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Repatriation of cultural heritage: the 1995 UNIDROIT Convention

1. Introduction

In December 2021, the Manhattan District Attorney's Office concluded a multi-year international investigation seizing one hundred and eighty antiquities worth $70 million from the hedge fund manager Michael Steinhardt. The objects were stolen from around the world in recent decades. The collector is now banned for life from acquiring antiquities on the legal art market[1]. One year before, on 24 December 2020, after a long legislative process, the French National Assembly adopted Law No. 2020-1673 aiming at returning, by derogation to the principle of inalienability of French public collections, cultural goods in Benin and Senegal brought to France as a war booty[2]. The bill is part of President Emmanuel Macron's plan, which began with the drafting of the Sarr-Savoy report of 2018[3], to return to their countries of origin artefacts that are legally but not legitimately present on French soil.

A controversial exhibition at the Louvre Museum in Paris, raised awareness among the visitors of the danger caused by looters to cultural objects[4]. Since 2016, it has been permissible under French law to showcase trafficked art pieces under investigation, upon Court's permission, and the Louvre is the first museum in the country to have done so. The Museum put on show four Libyan funerary half-statues seized in France while in transit and about to be exported illegally, as well as two reliefs presumably from Syria. The message is clear: today, the problem posed by the illicit trafficking of cultural objects cannot be ignored. States, international and national organisations, and civil societies need to implement means to put an end to it.

This article focuses on one of the means to fight against illicit trafficking, a legal instrument to facilitate the restitution of stolen or illegally exported property, namely the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects[5] (hereinafter 'the 1995 UNIDROIT Convention'). A treaty that faced strong resistance during its drafting phase by often-uninformed circles[6]. One of the many criticisms raised against the adoption of the UNIDROIT Convention is that it was prepared by a committee appointed and asked by UNESCO to «draft the UNIDROIT Convention […] which resulted not in the act of governments and it was never discussed in an assembly elected by the people's representatives»[7]. This means that it was seen as a process without legitimacy or expertise. Other scholars have argued that «cultural heritage is too important to be considered only in the light of technical

1. Bragg D.A., *Two Antiquities Seized from Michael Steinhardt Returned to the People of Iraq*, 18 January 2020, available at www.manhattanda.org/d-a-bragg-two-antiquities-seized-from-michael-steinhardt-returned-to-the-people-of-iraq/#:~:text=In%20December%202021%2C%20the%20Manhattan,lifetime%20ban%20on%20acquiring%20antiquities (last accessed 20 Sept. 2023).
2. Loi n° 2020-1673 du 24 décembre 2020 *relative à la restitution de biens culturels à la République du Bénin et à la République du Sénégal*, available at www.legifrance.gouv.fr/dossierlegislatif/JORFDOLE000042118115/ (last accessed 20 Sept. 2023).
3. The so-called 'Restitution report' was handed to French President Emmanuel Macron on 23 November 2018 by scholars Felwine Sarr and Bénédicte Savoy.
4. The *Exposition de pièces archéologiques saisies par la douane* on show at the Louvre Museum, Paris, raised criticism after one of the co-curator of the exhibition, Ludovic Laugier, said: «There is blood on these artifacts». However, people believed that if the museum is genuine about combating the wrongful acquisition of artwork, it should start by decolonizing its century-long institutional practice and accelerate voluntary restitutions. Abdessamad, F., *The Louvre Shouldn't Exhibit Trafficked Antiquities from Libya and Syria*, Hyperallergic, 25 July 2021, available at hyperallergic.com/664480/louvre-should-not-exhibit-trafficked-libyan-syrian-antiquities/ (last accessed 20 Sept. 2023).
5. The UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects was adopted in Rome on 24 June 1995, available at www.UNIDROIT.org/fr/instruments/biens-culturels/convention-de-1995 (last accessed 20 Sept. 2023).
6. On this point, see Fitzpatrick, J.F., *The Misguided Quest: The Clear Case against UNIDROIT*, Journal of Financial Crime 4, 1, 1996, pp. 54-59; L.A. Lemmens, the Secretary-General of The European Fine Arts Fair (TEFAF), saw fit to write: «… a dealer at a fair in any UNIDROIT country could be bankrupted by accusations from any visitor claiming that the dealer is handling stolen goods». For a clear understanding of the criticism raised against the 1995 UNIDROIT Convention see Prott L., *The UNIDROIT convention on stolen or illegally exported cultural objects – Ten years*, Uniform Law Review 14 (1-2), 2009, p. 215-237; and Lalive P., *Une convention internationale qui dérange: la convention UNIDROIT sur les biens culturels*, in Dupuy R.J. ed., *Droit et Justice, Mélanges en l'honneur de Nicolas Valticos*, Paris: A. Pedone, 1999.
7. Loos P., *Acts of the colloquium: "La restitution des biens culturels – quel rôle pour la Belgique ?"* organised by the Belgian Senate on 10 January 2003, available at www.senate.be/doc/misc/cultuurgoederen-10-1-2003 (last accessed 20 Sept. 2023).

