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(Originals: 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 documents submitted  
during the fourth session of the committee  
(Rome, 29 September to 8 October 1993)

Rome, February 1994

G.E./C.P.  
4<sup>th</sup> session  
Misc. 1  
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

New Chapter/Article/Section  
separate from Chapter III or as a new part thereof

Illegally Excavated Cultural Objects

(1) Where a cultural object has been excavated (including surface removal) and removed from the territory of a Contracting State contrary to its laws applicable to the excavation of cultural objects that State may request the court or other competent authority of another Contracting State acting under Article 9 to order the return of the cultural object.

(2) Any request made under the preceding paragraph shall be accompanied by such information of a factual and legal nature as may assist the court or other competent authority of the State addressed to determine whether the requirements of paragraphs 1 to 4 have been met.

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

- (a) the physical preservation of the cultural object or of its archeological or historical context,
- (b) the integrity of a complex cultural object, through damage or dismemberment,
- (c) the preservation of information, for example, of a scientific or historical character,
- (d) the continued traditional use of the cultural object by an identifiable cultural group,
- (e) the outstanding cultural importance of the cultural object for the requesting State.

(4) In determining whether the possessor exercised due diligence, regard shall be had to the circumstances of the acquisition, including the character of the parties, taking into account the nature of the sale or transfer, and the price paid, and to whether the possessor examined reasonably accessible information or documentation as to whether the cultural object was excavated legally in the country of origin.

The provisions of Articles 7 and 8 shall apply to this Article *mutatis mutandis*, except as otherwise provided.

29 September 1993  
Afternoon session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 2  
(Original: English)

PROPOSAL OF THE DELEGATION OF FINLAND

Article 1

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

- (a) the restitution of stolen cultural objects;
- (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.

30 September 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 3  
(Original: English)

PROPOSAL OF THE DELEGATION OF FINLAND

The Finnish delegation proposes that a new Article be added to Chapter III as follows:

Article X

For the purposes of this Chapter:

- (a) "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;
- (b) "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;
- (c) "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 the cultural significance of the object.

30 September 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 4  
(Original: English)

# PROPOSAL OF THE DELEGATION OF HUNGARY

## Articles 11 and 12 (new)

In the light of the unfolding discussion the Hungarian delegation further developed its initial proposal (Study LXX - Doc. 29, p.39) as follows:

Article 11 of the revised, last preliminary draft comprises two kinds of provisions.

First, it allows each Contracting State to undertake further steps, aiming at the restitution or return of removed cultural objects ((a)(i); (b)(i) and (v)). These specific provisions cannot be generalised and should be retained in Article 11.

Secondly, the present Article 11 would render each Contracting State free to apply its existing law to the benefit of the claimant (when it is more favourable to the latter, in specified cases, than the Convention itself): (a) (ii), (iii); (b) (ii) (iii) (iv); or to the benefit of the possessor in title of the object (a) (iv).

The cases specified to the benefit of the claimant should be covered by a general clause, as a separate paragraph in the newly proposed Article 12.

The wording, proposed to this end by the delegation of Finland as paragraph (2) of Article 1 (GE/CP, 4<sup>th</sup> session, Misc. 2, Sept. 29, 1993) could be further developed so as to make it clear that:

- 1) the Contracting States remain bound to apply more favourable provisions of their law;
- 2) the scope of applicable rules encompasses both national law and provisions of international treaties (e.g. as regards jurisdiction, enforcement of court decisions, protection of folklore, etc);
- 3) a provision qualifies as more favourable, if it assists the claimant in pursuing the objectives of the Convention.

Thus, the proposed new paragraph (1) of Article 12 (new) should read:

"No provision of this Convention shall preclude the implementation of rules under applicable national laws and/or other international Conventions if they are more favourable to the claimant in pursuing the objectives set forth in Article 1".

As regards the application of national law in favour of the possessor (compensation), the present provision under Article 11 (a) (iv) being of a distinct nature, could remain of arbitrary nature and be maintained in Article 11.

1 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 5  
(Original: English/French)

REVISED TEXTS FOLLOWING THE DISCUSSION OF THE COMMITTEE

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 Contracting 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 property].

Article 9

(1) Without prejudice to the rules concerning jurisdiction in force in the Contracting States, the claimant may in all cases bring a claim under this Convention before the courts or competent authorities of the Contracting State where the cultural object is located.

(2) The parties may also agree to submit the dispute to another jurisdiction or to arbitration.

(3) Resort may be had to the provisional, including protective, measures available under the law of the Contracting State where the object is located even when the claim for restitution or return of the object is brought before the courts or competent authorities of another Contracting State.

4 October 1993  
Afternoon session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 6 rev.  
(Original: English)

WORKING GROUP ON ILLEGALLY EXCAVATED OBJECTS

Article 5

(1) (a) Where a cultural object has been [exported] [removed] from the territory of a Contracting State (the requesting State) contrary to its laws [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.

