MEANS OF PROHIBITING THE ILLICIT EXPORT, IMPORT AND SALE OF CULTURAL PROPERTY

Preliminary report prepared in accordance with Article 10,1 of the Rules of Procedure concerning the recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution.

SUMMARY

Introduction

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INTRODUCTION

1. The Executive Board, at its 61st session, had before it a preliminary study on the technical and legal aspects of problems involved in the illicit export, import and sale of cultural property, these problems having been brought up by the delegations of Mexico and Peru at the eleventh session of the General Conference.

The Board made a careful examination of the report, and on 23 May 1962 adopted the following resolution (61 EX/Decisions 12.1.8):

The Executive Board,

Having examined document 61 EX/12 together with the annexed study (document UNESCO/CUA/115),

Decides

(i) to include in the Provisional Agenda of the twelfth session of the General Conference an item entitled: "International regulations to prohibit the illicit export, import and sale of cultural property",

(ii) to recommend the establishment of a working party to examine this matter at the twelfth session of the General Conference,

(iii) to consider document UNESCO/CUA/115 as the preliminary study of the technical and legal aspects of the problem prescribed by Article 3(a) of the Rules of Procedure concerning Recommendations to Member States and International Conventions,

(iv) to transmit to the General Conference, for information, the summary records relating to the discussion of this item at the Executive Board.

2. In pursuance of this resolution, and in accordance with Article 5 of the Rules of Procedure concerning Recommendations to Member States and International Conventions, the above-mentioned preliminary study, was communicated to Member States, together with the summary records of the Executive Board's discussions, before being submitted to the General Conference at its twelfth session.

3. In accordance with the terms of Article 6 of the aforesaid Rules of Procedure, it rested with the General Conference "to decide whether the question dealt with in the proposal should be regulated at the international level and, if so, to determine to what extent the question can be regulated".

4. The General Conference, which was called upon to deal with the question at its twelfth session in 1962, (1) set up a special Working Party to study it.

After considering the documents submitted to it, the Working Party prepared a draft resolution which was subsequently adopted, with certain amendments, by the General Conference. The resolution runs as follows:

The General Conference,

Considering the provisions of the Rules of Procedure concerning Recommendations to Member States and International Conventions covered by the terms of Article IV, paragraph 4, of the Constitution,

Having examined the report of the Director-General on the desirability of preparing an international instrument designed to prohibit and prevent the illicit export, import and sale of cultural property,

Deems it desirable that an international instrument to this effect be prepared;

Considering that an international convention would be the most effective means of obtaining the desired result,

Considering, however, that, in present circumstances, the preparation of an international convention for adoption by the General Conference at its thirteenth session would raise difficulties,

Affirms its desire that an international convention may be adopted within the shortest possible time;

Decides that the international instrument to be submitted to it at its thirteenth session shall take the form of a recommendation to Member States within the meaning of Article IV, paragraph 4, of the Constitution;

Authorizes the Director-General to convene a special committee, as provided for in Article 10, paragraph 4, of the aforesaid Rules of Procedure, to be responsible for preparing a draft recommendation for submission to the General Conference at its thirteenth session;

Instructs the Director-General to pursue the necessary inquiries into the conditions in which it would be possible to prepare an international convention.

(12 C/Resolutions 4.413)

5. By virtue of this decision, and in accordance with the provisions of Article 10, paragraph 1, of the Rules of Procedure concerning Recommendations to Member States and International Conventions, the Director-General has prepared the present preliminary report on the situation requiring regulation, and on the possible scope of such regulation. This report is largely a recapitulation of the preliminary study referred to in paragraph 1 above.

The Director-General has also prepared a preliminary draft recommendation to Member States, the text of which is set forth in the annex to this report.

Member States are asked to make comments and observations on this report and on the accompanying preliminary draft recommendation.

Under the terms of Article 10, paragraph 2, of the aforesaid Rules of Procedure, the present report must reach Member States at least 14 months before the opening of the next session of the General Conference (October 1964), and their comments and observations must reach the Director-General at least ten months before the opening of that session, namely, by 1 December 1963 at latest.

In the light of the comments and observations presented, the Director-General will draw up a final report containing a revised draft recommendation which he will communicate to Member States and which will be submitted to the special committee of experts provided for in resolution 4.413 of the General Conference. The committee will have the task of preparing the draft recommendation which will be submitted, with a view to final adoption, to the General Conference at its thirteenth session scheduled to open in Paris on 1 October 1964.

I. LEGAL NATURE OF THE RECOMMENDATION UNDER THE RELEVANT RULES OF PROCEDURE, AND OBLIGATIONS FLOWING FROM ITS ADOPTION BY THE GENERAL CONFERENCE

6. The Rules of Procedure concerning Recommendations to Member States and International Conventions, adopted by the General Conference at its fifth session and amended by it at its seventh session, defines recommendations as instruments by means of which "the General Conference formulates principles and norms for the international regulation of any particular question and invites Member States to take whatever legislative or other steps may be required -
in conformity with the constitutional practice of each State and the nature of the question under consideration - to apply the principles and norms aforesaid within their respective territories"

These principles and norms derive their authority from the fact of their having been adopted, after thorough study, by the supreme body of an international organization embracing the vast majority of States. They tend to influence the development of national legislation and practices by specifying an international line of conduct. A recommendation is thus not an instrument involving reciprocal undertakings and creating strictly enforceable legal obligations of a contractual nature. It differs in this respect from international conventions, the adoption of which is likewise envisaged in Article IV, paragraph 4, of the Constitution. It also differs in that it leaves States entirely free to give effect to its provisions in the manner best suited to their particular circumstances.

The recommendation envisaged here, as an instrument formally adopted by the General Conference by simple majority, is not, however, devoid of legal consequences. The adoption by the General Conference of a statutory recommendation places definite obligations of a constitutional and statutory nature on all Member States, even those which did not vote for it.

In the first place, under Article IV, paragraph 4, of the Constitution, any recommendation adopted by the General Conference must be submitted by every Member State to its competent authorities within a period of one year from the close of the session of the General Conference at which it was adopted. In the second place, Article VIII of the Constitution, which deals with the submission of reports by Member States, prescribes that "each Member State shall report periodically to the Organization, in a manner to be determined by the General Conference . . . on the action taken upon the recommendations and conventions referred to in Article IV, paragraph 4".

In the Rules of Procedure concerning Recommendations to Member States and International Conventions, the General Conference amplified the latter provision by providing that in addition to the general annual reports called for by the Constitution, Member States shall submit special reports on the action they have taken to give effect to conventions or recommendations adopted by the General Conference, and by specifying that initial reports relating to any convention or recommendation adopted shall be transmitted two months prior to the opening of the first ordinary session of the General Conference following that at which such recommendation or convention was adopted.

These Rules of Procedure also prescribe that the General Conference shall consider the special reports thus submitted to it and "shall embody its comments on the action taken by Member States . . . in one or more general reports, which the Conference shall prepare at such times as it may deem appropriate". These reports are to be transmitted to Member States, to the United Nations, to National Commissions, and to any other authorities specified by the General Conference.

The purpose of the obligation imposed on States to submit the given recommendation to their competent national authorities is to ensure its application in actual practice as far as circumstances permit. Furthermore, the General Conference, thanks to the reports received, is able to assess how far the recommendation has been applied, the methods of application employed, the reasons for failure to implement the recommendation in whole or in part, the difficulties encountered in implementing it, the results obtained, etc. From the information thus received, it can draw helpful conclusions as to the line to be followed in its future activities in a particular field.

Lastly, it possesses, in the publicity it can give in its reports to the information received from Member States and to its own observations regarding the steps taken to implement a given recommendation, a means of action calculated to promote the general application of the recommendations adopted by it.
II. PREVIOUS EFFORTS

The problems involved in international trade in cultural property had been studied on several occasions, with a view to their regulation, long before the action taken by General Conference in 1960. A detailed analysis of the results of these studies will be found in document UNESCO/CUA/115.


The first of these instruments relates specifically to the problems involved in the exportation and importation of cultural property, though only with respect to the American countries; the other two mention those problems only incidentally, the former in connexion with cultural property exported during an armed conflict, and the latter in relation to objects coming from archaeological excavations.

These instruments are thus limited in scope, either geographically or in their field of application. However, they are of considerable value from the standpoint of the general regulation of international trade in cultural property, for they provide definitions of such property and in some cases divide it into different categories.

III. PURPOSE AND POSSIBLE SCOPE OF THE RECOMMENDATION

The following text contains a survey of the various questions involved in international regulations to prohibit and prevent the illicit export, import and sale of cultural property, arranged in the following sections:

A. Preamble
B. Definition
C. General principles
D. Measures to be applied
   1. Identification and national inventory of cultural property
   2. Service for the protection of cultural property
   3. Bilateral or multilateral agreements
   4. International collaboration in the detection of illicit operations
   5. Restitution or return of illicitly exported cultural property
   6. Publicity in the event of the disappearance of a cultural object
   7. Apportionment of cultural property brought to light by foreign scientific missions
   8. Educational action
   9. Collaboration with international organizations

E. Conclusions

A. PREAMBLE

Cultural property comprises some of the noblest examples of human genius. Unlike scientific discoveries and technical improvements, which are constantly outstripped by new ones, it steadily increases in value with its ever enhanced status as irreplaceable evidence of bygone civilizations and cultures. It is thus important that the heritage of cultural property today existing in every country should be preserved unimpaired and protected from any dangers which might result from uncontrolled commercial operations liable to bring about its impoverishment.

It is obvious that if the cultural heritage of a country is to be preserved unimpaired, protection must not be confined to objects produced or discovered in that country itself, but should extend equally to imported works which have become part of the country's national heritage.
But the fundamental problem involved in regulating the export and import of cultural property remains that of trade in objects originating in the countries concerned, particularly those newly discovered, which, because they are still outside the scope of public knowledge, more easily escape control of any kind.

Whether they be products of archaeological excavations or ethnographical missions, or works made available by the break-up of a little-known private collection, or uncatalogued library books or archive documents, or handicraft objects or items of folk art bought direct from their users, they usually come from sources which have hitherto been unexplored, or almost so, and which constitute a rich mine for antique dealers and collectors, sometimes producing objects of considerable importance.

Such situations are found to occur particularly in countries where the services responsible for protecting the cultural heritage are not yet fully equipped for effectively carrying out that task. The case of certain States which have recently acceded to independence provides a striking illustration of this point.

In some instances, the exodus of cultural property from these countries, has been due to actions by archaeological and ethnographical missions, and, in others to purchases, sometimes on a massive scale, by antique dealers assisted by local touts. And while it is only fair to admit that but for such exports, many of these objects would no doubt have perished owing to climatic conditions, or as a result of political or religious prejudices or neglect, the fact remains that close attention should be paid henceforth to situations of this kind.

It is considered by some that the problem can best be dealt with by having recourse to an international convention. This view has been advanced, specifically by certain members of the International Committee on Monuments, Artistic and Historical Sites and Archaeological Excavations, and by members of the Executive Board at its 61st session. Although this opinion did not for the moment prevail, the General Conference affirmed its desire that an international convention be adopted within the shortest possible time. With this end in view, the General Conference thought it essential to take steps forthwith to improve the international moral climate in this respect, to encourage States to adopt, within the limits of their national competence, various provisions calculated to prevent illicit dealings in cultural property, and to urge them to adopt an attitude of international solidarity paving the way to the preparation of an international convention in the future.

It was in this spirit that the General Conference, at its twelfth session, decided that the question should form the subject of a recommendation to Member States.

B. DEFINITION

The definition proposed in the preliminary draft recommendation attached to this report takes into account the analysis of the replies by the National Committees of ICOM and by the competent services of a number of States to the detailed questionnaire sent them on 25 April 1961. It is also based on the definition given in the 1954 Convention for the Protection of Cultural Property in the Event of Armed Conflict, but without coinciding with it, immovable property being excluded from the present recommendation.

In considering the definition of works of archaeological, historic or artistic interest, it is worth noting that the regulations in force in several States take age as the criterion, all objects of an age exceeding, for example, one hundred years being subject to protective measures. The Customs Co-operation Council has kindly intimated its views on this score, 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."

The International Association of Plastic Arts, for its part, has proposed 1920 as the limiting date so as to provide the fullest possible protection for the cultural heritage of the different States while allowing a certain amount of freedom of trade in contemporary works of art,
It seems hardly possible to envisage a single criterion in this matter, and there are likely to be appreciable differences between the criteria adopted by individual States.

It has also been felt necessary, to take another aspect of the question, to provide protection for ethnological documents. It is essential, in the case of rapidly developing countries, that such documents should not be allowed to leave the country without the permission of the competent services.

So far as scientific cultural property is concerned, scientific collections are protected as such. Protection will be provided for individual scientific objects only if they are of interest from another angle as well - e.g., historically.

Special mention is made of typical specimens in the fields of botany and zoology, i.e., specimens which exemplify most adequately the characteristics on which a new genus or species is based. The preservation of typical specimens in the large natural history museums is of cardinal importance to science.

According to the definition proposed for the present recommendation, the measures advocated would apply only to cultural property of "particular importance" to the cultural heritage of a State, leaving each State free to adopt whatever criteria it deemed most suitable for determining such "particular importance".

For while a State is entitled to safeguard the integrity of its cultural heritage, particularly in respect of cultural objects representative of its history and of the creativeness of the civilizations which have followed one another on its soil, or even of the interest taken by its population in foreign cultures, the fact remains that art and science constitute a universal language conveying a fuller and more direct knowledge of the different civilizations and cultures, and that exchanges of cultural property, if properly controlled, are the natural vehicles of that language.

