

UNIDROIT 1993
Study LXX - Doc. 38
(Original: English/French)

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 third session of the committee
(Rome, 22 to 26 February 1993)

Rome, April 1993

G.E./C.P.
3rd session
Misc. 1
(Original: English)

PROPOSAL OF THE FINNISH DELEGATION

CONVENTION ON THE INTERNATIONAL ASPECTS OF THE RESTITUTION
OF STOLEN AND THE RETURN OF UNLAWFULLY REMOVED CULTURAL OBJECTS

CHAPTER I - GENERAL PROVISIONS

Article 1

(1) This Convention applies to claims of [international character] for:

- (a) the restitution of stolen cultural objects [cultural objects stolen in a Contracting State] [removed from the territory of a Contracting State] [cultural objects stolen in a Contracting State and removed from its territory] [cultural objects stolen in a Contracting State, removed from its territory and found in another Contracting State];
- (b) the return of cultural objects unlawfully removed from the territory of a Contracting State.

(2) Nothing in this Convention shall prevent a Contracting State from applying any rules more favourable towards the restitution or the return of a stolen or an unlawfully removed cultural object than provided for by this Convention.

Article 2

For the purposes of this Convention:

- (a) "cultural object" means any material object of [outstanding] cultural significance, for example, in an archaeological, artistic, historical, spiritual or ritual area;
- (b) "stolen" means [theft, robbery, burglary, aggravated burglary, blackmail and acquisition of the possession of cultural objects through illegal excavations];

- (c) "unlawful removal" means the removal of a cultural object from the territory of a Contracting State contrary to its law applicable to the protection of cultural objects;
- (d) "unlawful removal" shall also include cases where a cultural object was removed lawfully from the territory of a Contracting State, but not returned to that State contrary to its law applicable to the protection of cultural objects;
- (e) "law applicable to the protection of cultural objects" means any rules and regulations of a Contracting State which contain prohibitions or restrictions relating to the removal of an object outside the territory of that State because of its cultural significance.

Article 2 bis

When determining whether the object, alleged to be stolen or unlawfully removed, shall be deemed to be a cultural object in the meaning of Article 2, subparagraph (a), the judicial or other competent authorities shall duly take into account the law applicable to the protection of cultural objects of the State from the territory of which the cultural object was removed.

Article 2 ter

(1) A Contracting State shall designate a Central Authority to discharge the duties imposed upon such Authorities by this Convention.

(2) Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify their territorial powers.

Article 2 quater

(1) Central Authorities shall co-operate with each other and promote co-operation between the judicial and other competent authorities in their States to secure the restitution of stolen cultural objects and the return of unlawfully removed cultural objects.

(2) For this purpose, Central Authorities shall, in particular, take or cause to be taken any appropriate measures:

- (a) to locate the cultural object alleged to be stolen or unlawfully removed;

- (b) to protect the physical preservation of the object;
- (c) to prevent its removal outside the territory of the State where the object is located by taking any appropriate protective and emergency measures;
- (d) to initiate or facilitate the initiation of proceedings for the restitution or the return of the cultural object;
- (e) to inform each other of stolen or unlawfully removed cultural objects found in their territory;
- (f) to exchange information of general character on their laws and regulations as well as on any administrative arrangements relating to the protection cultural property;
- (g) to keep each other informed of the operation of this Convention and of any obstacles in its application.

(3) Each Central Authority shall bear its own costs in the application of this Convention.

CHAPTER II - RESTITUTION OF STOLEN CULTURAL OBJECTS

CHAPTER III - RETURN OF UNLAWFULLY REMOVED CULTURAL OBJECTS

Article 5

(1) Where a cultural object has been unlawfully removed from the territory of a Contracting State (the requesting State), the court or other competent authority of the Contracting State where the object is located (the State addressed) shall upon request order the object to be returned.

(2) The request may be made by the requesting State through Central Authorities or directly to the court or other competent authority of the State addressed and it shall be accompanied by the particulars necessary to determine whether the removal was unlawful in the meaning of Article 2.

(3) The court or other competent authority of the State addressed may request that the requesting State obtain from the court or other competent authority a decision or other determination that the removal of the object was unlawful.

