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INTERNATIONAL INSTITUTE FOR THE UNIFICATION OF PRIVATE LAW

COMMITTEE OF GOVERNMENTAL EXPERTS
ON THE INTERNATIONAL PROTECTION OF CULTURAL PROPERTY

OBSERVATIONS OF GOVERNMENTS
ON THE PRELIMINARY DRAFT UNIDROIT CONVENTION
ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS

(Canada, China, France, Islamic Republic of Iran,
Norway, Sweden and Turkey)

Rome, January 1992

CANADA

Chapter I - Scope of Application and Definition

Article 2

Having regard to the request of the Chairman of the committee of governmental experts for written submissions for amendments to Article 2 (see Report of the first session, Study LXX - Doc. 23, para. 45), Canada would propose the following to replace the current Article 2:

"For the purposes of this Convention, "cultural object" means any material object designated by legislation as being of significance to the cultural heritage of a State."

This definition would permit each State to decide what is of cultural significance to that State.

It is unlikely that a multitude of frivolous actions would be initiated, as appears to be the concern of some representatives, because of the high costs associated with bringing such actions.

Chapter II - Restitution of Stolen Cultural Objects

Article 3

Paragraph (1)

This provision stipulates that the possessor of a stolen cultural object shall return it. Yet in Article 8, paragraph (2), the possessor of an *illegally exported object* is given the option of forfeiting compensation and retaining ownership, or transferring the object against payment or gratuitously to a person of its choice. There appears to be no reason why the two situations are not treated equally. In Canada's view, there should be no distinction between the possessor of a stolen object and the possessor of an illegally exported one in terms of the options available when returning the object.

Paragraph (2)

Canada would propose that the time limits in Article 3 (2) be changed to 5 years for the initial limitation period, and either 50 years or no limit at all vis-à-vis the time of the theft.

The initial limitation of 3 years may be too short, particularly in cases where only the identity of the possessor is known, but the location of the object and/or the possessor is not known. This limitation would be even more problematic if the draft Convention were amended, as has been suggested, to permit claims to be brought only in the State where the object is located, and not in the State where the possessor is habitually resident.

The maximum period of 30 years would also appear to be too short. We note that Article 7 of the Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property does not refer to a time limit for bringing actions for the return of stolen cultural property. Canada has not included a time limit in its domestic legislation governing the illegal import of foreign cultural property.

A further problem with requiring that an action be brought within a certain period of time from the date of the offence is that it will be necessary, in any court proceeding, to establish when the offence took place. In the case of a theft, this should be relatively simple; in the case of an illegally exported object (for example, of looted archaeological material), it will often be impossible, with the result that the court action will fail.

Article 4

Paragraph (1)

Article 4, paragraph (1) provides for compensation where a possessor can prove that it exercised "the necessary diligence" when acquiring a stolen cultural object. As the possessor is in possession of stolen material, patently it did not exercise the diligence necessary to prevent such an acquisition. By definition, a possessor will never be able to prove it exercised necessary diligence. It would be preferable if the possessor were required to exercise "reasonable diligence". Such language suggests that a court will be required to make a finding as to whether the possessor acted appropriately in the circumstances.

Paragraph (2)

In Canada, a list of cultural objects, the export of which is controlled, has been established pursuant to Article 4 of the Canadian Cultural Property Export and Import Act. An examination of this list by a prospective purchaser of an object would alert him or her to whether or not the export or import of such objects is controlled and, where it is so controlled, would put him or her on notice that further inquiries should be made.

Canada is interested in establishing a database that would contain the texts of cultural heritage statutes and regulations enacted by various States. It is envisaged that such a database could eventually be made available to other States as part of the Canadian Heritage Information Network (CHIN), a public access network containing a comprehensive inventory of Canadian museum collections as well as a register of stolen art and artifacts. Databases containing information on stolen cultural property as well as cultural objects that have been seized by police or customs officials could also be developed.

Consultation by a prospective purchaser of such databases as are available could be added to Article 4, paragraph (2) as one of the elements that must be taken into consideration in determining whether the possessor exercised "reasonable [necessary] diligence" as required by Article 4, paragraph (1).