legal aspects»[8], suggesting that the law is often ill-suited to deal with ethical or historical issues.
This contribution aims to support the role of the 1995 UNIDROIT Convention in the fight against illicit trafficking of cultural objects and provide answers to the criticism, without repeating here, for lack of time and space, the detailed analysis of all the provisions of the Convention, but stressing that UNIDROIT had the legitimacy, the expertise and the working methods that allow it to elaborate a legal instrument that remains faithful to ethical rules, and in which the cultural object is the central element.

2. Overview on UNIDROIT

UNIDROIT – one of the three universal organisations specifically created to promote the harmonisation and unification of private law rules[9] – began cooperating with UNESCO in the field of the circulation of cultural goods many years ago. The joint-work resulted in international instruments such as the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict and its First Protocol, the 1995 Convention and the UNESCO-UNIDROIT Model Provisions on State Ownership over Undiscovered Cultural Objects.
Many international instruments play a fundamental role in developing indicators used by several other organisations to assess, *inter alia*, the quality of national legislation in specific areas. Admittedly, UNIDROIT does not produce indicators as such, but rather 'legal standards'. That said, properly designed indicators – *i.e.*, indicators that are not susceptible to political interference and that are based on reliable empirical data and uncontroversial standards, rather than on ideologically biased assumptions – can be a useful tool for focusing political attention on areas in need of a reform[10].
UNIDROIT was called upon by UNESCO to address the issue of restitution and return of stolen or illicitly exported cultural property in order to fill the gaps in – and thus strengthen – the private law aspects of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property[11] (hereinafter 'the 1970 Convention'). The drafting of this new instrument was an opportunity to build on a solid foundation and to reaffirm that ethics is and must be the basis of work in this field. Indeed, UNIDROIT drew on values and principles to formalise its work in an instrument, the 1995 UNIDROIT Convention[12], which is faithful to ethics, without using the term itself, whereas others have clearly done so[13], both in the way it was drafted and in the principles it embodies.
These remarks are important for understanding the reasons that led the drafters of the 1995 Convention to go beyond the usual limits of traditional legal harmonisation. The drafters developed a number of rules that were intended to change the status quo rather than simply ensure the interoperability of existing standards and legal concepts. The aim was to address sensitive and complex issues involving conflicting but legitimate interests. In the process, they produced an instrument that eventually became a quasi-indicator itself.