Article 5 bis

The request for the return of the cultural object shall be made to the judicial or other competent authority of the State addressed within a period of [] years from the time when [the requesting State] knew [or ought reasonably to have known] the location [or/and] the identity of the possessor and within a period of [] year from the date of the unlawful removal.

Article 6

The return of the cultural object may be refused [only] where:

- (a) the return would significantly impair the physical preservation of the object or of its context, or
- (b) the cultural object, prior to the unlawful removal from the territory of the requesting State, was unlawfully removed from the State addressed, or
- (c) the return of the cultural object would be manifestly contrary to the fundamental principles of the law of the State addressed.

Article 7

Our delegation propose subparagraphs (a) and (b) to be replaced by Article 6, subparagraphs (c), (d) and (e) supra and subparagraph (c) to be deleted.

Article 8

(1) Contracting States may provide that where the return of a cultural object is ordered:

- (a) the possessor shall be entitled to fair and reasonable compensation unless the possessor knew or ought to have known at the time of the acquisition that the object was removed unlawfully;
- (b) the possessor shall be entitled to the reimbursement of expenses incurred in the protection and restoring of the object.

(2) In the application of paragraph (1), subparagraph (a) the possessor shall not be in a more favourable position than the person from whom the possessor acquired the object by inheritance or otherwise gratuitously.

Article 8 bis

The State addressed is not bound to assume any costs resulting from the return of an unlawfully removed cultural object.

Article 8 ter

The provisions of this Chapter shall only apply where the cultural object was unlawfully removed from the territory of the requesting State after the entry into force of this Convention between the requesting State and the State addressed.

CHAPTER IV - CLAIMS AND ACTIONS

Our delegation propose this Chapter to be transferred into Chapter II and made applicable to the restitution of stolen cultural objects only.

CHAPTER V - FINAL PROVISIONS

Article 10

Our delegation propose that the non-retroactivity rule applicable to unlawful removals be included in the provisions of Chapter III on the obligations of Contracting States to order the object to be returned (supra, Article 8 ter). This would mean that the services of Central Authorities would be available also where the unlawful removal took place before the entry into force of the Convention between the requesting State and the State addressed and where the internal law of the State addressed would allow the object to be returned. - For these reasons we consider that also the non-retroactivity rule applicable to stolen cultural objects should only apply to the provisions of Chapter II.

Article 10 bis

A Contracting State may, at the time of signature, ratification, acceptance, approval or accession, reserve the right to exclude the application of Chapter II of this Convention.

Article 10 ter

A Contracting State may declare that it shall not be bound to order the cultural object to be returned under article 5 where:

- (a) the object was removed during the lifetime of the person who created it or within a period of [twenty] [fifty] years following the death of that person, or
- (b) the cultural object has a [manifestly] closer connection with the State addressed [and the return would be [manifestly] contrary to [the fundamental principles on] the protection of the cultural heritage of that State].

Article 11

Our delegation propose this Article to be deleted and replaced by Article 1, paragraph 2, supra.

G.E./C.P.
3rd session
Misc. 2
(Original: French)

PROPOSAL OF THE DELEGATION OF THE ISLAMIC REPUBLIC OF IRAN^(*)

In order on the one hand to prevent the theft of and the illicit traffic in cultural objects, and on the other hand to slow down the increasing "black market" in these objects, the necessity of establishing an international identity card has been raised by the Iranian delegation at this session of the committee of governmental experts on international protection of cultural property.

The President, Mr Lalive, suggested that such a proposal be considered by a special committee, set up in the framework of the International Institute for the Unification of Private Law.

With a view to creating a genuine order in the international trade in cultural objects, we propose that a uniform identity card be constituted by the "Contracting States" for the objects encompassed within the following categories:

(1) Cultural objects which have a universal value (cf. the Unesco Convention of 1972 concerning the Protection of the World Cultural and Natural Heritage);

(2) Cultural objects which have a value for various civilizations;

(3) Cultural objects which have a national value.

Such an identity card should indicate, for the objects concerned:

- its particulars (technical, historical, cultural ... etc.)
- the identity of the owner or owners,
- the authorisation or prohibition of export.

