

Article

Tracing Legitimacy in the Art Market: Evaluating Thirty Years of the 1995 UNIDROIT Convention

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Abstract

This article examines the impact of the 1995 UNIDROIT Convention on stolen or illegally exported cultural objects thirty years after its adoption, placing the emphasis on the legitimacy of acquiring cultural goods. The Convention has reshaped the allocation of risk, responsibility, and evidentiary burden in the international art market, redefining the relationships among possessors, intermediaries, and source states under an affirmative standard of due diligence. In doing so, it departs from the traditional focus on transactional security that characterizes both civil-law and common-law systems. The article further considers the Convention's capacity to address the traditional reluctance of courts in market-state jurisdictions to enforce foreign public law on cultural property. Despite these achievements, the Convention's limited ratification by a substantial number of states has constrained its overall effectiveness. The article concludes by reflecting on potential strategies to enhance its reach, including broader ratification and harmonized implementation measures, underscoring the Convention's continuing role in shaping the jurisprudence of cultural property disputes over the past three decades.

Keywords: 1995 UNIDROIT Convention; trafficking of cultural objects; due diligence; burden of proof; Object ID

1. Introduction

The protection and restitution of cultural property have become central concerns in international law, reflecting the growing recognition of cultural heritage as a human right and a key aspect of national identity. Theft, unlawful export and illicit trafficking of cultural objects continue to pose significant challenges for source States, art market participants, and international institutions. Over the past decades, the development of normative frameworks, notably the 1970 UNESCO Convention and the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, has sought to address these challenges by establishing a minimum institutional framework for protection and procedural mechanisms for return of cultural objects (Stamatoudi 2011).

The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects established detailed, operational rules to facilitate the return of cultural property to its State of origin, introducing key innovations such as the reversal of the burden of proof, the sense of due diligence, and extended time limitation periods (Grammatikaki-Alexiou et al. 2001; Chechi 2018; Weber 2022). Despite these advances, debates persist regarding the Convention's effectiveness, especially given its non-retroactive application, limited accession by key market States. Moreover, the practical challenges in implementing, interpreting, and



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controlling due diligence standards further underscore ongoing controversies in the field (Prott 1997; Szabados 2020; Vrdoljak et al. 2024).

This article seeks to examine the legal impact of the UNIDROIT Convention over the three decades since its adoption. Specifically, it addresses these interrelated research questions: (i) how the Convention's provisions have influenced domestic legal systems, judicial practice and art market; (ii) the extent to which the Convention has shaped subsequent instruments; (iii) the principal obstacles that constrain its effectiveness; and (iv) potential measures and reforms that could enhance its practical impact.

The findings demonstrate that the Convention has significantly strengthened the interests of source states, influenced subsequent legislation, and contributed to a shift in market and institutional practices. At the same time, structural compromises, non-retroactivity, and partial ratification limit its global reach, highlighting the need for complementary mechanisms such as *lex originis* application, standardised provenance documentation, and soft law instruments (Kakouris 2000; Giardini 2017). Through this dual focus on normative design and practical implementation, the article provides a nuanced assessment of the Convention's role in shaping restitution processes and safeguarding cultural heritage.

Beyond this general framework, the present Article makes two interrelated contributions to the state of the art. First, it demonstrates—drawing on recent jurisprudence and market evidence—that the 1995 UNIDROIT Convention has contributed to a measurable shift in both legislation and judicial practice, particularly through the reallocation of evidentiary burdens and the consolidation of due diligence as the operative standard in cultural-property disputes. This shift, which is observable even in major market jurisdictions, reflects a gradual move away from formalistic reliance on good faith and towards a more substantive, provenance-centred assessment of acquisition practices.

Second, the Article offers an in-depth theoretical account of why the Convention departs from the traditional transactional-security paradigm characteristic of private law. Building on contemporary property theory, it argues that cultural objects differ fundamentally from ordinary chattels due to their dual tangible and intangible nature, their identity-constituting role, and the centrality of institutional custodianship (“placeness”). These features justify a distinct constellation of in rem rights and in rem duties, thereby explaining doctrinal developments that cannot be captured by the standard rules of movable property. In this sense, the Article situates the UNIDROIT Convention within a broader evolution of cultural-property law, both empirically and conceptually, revealing its enduring significance thirty years after its adoption.

2. Methods

This article engages with the 1995 UNIDROIT Convention through a combination of doctrinal, comparative, and interpretative legal analysis, with an emphasis on the practical operation of its provisions and their impact on the restitution of cultural objects. The analysis focuses on the interaction between international legal norms and domestic legal systems, paying particular attention to those provisions of the Convention that challenged long-established assumptions within the art market that had traditionally hindered the return of cultural objects to their States of origin, such as the position of the good-faith purchaser and the allocation of the burden of proof. At the same time, the study identifies potential areas for improvement within the Convention, substantiating why these constitute normative gaps and proposing ways in which they could be addressed.

The research is based on a combination of primary and secondary sources. The primary material includes the text of the 1995 UNIDROIT Convention, as well as other relevant legislative instruments (such as Directive 2014/60/EU), pertinent judicial decisions, and operational guidelines issued by UNESCO. Secondary sources consist of scholarly articles,

monographs, and case analyses that assess the legal, institutional, and practical dimensions of the Convention's operation. Taken together, these sources make it possible to evaluate the impact of the Convention both on States seeking the restitution of cultural objects stolen from or illicitly exported from their territory and on the art market, including prospective purchasers, auction houses, and art dealers. The analysis was conducted through doctrinal examination aimed at interpreting legal texts, combined with a comparative assessment of how the Convention's provisions have influenced judicial practice over the three decades since its adoption.

The case law discussed in this Article was selected on the basis of three criteria: (i) its relevance to the Convention's core mechanisms (due diligence, burden of proof, limitation periods); (ii) its illustrative value for showcasing divergences between source States and market States; and (iii) its jurisprudential influence, either because it originates from major art-market jurisdictions or because it reflects significant domestic approaches to ownership of antiquities. These jurisdictions were chosen not to provide an exhaustive comparative survey, but to represent the principal legal families (civil-law/common-law systems) and the primary loci where restitution disputes arise in practice.

The analysis presented in this article is predominantly doctrinal and interpretative, drawing on publicly available legal materials, academic literature, and national implementing measures. Consequently, it does not include empirical input from practitioners directly involved in the recovery and circulation of cultural objects, such as customs officials, law-enforcement authorities, or museum acquisition bodies. In addition, while the jurisdictions examined are selected to illustrate central legal approaches and recurring implementation challenges, they do not provide an exhaustive or globally comprehensive overview. The lack of consistent and comparable quantitative data on restitution proceedings, enforcement outcomes, or art market practices further limits the ability to assess the Convention's effectiveness in strictly empirical or measurable terms. These constraints do not undermine the analytical value of the study; rather, they highlight the importance of future research that integrates empirical methodologies in order to capture more fully the Convention's practical operation across different legal and institutional settings.

Future research could build on the present analysis by incorporating empirical perspectives, for example through interviews with museum acquisition staff, auction-house professionals, or law enforcement authorities involved in the recovery of cultural property. Such approaches would provide additional insight into the practical implementation of provenance duties and due diligence standards in the art market.

3. Findings

The analysis demonstrates that the 1995 UNIDROIT Convention introduced significant normative innovations in the field of cultural property restitution. In particular, the reversal of the burden of proof onto the possessor, the central role accorded to due diligence, and the extension of limitation periods constitute a marked departure from earlier international instruments. These elements provide source States with enhanced procedural tools to pursue restitution claims and have contributed to a gradual shift in judicial and institutional attitudes towards greater scrutiny of art market transactions. Compared to the 1970 UNESCO Convention, the UNIDROIT Convention offers more precise, operational, and enforceable rules, thereby strengthening the legal framework governing the return of stolen or illicitly exported cultural objects.

The analysis further indicates that the 1995 UNIDROIT Convention has exerted a significant normative influence on subsequent legal instruments and guidance. Notably, Directive 2014/60/EU reflects key features of the UNIDROIT Convention, aiming to ensure the return of cultural objects illegally removed from the territory of one Member State

and found within another. Both instruments pursue the same objective, the return of cultural property to its State of origin, using comparable procedural mechanisms and legal principles.

The Convention's influence is also evident in UNESCO's operational guidelines for the 1970 UNESCO Convention, which interpret its provisions through the lens of the 1995 UNIDROIT Convention, particularly with regard to the application of 1995 UNIDROIT Convention's standards on due diligence. At the same time, the findings reveal that the Convention reflects a compromise between the interests of source States and market States, resulting in structural limitations. A key weakness concerns the operation of limitation periods under Article 3(3), which presuppose the identifiability of the moment of theft or removal. This assumption is frequently untenable in cases of illicit excavation, where neither the date of removal nor the object's prior existence can be established with certainty. In practice, this places a disproportionate and often insurmountable evidentiary burden on claiming States. Rather than enhancing legal certainty, the limitation regime may thus inadvertently shield unlawful possession.

The Convention's non-retroactive application further constrains its effectiveness. While politically necessary to secure wider acceptance, non-retroactivity excludes a substantial category of cultural objects from its protective scope and produces a fragmented legal landscape in which similar claims are treated differently depending on the timing of removal. The findings indicate that this temporal limitation incentivises strategic behaviour by possessors, who may rely on incomplete, lost, or falsified documentation to assert compliance with due diligence requirements. This problem is particularly acute in cases of illicit excavation, where source States are structurally unable to document the object prior to its removal. Under such conditions, the Convention risks reinforcing precisely those market practices it seeks to curtail.

The analysis identifies two complementary mechanisms capable of mitigating these limitations. First, the application of the law of the source State (*lex originis*) emerges as a critical tool for addressing ownership disputes, particularly where the Convention is inapplicable *ratione temporis*. By grounding restitution claims in the legal order of the State of origin, *lex originis* can partially offset the restrictive effects of non-retroactivity. Second, preventive measures—most notably the adoption of standardised provenance documentation systems, such as those modelled on Object ID—play a crucial role in strengthening evidentiary safeguards. While universal mandatory application may be impractical, their targeted use in relation to high-risk categories, such as antiquities, enhances due diligence and reduces opportunities for fraudulent claims.

Finally, the findings underscore that the Convention's impact remains constrained by the limited accession of key market States. The reluctance of major importing countries, often influenced by domestic art market interests, significantly reduces the Convention's global reach. Nevertheless, the analysis indicates that bilateral agreements incorporating UNIDROIT standards, alongside the broader use of soft law instruments, can extend the Convention's normative influence even beyond formal ratification.

Finally, the findings underscore that the effectiveness of the Convention is significantly constrained by the limited accession of key market States, particularly those that function as major importers of cultural objects. The reluctance of major importing countries, often influenced by domestic art market interests, significantly reduces the Convention's global reach. Nevertheless, the analysis indicates that bilateral agreements incorporating UNIDROIT standards, alongside the broader use of soft law instruments, can extend the Convention's normative influence even beyond formal ratification.

