Means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property

Preliminary report prepared in compliance with Article 10.1 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

SUMMARY

Introduction

Purpose of the Convention

Article by article commentary

Annex: Preliminary draft convention concerning the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property.
On 19 November 1964, the General Conference at its thirteenth session adopted a recommendation concerning means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property.

While declaring in favour of adopting such a recommendation, the General Conference, in an earlier resolution (12 C/Resolution 4.413), had expressed the opinion "that an international convention would be the most effective means of obtaining the desired result," and affirmed its desire that "an international convention might be adopted within the shortest possible time"

The Programme and Budget for 1967-1968, adopted by the General Conference at its fourteenth session, contains the following work plan relating to this subject:

"The possibility will be explored of developing, in accordance with the hope expressed by the General Conference at its thirteenth session, recalled in the recommendation on the subject adopted at its fourteenth session, an international convention on the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property."

In implementation of this work plan, the Director-General prepared a preliminary study of the technical and legal aspects of drafting a convention on this subject, which was submitted to the Executive Board at its 78th session. Having taken note of the Director-General's report and of the preliminary study contained in document 78 EX/9, the Executive Board decided to include the question of the desirability of drafting an international convention concerning the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property in the provisional agenda of the fifteenth session of the General Conference. The decision taken in this matter is worded as follows:

"The Executive Board,

Bearing in mind Articles 2 and 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,

Having examined the report and preliminary study contained in document 78 EX/9, and appreciating the need both to consult Member States and to conduct more detailed studies,

Decides to include the following question in the provisional agenda of the fifteenth session of the General Conference: 'Desirability of drafting an international convention concerning the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property';

Being of opinion that such a convention should be drafted in such terms as to make it ratifiable by a large number of Member States, and thus respond to the desire expressed in 12 C/4.413 adopted by the General Conference at its twelfth session,

Requests the Director-General to provide the General Conference with a summary of the Executive Board's discussion on this matter, and

Recommends that the General Conference debate the question at its fifteenth session."

In implementation of this decision, the Director-General submitted the text of the preliminary study and a summary of the discussions to the General Conference (document 15 C/15). The Conference adopted resolution 3.344, which reads as follows:

The General Conference,

Bearing in mind 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 Director-General’s preliminary study on the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property (document 15 C/15),

Considers it desirable that an international convention be drafted on the subject;

Authorizes the Director-General to convene the special committee provided for in Article 10, paragraph 4, of the above-mentioned Rules of Procedure, which will be entrusted with drafting a convention for submission to the General Conference at its sixteenth session.

8. In proceeding to apply this resolution, the Director-General took into account suggestions made at the meetings of the Programme Sub-Commission during the fifteenth session of the General Conference. He also wished to assure for himself as much as possible the co-operation of the most varied skills. A principal expert and four consultants from various parts of the world have worked together on the preliminary draft of the convention here submitted to Member States for comment.

PURPOSE OF THE CONVENTION

9. Cultural property being one of the basic elements of civilization and the culture of peoples, it is important for States to find means of protecting the cultural heritage on their territories from the dangers arising from the illicit export of such property.

As this can be done only if there is close co-operation between States, prohibiting the illicit import of cultural property into a State is the unavoidable corollary of prohibiting its export.

However, the illicit transfer of ownership should also be prohibited, as it helps to impoverish the cultural heritage of peoples by facilitating illicit exports.

10. A people’s cultural heritage. Although this expression is in common use, it is not easy to say exactly what it means. It is not identical with the notion of the cultural heritage of mankind, to be found in the 1954 International Convention on the protection of cultural property in the event of armed conflict. The circumstances are not the same in the two cases. In the 1954 Convention, the property in question is of outstanding importance for all mankind, as well as being property in danger of destruction. The circumstances are not the same in the two cases. The property in question is of outstanding importance for all mankind, as well as being property in danger of destruction. This is quite different from the convention under study, since the danger threatening it is transfer from one territory to another, and not destruction.

11. However humble an object may be, it may be worthy of protection under the present draft. Its commercial value is only one aspect, not the determining one, and even of minor importance, except in the case of possible compensation for the victim of spoliation. An object of no commercial value may, in fact, be immensely important for a people; relics or religious objects, objects intimately associated with a people’s history, with its great men, etc. Another instance - more rare, but conceivable - is that of an object which may not be regarded as cultural in its country of origin, and so does not belong to the cultural heritage of the people of that country, but becomes cultural property in a foreign land: a Nineteenth century boubou may not be thought of as cultural property in Sudan, but may be so in the Ethnological Museum in Paris. It is not for that reason less worthy of protection.

12. All these considerations will figure largely as soon as States are prepared to settle their disputes either by a convention or by law.

History offers examples of such difficulties; for example, the dividing up of the collections of the House of Hapsburg under Article 177 of the Treaty of Trianon, or the restitution of art works, collections of all kinds, archives, etc., settled by the Treaty of Riga of 18 May 1921 between Poland, Russia and the Ukraine.

In the first case, discussion between the Austrian and Hungarian Governments lasted twelve years, for the expression "intellectual heritage" of a people proved to be manifestly imprecise. The problem was to return to Hungary collections, documents and various objects which had belonged to the government of the Austro-Hungarian monarchy or to the Crown and which, by their nature or origin, ought to be regarded as belonging to the Hungarian "intellectual heritage". Discussions were further complicated by the territorial break up of Hungary.
In the end a strictly territorial principle was accepted, for long contested by Hungary. During these and other discussions, it was argued that collections of world-wide repute should be left intact, and this argument prevailed in the Austro-Italian Convention of 4 May 1920, which acknowledged that the Vienna collections constitute an organic whole of undeniable value for the entire world.