In this context, if the "Contracting States" were to agree to such a proposal in the framework of the Unidroit Convention on stolen or illegally exported cultural objects, the purchase, sale or import of cultural objects made in the absence of the relevant identity card should be forbidden by Contracting States.

(*) This proposal had been made during the second session of the committee of governmental experts (Unidroit 1992, Study LXX - Doc. 29, Misc. 52)

Insofar as this proposal raises some questions with respect to international public and private law, also from a cultural point of view, it could be studied with the assistance of the members of Unidroit, within a commission, whose report could be considered by the representatives of States at the next session.

The National Organisation of Cultural Heritage of the Islamic Republic of Iran undertakes to make its best efforts to contribute to the work of the aforesaid commission.

Uniform International Identity Card of Cultural Object for Exportation Purposes

Inventory No. Object No.
Card No. Date

Specifications:

Identity of legal owner:

Object name - type

Material

Identity of holder:

Technique

Originality

Authority delivering this card:

Number

First name Last name Position

Decoration

Signature & seal:

Dimensions

Length Width
Height Diameter

Artist / craftsman

Signature Date

Weight

Originating country

Value / price

Purpose of export

Origin

Destination

Picture /
contact print /
color slide /
drawing

Negative No.

Export certificate No.:
Certificate delivery date:

No. in export certificate book
Certificate delivery date

Place of delivery of subsequent exportation
authorizations:

Notes:

• Exportation of the cultural object identified on the recto of this card is authorized from to
First name Surname Position of
responsible customs official.
Exportation certificate No. Certificate delivery date:
Seal and signature:

• Exportation of the cultural object identified on the recto of this card is authorized from to
First name Surname Position of
responsible customs official.
Exportation certificate No. Certificate delivery date:
Seal and signature:

• Exportation of the cultural object identified on the recto of this card is authorized from to
First name Surname Position of
responsible customs official.
Exportation certificate No. Certificate delivery date:
Seal and signature:

G.E./C.P.
3rd session
Misc. 3
(Original: French)

PROPOSAL OF THE BRAZILIAN DELEGATION

Article 5(3)

(3) The court or other competent authority of the State addressed shall order the return of the cultural object to the requesting State if that State proves that the object was removed from its territory contrary to its law and significantly impairs one or more of the following interests:

... (unchanged)

G.E./C.P.
3rd session
Misc. 4
(Original: English)

PROPOSAL OF THE HUNGARIAN DELEGATION

Article 1(b) and Article 5(1)

Both paragraphs determine the notion of illegal removal of cultural objects from a Contracting State by using the same alternative definitions: removal "contrary to its law" or, in square brackets, contrary to its law "applicable to the protection of cultural objects". Both definitions were retained in order to avoid the term "export legislation" which was found to be rather technical and restrictive.

However, a possible specific restriction of the legislation to be considered to the law applicable to the "protection" of cultural objects may also exclude from the scope of application of the Convention illegal removals violating general rules of the law of contract, e.g. those concerning the disposal of property rights in the objects, and the validity of the related contract. "Protection of cultural objects" refers rather to their safety and the prevention of theft, demolition or damaging than to the respect of legal provisions governing the exercise of property rights in the object. The latter aspect should also be recognised when covering illegal removals under the Convention.

This requirement corresponds to the basic principles of private international law in the law of contract and the requirement of mutual recognition of the relevant national laws.

Consequently, Hungary favours the first alternative, i.e. a general reference to the law of the requesting State. Should, however, the subsidiary proposal be accepted, the relevant passage should be completed as follows:

" contrary to its law applicable to the protection of cultural objects and to the disposal of property rights therein ... ".

