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UNITED NATIONS EDUCATIONAL,
SCIENTIFIC AND CULTURAL ORGANIZATION

TECHNICAL AND LEGAL ASPECTS OF THE PREPARATION OF
INTERNATIONAL REGULATIONS TO PREVENT THE ILICIT EXPORT,
IMPORT AND SALE OF CULTURAL PROPERTY(1)

A. INTRODUCTION

1. The problems involved in the illicit export, import and sale of cultural property, were brought up by the delegations of Mexico and Peru at the eleventh session of the General Conference.

The draft resolution submitted by these delegations on the subject was worded as follows:

"The General Conference authorizes the Director-General to appoint a group of experts to study appropriate means of prohibiting the illicit export, import and sale of works of art and archaeological finds with a view, primarily, to the preparation of a draft international convention, and to present a report on this matter to the twelfth session of the General Conference". 

On the basis of this proposal, the General Conference adopted resolution 4.412, which authorizes the Director-General, in sub-paragraph (d):

"To prepare, in consultation with appropriate international organizations, and to submit to the General Conference at its twelfth session, a report on appropriate means of prohibiting the illicit export, import and sale of cultural property, including the possibility of preparing an international instrument on this subject".

2. With a view to preparing this report, the Director-General asked the International Council of Museums (ICOM), in consultation with certain other competent international organizations, to undertake a detailed preliminary study of the technical problems involved and of the different solutions which could be considered.

3. ICOM accepted this task and commissioned an expert to proceed with the study. It took the view, in fact, that the question raised by Unesco was of manifold interest to museums, which play a vital part in the preservation and protection of cultural property. From the State angle, laws which are inadequate or are ineffectively applied in these fields are liable to hamper the development of museums; while from a broader angle, it is highly desirable, quite apart from narrowly legal considerations, that museums in any one country should recognize certain moral obligations for respecting the cultural property of other countries.

4. In order to obtain information on these points, a questionnaire relating to definitions, the internal administration and export of cultural property, and the recovery of property illicitly removed from a country, was sent to all the Chairmen of ICOM's National Committees and to the competent services in certain States where no ICOM committee exists.

5. The information obtained from 32 countries or organizations, and consultation of the documentation assembled by the Unesco Secretariat and the Unesco-ICOM Museum Documentation Centre since 1949 made it possible to obtain a sufficiently accurate picture of the current situation in this matter, and to prepare the present study.

(1) The present document was prepared by the Director-General with the aid of material assembled by the International Council of Museums in a study undertaken at Unesco's request with the co-operation of Mr. Robert Brichet, Deputy Director of Youth and Adult Education at the Office of the High Commissioner for Youth and Sport (France).
6. This information was submitted to the International Institution for the Unification of Private Law and to two international non-governmental organizations, the Customs Co-operation Council and the International Association of Plastic Arts, for an advisory opinion, and a preliminary draft was drawn up by the ICOM expert following these various investigations. This draft was examined by ICOM's Advisory Board, which met in Paris on 4 July 1961, and by the International Committee on Monuments, Artistic and Historical Sites and Archaeological Excavations at its eighth session held in Paris from 23 to 27 October 1961. (1)

1. Previous efforts

The problems dealt with in the present document have long attracted the attention of the competent circles and responsible services in a number of States. The International Museums Office, an organ of the International Institute of Intellectual Co-operation, had been studying this question since 1935 with a view to finding satisfactory solutions, while other efforts date from 1933, 1936 and 1939.

As far as concrete results are concerned, mention should be made, in particular, of the treaty on the Protection of Movable Property of Historical Value prepared by the Pan American Union in 1935, the Protocol for the Protection of Cultural Property in the Event of Armed Conflict signed at The Hague in 1954, and the 1956 recommendation defining the international principles applicable to archaeological excavations.

The Draft Convention of 1933

The International Committee on Intellectual Co-operation had tried for many years to bring about the adoption of an international convention on the repatriation of art objects which had been stolen, lost or illicitly exported. A draft Convention on the repatriation of objects of artistic, historical or scientific interest, which have been lost, stolen or unlawfully alienated or exported was submitted to the Member States of the League of Nations in 1933. It made very extensive provision for the protection of national heritages, but its implementation would have raised serious legal difficulties, on the one hand, and was liable to have created disturbances in international trade, on the other. Many governments seriously objected to it for these reasons, and it was dropped.

