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U n i d r o i t

INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW  
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COMMITTEE OF GOVERNMENTAL EXPERTS  
ON THE INTERNATIONAL PROTECTION OF CULTURAL PROPERTY

Working papers submitted  
during the first session of the committee  
(Rome, 6 to 10 May 1991)

Rome, July 1991

The present document contains the working papers submitted at the first session of the Unidroit committee of governmental experts on the international protection of cultural property. In addition to the renumbering of the paper submitted by the German delegation on the influence of European Community law on the preliminary draft (now Misc. 15), the amendments to the working papers are almost exclusively of an editorial character (correction of typing errors, uniformity of presentation, etc.). The only exception concerns Misc. 4, Provisional list of proposals for amendment and principal issues raised, the revised version of which covers the discussions on the last morning of the session and incorporates the content of a certain number of written proposals submitted too late for inclusion in the original version of Misc. 4.

G.E./C.P.  
1<sup>st</sup> session  
Misc. 1  
(Original: English)

## PROPOSALS OF THE CHINESE DELEGATION

### Art. 2

After "historical" and before "spiritual" add "scientific".

Reason: It would bring the definition into conformity with the requirements of some legal systems. Moreover, taking into consideration Art. 5(3) (c), it could make the legal text more consistent.

### Art. 5 (2)

All of this paragraph should be deleted.

Reason:

(1) This paragraph deviates from the principal purpose of the prospective Convention, especially as expressed by Article 1.

(2) The conservation, security and accessibility of the cultural object is a totally internal affair of the requesting State.

(3) The raising of such conditions might impede the restitution or return of cultural objects since there is no worldwide recognised standard for such conditions.

### Art. 5 (3)

Amended text of the first sentence:

"When the court or other competent authority of the State addressed orders the return of the cultural object to the requesting State, it shall in particular take into consideration one or more of the following interests of the requesting State".

Reason:

(1) The original version gives the impression that the cultural object would be returned only when it satisfies one or more of the five conditions. This derogates from the objective of Article 1.

(2) The new text requires that the State addressed should give more and comprehensive consideration to the interests of the requesting State.

### Art. 6

Add an additional paragraph:

"Paragraph (1) does not apply if the requesting State proves that it is the true dispossessed owner."

Art. 7 (a)

Before "exported" add "legally".

Reason: This will make the exception more clear in the sense that it does not include those cultural objects which are legally exported.

Art. 8 (2)

After the word "possessor" in the first line add the following words: "after obtaining the permission of the requesting State or the dispossessed owner".

Reason:

(1) This paragraph which allows the possessor to retain the ownership and the possession of the cultural object is in contradiction with the objective of the Convention, when the requesting State has met the requirements laid down by the Convention.

(2) This provision to allow the possessor to transfer the cultural object to another person residing in the requesting State may be contrary to the mandatory law of the requesting State. Therefore, without the official permission of the requesting State, there will be no guarantee of non-confiscation.

G.E./C.P.  
1<sup>st</sup> session  
Misc. 2  
(Original: English)

PROPOSAL OF THE EGYPTIAN DELEGATION

Article 4 (2)

"In determining whether the possessor exercised such diligence, regard shall be had to the relevant circumstances of the acquisition including the character of the parties, the nature of the stolen objects, and the price paid, and whether the possessor consulted any accessible register of stolen cultural objects, if any, which it could reasonably have consulted".

G.E./C.P.  
1<sup>st</sup> session  
Misc. 3  
(Original: French)

PROPOSAL OF THE ITALIAN DELEGATION

Article 4

Add to Article 4 the following paragraph 1bis:

"When the dispossessed owner is unable to pay the compensation established, a third person, whether public or private, which is not necessarily the State of the claimant, and which pursues a cultural objective, may guarantee payment of the compensation, on condition that the object shall, on its return to its legitimate owner, be made accessible to the public in the State of the owner, and that the third person undertakes also to meet the cost of insuring and conserving the object in question".