Care must therefore be taken to ensure that the measures adopted to prevent illicit trade in cultural property do not become a barrier in the way of such exchanges. These measures should therefore apply only to cultural objects of such importance to the national cultural heritage that it would be appreciably impoverished by their removal from the country.

This limitation seems essential, and it would be advisable to incorporate it in the actual title of the recommendation, to which the words "of particular importance" might be added.

C. GENERAL PRINCIPLES

The first requisite is to define the circumstances in which the export, import and sale of cultural property shall be lawful. Since it would be impossible to determine these conditions a priori to fit all cases, the principle to be adopted should be that of subjecting all trade operations relating to cultural property to the control and approval of the competent authorities.

It would be out of the question for the latter to apply the same methods of control to transactions so different from one another as the export, import and sale of cultural property: for export operations, for example, to be controlled at the right stage, they would need to be subject to prior authorization from the responsible services, whereas the control of imports would consist in verifying that they had been exported in due form from the owner country. Sales, finally, would need to be subject to technical and administrative control designed to enable the responsible services to exercise supervision over cultural property.

The exercise of these different forms of control should be the subject of national regulations governing the scope of control, and its procedures. The regulation should define in the first place, the domestic legal system applying to cultural property, since this may have repercussions on the corresponding international legal system, particularly in the event of a claim in respect of a cultural object which has been illicitly sold and exported. One arrangement might be that objects listed in inventories of public collections may not be ceded unless action is taken in accordance with a specific procedure to withdraw them from the particular system of protection governing them, or that property belonging to a public body may not be sold except to another public body. In other cases it might be provided that certain cultural objects in private ownership may be
ceded within the national territory, but would be subject to a ban on their removal from that territory.

Trade operations which infringe the national regulations should be regarded as illicit.

It is desirable to point out in this connexion, perhaps, that the illicit nature of the import of a cultural object can be ascertained only by the authorities of the importing country. In view of the differences existing between the laws on the subject in different countries, these authorities should take account, above all, of the national regulations of the country of origin, so as to make sure that the authorities of the latter have no objection.

It is impossible to overstate the importance of the part that may be played by museums, and in general by the services and institutions concerned in various capacities with the preservation of cultural property, in repressing illicit trade operations.

For while State control of imports may be regarded as an effective means of supplementing export measures, by reciprocal action, as it were, the fact remains that the surest way of preventing fraudulent transactions is to discourage them by reducing their prospects of success. And these prospects would undoubtedly be much diminished if museums and the services and institutions concerned were to refuse to acquire any item the legal position of which is irregular.

Lastly, it is also worth recalling that repressive action against illicit, or even only uncontrolled, export should not exclude cessions or exchanges of certain cultural objects where they have been duly authorized by the responsible services. On the contrary, the possibility of ceding to, exchanging with, loaning to or depositing in foreign public collections should be considered in a liberal spirit.

This principle is parallel to the provisions of paragraph 23 of the Recommendation of 5 December 1956 on International Principles Applicable to Archaeological Excavations, concerning the assignment of finds.

Such cessions, exchanges or deposit cannot but promote the mutual appreciation of cultural values. However, to meet the legitimate concern of the individual States, they should relate to objects assigned to public collections and thus made readily accessible to the population of the country of destination. Furthermore, the objects in question should not themselves be objects of great importance but "duplicates" of them.

D. MEASURES TO BE APPLIED

1. Identification and national inventory of cultural property

It would be of great value to States, in the interests of ensuring that their supervision of their cultural property is effective, to take a prior census of objects of particular importance, i.e., to prepare a national inventory of them. An inventory of this kind would have the great advantage, in addition to the administrative one of the control it would permit, of bringing unknown cultural objects to light, promoting their study and classification, and singling out simultaneously the unique items and the "duplicates" suitable for assignment to foreign missions or museums.

The identification of new cultural property, which would be facilitated by the preparation of a national inventory is yet another matter of special importance in this connexion. In the field of ethnography, for example, it is urgently necessary, in the case of objects representative of ways of life which are now disappearing, to assemble them even before proceeding to catalogue and study them; and this applies even more forcibly to the rapidly developing countries, where these evidences of the past are in danger of being swept away in the rapid process of economic and social modernization.

The inclusion of a cultural object in the national inventory would in no way affect its ownership. In other words, even after its inclusion, such an object would remain in the hands of its owner at the time. The sole purpose of such procedure would be to make the existence of the cultural objects better known, bring about a better appreciation of their importance, and facilitate supervision.
2. Service for the protection of cultural property

Control of trade in cultural property cannot be ensured unless a special service is set up, for that purpose, with the following characteristics and functions:

(a) It should as far as possible, be a central State service, or at least a permanent body, equipped by law with the requisite administrative, technical and financial resources to enable it to take all necessary steps for the protection of cultural property. This aspect of the problem deserves particular attention in view of its importance at both the national and international levels. A study published in 1939 by the International Institute of Intellectual Co-operation rightly remarks that:

"It is the accepted view among the general public today, and the same view is reflected in the attitude of governments, that countries in possession of artistic treasures are merely the repositories of such property and are hence accountable to the community for it. The principles corollary to this general truth are immediately apparent: any damage inflicted on this heritage, either by those who have it in their keeping and fail to tend it as required for its preservation, or by those who, for whatsoever reason, destroy or tamper with any part of such property or fail to make it available for the general enjoyment or of study, is prejudicial to mankind as a whole, present and future generations included".

(International Museums Office, Bulletin no. 1, 1939. "La protection des collections nationales d'art et d'histoire", pp. 9-10)

It is thus supremely important for national authorities to take all steps to meet their responsibilities not only towards their own countries but towards the international community.

(b) One of the major functions of the protection service would be to prepare the national inventory of cultural property and keep it up to date by entering all new items brought to its notice by missions engaged in archaeological excavations or seeking out works of art, or as the result of the systematic collection of objects of ethnographical interest, particularly in rapidly developing countries, etc.

(c) The protection service would be required to supervise trade in cultural property, including the export and import of objects of this kind, in order to prevent illicit transactions. Stress should be laid here on the importance of establishing close collaboration between the protection service and other bodies concerned, such as the police and customs services.

It is also worth recalling that the International Committee on Monuments has stressed the difficulty of establishing control over the export of cultural property by reason of the progressive elimination of customs frontiers. But quite apart from the fact that phenomenon is by no means a general one - on the contrary, fresh customs frontiers are arising in the newly independent States - various systems are conceivable whereby control services would be able to "pursue" their property.

(d) The protection service would be empowered and required to submit proposals to the national authorities, after consultation with legal experts, for statutory measures to ensure the legal protection of cultural property. It would be advisable, for instance, to provide legal penalties for breaches of the protective regulations, such as refusal to permit the periodic checking of cultural property listed in the inventory, undeclared transfer of ownership, fraudulent export, etc.

(e) As the protection of cultural property sometimes involves consideration of sometimes difficult individual cases, the control service should be able to have recourse to the services of a body of qualified experts. The rôle played by the latter would be outstanding in view of the aim of the recommendation, which is limited to cultural property of particular importance for the national heritage, and it would be required to give opinions on the national inventory, the preparation and posting up of which would inevitably
involve complex technical problems, and on the measures proposed in regard to the export, import and sale of cultural property.

3. Bilateral or multilateral agreements

The problems flowing from international trade in cultural property are manifold. An international convention would make it possible to resolve them uniformly and completely by offering contracting States, among other advantages, a means of recovering cultural property illicitly exported from their territory and located in the territory of other contracting States.

However, in view of the difficulties which would be involved in the adoption of such a convention, at this time it seems advisable to recommend that Member States conclude bilateral or multilateral agreements whenever necessary, to deal with matters of common interest arising in connexion with the illicit export, import and sale of cultural property.

Whereas no "droit de suite" (right of pursuit) is at present possible in respect of a cultural object which has crossed the frontiers of its country of origin, a treaty concluded between two or more States would permit a claim for the restitution of such objects to be laid.

It should be noted that provisions relating to matters of common interest in connexion with cultural property would not necessarily imply the conclusion of a special agreement; they might very well be comprised within a more extensive agreement, such as a cultural agreement.

4. International collaboration in the detection of illicit operations

Paragraph 30 of the Recommendation of 5 December 1956 on the International Principles Applicable to Archaeological Excavations states 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 appertaining thereto should be brought to the attention of the services concerned . . . . . ."

The principle laid down in this recommendation should be extended, by means of bilateral or multilateral agreements, to all categories of cultural property.

Such provisions would meet the wishes expressed on several occasions - for instance in October 1961 by the International Committee on Monuments, Artistic and Historical Sites and Archaeological Excavations - stressing the need to develop an international sense of respect for cultural heritages - a sense which would doubtless involve certain moral obligations in respect of the purchase of cultural property coming from foreign countries. It should become a universally recognized principle that whoever acquires, in his own country, a cultural object which has illicitly disappeared from another country, is committing a reprehensible act even if no "droit de suite" exists in the present state of affirmative law on the subject. This will require psychological preparation, the creation of a frame of mind conducive to the conclusion of bilateral or multilateral agreements, pending the adoption of an international convention giving legal expression to the progress in morality.

5. Restitution or return of illicitly exported cultural property

The return of objects of archaeological interest is dealt with in paragraph 31 of the Recommendation of 5 December 1956 on International Principles Applicable to Archaeological Excavations. These provisions should be extended to all types of cultural property. An undertaking regarding restitution or return by States, services for the protection of cultural property and, in general, all competent institutions would mark a decisive step forward in action to prevent the illicit export of cultural property. The grave breaches of national legislation that occur at present can be put down to the fact that offenders can be sure of impunity. In the absence of any possibility on the part of their victims, of claiming property once it has left the national territory.
It should be recalled, in this connexion, that the problem of the return of illicitly exported cultural property to its country of origin was raised at the twelfth session of the General Conference in 1962 by the Working Party set up to study the report on the problems involved in the illicit export, import and sale of cultural property, and that it was also mentioned in resolution 4,412 (d).

6. Publicity in the event of the disappearance of a cultural object

Extensive publicity in the event of the disappearance of any cultural object of particular importance, by means of police notices, radio and television announcements and illustrated reports in the major newspapers and in specialized journals would at least serve to call public attention to its disappearance and inform the public of the illegality of any proposals for its sale which might be made to prospective purchasers. The object would thus become virtually unsaleable in the territory of the country concerned. This method is found very satisfactory by the States which resort to it.

National publicity of this kind needs to be supplemented by publicity on an international scale, aimed not only at facilitating the recovery of the vanished object, but even more at preventing its sale to any prospective buyer. For while the rights of a bona fide purchaser should be recognized - e.g., by the payment of suitable compensation - it seems only logical that no purchaser should be regarded as having acted in good faith once the matter has been publicized. The risks of a sale concluded in such circumstances would be tremendous, and a dishonest purchaser, once the lost property had been recovered and returned thanks to the collaboration of the services concerned, would have no right to any compensation.

The International Institute for the Unification of Private Law fully endorses such publicity action, the legal consequences of which would be very appreciable. That intergovernmental organization considers that if extensive international publicity were habitually given to the disappearance of any cultural object, a civil suit could be brought challenging the good faith of the purchaser of that object; he would thus cease to be protected, and a claim would become possible. Publicity might thus serve as an effective means of making a claim possible, even where the rule that "possession is nine points of the law" is in operation.

7. Apportionment of cultural property brought to light by foreign scientific missions

Objects brought to light by research missions sent out by foreign scientific institutions constitute a special case in certain respects, such as the fact of the importance of those missions for the progress of study in different fields.

Paragraph 23 of the Recommendation of 5 December 1956 on International Principles Applicable to Archaeological Excavations suggests, in a spirit of international scientific collaboration, that the conceding authority, "after scientific publication, might consider allocating to the approved excavator a number of finds from his excavation, consisting of duplicates or, in a more general sense, of objects or groups of objects which can be released in view of their similarity to other objects from the same excavation".

It might be recommended, in order to promote studies through the dissemination of original items, that the products of ethnological, natural science or other missions in which foreign scientists have participated be shared out as in the case of archaeological excavations.

8. Educational action

Educational action should likewise not be overlooked. The attitude of the individual towards cultural property is one of the essential elements in a protection system. The apothegm, "Quid leges sine moribus?" is particularly true in respect of the protection of cultural property.

The educational action in question should be undertaken by the service for the protection of cultural property in co-operation with the educational services, and the youth and adult education organizations. The negligence, ignorance and political or religious fanaticism which often have considerable bearing on the fate of cultural property can be effectively remedied by education,
9. **Collaboration with international organizations**

In applying the principles enunciated above, the collaboration of the international organizations specially qualified in this field is of capital importance. They include the International Council of Museums (ICOM), the International Federation of Library Associations, the International Council on Archives and the International Association of Plastic Arts.

The last of these, it should be noted, has recommended the establishment of "international committees of experts" to settle any disputes which might arise. In any event, these organizations, each in its own sphere of competence, could give helpful opinions and advice on the subject.

E. **CONCLUSIONS**

There can be no doubt of the contribution that procedures more specific than those proposed in this preliminary report could make towards putting an end to the illicit export, import and sale of cultural property.