The Draft Convention of 1936

In 1936, a revised draft was submitted to the Member States, entitled Convention for the protection of national historic or artistic treasures, whereby each contracting State recognized the right of every other State to claim the repatriation of all objects of remarkable palaeontological, archaeological, historical or artistic interest which were in its territory in consequence of having been lost, stolen, alienated or exported contrary to the laws of the claimant State.

In consequence of further observations submitted by Member States, this draft Convention also had to be recast.

The Cairo Conference (1937)

This Conference, which met in order to draw up the preliminary recommendations on the international level concerning archaeological excavations, in prospect of the adoption of the 1936 draft Convention, made a very clear distinction between the category of objects referred to in the draft Convention and objects abstracted during illicit excavations or misappropriated during authorized excavations.

(1) The International Committee on Monuments, Artistic and Historical Sites and Archaeological Excavations, considered it preferable to substitute the term "prevent" for the term "prohibit" which is used in the above-mentioned draft resolution, so as to emphasize more strongly the nature and importance of the preventative and repressive measures to be envisaged. The Committee's point of view has been taken into account in preparing the present document.
The 1939 Draft Convention

This was the product of a still narrower and more restrictive concept, as already evidenced by its even less ambitious title, Convention for the protection of national collections of art and history. It applied only to objects individually catalogued as having formed part of collections belonging to another contracting State. Claims for the restitution of these objects from the territory of another contracting State would have been allowable only if they were found there as the result of a loss, theft or similar action. Provision was made for payment of compensation to bona fide possessors.

The outbreak of the 1939 war prevented the adoption of this draft Convention. After the war, consultations or unofficial soundings of the various States and competent services seemed to indicate that the States were not prepared to bind themselves by an international convention in a field of this kind.

Let us now examine the international regulations which have so far been issued on this score.

The first document is the Treaty on the protection of movable property of historical value prepared by the Pan American Union and signed in Washington on 15 April 1935. The Treaty was ratified by Chile, El Salvador, Guatemala, Mexico and Nicaragua, but the replies to the questionnaire sent to the Chairmen of ICOM's National Committees make no mention of this Treaty, which does not always seem to have been applied in practice.

The provisions of the Convention are as follows. First comes a very broad definition of movable monuments comprising all kinds of objects:

1. Of the pre-Colombian period: weapons, work implements, pottery, materials, jewels, amulets, engravings and drawings, manuscripts, quipus costumes, ornaments and any objects removed from an immovable monument of that period.

2. Of the colonial period: a very long list containing, in addition to the objects cited above, coins, maps and charts, rare books, gold and silver objects, ivories, shellwork and lace, and in general all objects of historical or artistic value.

3. Of the liberation and republican period: objects as listed above, corresponding to this period.

4. Of all periods: official libraries, private libraries of value in the aggregate, national archives, collections of manuscripts, movable objects representing natural wealth, and zoological specimens of rare or beautiful species threatened with extinction.

Before such objects can be imported into a signatory country, the customs officials must require the importer to produce official documents authorizing export from the country of origin if the latter is party to the Treaty.

The country of origin provides the exporter with a compulsory licence which is granted only if other examples similar or equal in value to that which he intends to export remains in the country.

The customs officials of a country into whose territory an attempt is being made to import movable monuments belonging to a signatory country without the required authorization, shall confiscate such objects and hand them over to the government of the country of origin so that the latter may impose the penalties provided for in the case of illicit export.

A signatory government cognizant of the illicit export of an object of cultural value from its territory may approach the government of the country to which it has been transported so that the latter can take appropriate steps to have the object restored to the country from which it was improperly removed.

The signatories to the Treaty also declare that movable monuments are never to be treated as war booty. And this brings us to the point where a concise reference to the second positive international legal instrument is called for.
Protocol on the Protection of Cultural Property in the Event of Armed Conflict

1. This Protocol, which was signed at The Hague on 14 May 1954, is of particular relevance to the subject under discussion.