G.E./C.P.  
1st session  
Misc. 4 rev.  
(Original: English)

PROVISIONAL LIST OF PROPOSALS FOR AMENDMENT  
AND PRINCIPAL ISSUES RAISED  
(prepared by the Secretariat)

GENERAL QUESTIONS

1. Is it the intention that the future Convention should establish an autonomous uniform law replacing national law in respect of matters falling within its scope of application or is it intended only to establish minimum standards of protection for dispossessed persons and requested States which may be extended by Contracting States?

2. If so, ought not certain key concepts such as "theft" and "possessor" to be clarified?

3. Ought the Convention to contain some such provision as that to be found in Article 7 of the United Nations Convention on Contracts for the International Sale of Goods:

"1. In the interpretation of this Convention, regard is to be had to its international character and to the need to promote uniformity in its application ... .

2. Questions concerning matters governed by this Convention which are not expressly settled in it are to be settled in conformity with the general principles on which it is based or, in the absence of such principles, in conformity with the law applicable by virtue of the rules of private international law."

4. Reference to the need to avoid imposing on States Parties to the future Convention obligations in conflict with those existing under the 1970 Unesco Convention.

CHAPTER I - SCOPE OF APPLICATION AND DEFINITION

Article 1

Proposal to delete the word "export" in the last line.

## Article 2

1. Proposal to amend the provision as follows: "For the purpose of this Convention, 'cultural object' means a material object of great artistic, historical, spiritual or other cultural significance".

2. Proposal to replace the definition of "cultural object" by a more detailed definition such as that contained in Article 1 of the 1970 Unesco Convention.

3. Proposal to amend the present text by the addition of such adjectives as "scientific" and "archeological".

4. Proposal to add at the end of Article 2 the words "in accordance with the law of the requesting State".

## CHAPTER II - RESTITUTION OF STOLEN CULTURAL OBJECTS

1. Proposal that Chapter II should not apply to purely domestic situations (or possibly reservation to that effect).

2. Proposal that Chapter II should only apply when the cultural object is stolen on the territory of a Contracting State.

3. Suggestion that consideration be given to the possibility of overlapping of claims under Chapters II and III and resolution of potential problems arising therefrom (see proposal under Article 9 (1)).

## Article 3 (1)

1. Proposals either to replace the word "possessor" by some term such as "holder" or to define it more precisely.

2. Proposal to specify the person or persons to whom restitution of the cultural object should be made.

3. Question whether the concept of stolen cultural objects includes objects removed in the course of clandestine excavations.

4. Criticism of the lack of precision of the concept of "stolen" cultural objects and suggestions either that some definition be provided for the purposes of the Convention or that a conflicts rule be introduced to indicate the applicable law to determine the concept of theft (law of the State where the act was committed, *lex rei sitae*, *lex fori*).



Article 3 (2)

1. Proposals (a) to lengthen the limitation periods, (b) to shorten them (especially the thirty year absolute period), (c) simply to delete them altogether or to make provision for exceptions to take account of the particular circumstances of the case (e.g. when the possessor of the cultural object is the thief himself or an accomplice of the thief).

2. Proposal to delete the words "or ought reasonably to have known".

3. Question as to whether the obligation on the dispossessed person to act within the limitation periods should be balanced by an obligation on the part of the possessor to give notoriety to his possession of the object or to exercise due diligence in ascertaining the provenance of the object, failing which he could be debarred from relying on the absolute time bar of thirty years.

Article 4 (1)

1. Criticism of the concept of "fair and reasonable" compensation as placing an unduly heavy burden on claimants, especially developing countries and suggestion to add the words "in all the circumstances" after "compensation".

2. Proposal to replace the term "necessary diligence" by "reasonable diligence".

3. Proposal that a possessor who has acquired title to a stolen cultural object be entitled to full compensation.

4. Proposal that a possessor who fails to exercise the necessary diligence be entitled to compensation for the expenses of conservation of the object.

5. Proposal that the compensation due to the possessor may, where possible and appropriate, be paid not by the dispossessed person but by a vendor in bad faith.

New Article 4 (1)bis

"When the dispossessed owner is unable to pay the compensation established, a third person, whether public or private, which is not necessarily the State of the claimant, and which pursues a cultural objective, may guarantee payment of the compensation, on condition that the object shall, on its return to its legitimate owner, be made accessible to the public in the State of the owner, and that the third person undertakes also to meet the cost of insuring and conserving the

object in question".