G.E./C.P.
3rd session
Misc. 5
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

Article 7 (a)

Add to the end of sub-paragraph (a):

" (...) that person [except in those situations where the object is created for the purpose of traditional communal or tribal practices and according to the practices thereof cannot be alienated from the living culture by the creator]; or"

G.E./C.P.
3rd session
Misc. 6
(Original: English)

PROPOSAL OF THE NIGERIAN DELEGATION

Article 5(3)

(3) The court or other competent authority of the State addressed shall order the return of the cultural object to the requesting State if that State [the requesting State] certifies that the object is of outstanding cultural importance or that the removal of the object from its territory significantly impairs one or more of the following interests:

... (unchanged)

New paragraphs (4) and (5)

(4) Where the court or other competent authority of the State addressed refuses to order the return of an object on the ground that the requesting State has not established its claim under Article 5(3), the requesting State may at its option appeal to [the Central Authority to be established under this Convention] [an Arbitration Tribunal constituted in accordance with paragraph (5) of this Article] [a review Tribunal to be constituted by the President of the International Court of Justice in accordance with paragraph (5) of this Article].

(5) In the appointment of the Arbitration Tribunal, each Contracting State (i.e. the requesting State and the State addressed) shall be entitled to appoint an arbitrator while the two arbitrators shall appoint the third who shall be the Chairman of the Tribunal. In the event of the two arbitrators appointed by the Contracting States not being able to agree on the appointment of the third arbitrator, the appointment shall be made by the [Central Authority] [Secretary-General of UNESCO] [President of the International Court of Justice].

OR

(5) The President of the International Court of Justice or the Vice-President where the President is a national of the requesting or requested State, after consultation with members of the Court and the Secretary-General of UNESCO shall appoint three persons who are experts on the subject matter in dispute and non-nationals of the parties. One of the three shall be designated by the Chairman of the Tribunal.

Remarks

The above proposal has been made bearing in mind that the Convention permits a different authority other than the courts of a contracting State to determine questions relating to whether or not an object should be returned. Given the fact that the other "competent authority" of a Contracting State could be a political department and may make its determination based on considerations other than legal considerations, it is the considered view of this delegation that there should be the possibility of an appeal to a neutral body.

G.E./C.P.
3rd session
Misc. 7
(Original: French)

PROPOSAL OF THE WORKING GROUP ON THE CERTIFICATE

The Working Group on the Certificate was composed of representatives of the following delegations: China, Egypt, Greece, Indonesia, Iran, Mexico, Nepal, Nigeria and Turkey. The discussions demonstrated the desire of all the participants to combat the illegal traffic in cultural objects.

Agreement was therefore reached on the need to develop a system which will discourage such illegal traffic, while at the same time having regard to the legitimate interests of international commerce in cultural objects.

According to several delegations one appropriate way to achieve this objective could be to make provision in the text of the Convention for an export certificate.

Such a mechanism was already to be found in the 1970 Unesco Convention, as in EEC Council Regulation n° 3911/92 (9.12.1992) concerning the export of cultural goods. It had likewise been introduced into the legal system of a number of States and had functioned most satisfactorily without giving rise to difficulties.

It seemed therefore to be quite legitimate to make provision for such a certificate in the text of the draft, at least on a voluntary basis.

To this end we are submitting the following proposal for consideration:

Article 2 bis

Any Contracting State may make provision in its legal system for an export certificate in respect of its own cultural objects, the model of which is annexed to this Convention.

Article 4, last paragraph

In the absence of the export certificate referred to in Article 2 bis duly issued by the requesting State, the bad faith of the possessor of the cultural object is conclusively presumed.

Article 8, paragraph 1 bis

Same provision as that in the last paragraph of Article 4.

Article 5, Alternative II

Add a last paragraph:

"In the absence of the export certificate referred to in Article 2 bis duly issued by the requesting State, the cultural object is conclusively presumed to have been illegally exported and must automatically be returned."

G.E./C.P.
3rd session
Misc. 8 Corr.
(Original: English)

PROPOSAL OF THE WORKING GROUP ON ARTICLE 5(2)

This Working Group was composed of representatives of the following delegations: Australia, Belgium, Canada, Croatia, Cyprus, France, Greece, Portugal, Slovenia and Turkey. The consensus of the Group was that Article 5(2) should read as follows:

Article 5

(2) Any request made under the preceding paragraph shall contain or be accompanied by such information of a factual or legal nature as may assist the court or other competent authority of the State addressed.