However, if the recommendation corresponding to the General Conference's wishes were adopted, it would quite certainly be an encouragement to States wishing to do so to improve their national legislation. It would help to develop an international frame of mind on the subject by improving the moral climate as a means of effectively combating illicit trade in cultural property, which in turn would spur museums, for example, not to purchase objects of unattested origin.

It would also encourage States, particularly those which have recently acceded to independence, to expand their existing services for the protection of cultural property, or to create new ones.

The amendment along these lines of national legislation in certain countries laws in this sense, possibly accompanied by the conclusion of bilateral or multilateral agreements, would go far towards putting a stop to the illicit export, import and sale of cultural property which were so justly censured by the resolution adopted by the General Conference of Unesco at its eleventh session.

And the application of these measures, differing in character but all directed towards the same end, might gradually help to bring about the preparation of an international convention and the return, by agreement, of property already illegally exported - two developments considered desirable by the General Conference at its twelfth session.
The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from .......... to ............... 1964, at its thirteenth session;

Being of the opinion that cultural property constitutes a fundamental element of civilization and national culture, and that familiarity therewith is conducive to understanding and mutual appreciation between nations;

Considering nevertheless that it is incumbent upon every State to protect the integrity of the heritage constituted by the cultural property existing within its territory against the dangers resulting from illicit export, import and sale;

Considering that, to avert these dangers, it is essential for every Member State to become increasingly alive to certain moral obligations concerning respect for the integrity of its own cultural heritage and that of other States;

Convinced that steps should be taken forthwith to encourage the adoption of appropriate measures and an improvement in the climate of international solidarity without which the objectives in view would not be attained;

Having before it proposals for international regulations to prohibit and prevent the illicit export, import and sale of cultural property, which constitute item ............ on the agenda of the session;

Having decided, at its twelfth session, that these proposals should be regulated at the international level by way of a recommendation to Member States;

Adopts, this ........................., day of ......................... 1964, the present recommendation.

The General Conference recommends that Member States should apply the following provisions by taking whatever legislative or other steps may be required to give effect, within their respective territories, to the principles and norms formulated in the present recommendation.

The General Conference recommends that Member States should bring the present recommendation to the knowledge of authorities and organizations concerned with the protection of cultural property.

The General Conference recommends that Member States should report to it, on dates and in a manner to be determined by it, on the action which they have taken to give effect to the present recommendation.

1. DEFINITION

1. For the purpose of the present recommendation, the term "cultural property" shall be understood to mean movable property of particular importance to the cultural heritage of a country, such as works of art, manuscripts, books and other objects of artistic, historical or archaeological interest, ethnological documents, typical specimens, scientific collections and important collections of books and archives.

2. Each Member State should adopt whatever criteria it deems most suitable for determining which of the items of cultural property located within its territory and of particular importance to its cultural heritage should receive the protection envisaged in the present recommendation.
Annex

II. GENERAL PRINCIPLES

3. To ensure the protection of its cultural heritage against all danger of impoverishment, each Member State should take the necessary steps to ensure that all exports of objects of cultural property, as defined in paragraphs 1 and 2 above, shall be subject to prior authorization by the service for the protection of cultural property as provided for hereunder.

4. All imports of cultural property from another State should be subject to control by the service for the protection of cultural property and should not be authorized until such property has been freed from any injunction on the part of the competent authorities in that State.

5. Each Member State should take the necessary steps to exert effective control over the sale of cultural property.

6. Each Member State should lay down general rules governing the application of the above principles.

7. Any export, import or sale effected contrary to these regulations should be regarded as illicit.

8. Museums, and in general all services and institutions specializing in the conservation of cultural property, should refuse to purchase any item of cultural property the origin of which is not definitely established.

9. Each Member State should strive to make available to public collections in other Member States, by sale or exchange, duplicates of cultural objects the export or sale of which cannot be authorized, or certain of those objects themselves, on loan or deposit.

III. MEASURES TO BE APPLIED

Identification and national inventory of cultural property

10. To permit the application of the above general principles, each Member State should devise and apply procedure for the identification of the cultural property, as defined in paragraphs 1 and 2 above, which exists within its territory, and as far as possible draw up a national inventory of such property. The inclusion of a cultural object in this inventory should produce no change in the legal status of that object. In particular, a cultural object in private ownership should remain such even after inclusion in the national inventory.

Service for the protection of cultural property

11. Each Member State should set up a national service for the protection of cultural property. Although differences of tradition and disparity of resources preclude the adoption by all Member States of a uniform structure for these services, certain common principles, set forth below, should nevertheless be adopted in organizing these services:

(a) The national service for the protection of cultural property should as far as possible take the form of a State-operated administrative service, or a body equipped by law with the necessary administrative, technical and financial means to exercise its functions effectively;

(b) The functions of the national service for the protection of cultural property should include:

(i) identification of the cultural property existing within the territory of the State, and, where appropriate, the establishment and posting up of a national inventory of such property, and in accordance with the provisions of paragraph 10 above;

(ii) control of the export, import and sale of cultural property, in accordance with the provisions of paragraphs 3, 4 and 5 above;
(c) The national service for the protection of cultural property should be empowered to submit proposals to the competent national authorities for any other appropriate legislative or statutory measures for the protection of cultural property, including the introduction of penal and other sanctions for the prevention of illicit export, import and sale;

(d) The national service for the protection of cultural property should be able to call upon the services of a consultative body, consisting of experts, to advise it on technical problems and to propose solutions in contentious cases.

Bilateral or multilateral agreements

12. Whenever necessary or desirable, Member States should conclude bilateral or multilateral agreements to resolve problems flowing from the export, import or sale of cultural property, and more especially in order to secure the restitution of cultural property illicitly exported from their territory to and located in the territory of another party to the agreement. Such agreements might, where appropriate, be comprised within agreements of wider scope, such as cultural agreements.

International collaboration in the detection of illicit operations

13. These bilateral or multilateral agreements should include provisions to the effect that whenever a cultural object is offered for sale the competent services of each State shall ascertain that there are no grounds for regarding that object as proceeding from a theft, an illicit export or sale, or any other operation regarded as illegal under the legislation of the owner State. Any dubious offer, and any details relating thereto, should be brought to the knowledge of the services concerned.

Restitution or return of illicitly exported cultural property

14. Member States, services for the protection of cultural property and, in general, all competent institutions should collaborate with each other in ensuring or facilitating the restitution or return of cultural objects illicitly sold or exported.

Publicity in the event of the disappearance of a cultural object

15. The disappearance of any cultural object should be brought to the knowledge of the public by means of specially organized publicity.

Rights of bona fide purchasers

16. Bona fide purchasers should be entitled to compensation representative of the price paid by him. An appropriate system for determining the amount of such compensation should be envisaged.

17. A purchaser should not be regarded as having acted in good faith in cases where the disappearance of an object, prior to its having been purchased, has been announced, and a description given of it in the press of the State concerned and in that of the other interested States.

Apportionment of cultural property brought to light by foreign scientific missions

18. To promote mutual appreciation of their respective civilizations, Member States should agree on the conditions which might apply in apportioning cultural property brought to light by foreign scientific missions. The conceding authority might consider assigning to such archaeological, ethnological or natural science missions a certain number of cultural objects which it would be prepared to surrender.
Educational action

19. Each Member State should take steps to arouse and develop among its nationals interest in and respect for the national cultural heritage and for those of other States. Such action should be undertaken by the responsible services in co-operation with the educational services and with youth and adult education organizations.
MEANS OF PROHIBITING THE ILLICIT EXPORT, IMPORT AND SALE OF CULTURAL PROPERTY

Final report prepared in accordance with Article 10.3 of the Rules of Procedure concerning recommendations to Member States and international conventions covered by the terms of Article IV, paragraph 4, of the Constitution.

1. Pursuant to resolution 4.413 concerning the means of prohibiting the illicit export, import and sale of cultural property, adopted by the General Conference at its twelfth session, the Director-General prepared a preliminary report, together with a preliminary draft recommendation (UNESCO/CUA/123), which was communicated to Member States on 31 July 1963 under cover of circular letter CL/1667, inviting comments and observations on the texts in question.

2. By 6 February 1964, 21 replies had been received by the Secretariat. One, from the Netherlands, was a mere acknowledgement which, however, indicated that the preliminary report would be given subsequent consideration.

3. The following ten Member States stated that they approved the preliminary draft recommendation and had no comments to make on it: Burma, Cuba, Czechoslovakia, France, Hungary, Mexico, Norway, Pakistan, Madagascar and Uruguay.

4. On the other hand, the following Member States commented on the substance of the questions at issue: Australia, Bulgaria, Federal Republic of Germany, Italy, Japan, New Zealand, Switzerland, Syria, United Kingdom and United States of America.

5. Annex I of the present document reproduces the replies from Member States which have either approved the preliminary draft recommendation without comment or have submitted observations thereon.

6. The Secretariat has analysed these observations and arranged them in the order of the provisions of the preliminary draft recommendation to which they refer.

7. The present document thus supplements the preliminary report (UNESCO/CUA/123) sent to Member States on 31 July 1963 and should be considered as constituting with it the final report being submitted to the Special Committee of Governmental Experts which will be responsible, under the terms of resolution 12 C/4.413, for preparing the draft recommendation for submission to the General Conference at its thirteenth session. This committee will meet in Paris from 13 to 24 April 1964.
Replies to circular letter CL/1667 and document UNESCO/CUA/123, received from Member States by 10 February 1964

(AUSTRALIA)
National Advisory Committee for UNESCO
61/1435(43)

Sydney, 25 November 1963

Sir,

I refer to your letter CL/1667 concerning the most effective means of prohibiting and preventing the illicit export, import and sale of cultural property.

On the advice of the Chairman of the Australian Unesco Committee for Museums, the report and the preliminary draft of a recommendation were referred to the Australian Institute of Aboriginal Studies. The Institute has commented on the documents as follows:

"P.6, 13/I/1. This report covers a wide field, and the opinion of librarians and archivists should be sought about books and documents.

P.6. Definition of an antiquity. 60 years has been suggested in Australia at a conference of Museum representatives in 1963.

Allowances will have to be made in Australia for a certain freedom of trade in contemporary Aboriginal curios including bark paintings, wooden sculptures, boomerangs and other objects which are produced on mission and government stations, and by private individual natives, for sale. The explanations of these bark paintings are supplied to the buyer by missionaries. Where a collection of bark paintings is documented in the field by an anthropologist, consideration should be given to retaining portion or all of such a collection if the subjects are not represented in Australian collections.

P.7. The exchange of Aboriginal archaeological and ethnological material is left to the discretion of the museums in Australia. The division of collections from archaeological sites, or made by a joint expedition from foreign and Australian Museums, is a matter for decision by the institutions concerned. Items of particular importance would always be retained in Australia.

P.7c. There are no provisions in Australia for the control of sales of cultural property by competent authorities, and it is doubtful that such a control could ever be introduced. It is not necessary in this country where really valuable works of art (such as sculptures, friezes, etc.) are not found archaeologically.

7c. 14/II/3. The Customs department controls the import and export of archaeological material (in liaison with specialists from Museums and Universities) in Australia, but there is no control of the sales of such material within Australia, nor is there any listing or control of private collections.
It might be mentioned that the Customs Department is in the process of re-casting the regulations, and the Australian Institute of Aboriginal Studies is collecting information from all possible sources as a guide to the type of control desired in Australia over the export of archaeological and ethnological material.

There are no particular laws applying to cultural property in most of the Australian States. The only law in force, and specially enacted for the purpose, is the one in the Northern Territory. New Guinea has a comprehensive law covering cultural property and one that could form a model for Australian States.

P.8. Australia is a poor market for classical sculpture and similar cultural property compared with Europe and the United States, and consequently little or no attempt is made to import such items into the country. I feel sure that no Australian museum would purchase illicitly imported items, and in the case of specimens from abroad, every museum would make most careful inquiries into their history before purchase.

Exchanges with foreign museums and universities is a common practice in Australia, and a liberal view on loaning, depositing, ceding and exchanging is probably widely held, particularly with duplicate specimens.

8d. A National Inventory of Aboriginal relics in situ (cave paintings, rock engravings, stone arrangements, axe-grinding rocks, ochre and stone quarries, carved trees, 14/III/ceremonial grounds) is to be compiled by the Australian Institute of Aboriginal Studies.

The Institute is also compiling an assessment of collections of aboriginal material in all countries of the world, and intends in the future an inventory of them as part of its Documentation Centre on Aboriginal Life and Culture.

P.9/2 The view is strongly supported that the cultural heritage of Australia belongs to the world. The economic life, social structure, ceremonies, mythology and meaning of cave paintings and portable art, manufacture and use of stone implements, and other customs, provide a significant contribution to the world's knowledge of the origin and development of man's culture. For this reason, the Australian Institute of Aboriginal Studies has been set up by the Commonwealth Government of Australia to record information on every aspect of Aboriginal anthropology. The Institute is promoting a vigorous policy of research in the field by linguists, musicologists, social anthropologists, archaeologists, film-makers and other specialists.

14/III, 11. There is no protection service in Australia for portable objects, very few of which possess a monetary value to warrant the establishment of such a service.

P.9/2d. There are no special penalties, apart from those in common law for infringement of Customs Regulations in the illicit export of archaeological and ethnological objects from Australia. Such penalties, however, should be introduced.

P.11/7. The allocation of specimens from foreign expeditions is controlled in the biological field by stipulations concerning the number of a species that may be collected, the issue of permits for collecting by State authorities, and the retention of type specimens in Australia. No provisions of this nature are in force regarding archaeological and ethnological material, but a limited control is applied through the Customs Regulations on the export of such curios.