Article 4 (2)

1. Call for the degree of diligence to be exercised by the possessor to be spelt out as clearly as possible.

2. Proposals to add further criteria for the determination of whether the possessor exercised the necessary diligence such as "the nature of the object" and the "civil or commercial" character of the parties.

3. Proposals that registers of stolen cultural objects be "reliable" or "official" and that the reference to an "accessible register" be qualified by the words "if any".

Article 4 (3)

1. Proposals to delete the provision as being either unnecessary or as unduly harsh on possessors acquiring stolen cultural objects by inheritance or otherwise gratuitously.

2. Need to clarify the intention of the provision in the event of its retention.

3. Allusion to possible difficulties in the case of partial or serial gifts or of objects donated directly by purchasers to institutions such as museums or universities.

Article 5 (1)

1. Proposal to replace the words "its export legislation" by another formula such as "a legislative provision prohibiting the export of cultural property because of its cultural significance".

2. Proposal to specify that the legislation prohibiting the export of cultural objects must be in force at the time of the export.

3. Criticism of the term "court or other competent authority" and proposals to amend the language of the provision to avoid possible interference with national procedural rules or practice.

4. Proposal to state expressly that the possessor must return the object to the requesting State.

Article 5 (2)

1. Criticism of the ambiguity of the language of the provision (uncertainty as regards the consequences of failure to provide the information specified).

2. Proposals (a) to clarify the meaning of the paragraph or (b) to delete it in whole or in part.

3. Proposal to replace the present text by the following: "The requesting State undertakes, if its claim is successfully, to subject the object whose return it has obtained to minimum conditions of conservation and likewise undertakes to make it accessible to the public".

Article 5 (3)

1. Proposal to delete the paragraph.

2. Proposal to add the words "in particular" before the list of interests set out in sub-paragraphs (a) to (e).

3. Insistence on the need to maintain, and perhaps to reinforce, the conditions for return listed in the provision, in the absence of which the Convention would prove unacceptable to a number of States.

4. Criticism of the paragraph as being difficult for courts to apply in practice - proposal that request for return be made by a court or other competent authority of the requesting State to the court or other competent authority of the State addressed and replacement of the interests listed by objective criteria such as the age or value of the object, thereby eliminating the element of judicial discretion and permitting a shortening of the limitation periods under Article 7(b).

5. Reference to the possibility of incompatibility of the present text of paragraph (3) with Article 36 of the EEC Treaty and Article 20 of GATT.

6. Proposal to supplement paragraph (3) by the words: "The return of the cultural object shall also be ordered if the requesting State proves that it was registered as an object whose export was subject to permission".

7. Compromise proposal by China, Egypt, Belgium and Austria (Misc. 7) to replace paragraphs (2) and (3) by the following:

"(2) The court or other competent authority of the State called upon to adjudicate upon the request for the return of the [illegally exported] cultural object shall order such return if the export significantly impairs the interests of the requesting State because of the outstanding cultural importance of the object for such requesting State, having regard

[in particular] to one or more of the following interests:

- (a) the physical preservation of the object or of its context,
- (b) the integrity of a complex object,
- (c) the preservation of information of, for example, a scientific or historical character,
- (d) the use of the object by a living culture."<sup>(1)</sup>

#### Article 6

1. Proposal to delete the article.
2. Proposal to delete the words "or of a State other than the requesting State".
3. Proposal to add the word "manifestly" to qualify the "close" or "closer" connection.
4. Proposal to add, at the end of the existing text of the article, the words "in which case that other State may present a claim for the return of the cultural object to it".

#### Article 7 (a)

1. Proposal to recognise, at least in certain circumstances, export prohibitions imposed on a cultural object during the lifetime of the person who created it.
2. Proposal to reduce the period of fifty years to twenty.
3. Proposal to add, in fine, the words "by, or with the consent of, the creator or his/her successor in title".
4. Proposal to add the word "legally" before "exported".