Chapter III - Return of Illegally Exported Cultural Objects

Article 5

Paragraph (2)

Article 5, paragraph (2) provides that a request shall contain specific information about the conservation, security and accessibility of a cultural object after its return to the requesting State. The Convention does not indicate that the State addressed may refuse a request for return where the proposed measures for conservation, security and accessibility are not satisfactory. If this provision is retained, consideration should be given to specifying that a State may refuse to return a cultural object where proposed measures for conservation, security and accessibility are not acceptable. If this option is added to the provision, it will be necessary to establish to whom the measures must be acceptable, and what should happen if the object is not returned. This option may pose insurmountable difficulties. It may be preferable, therefore, to delete Article 5, paragraph (2) completely.

In any event, it would seem that Article 11 (b) (1) could be resorted to if conservation, security and accessibility were in issue in a particular proceeding.

Paragraph (3)

Article 5, paragraph (3) provides that a requested State is required to return a cultural object only where the requesting State can prove that the removal of the object from its territory significantly impairs a specified interest. If "cultural property" is defined as proposed above (see comments under Article 2), such that each State defines its own

cultural property, and given that actions for the return of cultural objects are self-limiting because of the costs involved, paragraph (3) would not appear to be necessary and could be deleted completely.

Article 6

Article 6 provides that a court may refuse to order the return of a cultural object to the requesting State where the object is more closely connected with some other State. A State other than the requesting State (the "second State") cannot bring an action unless the object was illegally exported from the second State. This seems to imply that the State addressed could be entitled to retain an object with which it has no reasonable or substantial connection. This possibility would be removed if the words "or of a State other than the requesting State" were deleted.

In any event, Canada questions the desirability of including in the Convention a provision that would permit a requested State to refuse to return property that had been designated by the requesting State in its legislation as an object the export of which is illegal.

If the provision is to be retained, the following amendment would avoid any apparent contradiction with Article 5, paragraph (3): "... the court or competent authority may nevertheless refuse to order the return ...".

Article 7

Sub-paragraph (b)

Canada would propose that Article 7, sub-paragraph (b) be amended to include the same time periods as proposed above for Article 3, paragraph (2), for the reasons discussed under Article 3.

As discussed during the first meeting of the committee of governmental experts, in some instances cultural objects will have been both stolen and illegally exported. The existence of different time limits for stolen (Article 3) and illegally exported (Article 7) objects could, therefore, pose difficulties. Having identical time limits in respect of the two situations would help to alleviate the problem.

Article 8

Paragraph (1)

It may be useful to reformulate this paragraph along the lines of paragraphs (1) and (2) in Article 4. In addition, thought should be given

to including provisions similar to those proposed for Article 4, paragraph (2) with respect to consultation of various registers of cultural heritage legislation.

Paragraph (2)

The reference to retaining possession while at the same time returning the object could cause confusion. The words "and possession" could be deleted from line 2. This would more closely track the French language version of Article 8, paragraph (2), which refers to "rester propriétaire".

With respect to "necessary guarantees", it would seem desirable to give some guidance as to what constitutes such guarantees, if this provision is retained. Given the difficulty of doing so, however, it may be preferable to delete the words "and who provides the necessary guarantees".

Chapter IV - Claims and Actions

Article 9

Article 9 stipulates the location in which an action may be initiated, but makes no provision for safeguarding the cultural object while legal action is in progress. Thought should be given to adding a provision which would oblige a State in which an object is found to take appropriate steps, in accordance with its legislation, to safeguard the object. For instance, a State in which a cultural object is located could prohibit the further export of the object once an action has been commenced.

Such safeguard action may be more difficult, however, if an action is brought in the jurisdiction where the possessor is habitually resident, but the object is located in another State. In the light of this problem and the difficulties that have already been raised with respect to permitting an action to be brought in the jurisdiction where the possessor is habitually resident, it may be appropriate, as the Chairman suggested during the first meeting of the committee (see Study LXX - Doc. 23, para. 150), to sacrifice the jurisdiction of the State of the possessor.

CHINA

Article 1

We propose that the word "export" be deleted from "its export legislation".

Reason: in some legal systems there is no such concept as "export legislation".

Article 2

We propose that the word "scientific" be inserted between the words "historical" and "spiritual".

Reason: to conform the definition to the requirements of some legal systems and make it more consistent with Article 5(3)(c).

