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REPORTS OF MEMBER STATES ON THE ACTION TAKEN BY THEM TO IMPLEMENT THE RECOMMENDATION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT EXPORT, IMPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY (1964) AND THE CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY (1970)

SUMMARY

This document transmits to the General Conference for its examination reports forwarded by Member States as at 15 June 1978 on the action taken by them to implement the above-mentioned Recommendation and Convention. The report of the Committee on Conventions and Recommendations of the Executive Board on this question, together with the Executive Board's comments thereon, will be distributed at a later date as an Addendum to this document.

10 JUL 1978

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REPORTS OF MEMBER STATES
AND
ANALYTICAL NOTES THEREON

PART I

INTRODUCTION

1. The Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (hereinafter referred to as "the Recommendation") was adopted by the General Conference at its thirteenth session on 19 November 1964. The Convention on the same question, entitled "Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property", (hereinafter referred to as "the Convention") was adopted by the General Conference at its sixteenth session on 14 November 1970.
2. The objective of these two instruments is to render more effective the protection of the cultural heritage which constitutes one of the basic elements of civilization and national culture by setting out measures to be taken at the national level to combat theft, clandestine excavations, illicit trade in and export of cultural property and by fostering close collaboration among Member States to inhibit international traffic in cultural property.
3. As at 15 June 1978, 39 Member States had ratified or accepted the Convention. The list of these States is given in the Annex to this document.
4. The General Conference, aware of the urgent need to act against illicit traffic in cultural property, adopted, at its nineteenth session, resolution 4.122 in which it "Request~~ed~~/ Member States to submit for consideration at its twentieth session reports on the action they have taken to implement the Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (1964) and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)". It will be recalled, in this connection, that both the Constitution of the Organization and the Rules of Procedure concerning Recommendations to Member States and International Conventions call for the submission of reports by Member States on the action they have taken in pursuance of conventions and recommendations adopted by the General Conference. Furthermore, Article 16 of the Convention stipulates that States Parties "shall in their periodic reports submitted to the General Conference ... give information on the legislative and administrative provisions which they have adopted and other action they have taken for the application of the Convention, together with details of the experience acquired in this field". The Recommendation provides, moreover, that "Member States should endeavour to assist each other by exchanging the fruits of their experience in the fields covered by the Recommendation" (paragraph 15).
5. In conformity with resolution 4.122 adopted by the General Conference, Member States were invited by circular letters 2559 and 2560 dated 28 June 1977 to transmit their reports concerning the Convention and Recommendation under consideration to the Organization, if possible, by 15 November 1977. The attention of Member States was at the same time drawn to the importance of providing detailed information in their reports on certain crucial issues arising in connection with the implementation of the Recommendation and the Convention. Thus, in their reports on action taken in pursuance of the Convention, States were called upon to furnish details on the way in which effect is given to those provisions in the Convention concerning the exportation of cultural property and, in particular, the introduction of an export certificate (Article 6 of the Convention), and in addition, on the measures taken for prohibiting the import of cultural property stolen from institutions in other States Parties (Article 7 (b) (i) of the Convention). Similarly, Member States were invited to include in their reports with respect to the Recommendation information on the control exerted over the export of cultural property (paragraph 3), on the introduction of an export certificate (paragraph 11.b (ii)), on the import of cultural property (paragraph 4), and the measures taken to discourage museums from purchasing items of cultural property obtained through an illicit export, import or transfer of ownership (paragraph 8).
6. In January 1978, a reminder (DG/4.5/196/628) was sent to those States from which the Secretariat had not yet received replies.
7. As at 15 June 1978, 27 reports from Member States⁽¹⁾ had reached the Secretariat. Seventeen of the 27 reports received were submitted by States Parties to the Convention. These reports are reproduced in Part III of this document.

(1) The list of those States is as follows (States Parties to the Convention are underlined): Argentina, Austria, Brazil, Bulgaria, Canada, Denmark, Ecuador, Finland, France, the German Democratic Republic, Guinea-Bissau, Hungary, India, Iran, Iraq, Japan, Jordan, the Libyan Arab Jamahiriya, New Zealand, Nigeria, Poland, Switzerland, the Syrian Arab Republic, the United Kingdom, the United Republic of Cameroon, Yugoslavia and Zaire.

8. In conformity with the above-mentioned resolution 4.122, the reports of Member States on the action taken to implement the Convention and Recommendation in question are hereby submitted to the General Conference for its consideration. Following the discussion by the General Conference in plenary meeting of the report of the Committee on Conventions and Recommendations on this question, and of the comments of the Executive Board thereon, the General Conference is, in accordance with the Rules of Procedure concerning Recommendations to Member States and International Conventions, to embody its comments on the action taken by Member States in pursuance of the Convention and Recommendation in one or more general reports "which the Conference shall prepare at such times as it may deem appropriate". According to the same Rules of Procedure, the reports of the General Conference on this question "shall be transmitted to Member States, to the United Nations, to National Commissions and to any other authorities specified by the General Conference".

PART II

ANALYTICAL NOTES ON THE REPORTS RECEIVED FROM MEMBER STATES

9. In order to facilitate examination of the reports of Member States, brief analytical notes have been prepared on the information provided by Member States on certain aspects that appear to be of particular relevance for assessing action taken to implement these two instruments. In view of the nature of the reports received, it has not been possible to prepare a detailed analysis of the action taken with respect to each article of the Convention or each paragraph of the Recommendation. The notes that follow are grouped under five main headings, namely:

Measures relating to the illicit export of cultural property

Measures relating to the illicit import of cultural property

Measures relating to the illicit transfer of ownership of cultural property

Other measures

Reasons given by States not Parties to the Convention for the non-ratification of the Convention.

Chapter I - Measures relating to the illicit export of cultural property

10. Both the Convention and the Recommendation call for legislative and administrative measures to be taken by States to ensure the protection of their cultural property against illicit export. Specifically, under Article 5 (b) of the Convention, States Parties are to make arrangements for:

"establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage"

and under Article 6 of the same instrument, States Parties undertake:

- "(a) to introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations;
- (b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;
- (c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property."

Similarly, the Recommendation in paragraph 2 provides that:

"Each Member State should adopt whatever criteria it deems most suitable for defining which items of cultural property within its territory should receive the protection envisaged in this Recommendation by reason of their great importance."

and furthermore, paragraph 10 foresees the preparation of a "national inventory of such property". On the question of export control, the Recommendation specifies in paragraph 11.b (ii) that:

"... the control of exports would be considerably facilitated if items of cultural property were accompanied, at the time of export, by an appropriate certificate in which the exporting State would certify that the export of the cultural property is authorized. In the case of doubt regarding the legality of the export, the institution entrusted with the protection of cultural property should address itself to the competent institution with a view to confirming the legality of the export."

11. The comments that follow, on the reports received from Member States, have been prepared in the light of the above-mentioned provisions. The reports of States Parties to the Convention will be considered separately from those submitted by States not Parties thereto, a pattern that has been adopted throughout Part II of this document.

(a) States Parties to the Convention

12. All States Parties to the Convention indicate that they have adopted legislative measures concerning the export of cultural property.
13. With respect to the establishment of a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage, the reports of several States set out the categories of cultural property, the export of which is prohibited under national legislation. Others indicate that inventories of cultural property have been or are in the process of being established, but it is not always clear whether these inventories are prepared for the general purpose of protecting cultural property or for the specific purpose of prohibiting their export. Yet others refer to the injunction to export cultural property without defining which items or categories of cultural property are covered by this injunction.
14. Thus Argentina, Bulgaria, Iraq, Libyan Arab Jamahiriya and the United Republic of Cameroon refer to the adoption of legislative measures regulating the export of cultural property but the reports of these States provide no information on the items or categories of cultural property protected under such legislation and no mention is made of an inventory or list of cultural property.
15. Eight States Parties make reference to the establishment of inventories of cultural property. India, Jordan and Nigeria all indicate that no item of antiquity may be exported from their countries, adding that inventories of antiquities are being prepared. According to the report of Ecuador, no item belonging to the "national artistic patrimony" of that country may be exported; an inventory of the objects constituting this patrimony has been under preparation for more than two years. Iran refers to the establishment of lists of cultural objects and Yugoslavia affirms that the preparation of lists of cultural property subject to protection under the terms of the Convention is under way. It emerges from the reports of the German Democratic Republic and Poland, that cultural property included in inventories and classified and non-classified cultural property respectively is protected against illicit export, but no further details are provided as to the type of cultural property covered by this protection.
16. The reports received from Brazil, Canada and the Syrian Arab Republic indicate that their national legislations set out in general terms the categories of cultural property, the export of which is prohibited unless special authorization is obtained. In the case of Canada, the Cultural Property Export and Import Act sets out six categories and provides guidelines for the establishment of a control list; the control list itself, a 16-page document, provides specific age and value limits for categories of objects which are carefully defined. It is not known whether other countries have established such detailed lists. In the report of Zaire, reference is made to legislation dating back to 1971 under which the export of classified objects was prohibited and which set out the categories of non-classified objects which could be exported; the report refers later to 1975 regulations prohibiting the export of both classified and non-classified objects which have given rise to some confusion, with the result that the provisions formerly in force, which had been regularly observed, had become ineffective.
17. Details have been made available by few countries on the mechanism adopted for controlling the export of cultural property. Of the 17 States Parties from which reports have been received, 11 namely, Bulgaria, Canada, Ecuador, India, Iraq, Nigeria, Poland, Syrian Arab Republic, United Republic of Cameroon, Yugoslavia and Zaire, affirm that a system has been introduced in their countries whereby a permit must be requested for the export of cultural property. In the case of three of these States (Bulgaria, Iraq and the United Republic of Cameroon), the reports indicate that such a permit should accompany the object exported. Six of these States refer to the procedure for obtaining authorization to export cultural objects, with Bulgaria, Ecuador, India and Zaire mentioning only the person or body responsible for granting authorization and both Canada and the Syrian Arab Republic giving precise details on the different steps to be taken with respect to the export of cultural property (readers of this document are invited to refer to the reports of the latter two States in view of their particular relevance in this context; see paragraphs 5 to 14 of the Canadian report and Articles 66 to 71 and 74 of the law concerning antiquities, which is quoted in part in the Syrian Arab Republic report). Mention is made by Ecuador, Iraq and the Libyan Arab Jamahiriya of customs control to combat the smuggling of cultural objects. Ecuador specifies that every person leaving the country must hand over to emigration and customs authorities a sworn declaration to the effect that no object belonging to the national artistic patrimony is in their luggage.
18. Other measures designed to retain cultural property in their respective countries have been adopted by several States. Thus, Canada refers to the availability under the Cultural Property

Export and Import Act of a broader range of tax exemptions when cultural property is placed in the public domain either by sale or donation and the report of Ecuador mentions certain forms of tax exemption with respect to cultural property forming part of the national artistic patrimony of that country. Furthermore, other States specifically point to measures foreseen to provide opportunities for the transfer of cultural property to the public domain, in the case, for instance, of the public sale of important items. The reports of Jordan and Zaire refer explicitly to such provisions.