4. Discussion

4.1. Historical Context and Rationale for the Adoption of the Convention

The suppression of crimes of a cross-border nature, such as the illicit trafficking of cultural property, is achieved primarily through international legal instruments. The stringent measures adopted by countries that are vulnerable to the theft or unlawful export of their cultural heritage operate as protective mechanisms at the national level; however, they do not bind other states. As early as the 1960s, it became evident that an international institutional framework needed to be established with the aim of safeguarding the cultural heritage of each country. A milestone in the creation of such a framework was the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which introduced a series of prohibitions on the circulation of certain significant categories of cultural property (Schneider 2001).

In the decades following the entry into force of the 1970 UNESCO Convention, the increase in the illicit trafficking of cultural property made it apparent that additional measures were required to combat the phenomenon. There was a need to develop a more targeted protective framework for specific categories of cultural property, such as objects originating from illicit excavations. Such objects raise particular legal and evidentiary difficulties, since illicit excavation is by definition undocumented and the source State is often unable to prove prior ownership or the precise moment of removal.

At the same time, the resolution of disputes concerning the restitution or recovery of cultural objects revealed significant obstacles arising from divergences among national legal systems. Some states adhere to the common law tradition, under which a purchaser acquires valid title only if the transferor himself holds valid title (*nemo dat quod non habet*), whereas others follow the civil law tradition, which affords protection to the good-faith acquirer of a cultural object with the notion of good faith varying from state to state (*en fait de meubles, possession vaut titre*). This fundamental divergence intensifies the conflict of interests between the individual from whom an object has been unlawfully removed and the good-faith purchaser of that object (Schneider 2001).

As an instrument of public international law, the 1970 UNESCO Convention was not designed to engage in detailed regulation of private international law matters. At the same time this decision was shaped by both institutional and political considerations. The broadly framed provisions of the 1970 UNESCO Convention reflected the need to accommodate conflicting interests between source States seeking the return of cultural objects and market States hosting major auction houses and metropolitan museums. In order to secure the widest possible participation of market countries, the Convention necessarily relied on general principles rather than detailed, binding rules.

In the mid-1980s, UNESCO, in reviewing the practical implementation of the 1970 UNESCO Convention, concluded that it would be beneficial to provide support to the International Institute for the Unification of Private Law (UNIDROIT) in order to examine the private international law issues associated with the illicit international trafficking of cultural property that hinder the successful resolution of cases concerning the return of cultural objects to their countries of origin (Grammatikaki-Alexiou 2002). This study ultimately led to the drafting of the 1995 UNIDROIT Convention (Grammatikaki-Alexiou et al. 2001).

Although its roots lie in the 1970 UNESCO Convention, the objectives of these two legal instruments are not identical. The 1970 UNESCO Convention seeks to contribute effectively to the suppression of the illicit trade in cultural property by providing for state action through administrative procedures. The 1995 UNIDROIT Convention extends this objective by establishing common, minimum legal rules governing the return and restitution of cultural property among the Contracting States. In this context, it aims to harmonise divergent national rules concerning good-faith acquisition, extended limitation

periods, and the tailored legal treatment of such disputes. At the same time, it provides for direct access to the courts of a state by the owner of a stolen cultural object or by a state from which a cultural object has been unlawfully exported. Accordingly, it may be regarded as a continuation of, or a complementary instrument to, the 1970 UNESCO Convention (Stamatoudi 2011).

UNIDROIT took the view that the new Convention should consist of a limited number of focused provisions (Grammatikaki-Alexiou 2002). Taking into account Article 7(b)(ii) of the 1970 UNESCO Convention, the drafters of the new instrument sought to enhance the possibilities afforded by that provision and to establish rules of minimum protection with regard to the restitution of stolen cultural objects and the return of cultural objects unlawfully exported (Van Woudenberg 2016). Despite the dynamic nature of its provisions, the final text of the 1995 UNIDROIT Convention was the outcome of a confrontation between two opposing positions: on the one hand, that of market countries, which possess strong art markets and therefore favour the protection of the good-faith possessor; and, on the other hand, that of source countries, which are typically victims of looting and adopt a more protective stance towards the dispossessed owner of cultural property. Consequently, the drafting of the provisions reflects a compromise aimed at achieving consensus and ratification by as many states as possible (Stamatoudi 2011).

4.2. Key Provisions

4.2.1. Objectives

The purpose of the Convention is articulated in its Preamble, which emphasises the fundamental importance of cultural heritage for humanity as a whole and the need to adopt measures for its protection (Grammatikaki-Alexiou 2002). The objective of its provisions is to establish a minimum institutional framework for the restitution and return of cultural property (Chechi 2014) and to broaden cooperation among its parties, in particular between the so-called market countries and the source countries (Schneider 1997). The Convention's provisions are structured into five chapters. Through these provisions, the Convention regulates issues that arise in the resolution of disputes concerning three distinct categories of cultural objects: stolen cultural objects, objects resulting from illicit excavations, and cultural objects that have been unlawfully exported (Prott 1997).

4.2.2. Scope of Application

The 1995 UNIDROIT Convention applies to claims of an international character concerning the restitution of stolen cultural objects or the return of cultural objects unlawfully exported. Consequently, purely domestic thefts of cultural objects fall outside the Convention's scope. The state from which a cultural object has been stolen may bring an action before the courts of the state in which the object is located, provided that the latter state has ratified the Convention. This applies even if the requesting state is not itself a Contracting Party to the Convention. By contrast, in cases involving unlawfully exported cultural objects, both states concerned must be Contracting Parties to the Convention (Stamatoudi 2011).

Pursuant to Article 2 of the 1995 UNIDROIT Convention, cultural objects are defined as those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art, or science and which belong to one of the categories listed in the Annex to the Convention. The wording of Article 2 leads to the conclusion that, in order for an object to qualify as a cultural object under the Convention, two conditions must be satisfied. First, it must fall within the general definition set out in Article 2 of the Convention, and second, it must be included in the list of cultural objects annexed to the Convention.

The enumerative list of cultural objects contained in the 1995 UNIDROIT Convention largely coincides with that of the 1970 UNESCO Convention (Stamatoudi 2011).

Although the two Conventions contain the same list of categories, they do not, in practice, share the same scope of application. The 1970 UNESCO Convention requires the requesting state to have designated the object it seeks as cultural property (Stamatoudi 1998). The 1995 UNIDROIT Convention departs from most international and European legal instruments in the field of cultural property protection, in that it does not recognise the right of source countries to define their own cultural objects. This approach is widely regarded as restrictive in terms of the protection of cultural heritage, given that preservation and the prevention of the illicit removal of cultural property depend significantly on the recognition of the role of source countries. The Convention entrusts the courts of the state in which the object is located (*lex situs*) with the application of the definition set out in Article 2. This constitutes a significant gap in the 1995 UNIDROIT Convention, particularly in light of the differing historical, cultural, and religious backgrounds through which each state classifies an object as cultural property (Stamatoudi 2011).

However, the definition under the 1995 UNIDROIT Convention is significantly broader than that of the 1970 UNESCO Convention, as it encompasses cultural objects that have not been catalogued or identified as such by the requesting state (Grammatikaki-Alexiou 2002). The 1995 UNIDROIT Convention applies to all stolen cultural objects, whereas the 1970 UNESCO Convention (pursuant to Article 7(bi)) applies only to objects stolen from museums, religious, secular, or other comparable institutions, and recorded in those institutions' inventories. Accordingly, the 1995 UNIDROIT Convention covers a wider range of stolen objects that may be subject to recovery (Stamatoudi 2011).

4.2.3. Treatment of Stolen Cultural Property

Definition of Theft

The provisions of this chapter II of the Convention address two situations: cultural objects that have been stolen, and those that have been unlawfully excavated or lawfully excavated but unlawfully retained (Stamatoudi 2011). In addition to the offence of theft, many states provide in their domestic legislation for severe criminal sanctions in respect of other forms of unlawful appropriation. During the drafting of the Convention, it was debated whether the relevant provision should encompass, in addition to theft, offences such as fraud and embezzlement. The drafters ultimately took the view that the term "theft" was sufficiently broad to cover these other offences, as it may, depending on the circumstances, be interpreted expansively by the court or the competent authority (Schneider 2001).

The concept of theft is not defined by the Convention. Although the inclusion of a definition would have reduced the risks arising from the lack of uniformity among national legal systems (Siehr 1998), the term is interpreted either in accordance with the domestic law of the state seized of the dispute or pursuant to any other law applicable under that state's rules of private international law (Prott 1997). Given that the content of this concept varies widely across jurisdictions (Veres 2014), national courts are required, when applying the Convention, to harmonise their interpretation of its key terms in light of the Convention's objectives (Grammatikaki-Alexiou 2002).

Despite certain divergences, the offence of theft is universally condemned by all states. This is also reflected in the Convention, as the provisions governing stolen cultural objects are more stringent than those relating to unlawfully exported objects. The Convention enables non-Contracting States to claim stolen cultural objects located within the territory of States Parties to the Convention. By contrast, in cases concerning the return of unlawfully exported cultural objects, both the requesting state and the state from which return is sought must be Parties to the Convention (Trova 2018). The mere commission of the offence

of theft suffices to dispense with any inquiry into whether the state in which the theft occurred is a Contracting Party (Grammatikaki-Alexiou 2002).

Findings of Illicit Excavation

The drafters of the Convention acknowledged that the existing institutional framework was insufficient to ensure the effective claiming and return of objects originating from illicit excavations (Phelan 1998). In practice, the 1970 UNESCO Convention afforded no protection to antiquities derived from illicit excavations, since its provisions extend protection only to cultural objects that have been inventoried. Objects unearthed through illicit excavations are unknown to the state concerned and therefore cannot have been catalogued by it. The 1995 UNIDROIT Convention expressly addresses this gap by emphasising in Article 3(2) that an object resulting from an illicit excavation, or from a lawful excavation but unlawfully retained, shall be considered stolen (Fincham 2008). Through this provision, the Convention enables the interested state to claim an object originating from an illicit excavation as a stolen cultural object. The provisions of Articles 3 and 4 of the Convention governing claims for the restitution of stolen cultural objects are more stringent than those devoted to unlawfully exported cultural property. The drafters' decision to equate illicit excavation with theft demonstrates that they regard it as an offence of comparable gravity (Grammatikaki-Alexiou 2002).

This approach is reflected in the decision of the United States Court of Appeals for the Second Circuit in *United States v. Schultz*. In that case, Schultz was convicted for receiving antiquities that had been stolen and exported in violation of the national legislation of the Arab Republic of Egypt, specifically Law No. 117 on the Protection of Antiquities. That statute incorporates the provisions of the 1970 UNESCO Convention, which, as noted above, does not adequately cover antiquities originating from illicit excavations. Schultz argued that the cultural objects in question could not be regarded as stolen property, since they had not been removed from any cultural institution or private collection. According to his argument, because the objects had not been previously inventoried, they did not belong to anyone and therefore could not have been stolen. Notwithstanding these claims, the Court held that the statuettes constituted stolen property and were owned by the Egyptian state.