We propose that an article be added to explain the word "stolen".

We propose that an additional paragraph be added to define the term "possessor".

We propose that an additional paragraph be added as follows: "For the purpose of this Convention, cultural objects obtained by clandestine excavation are deemed to be stolen cultural objects and are subject to Chapter II".

Article 3

Paragraph (2)

We propose that the period "three years" be extended to "five years" and that the period of thirty years be further extended.

Reason: for the interests of the requesting States.

Article 4

Paragraph (2)

We propose that this paragraph be amended to read: "In determining whether the possessor exercised such diligence, regard shall be had to the relevant circumstances of the acquisition, including the quality of the cultural objects, the character of the parties, the price paid and whether the possessor consulted any accessible official or authoritative register of stolen cultural objects which it could reasonably have consulted".

Reason: to further clarify the notion "necessary diligence".

Article 5

Paragraph (2)

We propose that the entire paragraph be deleted.

Reason: this paragraph departs from the principal purpose of the future Convention.

Paragraph (3)

We propose that this paragraph be amended to read: "When the court or other competent authority of the State addressed orders the return of the cultural object to the requesting State, it shall take into consideration the interests of the requesting State, in particular one or more of the following:

- (a) the outstanding cultural importance of the object for the requesting State,
- (b) the physical preservation of the object or of its context,
- (c) the integrity of a complex object,
- (d) the preservation of information of, for example, a scientific or historical character,
- (e) the use of the object by a living culture.

Reason: the State addressed should give more and comprehensive consideration to the interests of the requesting State.

Article 6

We propose that an additional paragraph be added as follows: "When the court or competent authority finds that the cultural object has a close or a closer connection with the culture of a third State, the State addressed has an obligation to give notice regarding the return of that object to the third State without undue delay".

Reason: for the interests of the third State.

Article 7

Sub-paragraph (a)

We propose that the period of "fifty years" be shortened in order to safeguard the cultural property of the requesting State.

Sub-paragraph (b)

We propose that the period of "twenty years" be extended for the interests of the requesting States.

Article 8

Paragraph (2)

We propose that this paragraph be amended to read: "When returning the cultural object, with the permission of the requesting State or the dispossessed owner, the possessor may, instead of requiring compensation, decide to retain ownership and possession or to transfer the object against payment or gratuitously to a person of its choice residing in the requesting State and who provides the necessary guarantees. In such cases, the object shall neither be confiscated nor subjected to other measures to the same effect."

Reason: the prior permission is necessary for such retention or transfer, for otherwise this paragraph would be contrary to the laws of some requesting States.

We propose that a new paragraph be added in this article as follows: "The preservation and repair of or damage to the cultural object by the possessor should be taken into account when a requesting State pays the possessor reasonable compensation."

Reason: to provide some main factors for determination of the fair price in compensation.

FRANCE

Article 1

It should be made clear, in one way or another, that theft as it is understood in this and other relevant articles of the Convention, should be of an international character.

Article 2

The language "of cultural ... significance" should be replaced by "of cultural ... interest".

The word "archaeological" should be added before the word "artistic" in the list of adjectives characterising the interest of a cultural object.

Article 3

Without raising any objection to the present wording of preliminary draft Article 3, we would point out that the provisions of paragraph (2) differ considerably from those of the French Civil Code.

Article 4

The provisions of paragraph (3), concerning the assimilation of an inheritor or other person acquiring a stolen object gratuitously to the possessor, should be redrafted so as to attenuate for such persons acting in good faith some of the prejudicial effects of such assimilation to the possessor, who may sometimes be the thief himself.

Article 5

The words "[t]o be admissible" should be deleted from paragraph (2) as the conditions for admissibility may vary considerably according to which States accept the Convention.

The words "and shall contain all material information regarding the conservation, security and accessibility of the cultural object after it has been returned to the requesting State" in paragraph (2) should be deleted in so far as they seem to be redundant in view of the enumeration contained in paragraph (3).

Article 6

The words "or of a State other than the requesting State" after "with the culture of the State addressed" should be deleted.

Article 7

In sub-paragraph (a), the period of "fifty years" after the death of the person who created the object should be reduced to "twenty years".

