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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

(Thailand)

Rome, January 1992

Article 2

The term "cultural property" should be used rather than "cultural object" because "property" signifies something that belongs to someone which, in this case, is the heritage of a people. Therefore, as this draft Convention refers to the theft of cultural objects belonging to a certain country, we feel that the word "property" is more appropriate, as an "object" does not necessarily have to belong to someone.

The definition of "cultural property" is not clear enough. We would like to suggest adding the word "archaeological" after "historical" and just before "spiritual" because archaeological finds are generally considered by the domestic laws of many countries to be "cultural property", and thus have to be protected under this Convention.

Article 3

Paragraph (2)

Since cultural property has been stolen from developing countries for far longer than 30 years, we would like to propose that the time limit specified in Article 3(2) be modified. The claims should be made within a period of at least 60 years and any claims for the restitution of stolen cultural property should be made within a period of at least 10 years from the time when the claimant knew or ought reasonably to have known the location or identity of the possessor of the property.

Article 4

In order effectively to prevent the illicit transfer of cultural property, we need to make the transferee aware of the risk of having to return the cultural property without any compensation to all. Besides, property that has been considered "cultural property" is normally of a very high value and the amount of money considered by developed countries as "fair and reasonable compensation" may not be considered fair by developing countries which have a limited budget in paying for the restitution of the property. At this stage, it is necessary to create a new Convention which is fair, reasonable and acceptable to all interested parties. Compensation is therefore the most important issue in the Convention.

Article 8

Paragraph (1)

The draft Convention should put the burden of proof on the purchaser. That is, the purchaser should exhibit the receipt or authorisation received on purchasing the property.

Paragraph (2)

This draft article should be deleted. Since cultural property is a common heritage of nations, it should be returned to its owner in all circumstances (the authorities of the requesting State, not just to any individual residing in the requesting State).