More specifically, in its reasoning the Court took into account the provisions of Law No. 117, which, by extending the scope of the Convention, provides that antiquities discovered within the territorial boundaries of Egypt from 1983 onwards are, by operation of law, the property of the Egyptian state. In particular, under the prescribed procedure, once an antiquity is discovered, the competent authorities must be notified so that the object may be assigned a specific registration number. Moreover, under Egyptian national law, since such finds belong *ipso iure* to the Egyptian state, the private individual who discovers them is not entitled to receive compensation for their surrender to the authorities. The removal of objects resulting from an excavation, even where they have not yet been assigned a registration number, constitutes an act of theft if carried out without the consent of the Egyptian authorities. As these objects were the product of theft, their importation into the United States constituted a violation of U.S. federal law, specifically the provisions of the National Stolen Property Act (hereinafter NSPA). In addition, seeking to align its reasoning with contemporary legislative developments in the field, the Court emphasised that the removal of these objects from Egypt constitutes an act of theft within the meaning of Article 3(2) of the 1995 UNIDROIT Convention.

Restitution of Stolen Cultural Property

According to Article 3(1) of the 1995 UNIDROIT Convention, “the possessor of a stolen cultural object shall return it.” This is a particularly significant provision, as it marks a clear departure from legal systems that favour the good-faith purchaser over the original owner by allowing the purchaser to retain the object after the expiry of a relatively short limitation period (ranging from three to six years) or, in certain cases, to return it only upon payment of compensation (Stamatoudi 2011). The choice of the term “restitution” reflects the existence of a prior wrongful act, the redress of which can be achieved only through the return of the object to its lawful owner (Roehrenbeck 2010). Although Article 3 in its entirety seeks to strike a balance between the interests of the parties to the Convention (Szabados 2020), Article 3(1) unequivocally provides, leaving no room for alternative solutions, that the possessor of a stolen cultural object is under an obligation to return it (Vrellis 2008). The Convention thus follows the common law rule *nemo dat quod non habet*, according to which no one can transfer a title he does not possess, and consequently no one can acquire ownership of an object obtained from a thief. The term “possessor” was deliberately chosen by the Convention as a sufficiently neutral concept, as it designates the person who is obliged to return the cultural object to its rightful owner (Stamatoudi 2011).

The English case of *Winkworth v Christie, Manson & Woods Ltd. and Others* illustrates the issues that arise in the absence of such a provision. In that case, Japanese works of art were stolen in England from their private owner and subsequently transported to Italy for sale. The purchaser acquired them in good faith and later brought them back to England with the intention of auctioning them by Christie’s. When the original owner became aware of the forthcoming auction, he asserted a claim to recover the artworks. The High Court applied Italian law, namely the law of the place where the cultural objects were situated at the relevant time of their transfer (*lex rei sitae*). Since, under Italian law, a good-faith acquirer of movable property becomes its owner, the court dismissed the claim, holding that ownership of the artworks had passed to the purchaser. It further clarified that, even if the objects had previously been stolen from their original owner, when the cultural objects were reintroduced into England, they were lawfully imported as property belonging to the good-faith purchaser (Vrellis 2008).

On the basis of Article 3(1), the outcome of that case could have been different: the good-faith purchaser of the Japanese artworks would not have been regarded as their owner, but merely as their possessor. The positive impact of this provision was already evident in the early years following the adoption of the Convention. By way of example, in 1997 the Swiss Federal Supreme Court held that the possessor of a painting stolen from a castle in France was obliged to return the artwork to its country of origin, on the ground that he had failed to exercise the requisite due diligence prior to its acquisition. In its reasoning, the Court referred to a number of provisions of the 1995 UNIDROIT Convention, placing particular emphasis on Article 3(1). Moreover, the Court underlined that the return of the painting reflected the principles of an emerging international public order in the field of cultural heritage protection, which had begun to take shape with the adoption of the Convention and continues to develop dynamically to this day (Jagielska-Burduk and Fincham 2024).

For the Convention to be applied effectively, and in the absence of a contrary provision, Article 3 should be interpreted broadly, so as to allow a private individual to invoke its provisions in order to claim a cultural object. Although Article 3 does not expressly state this, it has been interpreted as allowing claims by natural persons, particularly given that the provision refers broadly to “the possessor” and does not limit standing to States (Grammatikaki-Alexiou 2002). Consequently, the right to bring a claim may, in addition to a state, also be vested in a natural person.

Time Limitations

During the drafting of the Convention, disagreements arose regarding the limitation periods for claims brought under its provisions. Representatives of the market countries favored short limitation periods. In support of their position, they emphasized that brief timeframes would pressure the rightful claimant to act promptly and would help avoid complications arising from the differing rules on acquisitive prescription under the domestic laws of the States Parties (Grammatikaki-Alexiou 2002). Moreover, short limitation periods would enhance the marketability of the object and strengthen the security and stability of transactions (Stamatoudi 2011).

In contrast, representatives of the source countries argued that claims should be imprescriptible, as limitation periods would allow the apparent legitimization of illegal situations. Artworks and cultural objects that have been illicitly trafficked are often hidden for long periods in bank vaults or safes until they can be legitimised through the expiration of limitation periods. This practice increases the value of the objects, making their acquisition a long-term investment (Grammatikaki-Alexiou 2002).

The drafting of Article 3(3) reflects a compromise between these two opposing positions (Stamatoudi 2011). Any claim for the restitution of a stolen cultural object must be brought within specific time limits. These periods are neither as strict as in some countries—where the limitation period begins at the time of the theft or loss (France) or when the good-faith possessor acquires the object (England)—nor as lenient as in legal systems where the period starts from the claimant's request and the possessor's refusal to return the object (Prott 1997). Under Article 3(3), each restitution claim must be filed within three years from the moment the claimant became aware of (a) the location of the cultural object and (b) the identity of its possessor. Both conditions must be met for the limitation period to commence (Grammatikaki-Alexiou 2002)¹.

In any case, a claim must be brought within fifty years from the moment of the theft. This period may be extended if the cultural object forms an integral part of a designated monument or archaeological site, or if it belongs to a public collection. In such instances, the only applicable limitation period is the three years from the moment the owner of the cultural object becomes aware of its location and possessor—unless one of the States Parties, upon signing, ratifying, accepting, approving, or acceding to the Convention, declared that the restitution claim is barred after seventy-five years or more. This provision accommodates countries that recognize inalienable and imprescriptible rights for certain cultural objects—that is, countries that treat such items as *res extra commercium* or *res sacrae* (Prott 1997).

Nevertheless, this provision does not extend to objects deriving from illicit excavations. As a result, the limitation periods set out in Article 3 may be considered unduly stringent with respect to such items. In particular, a significant part of the illicit trade in cultural objects is fueled by illegal excavations. In practice, the products of such excavations are in a more vulnerable position than stolen cultural objects, as the source country is often unaware of their existence. The concerned state must therefore engage in continuous monitoring of the catalogues published by museums and auction houses to identify whether any antiquities bear stylistic similarities to the cultural objects known to have been discovered within its territory.

¹ This provision is grounded in the American discovery rule, according to which the statute of limitations for a claim does not commence until the claimant discovers—or reasonably should have discovered—the object in dispute. However, U.S. courts often adopt a more flexible interpretation of this rule, allowing greater opportunity for claimants from other countries to take action. To achieve this, they do not measure the limitation period from the moment of initial awareness but rather from the point at which the claimant formally requested the return of the object from its holder, and the holder either refused or failed to respond to that request. (Grammatikaki-Alexiou 2002).

The claiming state must identify the cultural object within fifty years, as its right to bring a claim expires if more than fifty years have passed since the theft. In the case of objects resulting from illicit excavations, it is practically impossible to know precisely when the excavation took place. It is rare for the state to know the exact location where an archaeological find was discovered, and even if it does, it can only approximate the time the offense occurred. Consequently, it is impossible to determine the precise starting point from which the limitation period begins to run. Moreover, a fraudulent possessor or art dealer could falsely assert that the object was in their possession well before the fifty-year period expired, while the claiming state lacks the evidence to prove otherwise. It is also common practice to treat transactions involving cultural objects as long-term investments. Storing and concealing the object for an extended period until the fifty-year limitation expires is a frequent tactic employed by those engaged in the illicit trade of antiquities (Grammatikaki-Alexiou 2002).

The limitations imposed by the fifty-year period could be mitigated if objects from illicit excavations were explicitly included in the exception provided by Article 3(4). As currently drafted, this exception applies only to collections and cultural objects that form part of a specified monument or archaeological site. Illicit excavations, however, typically occur in uncharted locations that the claiming state has not designated as archaeological sites. Article 3(4) should expressly recognize objects from illicit excavations as a separate category, thereby decoupling the commencement of the limitation period from the date of the illicit excavation, or at the very least, substantially extending the fifty-year limitation period.

Due Diligence and Burden of Proof

In seeking to balance the interests of the parties, the 1995 UNIDROIT Convention provides that the possessor is obliged, in all cases, to return a stolen cultural object, but is entitled to receive fair and reasonable compensation. During the drafting of the Convention, it was suggested that the possessor of a stolen cultural object should not be entitled to any compensation. This view, however, did not gain sufficient support. The drafters emphasised that the obligation of a good-faith purchaser to return a cultural object already represents a significant step forward and constitutes a fundamental shift for many Contracting States whose national laws follow a different legal system. Requiring the return of the object without any compensation would have created additional political and practical difficulties (Grammatikaki-Alexiou 2002).

In order for a possessor to receive compensation, certain conditions must be met. The possessor must demonstrate that they neither knew, nor ought reasonably to have known, that the object had been stolen. This distinction emphasised by the provision highlights that, in some circumstances, a purchaser, by virtue of their position or the conditions, may be expected to be aware that an object could be the product of theft (Palmer 2012). This provision introduces new trends in two respects. First, it provides for compensation to the good-faith possessor, which most national legal systems do not, at least when the compensation is to be paid by the object's rightful owner. Second, it reverses the burden of proof, requiring the possessor to show that they neither knew nor could reasonably have known that the object in their possession was stolen, and that they exercised due diligence at the time of acquisition (Stamatoudi 2011).

In the final text of the Convention, the term "due diligence" was adopted in place of "good faith." The latter would have automatically referred to the classical civil-law notion of good faith and, consequently, to existing domestic practice (Stamatoudi 2011). According to the Swiss Federal Supreme Court, the concept of due diligence is not fixed; rather, it must be assessed on a case-by-case basis (Prott 1997). The possessor of the cultural object must show that, prior to acquiring it, they acted in accordance with standards of

due diligence. This requirement encourages purchasers to refrain from acquiring cultural objects of questionable provenance where information is incomplete (Fincham 2008). The ultimate aim of these conditions, and particularly of placing the burden of proof on the possessor, is to combat theft and illicit excavation of cultural property while simultaneously exerting pressure on dealers and auction houses to avoid concealing the identities of sellers and buyers when doubts exist regarding the legality of the ownership of a cultural object (Prott 1997).

The concept of due diligence was not first introduced by the 1995 UNIDROIT Convention; it had already been developed within U.S. law. Specifically, it appears in the Securities Act of 1933 and the Uniform Commercial Code, which refer to “reasonable commercial standards of fair dealing.” Similarly, the National Stolen Property Act (NSPA) criminalizes the trafficking in stolen cultural property when the possessor has knowledge of its unlawful origin.