(b) Return shall also be ordered in cases involving a cultural object that has been excavated (including surface removal) contrary to the laws of a Contracting State applicable to the excavation of cultural objects and removed from the territory of that State. For these cases the following shall apply in place of paragraph (3) (d): the continued traditional use of the cultural object by an identifiable cultural group.

(2) unchanged

(3) unchanged

(4) unchanged.

1 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 7  
(Original: English)

WORKING GROUP ON ARTICLE 11

1. The working group on Article 11 met on the afternoon of Thursday, 30 September 1993. The meeting was attended by representatives of the delegations of Finland, France, Hungary and Italy, as well as by the Secretary-General of the Hague Conference on Private International Law and the Secretary-General of Unidroit.

2. The group decided to propose to the plenary committee that the present text of Article 11 of the preliminary draft Convention be replaced by Article 1, paragraph (2) as proposed by the delegation of Finland in Misc. 2 as follows:

"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 unlawfully removed cultural object than provided for by this Convention."

3. Some doubts were however expressed as to whether the language of the Finnish proposal necessarily covered all the matters dealt with in the existing text of Article 11 (for example the possibility to extend the application of Chapter II of the Convention to offences other than theft).

4. The group considered that its mandate did not permit it to take a stand on the question of whether the language of Article 11 should leave an option to Contracting States to apply rules more favourable towards the restitution or the return of stolen or unlawfully removed cultural objects or whether it should be an obligation for Contracting States to apply such rules as already (or may in the future) exist.

5. The group also agreed that its mandate did not cover the question of whether the final clauses of the Convention should contain a provision contemplating a declaration by Contracting States as to those instances in which they would provide more favourable treatment than that offered by the Convention or whether such information might be exchanged in the framework of a system of central authorities as had been suggested by the delegation of Finland.



1 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 8  
(Original: English)

PROPOSAL OF THE DELEGATIONS OF AUSTRIA, BELGIUM, FRANCE, INDIA, ITALY,  
NETHERLANDS, NORWAY, PORTUGAL, SWEDEN, SWITZERLAND AND UNITED KINGDOM

Article 3(3)

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

4 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 9 corr.  
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

Article 3(4)

Public collection includes a collection of cultural objects which is the property of:

- (i) a Contracting State or local or regional authority,
- (ii) an institution substantially financed by a Contracting State or local or regional authority, or
- (iii) a charity or non-profit organisation in the Contracting State; and is open to the public on a regular basis.

NOTE: This does not affect the abstention of the United States as to the substance of this provision, since it relates to a prescription period, and the United States has abstained on that issue in whichever articles it has arisen.

4 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 10  
(Original: French)

PROPOSAL OF THE DELEGATIONS OF FRANCE AND ITALY

(replacing the proposal in square brackets in Article 5(4) of document Study LXX - Doc. 40)

Article 5(4)

(4) For the application of this article, breach of the conditions attaching to an export authorisation granted for a limited period, in respect of a particular territory or of a specified location, shall be considered to be equivalent to an illegal export from the territory of the State which granted the authorisation (State of initial origin).

A State which makes a request on this ground is required to notify such request to the State from whose territory the object has been illegally removed (State of subsequent origin).

In the event of competing requests by the two above-mentioned States, preference shall be accorded to that of the State of initial origin.

G.E./C.P.  
4<sup>th</sup> session  
Misc. 11  
(Original: English)

DOCUMENT SUBMITTED BY THE ART TRADE LIAISON COMMITTEE  
ON THE UNIDROIT INTERNATIONAL IDENTITY CARD PROPOSAL

The Art Trade Liaison Committee, representing the art trade of the United Kingdom, invites the delegates to the Unidroit Committee of Governmental Experts to consider the inherent practical problems (as set out below) which would make the administration of the proposed certification scheme (cf. Study LXX - Doc. 38, Misc. 7) virtually unworkable.

1. How is the "voluntary basis" of the Working Group's proposals compatible with the assumption of bad faith for the possessor in the absence of paperwork referred to in Article 4, last paragraph? Is the proposed system viable at all if it is not applied on a worldwide basis?

2. If the international identity cards (IIC's) are effectively "bearer" certificates rather than centrally registered documents how will it be possible to ratify them efficiently, speedily and accurately?

3. How would one be able to distinguish forged IIC's from genuine ones? What international resources would be available to control what would inevitably become a vast trade in forged certificates?

4. What system of verification would be set up to keep control over the huge number of documents circulating around the world?

5. Who will pay for the administration of a system of issue and verification bearing in mind that in the UK alone an estimated 2,5 million cultural objects per annum are dealt in and how much would it cost to pay all the experts who would be called upon to provide academic guidance?

6. If individual States are to grant certificates how will it be decided which country should do so? The country of "origin" or the country where the item is located after the legislation came into force?

7. How does one distinguish between items exported before and those exported after the legislation came into force?

8. Who is responsible for describing the objects in the first place. A museum? A dealer? A private individual?

9. How would the system cope with multiple objects in a set such as a dinner service for which many examples of the same design were created?