G.E./C.P.
3rd session
Misc. 9 rev.
(Original: English)

PROPOSAL OF THE WORKING GROUP ON ARTICLE 7(a)

This Working Group was composed of representatives of the following delegations: Canada, France and the Netherlands. The consensus of the Group was that Article 7 should read as follows:

Article 7

The provisions of Chapter III shall not apply where:

- (a) the cultural object was exported during the lifetime of the person who created it or when the object is less than 50 years old; or
- (b) [No change is suggested]
- (c) [No change is suggested]

G.E./C.P.
3rd session
Misc. 10
(Original: English)

PROPOSAL OF THE FINNISH DELEGATION

Article 6 (c)

Restrictions of the application of the general ordre public - clause; to be drafted by the drafting committee. The provision might read e.g. as follows:

Article 6

The return of the cultural object may be refused [only] where:

- (a) the return would significantly impair the physical preservation of the object or of its context, or
- (b) the cultural object, prior to the unlawful removal from the territory of the requesting State, was unlawfully removed from the State addressed, or
- (c) the cultural object is of outstanding cultural importance for the State addressed and the return would be manifestly contrary to the fundamental principles on the protection of the cultural heritage of that State.

G.E./C.P.
3rd session
Misc. 11 Corr.
(Original: French)

PROPOSAL OF THE DELEGATIONS OF BELGIUM, BRAZIL, PORTUGAL,
SWEDEN, SWITZERLAND AND TUNISIA

Article 8(2)

Draft of the Unidroit Study Group, 1990

(2) Instead of requiring ompensation, and in agreement with the requesting State, the possessor may, when returning the cultural object to that State, decide:

- (a) to retain ownership of the object; or
- (b) to transfer ownership against payment or gratuitously to a person of its choice residing in the requesting State and who provides the necessary guarantees.

G.E./C.P.
3rd session
Misc. 12
(Original: English)

PROPOSAL OF THE MEXICAN DELEGATION

Article 9 sexties

The requested State shall prevent, by the necessary interim measures, any action to evade the return procedure.

G.E./C.P.
3rd session
Misc. 13
(Original: English)

PROPOSAL OF THE MALTESE DELEGATION

Article 8(5)
(Study LXX - Doc. 31)

This paragraph should be substituted by the following:

(5) The cost of returning the cultural object in accordance with this article shall be borne by the requesting State [which shall have a right of recovering the same from the possessor who is not in good faith].

G.E./C.P.
3rd session
Misc. 14
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

Article 3(1)

Add to this paragraph the following:

"A cultural object shall be deemed to be stolen if it is proven to have been illegally excavated and to have been owned by a person or a State."

G.E./C.P.
3rd session

Misc. 15

(Original: English/French)

PROPOSAL OF THE GREEK DELEGATION

Article 3(3)

(3) Any claim of restitution of a cultural object belonging to the requesting State or to a public body in that State shall not be subject to prescription.

G.E./C.P.
3rd session
Misc. 16
(Original: French)

PROPOSAL OF THE ITALIAN DELEGATION

Article 5(4) (revised)

(based on the wording of Misc. 54 (Doc. 29) and Doc. 31)

(4) The claim may also be brought, in conformity with paragraphs (2) and (3) of Article 5, by a Contracting State from whose territory a cultural object was initially legally exported (but was subject to temporal limitations and/or to limitations as to the territory of destination) when, following one or more successive exports not contemplated by the law of the State of origin, or by the export authorisation issued by that State or by an international agreement, whether multilateral or bilateral, to which both States concerned are Parties, the same effect is produced as would have been by the illegal export of the object to another Contracting State or by an infringement of cultural interests protected by the conditions which would have attached to the initial permission to export the object.

G.E./C.P.
3rd session
Misc. 17
(Original: French)

PROPOSAL OF THE ITALIAN DELEGATION

Article 8(1)
(Study LXX - Doc. 31)

Add, at the end of the provision:

" (...) and shall bear the cost of returning the object".

Article 8(5)
(Study LXX - Doc. 31)

Add, at the end of the provision:

" (...) only in cases where the object is to be returned by a possessor in good faith".