The interpretation of due diligence has been further shaped primarily through case law concerning the restitution of cultural property. For example, in the US case *Autocephalous Greek-Orthodox Church of Cyprus v. Goldberg*, the court examined whether Goldberg had exercised due diligence by considering factors such as: (1) Goldberg’s failure to investigate the provenance of the mosaics, (2) the lack of documentary evidence supporting the research she claimed to have conducted, (3) the purchase price, which was disproportionately low relative to their value and to the price Goldberg sought when attempting to sell them, (4) the nature of the objects as originating from an immovable monument, (5) the dubious reputation of intermediaries involved, and (6) the haste of the transaction. These factors closely mirror the guidance provided in Article 4(4) of the 1995 UNIDROIT Convention.

Article 4(4) sets out a non-exhaustive list of criteria, primarily describing the circumstances under which the cultural object was sold (Prott 1997). In particular, it examines the status of the parties involved in the transaction. Although the Convention’s provisions are addressed to and bind both art market professionals and ordinary purchasers in the same manner, in practice, a court is expected to apply a stricter standard to a purchaser who is familiar with how the art market operates (Valentin 1999). Similarly, the court must assess whether the purchaser chose to acquire the cultural object from a reputable collector or dealer, who, in order to maintain their good standing in the market, would avoid acquiring antiquities that are likely to have been illicitly excavated or forged (Prott 1997).

Other factors that define the concept of due diligence include the price paid for the object, whether the possessor consulted all accessible inventories of stolen cultural property beforehand, the extent to which they examined any other relevant documentation or information that could reasonably have been obtained, and whether they consulted other sources to which they could reasonably have had access, or took any other action that a reasonably diligent person would take under the same circumstances (Prott 1997). For example, the sale of a cultural object in unusual locations or at odd hours, an unjustified haste in completing the transaction, and an obviously low price are all circumstances that should raise suspicions for a prospective purchaser. In the case of illicit excavations, additional factors must be considered when acquiring an antiquity. Typically, objects from illicit excavations are transported and transferred in packaging that still contains residual traces, such as soil, worms, mud, straw, or even food remnants.

The provenance and type of a cultural object must be carefully assessed by the prospective purchaser. Cultural objects that may originate from countries that have experienced widespread looting of their antiquities, such as Afghanistan and Iraq, should raise suspicions for the purchaser. The categories of cultural property most vulnerable to illicit trafficking from these regions, along with a small proportion of objects known to authorities to have been looted, are published in reputable databases for stolen art, such as the Art Loss

Register. Consulting these databases prior to acquisition is mandatory and is considered a key element of due diligence (Valentin 1999). Furthermore, certain types of antiquities, such as Cycladic figurines, should, by default, trigger suspicion on the part of the purchaser, unless they can demonstrate, with verifiable evidence, a clear history of lawful transfers from previous owners (Prott 1997).

Although the list of factors relating to the possessor's due diligence is extensive, non-exhaustive, and certainly not cumulative in its application, the reality is that, in practice, very little title research is conducted, and purchasers pay minimal attention when acquiring an artifact (Stamatoudi 2011). The Convention does not expressly specify what evidence a possessor must present to the court in order to demonstrate that they exercised due diligence. One such means of proof is the export certificate or permit issued by the country of origin (Grammatikaki-Alexiou 2002).

According to Article 4(5), "the possessor shall not be in a better position than the person from whom they acquired the cultural object, whether by inheritance or otherwise as a gift." This is a significant provision because it addresses situations in which a bad-faith purchaser attempts to donate an object to a museum to gain tax advantages. The transfer of the object to a museum does not "cleanse" it of its prior status. Under this provision, the museum is not in a better position than the transferor or donor. The rule also prevents museums from circumventing their own acquisition policies by accepting unregistered antiquities from donors. In such cases, the cultural object must be returned to its original owner without compensation (Stamatoudi 2011).

Moreover, the drafters of the Convention recognized that several possessors falsely claim to have acquired cultural objects through inheritance. To curb such abusive practices, Article 4(5) provides that a person who has acquired a cultural object illegally should not be in a better position than someone who acquired it through inheritance or by other gratuitous means. This provision was introduced because numerous collectors knowingly purchased cultural objects of questionable provenance and donated them to museums in order to benefit from tax advantages and other privileges. Article 4(5) therefore places museums under an obligation to assume responsibility for the donations they accept (Prott 1997).

Recent U.S. case law in antiquities disputes suggests a gradual shift away from a formalistic reliance on good faith toward a more substantive examination of provenance. In *Republic of Turkey v. Christie's Inc.*, the United States Court of Appeals for the Second Circuit clarified that claimants in stolen-art litigation need only make a preliminary or "threshold" showing of a plausible ownership claim. Once such a showing is made, the burden shifts to the current possessor to demonstrate lawful title. Although the claimant ultimately failed in that case due to the doctrine of laches, given the particular delays involved, the court's clarification of the burden-shifting framework, together with its analysis of inquiry notice, signals an expectation that market participants exercise meaningful diligence when confronted with gaps or irregularities in an object's provenance (French 2025).

When considered alongside the persistent opacity and comparatively light regulation of the art market in New York City and the United States more broadly—the world's largest art market—these developments lend empirical support to the view that the legal landscape is undergoing a systemic shift. Increasingly, due diligence rather than formal assertions of good faith appears to be emerging as the operative standard governing conduct within the antiquities market (French 2025).

Building on this analysis, the shift from transactional security to due-diligence-centred adjudication can also be understood as part of a broader reconfiguration of property governance in the cultural heritage field. Rather than treating cultural objects as ordinary commodities circulating within private markets, contemporary jurisprudence increasingly

recognises their hybrid status as both tradable assets and carriers of historical, cultural, and identity-forming value. This recognition justifies the imposition of enhanced obligations on possessors, collectors, and market intermediaries, including duties of transparency, systematic provenance research, and cooperation with potential claimant states or communities (Lehavi 2025).

From a doctrinal perspective, these developments indicate a gradual recalibration of in rem property expectations. While traditional property law privileges stability of transactions and protection of good-faith purchasers, courts in major art-market jurisdictions are beginning to prioritise the integrity of the object's provenance history. In this sense, the emerging emphasis on due diligence operates as a bridging principle between international cultural heritage norms and domestic private law. By embedding provenance-based scrutiny into adjudication and market practice, courts and regulators effectively translate global heritage-protection goals into enforceable standards of conduct for collectors, dealers, and auction houses. The resulting framework not only strengthens restitution mechanisms but also encourages a more transparent and accountable art market.

Compensation

If the possessor can demonstrate that the cultural object was acquired with due diligence, they are entitled to receive fair compensation. In determining the amount of compensation, the court may consider various factors. For example, in *Webb v. Ireland*, the Irish Supreme Court considered, among other things, that the museum's costs for the conservation of the object had significantly increased its value when calculating reasonable compensation (Prott 1997). Compensation is paid upon the restitution of the cultural object. Both the timing of the return and the payment of compensation may be adjusted, either because the parties have agreed otherwise through negotiation, or because the court or another competent authority has ordered a different arrangement. For instance, the restitution of the stolen Siva Nataraja statue to India was postponed to allow the purchaser, a collector in the United States, to exhibit it. A similar arrangement can enable an owner who is unable to immediately raise the funds for compensation to secure the return of the object while delaying the payment of the corresponding amount (Prott 1997).

Compensation may be charged to the person who transferred the cultural object to the possessor, or to any prior transferor, provided that this is consistent with the law of the state before which the claim is brought. At the same time, the claimant seeking restitution retains the right to pursue the recovery of compensation from another party (Grammatikaki-Alexiou 2002). For example, in the US case of the return of the *Gilgamesh Dream Tablet*, Hobby Lobby claimed compensation from both the auction house Christie's and the seller, as it had exercised due diligence when acquiring the object.

In this case, the tablet was discovered in 1853 as part of the library collection of the Assyrian King Ashurbanipal and was displayed in an Iraqi museum until the Gulf War in 1991, when it was stolen. In 2003, the tablet was sold in London by the Jordanian antiquities dealer Ghassan Rihani to the antiquities dealer John Doe, who illegally imported it into the United States with the intent of selling it through Christie's auction house. To facilitate the auction, John Doe provided forged certificates to the auction house, claiming that the tablet had first been auctioned by Butterfield & Butterfield in San Francisco in 1981. In 2014, Hobby Lobby Stores purchased the tablet for display at the Museum of the Bible. The museum's exhibitions curator contacted Christie's seeking further information about the provenance of the object. Christie's maintained that, since the tablet had allegedly been auctioned in San Francisco in 1981, it must have been removed from Iraq many years before the Gulf War. However, Christie's refused to disclose the name or details of the seller (Roodt 2024).

In an effort to exercise due diligence, the museum's curator again raised questions about the tablet's provenance with Christie's in 2017, requesting evidence demonstrating that the object had been circulating on the art market since 1981. Christie's responded with a payment receipt for certain fragments auctioned by Butterfield & Butterfield, claiming that the tablet was among those fragments (Prott 1997). In 2019, in an *in rem* action brought by the United States, the District Court ordered the seizure of the tablet as stolen Iraqi property illegally imported into the United States in violation of the NSPA, and the tablet was subsequently returned to Iraq. Following the court's decision, Hobby Lobby Stores and the Museum of the Bible filed claims against the auction house and the seller for fraud and breach of express and implied warranties, seeking compensation as good-faith purchasers. The parties ultimately reached a settlement, and the case was dismissed (Pallen and Dickieson 2022).

4.2.4. Treatment of Illegally Exported Cultural Property Return of Illegally Exported Objects

Illicitly exported cultural objects are those that have left the territory of a State without its authorization, which, in most cases, is evidenced by an export certificate. It is the requesting State that determines which objects have been unlawfully exported from its territory. Cultural property that has been temporarily removed from the territory of the requesting State for purposes such as exhibition, research, or restoration, pursuant to a permit issued under the law governing export for the protection of its cultural heritage, and which has not been returned in accordance with the terms of that permit, is also considered illicitly exported (Article 5(2)) (Stamatoudi 2011).

The State of origin is required to submit its claim to the court or any other competent authority of the State to which the request is addressed. In order for the competent authority to order the return of a cultural object that has been illicitly exported, the requesting State must demonstrate that the removal of the object from its territory substantially affects one of the following: (a) the physical preservation of the object or the environment in which it is situated; (b) the integrity of a composite cultural object; (c) the preservation of information, particularly of a scientific or historical nature, relating to the object; (d) the traditional or ritual use of the object by an indigenous community or tribe; or it must show that the object holds significant cultural importance for the requesting State. If the cultural object does not fall within any of the above categories, the State must demonstrate the object's substantial significance for its cultural heritage (Prott 1997). Furthermore, the requesting State must establish that the export of the object violated the laws governing the "export of cultural objects for the protection of its cultural heritage" (Veres 2014).

These conditions imposed serve to limit the scope of the provision. Market countries often express concerns regarding the strictness of the export regulations of the States of origin. It has been argued, in particular, that some States of origin establish stringent requirements that may create obstacles to the art market. To address these concerns, the Convention includes this provision, which implicitly acknowledges that not all cultural objects of a State are necessarily of equal significance. Accordingly, the requesting State must demonstrate the importance of the objects as an integral part of its cultural heritage in order to secure their return (Stamatoudi 2011).

