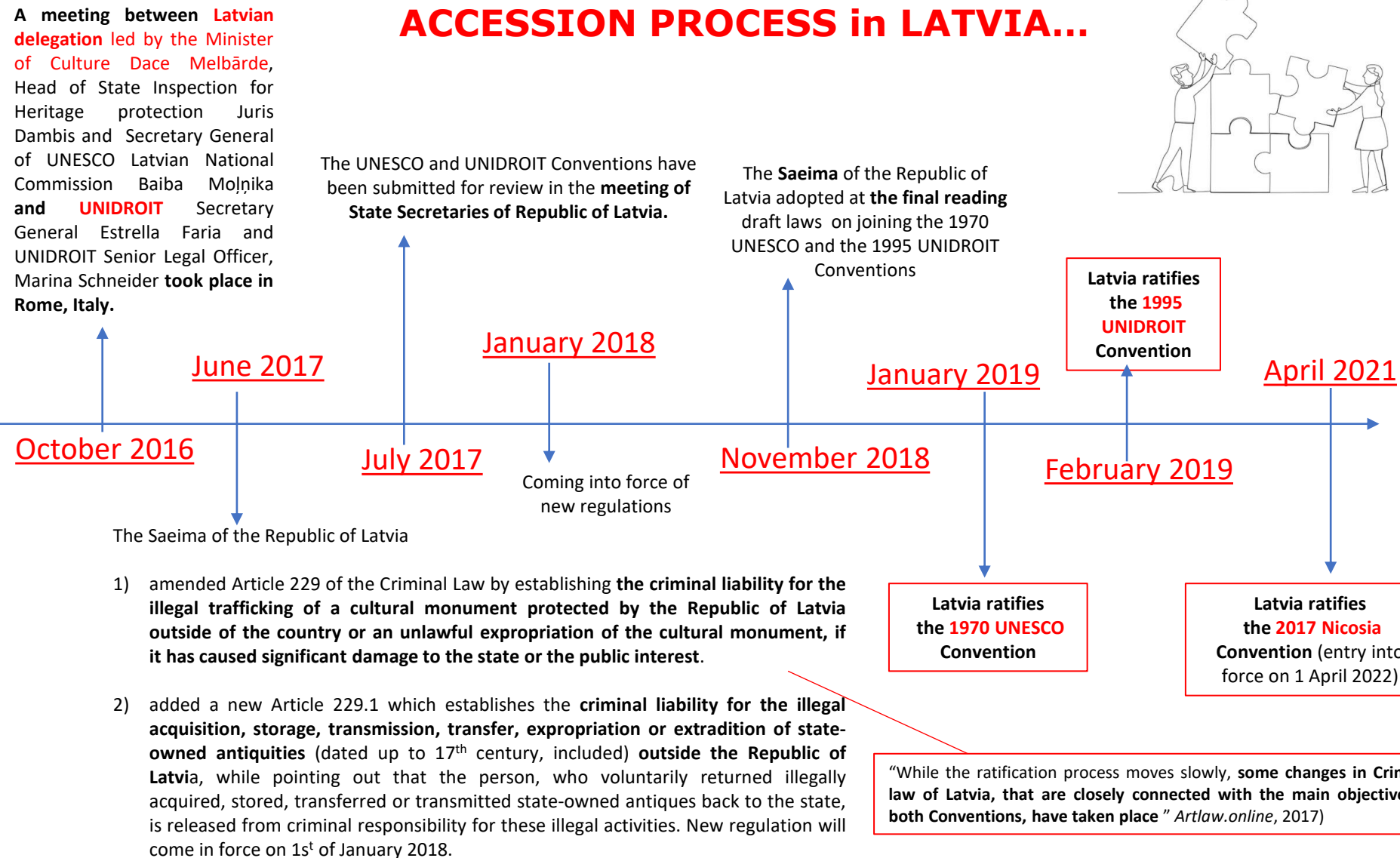


ACCESSION PROCESS in LATVIA...