It is true that a Nation educates itself and adds to its stature in contact with its works. As the philosopher Taine said, at the end of the Nineteenth century, "Monuments, pictures, statues and books are accumulators storing the most beautiful, the best and the deepest inspirations of peoples over the ages, and the energy thus stored sparks off a fresh impetus. It is true that these harvests of the arts are the work of our ancestors, and the fruits of their imagination are to be found therein, but these in turn have repercussions on the civilization of posterity."

13. This idea has had consequences for the rôle of States and of the international community. States must inventory and protect their cultural heritage, control its movements, if necessary search for and claim it when it has disappeared. The international community in turn must lay down basic principles and assist in the work of protection.

14. There is no doubt that international understanding is encouraged by the circulation of cultural property and it has often been said that works of art, as representing the genius of a people, would be its best ambassadors abroad.

15. However, it cannot be denied that several States are unwilling witnesses of the departure from their territories of cultural property of historical, artistic, archaeological and ethnographical importance without their being able to claim such property in the countries to which it has been secretly transferred. In particular, rapidly developing countries, especially in Tropical Africa, are concerned to protect their works of ethnological interest, the exodus of which is due to archaeological or ethnographical expeditions or to purchases by antique-dealers assisted by a vast network of local jobbers.

16. Apart from the moral and material impoverishment of the cultural heritage of countries subjected to such operations, harm is frequently done to the higher interests of science. Clandestine digs aimed exclusively at precious objects and leading to the deterioration of sites and the dismantling of monuments for the purpose of carrying off transportable archaeological and historical finds, raids on ethnological and biological equipment, the theft of works of art from museums and from public or private collections, deprive science forever of the indispensable media of study and research, and expose such cultural heritage to the dangers of deterioration inherent in clandestine transport and ignorance of essential safety precautions.

17. Even European states have experienced, and are still experiencing, the damage done by organized gangs which do not scruple to raid public collections and sell their works abroad.

18. Of course, in protecting what deserves to be protected, there can be no question of forbidding the purchase and sale of works of art, of restricting the lawful exchange of cultural property; but all this must be controlled in such a way that exports, imports and transfers of cultural property in the interests of the great cause of international understanding do not lead to the disappearance of the cultural heritage of certain States.

19. The present Convention is essentially concerned with determining means to prohibit and prevent action which impoverishes that cultural heritage.

20. The preliminary draft Convention comprises 24 Articles. The report will discuss their provisions, Article by Article.

   Articles 1 - 4  Definition and basic principles
   Articles 5 - 13  Rôle of States
   Article 14  Rôle of the international institution
   Articles 15 - 24  Final provisions

   Conclusion
ARTICLE BY ARTICLE COMMENTARY

Articles 1 - 4

Definition and basic principles

21. Definition of cultural property (Article 1)

Several definitions are to be found in already existing international regulations concerned with cultural property.

22. (a) The International Customs Convention signed in Brussels on 15 December 1950, modified by the protocol of amendment of 1 July 1955, groups works of art, collection pieces and antiques in clearly specified categories, under six headings:

(1) Pictures, paintings and drawings done entirely by hand, other than industrial drawings and hand-decorated manufactured articles.

(2) Original engravings, prints and lithographs.

(3) Original examples of statuary and sculpture in all materials.

(4) Postage and similar stamps, duty and similar stamps, cancelled or uncanceled, but no longer current or intended to have currency in the country of destination.

(5) Collections and specimens for collections of zoology and botany, mineralogy and anatomy, collection items of historical, archaeological, palaeontological, ethnographic and numismatic interest.

(6) Antiquities over one hundred years old.

23. (b) The International Convention for the Protection of Cultural Property in the Event of Armed Conflict, signed at The Hague in May 1954, defines cultural property as follows: movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular, works of art, manuscripts, books and other objects of artistic, historical or archaeological interest, as well as scientific collections and important collections of books or archives or of reproductions of the property defined above. To these movable objects are added certain buildings, refuges and "centres containing monuments".

24. (c) The agreements concerning the end of the official occupation of the Federal Republic of Germany, signed in Paris on 23 October 1954, state, in the chapter on external restitution: "The term 'cultural property' refers to movable property of religious, artistic, documentary, educational or historical interest, or the equivalent. This definition covers such objects as those normally found in museums, public or private collections, libraries or historical archives. The term 'old' applies to movables dating back one hundred years or more before the Convention came into force".

25. (d) The Recommendation of 19 November 1964 on the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property regards as cultural property: movable and immovable property of great 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 of flora and fauna, scientific collections and important collections of books and archives, including musical archives.

26. The objectives with which these definitions are concerned are not those of the present preliminary draft convention.

The Hague Convention of 1954 protects movable and immovable property from the dangers of war which may threaten them with destruction in the place where they are. Protective measures are conceived exclusively for property of "great importance" and buildings containing cultural property: museums, depositories of archives, shelters, etc., together with centres containing monuments. All this has nothing to do with the draft convention now being examined.
27. The Brussels Customs Convention is not concerned with protection of the cultural heritage of peoples, and from this point of view the list of items given can be regarded as too long. For example, all the products of the graphic arts. On the contrary, the Customs definition may not cover such indisputably cultural property as, for example, the earliest photographic plates, which are the "incunabula" of photography.

28. The "Recommendation" of 1964 has been criticized in so far as it restricts cultural property to works of "great importance" only, the States being left to adopt the criteria they deem most suitable for the definition of cultural property.

During the fifteenth session of the General Conference, the Programme and External Relations Commission, discussing the possible drafting of the convention now being examined, expressed the opinion that it should not be limited exclusively to cultural property "of great importance".

29. It further appeared desirable for all States to apply a common definition, so as to facilitate the control of exports and imports of cultural property.

30. However, the need to avoid serious hindrance to international trade must also be taken into account.

31. The definition proposed in the attached preliminary draft draws upon various points in the earlier definitions. The sum of all archaeological excavations or chance finds constitutes a country's archaeological heritage, and as such is worth protecting.