Time Limitations

The State of origin is subject to specific time limits within which it may assert its claims. During the drafting of the Convention, deliberations were held on whether shorter limitation periods should apply to illicit exports, given that such acts contravene only the exporting State's regulations on cultural property, whereas theft is recognized as an

internationally condemnable offense. It was ultimately agreed that the limitation periods should be identical for both scenarios. Accordingly, the State of origin may submit its claim within three years from the moment it becomes aware of both the location of the cultural object and the identity of its possessor. In any event, the claim expires fifty years from the date of the illicit export or from the date on which the object should have been returned under the conditions set forth in any temporary export permit (Stamatoudi 2011).

In the case of illicit export, no specific categories of cultural property are exempted from the above limitation periods, as is the case with stolen cultural objects. This implies that, for illicitly exported cultural property, the State's ability to claim restitution cannot be extended beyond fifty years. The State of origin is entitled to assert its claims within fifty years following the illicit export (Prott 1997).

Right to Compensation and Burden of Proof

The holder of a cultural object unlawfully exported is obliged to return it to the requesting state. If the holder acquired the object in good faith, they are entitled to receive fair and reasonable compensation from the requesting state, in the same manner as with stolen cultural property. For unlawfully exported cultural objects, the Convention further provides the holder with an alternative: instead of receiving compensation, they may retain ownership of the object or transfer it, either for consideration or gratuitously, to a person or a cultural institution.

Given the potential for a prospective holder to exploit this provision to circumvent the Convention, it is crucial to stress that a holder may exercise these alternative options in lieu of compensation only with the requesting state's consent. Absent this requirement, a holder could ostensibly return the cultural object to a person of their choosing with the aim of re-exporting it illegally to a country that is not a party to the UNIDROIT 1995 Convention. For this reason, particularly in cases where ownership of the cultural object is being transferred, such a transfer should occur only with the approval of the state of origin and exclusively to a person who can provide the necessary assurances. In this way, the provision serves a supportive function for States Parties that are economically more vulnerable and may be unable to shoulder the financial burden associated with compensation (Prott 1997).

However, this procedure may entail certain risks regarding the smooth resolution of the restitution process for the cultural object. Some of the challenges that may arise are illustrated by the case of the frescoes from the Church of Saint Euphemianos (Themonianos), which, although directly related to the application of the 1995 UNIDROIT Convention, can serve as a representative example of the issues that may emerge in such agreements.

In 1984, Aydin Dikmen removed two frescoes from the Church of Saint Euphemianos (Themonianos) in the occupied Lysi district. Following common practices in illicit trafficking, he cut the frescoes into thirty-eight smaller sections to conceal and transport them to Turkey. The frescoes were later discovered in an abandoned church in southern Turkey, and the Cyprus Department of Antiquities moved swiftly to prove that they had been forcibly detached from the Church of Saint Euphemianos. After protracted negotiations, it was agreed in 1986 that the frescoes belonged to the Orthodox Church of Cyprus. The return process for the frescoes continued for several decades, as the Republic of Cyprus was compelled to reach an agreement with the Menil Foundation in Houston to recover them. Under the agreement, the Menil Foundation purchased the frescoes on behalf of the Holy Archdiocese of Cyprus. In return, the Cypriot side agreed to lend the artworks for fifteen years, until 2001, for exhibition at the Foundation's museum. In 1992, the loan period was extended until 2012. Upon the conclusion of the loan, the Menil Foundation claimed ownership of the frescoes, asserting that it had held them for twenty consecutive

years. The Foundation also emphasised that, under the 1992 agreement, any dispute would be subject to arbitration before the Federal Court of Texas, applying U.S. law.

The Autocephalous Church of Cyprus, together with the Republic of Cyprus, contended that, under the 1983 pre-agreement, any dispute would be binding on both parties according to the Department of Antiquities' determination. Following interventions by the Cypriot authorities, the Menil Foundation returned the frescoes to the Republic of Cyprus, and they were repatriated on 16 March 2012 ([Agios Themoneianos n.d.](#)).

Although the provision states that, to receive compensation, the holder must neither have known nor reasonably been expected to know that the cultural object was illicitly exported, it does not explicitly clarify whether the holder bears the burden of demonstrating that they exercised due diligence ([Vrellis 2008](#)). In assessing whether the holder knew that the cultural object had been illegally exported, the circumstances of acquisition are considered, particularly the existence or absence of an export certificate. Accordingly, it is reasonable to contend that the burden of proof rests with the holder, as the inquiry focuses on their conduct at the time of acquisition and on the existence of the export certificate or a document that any purchaser is obliged to request when acquiring a cultural object and is expected to produce in any subsequent transaction involving that item.

If the concept of "circumstances of acquisition" is analyzed in terms of specific actions, it becomes apparent that the conditions set forth in Article 6(2) effectively mirror those stipulated in Article 4(4). The fact that they are not explicitly enumerated suggests that the standard of diligence required for stolen cultural objects is higher than that demanded for illicitly exported ones. In any event, however, a purchaser who knowingly acquires an illicitly exported cultural object is not entitled to compensation ([Prott 1997](#)).

4.2.5. Jurisdictional Issues

Article 8 addresses issues of jurisdiction and establishes a new basis for jurisdiction in addition to those provided under other applicable law. Specifically, it provides that a claim may be brought before the courts or other competent authorities of the Contracting State in which the cultural object is located, in addition to the courts or authorities that would otherwise have jurisdiction under the existing rules in the Contracting States. In practical terms, this allows an owner deprived of a cultural object to initiate proceedings before the courts or competent authorities of the State where the object is situated, regardless of the residence of the seller or any other parties involved. The parties, however, remain free to agree to another forum or to arbitration if they so wish ([Stamatoudi 2011](#)).

The 1995 UNIDROIT Convention does not replace existing jurisdictional rules² but rather introduces an additional option: a claim may be brought in the State where the cultural object is located. This provision is also likely to facilitate enforcement, as the State of location need not enforce a foreign judgment ordering the return of the object; rather, it need only enforce the decision of its own courts. Nonetheless, even if a claim is brought in another State, the dispossessed owner or State may seek provisional measures from the courts of the State where the cultural object is located to promptly and effectively ensure that the object is withdrawn from auction, not sold, or not otherwise removed. Such measures may also safeguard the object's integrity and security, ensure its proper handling,

² For instance in Europe, jurisdiction is generally determined by the defendant's place of residence (for example, under Regulation 44/2001, formerly the Brussels Convention). Alternatively, claims may be brought under special jurisdiction before the courts of the place where the harmful event occurred or may occur in cases involving torts or quasi-torts (Article 5(3) of the Regulation). A similar framework is established under the 1988 Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which was later replaced by the 2007 Lugano Convention. The latter applies between EU Member States and certain EFTA States (Denmark, Norway, Iceland, and Switzerland) and is grounded in the principles of Regulation 44/2001. These jurisdictional bases are not displaced or excluded by the UNIDROIT Convention ([Stamatoudi 2011](#)).

or prevent its further export. Without this possibility, it is highly likely that, by the time a judgment ordering the return or restitution of a cultural object is issued, the object could no longer be located for enforcement. Judgments issued within EU Member States are almost always automatically recognised and enforced among them (Stamatoudi 2011).

4.3. *The Impact of the 1995 UNIDROIT Convention*

4.3.1. Impact on the International Legal Framework

At the international level, the influence of the 1995 UNIDROIT Convention is most clearly reflected in the interpretative and operational practice surrounding the 1970 UNESCO Convention. Although the latter remains the cornerstone public international law instrument for combating the illicit trafficking of cultural property, its application has increasingly been informed by the more detailed and operational standards developed under the framework of the 1995 UNIDROIT Conventions.

UNESCO's "Basic Texts of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property" explicitly encourage States Parties, when confronted with claims for the return of cultural objects, to adopt a flexible approach to applicable law and not to hesitate to apply foreign law in order to determine whether an object should be regarded as stolen. This interpretative choice is favoured where both the State of origin and the forum State have ratified the 1995 UNIDROIT Convention. In such cases, Article 3(1) of the Convention provides a clear and internationally recognised basis for the restitution of stolen cultural objects, thereby facilitating judicial convergence and strengthening the practical application of the law of the State of origin (*lex originis*). Through this mechanism, the 1995 UNIDROIT Convention operates as a harmonising instrument that reduces conflict-of-laws uncertainty and promotes the effective return of cultural property to its country of origin (UNESCO 2025a).

The Convention's influence is further apparent in the treatment of limitation periods within operational framework of 1970 UNESCO Convention. The 1970 UNESCO Convention acknowledge that States of origin may pursue the return of cultural objects stolen or illegally exported after its entry into force in both the requesting and the requested States. However, the UNESCO emphasise that such claims remain subject to the limitation periods established by Articles 3 and 5 of the 1995 UNIDROIT Convention. In this context, UNESCO explicitly aligns its interpretative approach with the UNIDROIT regime, recognising both the legal certainty offered by defined time limits and the Convention's enhanced protection for particularly vulnerable categories of cultural heritage (UNESCO 2025a).

Notably, within this framework, UNESCO further highlights the need to respect the cultural heritage of Indigenous peoples and their rights thereto, as recognised and protected under the 1995 UNIDROIT Convention. In particular, the Convention's extension of the fifty-year limitation period for claims involving cultural objects belonging to Indigenous communities or tribes is expressly acknowledged as a significant safeguard. The 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects provides special, strengthened protections for cultural objects belonging to indigenous communities, allowing them to bypass the strict time limitations often applied to other cases of claims (UNESCO 2025b).

Beyond the above matters, the UNIDROIT Convention has also exerted a significant influence on the conceptual interpretation of key terms employed in the 1970 UNESCO Convention. Although the latter uses the notions of "restitution" and "return," these terms are employed inconsistently across its authentic language versions, giving rise to ambiguity in practice. UNESCO addresses this uncertainty by referring to the clearer conceptual distinction articulated in the 1995 UNIDROIT Convention, which differentiates between the restitution of stolen cultural objects and the return of illegally exported ones. In doing

so, the UNIDROIT framework functions as an interpretative reference point that enhances coherence and legal precision within the UNESCO system (UNESCO 2025b).

A similar interpretative reliance on the UNIDROIT Convention can be observed in relation to the concept of illegal discovery. UNESCO advises States Parties to interpret illegal discovery as encompassing both illicit excavation and unlawful retention. The legality of the excavation is to be assessed on the basis of the law of the State in which the illegal discovery occurred. Crucially, UNESCO expressly takes the position that, according to this approach, cultural objects originating from such practices should be regarded as stolen, in line with the approach adopted by the 1995 UNIDROIT Convention. This alignment represents a substantive shift away from more restrictive interpretations that previously limited the scope of protection for objects lacking prior documentation or inventory (UNESCO 2025a).

Perhaps the most far-reaching influence of the UNIDROIT Convention at the international level concerns the treatment of the good-faith purchaser. UNESCO explicitly encourages States Parties to assess good faith and the right to compensation of the bona fide holder through the lens of due diligence, drawing directly on the criteria articulated in the UNIDROIT Convention. In particular, Article 4 is identified as a benchmark for contemporary best practices, guiding both courts and authorities in evaluating whether an acquirer has exercised the level of care required by international standards. By endorsing this approach, UNESCO promotes a shift away from formalistic reliance on good faith towards a more substantive and evidence-based assessment, with the express aim of facilitating restitution and discouraging market practices that perpetuate the circulation of unlawfully removed cultural objects (UNESCO 2025a).