Under the terms of the Protocol, the High Contracting Parties undertake to prevent the exportation of cultural property from a territory occupied by them during an armed conflict. They likewise undertake to take into their custody cultural property imported into their territory, either directly or indirectly from any occupied territory, and to return, at the close of hostilities, to the competent authorities of the territory previously occupied, cultural property which is in their own country, if such property has been exported in contravention of the above principle. Such property shall never be retained as war reparations.

The High Contracting Party whose obligation it was to prevent the exportation of cultural property from the territory occupied by it shall pay an indemnity to the holder in good faith of any cultural property which has to be returned in conformity with the Protocol.

Another provision concerns the depositing of cultural property in the territory of another State for the purpose of protecting it against the dangers of an armed conflict. In this case, the country in which it was deposited must return it, at the end of hostilities, to the competent authorities of the territory from which it came.

These provisions would apply only in time of war; in other words, they do not relate to the situation with which the States are immediately concerned, i.e., the prohibition of the illicit export, import and sale of cultural property in normal times, that is in peace time.

The recommendation of 5 December 1956 on international principles applicable to archaeological excavations

It should be noted that the initial concern with the protection of cultural property against illicit export related particularly to objects coming from archaeological excavations, and it was with this type of cultural property alone, in fact, that the 1956 recommendation was concerned.

The question that arose was whether it was better to have recourse to an international convention or to a statutory recommendation. After examining a preliminary study concerning the technical and legal aspects of the international regulation of archaeological excavations, the General Conference of Uneasc decided, at its eighth session, that the international regulations to be prepared should take the form of a recommendation to Member States.

The provisions of this recommendation applicable to the subject under discussion, concern trade in antiquities, international co-operation in repressive measures and the return of objects to their country of origin.

The term "trade in antiquities" has been used for the reason that it corresponds to a traditional usage which it would be pointless to ignore. If trade in antiquities is to be permitted, it is all the more important that such trade be carried out openly with objects whose nature and future whereabouts are ascertainable so that fraudulent acts can be prevented.

Paragraph 27 stipulates that:

"In the higher interests of the common archaeological heritage, each Member State should consider the adoption of regulations to govern the trade in antiquities so as to ensure that this trade does not encourage smuggling of archaeological material or affect adversely the protection of sites and the collecting of material for public exhibit".

Paragraph 28 adds:

"Foreign museums should, in order to fulfil their scientific and educational aims, be able to acquire objects which have been released from any restriction due to the laws in force in the country of origin".
As regards international co-operation in repressive measures, paragraph 30 of the recom-
mendation stipulates that:

"All necessary measures should be taken in order that museums to which archaeological
objects are offered ascertain that there is no reason to believe that these objects have been
procured by clandestine excavation, theft or any other method regarded as illicit by the
competent authorities of the country of origin. Any suspicious offer and all details apper-
taining thereto should be brought to the attention of the services concerned. When archaeo-
logical objects have been acquired by museums, adequate details allowing them to be identified
and indicating the manner of their acquisition should be published as soon as possible".

The return of objects to their country of origin is provided for in paragraph 31:

"Excavation services and museums should lend one another assistance in order to ensure or
facilitate the recovery of objects derived from clandestine excavations or theft, and of all
objects exported in infringement of the legislation of the country of origin. It is desirable
that each Member State should take the necessary measures to ensure this recovery. These
principles should be applied in the event of temporary export as mentioned in paragraph 25(c),
(d) and (e) above, if the objects are not returned within the stipulated period.

II. Present considerations

It is a frequent occurrence for cultural property of great historical, artistic, archaeological
and ethnographical importance to disappear from the territory of certain States against their
wishes. With the present variety of legislation, they are unable to claim this property from the
country to which such property has been clandestinely taken.

In addition, certain States which have recently acquired independence, particularly those in
Africa, are more particularly concerned with ensuring the protection of objects of an artistic
and ethnographical interest which belong to them.

It is therefore becoming increasingly necessary to undertake a new and detailed study of the
problems involved in the illicit export, import and sale of cultural property.