3. Uniform law: the answer

The statutory purpose of UNIDROIT is «to examine ways of harmonising and coordinating the private law of States and of groups of States, and to prepare gradually for the adoption by the various States of uniform rules of private law»[14]. article 1 of the Statute goes on to list the various means of accomplishing this goal. In carrying out its mission for the benefit of the international community, UNIDROIT fulfils two main roles: that of a think-tank and rule-maker, and that of a centre for the dissemination and

8. Scovazzi T., *Diviser c'est détruire: Ethical Principles and Legal Rules in the Field of Return of Cultural Properties*, Study presented at the 15th session of the UNESCO Intergovernmental Committee for Promoting the Return of Cultural Property to its Country of Origin, on May 2009.
9. The other two organisations are the Hague Conference on Private International Law (HCCH) and the United Nations Commission on International Trade Law (UNCITRAL). UNIDROIT was founded in 1926 under the auspices of the League of Nations and re-established in 1940 as an autonomous organisation. Today, UNIDROIT counts 65 Member States, see www.UNIDROIT.org/fr/presentation-dUNIDROIT/presentation (last accessed 20 Sept. 2023).
10. Davis K. E., Kingsbury B., Engle Merry S. E., *Indicators as a Technology of Global Governance*, Law & Society Review 46, 2012, pp. 80-88.
11. UNESDOC CLT/CH/CS/51/4 – Final Report of the Consultation on the illicit trafficking of cultural objects, held in Paris on 14 March 1983, available at unesdoc.unesco.org/ark:/48223/pf0000068693 (last accessed 20 Sept. 2023).
12. Today, the self-executing text of the UNIDROIT Convention is considered the most effective international instrument in the fight against illicit trafficking. Other indispensable instruments in the field are the UNESCO International Code of Ethics for Dealers in Cultural Property of 2009; the ICOM Code of Ethics for Museum of 1999, and Combating Illicit Trade: Due Diligence Guidelines for Museums, Libraries and Archives on Collecting and Borrowing Cultural Material of the United Kingdom's Department of Culture Media and Sport of 2005. For more information on the instruments see, Frigo M., *Le rôle des règles de déontologie entre droit de l'art et régulation du marché*, Journal du Droit International 3, 2007, p. 885.
13. Among others, the 1970 UNESCO Convention in article 5(e), and the Convention on the Value of Cultural Heritage for Society of 2005 (the FARO Convention) at article 7(a), available at rm.coe.int/1680083748 (last accessed 20 Sept. 2023).
14. Article 1 of the Statute of UNIDROIT, a multilateral agreement adopted in 1940, available at www.UNIDROIT.org/english/presentation/statute.pdf (last accessed 20 Sept. 2023).

Fig. 1 – The International Institute for the Unification of Private Law (UNIDROIT) is an independent intergovernmental Organization with its seat in the Villa Aldobrandini in Rome. On this page and on the next, some pictures of the UNIDROIT building and library (courtesy of UNIDROIT).

exchange of information. UNIDROIT's autonomy from the U.N. system has a significance that is more than symbolic or political. Indeed, UNIDROIT has a unique mandate to achieve the interrelated goals of legal unification, which is at the heart of the Organisation's work.

UNIDROIT's goal of legal harmonisation is to facilitate relations between States and between citizens of different States by providing for identical or very similar regulations of those areas of the law where relations are frequent or where the difficulties associated with such relations are such that some form of agreement is imperative. It was precisely because of the diversity of national laws and legislative policies on the acquisition *a non domino* ('not from its owner') of a cultural object that favours illicit trade, that UNESCO turned for help to UNIDROIT in the early 1980s[15]. UNIDROIT was not only a long-time partner of UNESCO, but it gained experience in the preparation of the 1974 draft Uniform Law on the Acquisition of Good Faith of Corporeal Movables[16] ('LUAB').

The perception of the growing need for uniform law had been aptly summarised by René David, in the light of the unprecedented expansion of international trade in the twentieth century, resulting from the ease of transport, the increased mobility of persons and capitals and the international distribution of labour[17].

Judges, arbitrators, and practitioners benefit from legal harmonisation because the law becomes predictable and the

15. In sum, Common Law countries apply the rule of *nemo dat quod non habet* (a person without a valid title cannot transfer it) while the majority of Civil Law countries grants, to different levels, a greater protection to the good faith purchaser of a stolen good (based on the principle «en fait de meubles, la possession vaut titre», article 2279 of the French Civil Code and article 1153 of the Italian Civil Code).