Beyond the European context, the normative influence of the UNESCO and UNIDROIT conventions can also be observed in a number of regional and national initiatives addressing the illicit trafficking of cultural property. In the United States, for instance, the Native American Graves Protection and Repatriation Act introduced a comprehensive framework for the return of cultural objects and human remains to Indigenous communities. Similarly, discussions within organisations such as the African Union have increasingly emphasised the restitution of cultural heritage removed during the colonial period. Although these initiatives differ in scope and legal structure, they reflect a broader international trend toward strengthening restitution mechanisms and recognising the cultural rights of communities of origin (Sarr and Savoy 2018).

4.3.2. Impact Within the European Union

Within the European Union, the regulation of cultural property is shaped not only by international conventions but also by the fundamental principles of the internal market. In particular, cultural objects are, in principle, treated as goods; however, Article 36 expressly allows restrictions on their movement when justified on grounds of the protection of national treasures of artistic, historic, or archaeological value. To be more specific, the free movement of goods, enshrined in Articles 34–36 TFEU, requires that restrictions on trade between Member States be carefully justified. Cultural objects, occupy a special position within this framework, as Article 36 TFEU expressly allows Member States to adopt measures necessary for the protection of their national. EU legislation on cultural objects therefore operates at the intersection of internal market law and cultural heritage protection³.

³ The Court of Justice of the European Union (CJEU) has addressed the legal nature of cultural goods in Case 7/68 *Commission v Italy*, where it rejected Italy's argument that cultural objects should be treated differently from ordinary goods. In that case, the Italian government contended that, under Article 36 TFEU, it was entitled to impose export charges on items of artistic, historical, archaeological, or ethnographic interest. The Court, however, declined to accept this position, thereby affirming that cultural objects fall within the scope of

At the European Union level, the influence of the 1995 UNIDROIT Convention is particularly evident in the adoption of Directive 2014/60/EU of the European Parliament and of the Council of 15 May 2014 on the return of cultural objects unlawfully removed from the territory of a Member State. Notably, the concept of due diligence, first articulated in a systematic manner by the UNIDROIT Convention, has been expressly incorporated into Article 10 of the Directive (Schneider 2016).

The objective of Directive 2014/60/EU is to ensure the return of cultural objects unlawfully removed from the territory of one Member State and located within the territory of another. In pursuing this aim, both instruments seek to facilitate the restitution of cultural objects to their country of origin through closely aligned legal mechanisms and shared normative tools. Indeed, the Directive reproduces, to a significant extent, the core solutions developed by the UNIDROIT Convention, particularly with regard to due diligence standards, the assessment of the good faith of the possessor, the conditions governing compensation, and the limitation periods within which a return claim may be brought.

A significant point of divergence between the two instruments lies in the absence, within the Directive, of the conceptual distinction drawn by the UNIDROIT Convention between stolen cultural objects and illegally exported cultural objects. Notwithstanding this difference, the transposition of Directive 2014/60/EU into the domestic legal orders of the Member States has contributed to a considerable degree of harmonisation in the treatment of the good-faith purchaser across the European Union, as well as to the alignment of the national legislation of the Member States with the core provisions of the 1995 UNIDROIT Convention, at least in their mutual relations.

Moreover, both Directive 2014/60/EU and Regulation (EC) No 116/2009 require Member States, when adjudicating disputes concerning cultural objects, to respect and take into account the export policies applied by each Member State in relation to its national treasures. This approach has been further strengthened by Regulation (EU) 2019/880, which obliges Member States to respect the export rules of third countries whenever cultural goods are introduced into the territory of the Union. Taken together, these developments reflect a clear convergence with the principles enshrined in the 1995 UNIDROIT Convention.

Taken together, these developments illustrate a framework that could be described in as a “restitution triangle” between the UNESCO, UNIDROIT and European Union legal frameworks. The 1970 UNESCO Convention establishes the public international law basis for cooperation between States in preventing and addressing illicit trafficking, while the 1995 UNIDROIT Convention provides more detailed private law mechanisms governing restitution, limitation periods and the protection of good-faith purchasers. At the regional level, the European Union has incorporated several of these principles into its internal legal order through secondary legislation governing the return and circulation of cultural objects. The interaction between these three normative layers has progressively produced a complementary system in which public law obligations, private law remedies and regional market regulation mutually reinforce the international protection of cultural heritage.

the rules on the free movement of goods. That said, the Court has not examined a case dealing exclusively and comprehensively with cultural goods as a distinct category. Nevertheless, its broader case law indicates that the principle of free movement of goods may, under certain conditions, yield to the protection of cultural heritage. Relevant CJEU judgments are discussed in Part III, Chapter 9, which explores the limits of the Article 36 TFEU derogation; see, *inter alia*, *Cinéthèque SA v Fédération nationale des cinémas français* [1985] ECLI:EU:C:1985:329; *Fachverband der Buch- und Medienwirtschaft v LIBRO Handelsgesellschaft mbH* [2009] ECLI:EU:C:2009:276; *Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein (Cassis de Dijon)* [1979] ECLI:EU:C:1979:42; *Commission v France* [1991] ECLI:EU:C:1991:76; *Commission v Italy (Tourist Guides)* [1991] ECLI:EU:C:1991:78; and *Stichting Collectieve Antennevoorziening Gouda and Others v Commissariaat voor de Media* [1991] ECLI:EU:C:1991:323.

4.4. Gaps and Recommendations for Improvement

As demonstrated by the foregoing analysis of the relevant provisions and the cases discussed above, the 1995 UNIDROIT Convention is an international instrument that can effectively help combat illicit trafficking in cultural property (Abd el Wahed 2003). Its provisions represent a significant advancement over the 1970 UNESCO Convention, offering practical tools and substantive mechanisms for the restitution and return of unlawfully acquired cultural objects (Trova 2018). The two Conventions are compatible and complementary. Despite its notable strengths, however, the 1995 UNIDROIT Convention is not without imperfections. Indeed, this is impossible, given that it seeks to reconcile the interests of two diametrically opposed approaches to the trade in cultural property (Grammatikaki-Alexiou 2002), and to challenge deeply entrenched perspectives on the protection of the *bona fide* purchaser and on matters of private international law (Valentin 1999). This section will focus on gaps and recommendations for improvement.

4.4.1. Non-Retroactivity of the Convention

Under Article 10, the provisions of Chapter II (Restitution of Stolen Cultural Objects) and Chapter III (Return of Illegally Exported Cultural Objects) of the 1995 UNIDROIT Convention cannot be applied retroactively. The non-retroactive effect of the Convention's rules raises concerns, particularly among source countries. They believe that the absence of retroactivity could *de facto* legitimise past illicit transactions. Conversely, importing states defended the *ex nunc* application of the Convention. Article 10(3) strikes a balance between these positions by establishing that the Convention's non-retroactive effect neither legitimises unlawful exports that occurred prior to its entry into force, nor restricts the right of any state or individual to pursue claims under other applicable legal frameworks outside the scope of the Convention (Grammatikaki-Alexiou 2002).

Article 9 emphasises that the Convention does not prevent States Parties from implementing more favorable conditions for the restitution or return of cultural property. Within the framework of this article, it is important to ensure that cases falling outside the Convention's scope due to its non-retroactive application can still be addressed. The second paragraph of Article 9 underlines that this provision does not create an obligation to recognise or enforce judgments or decisions of courts or other competent authorities of another Contracting State that conflict with the Convention's provisions. This clause supports a narrow interpretation of the provision. Although it was added to alleviate the concerns of certain states reluctant to adopt the Convention because it establishes rules contrary to their domestic law, it also risks undermining the minimal level of protection the Convention seeks to achieve, as it allows Contracting States to apply standards according to their own interests at any given time (Grammatikaki-Alexiou 2002).

Although the non-retroactive application of the Convention represents a crucial element of the compromise between the interests of source countries and market countries, it may pose particular challenges for the restitution of certain cultural property to its countries of origin. The non-retroactivity of the Convention especially affects cultural property that was looted during the Second World War (Prott 1997). A similar issue may arise for certain countries, particularly developing former colonies, whose cultural property was exported from their territory prior to the establishment of a legal framework prohibiting such exports (Abd el Wahed 2003). The principal issue arising from the non-retroactive application of the Convention is that unscrupulous traffickers may claim that a cultural object was exported from the source countries before the Convention came into force, whereas in reality it was exported more recently.

Such discrepancies may potentially be addressed through alternative procedures, including negotiation (UNESCO 1970). In certain instances, even where theft or unlawful

export occurred prior to the entry into force of the Convention, some collectors, unwilling to associate their reputation with illicit trade, voluntarily return the cultural property. For example, when the Italian authorities initiated criminal proceedings against Robert Hecht for conspiracy to traffic in looted antiquities, several museums voluntarily returned cultural objects they had acquired from him. Consequently, the existence of a strict regulatory framework targeting dealers who fail to comply with due diligence standards could have a positive impact on combating illicit trade and facilitating the return of cultural property through alternative dispute resolution mechanisms ([Center for Art Law 2012](#)).

Applicable Law

Prior to the adoption of the 1995 UNIDROIT Convention, several States, especially those with a strong commitment to safeguarding cultural heritage, had already implemented domestic prohibitions on the export of cultural property. However, national legislation alone was often insufficient to effectively protect and recover cultural objects that had been illicitly removed at international level. Because the Convention is not retroactive, States Parties are unable to assert claims over cultural objects lost before 1995, except where domestic legal instruments already provided a basis for such claims. In this context, invoking the law of the source country (*lex originis*) may offer a means to navigate the restrictions imposed by the Convention's non-retroactive nature, particularly in cases where internal safeguards were established prior to the enforcement of international norms.

These domestic safeguards also indicate that measures requiring enhanced diligence in the circulation of cultural objects were not entirely novel developments introduced by the UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (1995) ([Abd el Wahed 2003](#)). Several states had already adopted legal mechanisms aimed at restricting the circulation of unlawfully removed antiquities and imposing duties on market actors. For instance, Italy's long-standing cultural heritage legislation—particularly the framework consolidated in the Italian Cultural Heritage and Landscape Code and its earlier statutory predecessors—recognised strong state ownership claims over archaeological objects and limited their private transferability. Similarly, national patrimony laws in countries such as Mexico (Federal Law of 1972 on Archaeological, Artistic and Historical Monuments and Zones) and Greece (Law 5351/1932, latter replaced by the Law 3028/2002 “On the Protection of Antiquities and Cultural Heritage in General”) had already established state ownership of undiscovered antiquities and strict export controls well before 1995. These earlier legal regimes provided an important doctrinal and regulatory backdrop against which the UNIDROIT Convention later articulated a more harmonised private-law framework for restitution and due diligence.