Such property is, in fact, becoming more and more important in educational and cultural
development; during recent years the role of institutions such as museums and libraries has
greatly changed, and they are concentrating more and more on developing into active instruments
for the dissemination of culture by devoting increasing attention to activities of an educational
nature.

Movable cultural property in the territory of a State should not leave that territory unbeknown
to the responsible authorities as the result of uncontrolled commercial operations. It is for the
State concerned, in fact, to assess the cultural value of particular objects and their true place in
the national cultural heritage as a whole.

It is therefore necessary to stress the fact that there can be no contradiction between the
legitimate desire of States to preserve their national cultural heritage in their own territory and
the idea of a universal cultural heritage or a steady increase in international exchanges in the
cultural field.

The definition of cultural property and the problems flowing from commercial transactions
which may involve such property raise particularly difficult questions which now call for exami-
nation.

B. DEFINITION OF CULTURAL PROPERTY AND PROBLEMS CONCERNING TRADE IN
SUCH PROPERTY

I. Definition

What is to be understood by cultural property? For the purposes of the International Con-
vention for the Protection of Cultural Property in the Event of Armed Conflict, which was signed
at The Hague in May 1954 and to which 47 States are at present parties, the term covers, as far
as the subject under discussion is concerned, movable or immovable property of great importance
to the cultural heritage of every people, such as monuments of architecture, art or history,
whether religious or secular; works of art; manuscripts, books and other objects of artistic,
historical or archaeological interest; as well as scientific collections and important collections of
books or archives or of reproductions of the property defined above.

Some of the States which have ratified this Convention also have, in their national regulations,
a more restrictive definition. For example, cultural property is defined by the Syrian Arab
Republic as everything that has been made, drawn, painted, constructed or manufactured by man
earlier than 200 years ago. Movable and immovable property dating from the Eighteenth century
is also regarded as such if the Antiquities and Museums Directorate considers it to be of such
artistic quality or historical nature as to warrant its classification and preservation (Legislative
decree of 30 June 1947).

There are also certain States which have adopted a very wide definition. In Czechoslovakia,
for example, the law of 17 April 1958 stipulates, in Article 2, that the term "monuments"
includes all cultural property which constitutes a document concerning the historical evolution of
society and of its art, technology and science and of other branches of work and human life; or
any built-up area or group of structures which preserve the historical setting of its time; or any
object which has been in contact with leading personalities or connected with an historical or
cultural event.

China, also, has adopted a very wide definition covering objects (a) of antique origin, (b) rare
in quantity, (c) of great scientific, historical or artistic value.

The same applies in the case of the Treaty on the Protection of Movable Goods of Historical
Value drawn up by the Pan American Union and signed in Washington on 15 April 1935.

Other States, such as the Federal Republic of Germany, have no definition at all of cultural
property either in their internal legislation or by reference to an international convention.

One important body of international regulations which makes a useful contribution to the
definition of cultural property is the International Customs Convention signed in Brussels on
15 December 1950 and amended by the Protocol of Amendment signed on 1 July 1955, the Annex to
which groups works of art, collectors' pieces and antiques and divides them into well-defined
categories under six headings (99.01 to 99.06):

1. Paintings, drawings and pastels executed entirely by hand, other than industrial drawings
   and hand-painted or hand-decorated manufactured articles.

2. Original engravings, prints and lithographs.

3. Original sculptures and statuary, in any material.

4. Postage, revenue and similar stamps (including stamp postmarks and franked envelopes,
   letter-cards and the like) used, or if unused not of current or new issue in the country to
   which they are destined.

5. Collections and collectors' pieces of zoological, botanical, mineralogical, anatomical,
historical, archaeological, palaeontological, ethnographic and numismatic interest.

6. Antiques of an age exceeding one hundred years.

A few additional data may be useful:

(a) Some 60 States have adopted this nomenclature as the basis of their customs tariffs.

(b) While these documents do not actually give a definition of cultural property, they never-
    theless provide certain pointers and lay down certain criteria which may facilitate the
    search for a definition.
(c) The items listed under the above six headings may be more closely defined on the initiative of States concerned, by the creation of "sub-headings". Thus the United Kingdom, in the case of groups two and three makes a distinction based on the age or artistic value of works, which are certified to be works of art by the Victoria and Albert Museum or by the Tate Gallery, depending on the case in point.