16. The problems of transfer of ownership and *non-domino* (non-owner) acquisition were first addressed by UNIDROIT in a draft model law prepared in the 1960s. The draft Uniform Law on the Acquisition in Good Faith of Tangible Property (hereinafter referred to as 'LUAB') dealt with the acquisition for the value of movable property in general and was intended to improve the security of international commercial transactions. In particular, see Sauveplanne J.G., *Explanatory Report*, Uniform Law Review 1, 1975, p. 85.

17. David R., *The International Unification of Private Law*, International Encyclopaedia of Comparative Law, Vol. II, Chapter 5, Leiden:Martinus Nijhoff Brill / Tübingen: Mohr/Siebeck, 1971-75, p. 5.

interpretation of uniform rules to be applied in cross-border transactions is univocal and not subject to sudden changes. In the example of the 1995 UNIDROIT Convention, the ultimate beneficiaries will be the parties who, in their transactions, stand to gain from the greater legal certainty and predictability that results from a harmonised set of rules applying in different jurisdictions. The nature of the instrument, however, places States in the forefront, as the immediate 'addressees' of the new instrument. This means that conventions require a dual level of awareness and sensitivity to the interests and concerns of governments of States Parties, as well as the interests and concerns of private operators in those countries.

Intermediate or parallel groups of interested parties must also be considered, namely intergovernmental organisations with a direct interest in the field covered by the future instrument. The 1995 UNIDROIT Convention is mainly the result of UNIDROIT's collaboration with UNESCO, but also with INTERPOL, the Organisation of American States, the Council of Europe, and the European Union, as well as with international non-governmental organisations representing internationally operating stakeholders (e.g., the International Council of Museums, hereinafter 'ICOM').

UNIDROIT has developed working methods that combine the rigour of scientific legal analysis and understanding the needs of a given field with the flexibility to adapt working methods to the specific requirements of the new instrument). The 1995 UNIDROIT Convention, for instance, like all UNIDROIT treaties, is firmly rooted in the methodology of scientific research[18], as well as, in the thorough negotiations of experts and, in particular, of experts appointed by their Governments that form the Study Group, the Committee of Governmental Experts and, in the end, the Diplomatic Conference[19], as well as in the contributions of representatives whose interests are covered by the Convention.

18. Reichelt G. *The International Protection of Cultural Property* (UNIDROIT 1986 Study LXX – Doc. 1), Uniform Law Review os-13, 1, 1985, p 42; and Reichelt G., *The International Protection of Cultural Property – second study* (UNIDROIT 1988, Study LXX – Doc. 4), Uniform Law Review os-16, 1, 1988, p. 52.

19. A Study Group made up of many of the most recognized experts in this field and whose composition aimed to ensure the representation of the various interests and geographical regions, was set up to examine the possibility and advisability of developing uniform rules relating to the private law aspects of the international protection of cultural property and worked on the basis of a preliminary draft whose essentially pragmatic approach was based on the concepts of restitution and the right to payment. The Study Group held three sessions in Rome between 1988 and 1990, and then a Committee of Governmental Experts met four times between 1991 and 1993. Finally, the Convention was adopted at the end of a Diplomatic Conference organised by Italy, the Proceedings of which appear on the UNIDROIT website. Reports of the different parties are available on the UNIDROIT website.

Moreover, since the international community, unlike the European Union for example, does not have a central court to ensure that UNIDROIT Conventions are interpreted and applied uniformly by national authorities, these Conventions are drafted with the utmost precision in order to ensure maximum certainty, predictability and uniformity. In public international law, UNIDROIT Conventions are deemed to be self-executing or directly applicable and, therefore, promote a high degree of consistency in their implementation.

The aim was therefore to find a transnational solution and not only the determination of a competent national law to settle disputes that cross borders. In the case of the 1995 UNIDROIT Convention, this resulted in the adoption of a pragmatic solution for a situation in which a third party in good faith acquires *a non domino* a cultural object. The creation of a new standard of 'due diligence' found a compromise between the two conflicting but legitimate interests described above.