#### Article 7(b)

1. Proposal to delete the limitation periods.
2. Proposal to extend the limitation period of twenty years.

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(1) The delegation of Egypt, speaking also on behalf of the delegation of China, orally proposed the following amendments to Article 5(2): (1) the deletion of the word "significantly" in line 3; (2) the substitution of the words "due to" for "because of" in line 4; (3) the substitution of the word "also" for "in particular" in line 5.

Article 8

Proposal that paragraphs (1) and (2) be redrafted to make their intention more clear.

Article 8(1)

1. Criticism of the words "fair and reasonable" compensation.
2. Proposal that the burden of proving that the possessor knew or ought to have known of the illegal export of the object be placed on the requesting State.
3. Proposal that the possessor be debarred from claiming compensation in the event only of its having known of the illegal export or of its having been guilty of gross negligence.
4. Suggestion that criteria for determining whether the possessor has exercised due diligence be specified along the lines of those set out in Article 4(2).

Article 8(2)

1. Proposal to delete the paragraph.
2. Proposal to delete the words "and who provides ... measures to the same effect".
3. Proposal that the options at present offered to the possessor should, at least in part, be exercised by the requesting State.
4. Proposal to add, after the word, "possessor" in the first line, the words "after obtaining the permission of the requesting State or the dispossessed owner".
5. Proposal to delete the reference to retaining "possession" in the English version.

Article 8(3)

Proposal to delete paragraph (3) or to make it clear that the costs of return be borne by the possessor if it knew or ought to have known of the illegal export of the object.

Article 8(4)

See comments on Article 4(3).

Article 9(1)

1. Add, at the end of the paragraph, a new sentence reading as follows: "The said action may be brought under either Chapter II or Chapter III of this Convention if the cultural object is both stolen and illegally exported".

2. Proposal that the grounds of jurisdiction referred to in this paragraph should not be exhaustive but additional to those existing under national law or under international Conventions.

3. Reference to the possible difficulties with regard to enforcement resulting from the exercise of jurisdiction by a court of the habitual residence of the possessor in cases where the object is located in another Contracting State.

4. Proposal for a total revision of Article 9 (Misc. 8).

Article 10

1. Criticism of the non-retroactive effect of the future Convention.

2. Compromise proposal to draw a distinction between illegally exported cultural objects, in respect of which the principle of non-retroactivity should apply, and stolen objects to which either the principle should not apply at all or in relation to which the Convention should apply if the theft took place no more than forty or fifty years before its entry into force.

Article 11

1. Query whether the possibility for Contracting States to provide more extensive protection to dispossessed owners or requesting States would (a) deprive the Convention of its character of a uniform law and (b) render the Convention less attractive to Contracting States in that it would perpetuate differences among national laws in respect of matters governed by the Convention.

2. Proposal to replace Article 11 (a) and (b) by the following: "This Convention shall in no way be interpreted to prevent the application of any relevant rule of the substantive and private or criminal international law of the State in which the claimant started proceedings, as well as of other applicable international treaties binding the Parties concerned, in so far as those laws and treaties guarantee more extensive protection than specifically provided for in this Convention for beneficiaries of rights in cultural objects, in general, and for the creators of such objects and their successors in title in Art. 7(a), in particular."

New Article 12

"For the purpose of this Convention cultural objects obtained by illegal excavations are considered as stolen and are subject to Chapter II."

New Article X

"The possessor of a cultural object is under an obligation to conserve and maintain it in its original condition".

G.E./C.P.  
1<sup>st</sup> session  
Misc. 5 rev.  
(Original: English)

#### OBSERVATIONS AND SUGGESTIONS OF THE HUNGARIAN DELEGATION

to further develop the preliminary draft Convention of 26 January 1991 on stolen or illegally exported cultural objects

Besides the suggestions made and still to be made for the record orally, the following observations and proposals are submitted for consideration.

##### I.

#### Nature of the Convention and its relation to national laws and other treaties

1. Corresponding to the objective of establishing uniform rules most probably acceptable to a large number of States, the proposed scope of application of the Convention turned out to be narrower than the comparable coverage of many national laws and the rules contained in the draft are in several respects less favourable to claimants for the restitution of cultural objects than the relevant legal provisions in a number of States.