10. Supposing there is a later disagreement over attribution or description who is to be responsible for "correcting" the licence? A paid committee? Or the owner?

11. Because of the problems which would arise from differences over attribution and description of pieces (i.e. if an auction house catalogue does not agree with the IIC description) would the certificate merely identify the object as "registered" rather than fulfil the onerous task of description? Does this not then defeat the purpose of the certificate?

12. How would the inclusion of photographs onto the IIC's permit distinction to be made between objects of which copies have been made?

13. Why is an IIC more suitable than an export certificate for the purpose of controlling the illicit traffic in goods from their country of "origin" to other States?

5 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 12  
(Original: English)

PROPOSAL OF THE DELEGATION OF HUNGARY

*Article 6*

When a State has established its claim 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:

- (a) the cultural object, prior to the unlawful removal from the territory of the requesting State, was unlawfully removed from the State addressed, or
- (b) the return would be manifestly contrary to the fundamental principles on the protection of the cultural heritage of that State.

4 October 1993  
Afternoon session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 13  
(Original: French)

PROPOSAL OF THE DELEGATIONS OF FRANCE AND SWITZERLAND

Article 5(3)

3) The court or other competent authority of the State addressed shall order the return of the cultural object if the requesting State establishes 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 of historical character,
- (d) the use of the object by a living culture,

or establishes that the object is of outstanding cultural importance for the requesting State.

5 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 14 rev.  
(Original: English/French)

WORKING GROUP ON DEFINITIONS

*Article 2*

For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science such as those objects belonging to categories a) to k) of Article 1 of the Unesco 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.



5 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 15  
(Original: English/English)

WORKING GROUP ON ARTICLE 1 AND ARTICLE 5

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 Contracting State;
- (b) the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects because of their cultural significance.

Article 5

(1) Where a cultural object has been removed from the territory of a Contracting State (the requesting State) contrary to its law regulating the export of cultural objects because of their cultural significance, 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.

(1bis) A Contracting State may also request the return under the preceding paragraph of a cultural object temporarily exported from its territory under a permit, for purposes such as exhibition, research or restoration, and not returned in accordance with the terms of the permit.

5 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 16  
(Original: French)

PROPOSAL OF THE DELEGATION OF BRAZIL

Replace letter (a) (i) of Article 11 by an Article 11 bis which would read as follows:

*Article 11 bis*

The provisions of Chapter II shall apply to acts other than theft when the claimant has been wrongfully deprived of possession of the object under the law of the State where the object was located.

5 October 1993  
Afternoon session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 17  
(Original: French)

TEXT REVISED FOLLOWING THE DISCUSSIONS OF THE COMMITTEE

Article 6

Once the requirements of Article 5, paragraph 3 have been satisfied, the court or competent authority may only refuse to order the return of a cultural object where:

- (a) the object has a closer connection with the culture of the State addressed [, or
- (b) the object, prior to its unlawful removal from the territory of the requesting State, was unlawfully removed from the State addressed].

6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 18  
(Original: English/French)

WORKING GROUP ON THE DEFINITION OF PUBLIC COLLECTION

Article 3(4)

(4) ...

For the purposes of this Article, a "public collection" consists of a collection of inventoried cultural objects, which is accessible to the public on a [substantial and] regular basis, and is the property of

- (i) a Contracting State [or local or regional authority],
- (ii) an institution substantially financed by a Contracting State [or local or regional authority], or
- (iii) a non profit institution which is recognised by a Contracting State [or local or regional authority] (e.g. by way of tax exemption) as being of [national] [public] [particular] importance, or
- (iv) a religious institution.

6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 19  
(Original: English)

PROPOSAL OF THE DELEGATION OF FINLAND

Article 10

(1) The provisions of Chapter II shall only apply where the cultural object was stolen after the entry into force of this Convention in respect of the State concerned. The provisions of Chapter III shall only apply where the cultural object was removed from the territory of the requesting State after the entry into force of this Convention between the requesting State and the State addressed.

6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 20  
(Original: English)

WORKING GROUP ON ARTICLE 7 (1) (a)

Article 7

- (1) The provisions of Article 5, paragraph 1 shall not apply:
- (a) when the cultural object was exported during the lifetime of the person who created it [or within a period of five years following the death of that person]; or
  - (b) when the creator is not known, if the object was less than twenty years old on the time of export;

However, sub-paragraphs (a) and (b) shall not apply when the object was made for the use of an indigenous community by a member of that community.

6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 21  
(Original: English)

REVISED VERSION OF CHAPTERS 1 AND 2 BASED ON THE DISCUSSIONS  
OF THE COMMITTEE AND ON THE PROPOSALS OF THE VARIOUS WORKING GROUPS

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 Contracting State;
- (b) the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects because of their cultural significance.

Article 2

For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science such as those objects belonging to categories a) to k) of Article 1 of the Unesco 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

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 [one] [three] year[s] from the time when the claimant knew or ought reasonably to have known the location and the identity of the possessor of the object, and in any case within a period of [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].