4. The 1995 UNIDROIT Convention: ethics and main features

The aim of the present paragraph is not to summarise all the provisions of the 1995 UNIDROIT Convention, nor to underline the complementarity between the 1970 and 1995 Conventions[20], but to show very briefly that the text of the 1995 UNIDROIT Convention was not only a legal achievement but also a cultural one. This was possible by taking into account the 'legitimate' claims of both States of origin and destination of cultural objects. To agree on an ethical principle is to adopt the best solution for all stakeholders. Integrating ethics into a legal text means establishing and ensuring a balance between different values

The main issue was to address two problems not solved by the 1970 UNESCO Convention. The first problem was the question of the protection of the *bona fide* purchaser and the burden of proof, which was dealt with, as explained above, very differently in common law and civil law systems. The second issue was the non-recognition of extraterritorial export prohibition laws and thus the fact that a good, while exported in violation of the export law of the source country, could legally enter another country.

20. For a comparative approach between the two Conventions see Prott L.V., *Commentary on the 1995 UNIDROIT Convention*, II ed., Leicester: Institute of Art and Law, 2021; Id., *UNESCO and UNIDROIT: a Partnership against Trafficking in Cultural Objects*, Uniform Law Review 1, 1996, p. 59; and Id., *The UNIDROIT Convention on Stolen or Illegally exported Cultural Objects – Ten Years On*, Uniform Law Review 13, 2009, p. 215.

Fig. 2 – The Villa Aldobrandini garden, seat of UNIDROIT in Rome (courtesy of UNIDROIT).

Traffickers took advantage of these situations for their illegal trade.

Perhaps the most important provision in the entire Convention is article 3(1), which enshrines the principle that the possessor of a stolen cultural object must return it, regardless of the circumstances. A pragmatic solution was devised: which rule was most likely to curb illicit trafficking? The answer was to oblige the buyers, afraid of having to return their purchase, to verify that the cultural object was being exchanged legally. This principle, coupled with the possibility of compensation for the buyers who can prove that they acted «with due diligence», article 4 (1), is one of the most important legal rules in the fight against illicit trafficking in cultural property. Its effect on the art market, which has sometimes tended to be reluctant to reveal the origin of cultural property and where buyers are not overly curious, will be immediate[21].

The argument of countries of origin that the dispossessed owner may not be able to pay compensation to the *bona fide* purchaser and therefore will not be able to recover the object anyway, can be countered by recalling that the Convention refers to a 'fair' compensation and not to the reimbursement of the sum paid, and that the criteria for 'due diligence', listed under article 4(4), are such that possessors will have to prove that they have acted with due diligence to obtain compensation.

Regarding the return of objects exported in violation of the export law of a given State, it proved virtually impossible to agree on export requirements that would be both recognised and enforced by all countries, so the drafters of the Convention finally opted for a set of interests that all States agreed to protect, article 5(3). The Convention does not recognise national export laws based on political or economic grounds, and requires proof by the requesting State of significant harm to interests that are primarily cultural, but also scientific or historical. Article 9 of the 1995 UNIDROIT Convention makes it clear that the list provided is not exhaustive, since each Contracting State is free to apply rules more favourable to the return of an illegally exported cultural object than those provided for by the Convention and even to take into account interests other than those listed in article 5(3).

21. Schneider M., *The 1995 UNIDROIT Convention: An Indispensable Complement to the 1970 UNESCO Convention and an Inspiration for the 2014/60/EU Directive*, Santander Art and Culture Law Review, 2016, 2, p. 149.

5. From a legal norm to a legal indicator: using the Convention as a benchmark for due diligence

Some instruments developed by UNIDROIT have provided real guidance in the areas of law that they cover. This is a particularly true of the 1995 UNIDROIT Convention. Having decided to adopt in the 1995 Convention the principle that the payment of compensation to the acquirer would be subject to proof of 'due diligence' at the time of the acquisition, article 4(1), it became necessary to explain this concept to guide the judges' assessment criteria and – given the very different interpretations of the concept of good faith in national legal systems – to ensure a certain uniformity of application of the Convention, article 4(4).
The court or competent authority addressed must consider «all the circumstances of the acquisition», as well as certain particularly relevant criteria. These criteria have been identified mainly from article 7(2) and (3) of the LUAB[22], while contemplating the specificity of cultural objects. The elements to be deliberated by the judge are illustrative and, as the word «in particular» preceding the list indicates, they are not exhaustive and are therefore not the only determining factors.