2. As regards the remedies for possible kinds of misappropriation of cultural objects the draft has been confined only to theft, whereas many legislations have ruled out the possibility of acquiring property right in objects obtained by means of other criminal, clandestine or otherwise wrongful acts, leaving the way open to reclaim the object in such cases also. A number of laws also limit the possibility of becoming the owner of misappropriated objects by *bona fide* purchase thereof to special cases, as exceptions to the general rule of safeguarding the original ownership of such objects.

3. The draft also provides for periods of prescription whereby several national laws admit claims relating to property without limitation in time and also preclude the possibility of acquiring ownership of a misappropriated object by means of its possession. Other laws may provide for longer periods of limitation than fixed in the draft.

4. The draft provides for the application of the Convention as regards stolen objects also in cases where the theft was not committed in a Contracting State and the country of the claimant is not bound to accept the treatment under the special rules of the Convention unless those are promulgated as a special domestic law for foreigners (*ius gentium*) or in substitution for the earlier national law in general.



5. Notwithstanding all this, Art. 11(a) and (b)) would leave it up to the Contracting States to extend or not the application of their respective national laws granting greater protection as regards claims arising under the Convention, without requesting, in this connection, any formal declaration or reservation. The draft would allow for the discriminatory exclusion of the application of more favourable domestic laws vis-à-vis foreign claimants. No reference is made to the applicability of domestic private or criminal international law rules which, however, should be considered by the court called upon e.g. as regards the classification of the misappropriation of the cultural object in a foreign country, concerning claims for the restitution of an object situated in another country, or when deciding on the validity of a contract for the unauthorised sale of a cultural object across frontiers, the exportation of which was subject to permission. Neither have other possibly applicable international treaties been considered.

6. All these considerations suggest that the substantive provisions of the draft were not only intended to become uniform law but also possibly to replace the application of any relevant rules of existing domestic law in every respect, without, however, providing a full coverage of the issue at stake and securing higher levels of protection in countries where such levels have already been guaranteed.

7. Thus, it seems to be necessary to rethink the relation between the rules of the proposed Convention and those of the pertinent national laws and other treaties. Since the Convention is intended to be international on a worldwide scale, it cannot be expected that its rules will replace the entire national legislation relating to the subject in every country concerned. Consequently, the provisions of the Convention have to be construed as minimum requirements to be observed in relation to every Contracting State, as a first step in the direction of harmonising and unifying the material in question. At the same time also the domestic substantive and private or criminal international law regulations as well as other applicable treaties should obligatorily apply if granting a higher or broader level of protection to claimants entitled under the proposed Convention. Thereby also particular questions not covered by the Convention, as e.g. the reimbursement by the culprit of the compensation paid to the *bona fide* possessor of a stolen object could be tackled according to the relevant provisions of the applicable national law.

8. Regulations of this type are to be found as regards the protection of intellectual property e.g. in the 1886 Berne Convention (as revised in 1971, Art. (5)1, Arts. 19 and 20), in the 1961 Rome Convention on the protection of performers, producers of phonograms and broadcasters (Art. 2(2)); in the 1971 Phonogram Convention (Art. 7(1)).

9. Instead of the present Art. 11 the following new article might be considered:

"This Convention shall in no way be interpreted to prevent the application of any relevant rule of the substantive and private or criminal international law of the State in which the claimant started proceedings, as well as of other applicable international treaties binding the Parties concerned, in so far as those laws and treaties guarantee more extensive protection than specifically provided for in this Convention for beneficiaries of rights in cultural objects, in general, and for the creators of such objects and their successors in title in Art. 7(a), in particular."

Sub-paragraph (c) of the proposed Art. 11 could be substantially maintained.

## II.

10. In Art. 5(3) the enumeration of the interests the proof of which should effect the return of the removed object to the requesting State should become illustrative.

"... impairs, in particular, one or more of the following interests."

