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

(Israel)

Rome, February 1993

ISRAEL

Title

We see no need to refer to the international situation.

Article 1(a)

- 1) Israel has no objection to the inclusion of objects which have been excavated unlawfully as objects which are covered by the Convention.
- 2) We prefer the alternative of property "found on the territory of another "Contracting State".

Article 2

- 1) Israel has no objection to the reference to the 1970 Unesco Convention, although there are certain discrepancies between this Convention and Israeli internal law.
- 2) A definition which leaves the designation of cultural objects to the requesting State would be preferable. However, since the question will be raised in a court in the requested State, the courts of that State cannot be prevented from determining the issue.

Article 3(1)

- 1) The word "physical" should be omitted.
- 2) The phrase "return it to its owner" raises certain problems:
 - a) If the claimant is not the owner, the object cannot be "returned" to him.
 - b) In certain countries, ownership may pass to the possessor. In such a case, the word "return" is meaningless.
- 3) Israel has no objection to the words "subject to the terms of this Convention".

Article 3(2)

- 1) Israel has no preference regarding the number of years.
- 2) The provision regarding prescription should be in the chapter on general provisions, and should relate to both stolen objects and objects which have been exported illegally.
- 3) The phrase "or ought reasonably to have known" is acceptable.
- 4) We feel that a period of 30 years is sufficient, but have no objection to a longer period of 50 years.

Article 4

Alternative I is preferable.

Article 4(1)

The first alternative is preferable. The second alternative deals with internal law and is therefore inappropriate in the context of the Convention.

Article 4(2)

The register should be defined: it should be made clear that its existence was known before the purchase of the object and that there were reasonable grounds to suspect that it might contain an entry relating to the object.

Article 4(3)

This provision belongs to the provisions on the period of applicability of the Convention.

Article 4(4)

- 1) The words "requesting State" (second line) should be replaced by the word "claimant".
- 2) This provision is altogether unnecessary: financing of the compensation should be regulated in a separate agreement between the claimant and the third party.

Article 4(5)

Redundant.

Article 5: Alternative I

Article 5(1)

- 1) For the definition of "law" see article 1.
- 2) The addition "competent authority" is acceptable.
- 3) The words "to the requesting State" should be retained.

Article (5)2

The words in brackets may be retained or omitted.

Article 5(3)

- 1) We prefer the phrase: "if the court or other competent authority has found that ...". The internal law of evidence should not be dealt with in the Convention.
- 2) There is no reason to include criteria in the first paragraph. Criteria (a) - (e) should all be used, with criterion (e) at the top since this is the most important.
- 3) The words "outstanding" and "significantly" should be omitted, as they unduly burden the requesting State.

Article 5: Alternative II

Article 5(2)

Redundant. This issue is not within the scope of the Convention and raises unnecessary difficulties of legislation.

Article 5(3)

This Article should be incorporated with Article 5(2) of Alternative I.

Article 5(4))

There is no justification for giving such protection to these States.

Article 5(5)

Redundant.

Article 6: Alternative I

1) We have no objection to the word "nevertheless" in place of the word "only", but feel that both words could be omitted.

2) The word "manifestly" should be omitted as it makes the return more difficult.

3) Where a third State can show the connection described in Article 5(3) with an object, this is sufficient to justify the involvement of that State in the proceedings. Similarly, where the requested State can show such a connection this can justify the non-return of the object.

4) Application to other States: it is preferable to provide, that once a claim has been filed, the contracting States will all be notified and given a certain period of time within which they may file their own claims. The court will determine which State has priority. It is possible that substantive criteria for these decisions should be agreed upon.

5) The right of a third State: it should be made clear that a third State may only become involved where it has an independent claim under the Convention.

Article 6: Alternative II

Redundant. The criterion of territorial origin is contained in Article 5(3)(a).

Article 7(b)

The provision regarding prescription belongs to the chapter on general provisions, and should apply to both stolen objects and objects which were exported unlawfully.

Article 7(c)

It should be made clear that the time of the request is the date the request is filed.

Article 8

The provisions regarding compensation should be identical to those in Article 4, and they belong in a separate article in the chapter on general provisions.

Article 8 bis

Article 5(2) should indicate that illegality must be proved (as it provided in Article 5 Alternative II subsection (3)).

Article 9

1) Alternative II is preferable.

2) The enforcement of foreign judgments is outside the scope of the Convention.

Article 10(1)

It must be clear that the Convention applies only where the theft, excavation or exportation has occurred after the Convention has entered into force with respect to both States involved.

Article 10(2) and (3)

Redundant.

Article 11(b)(i)

What are the interests?

Article 11(b)(iv)

1) In view of our comments on Article 8, we suggest this provision be rephrased.

2) The correct reference should of course be Article 8(2) and not 8(4).

Article 11(b)(v)

This provision seems vague. If the intention is that the costs may be borne etc .., then the word "require" should be replaced by "permit" or "allow".

Article 11(c)

Redundant.

Article 12

Israel supports this addition.

Article 13

1) The exemption from court fees is justified when the claimant is a State. The exemption from court fees for individual claimants should be reconsidered. That change can be effected by substituting "claims" for "requests".

2) We suggest that this Article be rephrased so that it is clear that custom duties relate to the return of objects, and court fees relate to requests filed.

Miscellaneous

1) Israel reiterates its suggestion that the period of prescription should not include periods of time in which the relevant States do not have diplomatic relations with each other, are in a state of war with each other, etc.

2) The provisions regarding entry into force of the Convention should be added.