P.11/8. There is no official body with the capacity to carry out an adequate publicity campaign for the protection of cultural property, particularly archaeological and ethnological material."

Yours faithfully,

(H. J. Russell)
SECRETARY.
Sir,

I refer to your letter CL/1667 and my letter 61/1435(43) of 25th November 1963, concerning the most effective means of prohibiting and preventing the illicit export, import and sale of cultural property.

The report and the preliminary draft of a recommendation were also referred to the Commonwealth Department of Customs and Excise. The Comptroller-General of that Department has commented as follows:

"Under Part I of the Second Schedule of the Customs (Prohibited Exports) Regulations, exports of certain classes of goods which fall within the scope of the proposed recommendation are prohibited unless the consent of the Minister for Customs and Excise is first obtained. Exports of other items falling within the scope of the recommendation are not subject to control. Particulars of the goods which are listed in Part I of the Second Schedule are as follows:

Item 1 - Animals and birds native to Australia, skins of animals native to Australia and plumage, skins, eggs and eggshells of birds native to Australia,

Item 2 - Archaeological and anthropological objects and specimens (including articles of ethnological interest) derived from or relating to the aborigines of Australia or of a Territory of the Commonwealth, including Nauru.

Item 3 - Birds of Paradise and their plumage.

Item 5 - Fossil material and other geological specimens.

Item 13 - Skeletons and parts of skeletons, of Australian or Tasmanian aborigines.

So far as Items 2, 5 and 13 are concerned, the present practice is to consult with all State Museum authorities before permission to export is granted.

While it is practicable to control export of articles of an archaeological, geological or anthropological nature and obvious works of art, it would be exceedingly difficult, if not impossible, to exercise fully effective control over exports of written documents since many of these can be transmitted by post and would normally not be subjected to Customs examination.

I note that the draft recommendation envisages control of imports of cultural property. In view of the likely differences between countries in the interpretation of the term 'cultural property' in their attitudes to exports and in view of the wide range of goods which would be involved, administration of import controls would be much more difficult than in the case of export controls. However, it may be possible to devise some method by which the importing countries could prohibit the import of cultural items exported illicitly. As in the case of exports, imports of written material would be virtually impossible to control''.

Yours faithfully,

(H. J. Russell)
SECRETARY.
Burma, 27 January 1964

Sir,

I have the honour to refer to your letter No. CL/1667, dated the 31st July 1963, addressed to the Secretary, National Commission Secretariat, Government of the Union of Burma, Rangoon, on the subject mentioned above, and to say that the Government of the Union of Burma have no comments and observations to offer in the matter.

The slight delay is regretted.

I am,
Sir,
Yours truly,

for Executive Secretary
(Saw Burgess, Chief of Division).

(Original: English)

(BULGARIA)
MINISTRY OF FOREIGN AFFAIRS
No. 73371 Sofia, 3 December 1963

Sir,

In reply to your letter No. CL/1667, dated 31 July 1963, I have the honour to send you the following observations on the preliminary draft recommendation on means of prohibiting the illicit export, import and sale of cultural property:

1. The wording of Section I, paragraph 1, would be improved by the addition of a provision to make it clear that the term "cultural property" should cover not merely movable, but also immovable, property of this kind, so as to ensure more thorough protection of each country's cultural wealth; the reason for this suggestion is that fragments, and indeed whole pieces, of the architecture (both external and internal) of ancient towns, temples, etc., are often exported, imported or sold illicitly.

2. We think it would be well to add to Section II a statement to the effect that all cultural property should be within reach of the people of every country and should therefore be under State protection, whether it is in fact owned by the State, or by some public body or trust, or is in private hands.

3. It would be well to specify in paragraph 11 that the national services there recommended should keep in close touch with each other, so as to promote international co-operation in this field.

I have the honour to be,
Sir,
Your obedient Servant,

Signed: R. Nikolov,
Chief, Cultural Affairs Department

(Translated from the French)
Sir,

In reply to your circular letter CL/1667 on "means of prohibiting the illicit export, import and sale of cultural property", and under instructions from my Government, I have the honour to send you the following observations:

The Czechoslovak Government is in general agreement with the preliminary draft recommendation appended to your document CUA/123. With particular reference, however, to Section III of this draft, I beg to inform you that the following measures have already been taken in Czechoslovakia:

A list of buildings or monuments regarded as cultural property has already been prepared, and on this basis a national inventory has been drawn up of all cultural property of notable importance. At the present time, a list is being made and an inventory prepared of movable cultural property also; this should be completed by about the end of 1965.

In order to check the disposal of cultural property abroad, the conditions governing its exportation have been fixed by an Order of the Ministry of Education and Culture, No. 239/1959. All export of cultural property has in fact been controlled by the terms of this Order since 1959. The cardinal provision of this Order lays down that no cultural property of any special importance may be exported without the preliminary agreement of expert committees both at national and regional levels.

I have the honour to be,
Sir,
Your obedient Servant,
Signed: František Pazur
(Permanent Delegate of the Czechoslovak Socialist Republic to Unesco)
(Translated from the French)
3. Cuba has already set up a competent body (as suggested in paragraphs 10 and 11 of the draft recommendation) for identifying and drawing up an inventory of cultural property; this is the National Monuments Commission, whose terms of reference now cover not merely movable but also immovable property, according to the draft law now prepared for the purpose.

I must ask you to excuse the unintentional delay in submitting this opinion.

I have the honour to be,
Sir,
Your obedient Servant,

Signed: Martha Frayde
(Minister Counsellor,
Delegate to Unesco)
(Translated from the Spanish)
Sir,

I have the honour to send you enclosed some comments and observations (including a version in German) of the relevant German authorities on the questions set out in the circular letter 1667.

I have the honour to be,

Sir,
Your obedient Servant,

(Holger Reimers)
Secretary-General

The Federal Republic of Germany welcomes the efforts made by Unesco to preserve the cultural heritage of its Member States. It recognizes the educational values of formulated principles in order to render impossible the illicit export and import of cultural property and to prevent dealings in works of art, operated without respecting the cultural heritage of other nations. Our country is gratefully aware of the fact that these principles do not fundamentally eliminate the exchange of cultural property, but merely aim at protecting cultural property of particular importance. In these main principles, the present draft recommendation to the Member States complies with Section I, paragraph 3 of the protocol of the Convention for the Protection of Cultural Property in the Case of Armed Conflicts.

According to the economic system prevailing in the Federal Republic, trade in art may not be governed by the State. As provided by the provisions of "foreign economic law", the trade in art is liberalized. On principle, the export and import of cultural property is unlicensed and not subject to any control by the customs authorities. The Federal Republic is of the opinion that such an arrangement will best serve the exchange of cultural property and thus promote an understanding between the nations of the world.

In order to prevent uncontrolled exports of such property, the loss of which would prejudice the German cultural property, the German Bundestag voted a law in 1955, the administrative application of which was ensured within the limits of the customs control service by a decree of 1958. It provides that works of art, property of archives and libraries as well as other cultural property of particular importance for the nation shall be listed in inventories and require a special permission of the Federal Minister of the Interior, when exported.

However, the German inventories for cultural property of particular importance, as prepared according to the provisions of the law of 1955, do not comply with the requirements as laid down by Unesco for such property. Unesco aims at a complete inventory of cultural property, irrespective of property rights; the German law, however, only includes privately owned property, since cultural property, owned by the State may, as a rule, merely be sold with the permission of the supervisory authorities. It is doubtful whether a complete inventory of private and public cultural property, as desired, will at all be possible in the Federal Republic. We are afraid that no complete details may be given by private owners in spite of the recognition of property. According to experience made in the application of the German law of 1955, there is all the more reason for this fear, since a control of the trade in art might lead to a reduction of prices.

Nevertheless, all the possibilities of how to control the trade in art should be considered. Such efforts may be observed in the Federal Republic. According to the present development, a possible control might, however, be limited mainly to the disclosure of dealings in cultural property and the adoption of strict accounting regulations for all art-dealers.
In the Federal Republic, there does not exist a special state service for the protection of cultural property. In the case of controls having been necessary according to the provisions of the law of 1955, they were carried out by the customs authorities in cooperation with the Ministers for Cultural Affairs of the Federal States. The Federal Republic would appreciate to know if there exists any model for such a service concerned with the protection of cultural property in any country, and whether any experience has already been made in this respect. A report on its activities might be useful to eliminate certain objections. It is doubtful whether the administrative measures and expenditure in connexion with the establishment of such a service are in proportion to its effectiveness. It should, therefore, be considered to intensify the work by utilizing the services of recognized institutions, such as Interpol, Customs Co-operation Council, etc.

Owing to the suggestions made in the draft recommendation to the Member States, we feel that the mentioned complex problems should be discussed in detail with all the authorities concerned in the Federal Republic.

(Original: English)

(HUNGARY)
MINISTRY OF FOREIGN AFFAIRS
20/UNESCO/289 - 2/1963
Budapest, 28 November 1963

Sir,

With reference to your circular letter CL/1667, dated 31 July 1963, announcing the preliminary report and preliminary draft recommendation on means of prohibiting the illicit export, import and sale of cultural property, I have the honour to inform you herewith that the Government of the Hungarian People's Republic regards Unesco's contribution towards the protection of the cultural heritage of different nations as a high-ranking obligation of this Organization and of every Member State. It considers the preparation and adoption of an effective international instrument in this matter to be highly desirable; it approves the main principles and draft measures laid down in the draft recommendation, but reserves the right to propose or to approve at the thirteenth session of the General Conference any changes which might increase the effectiveness or enlarge the scope of the measures to be applied.

I have the honour to be,

Sir,
Your obedient Servant,

Signed: Dr. Edith Konrád
(First Secretary, Department of International Organizations)
(Translated from the French)

(ITALY)
Italian Embassy
Paris, 11 January 1964
00409

Sir,

In reply to your letter CL/1667, dated 31 July 1963, I have the honour to inform you that the Italian Government is wholly in favour of any steps that can be taken at the international level to remove the grave and persistent damage to the archaeological and artistic heritage of every nation caused by illicit trade in antiques and objets d'art.
As regards the preliminary draft recommendation annexed to the preliminary report CUA/123, I have pleasure in sending you herewith the observations on this matter submitted by the General Department for Antiquities and Fine Arts in Italy:

"Re paragraph I (Definition): It would seem wise to exclude from cultural property enjoying special protection 'works of living artists, or works not more than fifty years old'. This kind of limitation is desirable on practical grounds; provision has already been made for it in an Italian law dated 1 June 1939, No. 1089, governing the protection of objects of artistic and historical importance.

Paragraph II (General Principles): Almost all the principles listed in this paragraph are in fact already carried into effect in my country's administrative arrangements and embodied in the statutory provisions now in force in this matter. We have certain reservations, however, on the wisdom, and even the possibility, of carrying out the proposal in paragraph 9 to the effect that equivalents of cultural objects, the export or sale of which cannot be authorized, should be made available to public collections in other Member States by sale, loan or exchange.

Paragraph III (Measures to be Applied): Whilst we fully agree with the need to draw up a national inventory of cultural property, as suggested in paragraph 10, we cannot but point out the difficulties involved in such a proposal, especially in respect of artistic property not belonging to the State.

As regards the proposal in paragraph 16 that bona fide purchasers of works of art which have to be returned to their country of origin should be entitled to compensation, we feel it advisable to emphasize the need for a serious study of this matter with particular reference to the identity of the person who would have to pay such compensation; such a study must investigate the relationships under private law between parties to any possible transfers of cultural property within the countries into which it has been smuggled, as also their implications in public and in international law.

I have the honour to be,
Sir,
Your obedient Servant,
Signed: A. Pedroni
(Permanent Delegate for Italy to Unesco)
(Translated from the French)

(JAPAN)
PERMANENT DELEGATION OF JAPAN TO UNESCO
63/4022/MO/GB

Paris, 24 December 1963

Sir,

With reference to the letter from the Acting Director-General to the Minister for Foreign Affairs of Japan, No. CL/1567, dated 31 July 1963 - Subject: Most effective means of prohibiting and preventing the illicit export, import and sale of cultural property - I have the honour to submit herewith the comments and observations of my Government on the report and on the accompanying preliminary draft of a recommendation concerning the subject.

I avail myself of this opportunity to renew to you, Sir, the assurances of my highest consideration.

Masami Ota,
Permanent Delegate of Japan to Unesco
The Government of Japan has, as a general rule, no objection to the purpose of the preliminary draft recommendation on means of prohibiting the illicit export, import and sale of cultural property; though it is hoped that careful consideration be given to the points described hereunder:

1. Definition and identification of cultural property (draft recommendation 1, 2 and 10).

It seems to be very conflicting that while an extensive scope is set in the recommendation for cultural property subject to protection, the individual Member States would have their own criteria to determine such items foreseeable that a certain amount of variance is created in the standard of judgement. There would occur cases where cultural property of certain Member States is found difficult to be identified as such by other Member States by virtue of registration in the national inventory.

2. Judgement of legality of the importation of cultural property (recommendation 4).

It is felt that for the importation of cultural property, some means (certification on the part of the exporting State, e.g. written certificate) warrant the legality of the exportation. It is possible that a case occurs in which illegality of the exportation is difficult to establish even though such certification is lacking.

3. Restitution or return of illicitly exported cultural property (recommendations 14 and 17).

To secure legally the restitution or return of illicitly exported cultural property, it is deemed to be necessary in Japan, because of the principle of immediate acquisition of movable property, that a law is instituted therefore.