11. Since one of the objectives of the draft consists in recognising the legal effects of the regulations of other States (Explanatory Report, p. 25; Art. 5(1)) and Art. 4(2) requires the *bona fide* possessor to have consulted any accessible register, Art. 5(3) should be supplemented by this provision:

"The return of the cultural object shall also be ordered if the requesting State proves that it was registered as an object whose export was subject to permission."

## III.

12. Since the general purpose of the draft Convention is to remedy illegal removal of cultural objects from a country where it was supposed to be owned lawfully, its return should not become refusable because of the finding by the court or other authority in the country of the possessor that it has a close connection to another State. Consequently, Art. 6 should be deleted.

C.E./C.P.  
1<sup>st</sup> session  
Misc. 6  
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

Art. 5 (1)

When a cultural object has been removed from the territory of a Contracting State (the requesting State) contrary to a legislative provision prohibiting the export of cultural property because of its cultural significance, that State may request the court or other competent authority of a State acting under Article 9 (the State addressed) to order the return of the object to the requesting State.

G.E./C.P.  
1<sup>st</sup> session  
Misc. 7  
(Original: French)

DRAFT COMPROMISE PROPOSAL

(based upon texts submitted by the delegations of China, Egypt, Belgium  
and Austria)

Article 5

(1) When a cultural object has been removed from the territory of a Contracting State (the requesting State) contrary to its export legislation, that State may request the court or other competent authority of a State acting under Article 9 (the State addressed) to order the return of the object to the requesting State.

(2) The court or other competent authority of the State called upon to adjudicate upon the request for the return of the [illegally exported] cultural object shall order such return if the export significantly impairs the interests of the requesting State because of the outstanding cultural importance of the object for such requesting State having regard [in particular] to one or more of the following interests:

- (a) the physical preservation of the object or of its context,
- (b) the integrity of a complex object,
- (c) the preservation of information of, for example, a scientific or historical character,
- (d) the use of the object by a living culture.<sup>(1)</sup>

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(1) The delegation of Egypt, speaking also on behalf of the delegation of China, orally proposed the following amendments to Article 5(2): (1) the deletion of the word "significantly" in line 3; (2) the substitution of the words "due to" for "because of" in line 4; (3) the substitution of the word "also" for "in particular" in line 5.

G.E./C.P.  
1<sup>st</sup> session  
Misc. 8  
(Original: English)

SUBMISSION BY THE DELEGATION OF THE UNITED STATES OF AMERICA

Claims falling under this Convention are the following:

(STOLEN CULTURAL OBJECT)

1. A claim by a habitual resident of a Contracting State for a cultural object, regardless of where stolen, filed against a habitual resident of another Contracting State, who is the possessor of the stolen object. This claim shall be filed with the courts of the latter Contracting State.

2. A claim by a person for a cultural object stolen in a Contracting State, filed against a habitual resident of another Contracting State who is the possessor of the stolen object. This claim shall be filed with the courts at the latter Contracting State.

3. A claim by a habitual resident of a Contracting State, for a cultural object, regardless of where stolen, filed against the possessor of the stolen object which is located in another Contracting State. This claim shall be filed with the courts of the latter Contracting State.

(ILLEGALLY EXPORTED OBJECT)

4. A claim by a Contracting State, in a case in which a cultural object in its territory was illegally exported, filed against a person who is the present possessor of the cultural object now located in another Contracting State. This claim shall be filed with the courts or competent authorities of the latter Contracting State.

(NO RETROACTIVITY)

5. Only a claim for a cultural object which was stolen or illegally exported after the two Contracting States involved became Parties to the Convention.

G.E./C.P.  
1<sup>st</sup> session  
Misc. 9 rev.  
(Original: English)

JOINT PROPOSAL OF THE DELEGATIONS OF EGYPT, MEXICO, GREECE,  
CYPRUS, INDIA AND GUATEMALA

Article X

"The possessor of a cultural object is under an obligation to  
conserve and maintain it in its original condition."

G.E./C.P.  
1<sup>st</sup> session  
Misc. 10  
(Original: English)

PROPOSAL OF THE GREEK DELEGATION

Article 4 (1)

The possessor of a stolen cultural object who is required to return it shall be entitled to payment at the time of restitution of fair and reasonable compensation by the claimant provided that the possessor prove that it exercised the necessary diligence when acquiring the object. Such compensation shall, where possible, be paid by the mala fide vendor of the object to the possessor.