5.1 *Influence of the UNIDROIT's concept of due diligence in national laws*

Some States, such as the Netherlands, Switzerland and Germany[23], although not Parties to the 1995 Convention, have implemented the 1970 UNESCO Convention, going beyond the requirements of the latter by drawing on the 1995 Convention, in particular the concept of due diligence. This has been described by some as the «1970 Convention plus option»[24].
The Dutch government, a signatory to the 1995 Convention, has so far chosen not to ratify it[25], but became a party to the 1970 UNESCO Convention in 2009 and decided to base its implementation partly on the good elements of the UNIDROIT Convention[26]. In particular, a new article 3:87a of the Dutch Civil Code specifies the «appropriate precautions» that the possessor must observe when acquiring the object. It is derived from article 4(4) of the 1995 Convention and an important point is that the «status of the parties» (buyer, professional trader, auctioneer, or other sellers) must be taken into consideration.
Under Swiss law, the principle of good faith is used to determine whether the buyer's conduct allows him to claim a valid title, while the duty of care refers to a public law obligation which holds the transferor of the cultural object to respect certain standards of conduct[27]. This duty, enshrined in the Swiss Federal Act on the International Transfer of Cultural Property (LTBC) of 2003, is primarily general (article 24), but is also specific to art dealers and auctioneers (article 16). As in the 1995 Convention (article 4(4)), the level of care required varies according to the «nature of the parties» involved. The standards are intended to create criteria for acceptable behaviour, both for private sellers and for art dealers and auctioneers.
These criteria would de facto 'clean up' (or 'moralise') the art market: sellers can only be declared ipso facto *bona fide* buyers if they have complied with the duty of care in the broadest sense, and only then they can transfer a 'clean' item. The obligations imposed on art dealers (establishing the identity of the seller, informing the customer of the law of the country of origin, keeping a register, etc.) will make it much easier for them to answer the purchaser's questions under the 1995 Convention.
By making due diligence and transparency obligations legal, whether at the time of transfer of ownership or at the time of import and export of cultural goods, the LTBC makes an important contribution to the legal circulation of such goods for the benefit of all concerned[28].
The adoption of Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 (recast) on the return of cultural objects unlawfully removed from the territory of a Member State has, by taking up verbatim the

22. Article 7 of the LUAB provides: «2. – The transferee must have taken the precautions normally followed in transactions of that kind, according to the circumstances of the case. 3. – In determining whether the transferee acted in good faith, account shall, inter alia, be taken in particular of the nature of the movables concerned, the qualities of the transferor or his trade, any special circumstances in respect of the transferor's acquisition of the movables known to the transferee, the price, or provisions of the contract and other circumstances in which it was concluded».
23. Gesetz zur Neuregelung des Kulturgutschutzrechts – KGSG [Act of 31 July 2016 amending the Cultural Property Protection Act], Bundesgesetzblatt (BGBl.) 2016 I S. 1914, entered in force on 6 August 2016.
24. For example, Professor K.-G. Lee speaking at the roundtable on the influence of the 1995 Convention at the first meeting of the Special Committee on the Practical Operation of the UNIDROIT Convention held in Paris at UNESCO headquarters on 19 June 2012.
25. In short, the objections concerned the very broad definition «which would require considerable vigilance on the part of commercial art dealers, and the weak protection of the bona fide purchaser who was not entitled to compensation of the purchase price», Van der Horst N.M., *The Dutch ratification of UNESCO: Implementation Acts and the Protection of Cultural Property*, Art Antiquity and Law 15, 2010, pp. 261-273.
26. See van Heese M. *The Implementation of Directive 2014/60/EU in the Netherlands*, Santander Art and Culture Law Review, 2016, 2, p. 109.
27. CECOJI-CNRS, Study on preventing and combating illicit trafficking in cultural goods in the European Union (Final Report, Oct. 2011).
28. Widmer B., *La mise en oeuvre de la Convention de l'UNESCO de 1970 en Suisse par la loi sur le transfert des biens culturels*, in La Convention UNESCO de 1970 et sa mise en application: état des lieux et perspectives, Zurich:Dike Publishing, 2012, p. 164, a colloquy organised by the Swiss Commission for UNESCO in cooperation with the Federal Office of Culture.