This principle is exemplified in the US case of *Greece v. Sotheby's*. The bronze horse statuette at issue first entered the art market in 1965 via the Swiss auction house Münzen und Medaillen AG and was subsequently acquired by the dealer Robin Symes, who sold it in 1973 to Howard and Saretta Barnett. In 2018, when part of the Barnett collection was scheduled for auction at Sotheby's New York, the Greek Ministry of Culture identified the statuette among the items for sale. Greece sought Interpol's assistance to trace the provenance, focusing particularly on the 1967 auction records to determine the date and circumstances of its export from Greece. The investigation, however, was inconclusive due to the passage of fifty years and the destruction of relevant documentation at the Swiss auction house. Despite this, Greece pursued restitution of the cultural object from the Barnetts' heirs and Sotheby's.

The U.S. District Court for the Southern District of New York ruled that claims concerning State cultural property are sovereign rather than commercial in nature, and therefore, the Court lacked jurisdiction. The Court of Appeals further clarified that Sotheby's could

not initiate legal action against the Greek government under the Foreign Sovereign Immunities Act (FSIA), while highlighting that Greek law vests ownership of all antiquities in the State, irrespective of the discovery date or location. This legal framework situates restitution claims squarely within the exercise of sovereign authority (*acta jure imperii*). Although the ruling does not establish *lex originis* as an absolute principle, it illustrates how its application can help circumvent the limitations imposed by the Convention's non-retroactivity (Wallace 2020).

A similar reasoning was demonstrated in the Dutch case *Village Committee of Yangchun and DongPu v. Oscar vn Overee*, concerning the return of the mummified Buddhist monk statue, Zhanggong Zushi. The statue was stolen from a Chinese temple during the 1990s and later found in 2013 in the possession of a Dutch collector. Although the Dutch courts initially dismissed China's claim, the Chinese judiciary ultimately upheld the restitution request. Even though the case did not directly rely on the 1970 UNESCO Convention or the 1995 UNIDROIT Convention, the court endorsed the principle that, in disputes concerning ownership of cultural property, the law of the State where the theft occurred should govern, rather than the law of the State where the object was most recently traded or held (Campfens 2024).

It may therefore be argued that the application of the law of the State of origin (*lex originis*) can play a decisive role in overcoming the limitations arising from the non-retroactive application of the 1995 UNIDROIT Convention. Where domestic law vests ownership of cultural property in the State, restitution claims may succeed even when the object was removed prior to 1995 or where the precise date of export cannot be established. Disputes concerning the return of cultural objects are inherently complex and present structural evidentiary challenges for source States, particularly in cases involving objects originating from illicit excavations. Although *lex originis* does not constitute an autonomous rule of international law, case law demonstrates that, when applied by domestic courts, it provides a functional and effective mechanism for resolving disputes involving cultural property. In this sense, adjudicating such disputes on the basis of the law of the State of origin complements the Convention's framework and reinforces its underlying objective of promoting the return of cultural objects to their country of origin.

Object ID

Beyond the establishment of the application of *lex originis* in disputes concerning cultural property, another mechanism for addressing the challenges arising from the Convention's non-retroactive effect is the widespread implementation of a standardized certificate modeled on the Object ID system. Demonstrating due diligence should be primarily grounded in the existence and presentation of a provenance or export certificate. Before acquiring any cultural object, a prospective buyer should obtain a certificate that details all previous owners of the item in question. If a dealer cannot provide such a certificate, the prospective buyer should refrain from the acquisition. Similarly, if the possessor of a cultural object cannot produce this document before a court or competent authority reviewing the case, they should not be entitled to compensation. There is a risk that the circumstances of acquisition and other factors relevant to due diligence could be misrepresented by the possessor to secure a right to compensation. While the conditions under which the object was acquired should indeed be considered, greater weight must be given to the existence or absence of the certificate.

Risks also arise with respect to the certificate itself. It is a common practice for art dealers to issue forged certificates (Grammatikaki-Alexiou 2002), as exemplified in the case of *Hobby Lobby Stores, Inc. v. Christie's Inc.*, discussed above, in which the antiquities dealer John Doe presented falsified certificates to Christie's to legitimise the tablet's presence on

the art market. Moreover, dealers frequently make false claims that export certificates or invoices documenting the object's acquisition have been lost (Grammatikaki-Alexiou 2002). For this reason, the use of a standardised format, such as the Object ID standard, should be expanded. This standard should be in a digital form, preferably uniform across all States Parties to the Convention, and issued by an official governmental authority. Clearly, such a measure cannot be imposed universally on all cultural objects, as it would place additional burdens on already overstretched administrative bodies and could significantly delay art market transactions. Nevertheless, its application is essential for antiquities, since these items, due to the prevalence of illicit excavations, are particularly vulnerable and require more robust evidentiary safeguards.

4.4.2. The Problem of Limited Market Countries Accession

The protection afforded to cultural property under the provisions of the Convention outweighs its shortcomings (Levine 2011). Nevertheless, the Convention alone cannot provide a comprehensive solution to the problem of illicit trade. The ultimate aim of these provisions is to initiate a process that ensures international cooperation in this field. The first step toward achieving such cooperation is the ratification of the Convention by a broader number of States. If additional countries, particularly the so-called "import countries", do not accede, then, despite the precision and clarity of its provisions, the UNIDROIT 1995 Convention risks remaining largely ineffective (Grammatikaki-Alexiou 2002). A decisive factor shaping the stance of these States has been the pressure exerted by art dealers. States of import are reluctant to ratify the Convention because, on the one hand, they perceive its spirit as encroaching on the interests of dealers, museums, and auction houses operating within their territory, and, on the other hand, they consider some of its provisions to conflict with fundamental aspects of their national legislation.

Treatment of the *bona fide* Purchaser

The divergent legal traditions followed by different States differ fundamentally in their approach to critical issues, such as the treatment of the *bona fide* purchaser. In an effort to reconcile these differences, the Convention provides that a purchaser of a stolen or unlawfully exported cultural object must return or restitute it accordingly, and, provided they can demonstrate that they exercised due diligence in acquiring the object, is entitled to receive fair and reasonable compensation. Many States that follow the civil law tradition are reluctant to embrace these provisions, as they view them as potentially disruptive to their national legislation, which often allows a *bona fide* purchaser to acquire ownership of an object, either immediately or after a certain period, even if it was stolen from its original owner. Nevertheless, most States, even those generally protective of the *bona fide* purchaser, make an exception for cases in which the movable property has been taken from the owner's possession by theft, providing that the transfer of ownership from a non-owner to a *bona fide* acquirer does not occur under such circumstances.

It should be understood by these States that the Convention does not affect a wholesale alteration of their national legal systems. A *bona fide* acquirer retains the rights granted under the national law of the respective State Party in all transactions, with the sole exception of those involving stolen or unlawfully exported cultural objects of a cross-border character. The scope of the Convention's provisions is therefore limited to a specific category of transactions and, as such, neither undermines the position of the *bona fide* purchaser nor disrupts the legal traditions of the States Parties to the Convention.

It must also be recognised that the provisions limiting the rights of *bona fide* purchasers are designed to combat the illicit trade in cultural objects. It is of paramount importance to safeguard cultural heritage for purposes of scientific research and to preserve cultural

objects as unique, non-renewable, and irreplaceable assets (Council of the European Union 2018). At the same time, the illicit trafficking of cultural objects constitutes a serious crime, often intertwined with other forms of criminality, including drug and arms trafficking, organised crime, and the financing of terrorism (Zygierewicz 2017). It is therefore essential that market countries internalise the principle that the protection of the world's cultural heritage is a vital duty, one that must be upheld even at the expense of the art market (Stamatoudi 2011).

Private International Law Provisions

Moreover, market countries have expressed concerns about the Convention's private international law provisions. Their reluctance to ratify the Convention largely stems from the difficulty of accepting the changes it would impose on their national private international law regarding the import of cultural objects. Specifically, these States remain cautious about the conditions and restrictions that other countries apply to the export of cultural objects. In some countries, export requirements are minimal, whereas in others, particularly those grappling with looting and illicit trafficking, certain categories of cultural objects are generally subject to a complete export ban (Valentin 1999). The Convention obliges Contracting States to return cultural objects that have been illegally exported from their country of origin. For many, this is regarded as one of the main drawbacks of the 1995 UNIDROIT Convention, as a ratifying State is required to comply with the export laws of all other Contracting States, even when those laws differ significantly from its own national legislation (Browne 2002).

Actors in the art market, such as dealers, collectors, and certain museums, who have been among the most vocal opponents of this provision (Snyder 2019), often argue that if courts are required to enforce the export rules of source countries, entire museum collections could be returned to their countries of origin. While this argument lacks any sound legal or logical foundation, the intense opposition from these circles has effectively discouraged many market countries from ratifying the Convention. It is evident, even upon a first reading of the Convention, that its provisions do not threaten existing collections, except in cases where the collections consist of objects that were stolen or illegally exported after the Convention entered into force, and only in relation to the two States involved in the dispute (Roca-Hachem 2005).

Furthermore, a careful reading of Article 5(3) makes clear that, for an illegally exported cultural object to be returned, its removal from the source country must significantly affect specific interests of that State or possess substantial cultural importance for the requesting State. The scope of the chapter concerning illegally exported objects is further constrained by Article 5(5), which provides that a requesting State may claim a cultural object only within fifty years of its unlawful export. Although the fifty-year period might initially appear sufficient, in practice it often proves inadequate, as many illegally exported cultural objects remain concealed in storage for extended periods, effectively treated as long-term investments. Once such objects reemerge on the art market after fifty years, the right of a source country to claim them has already lapsed. Given the narrow scope of this provision, market countries ought to set aside any concerns regarding the stringent export rules imposed by source countries.

Trade Agreements

Considering that it may take several decades before certain market countries are persuaded to accede to the Convention, alternative solutions could be explored, such as the conclusion of bilateral or multilateral treaties incorporating the provisions of the 1995 UNIDROIT Convention or drawing inspiration from them. In particular, the conclusion

of bilateral agreements with States that serve as transit points for cultural goods is equally crucial for combating illicit trafficking. A notable example is the Memorandum of Understanding between Cyprus and Switzerland, signed in 2013, as part of a joint effort to curb this phenomenon, improve controls, and strengthen monitoring and cooperation mechanisms.

Furthermore, States facing issues of illicit trafficking of cultural property seek to establish memoranda of cooperation with the countries in which dealers of cultural goods and auction houses operate (Stamatoudi 2011). For example, in 2001, Italy signed a memorandum with the United States, aimed at imposing restrictions on the import into the U.S. of cultural goods dating from the 9th century BCE to the 4th century CE originating from Italy (Trova 2018). Similarly, Greece signed a memorandum of cooperation with the United States in 2011, which provides that the competent U.S. authorities shall inspect and prohibit the entry of any object dating from the Upper Paleolithic period (circa 20,000 BCE) up to the 15th century CE. Likewise, in 2022 Cyprus and the United States concluded an agreement imposing restrictions on the import of archaeological material dating from the 11th millennium BCE to 1770 CE, and ethnological material dating approximately from the 4th century CE to 1878 CE. The import of such objects into the United States is permitted only if accompanied by the required export certificates.