32. From another point of view, it has been considered useful to protect States against the practice known as "Elginism", that is, the dismemberment of an historical monument, so as to export fragments of it, or even the entire monument piece by piece.

33. As regards property of artistic interest, a standard antiquity of fifty years has been adopted, for two reasons:

(a) the circulation of works by contemporary artists should be in no way hindered;

(b) no specific date should be fixed, a reference year, for example (1920 is sometimes taken in certain national legislations), so that the Convention need not be revised periodically and its articles adjusted to the protection requirements of the cultural heritage of peoples.

34. The need to protect souvenirs of great men, or industrial products which have acquired value on account of their antiquity (the first aircraft and motor-cars, for example), has not been overlooked. These are covered by the expression "property of importance for history, including the history of technology".

35. The expression "rare specimens of palaeontology or mineralogy and rare specimens of flora and fauna" covers notions having a precise meaning for specialists.

36. Collections of scientific interest are protected as such (for example, an entomological collection). On the other hand, in the case of books or archives, only important collections are protected.

**Import, export and transfer of cultural property (Article 2)**

37. Article 2 of the preliminary draft proposes a precise definition of the terms "import, export and transfer of illicit property".

38. "Illicit" applies to any import, export or transfer of ownership of cultural property where there is a violation of measures taken by States under the provisions of the present convention.

**Need for international co-operation based on the principle of reciprocity (Article 3)**

39. Article 3 expressly stipulates that "only international co-operation based on the principle of reciprocity is capable of effectively protecting cultural property against all the dangers" inherent in illicit imports, etc.
Cultural heritage of individual countries (Article 4)

40. To avoid what would be the inevitable reactions to a misinterpretation of the Convention, this Article proposes that States acknowledge their own or their nationals' ownership, of the cultural property enumerated in the Article. This is justified by a number of considerations based on history, vested interests, signed agreements and the principle of the non-retroactivity of international conventions.

It should be pointed out that this provision does not mean that certain past circumstances cannot be reconsidered, but that they could be the subject of freely negotiated agreements, as will be indicated when Article 11 is examined.

Articles 5 - 13

Rôle of States

41. National services for the protection of cultural property (Article 5)

Each contracting party should provide that the protection of cultural property shall be the concern of one or more services for the protection of national property. Although differences of constitutional provisions and tradition and disparity of resources preclude the adoption by all Member States of a uniform structure, certain common principles, set forth below, should be adopted.

Services for the protection of cultural property should, as far as possible, take the form of State-operated administrative services, or bodies operating in accordance with the national law with the necessary administrative, technical and financial means to exercise their functions effectively.

42. The functions of national services for the protection of cultural property (Article 6)

To ensure more effective application of the above general principles, each Member State should, as far as possible, devise and apply procedures for the recognition of cultural property within its territory.

43. To enable States to keep watch over their property, a census should be made of it, that is, an official inventory of it should be drawn up. Apart from the administrative usefulness of such an inventory, through the control of such property thus made possible, it would offer the great advantage of bringing unknown cultural property to light, encouraging the study and classification in categories of cultural property as a whole, and determining unique objects and at the same time identical or equivalent ones which could be allocated to scientific expeditions or foreign museums. Many States possess such an inventory of their most important cultural property and appreciate its usefulness. It would be desirable for such basic procedure for any protection to be adopted by all States, even should this mean difficulties and expense, and provision for this has been included in the preliminary draft.

44. National services for the protection of cultural property should establish exact programmes of acquisition and scientific research with reference to archaeology, ethnology and the natural sciences. These programmes should be drawn up in the light of the state of the heritage and the need to enrich it and make it known. Such programmes should of course have educational and cultural objectives.

45. Some of the tasks of national services for the protection of cultural property aim at discouraging or stopping the illicit export of cultural property from a given country; for example, a vigilant control of archaeological sites and systematic excavation campaigns may discourage the clandestine excavations that lead to illicit exports.

46. In ethnology, official finds, in rapidly developing countries particularly, may render the activities of specialized gangs ineffective.

47. Another point calling for special attention is the creation and organization of collections of cultural property: museums, archives, archaeological depositories, etc.
The constitution of such collections may succeed in sheltering cultural property from the dangers with which it is threatened; theft in particular, which is often the prelude to illicit export. In all countries, especially those which recently became independent, scientists must be trained who can cope with all the obligations inherent in the protection of their cultural heritage. They should be trained in the light of scientific and technical developments in the various disciplines concerned with the conservation of cultural property.

48. States Parties to the Convention must also undertake to establish rules in conformity with morality and ethics for the acquisition of cultural property. The specialized services, museums in particular and consequently their curators, should acquire only cultural property free from all national or international protest and claims.

49. It is essential that the new rules to be worked out for acquisitions shall place collectors and dealers on the same footing as curators; otherwise museums would be restrained for the sole benefit of illicit trade in cultural property.

50. The specialized services should be authorized to submit to the other competent national authorities legal and administrative measures found to be essential to the effective protection of cultural property against all danger of impoverishment resulting from illicit dealings.

51. In co-operating with the other States bodies, the national protection services should be given powers to have recourse to the effective application of all measures taken to enrich and conserve cultural property and to control any operations liable to do it injury.

52. The national services for the protection of cultural property must not neglect educational action and must act in liaison with the educational services, museums and workers' and adult education institutes. Strong action must be taken against carelessness, ignorance, to say nothing of political or religious fanaticism, which influence the fate of cultural property. How many major works have been sold at throw-away prices and exported, with second-hand dealers exploiting the ignorance of the owners of such property. Unfettered buying and selling encourage transactions bordering at times on fraud. It will be the task of the service for the protection of cultural property to foster a general feeling of respect for cultural property and of disapproval for illicit dealings in it. The protection of cultural property undoubtedly has a moral aspect. The public must be informed and educated on this point.