Article 8

Paragraphs (1) to (3) should be replaced by the following text:

"(1) When the return of the cultural object is ordered, the possessor who knew or ought to have known at the time of acquisition that the object had been exported contrary to the export legislation of the requesting State shall not be entitled to claim compensation.

(2) If it has not been established that the possessor knew or ought to have known of the illegal character of the export, it may either:

- retain ownership of the cultural object on condition that it return it to the territory of the requesting State;
- transfer ownership of the object to a person of its choice residing in the requesting State who provides the necessary

- guarantees, on condition that such person return the cultural object to the territory of the requesting State, or
- transfer ownership to the requesting State after payment by that State of fair and reasonable compensation.

(3) The cost of returning the cultural object shall be borne by the requesting State."

Paragraph (4) would remain unchanged.

Article 11

It should be indicated in this article that the derogations permitted by it should be the object of declarations with the depository State either at the time of signature or ratification of the Convention, or subsequent thereto.

Allowance should be made for the possibility for a group of States to agree on certain common provisions derogating from the Convention - in accordance with the spirit of Article 11 - which would apply in their mutual relations.

ISLAMIC REPUBLIC OF IRAN

The above draft, which if approved by the contracting countries, will become a binding international document with broad application, has been prepared on the basis of the 1970 Unesco Convention - (Adoption of Decisions for Control and Prevention of Import, Export and Illegal Transfer of Ownership of Cultural Property) - in an attempt to remove the enforcement shortcomings of the said Convention.

In the 1970 Convention the issue of ownership of cultural objects and illegal export of such objects was considered under a general cultural point of view, and certain principles for restitution and return of cultural property to the country of origin were provided. The enforcement shortcomings of the methods set forth in the said Convention led to the commencement of Unidroit studies and eventually to the present preliminary draft, PDUC.

There are areas of conflict and contradiction between PDUC and the Convention, details of which are as follows:

1. The 1970 Convention explicitly confirms the duties of Governments for preservation and protection of cultural heritage existing within their territory against theft, clandestine excavations, illegal export and any other actions which may deprive the country of origin of its ownership right.

In PDUC the issue has been weighed on the basis of personal offences such as theft and smuggling of cultural objects, while the question of illegal excavations and finding of cultural objects in the course of such excavations which remain unknown and untraceable to the country of origin due to the secret nature of such actions has been disregarded. As such, PDUC is more limited in its scope of application than the 1970 Convention and approval of it in its present context would provide for uncontrolled illegal export of cultural objects found through unauthorised excavations and would place such practices practically beyond and outside any diplomatic and legal control and jurisdiction, taking into account the procedures that are recommended by PDUC in terms of enforcement and execution, particularly the provisions of paragraph (3) of Article 5 and Article 6 thereof, and would encourage increasing escalation of such practices.

2. Also PDUC's scope with respect to the definition it gives of cultural objects is much narrower than the 1970 Convention.

3. Enforcement procedures of the 1970 Unesco Convention are generally established through diplomatic channels, and despite the problem areas of such procedures, they are yet appropriate for the international obligations of countries.

In the light of the expected difficulties of resorting to diplomatic procedures, PDUC leaves the argument undebated and makes no effort to find solutions for the problems of the procedures and simply recommends judicial procedures.

The taking of legal actions or bringing claims of a Government before the competent courts of another country is in principle a subject matter of private international law while conventions among Governments are included in public international law: two completely distinct fields, widely separated from one another in respect of their areas of concern, effectiveness, enforcement methods and consequences. As the judicial and executive powers of Governments function independently, Governments cannot in principle make any commitment with respect to orders that are issued by the courts, unless they are forced to change their internal legal system on the basis of an international convention. Such a development is quite unlikely.

In any case, resort to orders of courts and legal authorities has often been helpful for contracting Governments to circumvent their international obligations and would substantially decrease the enforcement power of the new Convention.

It is expected that if an international convention is found inefficient in application and execution due to the enforcement methods that are set forth therein, the said convention should be carefully reviewed so as to ensure that the weak points are corrected and removed.

PDUC elaborates the points of strength such as the scope of application of the Convention covering stolen and illegal export of cultural objects from the country of origin and obligations of contracting countries regarding such issues, but makes no effort to remove the weak points of the 1970 Convention. Thus as far as law and culture are concerned PDUC stands at a lower level than the 1970 Convention.