(b) States not Parties to the Convention

19. Five of the ten States whose reports are considered in this section, namely, Austria, Hungary, Japan, New Zealand and the United Kingdom, indicate that they have adopted legislative measures to control the export of cultural property. Finland states that legislation to this end has been prepared.

20. The information transmitted by those States on the definition of the cultural property receiving protection under such legislation varies from report to report. Austria declares that the export of all objects of historic, artistic and cultural importance is prohibited, adding that it would be extremely difficult to establish the exhaustive lists of cultural property as required under the Convention; this is the reason put forward for the non-ratification by Austria of the Convention. The report from Hungary indicates that all objects, written documents and other items considered as cultural property and protected as such by law cannot be exported without special authorization, and asserts that the preparation of an inventory of protected cultural property is foreseen. Both Japan and the United Kingdom provide information on the categories of cultural property, the export of which is prohibited, with Japan adding that lists of objects pertaining to each category have been compiled by the national authorities of that country.

21. The draft law included in the report of Guinea-Bissau defines cultural property in terms similar to those used in the Convention; no reference is made, however, to any export prohibition. Switzerland states that the drawing up of scientific inventories of cultural property worthy of protection is foreseen by law but asserts that no export control is undertaken.

22. As in the case of States Parties, few details have been provided in the reports received from States not Parties to the Convention on export control procedure. Four States, namely, Austria, Hungary, Japan and the United Kingdom, mention the use of an export permit. Austria, Hungary and Japan indicate the person or body responsible for granting such authorization, but provide no information on the control procedure followed, whereas the United Kingdom describes the procedure followed in determining whether or not an export licence is to be granted in the case of objects subject to individual licensing control.

23. Similar measures to those adopted by several States Parties for retaining cultural property in their countries are referred to in the reports of Hungary, Japan and the United Kingdom. Both Hungary and Japan affirm that their national authorities have, under specific conditions, a right of pre-emption in the case of the transfer of ownership of items belonging to their cultural heritage. According to the information contained in the report of the United Kingdom, protection of the nation's cultural heritage is promoted by a system of estate duty concessions in respect of items of national, scientific, historic or artistic interest; such concessions have the effect of encouraging testators and heirs to transfer valuable works to the nation rather than to sell them abroad.

Chapter II - Measures relating to the illicit import of cultural property

24. The Convention stipulates that States Parties shall oppose the illicit import of cultural property. In particular, according to Article 7, States Parties undertake:

"(a) to take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;

(b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;

- (ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party".

25. The Recommendation includes the following provisions directly relevant to the illicit import of cultural property:

"No import of cultural property should be authorized until such property has been cleared from any restrictions on the part of the competent authorities in the exporting State." (paragraph 4).

"Member States, services for the protection of cultural property, museums and, in general, all competent institutions should collaborate with one another in ensuring or facilitating the restitution or return of cultural objects illicitly exported. This restitution or return should be carried out in accordance with the laws in force in the State on whose territory the objects are located." (paragraph 16).

"Each Member State should, if necessary, take appropriate measures to provide that its internal laws or the international conventions to which it may become a party, ensure to the bona fide purchaser of cultural property which is to be restored or returned to the territory of the State from which it had been illegally exported, the possibility of obtaining damages or fair compensation." (paragraph 18).

(a) States Parties to the Convention

26. Of the 17 States Parties from which reports have been received, ten States indicate that legislation foresees the import control of cultural property but five of these States, namely, Brazil, German Democratic Republic, Iran, Jordan and the Libyan Arab Jamahiriya provide no additional details or comments thereon.

27. The reports received from Canada, Iraq, Poland, Syrian Arab Republic and the United Republic of Cameroon, indicate that measures are foreseen to co-operate with other States in recovering items illegally imported. Iraq affirms that legislation entitles the government to confiscate any ancient object brought into Iraq without a licence from the government of the country from which the object was exported "on condition that the object should be sent back to the latter government". Similarly, the report from the Syrian Arab Republic refers to legislation stipulating that the antiquities authorities should collaborate in restituting to countries of origin foreign antiquities illicitly imported on condition that such collaboration is reciprocated. Such a condition is also taken up in the report of Poland which refers to the need to make available the list of cultural property, the export of which is prohibited by each State Party to the Convention. A similar concern is voiced by the United Republic of Cameroon which underlines in its report the problem of harmonizing measures in this respect. The report from Canada is more specific: the Cultural Property Export and Import Act foresees that the Government of Canada may enter into bilateral or multilateral cultural property agreements with other countries; when such agreements are signed, Canada will recognize the cultural property export laws of reciprocating States to the extent that an action may be taken to recover foreign cultural property which was exported illegally and brought into Canada; it will then become illegal to import into Canada any foreign cultural property (i.e. that property specifically designated as important by the reciprocating State) illegally exported from a reciprocating State; there is no intention of setting up elaborate checks on imports at Ports of Entry to enforce this law; on the one hand it will be up to the importer to ensure that the cultural property being imported has legally left its country of origin and to obtain export permits when required; on the other hand, the Act provides only for action to be taken when a reciprocating State requests in writing the recovery and return of cultural property illegally imported into Canada; an action in the courts can be instituted for the recovery of the property and the court can arrange for compensation to be paid by the reciprocating State when it is satisfied that the possessor is a bona fide purchaser.

(b) States not Parties to the Convention

28. Only two States not Parties to the Convention refer to the import control of cultural property. Switzerland observes that it would seem possible to reinforce import control and to watch more attentively public sales, although it would be necessary for this purpose for the Swiss authorities to be familiar with the legislation of other countries and to have access to the lists of objects sought. This country adds that its government will take all the necessary steps in the case of any request relating to foreign cultural property illicitly imported into Switzerland and cites two examples of cultural property returned to the Italian Government. The United Kingdom expresses the view that control should rather be executed at the export and not passed on to the importing countries; the controls envisaged by the Recommendation would imply wider import controls with the production to the import authorities of some appropriate export certificate, inevitably leading to delays, particularly since there are no ways of distinguishing at the point of importation goods that have infringed the laws or export controls of other countries; the United Kingdom therefore states that it would not be practicable to impose the import controls referred to in the Recommendation and that consequently no action has been taken under its terms. However, the United Kingdom includes in its report a statement by the Standing Commission on Museums and Galleries affirming that it will continue to be the practice of museums and galleries in the United Kingdom that they will not knowingly acquire any antiquities or other cultural material which they have reason to believe has been exported in contravention of the current laws of the country of origin.

Chapter III - Measures relating to the illicit transfer of ownership of cultural property

29. The Convention provides that States Parties shall oppose the illegal transfer of ownership of cultural property and foresees, inter alia, specific measures in connection with the control of commerce in cultural objects and with the supervision of archaeological sites. Thus, under the terms of Article 10 (a), States Parties undertake to:

"... oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property might be subject;"

Furthermore, the Convention stipulates, in connection with the struggle against clandestine excavations, that States shall make appropriate arrangements for:

"organizing the supervision of archaeological excavations, ensuring the preservation 'in situ' of certain cultural property, and protecting certain areas reserved for future archaeological research;" (Article 5 (d)).

30. Paragraph 5 of the Recommendation states that:

"Each Member State should take appropriate steps to prevent the illicit transfer of ownership of cultural property".

(a) States Parties to the Convention

31. The reports received from several States Parties are not very explicit on the measures taken with respect to the transfer of ownership of cultural property. As far as can be seen from the reports of those States who do provide some details on this question, the extent and form of the control on the transfer of ownership differs considerably from country to country.

32. The German Democratic Republic and Bulgaria refer to the illicit transfer of cultural property, with the German Democratic Republic specifying that regulations protect from illicit transfer museum objects recorded in inventories and Bulgaria observing that there have been no known cases of illicit transfer of ownership of cultural property in that country. On the other hand, as indicated in their reports, Ecuador, Syrian Arab Republic and Zaire require that the authorities be notified in the case of transfer of ownership of cultural objects of particular importance.

33. Several States indicate that measures are taken by their authorities to exercise control on commerce in cultural property. Poland and Yugoslavia both refer to measures taken to this end and Brazil asserts that measures are foreseen for this purpose, while Jordan and the Libyan Arab Jamahiriya declare that trade in cultural property is prohibited in their countries. Other States specify the type of measure taken in this connection. The licencing of dealers in antiquities

is a practice adopted in several countries: Ecuador, India, Nigeria and the Syrian Arab Republic all affirm that such a system has been adopted by their respective authorities. Four States, namely, Ecuador, Iran, Jordan and the Syrian Arab Republic state that some procedure is foreseen for the registration of cultural property held by dealers in such objects. The report of the Syrian Arab Republic sets out in some detail the conditions under which trade in cultural property may be exercised; these include the registration of daily operations of buying and selling and the displaying of a notice to the effect that the export of antiquities abroad is subject to special authorization.

34. With respect to the supervision of archaeological excavations, it emerges from the reports of six States Parties (Brazil, India, Jordan, Nigeria, Syrian Arab Republic and Yugoslavia) that these States have foreseen measures to institute a control over all excavations. Four of these States, namely, India, Jordan, Nigeria and the Syrian Arab Republic, refer specifically to the need to obtain prior authorization before undertaking any excavations and Jordan and the Syrian Arab Republic add that the authorities must be notified of any fortuitous discovery.

(b) States not Parties to the Convention

35. Six of the States not Parties to the Convention comment on the situation prevailing in their respective countries concerning certain aspects of the transfer of ownership of cultural property. The Austrian report indicates that the illicit sale and purchase of cultural property is penalized by law and goes on to illustrate the care exercised in acquiring cultural property for the federal museums by declaring that there has been no known case of unlawful acquisition of such property for a federal museum, at least since the end of the Second World War. In the case of Hungary, the report of this State indicates that the transfer of ownership of cultural property protected by law requires the authorization of the Ministry of Culture. Japan states that the sale of national treasures, important cultural properties and important tangible folk-cultural properties is restricted and that any person intending to sell such property must first make an offer to the State. The registration of collectors and dealers is required under law in New Zealand, according to the report received from this State. Switzerland comments that its federal constitution guarantees freedom of trade but, as noted above, this country considers it possible to maintain a close watch on the trade and in particular on public sales. Both New Zealand and the United Kingdom state that measures are taken by their authorities to supervise archaeological sites, with the United Kingdom adding that preservation "in situ" of certain cultural property is ensured and that it is possible under the terms of national legislation to ensure the protection of certain areas for future archaeological research.