For the purposes of this article, a "public collection" consists of a collection of inventoried cultural objects, which is accessible to the public on a [substantial and] regular basis, and is the property of

- (i) a Contracting State [or local or regional authority],
- (ii) an institution substantially financed by a Contracting State [or local or regional authority], or
- (iii) a non profit institution which is recognised by a Contracting State [or local or regional authority] (e.g. by way of tax exemption) as being of [national] [public] [particular] importance, or
- (iv) a religious institution.

#### Article 4

(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 objects, and to other relevant information and documentation which it could reasonably have 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].



6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 22  
(Original: English)

REVISED VERSION OF CHAPTERS III AND IV BASED ON THE DISCUSSIONS  
OF THE COMMITTEE AND ON THE PROPOSALS OF THE VARIOUS WORKING GROUPS

CHAPTER III - RETURN OF ILLEGALLY [EXPORTED] CULTURAL OBJECTS

Article 5

(1) (a) Where a cultural object has been removed from the territory of a Contracting State (the requesting State) contrary to its law regulating the export of cultural objects because of their cultural significance, 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.

(b) A Contracting State may also request the return under the preceding paragraph of a cultural object temporarily exported from its territory under a permit, for purposes such as exhibition, research or restoration, and not returned in accordance with the terms of the permit.

(c) Return shall also be ordered in cases involving a cultural object that has been excavated (including surface removal) contrary to the laws of a Contracting State applicable to the excavation of cultural objects and removed from the territory of that State. For these cases the following shall apply in place of paragraph (3) (d): the continued traditional use of the cultural object by an identifiable cultural group.

(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 in determining whether the requirements of paragraphs 1 to 3 have been met.

(3) The court or other competent authority of the State addressed shall order the return of the cultural object if the requesting State establishes 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,

or establishes that the object is of outstanding cultural importance for the requesting State.

#### Article 6

When the requirements of Article 5, paragraph 3 have been satisfied, the court or competent authority may only refuse to order the return of a cultural object where:

(a) the object has a closer connection with the culture of the State addressed [, or

(b) the object, prior to its unlawful removal from the territory of the requesting State, was unlawfully removed from the State addressed].

#### Article 7

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

(a) when the cultural object was exported during the lifetime of the person who created it [or within a period of five years following the death of that person]; or

(b) when the creator is not known, if the object was less than twenty years old on the time of export;

However, sub-paragraphs (a) and (b) shall not apply when the object was made for the use of an indigenous community by a member of that community.

(2) The provisions of Article 5, paragraph 1 shall not apply when the export of the object in question is no longer illegal at the time at which the return is requested.

(3) A request for the return of the object shall be made within a period of [one] [three] year[s] from the time when the requesting State knew or ought reasonably to have known the location and the identity of the possessor of the object and in any case within a period of [thirty] [fifty] 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 its law regulating the export of cultural objects because of their cultural significance 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 reasonably to have known at the time of acquisition that the object had been illegally exported.

(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) 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].

## CHAPTER IV - CLAIMS AND ACTIONS

### Article 9

(1) Without prejudice to the rules concerning jurisdiction in force in the Contracting States, the claimant may in all cases bring a claim under this Convention before the courts or competent authorities of the Contracting State where the cultural object is located.

(2) The parties may also agree to submit the dispute to another jurisdiction or to arbitration.

(3) Resort may be had to the provisional, including protective, measures available under the law of the Contracting State where the object is located even when the claim for restitution or return of the object is brought before the courts or competent authorities of another Contracting State.

6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 23  
(Original: English)

PRESENTATIONAL AND DRAFTING PROPOSALS SUBMITTED BY THE SECRETARIAT<sup>(\*)</sup>

Article 5

(1) A Contracting State (the requesting State) may request the court or other competent authority of another Contracting State acting under Article 9 (the State addressed) to order the return of a cultural object which has:

- (a) been removed from the territory of the requesting State contrary to its law regulating the export of cultural objects because of their cultural significance; or
- (b) been temporarily exported from the territory of the requesting State under a permit, for purposes such as exhibition, research or restoration, and not returned in accordance with the terms of that permit, or
- (c) been taken from a site contrary to the laws of the requesting State applicable to the excavation of cultural objects and removed from that State.

Article 6

Add a new paragraph 2 worded as follows:

- "(2) The provisions of sub-paragraph (a) of the preceding paragraph shall not apply in the case of cultural objects referred to in Article 5, paragraph 1(b)."

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(\*) The proposals contained in this paper are made in full knowledge of the fact that a number of provisions proposed by the various working groups have yet to be considered by the committee and are therefore submitted purely with a view to assisting the committee in regard to the presentation of the articles in question without prejudice to their final content.

Article 7

(1) The provisions of Article 5, paragraph 1 shall not apply when:

- (a) the cultural object was exported during the lifetime of the person who created it [or within a period of five years following the death of that person]; or
- (b) the creator is not known, if the cultural object was less than twenty years old at the time of export; or
- (c) the export of the cultural object is no longer illegal at the time at which the return is requested.