53. The disappearance of any cultural object should, at the request of the State claiming that object, be brought to the knowledge of the public by means of appropriate publicity, particularly through the latest media of mass communication. If such publicity should not lead to the immediate recovery of the cultural object, it would have the merit of drawing the attention of the public, specialist circles in particular, to the object in question. The latter would then be unmarketable, with the result that the holder, to avoid serious trouble, might be induced to restore it to its owner.

54. It might further be said that such national publicity could be supplemented by an international campaign (Article 14) organized in specialized publications. The International Institute for the Unification of Private Law highly approves such advertising for lost cultural property, and attaches important legal consequences to it; being of the opinion that, if it were possible to organize a wide international publicity campaign every time a cultural object disappeared, it might be possible in a civil lawsuit to cast doubt on the good faith on the acquirer of any such property, in such a way that he would cease to be protected, and an action for recovery would be possible. Publicity might prove an effective means of justifying such an action, even where it is held that "possession is title".

Other undertakings of the States Parties to the present Convention (Article 7)

55. Other means should be adopted by States for effective action against the illicit import, export and transfer of cultural property.

In the first place, an appropriate export certificate should be introduced. This is one of the key pieces in the working of the Convention. It is an official instrument made out by the competent authority (national service for the protection of cultural property) of the exporting country certifying that it has authorized export of the cultural object described. This certificate is issued against payment.
The certificate would have a second and no less important function, since it would make it possible to take action against the trade in counterfeit property. An appropriate certificate, if necessary prepared after consultation with the experts in the national service for the protection of cultural property, will attest the genuineness of the object exported.

This will make it possible to apply scientific means to the suppression of fraudulent transactions and will help to clean up the trade in works of art; a matter which will be duly appreciated by buyers, especially if they are foreigners. For what would be the practical outcome of legal action taken many years after a sale, should the buyer or his beneficiaries find that the object sold was a fake? With the issue of the appropriate certificate, they can be sure from the start that what they are buying is genuine.

If the buyer nevertheless has doubts in spite of the appropriate certificate, he can always apply to the national service of the importing country to have his purchase valued by an expert. If the two opinions agree, the buyer will be doubly sure; if the second opinion varies from the first, the buyer will still have time to sue the seller.

In conclusion, the appropriate certificate accompanying a cultural object for export testifies that its export is authorized by the exporting nation. This document is essential for effective control, and implies co-operation between the service of cultural property and the Customs. It may be objected here that the trend is towards abolishing Customs barriers, but while that is foreseeable in some parts of the world (for example, E.C.E.), it is far from general. On the contrary, new Customs barriers coincide with the coming of new independent States into existence. For that matter, even if Customs controls were to be abolished or proved difficult to organize in certain countries, export control might quite conceivably be made to depend on the national services responsible for cultural property.

56. Import control of cultural property is complementary to export control. The competent authorities are thereby able to prevent illicit dealings, since the appropriate certificate accompanying the cultural object has to be produced to the authorities of the exporting country, and later to those of the importing country. If fraud is successful the first time, it may be detected at the second control. Any import of a cultural object unaccompanied by the appropriate certificate is regarded as illicit, and the importing country must not allow it to be brought in.

57. Import control has a reputation - in theory, since it has not yet been applied on a large scale - of causing additional formalities and therefore delay. This would be true if both an import and an export certificate were necessary, i.e. if a vendor had to obtain not only an export certificate issued by the authorities of the exporting country but also a second certificate to be obtained by him from the authorities of the importing country. This disadvantage is obviated if one and the same document is required from the competent authorities of the two countries concerned.

58. Provision is made for States to undertake to adopt the necessary measures to seek out and impose penalties on all persons committing an offence against the prohibition on exporting or importing cultural property unless accompanied by an import certificate.

59. It is desirable that illicitly imported cultural property should be sequestrated, as a protective measure pending a decision by the national services responsible for cultural property on the action to be taken. In this connexion all necessary publicity should be given, both nationally and internationally, to trace the lawful owners of sequestrated cultural property, and to restore to them such property.

60. To prevent or where necessary curb illicit transfers of cultural property, States should undertake to penalize specialists in the trade, in particular second-hand and antique-dealers whose proliferation constitutes a permanent encouragement to all kinds of traffic in cultural property, unless they keep a reference register listing the characteristics of each item of cultural property put on the market, its place of origin, the name and exact address of the supplier, the name of the purchaser, and the price paid. Control of such registers by the national services for the protection of cultural property would make it possible to follow up an item of cultural property and perhaps retrace an item which has disappeared after being lost or stolen.

61. To avoid unduly hampering trade in such property, registration might be made compulsory only in the case of property whose value is estimated as at least the minimum monthly salary applicable in
the country concerned. Penalties should be imposed in cases of fraud, particularly for non-registration of an item whose value has obviously been underestimated.

Such procedures already operate in many States. They have been made necessary by the renewed outbreak of the looting of cultural property, planned and carried out by organized gangs with their experts and henchmen.

62. Disciplinary penalties may or not be combined with the foregoing. The States Parties to the Convention should undertake to adopt among their administrative regulations the necessary measures for seeking out and imposing disciplinary or vindicators punishment on those in charge of public or private institutions, especially museums, who have knowingly added to their collections illicitly imported cultural property, or who have acquired cultural property without ascertaining its origin.

Export of cultural property arising from foreign occupation (Article 8)

63. This Article makes provision for the obligation of States with regard to the export of cultural property arising, in a country occupied by a foreign power, from the exaction of heavy per diem occupation costs, or other forms of pressure.