Chapter IV - Other measures

36. Both the Convention and the Recommendation foresee measures on certain related issues which are of fundamental importance in the fight against the illicit import, export and transfer of ownership of cultural property. These include educational measures to stimulate and develop respect for the cultural heritage of all nations, public information activities, the provision of adequate financial resources for the protection of the national cultural heritage and the introduction of sanctions.

(a) States Parties to the Convention

37. Only three of the 17 States Parties from which reports have been received refer to educational measures taken with respect to the provisions of the Convention. Two, namely, Brazil and Yugoslavia, underline the importance of action taken to inculcate in young people interest in and respect for property of cultural value. The protection of cultural monuments is, as mentioned in the report of Yugoslavia, a subject covered by specialized courses for customs officials of that country. Bulgaria also refers to training seminars for customs officials which, the authorities consider, form an essential component of any import-export control system. Closely related to the adoption of educational measures are public information activities for spreading knowledge of the provisions of the Convention. Yugoslavia is the only State Party that makes any reference thereto: information on the provisions of the Convention has been widely disseminated and the Convention itself has been translated into the languages of all the peoples of the country.

38. Mention is made in the reports of five States of sanctions foreseen by law against illegal activities connected with the export of cultural property in some cases, in the case of illicit trade in cultural property, unlawful archaeological excavations and, in one case only, with respect to the import of cultural property. The Cultural Property Export and Import Act of Canada provides for penalties for exporting or importing, or attempting to do so, cultural

property in contravention of the law. The report of Ecuador affirms that penalties are foreseen under national legislation for attempting to export objects forming part of the "national artistic patrimony", for not declaring within the prescribed time-limit the transfer of ownership of such objects, and for trading in cultural property without obtaining prior authorization. The export of antiquities is also, according to the report submitted by Iraq, liable to penalties under the legislation of that country. Both Jordan and the Syrian Arab Republic assert that legislation provides for penalties for illicitly exporting or trading in antiquities, for undertaking archaeological excavations without authorization and for not declaring the discovery of antiquities.

39. On the financial aspects of the issues arising in connection with the Convention, Canada and the German Democratic Republic refer to the positive measures adopted by their authorities. The Canadian Cultural Property Export and Import Act establishes two funds which can be used to assist institutions and public authorities in purchasing cultural property under the conditions laid down by the Act. The German Democratic Republic asserts that its State authorities have sufficient funds to prevent the illicit export of cultural property and to meet its obligations under the Convention. On the other hand, Brazil refers to the lack of sufficient funds which has proved an obstacle in applying all the objectives of the Convention.

(b) States not Parties to the Convention

40. Relatively little information is provided in the reports of States not Parties to the Convention on the educational and financial measures and public information activities referred to above and on the penalties foreseen by law for illicit trafficking in cultural property.

41. Guinea-Bissau, Hungary, Japan and the United Kingdom all underline measures adopted by the appropriate authorities in order to instil in the public at large a greater awareness and appreciation of the value of the cultural heritage. Guinea-Bissau states that one of its principal concerns is to bring to the attention of the whole population the cultural wealth of the nation. The report of Hungary refers to action taken to afford the population the possibility of gaining knowledge and appreciation of the cultural property not only of Hungary but also of other States. In order to stimulate and develop among the general public interest in and respect for the cultural heritage, Japan has, its report indicates, organized seminars and produced films, slides and other educational material on cultural property. The United Kingdom makes reference to a Government White Paper which emphasizes the importance of making "All that is best in the Arts" more widely appreciated and which devotes a whole section to the role of education in accomplishing this task.

42. Austria is the only State not Party to the Convention that refers to sanctions: the illicit sale and purchase of cultural property is punishable under its national legislation.

Chapter V - Reasons given by States not Parties for the non-ratification of the Convention

43. It is essential for any future studies that might be undertaken with respect to the Convention to note the reasons put forward by States for not ratifying this instrument. These reasons relate to the incompatibility of certain provisions of the Convention with national legislation, constitutional principles and with the Rome Treaty instituting the European Economic Community, the definition of cultural property, the practical and administrative aspects, particularly in terms of customs control and, as has already been mentioned, the question of import control.

44. On the question of incompatibility of provisions of the Convention with national legislation, Denmark refers to problems as regards the interrelation between the measures proposed and national legislative principles, adding that problems relating to the field covered by the Convention have been recently raised at the level of the Nordic Council. The report of Finland indicates that there are discrepancies between the provisions of the Convention on the innocent purchaser (Article 7) and national legislation. For France, the question of incompatibility arises, according to the report of this country, in connection with provisions of the Rome Treaty on the free circulation of goods within the European Economic Community, although this State affirms that a solution is being found to this problem. Switzerland declares that its federal structure constitutes an obstacle in creating the constitutional basis and in promulgating the federal laws that would be necessary to give effect to the Convention.

45. The definition of cultural property poses problems for both Austria (see paragraph 20) and Finland, the latter State asserting that the definition of cultural property in the Convention is somewhat different from that for which protection is needed in Finland.

46. Several countries express concern with respect to the practical and administrative measures that would be required to fulfil the obligations under the Convention. Denmark refers to this question while New Zealand specifically mentions the problems of manpower required. The difficulty of improving the effectiveness of customs control is raised in the reports of France and Switzerland: France expresses the fear that efforts to this end would entail excessive border delays; Switzerland indicates that the effectiveness of a customs control system, which it would be both complicated and costly to establish, would be relative because of the volume of border traffic and the difficulties of enforcing control in the mountain regions in that country.

47. As has been indicated above (see paragraph 28), it is on the question of import control and related measures that the United Kingdom finds difficulty in carrying the Convention into legislative and practical effect; this country states, however, that it continues to review the question of ratification at appropriate intervals.

PART III

REPORTS RECEIVED FROM MEMBER STATES AS AT 15 JUNE 1978

A. Reports received from States Parties to the Convention

ARGENTINA

"Decree No. 158 (B.O. 31/7/73), issued on 24 July 1973, set up a system to govern the export of works of art and other cultural property and made the Ministry of Culture and Education responsible for formulating regulations laying down the procedures to be followed for requesting and obtaining licences and authorizations for the export of such property. Accordingly, Ministerial Resolution No. 1576, dated 29 August 1973, regulated the pertinent aspects of the aforesaid legal transactions and assigned the task of supervising export procedures to the Department of Culture.

A bill for a law on the Protection of the Cultural Heritage containing measures compatible with Unesco's recommendations is at present being processed."

BRAZIL

"In 1969, 1970 and 1972 the Ministry of Foreign Affairs requested the National Historical and Artistic Heritage Institute (IPHAN) to give its opinion regarding the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by Unesco's General Conference at its sixteenth session, in Paris, on 14 November 1970.

In November 1969 IPHAN submitted its observations in draft form to the Cultural Department of the Ministry of Foreign Affairs.

After more detailed study the Institute reported in June 1970 that it appeared to be desirable for the Brazilian Government to approve the document.

After approval by Legislative Decree No. 71 of 28 November 1972, the Convention was eventually promulgated by Decree No. 72,312 of 31 May 1973.

In the commentaries IPHAN appended to the Draft Convention the Institute noted that safeguards and regulations already existed in Brazil with regard to export abroad: (a) of the classified objects referred to in Decree-Law No. 25 of 30 November 1937; (b) of works of art produced in Brazil up to the end of the Monarchy and of those executed in Portugal and incorporated into the national heritage during colonial and imperial times (Law No. 4,845 of 19 November 1965); (c) of objects of archaeological, pre-historical, numismatic or artistic interest as referred to in Law No. 3,924 of 26 July 1961; (d) of libraries or document collections composed of Brazilian works or works on Brazil published between the sixteenth and nineteenth centuries (Law No. 5,471 of 9 July 1968); (e) of specimens and fossils as referred to in Decree No. 65,057 of 26 August 1969.

Entry into Brazil of all objects of artistic interest is exempt from customs duties on condition that such objects are more than one hundred years old and are properly authenticated by the National Historical and Artistic Heritage Institute (Decree-Law No. 37 of 18 November 1966, Chapter 99).

Most of the Convention's principal recommendations (see Article 5) have been in force in Brazil since 1937 (note the legislation referred to above) or have been submitted to the higher authorities in the fields of education and culture. Such is the case with regard to the recommendations concerning the inventory, classification, survey, supervision and exploration of archaeological sites; the supervision of business transactions involving works of art; and encouraging the establishment and organization of new museums, archives and collections and ensuring access to them.

Other measures proposed by the Institute within the governmental framework include educational activities designed to awaken the interest of children in property of cultural value from their first years of schooling through the post-university period and to instil in them greater awareness of the history of art in a general sense. Additional measures include both those considered to be basic to the success of any programme concerning the national cultural heritage and those relating not only to the training, but also to the proper remuneration of specialized technical personnel responsible for the preservation, recovery and dissemination of cultural property.

The new Regulations of the National Historical and Artistic Heritage Institute, which will be referred to later on, were approved in 1976 and have contributed to achieving these objectives. Even before IPHAN's reorganization, this Institute, in conjunction with the Council for the Protection of the Historical, Archaeological, Artistic and Touristic Heritage of the State of Sao Paulo (CONDEPHAAT) had organized post-graduate courses at the School of Architecture and City Planning of São Paulo with a view towards improving the techniques for preserving cultural property. In 1976 IPHAN programmed similar courses in the city of Recife, and in 1977 in the State of Minas Gerais, in order to train, in conjunction with the universities, the technicians required for preserving and recovering the cultural heritage.

This Institute additionally plans to give immediate priority to drawing up an inventory of cultural property throughout the national territory.

For this purpose a Unesco technician will soon arrive in Brazil to pass on to us his observations regarding the methodology to be used in carrying out this inventory.

This measure is important in order for Brazil to be able to exercise better control over the location of and improper trade in property of cultural value by means of a detailed inventory to be carried out through an operational system on the national level.

With respect to paragraph (a) of Article 5 of the Convention, IPHAN has also contributed to the preparation of draft bills for legislation to regulate protection of the cultural heritage, including, *inter alia*, a draft bill submitted by Deputy Marco Maciel presently being examined by the Federal Congress.

The observations made by Brazil with respect to Article 6, paragraph (f) of the draft Convention in 1969 referred to the urgent need to emphasize the training of skilled technical personnel as a means of implementing the measures proposed.

The precarious nature of budgetary allocations for cultural property preservation services - a common difficulty encountered by institutions of this kind - coupled with a lack of skilled technical personnel until only recently represented the principal obstacles for official organizations in carrying out their conservation activities.

The National Historical and Artistic Heritage Institute is now in a position to enforce more effectively the measures prohibiting the illicit import, export and transfer of ownership of the cultural property of Brazil.

IPHAN's new Regulations were approved by Order No. 230 of 26 March 1976, which increased the size of its technical staff. The Institute consequently has a greater field for action in the various areas of its concern, particularly with regard to thorough and regular control of the movement of property of cultural value.