Sub-paragraphs (a) and (b) shall not however apply when the object was made for the use of an indigenous community by a member of that community.

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Note: Paragraph 3 of the text reproduced in Misc. 21 might be transposed as the final paragraph of Article 5 so as to ensure parallelism with Article 3, as proposed by the Belgian delegation.

6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 24  
(Original: English)

PROPOSAL BY THE DELEGATIONS OF AUSTRALIA AND CANADA

Article 3(4) to (6)

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

(5) For the purposes of this article, a "public collection" consists of a collection of inventoried cultural objects, which is accessible to the public on a [substantial and] regular basis, and is the property of

- (i) a Contracting State [or local or regional authority],
- (ii) an institution substantially financed by a Contracting State [or local or regional authority], or
- (iii) a non profit institution which is recognised by a Contracting State [or local or regional authority] (e.g. by way of tax exemption) as being of [national] [public] [particular] importance, or
- (iv) a religious institution.

(6) For the purposes of this Convention, an indigenous [community] [group] is a tribal or other [community] [group] which is regarded as indigenous on account of descent from populations which inhabited the country, or a geographical region to which the country belongs, at the time of the conquest or colonisation or the establishment of present state boundaries, and which live in part or in whole according to their own social and cultural norms, which distinguish them from other sections of the society.<sup>(1)</sup>

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(1) This definition is based on Article 1 of the 1989 ILO Convention n. 169 on Tribal and Indigenous Peoples.

6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 25  
(Original: English)

PROPOSAL OF THE DELEGATION OF EGYPT

Article 10

(1) The non-retroactivity rule shall apply to this Convention, except in cases where the object is of outstanding cultural importance for the requesting State, or in cases of excavated archaeological objects more than 100 years old.

(2) This does not in any way preclude any future extension of the Convention so as to apply to objects stolen or illegally removed from the territory of a Contracting State before the entry of the Convention into force.

6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 26  
(Original: English)

PROPOSAL OF THE DELEGATION OF FINLAND

Article 10

(1) The provisions of Chapter II shall not apply where the object was stolen before the entry into force of this Convention in respect of the State concerned. The provisions of Chapter III shall not apply where the object was removed from the territory of the requesting State before the entry into force of this Convention between the requesting State and the State addressed.



6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 27  
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

Article 1

Substitute following provisions for present paragraph (a):

- (a) The restitution of a cultural object stolen in a Contracting State and subsequently moved from the territory of that State.

6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 28  
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

Article 9

Add these provisions after the present paragraph (1):

(2) Paragraph 1 shall not apply to a claimant who is not a habitual resident of a Contracting State.

(3) Paragraph 1 shall not apply to a claimant who is a habitual resident of a Contracting State bringing an action against a habitual resident of the same Contracting State.

6 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 29  
(Original: French)

PROPOSAL OF THE DELEGATION OF GREECE

Article 10

Substitute the following provision for present paragraph 3:

(3) This Convention is nevertheless applicable to the restitution of objects removed by illicit excavation, when the date of the theft or the illicit removal from the territory of the State of origin has not been established.

8 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 30 rev.  
(Original: English)

PROPOSAL OF THE DELEGATIONS OF CANADA AND MEXICO

Article 8

The present Article 8(1) provides for compensation to be paid to the possessor of an illegally exported cultural object where the possessor neither knew nor ought to have known that the object had been illegally exported. Thus the burden of proof would be upon the requesting State to establish the bad faith of the possessor.

With respect to stolen cultural objects, the possessor must establish that due diligence was exercised when acquiring the object: the concept of "due diligence" is elaborated in Article 4(2).

If the onus of proving *bona fides* were stated in Article 8 to be on the possessor of illegally exported cultural property, this should have the effect of ensuring that prospective purchasers enquire very closely as to provenance, given that they stand to lose both the object and its purchase price if it has to be returned.

Delegates are asked to consider the following proposal, which is based upon the Canadian proposal at page 3 of Study LXX - Doc. 43.

Article 8

(1) The possessor of cultural property that has been illegally exported who is required 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 information and documentation which it could reasonably have consulted.

6 October 1993  
Afternoon session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 31  
(Original: English)

PROPOSAL OF THE DELEGATION OF EGYPT

Article 10

(1) The non-retroactivity rule shall apply to this Convention. This Convention shall, however apply to cases where objects are stolen or illegally removed prior to the entry into force of the Convention and acquired by the possessor subsequent to the entry into force of the Convention.

(2) Unchanged.

6 October 1993  
Afternoon session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 32  
(Original: English)

PROPOSAL OF THE DELEGATION OF UNITED STATES OF AMERICA

Article 10

(1) The rule of non-retroactivity shall apply to the claims under Chapters II and III of this Convention:

- (a) with respect to Chapter II non-retroactivity exists when the theft of the object in a Contracting State and the removal of the object from that Contracting State have occurred after the date when that Contracting State and the Contracting State where the claim is brought have both become Parties;
- (b) with respect to Chapter III non-retroactivity exists when the unlawful removal of the object from the requesting State has occurred after the date when that State and the requested State have both become Parties.