The deployment of bilateral and multilateral agreements could illustrate how collaborative frameworks can effectively implement the principles of the 1995 UNIDROIT Convention even prior to formal accession. These agreements provide concrete, operational pathways for States to engage with the Convention's standards in practice, demonstrating that adherence need not conflict with domestic legal frameworks or disrupt existing regulatory arrangements. By allowing States to witness the Convention's principles functioning effectively in real case studies contexts, such cooperative arrangements foster trust and confidence among hesitant Market States. This practical exposure can help alleviate perceived risks or uncertainties associated with accession, thereby creating a persuasive incentive for eventual ratification and broader participation in the Convention.

The Role of *soft law*

Soft law instruments may serve as a vehicle for the effective application of the principles of the 1995 UNIDROIT Convention in States that have not formally acceded to it. Soft law may serve as an effective means for States that are not yet prepared to undertake binding legislative commitments, which may otherwise implicate sensitive aspects of their domestic legal frameworks. By adhering to soft law standards that explicitly or implicitly incorporate the principles enshrined in the 1995 UNIDROIT Convention, both professional associations and States can implement its provisions informally while aligning with the interests of source countries. A prominent illustration of this approach is UNESCO's *International Code of Ethics for Dealers*, which has emerged as the most widely recognised normative framework in the field. Originally promulgated in 1999, the Code was developed pursuant to the principles of both the 1970 UNESCO Convention and the 1995 UNIDROIT Convention, and it is presently undergoing revision to reflect contemporary commercial practices and challenges (Frigo 2024). The ongoing revision process concentrates primarily on three interrelated objectives: firstly, the clarification and provision of guidance regarding the requisite standard of due diligence in the acquisition of cultural objects; secondly, the reinforcement of cooperative mechanisms with source countries in the restitution of cultural property; and thirdly, the establishment of a mandatory registry for the systematic documentation of key information relating to each transaction (UNESCO 2021).

By embedding the fundamental elements of the 1995 UNIDROIT Convention, the Code extends the Convention's normative influence to jurisdictions that have not formally ratified it, particularly those hosting active dealers and auction houses. The application

of ethical standards that mirror, albeit indirectly, the Convention's principles fosters a *de facto* regime of compliance, cultivating a culture of adherence to internationally recognised norms even in the absence of formal legal obligations (Stamatoudi 2016).

In this context, in order to strengthen compliance with the Codes of Ethics, it is essential to link a dealer's professional reputation to their actual adherence to these ethical standards. The notion of a dealer's good faith and professional reputation should be understood as directly linked to compliance with ethical standards.

The gradual alignment of commercial behavior with the codes of ethics and by extension with the principals of the 1995 UNIDROIT Convention (diligently verifying the provenance of cultural objects, exercising due care, and notifying authorities of suspected illicit trade) could demonstrate that adherence to the Convention is compatible with market operations.

When dealers' conduct is guided by such ethical principles, reflecting the standards set out in both the Code of Ethics and the Convention, market States' attitudes toward the protection of cultural heritage may increasingly converge with the objectives established by source countries. As a result, the gradual shift in perception and practice can create a more favorable environment for broader ratification, illustrating that adherence to the Convention's principles is both feasible and beneficial for States operating within the global art market.

Institutional Pressure for Broader Ratification of the 1995 UNIDROIT Convention

The exertion of pressure by bodies such as UNESCO and the European Union constitutes a significant mechanism for encouraging broader accession to the 1995 UNIDROIT Convention among States.

More specifically, UNESCO actively invites States to consider becoming Contracting Parties, emphasizing that the Convention complements the 1970 UNESCO Convention. Key UNESCO documents, such as the *Basic Texts*, explicitly reference the UNIDROIT Convention, providing non-Contracting States with a legal foundation to implement its principles domestically. By aligning national legislation with these provisions, States not only enhance the coherence of their legal frameworks with international standards but also create conditions conducive to future accession.

This influence is even more pronounced at the European Union level, as the core normative solutions of the Convention have been substantially integrated into EU law through Directive 2014/60. Following the adoption of the Directive, Member States can no longer invoke conflicts with domestic law as a rationale for refraining from accession. Nevertheless, some EU Member States—particularly those with a thriving art market—remain hesitant to join the Convention. It should be emphasized that broad accession remains essential, as Directive 2014/60 does not fully cover all aspects of the Convention.

For example, where ownership of a cultural object resides with a private individual, the Directive allows that individual—either alone or in cooperation with the source State—to pursue claims or criminal sanctions without invoking the Directive. By contrast, accession to the Convention would extend protection directly to citizens, empowering them to safeguard cultural property and assert claims in cases of theft. Moreover, the Convention provides more favorable limitation periods. While Directive 2014/60 mirrors the Convention in establishing a three-year period from the moment a source State becomes aware of the object's location and holder, it limits the right to claim to thirty years following unlawful removal. The UNIDROIT Convention, by contrast, allows claims for up to fifty years. Considering the widespread practice of collectors concealing cultural objects for extended periods before reintroducing them to the art market, this additional twenty-year window

can prove decisive, enabling source States to locate the object and assemble the necessary evidence to pursue restitution.

4.4.3. Adapting the 1995 UNIDROIT Convention to the Digital Age

In recent decades, the rapid development of digital technologies and the proliferation of online platforms have introduced new dimensions and challenges to cultural property protection. The 1995 UNIDROIT Convention, while establishing robust legal frameworks for the restitution or return of illicitly trafficked cultural objects, must increasingly take into account the evolving risks associated with online trade. The internet facilitates the sale of cultural goods through a variety of mechanisms, including online auctions and fixed-price sales, which often obscure the identities of sellers, buyers, and intermediaries. These platforms, encompassing mainstream marketplaces such as eBay and Amazon as well as specialised websites, play a pivotal role in both the legitimate and illicit circulation of cultural objects.

Moreover, the rise in social media networks has exponentially expanded the reach of cultural objects trade, enabling the promotion and sale of artifacts, range from coins and small finds to larger antiquities, including inscribed stelae, statues, and mosaics, under conditions of anonymity and minimal oversight. The integration of encrypted communications, cryptocurrency payments, and decentralised networks further complicates regulatory enforcement and detection efforts (Paul 2018). Consequently, the Convention's implementation must consider not only traditional trafficking routes but also the complex ecosystem of online commerce, including the Dark Web, social media, and emerging technological tools. In doing so, attention should be given to revising, enhancing, and tightening the provisions governing the exercise of due diligence to ensure that stakeholders can effectively identify and prevent illicit trade in cultural property.

At the same time, advances in artificial intelligence, image recognition software, and digital tracking platforms present novel opportunities for authorities to prevent, monitor, and investigate illicit trade with unprecedented speed and precision. Platforms such as SIGNIFICANCE and INTERPOL's ID-Art mobile application illustrate how AI-assisted data analysis, real-time reporting, and automated identification of stolen cultural objects can enhance the efficacy of enforcement and restitution measures (INTERPOL n.d.). While the 1995 UNIDROIT Convention itself does not directly regulate these technological measures, it provides a complementary framework within which States can develop and implement such innovations, thereby extending the practical effectiveness of the Convention in addressing the challenges of the digital age.

5. Conclusions

The analysis of the 1995 UNIDROIT Convention highlights several of its notable strengths. The Convention reverses the burden of proof onto the possessor of a cultural object, emphasises the rigorous exercise of due diligence in transactions, and establishes extended limitation periods, thereby granting source States a sufficient temporal window to assert claims for the restitution of cultural property. Furthermore, it has contributed to a shift in legal and institutional mindsets, fostering a more conscientious approach by courts and stakeholders when addressing disputes concerning cultural objects. These features represent significant normative progress over prior instruments, particularly the 1970 UNESCO Convention, as the UNIDROIT Convention establishes precise and operational provisions rather than the more general and aspirational rules characteristic of the framework of the 1970 UNESCO Convention.

Despite its innovative features, the 1995 UNIDROIT Convention represents a compromise between the interests of source States and market States. Consequently, certain

weaknesses emerge in its effort to establish an effective protective framework for cultural property. A central concern relates to the operation of the Convention's limitation periods. The time limitations of Article 3(3), though relatively generous, presuppose that the moment of theft or removal can be clearly identified. This assumption is often unrealistic regarding the finds of an illegal excavation. As a result, the burden on the claiming State may become disproportionate, and in many instances, impossible to satisfy. Far from promoting legal certainty, this time-limit regime frequently benefits possessors, allowing illicitly excavated objects to remain in their possession until claims are barred by lapse of time.

These difficulties are compounded by the Convention's non-retroactive application. While non-retroactivity was a necessary political concession to secure broader acceptance, its consequences are significant. Objects removed prior to the Convention's entry into force remain largely outside its protective scope, creating a fragmented legal landscape in which similarly situated claims receive divergent treatment. Moreover, the absence of retroactivity incentivises strategic assertions regarding the timing of export or removal, thereby undermining the Convention's objective of discouraging illicit trade. In practice, possessors may rely on incomplete documentation, alleged loss of records, or forged certificates to substantiate claims of due diligence. This problem is particularly acute in cases of illicit excavation, where the source countries cannot, by definition, document the object's existence prior to its removal. Under such conditions, the provisions of the Convention risk rewarding inadequate scrutiny and perpetuating market practices that the Convention seeks to reform.

Addressing the challenges arising from the non-retroactive effect of the 1995 UNIDROIT Convention requires a dual approach. First, the application of the law of the source State (*lex originis*) provides a foundational legal framework for resolving ownership disputes and guiding restitution. By assessing claims according to the legal norms of the State from which a cultural object originates, *lex originis* allows source countries to circumvent some of the limitations imposed by the Convention's *ex nunc* application, particularly in cases where illicit removal occurred prior to its entry into force.

Second, preventive measures such as the widespread adoption of standardised provenance certificates, modeled on the Object ID system, are essential to complement the legal framework. These certificates provide verifiable documentation of prior ownership and export, enabling prospective buyers to exercise due diligence and courts to assess claims effectively. While the implementation of such certificates cannot be universally mandated without unduly burdening legitimate trade, their targeted application to antiquities, especially objects at high risk of illicit excavation, strengthens evidentiary safeguards and mitigates the potential for fraudulent claims.

A persistent challenge for the effective implementation of the 1995 UNIDROIT Convention lies in the limited accession of market countries, particularly those that act as primary importers of cultural objects. Reluctance among these States, often influenced by the interests of dealers, museums, and auction houses, limits its global impact. Beyond the shift in mindset among States Parties and the change in their approach to certain provisions of the Convention, the challenge posed by the non-ratification of the Convention by a significant number of States may be mitigated through the conclusion of bilateral trade agreements between source and destination countries. Such agreements could incorporate the provisions of the Convention. Simultaneously, the broader application of soft law instruments could extend the normative influence of the Convention even in jurisdictions that have not formally acceded.

To conclude, the 1995 UNIDROIT Convention represents a highly influential instrument in the fight against illicit trafficking of cultural property, marking thirty years of

shaping legal practice, raising standards of due diligence, and fostering international cooperation. Its effectiveness, however, depends not only on broader ratification, particularly by market countries, but also on consistent interpretative practices, complementary domestic measures, and the adoption of preventive mechanisms, such as technological tools. As the Convention enters its fourth decade, it remains an essential pillar in the global effort to safeguard cultural heritage, demonstrating that legal frameworks, when combined with cooperation and innovation, can effectively address the challenges posed by disputes involving cultural objects.

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