64. Although the Annex to the Fourth Hague Convention of 1907 already prohibited looting, history shows, in particular that of the 1939-1945 war, that such provisions have proved inadequate to deal with modern spoliation methods adopted by occupying powers.

65. As a result, on 5 January 1943, eighteen powers signed in London the Inter-Allied Declaration solemnly condemning acts of looting committed in occupied or controlled territories.

"The Governments of... Hereby issue a formal warning to all concerned, and in particular to persons in neutral countries, that they intend to do their utmost to defeat the methods of dispossession practised by the Governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled.

Accordingly, the Governments making this Declaration and the French National Committee reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, of have been, situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war, of which belong, or have belonged, to persons (including juridical persons) resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected."

66. Subsequently, the various armistice conventions made provision for the restitution of cultural property which had been removed; this expressly covered "objects of an historical character and museum pieces".

Protection of cultural property belonging to extra-metropolitan territories (Article 9)

67. It has become necessary, for the implementation of the principles of the future Convention, to invite States at present responsible for the international relations of a number of peoples, for example, States which possess colonies or extra-metropolitan territories, of federated States within a federation of States, to abstain from effecting transfers which might result in serious loss to the cultural heritage of the peoples whom they represent in the international field.

Such transfers should be regarded as illicit even where, in the terms of the London Declaration of 5 January 1943, they have taken the form of "transactions apparently legal in form, even when they purport to be voluntarily effected"

International co-operation with a view to detecting illicit dealings and restoring cultural property (Article 10)

68. States should take all possible steps to prevent illicit transfers of ownership of cultural property, especially as such transfers often precede subsequent illicit export. It is essential that
States should undertake to make available the co-operation of their services in ensuring the restitution of property illicitly existing on their territory, if only for the purposes of police inquiries, attachments, the execution of judicial decisions, etc. Here again, dishonest purchasers are only too inclined to take advantage of the fact that at present, in the absence of bilateral agreements, of which there are very few, no procedure exists whereby an end can be put to the regrettable situation in which an item of cultural property stolen from a State public collection can be put up for sale abroad.

69. To ensure that normal information is available on the origin and legal status of an item of cultural property, in order to dispel possible doubts in connexion with, for example, a transfer of ownership, the competent services, in particular those for the protection of cultural property, should co-operate and transmit to each other directly, with a minimum of formalities in order to avoid delay, all the necessary information which they either possess or are able to obtain.

70. Under such conditions a claim by the owner to recover an item of cultural property which has been the subject of illicit export or transfer becomes possible, in particular as regards any case of stolen or lost cultural property. The purchaser will be able if necessary to take action against the vendor.

71. Since cases will sometimes arise where individuals who have suffered loss or been the victims of theft will claim recovery of their property from a purchaser who is an individual or a legal entity possibly located in another country, States may accept responsibility for defending the interests of their nationals.

72. This preliminary draft Convention assumes in principle that the purchaser must be presumed to be in good faith; but that this presumption can be overthrown by the circumstances in which the sale took place.

The purchaser is considered to be in good faith when he has a reasonable belief that it is in the vendor's power to dispose freely of the item of cultural property. The onus of proving the absence of good faith lies on the person contesting the good faith of the purchaser. This is in fact in line with judicial practice in many countries.

It is normal for actions for recovery of property to be barred by a time-limitation. In this draft, the period is set at thirty years from the date on which the cultural property was stolen, lost or illicitly imported.

73. In the interest of international co-operation in this field it is suggested that prospective national legislations should make provision for the possibility of dispossessing, for reasons of public utility, and with an advance payment of fair compensation corresponding to the purchase price, bona fide possessors of cultural property illicitly imported and claimed by the State of origin, the cost of compensation to the holder to be borne by that State.

To discourage thieves and their accomplices, special protection should be devised by all States on the lines of that practised in States familiar with the idea of protection of State property ("protection domaniale"), in which cultural property made over to a public collection is inalienable for all time. In the event of disappearance a claim for recovery cannot be time-barred.

74. In other words, a claim by a State despoiled of a cultural object, and the recovery by that State of the object in question, should constitute an indefeasible right, particularly if the object has been registered in a national inventory or belongs to a public collection. Such collections are the moral property of a nation, which cannot be deprived of them. A de facto spoliation cannot become de jure: if the object in question later comes to light, a claim by the despoiled State would still be possible regardless of the time which has elapsed since its disappearance. This imperspicuity may have the effect of discouraging fraudulent purchasers of objects illicitly exported from a foreign country, who rely on a time-bar and produce them after keeping them hidden for several years.
Return of cultural property which has been the subject of illicit export or transfer of ownership before the entry into force of the Convention (Article 11)

75. It is suggested that special agreements may determine the conditions under which very important cultural property, which at some time in history has left a country, should be returned to that country.

76. There are several historical examples of treaties which stipulate the restoration of cultural property.

Under the Treaty of Vienna of 1815 the Allies obliged France to restore various items of property. The Treaty of Vienna of 3 October 1966 provided for the restoration of historical documents belonging to the former Venetian Republic.

The Treaties of Versailles and Saint-Germain stipulate that certain property shall be restored, or authorize claims to be submitted to arbitration.

Charles de Visscher (Mémoire "La protection des monuments et œuvres d'art en temps de guerre", page 151) analyses the principles of these treaties concerning cultural property as follows:

"(1) reconstitution by way of reparation, of a specific work of art elements of which have been scattered in the course of history, even when this has been the result of entirely normal transactions,

(2) reconstitution of a more general and reciprocal nature of the artistic and intellectual heritage of areas divided up in consequence of a change in territorial sovereignty,

(3) subordination of restitutions ordered or envisaged to respect for the unity of collections and essential archives, and to the existence or survival of a binding historical or functional link with a particular area".