4. Retroactive application of the recommendation.

Since retroactive application of the measure is feared to give rise to trouble, it is hoped that such measures are applied to the future cases only.

(Original: English)

(MALAGASY REPUBLIC)
Ministry of Foreign Affairs
No. 1790 - AE/Ol/UNES/267
Tananarive, 21 December 1963

Sir,

I have the honour to refer to your letter No. CL/1667, dated 31 July 1963, regarding the measures to be applied for prohibiting and preventing the export, import and illicit sale of cultural property.

It certainly seems necessary to apply every feasible measure on the international level, and to this end to draft an appropriate convention under Unesco's auspices.

In this connexion, the Government of the Malagasy Republic has no objection to any of the general principles set out in the report or to the preliminary draft recommendation presented by Unesco.

I should like, however, to set out for your information the various protective measures which have already been taken in this matter by our Republic: a National Service of Historical Monuments and Fine Arts was set up by a decree dated 11 January 1963 and attached to the Office of the President of the Republic; a National Commission for Historical Monuments and Sites was also set up by a second decree of the same date. In order to ensure the preservation of the nation's heritage, these two bodies avail themselves of two basic texts: (1) the law dated
25 November 1961 on Historical Monuments and Fine Arts, and (2) the law dated 13 July 1962 on the Classification of Sites.

I have the honour to be,

Sir,

Your obedient Servant

Signed: Sylla
(Minister of Foreign Affairs)
(Translated from the French)

(MEXICO)
Permanent Delegation of Mexico to Unesco
No. 988 - Exp. 7.5/63
Paris, 19 December 1963

Sir,

In reply to your letter CL/1667, dated 31 July 1963, I beg to inform you that the relevant authorities in Mexico have stated that they approve and accept both the preliminary report and the preliminary draft recommendation on measures to be adopted for prohibiting and preventing the illicit export, import and sale of cultural property, since they take into account the observations and opinions put forward by the Mexican Delegation when this matter was discussed at the last session of the General Conference of Unesco.

I have the honour to be,

Sir,

Your obedient Servant,

Signed: José Luis Martínez
(Mexican Ambassador,
Permanent Delegate to Unesco)
(Translated from the Spanish)

(NETHERLANDS)
Ministry of Education, Arts and Sciences
ICB 60627
The Hague, 5 December 1963

Sir,

With reference to your letter dated 31 July 1963, No. CL/1667, concerning the preliminary draft recommendation on means of prohibiting the illicit export, import and sale of cultural property (CUA/123), I regret to have to inform you that it has not been possible to forward to you my Government's comments and observations before the 1st of December.

However, I trust that the competent authorities who deal with this subject matter will be ready with their study of the draft recommendation this month so that I hope to be able to forward to you the comments before the end of this year.

Yours faithfully,

For the Minister,
for the director of international cultural relations,
(R.M.H. Koessoemo Joedo)
(Original: English)
Sir,

I have the honour to refer to your letter CL/1667 of 31 July 1963, in which you sought the comments of the New Zealand authorities on the preliminary report of the Special Committee set up to investigate the most effective means of prohibiting and preventing the illicit export, import and sale of cultural property, and the text of a draft recommendation on this subject, contained in document UNESCO/CUA/123 of 15 July.

I wish to inform you that while the New Zealand authorities support the aims of the proposed recommendation, there are some aspects of the report and the draft about which they have reservations; these are mentioned in the attached comments.

I have the honour to be,

Your obedient Servant,

Secretary of External Affairs

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**COMMENTS OF THE NEW ZEALAND AUTHORITIES ON THE TEXT OF THE REPORT AND PRELIMINARY DRAFT RECOMMENDATION ON MEANS OF PROHIBITING THE ILLICIT EXPORT, IMPORT AND SALE OF CULTURAL PROPERTY (CUA/123 AND ANNEX)**

Report, page 7 (Section B "Definition"), paragraph 4

It is understood that the term "type specimen", which is generally used and clearly defined, is preferred by botanists and zoologists to the term "typical specimen", which appears in the draft report and recommendation. The International Association of Plant Taxonomists, and the equivalent zoological organization, might usefully be asked for their views on this point.

It is thought also that "large natural history museums" are not always the best place to preserve type specimens. Provided they are properly housed and maintained, such specimens are often best cared for in institutions which have a special interest in them. This is particularly true of "type" collections in the working herbariums of institutes in developing countries. Such collections are often the special concern of the staffs of such institutes and an important part of their traditions. It is only if and when the spheres of interest within the institutes change that it is considered appropriate for the collection to be transferred to a natural history museum.

It is suggested, therefore, that after the words "large natural history museums" should be added the following:

"or in recognized institutions that have a direct interest in the material and are properly equipped and staffed to preserve it from deterioration".

Recommendation, page 14 (Section II "General Principles"), paragraph 8

While agreeing with the intention behind this section, the New Zealand authorities are concerned with the practical difficulties of implementing it. Museums and other institutions may not be in a position to investigate closely the bona fides of each item of cultural property offered to them. Provided such items are offered for sale by reputable sources, it would seem preferable that the onus of ensuring that their sale is legal should not fall upon the purchaser.
Recommendation, page 15 (Section III "Measures to be applied"), paragraph 16. Rights of bona fide purchasers

The New Zealand authorities would hesitate to support this provision without knowing in more detail who will be expected to pay the compensation stipulated, and how Member States are to aid or secure this payment.  

(Original: English)

(NORWAY)
National Commission for UNESCO
16/64 PG/ah
Oslo, 10 January 1964

Sir,

Re: Most effective means of prohibiting and preventing the illicit export, import and sale of cultural property

I refer to your letter of 31 July 1963 requesting comments and observations on a preliminary report and the first draft of a recommendation concerning the most effective means of prohibiting and preventing the illicit export, import and sale of cultural property.

The preliminary report and draft recommendation have been examined by the competent Norwegian authorities who are in agreement with the principles on which they are based. With respect to the specific proposals, note should be made of the fact that Norway, to a large extent, already has laws and regulations satisfactory for the national need for registration, supervision and control of cultural property. Unesco's proposal, which entails an extension of present arrangements, would probably necessitate amendments of an administrative as well as of a technical legal nature. However, Norwegian authorities are willing to consider proposing such amendments in the event the recommendation materializes.

I have the honour to be,
Sir,
Your obedient Servant,

Per Gisvold,
Secretary,
Norwegian National Commission for Unesco

(Original: English)

(PAKISTAN)
Ministry of Education and Information
(Education Division)
No. F. 1-23/63-Unesco II
Karachi, 7 December 1963

Sir,

I am directed to invite a reference to your letter No. CL/1667 dated the 31st July 1963.

It is necessary to exercise strict vigilance in affording adequate protection to objects of cultural properties, which, inter alia, include, products of archaeological excavations, antiques, rare manuscripts, works of art, etc., as these cultural properties are irreplaceable evidence of bygone civilizations and cultures. It is, therefore, imperative that the heritage of cultural property existing at present in every country should be preserved unimpaired and protected from any danger which might result from uncontrolled commercial operations.
liable to bring about its impoverishment, and with this end in view, protection should not only be confined to objects produced or discovered in any country itself, but that it should also equally extend to all valuable imported articles ultimately to become national heritage of the country.

This subject has already engaged our active consideration in the past. The Antiquities (Export Control) Act, 1947, as adapted by Article 4 of Pakistan (Adaptation of Existing Pakistani Laws) Order, 1947, prohibits the export of such articles of antiquities from Pakistan. The enactment of a fresh legislation on antiquities is also under our consideration, which embodies appropriate modifications aimed at ensuring sufficient safeguards to our national and cultural treasures against all possible dangers of illicit export, import and sale of cultural property and also to suit the present international requirements on the subject. It is expected that the intended legislation, when in force in Pakistan, will effectively supplement the international instrument now being proposed by Unesco.

We are, therefore, in general agreement with the views expressed in the "Preliminary Report and the Preliminary Draft Recommendation to Member States" as formulated by the Special Committee convened by Unesco with the object of preparing an international instrument on the above subject.

Your obedient Servant,

(M. Aslam)
Section Officer
(Original: English)

(SWITZERLAND)
Federal Political Department
0.734.341.6 - TE/s1

Berne, 5 December 1963

Sir,

In reply to your letter dated 31 July 1963 (CL/1667) addressed to the Chief of the Federal Political Department, we have the honour to send you herewith the observations of the Federal authorities to whom we sent on the preliminary report and the preliminary draft recommendation on "Means of prohibiting the illicit export, import and sale of cultural property" (document UNESCO/CUA/123) for comment.

We hope that these comments will reach you in time for your Secretariat to make use of them in drafting the final report and in revising the draft recommendation.

I have the honour to be,
Sir,
Your obedient Servant,

Signed: Cayide
Federal Political Department
International Organizations
(by order)
Appendix

Observations of the Federal authorities who were consulted on the measures to be applied for prohibiting and preventing the illicit export, import and sale of cultural property.

1. **Need for international regulation**

   It is not difficult to understand why certain States are eager to prevent, or at least to check, by means of a Unesco recommendation, the export of cultural property which forms part of their national heritage. But if these countries are not able to prevent such exports, which they consider undesirable, by measures prompted by their own domestic legislation, it is not easy to see how international co-operation along the lines of the draft recommendation submitted to Member States can be any more successful in removing the main difficulties which are inherent in this very intricate problem.

2. **Legal considerations**

   It is obvious that so far as domestic law is concerned a mere recommendation by Unesco cannot carry the same weight as a formal convention or international agreement. In any case, Switzerland has a very slender constitutional basis for taking steps along the lines set out in the recommendation. If this were applied in its present form, it would encroach so seriously on the rights of private ownership as to run counter to the liberal principles on which Swiss law is founded.

3. **Police control considerations**

   The type of regulation envisaged by the Unesco draft recommendation presupposes an almost unlimited extension of mutual assistance between nations in enforcement of the law. Such collaboration would be sought even at the stage of a purely routine scrutiny of simple applications for import permits. The State applied to would not even have the right to require the applicant State to furnish proof that the facts alleged were indeed well founded. It should also be noted that legal disputes between nations may at any moment change into criminal cases if it appears that the laws of the applicant State have been infringed.

   Very intricate problems would also be raised in connexion with any collaboration between nations for impounding cultural property which has been illicitly exported or for facilitating its return to the country of origin. Co-operation between nations in this matter could not go beyond the rules currently observed for mutual assistance between nations in criminal matters.

4. **Considerations regarding customs procedure**

   Even if the import and export of cultural property is not in any way affected by considerations of commercial policy, the problem here under review nonetheless raises certain aspects of customs procedure which demand mention. In particular, the present recommendation is in conflict with the agreement (which was also drawn up by Unesco) on the importation of educational, scientific and cultural materials. This agreement, dated 22 November 1950, came into force in Switzerland on 1 July 1953. Its object is to promote the free exchange of the articles mentioned in Annexes A to E without any customs duties or other levies. The works of art and collectors' pieces of an educational, scientific or cultural character, which are listed in Annex B, are very much the same as those envisaged in the preliminary draft recommendation. As long as the agreement of 22 November 1950 remains in force, Unesco's preliminary draft can only be an obstacle to the exchange of these articles between nations.

   The restriction which this draft recommendation would put upon trade or the free circulation of certain cultural property would require the application of special measures of control on imports and exports alike. But nowadays the Swiss Customs very seldom examine consignments for export, and do not have the facilities for making the kind
of checks advocated in the present draft. As regards incoming consignments, the responsibility for taking appropriate measures to prevent any undesirable export surely rests primarily with the exporting country.

Finally, it may be as well to point out that, if regulations are too strict, they are likely to lead to smuggling.

5. Observations submitted by museums, libraries, public records and private collectors

The curators of certain museums, libraries or public record offices and some leading collectors were asked to give their opinions on Unesco's preliminary draft recommendation, and were unanimous that it bears very little relation to any requirement in Switzerland. The importance of preserving cultural property of high value is so widely recognized that any official control of sales, or indeed of imports and exports, is unnecessary. The most that could be admitted is perhaps some regulation of the export of archaeological treasures.

If the recommendation were to be carried into effect, it would first be necessary to establish a precise definition of the cultural property to be covered by the regulation and to draw up an inventory with each object in its proper class. Such an inventory would obviously also cover cultural property in private hands, an operation which would soon run into great practical difficulties.

Lastly, it should be noted that the provisions of any recommendation must not in any way hinder museums from making useful additions to their collections (which are of educational value).

6. Art dealers' problems

The art dealers' associations are insistent that any prohibition on sales must carry with it a right of pre-emption for the State which introduces the prohibition.

The associations concerned emphasize that, since all responsibility for controlling the import of cultural property rests with the importing country, the provisions of the present recommendation could not in fact be applied without elaborate administrative machinery, which would probably impede the efforts now being made at the international level to lift controls on international exchanges, as also the implementation of the above-mentioned agreement on the importation of educational, scientific and cultural materials (22 November 1950).

These are our main objections to the preliminary draft recommendation on means of prohibiting the illicit export, import and sale of cultural property. This list is in itself evidence of the complexity of the problem raised by Unesco.

The Swiss Federal authorities are ready to expand and elaborate the remarks formulated above, should the Director-General of Unesco deem this necessary, and they would like to know the attitude taken by other Member States in this matter.