(d) The classification of works in the national customs tariffs and the definition of cultural property do not entirely coincide. The customs enumeration may be considered to be too wide, especially under the heading, "Antiques of an age exceeding one hundred years", which may include furniture having no real value as cultural property; everything produced in the way of graphic arts etc. For example, should a map or musical score be considered as cultural property simply because they came into existence before 1852? Conversely, the customs definition fails to cover such indubitable cultural property as the first photographs ever made, which constitute the incunabula of photographic art (i.e., the Nadar collection).

(e) Many States base themselves whether expressly or not, on the Brussels Treaty nomenclature defining antiques on the rule, "of an age exceeding one hundred years".

III. PROBLEMS CONCERNING TRADE IN CULTURAL PROPERTY

If the question of the illicit export, import and sale of cultural property has not yet been regulated in every State by means of international regulations, it is because it raises many points of law, finance, art history, technology and even politics which it is not always easy to reconcile.

1. The law is concerned with the maintenance of public order, which requires that property in a given territory shall be subject to no laws other than those which are binding in that territory. In the same way, respect for acquired rights is incompatible with any calling into question of those rights.

   In some States, the rule that where chattels are concerned, "possession is nine points of the law" effectively protects the bona fide collector. There is an interdependence, as it were, between possession and ownership.

   In certain States, the principles of insalubrity and imprescriptibility applicable to public property – which includes works belonging to museums or public bodies – and sometimes even to cultural property classified as being privately owned, clash with the application of the above-mentioned rule in cases where the cultural property protected by those principles enters the territory of a State applying the rule.

   The present tendency, it should be noted, is to protect the bona fide acquirer of movable chattels. For this reason the International Institute for the Unification of Private Law questions the desirability of special provisions to facilitate claims in respect of cultural property.

2. State finance is directly concerned with the sale and export of works of art. Certain centres in France, the Netherlands, the United Kingdom and the United States of America constitute a world market for art objects, and especially paintings; and transactions involving huge sums bring considerable income into the national budgets both through sales taxes and customs duties. But above all, national works sold abroad provide States with much sought-after foreign currency. Any measure which would check or actually prohibit the export of cultural property would meet with strong resistance, as is proved by the history of regulation systems. Excessively strict measures of control are ineffective, as they engender fraud and deprive the State subjected to them of resources which it could reasonably have expected from a more liberal system.

3. Considerations based on art history, pertinent though they may be, are no less conflicting.

   On the one hand, a State has the indubitable right to retain in its territory the cultural objects most representative of its genius, and it is only natural that it should try to recover them if it has been deprived of them. This feeling is particularly strong at present in those States which have recently achieved independence. This consideration is behind most of the present laws, not only those, of course, which impose a complete ban on exports but also those which apply a system of limited or controlled export. In the latter case, it is only the most important items of cultural
property which are earmarked for retention in the national territory, as witness the following typical formulations: "Only those objects of national interest included in the lists" (Germany); "Only classified objects, or objects whose importance is such as to necessitate their classification on the advice of an art adviser" (France); "Objects of such importance that their export would be seriously prejudicial to the national heritage" (Italy); "Important artistic objects" (Japan); "Items of outstanding aesthetic or archaeological interest" (Mexico); "Unica" (Peru); "National cultural monuments may not be exported without Government approval" (Czechoslovakia); "Antiquities" (Lebanon etc.); "Exit permits are granted only in cases where there is no loss to science as a result of export" (Republic of South Africa).

On the other hand, while a State is justified in retaining its own native works, which in some sort represent its distinctive hallmark and individual character, and while it is true that the conqueror's action in carrying away in his baggage the masterpieces of the conquered would be unanimously condemned today, it is equally true that art is a universal language and a particularly effective instrument for the spread of civilization. Works of art, representing the genius of a people, would be its best ambassadors abroad. In the view of the champions of this thesis, the free circulation of cultural property would be a splendid means of promoting international understanding.

Then there are technical and political aspects of the problem.