77. As an example it is interesting to note that restitutions imposed on Germany concerned works belonging to Belgium which had found their way to Germany as a result of normal transactions, the volets of the polyptych "The Lamb of God" by the Van Eyck brothers or the triptych of "The Last Supper" by Thierry Bouts.

This was not a case of restitution, properly speaking, but of compensation by Germany to Belgium for works of art destroyed by the German forces. The idea of reconstituting intact two major works of art was alone responsible for the choice of works made.

78. The Treaty of Saint-Germain makes compulsory provision under Article 193 for the reciprocal restitution of the official records, documents and reports dealing with either the territories ceded by Austria or those which remained Austrian. It states that Austria shall be bound to restore "respectively to each of the allied or associated governments concerned, all historic records, documents and memorials held by its public institutions which are directly related to the history of the territories ceded and which have been removed from these territories in the last ten years. As regards Italy, this period shall extend to the date of the proclamation of the Kingdom of Italy (1861)".

79. Warning should be given however to possible serious objections to the systematic return of property to its country of origin. Here Article 196 of the Treaty of Saint-Germain is highly instructive. This Article laid down that there should be a general return to "their regions of origin", (1) in whole or in part, of items from collections which had belonged to the Austro-Hungarian Government or to the Crown "and which should belong to the intellectual heritage of the regions ceded". (1)

Austria was invited to enter into negotiations with a view to a "friendly settlement" concluded on a reciprocal basis; pursuant to Articles 191 and 196 of the Treaty of Saint-Germain, Article 1 of the "Convention d'exécution italo-autrichienne" of 4 May 1920 shows the importance of keeping artistic collections intact.

"The Kingdom of Italy recognizes that in the general higher interest of civilization, it is desirable to avoid the dispersal of the historical, artistic and archaeological collections of Austria which,

(1) Unofficial translation, authoritative text not being available.
taken as a whole, constitute a celebrated indivisible aesthetic and historical entity; consequently
Italy, in availing herself of the right laid down in Article 196, paragraph (a) of the Treaty, an article to which Italy gives the most restricted interpretation as regards herself, undertakes to uphold vis-à-vis the other States to which this article applies the above-mentioned interpretation, which Italy considers to be a just one."(1)

Italy accordingly renounced inter alia its claim to the objects constituting the treasure of the Norman kings, used at the coronation of the emperors, though these objects were in fact mentioned in the paragraph headed "Palermo".

80. These examples show that only negotiation, accompanied as the case may be by compensation, taking account of all the circumstances of time and place, together with the need to avoid damaging the unity of collections which should be preserved in the interest of science, can settle the delicate problem of the return of cultural property which has been illicitly transferred before the entry into force of the Convention. In this connexion recourse to the good offices of Unesco is envisaged.

Purchases and rewards in respect of cultural property (Article 12)

81. Each State Party to the Convention is invited to set up a "special fund" or to consider other appropriate financial measures in order that the national service for the protection of cultural property may be in a position as necessary to take financial steps to prevent the export of an item of cultural property. The refusal of the appropriate certificate is admittedly already a guarantee, but fraud is always possible. It has therefore been considered desirable to discourage those who sell cultural property abroad with a view to increasing their resources. The fund in question might be used particularly for the acquisition by the competent authorities, on behalf of a public collection, of a particularly important privately-owned item of cultural property which its owner wishes to put on the market.

The fund could also be used to reward the discoverer of an archaeological find commensurately with the importance of the discovery made. In return for this reward the cultural object would be lodged with a public collection designated by the service for the protection of cultural property, and would thus be protected from the ever-possible danger of illicit export which would be a priori all the easier, because the cultural object would still be unknown and not registered in the national inventory of cultural property.

This fund would also make it possible to reward any person who helps the competent authorities to recover a cultural object which has disappeared.

Reports by States on the legislative and administrative provisions to be made under the terms of this Convention (Article 13)

82. In accordance with the procedure established for the submission and examination of reports by Member States on the action taken on conventions and recommendations adopted by the General Conference, the States Parties to this Convention shall submit special reports with all the necessary information on the legislative and administrative provisions and other measures they have adopted with regard to illicit import, export and transfer of cultural property.

These reports will enable Unesco to meet its obligations under Article 14 of this Convention. They may refer in particular to the measures adopted, relevant legislation and regulations, and the bodies responsible for controlling the export and import of cultural property.

Rôle of the international institution (Article 14)

83. It is necessary that States adhering to the future Convention should be able to call on the technical assistance of the United Nations Educational, Scientific and Cultural Organization in facilitating the implementation of the Convention. Assistance might be valuable in the following fields:

(1) information and education
(2) consultation and expert advice
(3) co-ordination and good offices

(1) Unofficial translation, authoritative text not being available.
In accomplishing its mission in any of these fields it would be desirable for the international institution to be able to call on the co-operation of competent non-governmental organizations such as the International Council of Museums (ICOM), the International Council of Monuments and Sites, the International Committee on the History of Art and the International Centre for the Study of the Preservation and Restoration of Cultural Property.

84. The object would be to make States aware of the international dimension of the problem of legal protection for cultural property seen from the standpoint of respect for the national cultural heritage.

There is a state of mind requiring to be changed, hesitations to be overcome, customs and traditions to be modified and a trade in cultural property which needs to be cleaned up. These legal, psychological and moral changes imply educational action undertaken by an international authority which is by definition disinterested.

85. In addition to this high educational mission, Unesco might within the sphere of its competence and on the basis of Article VIII of its Constitution, conduct surveys on the legal and administrative procedures and methods applicable in Member States to the import, export and transfer of ownership of cultural property, and publish the results.

86. Unesco might also appoint highly-qualified experts to assess the value of cultural property whenever it is called on to intervene in a negotiation, or to help in solving technical problems raised by the implementation of this Convention.