Fig. 3 – A view of the UNIDROIT library within the Villa Aldobrandini in Rome (courtesy of UNIDROIT).

provision of the 1995 Convention on due diligence, shown the intention to bring community law closer to existing international law[29]. All European States, half of which are not yet Parties to the 1995 Convention, therefore apply the concept of due diligence as conceived by the 1995 Convention.

5.2 *Influence of the UNIDROIT's concept of due diligence in European law*

As early as the 1990s, on the eve of the establishment of the European single market, the UNIDROIT draft Convention served as a basis and clearly influenced the work of the European Union in adopting Directive 93/7/EEC of 15 March 1993 on the return of cultural objects unlawfully removed from the territory of a Member State. On the question of compensation to the *bona fide* possessor, the drafters preferred to adopt the solution of the 1970 Convention, *i.e.*, to refer to national law, without resolving the problem of the difference in legislation on this point, which had been the main reason for drafting the 1995 Convention.
After almost two decades of application, Council Directive 93/7/EEC was found to have minimal impact in the fight against illicit trade in cultural goods[30] and was recast[31], after it was stated that if all EU States were parties to the 1995 Convention such a recast would not be necessary. At the second meeting of the *ad hoc* working group set up for the amendment of the 1993 Directive, in the framework of the Advisory Committee on Returns and Exports, the group of experts indeed recommended that:

> «Member States should develop a better understanding of the UNIDROIT Convention, as it provides a very important legal framework for the protection of cultural objects, and in relation to the subject of this study (due diligence practice). Although many Member States have not yet ratified the UNIDROIT Convention, this should not necessarily deter them from adopting the ethical framework of the Convention as a guiding principle for the acquisition of cultural property and thus for the practice of due diligence»[32].

The text thus takes up, almost twenty years later, several features of the UNIDROIT Convention and marks a shift from the mutual recognition of national laws (Directive 93/7/EEC) to a general trend towards the adoption of European rules of uniform law (Directive 2014/60/EU). Among the most significant features of the new Directive are the extension of the relative limitation period for return actions and the reversal of the burden of proof regarding

29. Peters R., *The Protection of Cultural Property: Recent Developments in Germany in the Context of New EU Law and the 1970 UNESCO Convention*, Santander Art and Culture Law Review, 2016, 2.
30. CECOJI-CNRS, Study cited.
31. Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 (recast) on the return of cultural objects unlawfully removed from the territory of a Member State and amending Regulation (EU) No 1024/2012.
32. CECOJI-CNRS, Study cited.

compensation for the exercise of due diligence on the part of the possessor, as well as the elaboration of the criteria for such diligence. Both the principle and the criteria are taken almost word for word from article 4(4) of the 1995 Convention.

Like all EU states, France transposed the new Directive into its domestic law in February 2015 (Law 2015-195 of 20 February 2015), ten months before the deadline and without much opposition from the art market. Before this, France had been very actively involved in the development of the Convention and signed it on 24 June 1995. On 24 January 2001, a bill authorising the ratification of the Convention was tabled and referred to the Foreign Affairs Committee in January 2002. Finally, on 29 January 2002, the bill was adopted without amendment on first reading by the National Assembly, during which Mr. Moscovici, then Minister Delegate for Foreign Affairs, presented it to the Committee on Foreign Affairs. Moscovici, then Minister Delegate for European Affairs, stated that «from a legal point of view, the UNIDROIT Convention represents an indisputable improvement of current positive law, […] does not create new obligations for art market professionals, […] and that the adoption of the Convention reflects, in the area of cultural property transactions, a regulation of the right of ownership which is not incompatible with French constitutional law»[33]. The Government undertook to prepare an implementing law clarifying certain points. The ratification law was transmitted to the Senate on 30 January 2002. At that time, the art market was against the ratification of the Convention. It is true that ratifying an international convention is a matter for each state to decide, whereas transposing a directive is an obligation.