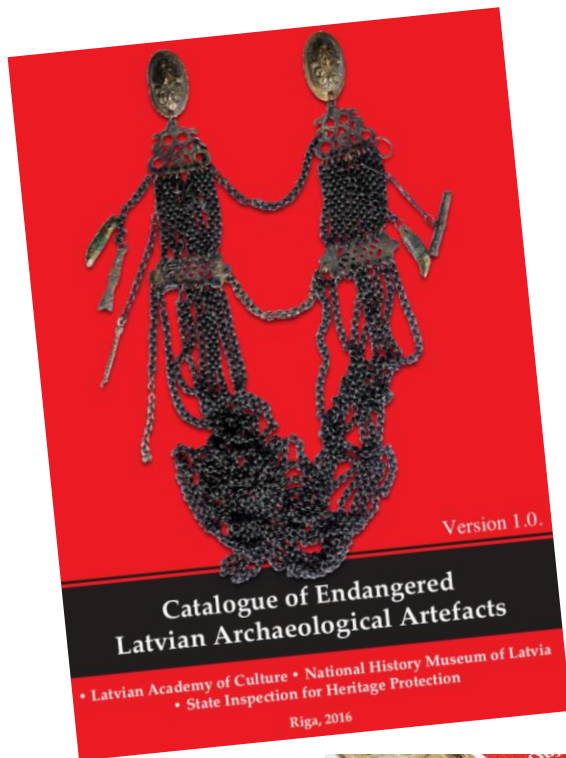
The UNESCO and UNIDROIT Conventions have been submitted for review in the **meeting of State Secretaries of Republic of Latvia.**

The **Saeima** of the Republic of Latvia adopted at the **final reading** draft laws on joining the 1970 UNESCO and the 1995 UNIDROIT Conventions



Criteria for due diligence – Article 4(4)

- Do not illegally dig in archaeological sites, within their protection zones, or anywhere else!
- Report the finding of any archaeological artefact or similar object to the State Inspection for Heritage Protection!
- Do not sell or resell archaeological artefacts*!
- Do not buy or engage in any transactions involving archaeological artefacts*!
- Even if a transaction involving an archaeological artefact seems legitimate, e.g., if the seller offers proof of the declaration of an artefact or its exportation permit, verify the provenance and status (i.e., that the artefact is not stolen or lost). If an archaeological artefact has been obtained in illegal digs, it is unlikely to be possible to confirm its provenance.
- Inform law enforcement authorities (the police) of transactions involving archaeological artefacts (offers, purchases, sales, exchanges, etc.), the locations of illegal digs, and the persons involved!
- Do not transport your legitimately owned archaeological artefacts across the national border or mail them abroad without an official exportation permit!



CRITERIA OF ENDANGERED OTHER ARCHAEOLOGICAL ARTIFACTS 14

BRACELETS

Material Mainly made of different copper alloys (brass), sometimes – silver.

Production technique Bracelets are mostly cast and polished. The metal can also be shaped into the desired form by hammering and/or by twisting one piece of metal. The surface is often ornamented with stamped markings of lines and dots.

Shape The shape is mainly oval with a small opening. The thickness of the bracelets varies. The warrior's bracelet is distinguished by a specially wide base (9).



CRITERIA OF ENDANGERED OTHER ARCHAEOLOGICAL ARTIFACTS 15

RINGS

Material Mainly made of different copper alloys (brass), sometimes – silver.

Production technique Typically a metal bar which is shaped and bent into the desired shape. Sometimes the rings can consist of several parts that are twisted together, but more often they are made of one piece of the metal. Surface can be ornamented with stamped decorations.

Shape Round. Overlapping ends can be usually seen in the back. The front part typically is widened or has more decoration.



CRITERIA OF ENDANGERED OTHER ARCHAEOLOGICAL ARTIFACTS 16

HEAD ORNAMENT

Material Mainly made of different copper alloys (brass). The brass is made of a twist of bent or twisted parts.

Production technique Bent or twisted parts to make into twists. Brass spirals and open plates are sitting on the twist.