The International Association of the Arts has recommended the establishment of international committees of experts consisting of painters, sculptors and engravers qualified to give useful advice to States having difficulty in preserving their cultural property. It appears that ICOM might advise in this field.

87. The implementation of the Convention may call for co-ordinated activities of different kinds, for example as regards the return of cultural property to its country of origin.

88. As necessary, and at the request of States engaged in a dispute, Unesco could propose its good offices.

Articles 15 - 24

Final provisions

89. The remaining articles of the preliminary draft Convention, with the exception of Article 15, which admits no reservations, deal purely with the ratification, acceptance or accession of Member States to the Convention, its entry into force, and possible denunciation and revision. These traditional provisions require no special comment.

CONCLUSIONS

90. The cultural heritage is a basic element of civilization and culture in all ages. States, individuals and legal entities legally in possession of elements thereof, however varied, should enjoy the right of effective reinforced international protection. This draft, which aims at regulating by way of a freely agreed convention the problem of illicit import, export and transfer of ownership of cultural property, lays down principles and determines measures which confirm this right.

91. The resultant reciprocal responsibilities and obligations will enable the international community to give concrete form to the idea of a world-wide cultural heritage belonging to all countries, to establish a moral and ethical code for the acquisition of cultural property, to abolish disputes and litigation, and thus to contribute towards international understanding.
The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 1970 to 1970, at its sixteenth session,

Considering that cultural property constitutes one of the basic elements of civilization and national culture, and that its true value can be appreciated only in relation to the fullest possible information regarding its origin, history and traditional setting,

Considering that, as cultural institutions, museums should ensure that their collections are built up in accordance with universally recognized moral principles,

Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers resulting from illicit export, import and transfer of ownership of such property,

Considering that, to avert these dangers, it is essential for every State to become increasingly alive to the moral obligations to respect its own cultural heritage and that of all nations,

Considering that the illicit import, export and transfer of ownership of cultural property is an obstacle to that understanding between nations which it is part of Unesco's mission to promote by recommending to interested States, within the field of its competence, international conventions to this end,

Considering that under Article 27 of the Universal Declaration of Human Rights everyone has the right freely to participate in the cultural life of the community and to enjoy the arts, which means that it is incumbent upon States to protect the cultural property existing within their territory against the dangers resulting from the illicit export and transfer of such property,

Considering that such protection can be effective only if organized both nationally and internationally among States working in close co-operation,

Having before it further proposals on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, a question which is on the agenda for the session as item ,

Having decided, at its fifteenth session, that this question should be made the subject of an international convention,

Adopts this Convention on the day of 1970.

ARTICLE 1

For the purposes of this Convention, the term "cultural property" means:

(a) The product of archaeological excavations or discoveries;

(b) elements of historical monuments or archaeological sites which have been dismembered;

(c) property of artistic interest which is more than fifty years old;

(d) rare manuscripts and art books;

(e) property which is important for history, including the history of technology;
(f) objects of ethnological interest;

(g) rare paleontological and mineral specimens; rare specimens of flora and fauna;

(h) scientific collections and important collections of books and archives, including photographic and musical archives.

ARTICLE 2

The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit.

ARTICLE 3

The States Parties to this Convention recognize that the illicit import, export and transfer of cultural property are a cause of the impoverishment of the cultural heritage of many countries, and that only international co-operation based on the principle of reciprocity is capable of effectively protecting each country's cultural property against all the dangers resulting therefrom.

ARTICLE 4

The States Parties to this Convention recognize the ownership vested in States or their nationals of the cultural property listed below:

(a) cultural property created by the individual or collective genius of members of the nation personified by the State in question;

(b) cultural property found within the national territory;

(c) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property;

(d) cultural property which has been the subject of a freely agreed exchange;

(e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property;

(f) cultural property acquired by a State or one of its nationals before this Convention entered into force for the State in question.

ARTICLE 5

To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake to set up within their territories one or more national services, where such services do not already exist, for the protection of cultural property.

ARTICLE 6

The functions of national services for the protection of cultural property shall include:

(a) Recognizing the cultural property existing within their territories;

(b) establishing and maintaining a national inventory of such property;

(c) drawing up a detailed programme for acquisitions and research based on the state of the national cultural heritage and the need to add to it for scientific, cultural or educational purposes;
organizing and controlling the exploration of archaeological sites, and building up and protecting archaeological reserves for research in the future, in order to discourage clandestine excavation which gives rise to the illicit export of cultural property;

(e) collecting ethnological specimens;

(f) forming and organizing collections of cultural property, museums, archives, and repositories for excavations at the national, regional and local levels, staffed by adequate scientific personnel to ensure the proper preservation of such property;

(g) drawing up rules in conformity with morals and ethics for the acquisition of cultural property by any interested individual or legal entity, whether public or private, such as curators, collectors or antique-dealers;

(h) proposing to the competent national authorities other appropriate legislative or administrative measures to protect cultural property and to prevent the illicit import, export and transfer of ownership of such property;

(i) ensuring that such measures are effectively implemented;

(j) taking educational action in stimulating and developing respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;

(k) taking steps to give appropriate publicity to the disappearance of any cultural object.

ARTICLE 7

The States Parties to this Convention also undertake:

(a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property is authorized. This certificate should accompany all items of cultural property exported in accordance with the regulations, and would also attest their authenticity.