Berne, 5 December 1963

(Translated from the French)

(SYRIAN ARAB REPUBLIC)
Ministry of Education and Instruction

Sir,

In reply to your letter No. CL/1667, dated 31 July 1963, regarding the proposed international recommendation on means of prohibiting the illicit export, import and sale of cultural property, I have pleasure in sending you herewith our observations on the various questions
raised. These observations are in fact those of our official body responsible for protecting cultural property, namely the General Directorate of Antiquities and Museums in Syria.

I should like to congratulate you upon this valuable proposal.

I have the honour to be,
Sir,
Your obedient Servant,

Signed: Dr. Moustapha Haddade
Minister of Education and Instruction
of the Syrian Arab Republic


A. PREAMBLE

If it be true that cultural property comprises some of the noblest examples of human genius, the natural inference is that it belongs to the lineal descendants of the original creators of this property, who still live in the same area as that in which it was created. We are still pressing for an international convention which would enable each country to retain the essence of its own cultural heritage. It is surely reasonable to devise, at long last, international legal machinery to put a stop, not merely to the naked pillage which used to be practised in the past, but also to the other illicit practices which still go on today in countless underhand ways, such as the encouragement given to clandestine surveys and excavations, the organization of looting raids, and arrangements to smuggle cultural property out of poor countries to rich ones where there are material resources which attract dishonest dealers. Syria has been, and still is, the victim of these thefts; and it is no satisfaction to her to see the pick of her cultural heritage being taken out of the country in defiance of her laws and regulations, just to stock foreign museums illicitly.

What is needed at this stage of our history is surely an international convention to prohibit and prevent the export, import and illicit sale of cultural property. If this is unfortunately impossible at present, Unesco, pending the adoption of such a convention, ought to prepare a viable and effective recommendation which will denounce these thefts at the international level and even put them down, and herald the day when every country will be in full and undisturbed possession of its own heritage.

Protection cannot, of course, be confined to objects produced or discovered in the country itself, but must extend equally to imported works which have become part of the country's national heritage. We suggest that this phrase should be reworded to read: "...imported works which have been legally acquired and which have thus become part of the country's national heritage..." , since we cannot think that the recommendation intends to legalize all the illicit operations which have taken place in the past.

We suggest that the recommendation should contain one or more provisions urging international organizations to request their experts not to acquire any cultural property in the countries where they are posted except after complying with the local regulations governing such property. The same prohibition should be imposed on all diplomatic and consular agents by their home governments, and on all archaeological or ethnographical missions or on other groups sent by universities or scientific organizations to carry out excavations, research and surveys.

We repeat once again that our own preference would be for a proper convention, since this (as the draft clearly states) would be "an instrument involving reciprocal undertakings and creating strictly enforceable legal obligations of a contractual nature". Moreover, the representatives of the Arab States (the Syrian Arab Republic, the Republic of Iraq, the United Arab
Republic, the Lebanese Republic, the Hashemite Kingdom of Jordan, the Government of Kuwait, the United Kingdom of Libya, the Republic of Tunisia, the Democratic and Popular Republic of Algeria and the Kingdom of Morocco) resolved at the IVth Pan-Arab Archaeological Congress, held in Tunis from 18 to 29 May 1963, to adopt the following motion:

"This Congress recommends that the League of Arab States and the several governments of such States direct their delegations to Unesco to complete the study of the international convention designed to prohibit the illicit sale, purchase or export of works of art, and to have it ratified and published as soon as possible".

Most of the points contained in the draft recommendation now before us are already embodied in the legislation now in force in Syria regarding antiquities and cultural property. It may perhaps be worth while to mention here that Article No. 12 of our decree law No. 222 (dated 26 October 1963) is worded as follows:

"The official bodies responsible for the management of antiquities should strive, within the framework of the conventions, treaties and recommendations drawn up by international organizations, to recover the cultural property of Syria which has been illicitly exported from the Republic, and at the same time to return to other countries their cultural property which has been illicitly brought into Syria, provided that such transactions balance exactly".

Finally, it must be frankly admitted that the implementation of the recommendation now before us will place a very heavy burden on small or medium-sized countries, for it will be necessary for them to classify and compile inventories of their cultural property, arrange for customs control and the conclusion of bilateral and other agreements, etc.

B. DEFINITION

We think it may be worth while to send you herewith the definition of ancient "cultural property" given in our own legislative decree No. 220:

"Article 1 - The term 'antiquities' shall denote movable or immovable property, constructed, fabricated, fashioned, written or drawn by man more than two hundred years ago. Authorities responsible for antiquities shall have the right to regard as antiquities other movable or immovable articles of a more recent date if these are thought to be of historical, artistic or national interest. Each case shall be dealt with separately by a ministerial order".

By thus qualifying the rule of an age of two hundred years, our legislation gives authorities responsible for cultural property the right to act as they think fit to protect any objects less than two hundred years old, if these have some special value for the country’s cultural heritage.

We also hold that the recommendation now before us ought not to be limited to protecting objects of "particular importance" to the cultural heritage of a State. This would severely limit its field of action, especially since the criteria for determining this "particular importance" are difficult enough to agree upon at the national level, let alone at the international. The relative wealth of one country's cultural heritage cannot be measured against that of another country. We regard it as the absolute right and obligation of each State to defend the whole of its cultural heritage without any limitation, and we venture to hope that the recommendation now before us, if and when it comes into force, will help any country whatsoever to recover any cultural property whatsoever which has been illegally taken out of its territory.

C. GENERAL PRINCIPLES

In our view, the first requisite of this section is to define the rights of individuals to acquire cultural property, and to make it clear what limitations upon these rights are imposed by the need to protect the entire national cultural heritage.
In Syria, all cultural property, whether movable or immovable, belongs to the State (Article No. 4 of legislative decree No. 222), with the following exceptions:

1. immovable property to which the owners can prove their title by deeds issued by a legal authority;
2. movable property registered by its owners with the authorities responsible for cultural property;
3. movable property which has been duly examined by the authorities responsible for cultural property, but which they have left unregistered at the free disposal of its owners.

There are restrictions even upon these rights of individuals to possess cultural property; these restrictions are listed in Articles 7, 32, 33, 34, 38 and 39 of our legislative decree No. 222. They may briefly be summed up as prohibitions on the destruction of one's own cultural property, on its removal to another place within the country or on its export outside the country without special authorization (export being regulated by Articles 66 to 74 of our legislative decree No. 222, whilst import is regulated by Article 33); a requirement to declare the name of the new owner of cultural property when it changes hands (such dealings in antiquities being regulated by Articles 56 to 65); and formal agreement by the owner of any cultural property that the authorities responsible for antiquities may at any time intervene to take any steps which may be needed to protect the property (whether at their own expense or at that of the owner), to photograph it, sketch it, study it, take casts of it or exhibit it.

The text of the recommendation before us ought to contain provisions clearly stipulating that national authorities responsible for cultural property have the right to examine all cultural property being imported. Article 33 of our legislative decree No. 222 reads as follows:

"Article 33 - The Customs Service must submit all imported antiques for inspection by the authorities responsible for them, in order that the latter may be able to classify the objects correctly. Imported antiques thus classified would then have the same status as national antiques and be subject to the provisions of this law".

We would once again mention that Article 22 of the legislative decree in question lays upon the authorities responsible for cultural property the duty also to help other countries to recover their own cultural property which has been illicitly brought into Syria, provided that such transactions are reciprocal.

The recommendation should also contain provision for the right of each country to control the export of cultural property through the national authorities responsible for cultural property. Article 66 of our legislative decree No. 222 is typical in this matter:

"Article 66 - The export of cultural property shall be submitted for inspection by the authorities responsible for such property, in accordance with the procedure set out in this law. These authorities shall have power to refuse permission for the export of any cultural property, if such export is likely to impoverish the cultural and artistic heritage of the country".

Article 67 makes it plain that:

"The only cultural property which may be exported is movable cultural property".

It may also be of interest to quote Article 69:

(a) "Governmental commissions for the purchase of cultural property may be set up wherever necessary. At least one museum curator must serve on each."
(b) Any cultural property intended for export must be submitted to one of these commissions for the estimation of its real value.

(c) After examining the cultural property intended for export, the authorities responsible for such property may grant or withhold authorization for such export, or may purchase the property in question at the price quoted by the exporter. Where such price is markedly different from the real value, the relevant commissions may alter the price to a figure which shall then become definitive".

Finally, Article No. 86 contains the following provision:

"The authorities responsible for cultural property shall have power to grant any police or customs officers or officials working in the General Directorate of Antiquities and Museums rewards up to 20% of the price of any cultural property which has been confiscated".

Museums may also play a very important part in repressing illicit trade operations. It is imperative that these establishments should refuse to acquire any object the legal position of which is irregular. Large museums should take the lead in this task. Similarly, the International Council of Museums (ICOM) should adopt resolutions to the same effect at its next General Assembly.

We are in favour of extending the possibilities of ceding to, exchanging with, loaning to or depositing in foreign public collections, provided that such transactions are governed by rules which are in themselves just and have been discussed and adopted at the international level.

D. MEASURES TO BE APPLIED

1. Identification and national inventory of cultural property

We would suggest the adoption of one or more forms of inventories of cultural property for communication to any country at its request.

2. Service for the protection of cultural property

Our General Directorate of Antiquities and Museums is a permanent central State service, with the legal status of a body corporate and with full control over its own finances; by virtue of a legislative decree No. 88 (dated 30 June 1947), law No. 51 (dated 26 December 1950), a legislative decree No. 130 (dated 7 October 1953) and law No. 197 (dated 1958), it is also equipped with the requisite administrative, financial and technical resources to enable it to take all necessary steps for the protection of cultural property.

We suggest that the draft recommendation should contain a provision stipulating that States whose economies are expanding rapidly may obtain international assistance in drawing up an inventory of their cultural heritage.

3. Bilateral or multilateral agreements

This raises one of the biggest difficulties inherent in the recommendation now before us. It is not easy for services responsible for protecting cultural property to add the conclusion of bilateral or multilateral agreements to their other duties. In view of the large number of States which have become or are becoming independent nowadays, these services are likely to be alarmed at the prospect of having to pave the way for the negotiation, conclusion of agreements, implementation and amendment of agreements and for extending their period of validity; this might involve almost one hundred and ten separate agreements, which demonstrates the need for a new department of foreign affairs in each service for the protection of cultural property - a luxury that not every country can afford.
Would it not be possible for those responsible for re-examination of this draft recommendation to substitute for this principle of bilateral or multilateral agreements some other principle that would be easier to apply?

4. **International collaboration in the detection of illicit operations**

If this kind of international collaboration is to yield the anticipated results, both museums and customs services will have to demand formal certificates issued by the authorities responsible for the protection of cultural property and by the customs authorities in the countries from which the cultural property has been exported.

5. **Restitution or return of illicitly exported cultural property**

The draft recommendation should state that any cultural property which has been illicitly exported will be automatically returned to its country of origin, once a formal statement has been made at the customs or at the museum where the property has been offered for sale, or by the national organization responsible for internal security. The restitution of cultural property to its country of origin should never become the occasion for any legal action or dispute of any sort, while the right of authorities in these countries to confiscate the entire consignment and to impose penalties upon the smugglers should be clearly stated and recognized.

6. **Publicity in the event of the disappearance of a cultural object**

In our opinion, the concept of a *bona fide* purchaser should be kept within very narrow limits. Once this recommendation has been published, the cultural property of every country should cease to be regarded as a major source of material profit.

7. **Apportionment of cultural property brought to light by foreign scientific missions**

It is only right that the scope of paragraph 23 of the recommendation dated 5 December 1956, which defines the international principles applicable to archaeological excavations, should be extended to cover the apportionment of objects brought to light by ethnological missions or by other missions concerned with natural science. Syria was the first country to demand such an extension, through its representative at the international conference organized by ICOM at Neuchâtel in July 1962.

8. **Educational action**

This action should also receive the regular backing of international organizations, especially Unesco.

9. **Collaboration with international organizations**

We consider collaboration with international organizations in this field to be immensely valuable. We also feel it advisable for these organizations to be grouped together instead of acting in isolation. We should like to see organizations already in existence further strengthened and equipped with effective resources (experts and funds) so that they may be in a position to give rapid service to every nation.

**E. CONCLUSIONS**

Failing the possibility of concluding a formal international convention to prohibit and prevent the illicit export, import and sale of cultural property, the Syrian Government approves the principle of the recommendation now before us, especially as its own legislation already
enables it to cope with all the eventualities arising out of this recommendation. The Government would be glad if the above observations were taken into consideration in any future revision of the recommendation under consideration.

We wish to put on record our high regard for the great work undertaken by Unesco and our satisfaction with all that it has already accomplished.

(Translated from the French)

(UNITED KINGDOM)
MINISTRY OF EDUCATION
National Commission
ER 4/6/9

London, 20 January 1964

Sir,

I have the honour to refer to your letter (CL/1667) of 31 July 1963 asking for U.K. comments on document UNESCO/CUA/123.

I now have the honour to forward these to you. I regret that your date-line of 1 December 1963 has passed, and I hope that this has not caused any inconvenience.

I have the honour to be,
Sir,
Your obedient Servant,
Miss. M.K. Stewart

Means of Prohibiting the Illicit Export, Import and Sale of Cultural Property

In general, the encouragement to Member States to improve their machinery for the protection of works of art and for the control of their export is welcomed. But there are important reservations:

1. There are insuperable practical difficulties in defining and physically distinguishing "cultural property" for the purposes of an effective import or export control.