Among the objectives of the new Regulations, Chapter 1, Article 1, item v should be noted:

'... the protection, preservation and restoration of classified property in conformity with Decree-Law No. 25 of 30 November 1937, in addition to supervision of such property, which includes trade in the country's antiquities and of traditional works of art, for the purposes stipulated in the aforementioned Decree-Law;'

Chapter III - Competence of Organs - Article 8, paragraph 2 stipulates that:

'... the Department for the Control of Trade in Works of Art and for Development of the Special Fund is responsible for:

I - initiating proceedings with regard to the entry into and exit from the country of works of art in conformity with the laws in force;

- II - supervising and co-ordinating control of trade in works of art in conformity with the laws in force;
- III - promoting studies aimed at creating enterprises of a cultural nature as a means of obtaining new sources of revenue for IPHAN's Special Fund;
- IV - assisting the Directorate in questions regarding annual budget estimates for the Fund;
- V - initiating proceedings, within the purview of its speciality, deriving from decisions taken by the Directorate of the Institute'.

With the recent enlargement of its staff and the establishment of a Special Control Service for supervising trade in works of art the Institute hopes to be able to implement the proposed measures as effectively as possible on the basis of resolution 4.122 dealing with this question.

The Directorate of IPHAN remains at the disposal of Unesco for any other information that may be required."

BULGARIA

"1. With a view to implementing the General Conference's Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property, in 1969 the National Assembly passed a law entitled 'Law on Cultural Monuments and Museums' (published in State Journal No. 29 of 11 April 1969). Article 31 of this Law provides that '... it is prohibited to export cultural monuments from the country'. In exceptional cases export of such property for exhibition purposes may be authorized by the Chairman of the Cultural Committee.

In pursuance of these provisions an ordinance has been issued to define the means of controlling the export of cultural property. Essentially, this ordinance specifies that export of museum property may be carried out only by order of the Chairman of the Cultural Committee.

2. A permit is required from the specialized units in the Cultural Committee for the export of cultural property not registered in museums. For this purpose a certificate is issued to accompany the property, or the object itself is marked with the Cultural Committee's seal.

3. A theoretical seminar for customs employees who work in border zones is an essential element in exercising control over the export and import of cultural property.

In the People's Republic of Bulgaria no cases of illicit transfer of ownership of cultural property have been detected. Consequently, no government documents exist with a view to instituting controls and safeguards in regard to transfers of ownership that might be detrimental to cultural property and national interests."

CANADA

Canada has informed the Secretariat that its report on the action taken to implement the Recommendation and Convention is contained in the document entitled "An Introduction to the Cultural Property Export and Import Act". In view of the length of this document, it has not been found possible to reproduce it in its entirety. Extracts thereof are given below.

"The objective of this first federal law regarding movable cultural property is to give the nation an opportunity to keep in Canada, in the public domain, that which is deemed to be of national importance. Concomitantly it contains provisions prohibiting the import into Canada of cultural property illegally exported from foreign States and facilitates the return of such property to its rightful owners in cases where the foreign State concerned has signed a bilateral or multilateral cultural property agreement with Canada.

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The Act begins by establishing that it will be administered by the Secretary of State, and after setting out certain definitions required for the interpretation of the Act, describes the Control List in general terms. It should be pointed out that a Control List is not unique to this

Act. It is a device used as a supplement to legislation regarding exports and imports, as it allows the setting out of categories of materials to which the export or import regulations may apply in precise terms.

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The Canadian Cultural Property Control List, which is established by the Governor in Council, on the recommendation of the Secretary of State, in consultation with the Minister of Industry, Trade and Commerce, may not include any object that is less than fifty years old or was made by a person still living. The List, as described in the Act, may include 'any objects or classes of objects' which it is deemed are necessary to control 'in order to preserve the national heritage'. There are six categories set out in the Act which provide the guidelines for establishment of the list itself and for five of the six the Act sets minimum value limits. Objects with a value below the minimums are not included in the Control List. Therefore no permit is required before exporting them. It is important to note that these minimums cannot be lowered without parliamentary amendment but, when appropriate, higher value limits can be set and these can be changed as the market varies or other circumstances dictate.

To determine whether or not an object is subject to control, it is not the Act which should be consulted but rather the Control List itself. The Act merely describes the rather open-ended limitations of the List and the lowest fair market value in Canada which can be set. The Control List provides specific age and value limits for carefully defined categories of objects.

In subsequent sections of the Act the method of control is described. The essence of the system for control of the export of cultural property is that those persons wishing to export an object or objects which fall within a class of objects included in the Control List must apply for an export permit. As with all export controls it is the responsibility of the exporter to know what objects come under control or to find out by consulting those who can advise from within the professional community concerned with movable cultural property.

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[An export permit is issued without delay when]

1. Object is not covered by the Control List, or not included in the Control List, but a permit has been requested.
2. Object is included in the Control List but
 - (a) was imported into Canada within the thirty-five years immediately prior to the date of application and was not exported under an export permit under the Act prior to that importation or
 - (b) was loaned to a Canadian institution or public authority by a person who was a non-resident at the time the loan was made or
 - (c) is being exported for some temporary purpose before being returned to Canada.

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When a Permit Officer confirms that an application for an export permit is for an object that is included in the Control List, or if he is in doubt, his next step is to refer the application to an Expert Examiner.

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Where the Expert Examiner determines that the object is included in the Control List, he must then determine its importance. The language of the Act needs no paraphrase:

'... he shall forthwith further determine

- (a) whether the object is of outstanding significance by reason of
 - (i) its close association with Canadian history or national life,
 - (ii) its aesthetic qualities, or
 - (iii) its value in the study of the arts or sciences; and

- (b) whether the object is of such a degree of national importance that its loss to Canada would significantly diminish the national heritage.'

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It should be apparent that the vast majority of movable cultural property exports are either excluded from control or would qualify for a permit. The exceptions, those objects whose loss 'would significantly diminish the national heritage', are subject to a carefully worked out procedure for delay, appeal and arrangements to facilitate domestic purchase by a recognized custodian.

When an Expert Examiner has decided that an object meets the criteria of outstanding significance and national importance, he advises the Permit Officer not to issue a permit, The Permit Officer then informs the Applicant that the permit is denied.

The Applicant now has two options. He may decide to accept the refusal of an export permit and keep the object in Canada. In that case no permit for permanent export will be issued for that particular object for two years. Thus, should the owner decide to sell the object in Canada it would still be subject to the original notice of refusal and a new owner would not be issued an export permit until the two-year period had elapsed. The alternative is to appeal the refusal of a permit. This is done by writing to the Canadian Cultural Property Export Review Board.

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The Review Board will determine if the object in question is included in the Control List and then, calling on expert advice if needed, whether it meets the criteria of outstanding significance and national importance as set out in the Act.

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When an object meets all criteria, the Board has two courses of action open. If it believes that a Canadian institution or public authority might make a fair cash offer to purchase, then it can establish a delay period of from two to six months during which no export permit can be issued. Where the Board is not of the opinion that a fair offer might be made, then it may direct that the permit be issued even though the object has been shown to be of outstanding significance and national importance.

The Board notifies both the Applicant and the Minister when a delay period is established. The Minister may then notify such institutions and public authorities as he sees fit which might wish to negotiate the purchase of the object. Here it should be explained that the Act provides for two funds which can be used to assist institutions and public authorities in making purchases when their own funds are inadequate. One is a fund voted annually by Parliament to provide grants and loans for such purposes. The other is the Canadian Heritage Preservation Endowment Account intended to attract gifts and bequests from the private sector.

[The document proceeds, inter alia, to describe the conditions in which the purchase price of the object would be determined and to refer to the broader availability of tax exemptions when cultural property is donated or sold under certain circumstances.]

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Thus far, the Act has been described in terms of the procedures for the export of movable cultural property together with the incentives for domestic sales or gifts to Canadian institutions or public authorities, and the general considerations concerning the Act's administration. Before examining the question of the illicit import of foreign cultural property, the offenses and penalties for an infringement of the Act in respect of export should be noted.

First of all, it is illegal to export or attempt to export from Canada any object included in the Control List without a permit. Secondly, it is illegal to transfer a permit to allow anyone other than the legal permit holder to use it. And thirdly, anyone who has willfully given false or misleading information in connection with a permit application or its use has committed an offense. Exporting or attempting to export foreign cultural property which has been imported into Canada, and is being claimed as an illegal export by another country and in respect of which court action has been instituted by the Attorney-General of Canada, is also illegal.

For any of these offenses, a fine of up to \$5,000 or imprisonment up to twelve months, or both, is a penalty on summary conviction. On conviction upon indictment, the fine may be up to \$25,000, imprisonment up to five years, or both.

The provisions of the Act regarding the import of foreign cultural property are less complicated than those concerned with export. The principle is clear. Once the Act is in force, the Government of Canada may enter into bilateral or multilateral cultural property agreements with other countries. When such agreements are signed, Canada will then recognize the cultural property export laws of reciprocating States to the extent that an action may be taken to recover foreign cultural property which was exported illegally and brought into Canada.

For the purposes of these agreements, all cultural property included in the Canadian Control List is regarded as being specifically designated as being of importance for 'archaeology, pre-history, history, literature, art or science'. 'Foreign cultural property' will mean that property specifically designated as important 'for archaeology, etc.' by a reciprocating State. Once agreements are signed, it becomes illegal to import into Canada any foreign cultural property illegally exported from a reciprocating State.

It is not intended, however, to set up elaborate checks on imports at Ports of Entry to enforce this law. First, it is up to the importer to know whether or not the cultural property being imported has legally left its country of origin, and to obtain necessary export permits when required. No provision has been made for a foreign cultural property import permit or other formality beyond existing Canadian import procedures. Second, the Act provides only for action to be taken when a reciprocating State requests in writing the recovery and return of cultural property illegally imported into Canada.

Where there is such a request, the Attorney-General of Canada can institute an action in the courts for the recovery of the property. The court can make an order for the recovery of the property and can also arrange for compensation to be paid by the reciprocating State to the person, institution or public authority in possession. Compensation will only be ordered by the court when it is satisfied that the possessor is a *bona fide* purchaser for value who had no knowledge at the time of purchase of the illegal export, or that the possessor has a valid title to the property but had no knowledge of the illegal export at the time the title was acquired.

It should be noted that compensation determined by the court is not fixed to the price paid, or fair market value, but is an amount 'the court considers just in the circumstances'. The fines and imprisonment for the illegal import of foreign cultural property are the same as those cited earlier for illegal export.