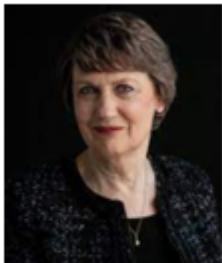
Shape The shape is circular. Head ornament can have arches ornament or "spike" with triangular pendants attached. Head ornament can be low if the twist or if the spirals are sitting on a ring.





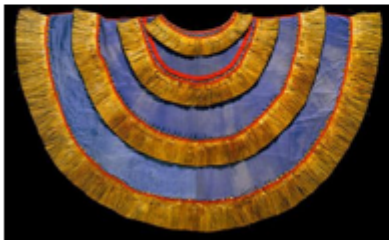
In **1999**, **Finland** ratified both the **1970 UNESCO Convention** and the **1995 UNIDROIT Convention**. Under the Decree to ratify the UNESCO Convention, “the Government of Finland **declares** that it shall implement the regulations of Article 7, paragraph b, subparagraph ii of the [1970 UNESCO] Convention in accordance with the obligations set by the UNIDROIT Convention”.

The specific reference to Article 7 (b) (ii) for Finland focuses on the restitution of cultural objects and the compensation to “an innocent purchaser”, relying more on the UNIDROIT Convention than the UNESCO Convention over all for this specific element of implementation.



2006 - Visit to UNIDROIT by Rt. Hon. Helen Clark, Prime Minister and Minister of Arts, Culture and Heritage of New Zealand on the occasion of the deposit of the 28th instrument of ratification/accession to the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (16 November 2006)

The Prime Minister stressed the interest of her country, although not a UNIDROIT member State, for the work of the organisation. She indicated her pleasure that, in her capacity of Minister of Arts, Culture and Heritage, she had been able to spearhead the implementation of both the 1995 UNIDROIT Convention and the 1970 UNESCO Convention in her country, stressing the complementarity between the two instruments which will be extremely important for the protection of New Zealand cultural artefacts.



The deposit of the two instruments of ratification was done for a contemporary entry into force of both Conventions (1 May 2007)!



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WHAT PROSPECTS
FOR « ORPHAN
WORKS »?



COLLOQUE
INTERNATIONAL
QUEL AVENIR POUR
LES « ŒUVRES
ORPHELINES » ?

Reflections on cultural goods
without provenance
University of Geneva,
4th and 5th February 2021*

Réflexions sur les biens
culturels sans provenance
Université de Genève,
4 et 5 février 2021*

THURSDAY 4TH FEBRUARY 2021

JEUDEI 4 FÉVRIER 2021

Harry Radzyner Law School
 International Council of Museums

Harry Radzyner Law School at Reichman University cordially invites you to the Atara Kaufman Conference on Law, Art, and Cultural Heritage

Due Diligence, Digital Databases, and Cultural Property Law & Policy

March 27-29, 2022
Reichman University, Herzliya
Conference Room C110 (Arazi-Ofer Building)

International Council of Museums Israel
 Harry Radzyner Law School
 מוזיאון תל אביב לאמנות

מה מוזיאונים ואספנים צריכים לדעת על חקר מוצאות ו-Due Diligence: מבט בינלאומי

What Museums and Collectors Should Know about Provenance and Due Diligence: An International Perspective

PRIVATE (AND PUBLIC) ART COLLECTIONS ORPHAN OBJECTS

UNIDROIT Work Programme 2023 – 2025 – focus on orphan objects and priority raised from low to medium

- 2 meetings of the Exploratory Experts Group
- 1 meeting sub-group on definitions

Strong input from art market

Working Group to be created and convened in autumn 2023

Organisation des Nations Unies pour l'éducation, la science et la culture
 Centre UNESCO au droit international de la protection des biens culturels, Université de Genève



UNIDROIT stands next to States to assist them in ratifying and implementing the 1995 Convention and understanding the synergies between instruments

and will continue to collaborate with the Council of Europe and all Partners to elaborate and / or disseminate tools to fight against illicit traffic in cultural property

Marina SCHNEIDER

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