Strengths and weaknesses of the Conventions and legal implications of the ratification

Gaborone, Botswana
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Marina Schneider
Strengths of the Conventions
1. Legal basis for an international cooperation in the area of the protection of cultural movable heritage

- These 2 Conventions are the result of years of discussions and negotiations on diplomatic level (see preparatory works)

- Continuous construction of a compromise between apparently radically opposed positions:
  Countries with an ‘art market’ / ‘Source’ countries
2. Tangible influence in the development of other instruments

- Many other **legal and operational instruments** are based on these 2 Conventions: model provisions, databases, etc.

- The 1970 Convention has also influenced on the development of **other conventions**, particularly of UNESCO, seen in specialised areas of heritage protection


- Influence also on **regional level**: new Directive 2014/60/UE on the return of cultural objects unlawfully removed from the territory of a Member State (15 May 2014)
3.

**Persuasive effect on public attitudes on this issue**

- Evidenced by the *changing flavour* of the debate in the media and in academic writings

- Illustrated also by the *practice of museums* (and similar institutions)

*Examples*

- *adoption of the date of the 1970 Convention as a key marker/threshold for enquiries into provenance*

- *Adoption of codes of ethics*
4.

Passage of national legislation in many countries to bring their practice into conformity with the Conventions

- Decades of **efforts** made by UNESCO and UNIDROIT towards ratifications and harmonization
  → Achievements: 128 and 36 States Parties

- **Change** of attitude of Governments on this subject

- Mesures **implemented** by States Parties: Specialized units, international cooperation, etc.
5.

Evolution of support mechanisms for the protection of movable cultural heritage

- Increase of national/regional **workshops** (mainly organized by UNESCO Headquarters and field offices)

- Development of **tools** as publications, video-clips, actions in social media, etc.
Facilitation of return or restitution cases

- Through the **direct use** of the mechanisms provided by the Conventions

- But also successful solutions found in accordance with the **principles** contained in the Conventions (‘spirit’ of the texts’)

6.
Weaknesses of the Conventions
The main weaknesses of text of the 1970 Convention have been resolved with the adoption in 1995 of the UNIDROIT Convention on stolen or illegally exported cultural objects

- How?
1. Variable interpretations and differential implementation of the 1970 Convention

- Clumsiness of some of the drafting (result of a difficult compromise between countries)
- Balance between broad principles (example: Art. 3) and restrictive provisions (example: Art. 7(b)(ii))

- Provisions carefully drafted which deal with precise issues
- No difference in implementation as directly applicable
2.

Some notions were not dealt with in the final text of the 1970 Convention

- Absence of time limitations to claims
- the ‘just compensation’ and the ‘innocent purchaser’ (Art.7 (b) ii))

- Time limitations: Art.3 for restitutions and Art.5(5) for returns
- Criteria for compensation: Art.4(4) for restitutions and Art.6 for returns
3. The archaeological objects illicitly excavated are not covered by the 1970 Convention (concerning the restitutions)

- The Art.7 (b) ii)) only concerns ‘cultural property stolen from a museum or a religious or secular public monument or similar institution (...) provided that such property is documented as appertaining to the inventory of that institution’

- Special protection of archaeological objects (Art.3)
  - Illicit excavation = theft
  - No time limitation to action
4. Non retroactivity of the two Conventions

- One reproach often made of the Conventions is that they do not allow for retroactivity

  Note: application of a general rule of public international law embodied in Art.28 of the Vienne Convention on the Law of Treaties

- Nevertheless, the Conventions do not in fact prevent application of their provisions to cultural objects taken before then.

  ➔ The States Parties can decide to adopt a broader position!
Legal implications of the ratification
1. Implementation at the national level

- Obligation to have a transposition law which implements the provisions of the 1970 Convention

≠

- Direct application (no need to have a transposition law)
Facilitation of successful bilateral restitutions through the implementation of the 1970 Convention (international and national levels)
3. Possibility to actively participate in the discussions during statutory organs meetings

- Meeting of States Parties
- Subsidiary Committee
- Follow-up Committee
Meeting of States Parties (MSP)

- is the sovereign body of the Convention
- provides strategic orientations for the implementation of the Convention
- takes all measures it deems necessary for the promotion of its objectives

MSP

- With all 128 States Parties
- Meeting every 2 years
Subsidiary Committee of the Meeting of States Parties (SC)

• promotes the objectives of the Convention
• reviews the national reports submitted by the States Parties
• shares good practices (preparation of the Operational Guidelines)
• identifies difficult situations resulting from the implementation of the Convention
• establishes & maintains coordination with the ICPRPCP

SC
• With 18 Members (3 by UNESCO regional group)
• Session every year

Elected on 1st July 2013

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Work on the Operational Guidelines 1970 Convention

- In 2013, following a decision of the Subsidiary Committee, an Informal Working Group (IWG) was created.

- The IWG working group met on several occasions to consider the draft document on Operational Guidelines and related written inputs given by Members of the Subsidiary Committee or Observer States.

- The final draft IWG was discussed and approved during the Second session of the Subsidiary Committee (30 June – 2 July 2014, UNESCO Paris)

- This approved version will be submitted to the Third Meeting of States Parties which will be convened in May 2015.
Follow-up Committee

- To review the practical operation of the Convention
- First meeting in Paris on 19 June 2012

Special Committee
- Initiative – President of UNIDROIT or at the request of five Contracting States
- At regular intervals, or at any time on request
Thanks!

The 1970 Convention
Contact
Mr Edouard PLANCHE

The 1995 Convention
Contact
Ms Marina Schneider