(2) Chapters II and III shall not apply to a gratuitous transferee unless the transferor acquired possession before the date when such Contracting States both became Parties.

6 October 1993  
Afternoon session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 33  
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

Article 4(2)

(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 [or reasonably accessible information as to whether the cultural object was excavated legally], and to other relevant information and documentation which it could reasonably have obtained.

6 October 1993  
Afternoon session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 34  
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED STATES OF AMERICA

Article 2

Proposed additions:

(A) "Claimant" means, for purposes of Chapter II, a person or entity with a good faith claim of ownership or the legal right to exercise control over the object;

(B) "Possessor" means a person or entity which physically, on its own account, holds the cultural object, or which exercises control or dominion over the cultural object, or has a present unqualified right to do so;

(C) "Stolen" for purposes of Chapter II, applies to an object illegally taken without a good faith claim of a right of possession, from a person or entity who has a good faith claim of ownership, with the intent to permanently deprive the latter of possession.

NOTE: Definitions (A) and (B) remove "secondary" parties, such as financing or other parties with secured interests, lien holders, temporary as transportation entities.

Together with "C", these definitions provide some focus on the important question of who can make a claim, which is necessary to resolve in a Convention dealing with private litigable rights, in order to assure a sufficient degree of common understanding between Contracting States.



6 October 1993  
Afternoon session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 35  
(Original: English)

PROPOSAL OF THE DELEGATION OF THE UNITED KINGDOM

Article 5(3)

In the penultimate line (Misc. 22) change "or establishes that the object is of outstanding ..." to "and establishes ...".

This would put beyond doubt the restrictive intention of Article 5(3) in relation to Chapter III claims.

7 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 36  
(Original: English)

REVISED VERSION OF CHAPTER V BASED ON THE DISCUSSIONS  
OF THE COMMITTEE AND ON THE PROPOSALS OF THE VARIOUS WORKING GROUPS

CHAPTER V - FINAL PROVISIONS

Article 11

Nothing in this Convention shall prevent a Contracting State from applying any rules more favourable to the restitution or the return of a stolen or unlawfully [removed] [exported] cultural object than provided for by this Convention.

7 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 37  
(Original: English)

PROPOSAL OF THE DELEGATIONS OF MEXICO AND TURKEY

Article 4

(1) The possessor of a stolen cultural object who is required to return it shall be entitled in connection with 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, can prove that it exercised due diligence when acquiring the object and has exhausted all legal remedies for compensation against the transferor of the object.

(2) In determining whether the possessor exercised due diligence, all the relevant circumstances of the acquisition shall be considered, including the character of the parties, the provisions of the contract, the circumstances in which it was concluded, the price paid, the provenance of the object, and any special circumstances in respect of the transferor's acquisition of the object which are known to the possessor. Special regard shall be given to whether the possessor took all reasonable steps to protect itself at the time of acquisition, including without limitation, securing indemnification from third party claims and insurance (if available), consulting all accessible registers or data bases of stolen cultural objects and all appropriate agencies which it could reasonably have consulted, consulting or obtaining all other documentation and information which it could reasonably have consulted or obtained from the transferor or elsewhere, and making all reasonable efforts to ascertain the accuracy, validity and authenticity of all such documentation and information.

7 October 1993  
Afternoon session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 38  
(Original: English)

STATEMENT SUBMITTED BY DR. JEROME M. EISENBERG ON BEHALF OF  
THE INTERNATIONAL ASSOCIATION OF DEALERS IN ANCIENT ART

(1) As an observer on behalf of the International Association of Dealers in Ancient Art, I greatly appreciate this opportunity to address the delegates on matters that are obviously of vital interest to the members of our newly founded organisation and to give you a picture of the concern of those dealers creating most of the "import" of antiquities in art-importing States.

(2) Following a preliminary meeting in Zürich, the IADAA was organised in London in July 1993, by a concerned group of 39 leading dealers from France, Germany, Great Britain, Israel, Italy, Netherlands, Switzerland and the United States of America.

(3) Among the aims of the IADAA, in addition to the furthering of interest in the study of Classical, Egyptian and Near Eastern antiquities throughout the world and the exchange of information within the profession, is the encouragement of the protection and preservation of ancient sites by promoting a more liberal and rational approach to the import and export of works of art. It is a widely held misconception that blanket laws greatly restricting or forbidding the movement of antiquities helps to preserve sites whereas, in fact, it has the opposite effect by driving a good part of the trade underground and encouraging smuggling.

Any help that our organisation can give in framing workable laws and regulations to discourage the illicit trade in works of art and encourage legitimate trade will be readily and enthusiastically given.

(4) Members will undertake to the best of their ability to make their purchases in good faith and to establish that an object has not been stolen from an excavation, public institution or private property.