However, the UNIDROIT Convention contains a 'disconnection clause', article 13(3), according to which «in their mutual relations, the Contracting States which are members of economic integration organisations or regional entities may declare that they will apply the internal rules of such organisations or entities […]». Thus, by choosing, by declaration, to apply the Directive instead of the 1995 Convention, States will apply to illicit export a rule that the 1995 Convention has limited to theft, thereby extending the due diligence rule. To date, only seven EU Member States and Parties to the 1995 Convention have made such a declaration. It will be interesting to see what happens to those States that have not made such a declaration[34].

33. See the debates of the 2nd meeting of the *Assemblée Nationale* on 29 January 2002
34. Presentation by Sophie Vigneron at the conference organized by UNIDROIT to celebrate the 25th anniversary of the Convention (Rome, 8 and 9 October 2020) (video online on the UNIDROIT website).

6. Conclusions

The UNIDROIT Convention complements the due diligence rules of museums and art dealers, while promoting confidence in international trade. It includes an obligation that serious collectors, museums, and art dealers already have: the obligation to make proper enquiries about the origin of a cultural object offered for sale.

For international art traffickers, on the other hand, it is an undeniable obstacle: it will be increasingly difficult to exploit differences in national legislation in order to obtain valid title to cultural property that has been stolen or otherwise removed from its owner.

The Security Council and the General Assembly of the United Nations[35], very recently the Ministers of Culture of the G20[36], the MONDIACULT 2022 Declaration[37], but also the European Union (Commission[38], Council and Parliament [39]) or the African Union and many others, have recalled the importance of the UNIDROIT Convention of 1995 and called for its wide ratification. Today, France holds the presidency of the European Union and is very involved in the issues of protection and restitution (particularly for property stolen during the Second World War or the colonial periods); it should not fail to set an example and support the European States with a view to ratification so that, in the future, it will have uniform mechanisms and procedures.

In conclusion, I would like to quote Professor Dicke: «a convention that seeks legally binding solutions should not start from the maximum expectations of those who will win, but from a minimum acceptable, through understanding and political pressure, to the presumed losers»[40]. But who are the winners and who are the losers in this area? We should all have a common goal, to fight against the illicit traffic of cultural goods! UNIDROIT and its Academic Project on the 1995 Convention will continue its efforts to accompany them.

35. See UN General Assembly Resolutions on the return and restitution of cultural property.
36. See the Declaration of Ministers of Culture of the G20 adopted in Rome on 30 July 2021.
37. See the MONDIACULT Declaration adopted in Mexico City on 28 September 2022.
38. European Commission, Directorate-General for Education, Youth, Sport and Culture, Brodie N., Batura O., Hoog G., et al., *Illicit trade in cultural goods in Europe: characteristics, criminal justice responses and an analysis of the applicability of technologies in the combat against the trade: final report*, Publications Office, 2019, available at op.europa.eu/en/publication-detail/-/publication/d79a105a-a6aa-11e9-9d01-01aa75ed71a1 (last accessed 20 Sept. 2023).
39. See the European Parliament resolution of 30 April 2015 on the destruction of cultural sites perpetrated by ISIS/Da'esh, or the European Added Value Assessment, Legislative initiative report on the cross-border restitution claims of works of art and cultural goods, 2017.
40. Words of Professor Detlev Christian Dicke, University of Freiburg (Switzerland) at the 13th European Law Colloquium on the International Legal Protection of Cultural Property, Delphi, 20-22 Sept. 1983.