2. As regards export control, although it seems that in the main the items covered by the paper are subject to export licence control, it is only rarely that an export from the U.K. is refused on the grounds of national importance of the item concerned. There is a considerable export trade in this field in the United Kingdom and London is one of the principal centres for auction of works of art and antiques. In the light of this and the practical difficulties referred to in paragraph 1, any international suggestions for additional control might lead to difficulties.

3. The burden of control should not be shifted to the importing countries, as is implied in paragraph 13. Museums will, of course, always take reasonable care that objects which they buy are of respectable origin, but they cannot be expected to make an exhaustive investigation in every case. In order not to interfere with legitimate imports of works of art and items of cultural interest, the only form of control on the import side which would appear practicable would be to admit the defined goods only if they were accompanied by the appropriate export certificate from the country of origin. This, however, would raise other problems of verification, and might lead to delays.
4. The proposal to draw up a national inventory of "cultural property" (paragraphs 10 and 11 (B) of the "measures to be applied") seems impracticable. Even if it were possible to carry out such a task, the labour and expense involved would be prohibitive.

5. It is important to ensure that no binding convention is established which is retrospective in its application.

(Original: English)

(UNITED STATES OF AMERICA)
Department of State
Bureau of Educational and Cultural Affairs
5 December 1963

Dear Mr. Maheu:

The United States appreciates the well-intentioned sentiments which have prompted the efforts of Unesco to seek means of prohibiting and preventing the illicit export, import and sale of cultural property. As nations have come to a fuller appreciation of their own cultural traditions, they have sometimes come to realize that important evidence of those traditions is to be found outside their own national borders. We are sympathetic with this concern and believe that appropriate help should be given to countries which have not yet developed effective means of preserving the cultural objects which form an important part of their artistic and intellectual heritage.

The United States has on several occasions, however, expressed its reservations regarding the practicability of controlling illicit traffic in cultural property at the international level, and, in particular, of utilizing an international convention for this purpose. These reservations have been confirmed by a careful study of the present report and draft recommendation. The report, admittedly a recapitulation of a report prepared for the twelfth session of the General Conference, presents no new information to clarify issues raised on the subject at the 61st session of the Executive Board or in the working party convened in connexion with the twelfth General Conference. The draft recommendation is, in the view of the United States, unworkable in many aspects and thus would not serve its intended purpose of preparing the way for the adoption of an international convention on the subject.

The United States Representative pointed out at the 61st session of the Executive Board that considerable further research would be required before consideration could be given to the subject at the next General Conference. The following are some of the questions for which answers are needed in determining whether an international instrument is required to deal with the problem of illicit traffic in cultural property: What is the scope of the problem? How many nations are concerned with significant illicit export of their important cultural property? Do the nations most concerned with this illicit activity have adequate export regulations and enforcement agencies? Do the chief problems exist with regard to paintings, objects of archaeological or ethnohistorical importance or rare manuscripts? Has the present concern arisen primarily because of actions which are occurring frequently today or has the period of greatest danger passed?

The plan for prohibiting illicit traffic in cultural property proposed in the preliminary draft recommendation appears to us to be impracticable for the following reasons:

1. Cultural property is not defined or delineated clearly, perhaps because the concept is so vague as to defy definition. If the property to be considered were limited to cultural property "of particular importance" and each government would itself determine what constituted its own cultural property of particular importance, the service involved with controlling illegal importations would be obliged to understand and deal with as many concepts of cultural property as there would be countries involved. Furthermore, this diversity of definitions
would make it difficult, if not impossible, for a purchaser to know whether an object that he bought was a "cultural object of particular importance".

2. As the proposed recommendation is not clear as to whether objects determined to be important in the national heritage must be indigenous, an importing country would have the problem of determining the true point of origin of objects and consequently of deciding which laws should be observed in determining the legality of export. An examining officer would doubtless find it difficult to go beyond the country of most recent sojourn of the object.

3. The draft recommendation proposes that museums and other institutions should refrain from buying an object unless they are able to establish its provenance and its lawful export from its country of origin. It is frequently impossible to determine the origin or rightful ownership of paintings, antiquities and other cultural objects.

4. Administration of the provisions of the recommendation would present very serious problems. Maintenance of lists of cultural objects of all Member States at each port of entry would be a staggering task. Even more significant, even though a special "service" would be set up to administer the recommendation, the national customs agency would in effect be obliged to identify cultural objects to be referred to the "service"; the inability of the average customs official to perform this function is readily apparent.

We wish also to question the principle enunciated in Section III, Item 10, which states that cultural objects in private ownership might be included in a national inventory, though there would be no change in their legal status. This provision is predicated upon the assumption that the State in fact has a claim upon all cultural property within its domain and can thus prohibit sale of an object owned by an individual. In the United States, although the power of the Federal Government to regulate import and export of any object is not questioned, there would be a constitutional question concerning the power of the Federal Government to regulate the sale of cultural property.

The United States realizes that the draft recommendation is subject to revision before its submission to the General Conference. However, we wish to reiterate our belief that the problem of illicit traffic of cultural property cannot best be solved through an international agreement. We do believe that individual nations can do much to control the export from their territory of materials which they believe should be retained. We believe, moreover, that Unesco and the International Council of Museums can both assist States in the preparation of appropriate legislation for this purpose and in the organization of local agencies for the protection of cultural property. A suggestion to this effect, made by the Association of Art Museum Directors of the United States of America and Canada, is here enclosed.

Sincerely yours,

Robert H.B. Wade
Director
Multilateral and Special Activities

Seattle Art Museum 11 November 1963

The Association of Art Museum Directors (U.S.A. and Canada)

Re: The Unesco report on MEANS OF PROHIBITING THE ILLICIT EXPORT, IMPORT AND SALE OF CULTURAL PROPERTY

The Metropolitan Museum of Art in New York City has already pointed out some of the legal and practical grounds that make the proposals of this report inoperable in the United States of America.
With the realization of its estimable purpose we wish to urge that Unesco should, instead, use its good offices in assisting each nation in establishing, if so desired, its own Cultural Properties Commission based ideally on the very successful one in Japan.

Each country could then establish its own national treasures and registered items that could not be legally exported. As in many countries of the world, art objects for export could be required to bear the approval of its National Museum or that of the suggested commission before being accepted for shipment by the carrier, thus avoiding the danger of unfinanced return with the necessary refund of the purchase price. This would also obviate congestion at the port of entry and the assignment of customs officers to the impossible task of attempting to enforce foreign restrictions of every country as well as distinguishing between antiques and forgeries, which presumably would be admissible. "A body of qualified experts" could rarely, if ever, be available to assist them. In countries with a vast wealth of archaeological material and inadequate museum facilities, excavations could be financed by the judicious sale of duplicate or equivalent material.

In our opinion, Unesco could properly assist each new country in establishing standards for cultural property and in establishing museums or warehouses to assure the proper preservation of its finest material, especially in tropical countries where deterioration is rapid. As in Japan, duplicate material could be approved for commercial export. A law forbidding the export of all antiques, if strictly obeyed as in the Scandinavian countries, results in international ignorance of the great artistic history of that region and overloads their own museums with duplicate material.

Many art museums in the United States and Canada, like the great historical museums of Europe, are dedicated to forming and displaying collections of original material illustrating the cultural heritage of mankind. In this educational work, with the aid of knowledgable and enterprising dealers, they perform a great service in furthering the international understanding and the appreciation of little known cultures as well as in interpreting the ancient cultures of the world. Their interest has resulted in the recognition and preservation of perishable items that would otherwise have been lost or destroyed in this period of great political change.

Except for sharing in the finds of approved archaeological excavations, museum collections have been acquired by purchase on the open market and through gift. Only rarely is the precise provenance of origin of an item known and then usually from its resemblance to an ancient ruin to which it could not be restored. Only the great old master paintings are apt to be accompanied by a record of previous ownership. Museums rigourously avoid the purchase of publicized stolen art objects.

Art museums deserve encouragement from both Unesco and ICOM and not the threat of being impeded in this dedicated purpose.

Respectfully submitted,

Association of Art Museum Directors
Richard Eugene Fuller, President, 1963-1964
President and Director, Seattle Art Museum

Laurence Sickman, Vice-President
Director, William Rockhill Nelson Gallery

Richard F. Brown, Secretary & Treasurer
Director, Los Angeles County Museum of Art

James J. Rorimer, Executive Committee
Director, Metropolitan Museum of Art

Otto Wittman, Executive Committee
Director, Toledo Museum of Art

(Original: English)
Sir,

I have the honour to refer to your letter CL/1667 regarding the most effective means of prohibiting and preventing the illicit export, import and sale of cultural property.

Our Executive Committee has given careful consideration to the draft recommendation announced in your letter, and expresses its approval of all the suggestions embodied therein.

I have the honour to be,

Sir,

Your obedient Servant,

Signed: Juan E. Pivel Devoto
Minister of Education and Social Welfare, Chairman of the National Commission for Unesco

(Translated from the Spanish)
ANNEX II

ANALYSIS OF OBSERVATIONS FROM MEMBER STATES IMPLYING PROPOSALS FOR THE AMENDMENT OF THE PRELIMINARY DRAFT RECOMMENDATION (UNESCO/CUq/123) ON MEANS OF PROHIBITING THE ILLICIT EXPORT, IMPORT AND SALE OF CULTURAL PROPERTY

GENERAL

It should be pointed out that most replies from Member States are favourable to what Unesco is doing with a view to regulating international trade in cultural property.

However, some States express reservations about the preliminary draft without actually being opposed to the idea of a recommendation. Others advocate more detailed preliminary studies or have doubts about the feasibility of reconciling the measures recommended with the provisions of their own legislation.

Some States question the possibility of giving effect to the measures set out in the preliminary draft recommendation without, however, suggesting any alternative.

Other States mention measures which have been taken at the national level in regard to the export, import and sale of cultural property, including both legislation concerning the actual property itself and stipulations relating to inventory or protection.

Most of the observations made refer to the preliminary report rather than to the actual text of the preliminary draft recommendation and so do not contain specific proposals for amendment of the latter. However, the Secretariat has been able to take some of these observations into account in the revised text.

Finally, some observations suggest amendments to the wording of the preliminary draft. Account has been taken of some of these proposals - fairly limited in number - in preparing the new text, which is included as Annex III of the present report.

A summary of the observations by States, referring either to the report or the preliminary draft, is given hereunder, together with the Secretariat's comments.

PREAMBLE

The observations by States refer to that part of the preliminary report which concerns the preamble to the recommendation, but none suggests any amendment to the preamble.

They represent the views on the recommendation as a whole of the competent authorities of Australia, the Federal Republic of Germany, Switzerland, Syria, United Kingdom and the United States of America.

The Federal Republic of Germany and the United States of America urge the desirability of making further studies before the recommendation is drawn up in final form.

The Federal Republic of Germany, Switzerland and the United Kingdom suggest that the principles stated in the recommendation are too strict and would make it difficult to reconcile legitimate protection with a liberal exchange policy; Switzerland further points out that the content of the recommendation seems at variance with the spirit of the agreement of November 1950 on the importation of educational, scientific and cultural materials.

Most of the other observations submitted refer to procedures in the countries concerned and consequently do not include any suggestions for improving the preliminary draft recommendation.
Comment

The observations made by the Federal Republic of Germany, Switzerland, the United Kingdom and the United States of America represent serious reservations as regards the effectiveness and expedience of the recommendation but do not contain anything which could be taken into account in preparing the final text.

I. DEFINITION

Paragraphs 1 and 2

Australia and Italy make observations on the age criterion in regard to cultural property covered by the recommendation.

Bulgaria proposes that the definition should cover immovable as well as movable property.

Switzerland and the United States of America consider that the definition of cultural property should be more circumscribed; the United Kingdom emphasizes the difficulty of defining the property whose import and export would be subject to control by the responsible authorities.

Japan suggests that the application of paragraph 2, which leaves States free to adopt whatever criteria they deem best for the determination of cultural property, would lead to confusion.

New Zealand suggests that the words "typical specimens" should be replaced by "type specimens" in the English text.

Syria considers that protection should not be limited to cultural property "of particular importance" and raises the question of the criteria which should be adopted in order to define the property to be protected.

Comment

It would not seem advisable to introduce the criterion of the age of the cultural property into the definition, as Australia and Italy suggest, since, under paragraph 2, the criteria to be adopted are a matter for the individual States to decide.

Although immovable property cannot in principle be exported or imported, the Bulgarian observation has been acted upon, especially in view of the fact that immovable property can be the object of a sale. Accordingly, the words "and immovable" have been inserted after the word "movable", and the words "and architecture" after the word "art", while the word "objects" has been replaced by "property".

The observations of Switzerland, the United Kingdom and the United States of America make no specific suggestions regarding the wording of paragraph 1. As it stands, it covers all categories of cultural property to be protected without specifying them, so that, under the terms of paragraph 2, Member States are left free to determine these categories themselves. It would therefore not seem advisable to alter the wording of the definition.

Japan's remark is based on the often considerable variations which may exist between the criteria adopted by different countries. It does not, however, seem feasible to lay down general criteria, as States alone have the necessary authority to establish their own systems of protection.

The amendment proposed by New Zealand has been made in the English text of the recommendation.

As for the observation by Syria, it must be recalled that it seemed necessary to limit the scope of the recommendation to cultural property "of particular importance" for the reasons stated in detail in the last four paragraphs of Section B of the preliminary report and, more
particularly, in order to ensure that the measures advocated in the recommendation should not impede duly controlled international exchanges of cultural property.