The 1970 Unesco 'Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property' is cited in the legislation. When the Act is proclaimed, the Government has announced that Canada will ratify the Convention in the interest of helping to prevent illicit traffic. [Canada deposited its instrument of acceptance of the Convention on 28 March 1978.] Those involved with the importation of cultural property should become familiar with the Convention and the cultural property export laws of the States signatory to it.

Other sections of the Act deal with internal administration, the details of the Income Tax Act (Canada) amendments, and an amendment to the Copyright Act to permit the making of deposit copies of certain classes of manuscripts and documents. There is a provision for the payment of tax penalties by designated institutions or public authorities which dispose of objects which came into their possession under the provisions of the Act (with tax benefits accruing to the donor or vendor), unless the disposition is made to institutions or public authorities designated for such a disposition under the Act. . . ."

ECUADOR

"The Law on the Cultural Heritage contains the following articles related to the control of works of art:

Article 5. The Ecuadorian Cultural Centre shall be informed of all transfers of ownership of objects forming part of the national artistic heritage, whether such transfers are effected freely or are subject to payment. Furthermore, such objects shall not be moved from one place to another without the permission of the aforesaid institution. In either case the Cultural Centre, which is responsible for preserving the national artistic heritage, shall be empowered to refuse such authorization.

Article 10. No object forming part of the national artistic heritage shall be permitted to leave the country except for the purpose of exhibition or for other dissemination purposes, and, in such cases, only with the permission of the President of the Republic after he has received a technical report from the Cultural Centre. Any attempt to remove objects forming part of the national artistic heritage from the country shall be sanctioned by confiscation of such objects and a fine ranging from one thousand to ten thousand sucres. Any attempt to export such objects shall be considered as smuggling and as such may be reported by any person whatsoever.

As a means of supplementing and updating the present Law on the Cultural Heritage, a new Law on the Artistic and Cultural Heritage will shortly be enacted. This Law includes the following consideration in its preamble:

WHEREAS... it is necessary to ensure that the cultural legacy of our predecessors and outstanding examples of contemporary art produced by artists now deceased do not leave the country permanently in either an illicit or a clandestine manner, thereby impoverishing the nation's cultural heritage ...

The articles of the Law further provide that:

Article 16. All persons leaving the country, including those enjoying diplomatic immunity, must submit a sworn declaration to the Immigration Office or to the Port of Embarkation Customs Authorities to the effect that they are not carrying any object forming part of the cultural heritage in their luggage. The relevant Regulations shall establish a system ensuring that such declarations do not interfere with the expeditious departure of passengers and that the truth of such declarations can be checked.

Article 17. All persons engaged in the purchase and sale of artistic and archaeological objects or those of historic value shall require permits and evidence of their qualifications from the National Heritage Department. Failure to comply with this provision shall be penalized by fines ranging from two thousand to fifty thousand sucres according to the magnitude of the business transaction involved or the extent of negligence in complying with these requirements, and repetition of the offense shall result in permanent cancellation of permits.

Article 19. Movable cultural property collected by government bodies or by private natural or artificial persons of sound judgement may be considered to be collections. For legal effects, a collection shall constitute a single and indivisible piece of property, and consequently the movable property included therein may be allotted to various persons or conserved or exhibited in different places only with the authorization of the National Heritage Department.

Article 25. No objects of foreign workmanship may be classified as property forming part of the cultural heritage, whatever their artistic or historical value, if they have been imported temporarily with the knowledge of the National Heritage Department and bear no direct relation to the history of Ecuador.

Article 28. In exceptional cases, national museums may be authorized, by resolution of the President of the Republic after consultation with the National Heritage Department, to exchange duplicates of national or foreign objects belonging to the cultural heritage for other national or foreign movable property abroad of equal cultural value.

Article 41. The export of national or foreign property of cultural, historical or artistic value more than 50 years old is prohibited without express authorization granted in accordance with the provisions of the present Law. Authorizations granted by the National Heritage Department to property not classified as being of a cultural nature may be used for ensuing exports of the same property on the condition that its eventual re-entry into the country is ensured. Re-export of foreign property imported into the country temporarily with the knowledge of the National Heritage Department shall be authorized in all cases with the exception of property bearing a direct relation to the history of Ecuador.

Article 42. Export of cultural property shall be permitted only in the following cases: (a) temporary conveyance abroad for scientific study or for photographic reproduction using technical equipment not available in Ecuador; (b) conveyance abroad of fragments or remains to ascertain their age or to obtain other information by means of technical tests unable to be performed in Ecuador, even though the objects sent may be destroyed as a result of such tests; (c) temporary exhibitions abroad under the auspices of the National Heritage Department; (d) decoration of the premises of diplomatic missions and other Ecuadorian Government offices abroad; (e) travel abroad of Ecuadorian owners of cultural objects who temporarily reside outside the country for purposes of work or for other justifiable reasons; (f) exchange of duplicate pieces owned by governmental, municipal or

private museums for cultural objects from other countries, whether of national or foreign workmanship. Authorization shall be refused whenever it is considered that the cultural value of the property warrants absolute prohibition of its export. Authorizations shall be granted by resolution of the Directorate of the National Heritage Department in the cases referred to in clauses (a) and (e), and by Presidential resolution in that referred to in clause (f).

Article 43. Objects expressly classified as cultural property by the National Heritage Department shall be subject to the provisions of the preceding Article, even though such classification occurs after the procedure for obtaining authorization to export them has been initiated.

Article 44. Unauthorized export of cultural objects constitutes smuggling and is subject to the applicable penalties and to confiscation of the objects by the National Heritage Department. In the case of unauthorized export of an object more than 50 years old that is not classified as a cultural object, the offender shall be subject to a fine ranging from two thousand to two hundred thousand sucres according to the importance of the object. Failure to return the objects referred to in Article 42 within the time stated and the use of such objects abroad for purposes other than those authorized shall likewise be held to constitute smuggling.

Furthermore, as a means of ensuring complete control of the cultural heritage, a National Centre for Cataloguing Cultural Property has been set up as part of the National Heritage Department. For more than two years this Centre has been cataloguing and listing objects in private, religious and State collections at the national level, in addition to inspecting and indexing objects held by galleries and art dealers. The following preambular paragraph and related articles are also included in the Law:

WHEREAS it is desirable to encourage the owners of artistic, archaeological, colonial, republican and contemporary collections, of documents and historical pieces of all kinds, of ethnographic, geological and city embellishment objects, etc., to register such property in the the Inventory of the Cultural Heritage and concomitantly to establish penalties for those who do not co-operate to this end.

Article 1, paragraph (b). The following objects are hereby declared to be property forming part of the cultural heritage of the nation: archaeological objects made of clay, metal, stone or any other material elements of pre-colonial Indian fortifications, temples and cemeteries, churches, convents, chapels and other buildings erected during the colonial period; paintings, sculptures, wood-carvings, and gold and clay objects produced during the colonial period; ancient manuscripts, incunabula and rare editions of colonial books; objects and documents belonging to the forerunners and fathers of national independence or to persons of outstanding importance in national history; and, in general, all objects declared to be of artistic or scientific merit or of historical value by the National Artistic and Cultural Heritage Department, whether they be owned by State institutions, religious communities, societies or private persons.

Paragraph (c). State institutions, religious communities, societies and other natural and artificial persons in possession, in whatever capacity, of objects considered to be cultural property shall be obliged to submit a detailed list of such objects to the National Heritage Department to enable it to draw up an inventory on this basis to form part of the Inventory of the Cultural Heritage of the Nation and thereby contribute to achieving the aims of the present Law. Such owners shall be subject to the applicable civil, administrative and penal sanctions. The State shall facilitate and encourage the actions of those who contribute to achieving the aims of this Law, which is implemented under the supervision of the National Heritage Department.

Article 3. No encumbrance of any kind shall be placed on movable objects incorporated in the national cultural heritage by their inclusion in the Inventory. Such objects shall be exempt from payment of any otherwise applicable taxes, such as death duties, legacy and donation taxes, and such objects shall not be taken into account in determining the taxable property of individuals or in calculating their presumed income for taxation purposes. In short, such objects shall be totally and automatically exempt from federal, municipal or provincial taxes.

Article 7. All transfers of ownership, whether effected free of charge or subject to payment, of objects forming part of the cultural heritage of the nation shall be reported in writing to the Heritage Department within 15 working days after conclusion of the transfer. In the case of hereditary succession, this period of time shall be counted from the time of actual and final delivery of the property to each heir or legatee and not from the time when the inheritance or legacy is awarded. Those failing to comply with the obligation of giving such notification within the prescribed time-limit shall pay a fine equivalent to 20 per cent of the value of the object or the collection, and if, by reason of non-compliance, the object is lost, the fine shall be equivalent to the total value of the object. All losses of objects classified as cultural property, whether

through destruction, theft or disappearance, must be reported immediately to the above-mentioned National Department for appropriate legal action. No fine shall be levied for unindictable loss or destruction, provided that such loss or destruction has been duly reported. Such objects or collections may not be moved from one place to another without permission from the National Department, and in either case this institution, in discharging its responsibility for preserving the cultural heritage, may refuse such authorization."

GERMAN DEMOCRATIC REPUBLIC

"1. Inventories in the museums of the German Democratic Republic are arranged on the basis of recognized principles, in accordance with the social mission. Legal regulations protect them from illicit export and transfer.

2. In the German Democratic Republic there are State authorities for the protection of the cultural heritage which fulfil this duty efficiently. The measures required for it have been taken and are constantly being improved.

3. There are strict legal regulations concerning the protection of the export of cultural property.

4. The acquisition of cultural property from other countries by museums is subject to existing legal regulations which make illicit imports impossible as provided for in the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

5. The authorities of the German Democratic Republic charged with the protection of cultural property have sufficient funds at their disposal to prevent illicit export and to observe the obligations resulting from this Convention."

INDIA

"1. India deposited the instrument of ratification of the Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property with the Director-General of Unesco, on 24 January 1977.

2. India has also enforced comprehensive legislation to regulate the export trade in antiquities and art treasures and to provide for the prevention of smuggling of antiquities. The legislation in question - Antiquities and Art Treasures Act, 1972 - was brought into force with effect from 5 April 1976. It is not lawful, as per the Act, to export any antiquity or art-treasure without a permit issued for the purpose by the Director-General, Archaeological Survey of India.

3. As a facility to exporters and tourists and also to assist the Customs, the Archaeological Survey of India has constituted Expert Advisory Committees for the issue of non-antiquity certificates at all the international ports. An archaeologist has also been posted at all the international ports to assist the customs.

4. According to the provisions of the Antiquities and Art Treasures Act, 1972, persons owing antiquities, irrespective of the country of origin have to get them registered with the Registering Officers. There are at present 104 Registering Officers posted in different parts of the country. The registration now covers three categories of antiquities, viz. (i) sculptures in all media except wood, (ii) paintings and (iii) manuscripts which are illustrated, painted or illuminated. The scope of registration will be extended progressively to other types of antiquities.