Article 6

When a State has established its claim for the return of a cultural object under Article 5(3) the court or competent authority may only refuse to order the return of that object when it finds that it has as close a, or a closer, connection with the culture of the State addressed or of a State other than the requesting State, in which case that other State may present a claim for the return of the cultural object to it.

G.E./C.P.  
1<sup>st</sup> session  
Misc. 11  
(Original: English)

PROPOSAL OF THE DELEGATION OF MEXICO

Article 12 (new)

"For the purpose of this Convention cultural objects obtained by illegal excavations are considered as stolen and are subject to Chapter II."



G.E./C.P.  
1<sup>st</sup> session  
Misc. 12  
(Original: English)

PROPOSAL OF THE DELEGATIONS OF DENMARK AND SWEDEN (1)

Article 2

"For the purpose of this Convention, "cultural object" means a material object of great artistic, historical, spiritual, ritual or other cultural significance."

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(1) The original reference to Switzerland as a co-sponsor of the proposal has been deleted at the request of the Swiss delegation.

G.E./C.P.  
1<sup>st</sup> session  
Misc. 13  
(Original: English)

PROPOSAL OF THE HUNGARIAN DELEGATION

Article 7

a) the cultural object was exported during the lifetime of the person who created it, or within a period of fifty years following the death of that person by, or with the consent of the creator or his/her successor in title.

G.E./C.P.  
1<sup>st</sup> session  
Misc. 14  
(Original.: English/French)

PROPOSAL OF THE TURKISH DELEGATION

Article 9

To be added to the text of paragraph 1

"The said action may be brought under either Chapter II or Chapter III of this Convention if the cultural object is both stolen and illegally exported."

G.E/C.P.  
1<sup>st</sup> session  
Misc. 15 rev.  
(Original: English)

REMARKS OF THE GERMAN DELEGATION  
ON THE INFLUENCE OF EUROPEAN COMMUNITY LAW  
ON THE PRELIMINARY DRAFT

The discussion of the question of the influence of European Community law on the preliminary draft has shown to the German delegation that it might clarify its attitude to the question as follows:

1. The member States of the EEC are bound by Community law within its limits. By its Article 222 the Treaty of Rome does not confer on the EEC competence in property law matters. But this does not mean that Community law would not be applicable at all in the context of the preliminary draft. The EEC has competence in matters of trade between the member States (cf. Art. 30 pp., 100, 100a of the Treaty of Rome) and of trade with third States (cf. Art. 113 of the Treaty of Rome). In this regard, that means in dealing with trade, and this is at least Chapter III, EEC member States must act in conformity with the requirements of Community law and ensure by specific provisions its execution.

2. In matters of trade in cultural objects there is actually no specific EEC legislation. The member States, therefore, are only bound by the prescriptions of the Treaty of Rome in this matter, i.e. Articles 30 ss.. These articles require of the member States of the EEC - as well as Article XX of GATT - free trade between the member States. They allow restrictions by national legislation of a member State or by a Convention a member State concludes only the protection of, in the wording of Art. 36 of the Treaty of Rome, "national treasures possessing artistic, historic or archeological value". Such measures must be absolutely necessary to achieve the aim of protection of the cultural object.

3. If the legislation of the member States differs too much and if that impairs free trade between member States, the EEC could promulgate its own legislation in order to unify those national legislations. Such an EEC measure would not become necessary if the member States were to arrive at adequate and unified rules either between themselves or by an international Convention in which third States also participate. The German delegation thinks that the latter approach is preferable, because it allows a solution with interested States also outside the EEC. Different solutions within the EEC and between States of the EEC and third States are not desirable as they could be discriminatory.

4. Such a solution could, on two conditions, be the preliminary Unidroit draft:

1. a restrictive definition of cultural objects;
2. restriction to the measures absolutely necessary so that free trade is the least impaired.

The preliminary Unidroit draft in its present form is a good basis for achieving that solution and work on it should be pursued and its provisions clarified.