On the one hand, the assertion that cultural property should remain in its territory of origin or be returned to that territory if removed, carries the implication that the local authorities are capable of preserving it under optimum conditions. Failure to do so on their part would mean that the cultural heritage of the world community would be impoverished accordingly.

On the other hand, the emergence of certain nationalist feelings sometimes leads States to take a regular stand in conflict with the spirit of international co-operation, every other consideration, even though strictly scientific, being liable to rejection.

C. MEASURES TO BE APPLIED

I. Information derived from the analysis of the replies

The measures to be applied in order to prevent the illicit export, import and sale of cultural property will emerge more clearly if an analysis is made of the replies by the competent services to the detailed questionnaire sent to them on 25 April 1961.

I. Definition of cultural property

Not all States have a definition of such property, and even where they have, the definition is sometimes too wide for the subject in question - which amounts to practically the same thing. The States which have recently achieved independence particularly need to draw up a more precise definition. A distinction should be drawn, for example, between objects of real ethnological value in need of protection and bazaar articles which can circulate freely. States should take steps to see that ethnological specimens are prevented from leaving the country before experts have been able to examine them.

As far as works of art are concerned certain States lay down different degrees of protection, as in Japan, which distinguishes between "important objects of art" and the higher category of "national treasures". Other States make a distinction between sale within the territory, which is legal even in the case of protected cultural objects, and export, which is prohibited for those items (France, Morocco, Niger).

A definition of cultural property would, indeed, be relevant for the purpose of the present study. It should not be identical with that of the 1954 Convention on the Protection of Cultural Property in the Event of Armed Conflict, or with the Brussels Customs Convention nomenclature (1955), but in order to avoid the necessity of a "breakdown" of buildings, it should also include objects resulting from the splitting up of architectural monuments. In this connexion, the Customs Co-operation Council has kindly notified ICOM of its views as follows:
"The principle, "of an age exceeding one hundred years", seems to be the one most frequently used, at least for those countries using the Brussels nomenclature. But this is no obstacle, of course, to seeking another definition which makes it possible to come closer to the idea of cultural property and which would, as it were, be superimposed on the above-mentioned criteria".

2. Many States are not sufficiently alive to the respect they owe to cultural property; and it is highly desirable that they should improve their laws and regulations on that score and co-operate in developing an international sense of respect for cultural heritages. It is essential for nations to be conscious of certain moral obligations concerning respect for cultural property, for example, the fact that it is blameworthy to make certain purchases even if a specious interpretation of the law seems to authorize them. Whoever purchases, in his own territory, a work of art which has illicitly disappeared from another territory, is committing a deplorable act even if no "droit de suite" exists under the present legal codes.

The International Committee on Monuments, Artistic and Historical Sites and Archaeological Excavations urged the necessity at its eighth session (23-27 October 1961), of creating a moral climate favourable to action against illicit trade in cultural property. Psychological preparation has to be undertaken and a frame of mind created, especially as the results of legal repression in this field are liable to prove disappointing.

3. Whereas liberalism, reflected particularly in exemption from import duties or the obligation to provide proof of licence in taking cultural property out of the country of export, is very widespread among the vast majority of States in the case of imports, this is not so in the case of exports.

However, certain States continue to hold to a liberal policy even in the latter case.

Denmark, Lebanon, Switzerland and the United States of America come in this category. The same applied to the Netherlands until recently, but now a licence has to be obtained from the Institute of Antiquarians in order to export objects valued at more than 1,000 florins.

4. In the case of exports, most States make a distinction between exportable and non-exportable cultural property, but a large number of States limit or control export even where this principle applies (Australia, Austria, Belgium, Czechoslovakia, France, Federal Republic of Germany, Ireland, Israel, Italy, Norway, Pakistan, Portugal, Spain, Sudan and Sweden).

The criteria laid down are more or less stringent, and take into consideration the genius and traditions of the particular country, its cultural wealth etc., but it is very generally found that States do allow certain items of cultural property to leave their territory.

Even Mexico - the author of the resolution referred to - which has particular grounds for complaint as regards the illicit export of its prehistoric treasures, unhesitatingly supports a system of controlled export, prohibiting only the export of "exceptional items".

