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everybody has in mind examples which bring home to all involved the urgent need for action to stay the escalation of art theft and the illegal export of works of art, and not only in the Latin American and Caribbean countries. While such works are indeed at times returned to source – in a move very much in keeping with the ethical and legal standards defended by UNESCO and its 1970 Convention – it is only too evident the national rules and regulations in force fall short of providing a satisfactory 

The UNIDROIT Convention sets out to remedy this state of affairs, yet it continues to be the object of passionate and at times violent debate often sparked off by false rumours and misinformation. One problem is that not many of its detractors are really familiar either with the text or its objectives. Certainly it would seem to be high 

time especially for art dealers to drop the rhetoric and undertake an in-depth study of the text, whose provisions, it is true, can only be properly understood if measured against the present state of the law in this area.

This contribution will confine itself to an outline of what has been done so far to ensure the effective implementation of the Convention, with a particular emphasis on Latin America and the Caribbean, to date, look at what has been achieved and explore the outlook for the future.

Efforts to date…

Since the Convention was adopted, UNIDROIT has been at pains to respond to requests for information and at times to allay what must be called the legitimate anxieties of some.

… at governmental level

The 1995 UNIDROIT Convention seeks to establish an international co-operation mechanism involving both the sources and the destination countries on the premise that, once cultural property has been moved to their respective territories, any system to secure the return of such property will stand or fall by these countries’ willingness to take action.

In a national context, the UNIDROIT Secretariat has on occasion been contacted or invited to take part in consultations to investigate the case for or against the UNIDROIT Convention against the backdrop of national law and the national cultural environment. UNIDROIT has prepared an Explanatory Report on the Convention to assist in the understanding of the provisions. The preparatory documents so as the Acts and Proceedings of the diplomatic Conference at the conclusion of which the Convention was adopted are available on the UNIDROIT website. 

UNIDROIT has also welcomed lawyers from Governments in Rome with its Scholarship Programme to study the Convention.

Needless to say, the 1995 UNIDROIT Convention is hardly the sole international legal instrument devised for the purpose of combating illicit trade, and one of the tasks falling to the UNIDROIT Secretariat is to explain where the Convention fits in and how it may be used to supplement other such instruments. A case in point is the relationship between the 1995 UNIDROIT Convention and the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property and several articles have been devoted specifically to the question of how the two Conventions can complement each other but one does not replace the other. Another important relationship to consider is between the UNIDROIT Convention and the 1993 Commonwealth Secretariat’s Scheme for the Protection of the Material Cultural Heritage, which would bind many States from the Caribbean.

Moreover, UNIDROIT attended a number of national and regional workshops organised by the local authorities and UNESCO (sometimes jointly with other organisations such as the Instituto Italo Latino Americano (ILAA) on the fight against illicit traffic in cultural objects. These workshops were attended by national civil servants and specialists in the field of cultural heritage. UNIDROIT has been participating in these workshops for many years now in order to present the 1995 Convention, and in the process has strengthened its links with certain countries in Latin America (among others Ecuador in 1996, Mexico City in 2006, 2009, 2012 and 2013, Buenos Aires in 2009 and 2012, Lima 2012) and the Caribbean (among others Grenada in 1997, Cuba in 2005 and Saint Lucia in 2012).

Finally, the President of UNIDROIT convened the first meeting to review the practical operation of the 1995 UNIDROIT Convention, in accordance with Article 30 of the Convention, which took place at the UNESCO Headquarters in Paris on 19 June 2012. The meeting provided an opportunity to explain which international claims mechanisms are available for cultural property outside the international instruments so as to better understand the benefits offered by the 1995 Convention mechanisms and to assess the Convention’s impact beyond the number of ratifications/accessions. It also gave States a chance to exchange views on their experiences, to compare practices and to discuss any difficulties encountered in implementing the Convention. International experts made presentations to assist States Parties and not Parties to the Convention in their discussions. If several Latin American 

… and involving the specialists

The UNIDROIT Secretariat is approaching practitioners in the art world who have both a political and a commercial case to put and the language. Yet their support is vital in persuading Governments to legislate at all, and it is a fact that the Convention’s more 

hostile detractors have tended to be certain categories of market operators, such as dealers and collectors, often misinformed both as to the content and goals of the Convention.

UNIDROIT is given an opportunity to meet these professionals and to set their minds at rest in the framework of meetings organised by other international fora such as UNESCO, INTERPOL, the Council of Europe, INTERPOL, UNODC, KDM and so on. It is worth noting at this juncture that all those organisations have been extremely supportive of the UNIDROIT Convention and have been instrumental in publicising it among their members worldwide.

Since much of the hostility is expressed in highly emotional terms, it is essential that the case for the Convention be argued by both sides on strictly rational grounds. All parties, Governments and private operators alike, must learn to curb such excesses of language and conduct, the only result of which is to arouse resentment and to buttress old prejudices. Governments, for example, should acknowledge that not all art dealers and art collectors are crooks and rascals. Dealers and collectors for their part should give a wide berth to objects which have manifestly been unlawfully traded although their precise origin is unclear.

The regional workshops also offer a choice forum for meeting museum directors from all over the world and to expose to them the provisions of the Convention, stressing in particular the fact that if the Convention seeks to promote greater diligence on the part of buyers, this is no more than is already required of them by their
The traditional knowledge of the shamans Jaguars of Yurupari, Colombia 2011 © Sergio Bartelsman, ACAIPI, Fundación Gaia Amazonas, 2006

Notes

2This is a point which has been amply stressed and renewed in subsequent letters by Professor Femke Luijken (cf. UNDRIT 1996, p. 40-50).
6For the training courses attended by UNIDROIT since 2003 to explain the 1995 Conventions, see Appendix IV of the information document prepared by the UNIDROIT Secretariat for the first meeting of the special committee to review the operation of the Convention (19 June 2012) at: http://www.UNIDROIT.org/english/conventions/1995culturalproperty/Meet-120619/Meet-120619-e.pdf.
7For the list of States Parties to the Convention, see at: http://www.UNIDROIT.org/english/implement/e-policy-1995.pdf.
8The latest revision dates back 12 December 2012 (A/RES/67/34).