A review of the articles of PDUC and our comments are as follows:

Article 1

(A) The article on scope of application covers two cases, namely, stolen cultural objects and illegal export of cultural property.

In the light of the different legal meanings of the terms "object" and "property" it is recommended that "property" be used in place of "object".

The text of the Convention and its articles and the manner the terms are used clearly indicate that it envisages two separate legal procedures for stolen cultural objects and illegal export of cultural property.

The use of "restitution" for stolen objects and "return" for illegal export of cultural property is indicative of the same approach.

Although these two actions are illegal and are legally defined differently, they share some common aspects in that they involve illegal removal of property from the owner's possession or its legal possessor. It is for this reason that the laws for control of illegal export and smuggling of most countries including Iran contemplate that illegally exported objects become the property of the Government immediately upon establishment of the elements of the offence.

In both cases, claimant countries by virtue of rights exercised through given penal laws seek restitution of the legal position at the time of the offence and compensation of consequent damages, losses of illegal transfer of cultural property. What is sought by the Governments of origin in both cases is naturally similar and in both cases the restitution of cultural property involved in the offence is sought. Therefore, the use of "return" for stolen property lacks legal merit, because acquisition of a stolen object only does not constitute an ownership right over it. It is, therefore, proposed that the term "restitution" be used in place of "return". In this case, the legal procedure for both cases would be the same and contradictory procedures and rulings would be avoided.

(B) It should be noted that establishment of an act of theft and/or illegal export and rights and penalties of such cases is debatable on the basis of penal and administrative laws of the Government of origin.

According to recognised principles in private international law, penal laws are internal laws of countries and national courts do not have jurisdiction over the penal laws of another country (Principle of Sovereignty of States).

Consequently, national courts will experience the above problem in admitting claims arising from the exercise of penal laws and administrative laws of other countries, unless the Convention explicitly requires the contracting Governments to admit such claims and to approve special rules for resolving the conflicts and contradictions to be added to their internal laws.

(C) The phrase "contrary to export legislation" is vague and ambiguous and can embrace not only very small offences but also major illegal export of cultural property. Evidently, for any crime or offence a penalty compatible with the damage caused by the offence or crime is determined.

Restitution of smuggled objects may be exercised only by a Government whose internal laws strictly prohibit smuggling of cultural property in general and the cultural property forming the subject matter of the claim in particular.

On the other hand, this article disregards other methods of illegal transfer of ownership and illegal export of cultural property found in the course of unauthorised excavations.

Therefore, Article 1, should be rewritten with due regard to the foregoing points.

(D) Article 1 is concerned with stolen and illegal export of cultural property, while the owner of the property has been ignored.

Internal laws of almost all countries contemplate the rule of physical acquisition with respect to movable property as an accepted legal principle, and the rule of physical acquisition is exercised by most national courts.

In this case if it is assumed that a national of the ruling court buys stolen property within the provisions of the same country's internal laws, claims of the country of origin would be subjected to the rule of physical acquisition leading the courts to dismiss the claim of the country of origin, unless the Convention explicitly emphasises a rule for prosecution of all acquirers, establishing rights for the loser of property to remove it from its last possessor and declares null and void all legal transactions after the theft or illegal export or unauthorised excavations on the basis of the said rule.

Article 2

The definition given for cultural property is defective and it is better that the definition of the 1970 Convention be used and that other objects, property and rare live animals that are of importance as natural heritage be added to the definition.

Article 3

(A) In this article the possessor of stolen cultural property is recognised as the owner of the object, while the use of the term POSSESSOR for the holder of a stolen historical and cultural object is against the accepted legal rules and principles.

The right of ownership is transferrable only through meeting legal requirements, and it is quite clear that the last holder should be able to prove ownership on the basis of proper legal requirements. Assuming that a cultural object is transferred after it is stolen, we will find that the chain of legal ownership has been broken by such a transfer. Therefore, a possessor of a cultural object is not necessarily its owner.

Any attempt to establish ownership rights over stolen and cultural property through an international convention will undoubtedly receive the unreserved support of smugglers of cultural property.

For this reason it is suggested that in place of the term "possessor" the term "acquirer" or "holder" be used.