(5) Members will refuse in any circumstances to dismember and sell separately parts of any one complete object. They will undertake to the best of their ability to keep objects together that were originally meant to be kept together.

(6) The Organisation intends to hold international congresses on problems concerning trade in antiquities. It will publish in an international art journal breaches by members of their code of ethics and practices.

(7) Members will undertake to inform the Administrative Board about stolen goods and thefts. They will also cooperate with international and national agencies involved with the recovery of stolen goods. IADAA will subscribe to bulletins of stolen art recovery organisations (IFAR, TRACE, etc.) and will request information on stolen goods from international agencies such as INTERPOL, ICOM and relevant State ministries, to be made available to the Board. This information will be centrally processed and sent to all of the members.

(8) If a member recognises a stolen piece from such information, he will be required to inform the Board and relevant authorities (INTERPOL, State ministries, Embassies or Consulates, and police). Failure to do so as soon as possible can lead to expulsion.

(9) The importance of countries publicising thefts of antiquities from sites and museums cannot be overemphasised. If the relevant institutions were to send out photographs or release information on stolen pieces as soon as the thefts occur it would help immeasurably in cutting down on the number of these occurrences. The well documented publication of the stolen objects recently from a museum in Palestrina, Italy, no doubt was instrumental in their recovery. On the other hand, it is extremely difficult to obtain information and photographs of objects stolen from the museums of another Mediterranean State, where repeated requests for information, including a visit by the speaker to the Minister of Culture and the head of the Department of Archeology brought no response. An important ancient head was apparently stolen from their National Museum four months ago, but I have been unable to obtain any specific information about it. It is a surprising attitude from a country so proud of its ancient heritage.

(10) I am pleased to note that the final draft of the UNIDROIT Convention on the (International Return of) Stolen or Illegally Exported Cultural Objects will now consider the definition of a "cultural object", as in Article 2, to include the defining term "which is of importance", although I would agree with the delegate from Germany that it would have better served the purpose to use "outstanding" to avoid a possible mountain of future paperwork through the misapplication of the phrase "of importance", which can be very loosely interpreted by scholars to include very minor objects only "of importance" to their own studies and to perhaps no one else. I propose that it should be changed to "of importance to the national patrimony". If not proposed here perhaps this can be submitted to the diplomatic conference. As it is, the paperwork involved in the legal export of cultural objects is already staggering. The possibility of the option for a country to make provision for an export document or "passport" for all cultural objects, was proposed by Article 2bis of the Convention, but now deleted, could lead to an incredible mountain of unnecessary bureaucratic paperwork and needlessly hamper free trade as has already happened in the EC.

Although there is provision in the EC law for excluding items of limited archaeological or scientific interest, some countries have already indicated that they intend to make use of this provision. In those countries all antiquities require an export license regardless of value. A French dealer exhibiting at the Maastricht Fair required over 300 separate licences with accompanying export documents and photographs of each antiquity at his stand including insignificant objects of very minor value.

These regulations have the effect of strangling legitimate trade and at the same time encouraging illicit trade. Even in the United Kingdom, which intends to fully make use of the exclusion clause noted above, there has been a large increase in the amount of paperwork both for dealers and the relevant ministries. The European laws are due for review in three years and we hope that at that time they will be simplified and made more reasonable.

#### *Postscript*

(11) Finally, if I may take this opportunity to express a personal view and not for the IADAA, but as a dealer in antiquities for nearly 40 years and in ancient coins for over 50 years:

This illicit trade could, without doubt, be reduced significantly by allowing a limited and carefully controlled legal export of antiquities from those States presently prohibiting their exportation. The sale of duplicate objects of minor value by the member States from their museum depots could bring a significant revenue for their use.

As I have written several times in MINERVA, the international review for ancient art and archaeology, which I publish and edit, until those States with an abundance of antiquities decide to allow the legal export of objects truly unimportant to a national patrimony there will continue to be an active illicit trade creating artificially high prices.

Meanwhile, a good percentage of the millions of minor objects in museum depots is slowly deteriorating through lack of proper conservation or stolen due to the lack of adequate security, because proper maintenance and security do not come cheaply.

Although most archaeologists are loath to admit it, probably 99% or more of the objects now being uncovered, do not lead to further significant insight into our past history or knowledge of ancient art. Once properly catalogued and photographed, the sale of these minor objects could secure major funding for conservation, upkeep of the museums, proper security, and ongoing and future excavations.

Hopefully an accommodation can be made to serve both the interests of the art-rich States and the art-importing States and to satisfy the need of both public museums and private collectors throughout the world who wish to share our common heritage.

8 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 39 Corr.  
(Original: English)

REVISED VERSION OF CHAPTERS I TO III BASED ON  
THE DISCUSSIONS OF THE COMMITTEE

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 Contracting State;
- (b) the return of cultural objects removed from the territory of a Contracting State contrary to its law regulating the export of cultural objects because of their cultural significance.