5. The system of licensed dealers to carry on the business of selling or offering to sell antiquities has also been introduced. At present no person can carry on business in antiquities without a valid permit issued by the Licensing Officers, appointed for the purpose.

6. The Archaeological Survey of India has taken measures to photo-document the monuments and loose antiquities. In fact, the registration of antiquities is inseparably connected with the programme of photo-documentation. Museums and educational institutions are also being urged to complete their documentation. Steps have also been taken to extend the scope of photo-documentation to private temples.

7. For the preservation of ancient and historical monuments and archaeological sites and remains of national importance, for the regulation of archaeological excavations and for the protection of sculptures, carvings and similar objects there is already an act - the Ancient Monuments and Archaeological Sites and Remains Act, 1958. Most of the States have brought out legislation on the lines of the central act for the preservation of monuments of State importance. According to the provisions of the Act of 1958, no archaeological excavation can be carried out without valid permission issued by the Archaeological Survey of India.

8. The Antiquities and Art Treasures Act, 1972 provides for regulating the export of art-treasures, i. e. any human work, not being an antiquity (an object is an antiquity when it is not less than one hundred years old), declared by the Central Government for the purposes of this Act. So far the works of art of Rabindranath Tagore, Amrit Sher-Gil, Nandalal Bose and Jamini Roy have been declared art-treasures, so the export of their works of art can be made only under a permit.

9. The Wild Life (Protection) Act, 1972, which has also come into force, aims to protect wild animals and birds, and also regulates trade or commerce in them."

IRAN

Iran reports that the following measures have so far been adopted by the cultural authorities concerned:

"Establishment of a Technical Committee in the Department of Archaeology for supervising the implementation of the laws prohibiting the export and import of items of cultural value.

Exercise of care in preparing inventories of goods of cultural and artistic value available with antique dealers and preventing the export, import and sale of goods which do not have adequate documentation and whose transfer is illicit under the terms of the relevant Convention.

Completion of lists of cultural items at museums to ensure improvement and maintenance of the collections.

Conducting necessary studies in the field of efficient implementation of the laws governing cultural property from the viewpoint of its import, export and transfer, and at the same time conforming these laws with the terms of the relevant international Convention.

It will thus be observed that the Imperial Ministry of Culture and Arts is very deeply interested in the implementation of all the provisions of the international Convention on the Import, Export and Illicit Transfer of Ownership of Items of Cultural Value.

In view of the continuous additions to the rich Iranian cultural treasures through the efforts of archaeologists, we shall appreciate if you will kindly inform us of measures adopted in this field by other countries. This information will enable us not only to implement the provisions of the relevant Convention more effectively but will also contribute to our co-ordination activities with them.

Also, we would like an effort to be made to induce private collectors and museums not to buy Iranian cultural property which is not accompanied by an official identity card and other legal documents."

IRAQ

"1. After the Republic of Iraq acceded to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, the Directorate General of Antiquities amended the Law of Antiquities No. 59 of 1936.

According to the first amendment (No. 120 of 1974), the Law of Antiquities prohibits taking any item of antiquities out of the country except objects taken abroad for purposes of scientific study, exchange or exhibition as stipulated in Article 26 of the Law of Antiquities. Article 60 of the said Law had imposed a heavy penalty on any person who transported or attempted, or helped to transport objects in contradiction with the provisions of Article 26.

2. Law No. 40 of 1926, which is still in force, entitles the government to confiscate any ancient object brought into Iraq without licence from the government of the country from which the object was imported and stipulates that the object should be sent back to the latter government.

3. Paragraph 8 of Article 16 of the amended Law of Antiquities No. 59 of 1936 stipulates that imported manuscripts must be registered at the Directorate General of Antiquities in order to be kept safely. It also covers the case of illegally imported manuscripts.

4. The Directorate General of Antiquities has instructed all customs offices at airports and frontiers to exert extraordinary efforts to search arriving and departing persons for smuggled antiquities. Many cases have been recorded in this respect.

5. The control on exportation of cultural property. The exportation of cultural property for the purposes of scientific study, exchange or exhibition is permitted as follows:

- (a) Antiquities exported for scientific study - Paragraph (E) of Article 44 stipulates that a licence must be obtained to export pottery fragments, organic materials and soil and provides that these materials are exempted from custom duties.
- (b) Exchange of antiquities with items possessed by foreign museums and scientific institutes, so as to increase the value of Iraq museums in accordance with Article 25 of the Law of Antiquities. The exportation of these antiquities should be according to paragraph 1.
- (c) Exhibitions of antiquities, i. e. antiquities which are sent abroad to acquaint the world with the civilization of Mesopotamia through exhibitions hosted by other States according to agreement. The exportation of these antiquities is governed by the terms of such agreements, under which the antiquities must be insured for a substantial amount, underwritten by the host States. These guarantees are considered as export certificates.

6. The Directorate General of Antiquities constantly issues laws and regulations which ensure the prevention of illicit import or export of cultural property, in order to preserve it in its original places so that its historical significance may be very helpful in order to understand and preserve the civilization of mankind."

JORDAN

"1. In pursuance of the Recommendation and the Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the General Conference in 1964 and 1970 respectively, the Antiquities Department has taken the following measures:

2. Formulation of Law No. 12 of 1976, which entered into force on 16 February 1976 and which includes the following provisions aimed at ensuring full protection of antique objects against damage, destruction and illicit import and export:

Article 7. All owners or holders of any kind of antique object shall provide a list of such objects and a brief description of them within two months following the entry into force of the present Law.

Article 8. The Department may purchase all or part of the antique objects referred to in the preceding Article at a price to be calculated in conformity with the provisions of the present Law; the remainder of such objects shall remain in the possession of their owners, who shall be prohibited from disposing of them in any way without authorization from the Department.

Article 9. It is prohibited to deface, destroy, mutilate or damage antique objects in any way, particularly by changing their appearance, dismembering them, modifying them or by affixing to them advertising panels or signs of any kind.

Article 13. It is prohibited to erect works of any kind, including constructions and enclosures, less than five to ten metres from an historical monument, as per decision of the Director of the Department.

Article 15. All persons who, although not in possession of an excavation authorization, discover cultural property or are informed of such discoveries, shall so inform the Director of the Department or the nearest police station within ten days following the discovery or the date on which such information was received.

Article 16.

- (a) The Department is the sole body empowered to undertake excavations within the Kingdom or to issue, under the provisions of the present Law, excavation authorizations to archaeological organizations, associations or missions once it has verified their capacity and competence and with the proviso that such excavations are carried out under such conditions as shall be determined by the Director.
- (b) Subject to the provisions of paragraph (a) of the present Article, all individuals and corporate bodies are prohibited from carrying out excavations anywhere within the Kingdom, including excavations carried out on land in their possession.

Article 23. Business transactions involving antiquities are prohibited, and all permits issued for this purpose are hereby cancelled as of the date of entry into force of the present Law.

Article 24. Pursuant to the provisions of Article 23, it is prohibited to export movable archaeological property without authorization from the Department, and approval thereof by the Minister in the case of sale and export.

Article 25. All antiquarians holding valid permits must hand in, within two months following entry into force of this Law, the registers referred to in Article 37 (i) of Law No. 26 of 1968, after recording on them all the details prescribed in Article 38 of that Law.

Article 26.

- (a) The Department is empowered to purchase all or part of antique objects in the possession of an owner and to set the price with the agreement of the Minister. In the event of disagreement, the price shall be determined by two experts, one of whom shall be designated by the Department and the other by the owner. If the two experts fail to come to an agreement they shall call in a referee.
- (b) In the event the Department decides not to purchase the antique objects, their owner may, within four months after receiving notification of such decision, transfer ownership to another party. The Department shall, however, be informed of such transactions and exercise supervision in regard to them.

Article 27. Any persons:

- (a) carrying out excavations without having obtained authorization as prescribed by the present Law; or
- (b) trafficking in antiquities

shall be liable to imprisonment for three years and a fine of two hundred dinars.

Article 28. Any persons who:

- (a) do not submit to the Department a list of antique objects they possess or hold at the time of entry into force of the Law or who do not hand in a register of the antique objects in their possession within the time prescribed by the present Law;
- (b) deface, destroy or mutilate antique objects, particularly by changing their appearance, dismembering them, modifying them or affixing to them advertising panels, signs or other objects of any kind;
- (c) fake or counterfeit any antique object;
- (d) manufacture or circulate one or more copies of an antique object without the authorization of the Department;
- (e) manufacture and use moulds and specimens of antique objects without authorization of the Department;
- (f) discover antique objects or are informed of such discoveries and fail to inform the authorities in conformity with the provisions of the present Law;

- (g) furnish false data or information or submit false documents in order to obtain such permits or authorizations as are granted under the present Law;
- (h) refuse or fail to turn over antique objects they have discovered to the Department, whether or not they are in possession of an authorization to excavate;
- (i) export antique objects or dispose of them in violation of the provisions of the present Law, particularly through concealment and smuggling;

shall be liable to imprisonment for two months to two years or to a fine of thirty to two hundred dinars.

3. The Department has also published regulations concerning foreign archaeological missions carrying out excavations with its authorization.

4. The Law and the regulations presently in force in the Hashemite Kingdom of Jordan have enabled the Antiquities Department to exercise satisfactory control over the ownership and transfer of ownership of antique objects and to achieve, in general terms, the objectives of the Recommendation and the Convention adopted by Unesco's General Conference respectively in 1964 and 1970."

LIBYAN ARAB JAMAHIRIYA

"Museums in the Socialist People's Lybian Arab Jamahiriya are governmental institutions and their acquisitions are purely Libyan, in which there is no room to date to exhibit any imported material.

In this regard, Law 40 of 1968 considers antiquities inter alia as public property and therefore strictly prohibits trade in them.

Precise and strict instructions are given to customs and police officials to confiscate any cultural property and advise the Antiquities Department of the confiscation so as to enable it to take the proper procedure in this respect.

Law 40 also implicitly prevents the import of stolen cultural properties, as well as the export of any cultural property, as it is considered part of public property and thus belongs to the State and is subject to the State Audit General. The contents of museums in the Jamahiriya are derived from the excavations and private works which are offered voluntarily, or sold by citizens after confirmation that they own them.

Museums acquire no cultural property which has been either imported or exported.

Such are the actions taken by the Antiquities Department to implement the Recommendation and Convention [on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property]."

NIGERIA

"In Nigeria, monuments, antiquities and cultural or historic sites are protected by the provisions of the Antiquities Ordinance No. 17, 1953.

The 1953 Ordinance established the Antiquities Commission which is charged with the responsibility of establishing museums and declaring historic sites, buildings and antiquities as monuments. The Antiquities Commission also has the powers of granting or refusing export permits for Nigerian antiquities. According to Section 14 (1) of the Antiquities Ordinance, 1953, 'the Antiquities Commission may, if it considers that any antiquity is in need of protection or preservation and ought in the public interest to be protected or preserved, cause a notice to be published in the Gazette'.