(B) Determination of two periods of time as statute of limitations for bringing legal actions to courts will cause many problems, should these statutes of limitations conflict with each other, as it is an expected assumption in all such claims.

In other words, if a claim is brought five years after the time of the theft and the respondent takes exception on the basis of a three year statute of limitations, which of the two periods, namely the period from the time of the theft or the period from the date of knowledge, would be considered as effective by the court?

In order to remove this problem, it is better that one period of thirty years from the time of the theft be contemplated.

Article 3 does not identify the competent court or legal authority for deciding political claims arising out of stolen cultural property, while such identification is necessary.

On the other hand, factors such as expiration and termination of the statute of limitations and interpretation under internal laws of countries

or imposition of general rules for specific cases have not been provided for. It is suggested that the statute of limitations set forth in this Convention be expired by any international actions of the country of origin indicating its search such as notifying the international police, etc., that the case should not be subjected to internal laws of countries and that in case of any conflict between the statute of limitations set forth in this Convention and other internal laws such as statute of limitation for movable property claims, etc., the thirty-year period from the time of the theft be adhered to by the contracting countries in respect of the subject matter of this Convention.

Article 4

Payment of compensation to the holder of stolen property is against all accepted legal principles.

In fact, the last holder of stolen property is responsible for continuity of a theft due to failure in exercising diligence, failure in making sufficient investigations, in ignoring the issues and clear indications, in depriving the original owner.

In the light of the foregoing points the last holder of stolen property should actually be penalised and not compensated.

This provision in the said article encourages buyers of stolen cultural property, because they would be able under any circumstances to regain their original funds, probably plus the desired interest and benefit.

Determination of failure or exercise of enough diligence is a matter of theory and cannot be carried out in practice, unless the countries are required to keep for their cultural property offered for sale special identity cards, which are officially recognised by Unesco and which are uniform in all countries, prohibiting and penalising the sale and purchase of property lacking such identity cards.

It is suggested that the provision for payment of compensation to illegal holders of stolen property be dropped from the Convention, and that the Convention should in principle avoid giving any right to illegal possessors of cultural property.

Article 5

The right of Governments to address courts within the territory of one another is an accepted international right. However, the meaning of the phrase: "competent State authority" authorised to return the cultural object to its owner is not clear.

Legal procedure and specific principles of private international law should be specifically added to this article.

For example, in the light of the fact that laws prohibiting exports and administrative rules in general have their origins in the sovereignty of States and rules for resolving conflicts in private international law do not provide in principle any definition for their application, the Convention should present a text ensuring immediate settlement of claims without any possible involvement with internal laws.

Moreover, the Convention should ensure that:

1. Ownership right in claims arising out of stolen cultural property are established according to national or internal laws of the country of origin.

2. The rules of acquisition and statute of limitations are not applicable to specified claims of the said subject matter.

3. Administrative and penal laws creating rights for the country of origin are necessarily adhered to regarding cases set forth in the Convention.

The requirement that documents supporting the claim should be forwarded along with the statement of claim is correct. However, involvement of the court in matters following restitution, such as conservation, preservation and security in the future and accessibility of the cultural objects in the country of origin (after the court order is issued) is, in principle, not a legal task.

The court's involvement in such matters comes to an end after the court order is issued.

In fact, the court may decide to investigate matters before or in the course of the court proceedings, but should not involve itself with matters following enforcement of the court order.

Such involvement on the part of courts is against sovereignty of States, because the claimant in such cases is a Government.

Therefore, it is suggested that the said provisions be dropped from paragraph (2) of Article 5.

Paragraph (2) of Article 5 contradicts Article 1.

To establish restitution of an object, it is sufficient to prove that it has been stolen or illegally exported, and that the claimant country is the lawful owner of the object under question.

In principle, an illegal possessor of a cultural object is not entitled to keep the object even if the preservation conditions provided by the possessor are better than those in the claimant country.

This article and its paragraphs contain contradictory provisions and would thus encourage illegal export of cultural property, because a professional exporter from a rich European country or a private or State museum in an advanced country can provide much better and more technical preservation conditions for a cultural object than a third world country. This means that third world countries will be deprived of their right to claim their cultural property merely because they are technologically poor. Therefore, deletion of paragraph 3 of Article 5 is suggested.