Article 2

For the purposes of this Convention, cultural objects are those which, on religious or secular grounds, are of importance for archaeology, prehistory, history, literature, art or science such as those objects belonging to the categories listed in Article 1 of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

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 or lawfully excavated and unlawfully retained shall be deemed to have been stolen.

(3) Any claim for restitution shall be brought within a period of [one] [three] year[s] from the time when the claimant knew or ought reasonably to have known the location of the object and the identity of its possessor, and in any case within a period of [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].

[For the purposes of this paragraph, a "public collection" consists of a collection of inventoried cultural objects, which is accessible to the public on a [substantial and] regular basis, and is the property of:

- (i) a Contracting State [or local or regional authority],
- (ii) an institution substantially financed by a Contracting State [or local or regional authority], or
- (iii) a non profit institution which is recognised by a Contracting State [or local or regional authority] (for example by way of tax exemption) as being of [national] [public] [particular] importance, or
- (iv) a religious institution.]

#### Article 4

(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 objects, and to any other relevant information and documentation which it could reasonably have 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.

### CHAPTER III - RETURN OF ILLEGALLY EXPORTED CULTURAL OBJECTS

#### Article 5

(1) A Contracting State (the requesting State) may request the court or other competent authority of another Contracting State acting under Article 9 (the State addressed) to order the return of a cultural object which has:

- (a) been removed from the territory of the requesting State contrary to its law regulating the export of cultural objects because of their cultural significance; or
- (b) been temporarily exported from the territory of the requesting State under a permit, for purposes such as exhibition, research or restoration, and not returned in accordance with the terms of that permit [ , or
- (c) been taken from a site contrary to the laws of the requesting State applicable to the excavation of cultural objects and removed from that State ] .

(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 in determining whether the requirements of paragraphs 1 to 3 have been met.

(3) The court or other competent authority of the State addressed shall order the return of the cultural object if the requesting State establishes 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,

or establishes that the object is of outstanding cultural importance for the requesting State.

(4) Any request for the return shall be brought within a period of [one] [three] year[s] from the time when the requesting State knew or ought reasonably to have known the location of the object and the identity of its possessor, and in any case within a period of [thirty] [fifty] years from the date of the export.

#### Article 6

(1) When the requirements of Article 5, paragraph 3 have been satisfied, the court or competent authority of the State addressed may only refuse to order the return of a cultural object where:

- (a) the object has a closer connection with the culture of the State addressed [, or
- (b) the object, prior to its unlawful removal from the territory of the requesting State, was unlawfully removed from the State addressed].

(2) The provisions of sub-paragraph (a) of the preceding paragraph shall not apply in the case of cultural objects referred to in Article 5, paragraph 1(b).

#### Article 7

The provisions of Article 5, paragraph 1 shall not apply when:

- (a) the cultural object was exported during the lifetime of the person who created it [or within a period of [five] years following the death of that person]; or
- (b) the creator is not known, if the object was less than [twenty] years old at the time of export;
- (c) [ the object was made by a member of an indigenous community for use by that community;
- (d) ] the export of the cultural object is no longer illegal at the time at which the return is requested.

#### Article 8

(1) The possessor of a cultural object exported from the territory of a Contracting State (the requesting State) contrary to its law regulating the export of cultural objects because of their cultural significance 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 reasonably to have known at the time of acquisition that the object had been illegally exported.

(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) The possessor shall not be in a more favourable position than the person from whom it acquired the object by inheritance or otherwise gratuitously.

8 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 40  
(Original: English/French)

REVISED VERSION OF CHAPTERS IV AND V  
BASED ON THE DISCUSSIONS OF THE COMMITTEE

CHAPTER IV - CLAIMS AND ACTIONS

Article 9

(1) Without prejudice to the rules concerning jurisdiction in force in the Contracting States, the claimant may in all cases bring a claim under this Convention before the courts or competent authorities of the Contracting State where the cultural object is located.

(2) The parties may also agree to submit the dispute to another jurisdiction or to arbitration.

(3) Resort may be had to the provisional, including protective, measures available under the law of the Contracting State where the object is located even when the claim for restitution or return of the object is brought before the courts or competent authorities of another Contracting State.

CHAPTER V - FINAL PROVISIONS

Article 10

Nothing in this Convention shall prevent a Contracting State from applying any rules more favourable to the restitution or the return of a stolen or unlawfully [removed] [exported] cultural object than provided for by this Convention.

8 October 1993  
Morning session

G.E./C.P.  
4<sup>th</sup> session  
Misc. 41  
(Original: English)

TEXT PROPOSED BY THE SECRETARIAT

Article 8

(1) The possessor of a cultural object exported from the territory of a Contracting State (the requesting State) contrary to its law regulating the export of cultural objects because of their cultural significance 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 reasonably to have known at the time of acquisition that the object had been illegally exported.

(1bis) Where a State Party to this Convention has instituted a system of export certificates, the absence of an export certificate for an object for which it is required shall put the purchaser on notice that the object has been unlawfully exported.

(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) The possessor shall not be in a more favourable position than the person from whom it acquired the object by inheritance or otherwise gratuitously.