Section 22 (on export of antiquities) says:

- (1) Subject to the provisions of subsection (4) of this section, and to any exceptions which may be prescribed, no antiquity shall be exported from Nigeria without a permit issued in that behalf by the Commission.

Section 23 (on excavations and discoveries of archaeological materials) says:

- (1) No person shall by means of excavation or similar operations search for any antiquity unless authorized by a permit issued by the Commission.

In 1974, a decree known as Antiquities (Prohibited Transfers) Decree, 1974, No. 9, was promulgated. The Decree makes it illegal for anyone other than an accredited agent of the Federal Department of Antiquities to buy or sell Nigerian antiquities. The Decree is aimed at preventing illegal trafficking in Nigerian antiquities.

As a follow up to the Decree, steps were taken to register all antiquities in private hands throughout Nigeria. Section 3 (1) of the Decree states:

'Any person who has an antiquity in his possession or under his control either before or after the commencement of this Decree shall, if so demanded by an accredited agent, register the antiquity with the accredited agent ...'. The entire nation was covered and about one million antiquities in private hands have been registered. The objectives of this exercise are:

- (a) to check illegal trafficking in Nigerian antiquities;
- (b) to enable the Federal Department of Antiquities to know who has what Nigerian antiquities;
- (c) to create an awareness of the need to preserve Nigerian antiquities."

POLAND

"1. The Council of State, which is the competent authority in this field, ratified the Convention [On the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property] on 10 January 1974. The ratification instrument was deposited on 31 January 1974. (Law Gazette No. 20, Text 107)

2. Most of the provisions of the Convention have been in force in Poland for a long time by virtue of the Law of 15 February 1962 on the protection of cultural property and on museums (Law Gazette No. 10, Text 48). Specifically, the export of classified or unclassified cultural property produced before 9 May 1945 is prohibited except when accompanied by an export permit issued by the Minister of Culture and Arts or by certification issued by the competent provincial curator of monuments to the effect that the property has no real value from a scientific, artistic or historical standpoint.

3. In principle, and on the condition that reciprocity exists, it is prohibited to import cultural property from countries adhering to the Convention without an appropriate certificate. However, in order to put this principle into practice it would be necessary to have a list of the cultural property whose export is prohibited from each of these countries, in addition to the text of the export certificate.

4. Trade in works of art and other objects of historical, artistic and scientific value, in addition to ancient books and other printed matter, is strictly regulated.

5. It is very regrettable that most of the countries in which the traffic in works of art and antiquities is concentrated have not yet ratified the Convention, inasmuch as this makes the struggle against the illicit traffic in cultural property extremely difficult and considerably reduces its scope and effectiveness."

SYRIAN ARAB REPUBLIC

The Minister of Education transmits the following information:

"The Department of Antiquities and Museums of the Syrian Arab Republic has informed us that the Recommendation adopted by the General Conference at its thirteenth session on 19 October 1964 and the Convention adopted by the General Conference at its sixteenth session on 14 October 1970, both of which concern [the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property], are being applied and enforced by virtue of the provisions of Decree-Law No. 222 of 26 October 1963, which regulates antiquities in Syria, and particularly Articles 12 and 33 thereof."

The provisions contained in Articles 12 and 33 of Decree-Law No. 222 are quoted below, in addition to other particularly pertinent provisions of the same Decree-Law:

"Article 1. Antiquities are considered to be such movable or immovable property as has been erected, manufactured, written or designed by man more than two hundred years ago (reckoned by the Christian calendar) or more than two hundred and six years ago (reckoned by the Muslim calendar).

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Article 3. Antiquities are classified into two categories:

movable antiquities, and

immovable antiquities.

B. Movable antiquities are those inherently susceptible of being removed from the ground or from historical monuments and transported, such as sculptures, coins, figurines, engravings, manuscripts, textiles and all manufactured objects irrespective of their composition, form and use.

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Article 12. The Antiquities Authorities, in conformity with agreements, treaties and recommendations drawn up by international organizations, shall take appropriate steps to return antiquities illicitly exported from the Syrian Arab Republic. They shall also collaborate in returning to their countries of origin any foreign antiquities imported illicitly on condition that such collaboration is reciprocal.

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Article 30. Movable antiquities belonging to the State and conserved in State museums shall not be sold or donated. However, it is permitted to sell movable antiquities that may be dispensed with because of the existence of a sufficient number of duplicates. Such sales must be authorized by Presidential decree issued with the assent of the Council of Antiquities.

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Article 33. The Customs Office shall turn over antiquities imported from abroad to the Antiquities Authorities for registration of important items, which, as movable antiquities, shall be subject to the provisions of this law.

Article 34. Ownership of a registered movable antiquity may be transferred, on condition that the seller informs the Antiquities Authorities, within three days following the date of the transfer, of the name of the new owner and his address as they appear on his identity card. In the event that the new owner is a foreigner and wishes to export the antiquity abroad, the act of transfer shall not be valid until an export permit is obtained.

Article 35. Any person who fortuitously discovers a movable antiquity must make a declaration to that effect to the nearest administrative authorities within 24 hours of such discovery and keep the antiquity in his possession until such time as it can be turned over to the Antiquities Authorities, who shall be immediately informed of the discovery by the administrative authorities.

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Article 56. Trade in antiquities shall be authorized according to the provisions of this law by an official permit issued by the Antiquities Authorities. Such permits shall be valid for one year and shall be renewable by payment of an annual fee to be determined by ministerial order after consultation with the Ministry of Finances.

Article 57. Trade in antiquities shall be confined to movable antiquities that have been registered with the Antiquities Authorities and whose owners have been authorized by such authorities to dispose of them. However, antique dealers may purchase other objects on the condition that they submit them to such authorities within three days following their purchase and furnish precise information regarding the origin of the objects purchased. The Antiquities Authorities shall have the prerogative of purchasing any portion thereof and of registering whatever portion so merits, prior to leaving the objects in the possession of the dealer or granting him full freedom to dispose of them without registration.

Article 58. Permits for trade in antiquities must bear the full name and address of the dealer and a precise indication of the premises on which he desires to exercise his trade.

Article 59. All authorized dealers must observe the following conditions, in addition to any other conditions the Antiquities Authorities deem necessary to add to the permit:

- A. Post signs on the entrance to their sales premises indicating that they are authorized to deal in antiquities;
- B. Refrain from storing any antiquity outside the premises on which they are authorized to deal in antiquities without authorization by the Antiquities Authorities;
- C. Maintain registers on which they keep a detailed list of the antiquities in their possession, in addition to their daily purchase and sale operations, in conformity with instructions and forms to be furnished by the Antiquities Authorities. Such registers must be presented whenever the Antiquities Authorities' inspectors and agents so request;
- D. Post a notice in a visible location on the sales premises to the effect that the export of antiquities abroad is subject to authorization by the Antiquities Authorities. This notice must appear in either French or English, in addition to Arabic;
- E. Show Antiquities Authorities officials all antiquities in their possession when inspections are carried out;
- F. Furnish the Antiquities Authorities with photographs of any antiquity in their possession or permit such authorities to make their own photographs should they so desire;
- G. Submit to the Antiquities Authorities a declaration with respect to all antiquities purchased or sold within three days following the date of such purchase or sale. Such declarations must bear a detailed description of the antiquity and the identity of the seller or the new buyer and must be signed by both parties;
- H. Assist Antiquities Authorities officials and facilitate their work when inspections are carried out;
- I. Obtain prior authorization from the Antiquities Authorities in the event of a change of address of the sales premises.

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Article 66. Export of antiquities abroad is subject to issuance of a special permit by the Antiquities Authorities in conformity with the provisions of this law. Such Authorities are fully empowered to refuse export authorizations for any antiquities whatsoever if they deem that such export would result in impoverishment of the historical and artistic heritage of the country.

Article 67. Only movable antiquities may be exported.

Article 68. Any person desiring to export antiquities in his possession must submit a request to the Antiquities Authorities bearing:

1. His full name, profession, domicile and nationality;
2. The name of the port, railway station or border point through which the antiquities are to be exported;
3. The destination to which the antiquities are to be exported and the name of the addressee;
4. The means by which such antiquities came into his possession; and
5. A description of the antiquities, including their number, nature, dimensions and assessed value.

The applicant must submit the antiquities to be exported together with photographs of them to the Antiquities Authorities.

Article 69.

- A. Antiquities purchase commissions may be set up by ministerial order whenever necessary. At least one member of such commissions shall be a museum curator or director.

- B. Antiquities intended for export shall be submitted to such antiquities purchase commissions for the purpose of assessing their real value.
- C. After inspection of the antiquities intended for export, the Antiquities Authorities shall be empowered to authorize or refuse permission for their export or to purchase whatever portion thereof they may desire at the price appearing on the export application. Should the Antiquities Authorities observe a great difference between the price appearing on the export application and the assessed value assigned by the purchase commission, the latter price shall be taken into consideration.
- D. The Antiquities Authorities shall issue export permits for the following objects:
 - 1. Antiquities sold by them to private parties and associations;
 - 2. Antiquities they choose to exchange with museums and scientific institutions outside the Syrian Arab Republic; and
 - 3. Antiquities conceded to institutions, associations or scientific missions at the conclusion of officially authorized excavations they have undertaken.

Article 70. Antiquities intended for export shall be subject to the following provisions:

- 1. Should the value of the antiquity or antiquities intended for export amount to more than 500 Syrian pounds, authorization shall be required from the Council of Antiquities upon the initiative of the Director-General of Antiquities and Museums;
- 2. Should the value of the antiquity or antiquities intended for export amount to more than 5,000 Syrian pounds, authorization shall be required from the Minister of Culture and National Orientation upon the initiative of the Council of Antiquities.

In either case, such antiquities shall be submitted to the antiquities purchase commission for assesement of their real value.

Article 71. Upon authorization of the export of a given antiquity by the Antiquities Authorities, an official export authorization shall be issued by the Director-General of Antiquities and Museums to the exporter, who shall pay an export tax thereon.

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Article 74. Exporters of antiquities must present export authorizations whenever requested to do so by customs, post office and criminal investigation officials and all members of the police force, who shall confiscate and report all antiquities whose owners do not possess export authorizations and subsequently turn over such antiquities to the Antiquities Authorities.

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Article 76. Theft of an antiquity belonging to the State or to private parties shall be punishable by two to three years imprisonment and a fine of 500 to 10,000 Syrian pounds.

Article 77. Any person who:

- A. undertakes, sponsors or collaborates in clandestine excavations;
- B. participates in trade in antiquities without authorization;
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- E. exports, attempts to export or assists in the illicit export of an antiquity
-

shall be subject to either imprisonment for one month to two years or a fine of 100 to 1,000 Syrian pounds or both."