G.E./C.P.
3rd session
Misc. 18
(Original: French)

PROPOSAL OF THE ITALIAN DELEGATION

Article 4(4) (revised)

(as reproduced in Misc. 54 (Doc. 29) and Doc. 31 Corr.)

(4) When the dispossessed owner is unable to pay the compensation awarded, a third party of a public or private character - in the first place the State of the claimant -, pursuing cultural aims, may guarantee payment of the sum in question, on condition that the object returned to its legitimate owner be made accessible to the public in the owner's State, and that the third party undertake to meet the cost of insurance and of the proper conservation of the object in question.

G.E./C.P.
3rd session
Misc. 19
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

Article 1

This Convention applies in international situations to claims for the restitution of stolen cultural objects and for the return of cultural objects illegally exported from or excavated in the territory of a Contracting State contrary to its law applicable to the protection of cultural property.

An international situation is one in which a cultural object is stolen in or illegally removed as stated above from the territory of a Contracting State, has been moved across an international border and is located in another Contracting State.

G.E./C.P.
3rd session
Misc. 20
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

Article 9

(1) A claim may be brought under this Convention by a claimant who is a habitual resident or domiciliary of a Contracting State against the possessor before the courts of another Contracting State where the stolen cultural object is located.

(2) A claim may be brought under this Convention by a claimant who is a habitual resident or domiciliary of a Contracting State against a possessor who is a habitual resident or domiciliary of another Contracting State in the courts of that State.

(3) Neither paragraph 1 nor 2 shall apply to a case involving a claimant who is a habitual resident or domiciliary of a Contracting State bringing suit against a habitual resident or domiciliary of the same Contracting State in the courts of that State.

G.E./C.P.
3rd session
Misc. 21 rev.
(Original: English/French)

ARTICLES 1 TO 8 PREPARED BY THE DRAFTING COMMITTEE

(This document consolidates Miscs. 21, 21 Add. and 21 Add. 2)

PRELIMINARY DRAFT UNIDROIT CONVENTION ON THE [INTERNATIONAL RETURN OF]
STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS

CHAPTER I - SCOPE OF APPLICATION AND DEFINITION

ARTICLE 1

This Convention applies to claims of an international character for:

- (a) the restitution of stolen cultural objects removed from the territory of a State;
- (b) the return of cultural objects removed from the territory of a Contracting State contrary to its law [applicable to the protection of cultural objects].

ARTICLE 2

ALTERNATIVE I

For the purposes of this Convention, cultural objects are those objects of [, in particular,] [outstanding] anthropological, prehistoric, ethnological, archaeological, artistic, historical, literary, cultural, ritual or scientific significance [or of significance for the natural heritage] [, including those designated as such by each Contracting State].

ALTERNATIVE II

For the purposes of this Convention, "cultural object" means any material object of an artistic, historical, spiritual, ritual [,archaeological, ethnological, literary, scientific] nature which [is of importance, is more than [100] years old and] belongs to the following categories:

- (a) rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (d) elements of artistic or historical monuments or archaeological sites which have been dismembered;
- (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs;
 - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc;) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;
- (k) articles of furniture more than one hundred years old and old musical instruments.

[ARTICLE 2 bis

Any Contracting State may make provision in its legal system for an export certificate in respect of its own cultural objects, the model of which is annexed to this Convention.]

CHAPTER II - RESTITUTION OF STOLEN CULTURAL OBJECTS

ARTICLE 3

(1) The possessor of a cultural object which has been stolen shall return it.

(2) For the purposes of this Convention, an object which has been unlawfully excavated shall be deemed to have been stolen.

(3) Any claim for restitution shall be brought within a period of [three] [five] years from the time when the claimant knew [or ought reasonably to have known] the location [or,] [and] the identity of the possessor [,] of the object, and in any case within a period of [six], [ten] [thirty] [fifty] years from the time of the theft.

(4) However, a claim for restitution of an object belonging to a public collection of a Contracting State [shall not be subject to prescription] [shall be brought within a time limit of [75] years].

ARTICLE 4

ALTERNATIVE I

(1) The possessor of a stolen cultural object who is required to return it shall be entitled at the time of restitution to payment by the claimant of fair and reasonable compensation provided that the possessor neither knew [nor ought reasonably to have known] that the object was stolen and can 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, to whether the possessor consulted any reasonably accessible register of stolen cultural property, and to other relevant information and documentation which it could reasonably have [consulted] [obtained].

