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

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

(Canada)

Rome, November 1992

CANADA

CHAPITRE I - CHAMP D'APPLICATION ET DEFINITION

Article 2

Compte tenu des différents points de vue au sujet de la définition des termes "bien culturel", et de la nécessité d'une définition applicable au bien culturel qui a été volé et également à celui qui a été illicitement exporté, le Canada propose que l'article 2 soit ainsi rédigé:

Article 2

Aux termes de la présente Convention, on entend par "biens culturels":

a) dans le cas d'un bien volé, tout objet matériel digne d'intérêt de par sa valeur culturelle, notamment de par sa valeur archéologique, artistique, historique, rituelle, scientifique ou spirituelle;

b) dans le cas d'un bien illicitement exporté, tout objet matériel désigné par la législation de l'Etat contractant qui revêt un intérêt particulier pour cet Etat de par sa valeur culturelle, notamment de par sa valeur archéologique, artistique, historique, rituelle, scientifique ou spirituelle.

CHAPITRE II - RESTITUTION DES BIENS CULTURELS VOLES

Article 4

Compte tenu qu'il est souhaitable d'imposer une obligation de prudence rigoureuse aux acquéreurs des biens culturels, le Canada propose que l'article 4 soit ainsi rédigé:

Article 4

1) le possesseur d'un bien culturel volé qui est tenu de le restituer a droit, au moment de la restitution, au paiement d'une indemnité juste et raisonnable de la part de celui qui le réclame, pourvu qu'il prouve qu'il a fait preuve de diligence raisonnable en l'acquérant.

2) In determining whether the possessor exercised due diligence regard shall be had to the circumstances of the acquisition, including the character of the parties and the price paid, and whether the possessor consulted any reasonable accessible register of stolen cultural property, the relevant legislation of the requesting State and other relevant information which it could reasonably have consulted.

3) The conduct of a predecessor from whom the possessor has acquired cultural property by inheritance or otherwise gratuitously shall be imputed to the possessor. [Unchanged from original version].

CHAPTER III - RETURN OF ILLEGALLY EXPORTED CULTURAL PROPERTY

Article 5

Having regard to the desirability of ensuring cooperation between States, while not making the furnishing of particulars a pre-condition to starting an action, Canada would propose that Article 5(2) provide as follows:

2) Any request made under the preceding paragraph shall contain or be accompanied by a copy of the legislation that has been breached as well as any particulars that may assist the court or other competent authority of the State addressed to reach a decision.

Article 8

Canada would propose that Article 8 be reformulated to make it more consistent with Article 4. Canada therefore proposes that Article 8 provide as follows:

Article 8

1) The possessor of cultural property that has been illegally exported who is requested to return it shall be entitled at the time of return to payment of fair and reasonable compensation, provided that the possessor prove that it exercised due diligence when acquiring the object.

2) In determining whether the possessor exercised due diligence regard shall be had to the circumstances of the acquisition, including the character of the parties and the price paid, and whether the possessor consulted the relevant legislation of the requesting State and other relevant information which it could reasonably have consulted.

3) The possessor may, instead of requiring compensation, decide to retain ownership of the cultural property and to transfer possession of the cultural property to a person of its choice residing in the requesting State. In such cases the cultural property shall neither be confiscated nor subjected to other measures to the same effect.

4) The conduct of a predecessor from whom the possessor has acquired cultural property by inheritance or otherwise gratuitously shall be imputed to the possessor.

CHAPTER IV - CLAIMS AND ACTIONS

Article 9

Canada would propose that the following be added to Article 9:

3) Where a claim has been brought under this Convention, the State where the cultural property is located shall take appropriate steps to safeguard the cultural property until a final determination has been made by the court or competent authority of the State before which a claim has been brought.

This requirement would help to safeguard the cultural property; for example, a State could prohibit the export of cultural property until such time as a final determination had been made.

CHAPTER V - FINAL PROVISIONS

Canada would propose that a Federal State Clause be added to the Convention, to facilitate ratification or accession by Federal States:

Article 12

1) If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to the matters dealt with in this Convention, it may, at the time of signature, ratification, acceptance, approval or accession, declare that this Convention is to extend to all its territorial units or only to one or more of them, and may substitute its declaration by another declaration at any time.

2) These declarations are to be notified to the depositary and are to state expressly the territorial units to which the Convention extends.