Article 6

Article 6 also has been written in line with the above purpose and provides security for illegal exporters of cultural objects from countries sharing common cultural aspects.

As common cultural aspects of world countries, in general, and neighbouring countries, in particular, are plentiful and permit unlimited interpretations, illegal export of cultural objects will be left without any legal control, and national judges will find themselves in a position permitting them to dismiss a claim of the country of origin merely on the ground of a cultural relationship of an object with their own country or any other countries other than the country of origin.

It should be noted that it is quite easy and possible to prove cultural relationships in many cultural claims. It is, therefore, proposed that Article 6 be dropped in its entirety, and that the claimant country's ownership and precedent possession in the absence of a legal transfer to the present holder be considered in deciding the claims and issuing court orders for restitution.

Article 7

This article also has been written in an attempt to explain the two statutes of limitations for claims arising out of illegal export of cultural property, and as discussed earlier lacks legal merit.

It is suggested that the statute of limitations for cultural claims be dropped or be fixed for a period of thirty years after the time of the theft, or illegal export or unauthorised excavation or any other illegal action leading to the transfer of the cultural property.

Article 8

This article attempts to clarify the cases in which a possessor will be entitled to receive compensation and also to describe the procedure and measurements for determining the amount of compensation. The article provides that a possessor is entitled to receive compensation provided that approved technical and security measures for preservation of the objects have been taken by the possessor. Preservation measures include necessary maintenance and repairs and renovations. In cases other than the above no compensation can be permitted.

Paragraph (2)

According to the internal laws of many countries illegal export would constitute a compulsory transfer of ownership from the offender to the Government.

This Convention attempts to establish ownership rights for the initial owner in accordance with the internal laws of the claimant country, and also to introduce internal laws of the claimant country as the prevailing law, while such provisions are against the internal laws of many countries including Iran.

Therefore, it is suggested that the Convention clearly indicate that illegally exported cultural property must be returned to the country of origin and restituted.

Article 10

It is suggested that this article be rewritten, taking into account the extensive cultural and legal concepts of the 1970 Convention.

This article describes the optional obligations of contracting countries, while fulfilment of such obligations is subject to the will and decision of the contracting countries.

It is suggested that such obligations should be compulsory and should form a principal article of the Convention for in this case many problem areas of the Convention would be solved.

NORWAY

The Norwegian Government would like to make a few remarks concerning Article 11 of the draft Convention. [We] refer to the official report of the first session (Study LXX - Doc. 23), pages 44 to 45. According to the relevant Norwegian legislation, the original owner of a stolen object will

always have the right to claim the object back without paying any compensation, even to a *bona fide* purchaser. This rule applies whether the object is "cultural" or not.

The Norwegian Government understands very well the concern of several participants at the Rome meeting for establishing a uniform law on this matter. However, such a uniform law that would not permit the Norwegian Government to keep its rather generous rules concerning the return of stolen objects would have the unfortunate consequence that a stolen cultural object would be less protected than objects which were not to be classified as "cultural objects". It would be rather difficult to explain to Parliament and the public that such a convention should be ratified in order to protect cultural objects.

The Norwegian Government is, therefore, quite content with Article 11 (a) (iii) of the draft Convention as it stands at present.

SWEDEN

At the first session of the committee of governmental experts various views on the draft Convention were presented as well as many proposals for amendment of the articles. The Government will not at this stage comment on all of these issues.

For the time being the Government will limit its observations to one question, which is especially important, and one question of drafting technique.

The most crucial question is that of the scope of the Convention. If a special international regime for the return of stolen or illegally exported cultural objects were to be established, it should be applicable only to the limited number of items which are of such importance that they deserve special protection. The scope as described in the present draft is much too wide. With regard to stolen property it could open up the special international regime for a far wider use than is reasonable.

With regard to the question of the return of stolen items the Government would furthermore suggest that the right to institute the special procedures under the Convention be restricted to Contracting States. Such a restriction would hamper misuse of the Convention and would facilitate court handling of claims for return.