(3) The possessor shall not be in a more favourable position than the person from whom it acquired the object by inheritance or otherwise gratuitously [provided that the latter person acquired the object after the entry into force of this Convention in respect of the Contracting State where such person acquired the object or had its habitual residence at the time of the acquisition].

[(4) When the dispossessed owner is unable to pay the compensation awarded, a third party of a public or private character - in the first place the State of the claimant -, pursuing cultural aims, may guarantee payment of the sum in question, on condition that the object returned to its legitimate owner be made accessible to the public in the owner's State, and that the third party undertake to meet the cost of insurance and of the proper conservation of the object in question.]

[(5) In the absence of the export certificate referred to in Article 2bis duly issued by the requesting State, the bad faith of the possessor of the cultural object is conclusively presumed.]

ALTERNATIVE II

(1) The possessor of a stolen cultural object who is required to return it shall not be entitled to payment of compensation from the claimant.

(2) In cases where the possessor of a stolen cultural object has incurred expenses in the protection and restoring of the object, it shall be entitled to claim reimbursement of the expenses so incurred from the claimant.

(3) The cost of returning the cultural object shall be borne by the claimant.

CHAPTER III - RETURN OF ILLEGALLY [EXPORTED] CULTURAL OBJECTS

ARTICLE 5

ALTERNATIVE I

(1) Where a cultural object has been removed from the territory of a Contracting State (the requesting State) contrary to its law [applicable to the protection of cultural objects], 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.

(2) Any request made under the preceding paragraph shall contain or be accompanied by such information of a factual or legal nature as may assist the court or other competent authority of the State addressed.

(3) The court or other competent authority of the State addressed shall order the return of the cultural object if the requesting State [certifies that the object is of outstanding cultural importance or if that State] proves that the removal of the object from its territory [significantly] impairs 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 [,
- (e) the outstanding cultural importance of the object for the requesting State].

[(4) The request may also be made, in conformity with paragraphs (2) and (3) of this article, by a Contracting State from whose territory a cultural object was initially legally exported (but was subject to temporal limitations and/or to limitations as to the territory of destination) when, following one or more successive exports not contemplated by the law of the State of origin, or by the export authorisation issued by that State or by an international agreement, whether multilateral or bilateral, to which both States concerned are Parties, the same effect is produced as would have been by the illegal export of the object to another Contracting State or by an infringement of cultural interests protected by the conditions which would have attached to the initial permission to export the object.]

ALTERNATIVE II

(1) Where a cultural object has been removed from the territory of a Contracting State (the requesting State) contrary to its law [applicable to the protection of cultural objects], 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.

(2) Contracting States shall prohibit the import of cultural objects in the absence of an authorisation issued by the State of origin of such objects.

(3) Any request made in accordance with paragraph (1) of this article shall be accompanied by the particulars necessary to enable the competent authority of the State addressed to determine whether the object falls within one of the categories of objects referred to in Article 2 and whether there has been a breach of the export legislation of the requesting State.

(4) The court or other competent authority of the State addressed shall order the return of the cultural object if the requesting State [certifies that the object is of outstanding cultural importance or if that State] proves that the removal of the object from its territory [significantly] impairs 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 [,
- (e) the outstanding cultural importance of the object for the requesting State].

[ARTICLE 5 bis

In the absence of the export certificate referred to in Article 2 bis duly issued by the requesting State, the cultural object is conclusively presumed to have been illegally exported and must automatically be returned.]

[ARTICLE 6

ALTERNATIVE I

Where a State has established its request 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 [manifestly] has [as close a, or] a closer [,] connection with the culture of the State addressed.

ALTERNATIVE II

The return of the cultural object may be refused [only] where:

- (a) the return would significantly impair the physical preservation of the object; or
- (b) the cultural object, prior to the unlawful removal from the territory of the requesting State, was unlawfully removed from the State addressed, or
- (c) the cultural object is of outstanding cultural importance for the State addressed and the return would be manifestly contrary to the fundamental principles on the protection of the cultural heritage of that State.

