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Preliminary draft Convention  
on the restitution of cultural property

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## Article 1

(1) For the purposes of this Convention, "cultural property" means any material object created by man of artistic, historical or cultural importance.

(2) This Convention governs neither:

- (a) the question of ownership of cultural property or that of other rights which may exist over it; however, a possessor who has been obliged to make restitution of cultural property to a person who has been deprived of possession or who, in conformity with Article 4 (1), has returned it against payment of compensation to the State of origin may no longer assert ownership or any other real right thereover; nor
- (b) the liability of experts, auctioneers or other sellers of cultural property.

## Article 2

(1) When a person has been dispossessed of cultural property by theft, conversion, fraud, intentional misappropriation of lost property or any other culpable act assimilated thereto by a court acting under Article 8, the possessor of such property shall make restitution of it to the dispossessed person when:

- (a) that property has, at the place where it is located, a value in excess of [100,000 Special Drawing Rights] [200,000 Swiss francs] and when the possessor fails to prove that he has consulted an expert who, before the acquisition of the property, had advised him in writing that there were no grounds to suspect that the property had been the subject of any of the culpable acts mentioned above: that expert shall be empowered to act by the authorities of a State Party to this Convention and his services shall be employed neither by the purchaser of the property nor by the person from whom the property may be acquired, nor yet again on the basis of any lasting professional or private relationship with the one or the other;
- (b) that property has, at the place where it is located, a value in excess of [10,000 Special Drawing Rights] [20,000 Swiss francs] and when the possessor fails to prove that he acquired it at a public auction in respect of which at least 500 catalogues or

lists describing the items on sale were circulated to named persons or that he acquired it from a dealer in property of the same kind who had advised him in writing that there were no grounds to suspect that the property had been the subject of any of the culpable acts mentioned above;

- (c) that property has, at the place where it is located, a value not in excess of [10,000 Special Drawing Rights] [20,000 Swiss francs] and when the possessor fails to prove that, at the time of its acquisition, he acted with the caution to be expected of an honest purchaser aware of the fact that many items of cultural property are removed from those formerly in possession of them by culpable acts.

(2) The conduct of a predecessor in possession from whom the possessor has acquired the property by inheritance or otherwise gratuitously shall be imputed to the possessor.

(3) When the cultural property in question has, at the time of the culpable act mentioned in paragraph (1), been located in a place open to the public such as a museum, an exhibition, a library, a place of religious worship or an archaeological site, the amounts of [100,000 and 10,000 Special Drawing Rights] [200,000 and 20,000 Swiss francs] shall be replaced respectively by those of [50,000 and 5,000 Special Drawing Rights] [100,000 and 10,000 Swiss francs].

(4) The preceding provisions of this article shall only apply if the action for restitution is brought before a court:

- (a) in respect of property mentioned under paragraph 1(a) within thirty years of the dispossession;
- (b) in respect of property mentioned under paragraphs 1 (b) and (c) within ten years of the dispossession.

### Article 3

(1) Any dispossessed person who is entitled to the return of cultural property shall at the same time, but at his own option, compensate the possessor either for the price paid by the latter or by his predecessor under Article 2 (2) or for a sum corresponding to the actual value of the property at the place where it is located.

(2) Paragraph (1) of this article shall not apply and no compensation shall be due when the dispossessed person proves that the possessor or his predecessor under Article 2 (2) acquired the property with knowledge that it had been the subject of a culpable act or in circumstances in which a reasonable purchaser should at least have had doubts in this regard.

#### Article 4

(1) When cultural property which, at the place where it is currently located, has a value in excess of [25,000 Special Drawing Rights] [50,000 Swiss francs] has, in spite of a prohibition, been exported from the Contracting State in which it was created, the State whose prohibition has been violated may request the court acting under Article 8 to order the return of the property to that State, on condition that the latter proves that the actual possessor or his predecessor under Article 2(2) had knowledge, when exporting or acquiring the property, of the export prohibition or that a reasonable person should at such time at least have had doubts in that regard.

(2) Paragraph (1) of this article shall not apply:

- (a) when the property manifestly has a closer link with the art, history or culture of a State other than that on whose territory it was created;
- (b) when the property has been exported by a person who himself, or whose predecessor under Article 2 (2), created it or possessed it for a period of at least five years prior to its export;
- (c) when ten years have elapsed as from the time of the violation of the export prohibition.

#### Article 5

Any possessor required to return cultural property under Article 4 (1) may, at his option, require that the requesting State pay him a sum corresponding to the amount which would be due by a dispossessed person in conformity with Article 3 (1), or transfer the property, for reward or gratuitously, to a person of his choice in the requesting State. In the latter case, the requesting State shall undertake neither to confiscate the property nor to interfere in any other way with the possession of the person to whom the property has been transferred or of his successors under a universal or individual inheritance.

[Article 6

(1) The Special Drawing Rights referred to in the preceding articles are those defined by the International Monetary Fund. Such rights shall be converted into the national currency of the State of the court with jurisdiction under Article 8 in accordance with the value of that currency on the date on which the court is seized of the case and in accordance with the method of valuation applied by the Fund for its operations and transactions.

(2) The value of the national currency, in terms of Special Drawing Rights, of a State which is not a member of the Fund shall be calculated in a manner determined by that State.]

Article 7

(1) In determining the value of cultural property, regard shall be had to the price applied in respect of comparable property at the place where the property is located, and in particular to the price fetched at auction sales.

(2) For the application of Articles 2 (1) and 4 (1), cultural property forming part of a collection, set or series or which comes from the same collection, set or series shall be considered to be a single item of property when the same person has been deprived of possession of it or when its export has violated a prohibition, and when it is in the possession of a single person.

Article 8

The courts either of the State where the person in possession of the cultural property has his habitual residence or those of the State where the cultural property is located shall, at the option of the claimant, have jurisdiction over claims governed by this Convention. The parties to the dispute may however agree upon another jurisdiction or submit the dispute to arbitration.

Article 9

Any State Party to this Convention may extend the protection of cultural property beyond that contemplated therein, either by broadening the notion of cultural property, or by making provision for its restitution

in circumstances in which such restitution is not required by the Convention by disallowing or restricting the right to compensation of the person in possession or in any other manner.

**Article 10**

This Convention shall apply only in respect of cultural property of which a person has been dispossessed by a culpable act or in violation of an export prohibition after the entry into force of the Convention.