Along with this vital point there are several questions which must be dealt with in the further work on an international agreement. One of these questions concerns the various proposals for giving in the articles themselves precise definitions of terms used in the Convention, such as "theft" or "possession". The Government is reluctant to accept these proposals. It seems advisable to avoid using words as strictly legal terms

and instead to use a more common language in the text. With the aim of the Convention set out in its preamble a fair implementation can be assumed to give a satisfactory result.

TURKEY

The purpose of the work undertaken by Unidroit with a view to the preparation of a draft Convention on stolen or illegally exported cultural objects is, according to the Unidroit Secretariat's explanatory report (Study LXX - Doc.19), "to clarify, and if possible improve, the way in which Article 7 (b) (ii) of the Unesco Convention should be applied". This is at least the aim as set out in the request by Unesco to Unidroit that the latter "prepare a study on the international protection of cultural property in the light of the draft LUAB of 1974 and of the 1970 Unesco Convention".

What is therefore being sought is a clarification and an improvement of the way in which a provision of the Unesco Convention ought to be applied, and not an alteration of or interference with the other provisions of the Unesco Convention.

The Turkish delegation which took part in the first session of the committee of experts voiced its opposition to any draft which would modify the spirit of the Unesco Convention and its contribution during the second session will be in the same vein.

The principal objections of the Turkish delegation to the text of the draft Unidroit Convention are set out below:

Article 2

The definition of a cultural object should be drafted in conformity with Article 1 of the 1970 Unesco Convention. A more condensed text might, however, be drawn up.

Article 3

Paragraph (1)

The laws of a large number of countries consider cultural objects originating from clandestine excavations to have been stolen. This is the case with Turkey on whose territory there exist thousands of archaeological sites which may be explored only by Turkish or foreign public organisations such as universities or other centres of scientific research. It would therefore be appropriate to reflect this concept in the text of Article 3

or in the final provisions. Moreover, Article 4 (b) of the Unesco Convention considers cultural objects which have been "found" on national territory as being illegally imported, exported or transferred.

Paragraph (2)

The Turkish delegation is in agreement with the three year time limit for the bringing of a claim for the restitution of a stolen cultural object as from the time the claimant knew the location of the object or the identity of the possessor. The remainder of Article 3 (2) is not acceptable as it tends to favour the thief.

Article 5

Paragraph (2)

Article 5 (2) imposes on the requesting State an obligation to prove that certain conditions additional to the essential requirement (that the cultural object in question has been illegally exported from the territory of the requesting State) have been met and to undertake to "conserve" the cultural object subsequent to its return. Rather, the duty of the requesting State should be restricted to that of accompanying its claim for return only with such information as will permit the competent authority of the State addressed to determine whether the cultural object in question has been stolen or illegally exported.

Paragraph (3)

It follows therefore that paragraph (3) of Article 5 is unnecessary, a proposition which is moreover in line with the Unesco Convention.

Article 6

The provisions of this article modify the purpose of the Unesco Convention as well as that of the draft Unidroit Convention as indicated by its title: "Convention on stolen or illegally exported cultural objects". It is compatible neither with the provisions of the Unesco Convention nor with Chapter II of the draft dealing with the restitution of stolen cultural objects.

Article 7

Sub-paragraph (b)

As regards the time limits for the bringing of claims mentioned in Article 7 (b), the Turkish delegation has the same objection to raise as it

did in relation to Article 3 (2). It is, however, in agreement with the period of five years as from the time when the requesting State knew the location of the cultural object or the identity of the possessor imposed upon the requesting State for the bringing of a claim for return.

Article 8

Paragraph (2)

The Turkish delegation fails to see the logic of Article 8 (2). This paragraph is entirely at odds with the logic underlying the draft Convention and should be deleted.

Paragraph (3)

The cost of returning the cultural object should be the responsibility of the possessor if it knew or ought to have known that the object had been illegally exported.

Article 9

Paragraph (1)

As was said with regard to Article 3 (1), it might perhaps be advisable to amend the text of Article 9 (1) with a view to emphasising that an action may be brought before a court under either Chapter II or Chapter III, as the case may be, when a cultural object originating from a clandestine excavation has been illegally exported, that is to say stolen.

Article 10

The Turkish delegation favours the principle of retroactivity. It could accept a distinction between stolen and illegally exported objects on condition that the definition of stolen objects covers objects removed in the course of clandestine excavations.