It may be recalled in this connexion that the last paragraph in Section B of the preliminary report suggests that it would be advisable to incorporate the limitation in the title of the recommendation by adding the words "of particular importance". In regard to the criteria to be adopted in applying paragraph 2, see the comment above regarding the observation made by Japan.

II. GENERAL PRINCIPLES

Paragraph 3

Bulgaria suggests stressing the principle that cultural property, whether public or private, should be accessible to the people of every country and placed under State protection.

Comment

As the recommendation has a specific, limited purpose, it does not seem desirable to incorporate in it a general principle that is already taken for granted, such as the interest of cultural property to the general public.

Paragraph 4

Japan observes that it would sometimes be difficult for the service for the protection of cultural property of a given country to establish that an import was illegal, since the absence of an export permit would not be sufficient for this purpose.

Comment

Control of the legality of the export and, consequently, the import of certain cultural property may involve difficulties which it would be a matter for the responsible service to deal with - if necessary, by exchanging information with the corresponding services in other countries. Such cases could not, however, be mentioned in the text of the recommendation which, especially in the section on general principles, must needs be confined to a general outline of the action advocated.

Paragraph 8

New Zealand and the United States of America suggest that museums are not always in a position to establish definitely the origin of cultural property offered for sale to them.

Comment

The aim of paragraph 8 is to ensure that all museums, services or institutions concerned adopt the principle of rejecting all offers of sale whose legality is not clearly established. The result would be the general adoption by sellers, when making their offers, of the practice of submitting documents establishing the origin of any such cultural property.

Paragraph 9

Italy expresses reservations about the feasibility of giving effect to provisions concerning the cession or exchange of equivalents of cultural objects whose export or sale cannot be authorized, or the loan or deposit of the objects themselves.

Comment

Such operations, designed to make the different cultures better known in all countries without thereby contravening the purpose of the recommendation, are already an established practice, e.g. archaeological finds, and temporary exhibitions.
III. MEASURES TO BE APPLIED

Paragraph 10

Identification and national inventory of cultural property

Switzerland and the United States of America raise the question of the rights a State might acquire by the inclusion of certain cultural property - private property, for example - in a national inventory; such rights might be contrary to the law in certain countries.

Italy and the United Kingdom consider it difficult and costly to establish a national inventory of cultural property.

Comment

The doubts expressed by Switzerland and the United States of America do not seem fully justified since the provisions of the recommendation could not in any case modify existing legislation. Nevertheless, to bring out this limitation on the scope of the recommendation more clearly, the words "under the terms of the existing legislation" have been inserted at the end of the second sentence of paragraph 10.

As for the objection raised by Italy and the United Kingdom, it must be acknowledged that in countries with a particularly rich cultural heritage, the preparation of an inventory would undoubtedly be a difficult and long-term operation. However, work of this kind, which has already been taken up by the competent services in several States, would be extremely useful in establishing any system of protection.

Paragraph 11

Service for the protection of cultural property

Bulgaria suggests emphasizing the desirability of contacts between the national services in various countries with a view to international collaboration.

Switzerland considers that the application of the provisions of the recommendation would entail a considerable extension of mutual assistance between nations in enforcement of the law, which Switzerland believes should be limited to criminal matters, and that, furthermore, the technical and administrative supervision of the various commercial operations involved would impose a constant mass of detailed work, particularly on the Customs services.

Comment

It is reasonable to anticipate that direct contacts between national services for the protection of cultural property, such as are advocated by Bulgaria, will soon be established and prove extremely useful in carrying the recommendation into effect. However, it is not felt advisable to make any specific reference to this point in a text the sole purpose of which is to define the technical functions, administrative character and general structure of the services in question.

The doubts voiced by Switzerland are felt mainly in countries which, in the matter of international trade in cultural property, have a very liberal policy which there is no compelling reason to change; however, from the standpoint of countries in which this type of trade is already controlled or considered desirable, such an attitude seems to lay the effectiveness of such control open to question.

Paragraph 12

Bilateral and multilateral agreements

The United States of America considers that the problems involved in the international trade in cultural property cannot be settled by international agreements and that - with help from Unesco
and the International Council of Museums (ICOM) — it is for States themselves to make their own arrangements for controlling the export of such property.

Syria, on the other hand, takes the view that there would be great difficulty in arranging bilateral and multilateral agreements and would like to see a more simple form of international collaboration introduced.

Comment

Bilateral and multilateral agreements have proved their worth in cultural exchanges and could afford one of the most effective means of preventing the illegal export and import of cultural property or of remedying the consequences of past operations of this kind. It would therefore seem worth including such arrangements amongst the measures proposed in the recommendation.

Paragraph 13

International collaboration in the detection of illicit operations

The United Kingdom is opposed in principle to the inclusion in international agreements of an obligation for an importing country to verify the legality of an offer of cultural property from another country party to such agreements; depending upon the country, the only way of controlling the import of cultural property will be by insisting on the production of a certificate issued by the competent services of the country of origin.

Comment

Such a certificate would undoubtedly afford the best guarantee of the legality of the export of cultural property, but collaboration based on international agreements along the lines suggested in paragraph 13 would permit closer collaboration between the services of the States party to the agreements, especially as information could be exchanged on dubious offers mentioned in the last sentence of the paragraph.

Paragraph 14

Restitution or return of illicitly exported cultural property

Japan and the United Kingdom refer to the risk of the provisions of this paragraph being interpreted in such a way as to render the principle of restitution applicable on a retrospective basis.

Comment

An export or sale becomes illegal by contravening the rules to which such operations are subject; hence there could be no question of the provisions of the recommendation being applicable retroactively to the date at which they came into force. To make the matter quite clear, however, the words "after the entry into force of the legislative provisions regarding the export, import and sale of cultural property" have been added to the end of paragraph 14.

Paragraph 16

Rights of bona fide purchasers

Italy, New Zealand and Syria raise various questions regarding the application of the concept of the bona fide purchaser.

Syria suggests that the interpretation of the concept should be limited, especially once the present recommendation is adopted.

Italy and New Zealand ask who would be responsible for compensating the bona fide purchaser.
Comment

It is not felt possible to lay down any general rule regarding a problem whose terms may vary considerably from country to country and from case to case. The State demanding the restoration of cultural property illicitly exported from its territory but which has become the property of a bona fide purchaser might be required to provide the sum necessary to make the compensation referred to in paragraph 14 and be entitled, under appropriately designed legislation, to have the sum reimbursed by those responsible for the illegal export. To stress the illegal character of the export which constitutes the main reason for paying compensation to the bona fide purchaser, the words "of cultural property illegally exported, imported or sold" have been inserted after the word "purchasers" in the first sentence of this paragraph.
ANNEX III

PRELIMINARY DRAFT RECOMMENDATION ON MEANS OF PROHIBITING THE ILLICIT EXPORT, IMPORT AND SALE OF CULTURAL PROPERTY

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from ....... to ....... 1964, at its thirteenth session;

Being of the opinion that cultural property constitutes a fundamental element of civilization and national culture, and that familiarity therewith is conducive to understanding and mutual appreciation between nations;

Considering nevertheless that it is incumbent upon every State to protect the integrity of the heritage constituted by the cultural property existing within its territory against the dangers resulting from illicit export, import and sale;

Considering that, to avert these dangers, it is essential for every Member State to become increasingly alive to certain moral obligations concerning respect for the integrity of its own cultural heritage and that of other States;

Convinced that steps should be taken forthwith to encourage the adoption of appropriate measures and an improvement in the climate of international solidarity without which the objectives in view would not be attained;

Having before it proposals for international regulations to prohibit and prevent the illicit export, import and sale of cultural property, which constitute item ....... on the agenda of the session;

Having decided, at its twelfth session, that these proposals should be regulated at the international level by way of a recommendation to Member States;

Adopts, this ....... day of ....... 1964, the present recommendation.

The General Conference recommends that Member States should apply the following provisions by taking whatever legislative or other steps may be required to give effect, within their respective territories, to the principles and norms formulated in the present recommendation.

The General Conference recommends that Member States should bring the present recommendation to the knowledge of authorities and organizations concerned with the protection of cultural property.

The General Conference recommends that Member States should report to it, on dates and in a manner to be determined by it, on the action which they have taken to give effect to the present recommendation.

I. DEFINITION

1. For the purpose of the present recommendation, the term "cultural property" shall be understood to mean movable and immovable property of particular importance to the cultural heritage of a country, such as works of art and architecture, manuscripts, books and other property of artistic, historical or archaeological interest, ethnological documents, type specimens, scientific collections and important collections of books and archives.

2. Each Member State should adopt whatever criteria it deems most suitable for determining which of the items of cultural property located within its territory and of particular importance to its cultural heritage should receive the protection envisaged in the present recommendation.
II. GENERAL PRINCIPLES

3. To ensure the protection of its cultural heritage against all danger of impoverishment, each Member State should take the necessary steps to ensure that all exports of objects of cultural property, as defined in paragraphs 1 and 2 above, shall be subject to prior authorization by the service for the protection of cultural property as provided for hereunder.

4. All imports of cultural property from another State should be subject to control by the service for the protection of cultural property and should not be authorized until such property has been freed from any injunction on the part of the competent authorities in that State.

5. Each Member State should take the necessary steps to exert effective control over the sale of cultural property.

6. Each Member State should lay down general rules governing the application of the above principles.

7. Any export, import or sale effected contrary to these regulations should be regarded as illicit.

8. Museums, and in general all services and institutions specializing in the conservation of cultural property, should refuse to purchase any item of cultural property the origin of which is not definitely established.

9. Each Member State should strive to make available to public collections in other Member States, by sale or exchange, objects equivalent to cultural objects the export or sale of which cannot be authorized, or certain of the latter objects, on loan or deposit.

III. MEASURES TO BE APPLIED

Identification and national inventory of cultural property

10. To permit the application of the above general principles, each Member State should devise and apply procedure for the identification of the cultural property, as defined in paragraphs 1 and 2 above, which exists within its territory, and as far as possible draw up a national inventory of such property. The inclusion of a cultural object in this inventory should produce no change in the legal status of that object under the terms of the existing legislation. In particular, a cultural object in private ownership should remain such even after inclusion in the national inventory.

Service for the protection of cultural property

11. Each Member State should set up a national service for the protection of cultural property. Although differences of tradition and disparity of resources preclude the adoption by all Member States of a uniform structure for these services, certain common principles, set forth below, should nevertheless be adopted in organizing these services:

(a) The national service for the protection of cultural property should as far as possible take the form of a State operated administrative service, or a body equipped by law with the necessary administrative, technical and financial means to exercise its functions effectively;

(b) The functions of the national service for the protection of cultural property should include:

(i) Identification of the cultural property existing within the territory of the State, and, where appropriate, the establishment and posting up of a national inventory of such property, and in accordance with the provisions of paragraph 10 above;

(ii) Control of the export, import and sale of cultural property, in accordance with the provisions of paragraphs 3, 4 and 5 above;
(c) The national service for the protection of cultural property should be empowered to submit proposals to the competent national authorities for any other appropriate legislative or statutory measures for the protection of cultural property, including the introduction of penal and other sanctions for the prevention of illicit export, import and sale;

(d) The national service for the protection of cultural property should be able to call upon the services of a consultative body, consisting of experts, to advise it on technical problems and to propose solutions in contentious cases.

Bilateral or multilateral agreements

12. Whenever necessary or desirable, Member States should conclude bilateral or multilateral agreements to resolve problems flowing from the export, import or sale of cultural property, and more especially in order to secure the restitution of cultural property illicitly exported from their territory to and located in the territory of another party to the agreement. Such agreements might, where appropriate, be comprised within agreements of wider scope, such as cultural agreements.

International collaboration in the detection of illicit operations

13. These bilateral or multilateral agreements should include provisions to the effect that whenever a cultural object is offered for sale the competent services of each State shall ascertain that there are no grounds for regarding that object as proceeding from a theft, an illicit export or sale, or any other operation regarded as illegal under the legislation of the owner State. Any dubious offer, and any details relating thereto, should be brought to the knowledge of the services concerned.

Restitution or return of illicitly exported cultural property

14. Member States, services for the protection of cultural property and, in general, all competent institutions should collaborate with each other in ensuring or facilitating the restitution or return of cultural objects illicitly sold or exported after the entry into force of the legislative provisions concerning the export, import and sale of cultural property.

Publicity in the event of the disappearance of a cultural object

15. The disappearance of any cultural object should be brought to the knowledge of the public by means of specially organized publicity.

Rights of bona fide purchasers

16. Bona fide purchasers of cultural property illegally exported, imported or sold should be entitled to compensation representative of the price paid by them. An appropriate system for determining the amount of such compensation should be envisaged.

17. A purchaser should not be regarded as having acted in good faith in cases where the disappearance of an object, prior to its having been purchased, has been announced, and a description given of it in the press of the State concerned and in that of the other interested States.

Apportionment of cultural property brought to light by foreign scientific missions

18. To promote mutual appreciation of their respective civilizations, Member States should agree on the conditions which might apply in apportioning cultural property brought to light by foreign scientific missions. The conceding authority might consider assigning to such archaeological, ethnological or natural science missions a certain number of cultural objects which it would be prepared to surrender.
Educational action

19. Each Member State should take steps to arouse and develop among its nationals interest in and respect for the national cultural heritage and for those of other States. Such action should be undertaken by the responsible services in co-operation with the educational services and with youth and adult education organizations.