The International Association of Plastic Arts, for its part, is in favour of restrictions relating only to objects of art the export of which would constitute the loss of an essential token of a country's genius.

Nevertheless, there are certain States which prohibit the exportation of all cultural property, without any distinction between what is important and what is less so (Bulgaria, China, Poland).

5. "Droit de suite" beyond the frontiers of a given State is practically non-existent, and States are often powerless once an object of cultural property has illicitly crossed the frontier.

6. As a general rule, the importer of an object is not required to provide proof (a copy of the export licence or export declaration) that he has been officially authorized by the exporting country to take out the object concerned.

7. The services responsible for cultural property are not always sufficiently well organized, nor do they always have precise techniques at their command enabling them to deal with all the
problems involved in supervising and safeguarding a rich cultural heritage. Certain services are at times restricted in the exercise of effective control over the export of cultural property.

8. Only a few bilateral or multilateral conventions exist which enable a State to reclaim cultural property illicitly taken from its territory and at present in that of another State.

The replies to the questions put to the Presidents of the National Committees of ICOM are all negative on this point.

CONCLUSION

It would seem logical, following these observations, to try to make good the omissions and inadequacies noted above; but since the problem under consideration is international in character it is advisable to begin by investigating what measures could be taken to that end at the international level.

The resolution adopted by the General Conference at its eleventh session suggested in the first place, among the measures which should be considered, "the possibility of preparing an international instrument". There is no doubt that a multilateral convention, if widely accepted, would permit a solution of the substantive problems examined in this document, and would very largely meet the considerations underlying the General Conference resolution. A convention of this kind would in fact create a network of reciprocal legal obligations which a State could invoke against other States parties to the convention, and thus create the "droit de suite" referred to earlier.

The experience of the draft conventions of 1933, 1936 and 1939, all of which were unsuccessful; the poor results obtained by the Pan American Treaty of 1936; the reluctance of a large number of States to ratify an instrument like the Protocol for the Protection of Cultural Property in the Event of Armed Conflict albeit limited in scope; the recent soundings made; and above all the diversity of legal systems in force in the individual countries - all these seem to indicate that an international convention creating strict legal obligations identical for a large group of States would stand very little chance in the present circumstances, of being ratified by States in considerable numbers.

What can be definitely anticipated is that States would be willing to conclude bilateral agreements with other States which, by reason of being neighbours or because of the similarity of their legal systems, would be equally prepared to undertake commitments, subject to reciprocity, with a limited number of States.

Some of them have already taken such steps, or intend to do so. Meanwhile, bilateral arrangements of this kind would not necessarily imply the conclusion of special agreements, and could usefully be incorporated in more general agreements, such as cultural agreements.

A sufficiently large network of bilateral agreements of this nature would, while not permitting such a high degree of uniformity as that which would result from a multilateral convention of universal scope, undoubtedly make it possible to solve the most urgent problems discussed above.

It does not follow, however, that concerted international effort in a form other than an international convention would be impossible or useless.

The General Conference may, in fact, without proposing precise legal obligations to the Member States, make recommendations to them on measures which could be taken by each one of them with a view to remedying any omissions or deficiencies found to exist in their national laws. These recommendations might relate to legislative or statutory provisions to be made not only as regards cultural property already in the territory of each State by lawful process, but also as regards cultural property coming from other States.

The International Committee on Monuments, Artistic and Historical Sites and Archaeological Excavations has already expressed itself in favour of a recommendation to Member States on the lines indicated. If a recommendation of that kind were adopted, it would open the way for those States which so desired to improve their national legislation. In addition, it would help to improve
the moral climate by promoting the development of an international spirit in this field and facilitate the struggle against illicit trade in cultural property, e.g., by encouraging museums not to acquire objects of undetermined origin.

Lastly, it would make possible a formulation of the general principles and standards which should govern the above-mentioned bilateral agreements.

It is thus evident that a recommendation to Member States, although not capable of replacing a multilateral convention or having the same legal effects, could nevertheless contribute to some extent towards the solution of the problems underlying the General Conference resolution quoted at the beginning of this study.