(b) to refuse to allow cultural property to leave their territory unless accompanied by the above-mentioned export certificate;

(c) to prohibit the import within their territory of cultural property originating in another State Party to this Convention, unless it is accompanied by such a certificate;

(d) to bring this prohibition to the knowledge of all customs authorities concerned and of any person likely to import cultural property;

(e) to impose a penalty on any individual or legal entity guilty of infringing the prohibition referred to under sub-paragraphs (b) and (c) above;

(f) as far as possible, to sequestrate cultural property introduced illicitly into their territory, to inform all interested parties of the existence of such property by means of appropriate publicity, and to restore it to its State of origin, provided that a request to this effect is made within three years by that State; on the expiry of this period, the State which has decided to sequestrate may hand over such property to the museum of its choice;

(g) to provide for compensation for bona fide owners whose cultural property is restored to the State of origin, on the understanding that cases of compensation will be very rare if the publicity referred to in sub-paragraph (d) above has been effective;

(h) to control trade in cultural property and to oblige antique-dealers, subject to penal sanctions, to keep a register recording the origin of each item of cultural property, the names and addresses of the supplier and purchaser, the description and price of each item sold in cases where the price exceeds the minimum monthly wage applicable in the country in question, and to inform purchasers of cultural property of the export prohibition to which such property may be subject;
(i) to impose disciplinary or penal sanctions on those in charge of public or private institutions, in particular, museums, who knowingly add to their collections illicitly imported cultural property without having ascertained its origin.

**ARTICLE 8**

The export of cultural property arising directly or indirectly from pressure exerted by a foreign power in an occupied country shall also be regarded as illicit.

**ARTICLE 9**

The States Parties to this Convention shall respect the cultural heritage within the territories for the international relations of which they are responsible, and shall protect these territories from the dangers resulting from illicit import, export and transfer of ownership.

**ARTICLE 10**

The States Parties to this Convention also undertake:

(a) To prohibit and prevent to the greatest possible extent transfers of ownership of cultural property likely to promote the illicit import or export of such property;

(b) to ensure that their competent services co-operate in facilitating the restitution of illicitly exported cultural property to its rightful owner;

(c) to admit actions for recovery of property against those possessing a lost, stolen or illicitly imported item of cultural property, on the understanding that the action may be brought by the owner of the cultural property in question, his authorized agent or the State of which he is a national;

(i) the claimant for the recovery of such cultural property must prove the dishonesty of the possessor i.e. must establish that the latter has acquired the property in the full knowledge that it was lost, stolen or illicitly imported;

(ii) such action shall be barred by prescription 30 years from the date on which the cultural property was stolen, lost or illicitly imported;

(d) to make provision in their respective national laws for the possibility of dispossessing, for reasons of public utility, and with an advance payment of fair compensation corresponding to the purchase price, bona fide possessors of cultural property illicitly imported since the entry into force of this Convention and claimed by the State of origin, the cost of compensation to the possessor to be borne by that State;

(e) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate the recovery of such property by the State concerned in cases where it has been exported.

**ARTICLE 11**

Nothing in this Convention shall prevent States Parties thereto from concluding special agreements among themselves regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the State concerned.

**ARTICLE 12**

To remove any possible encouragement to illicit export, and to meet the financial repercussions of implementing the above provisions, each State Party to this Convention shall, in so far as necessary,
set up a fund to finance the compensation referred to under sub-paragraph (d) of Article 9, to ensure publicity for lost cultural property and to purchase for public collections certain items of cultural property of special importance. Such a fund could also be used for rewarding those who make archaeological discoveries or trace cultural property which has disappeared, by a payment proportional in value to that of the property discovered or traced.

ARTICLE 13

The States Parties to this Convention shall in their periodic reports submitted to the General Conference of the United Nations Educational, Scientific and Cultural Organization on dates and in a manner to be determined by it, give information on the legislative and administrative provisions which they have adopted and other action which they have taken for the application of this Convention, together with the experience acquired in this field.

ARTICLE 14

1. The States Parties to this Convention may call on the technical assistance of the United Nations Educational, Scientific and Cultural Organization, particularly as regards:

   (a) Information and education,

   (b) consultation and expert advice,

   (c) co-ordination and good offices.

2. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative, make proposals to States Parties to this Convention for its implementation.

3. To this end, the United Nations Educational, Scientific and Cultural Organization may also call on the co-operation of any competent non-governmental organization.

4. At the request of a State Party to this Convention, the Organization may designate competent experts to assess the value of certain items of cultural property, and at the request of at least two States Parties to this Convention who are engaged in a dispute over its implementation, it may extend its good offices to reach a settlement out of court.

ARTICLE 15

Reservations to this Convention shall not be permitted.

ARTICLE 16

This Convention is drawn up in English, French, Russian and Spanish, the four texts being equally authoritative.

ARTICLE 17

1. This Convention shall be subject to ratification or acceptance by States members of the United Nations Educational, Scientific and Cultural Organization in accordance with their respective constitutional procedures.

2. The instruments of ratification or acceptance shall be deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
ARTICLE 18

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited to accede to it by the Executive Board of the Organization.

2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

ARTICLE 19

This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification, acceptance or accession, but only with respect to those States which have deposited their respective instruments on or before that date. It shall enter into force with respect to any other State three months after the deposit of its instrument of ratification, acceptance or accession.

ARTICLE 20

The States Parties to this Convention recognize that the Convention is applicable not only to their metropolitan territories but also to all territories for the international relations of which they are responsible; they undertake to consult, if necessary, the governments or other competent authorities of these territories on or before ratification, acceptance or accession with a view to securing the application of the Convention to those territories, and to notify the Director-General of the United Nations Educational, Scientific and Cultural Organization of the territories to which it is applied, the notification to take effect three months after the date of its receipt.

ARTICLE 21

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.

2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

ARTICLE 22

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 18, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in Articles 17 and 18, and of the notifications and denunciations provided for in Articles 20 and 21 respectively.

ARTICLE 23

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.

2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession as from the date on which the new revising convention enters into force.
ARTICLE 24

In conformity with Article 102 of the Charter of the United Nations, this Convention shall be registered with the Secretariat of the United Nations at the request of the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Done in Paris this 1970, in two authentic copies bearing the signature of the President of the sixteenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 17 and 18 as well as to the United Nations.