ALTERNATIVE III

When the conditions of Article 5 (3) have been met, the court or other competent authority may only refuse to order the return of the cultural object if it finds that it has a manifestly closer connection with the culture of, or that its territorial origin is in, the State addressed.]

ARTICLE 7

(1) The provisions of Article 5 shall not apply where:

- (a) the cultural object was exported during the lifetime of the person who created it or when the object is less than 50 years old; or
- (b) the export of the object in question is no longer illegal at the time at which the return is requested.

(2) Any request for the return of the object shall be made within a period of [three] [five] years from the time when the requesting State knew [or ought reasonably to have known] the location [, or] [and] the identity of the possessor, of the object and in any case within a period of [six] [ten] [twenty] [thirty] years from the date of the export of the object.

ARTICLE 8

(1) The possessor of a cultural object exported from the territory of a Contracting State (the requesting State) contrary to the law [applicable to the protection of cultural objects] of the requesting State shall be entitled at the time of the return of the object, to payment by the requesting State of fair and reasonable compensation, provided that the possessor neither knew [nor ought to have known] at the time of acquisition that the object [would be, or] had been [,] unlawfully exported.

[(1bis) In the absence of the export certificate referred to in Article 2bis duly issued by the requesting State, the bad faith of the possessor of the cultural object is conclusively presumed.]

(2) Instead of requiring compensation, and in agreement with the requesting State, the possessor may, when returning the cultural object to that State, decide:

- (a) to retain ownership of the object; or
- (b) to transfer ownership against payment or gratuitously to a person of its choice residing in the requesting State and who provides the necessary guarantees.

(3) The cost of returning the cultural object in accordance with this article shall be borne by the requesting State, without prejudice to the right of that State to recover costs from any other person.

[(4) A third State, or a third party of a public or private character furthering cultural aims may, with the consent of the requesting State, and in its place, provide for the payment of the compensation established under paragraph (1) of this article, on condition that the object be rendered accessible to the public in that same requesting State and that payment of the cost of insurance and of conservation of the object be met.]

(5) The possessor shall not be in a more favourable position than the person from whom it acquired the object by inheritance or otherwise gratuitously [provided that the latter person acquired the object after the entry into force of this Convention in respect of the Contracting State where such person acquired the object or had its habitual residence at the time of the acquisition].

[ARTICLE 8 bis

The court or other competent authority of the State addressed, in ascertaining whether there has been an illicit removal of a cultural object in the meaning of Article 5, may request that the requesting State obtain from the court or other competent authority of the requesting State a decision or other determination that the removal of the object was illicit under Article 5.]

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(Original: English)

PROPOSAL OF THE DELEGATION OF THAILAND

Article 2

ALTERNATIVE IV

The phrase "more than 100 years old" should be deleted because there are cultural objects which are not more than 100 years old, but are of cultural importance. They should, therefore, be protected by this Convention.

Article 6

This paragraph should be added:

"If, during the consideration of the court or other competent authority of the State addressed under Article 5, it appears that the cultural object may have been removed from the territory of a third Contracting State (the third State) against its legislation and that the cultural object may also have as close a, or a closer, connection with the culture of the third State, the third State will have the right to appeal directly to the court or competent authority under Article 5."

Reason:

This draft Convention provides only that the court or other competent authority of the State addressed has the right to inform the relevant authorities of the third State, and invite its relevant authority to appeal to the court or competent authority under Article 5. The third State can not directly appeal to the court or competent authority of the State addressed without being informed. Our delegation would, therefore, like to propose that the third State should have the right to claim or protect its own treasure by being able to submit an appeal to the court or competent authority of the State addressed by its own judgment, with or without being informed by the above-mentioned court or other competent authority.

G.E./C.P.
3rd session
Misc. 23
(Original: English)

PROPOSAL OF THE MEXICAN DELEGATION

Article 3(2)

Modify the wording of paragraph 2 of Article 3 as follows:

(2) For the purposes of this Convention, an object which has been unlawfully excavated or unlawfully removed following a lawful excavation shall be deemed to have been stolen.