UNITED REPUBLIC OF CAMEROON

"With regard to the export of cultural property, the United Republic of Cameroon is taking care to prevent such property from leaving the country except in the case of cultural exchanges with other States. Such exchanges are effected through our diplomatic representatives abroad

and our Ministry of Foreign Affairs. The Ministry of Information and Culture alone is empowered to issue export certificates for cultural property, in conformity with Article 30 of Federal Law No. 63/22 of 19 June 1963, still in force.

Other than in the case of cultural exchanges, export certificates are issued only for objects lacking in specific cultural nature (handicrafts) and deemed as such by the competent offices in the Ministry of Information and Culture. This practice is in conformity with the provisions of Article 6 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which requires that export certificates must actually accompany the object or objects in question.

As regards means of prohibiting the import of cultural property and of property stolen from institutions in other States Parties to the Convention, it must be recognized that there is still a problem here with regard to harmonizing the measures to be taken.

Although an export certificate is required for all cultural property that leaves the country, similar measures have not yet been taken with regard to objects entering the country. The essential measures taken so far are aimed principally at prohibiting export of our cultural heritage. However, if a foreign cultural institution brings to our notice a case of theft of cultural property, investigation of the matter will be undertaken by the appropriate Cameroonian authorities.

With regard to the second point, we accordingly feel that what should be aimed at is harmonization of the measures to be taken: an export certificate should be issued for all exports and be required for all imports of cultural property. Customs offices and the police should be amply informed of all such measures."

YUGOSLAVIA

"In the Socialist Federal Republic of Yugoslavia the field of science and culture, which includes the protection of cultural property, falls within the competence of the Republics and autonomous provinces.

Yugoslavia ratified the Convention [on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property] on 31 May 1972. Since then a number of agreements have been concluded among the various bodies of the Federation, the Republics and the provinces regarding the appropriate legal and organizational measures to be taken, *inter alia*, to prevent the illicit transfer of ownership of the country's cultural property and the movement of such property originating in other countries. Decisions were also taken in November 1976 during a consultation among the Republics held in Oteševo regarding future action to be taken by all organizations and institutions responsible for matters concerning the prevention of theft, smuggling and illicit trade in cultural property.

The degree of progress achieved with regard to certain obligations deriving from the Convention is consonant with the conditions and needs of the various Republics and autonomous provinces, and may be formulated as follows:

Lists of movable cultural property subject to protection measures under the Convention are currently being prepared. The institutes responsible for the protection of cultural property maintain registers of inventoried cultural property, and the objects listed on such registers may not be exported or may be exported only in exceptional cases as prescribed by law. Although a great deal of work has already been accomplished with regard to the registration of movable cultural property in the possession of private parties, much ground remains to be covered.

As a means of exercising greater control over the movement of cultural property, the institutes responsible for protecting such property have set up technical commissions to determine which objects should be classified as cultural property, which may be sold within the country and which may be exported.

The institutes responsible for the protection of cultural property organize and supervise archaeological excavations and earthwork, during the course of which property of value may be discovered and possibly exported or stolen.

Both the penal code of the Socialist Federal Republic of Yugoslavia, the Republics and the provinces, and the provisions in force in the Republics and provinces with regard to the protection of cultural property provide for appropriate means for protecting cultural property and for regulating the status of the owners of such property.

The Republics and autonomous provinces have set up a single system for obtaining permission to export cultural property, in effect since 1 February 1977 and valid for the entire territory of Yugoslavia (Article 6 of the Convention).

As regards Article 10 of the Convention, which places antique dealers under an obligation to maintain a register recording the country of origin of objects up for sale, these provisions have not been fully implemented so far. However, the institutes responsible for protection are to undertake this task as part of their programmes of activities.

The provisions of this Convention have been given wide publicity throughout the country so as to include the responsible authorities (institutes, customs, Ministry of the Interior and other government departments), as well as numerous amateur, social and educational organizations. Respect for the cultural heritage of all countries is being included in school and training curricula; for example, specialized courses are being included in the field of protection of cultural property in the training curricula for customs officials.

The text of this Convention has been translated into the languages of all the peoples and minorities of Yugoslavia.

In order to co-ordinate all the activities being carried out in our country with a view to implementing this Convention, and so as to fulfil our country's obligations on the international level and towards Unesco, the Federal Executive Council in 1976 appointed an ad hoc commission to co-ordinate activities in regard to implementation of the Conventions on the protection of cultural property in the Socialist Federal Republic of Yugoslavia. This commission functions as a liaison body to co-ordinate and harmonize the activities of the Republics and autonomous provinces, competent federal bodies and federal organizations.

The Commission has included the following activities, inter alia, in its programme of activities for 1978:

drawing up an inventory of all movable objects that may be classified as cultural property;

carrying out a comparative analysis of all legal provisions in the Republics, the autonomous provinces and the Federation as a means of harmonizing the provisions of the Convention and keeping them up to date; and

giving further publicity to the contents of the Convention.

Lastly, it should be stressed that in all the Republics and autonomous provinces great importance is attached to this Convention, which has become an integral part of the national body of law of the Socialist Federal Republic of Yugoslavia."

REPUBLIC OF ZAIRE

"Problems concerning the protection of cultural property in Zaire are dealt with in Ordinance-Law No. 71-016, promulgated on 15 March 1976 by the President of the Republic.

In this regard provisions have been made to classify not only immovable property but movable property as well, that is, according to the text of the Ordinance-Law, property whose conservation is in the public interest from the standpoint of history, art or science. Objects conserved in national museums are so classified ex officio.

The General Administrator of the National Museums Institute maintains a general list of classified movable cultural property. A copy of this list is on file at the Institute, where it may be consulted by all free of charge.

Classified objects are held by imperceptible right. In the event of loss or theft the owner or holder of the object is required to make a report to this effect to the General Administrator of the National Museums Institute within twenty-four hours following such occurrence.

Classified objects belonging to the State are inalienable. Classified objects belonging to a public entity other than the State may not be bought or sold except with the authorization of the State Commissioner for Culture upon the initiation of the General Administrator of the National Museums Institute. Ownership may be transferred only to the State or to another public entity.

The purchase of lost or stolen classified objects is without legal effect. Actions for voidance of contract and for recovery of property may be instituted at any time by the State Commissioner for Culture or by the original owner. Original or subsequent purchasers in good faith from whom an object is claimed are entitled to reimbursement in the amount of the purchase price. In the event such claim is made by the State Commissioner for Culture, he is entitled to charge the original seller the entire amount of the indemnization he must pay the original or subsequent purchaser.

All private parties who sell classified objects are required to inform the purchaser of the existence of such classification. All transfers of ownership of classified objects must be reported to the General Administrator of the National Museums Institute by the person effecting such transfer within one month from the date of such action.

The State may exercise its right of pre-emption at all public sales of classified objects. Agents responsible for holding public sales of classified objects must in principle so inform the State Commissioner for Culture fifteen days before the sale is scheduled to take place. If the State Commissioner wishes to leave open to himself the possibility of using the right of pre-emption, his representative must make a statement to this effect to the auctioneer for inclusion in the sales report as soon as the object has been declared sold. The State Commissioner's decision must be forthcoming within a period of fifteen days.

The export from Zaire of classified objects is prohibited. However, the State Commissioner for Culture may, after consultation with the General Administrator of the National Museums Institute, authorize temporary export of a classified object.

No classified object may be destroyed, mutilated, defaced, modified, repaired or restored without authorization by the State Commissioner for Culture after consultation with the General Administrator of the National Museums Institute.

In the event of accidental destruction of a classified object the owner or holder must so inform the General Administrator of the National Museums Institute within twenty-four hours of the occurrence.

All persons who reside abroad and who habitually or occasionally buy antique objects for resale are prohibited from collecting in Zaire such objects of Zairian origin, whether classified or not. The same prohibition applies to anyone, including those who reside in Zaire, who acts in the interest of such persons.

No one may export an unclassified antique object of Zairian origin without authorization from the State Commissioner for Culture after consultation with the General Administrator of the National Museums Institute.

Applications for authorization should be addressed to the General Administrator of the National Museums Institute and must include a detailed description of the object, its dimensions and a photograph of the object not less than 9 cm x 12 cm in size.

The State Commissioner for Culture must hand down his decision within fifteen days after receipt of the application. Authorization may be refused only if the State lays claim to the object. Exercise of the right of claim is followed by payment of compensation in an amount determined by mutual agreement or by the opinion of an expert.

In Inter-Office Memorandum No. 74/7 the National Museums Institute provided the following details regarding the constitution of dossiers for the export of unclassified antique objects:

Pursuant to Article 35 of Ordinance-Law No. 7. -016 of 15 March 1971, the General Administrator of the National Museums Institute must submit a dossier to the State Commissioner for Culture and the Arts to enable him to take a decision in full knowledge of the relevant facts.

Authorization may not be refused unless the State itself lays claim to the object.

The following rules are prescribed for constituting the dossier:

1. The dossier must be constituted by at least two members of the scientific staff working together. In addition to the legally prescribed elements it must also include a conclusion prepared in the manner specified under 2 below.

2. Objects for export are classified into one of the following categories:

- Category I. Contemporary handcrafts or traditional type objects obviously manufactured for commerce.
- Category II. Traditional-type objects that cannot be classified through photographic study in Category I but are sufficiently represented within the National Museums Institute.
- Category III. Apparently authentic traditional-type objects whose interest cannot be evaluated by photographic study.
- Category IV. Apparently authentic traditional-type objects to which the National Museums Institute may lay claim (on condition their authenticity is verified).

3. Each object must bear an indication of the category to which it belongs. The report should conclude with a generalized statement as follows:

All objects belong to Category I and/or II, namely _____ and/or
and the National Museums Institute lays no claim to any of them.

or

Object (s) No. (s) _____ may prove to be of interest and after study by the authorities of the National Museums Institute may be claimed by it.

The paragraph above concerns only objects in Categories III and IV.

4. The General Administrator of the National Museums Institute must forward his explicit agreement or disagreement with the conclusions of the dossier constituted by the members of the scientific staff designated for this purpose. In the event of disagreement he must indicate his reasons for disagreeing.

However, on 31 March 1975 the Head of the Department of Culture and Arts issued a Departmental Decree containing the following provisions:

'The export and marketing of antique objects of Zairian origin, whether classified or not, are prohibited throughout the territory of Zaire.

The Zairian Government alone, through the Department of Culture and the Arts, reserves the right to acquire antique objects of Zairian origin by donation or purchase. Purchase of such antique objects is to be effected in the locality of their origin'.

From a legal standpoint this Departmental Decree should not have been able to derogate from an act of the legislative branch of the government. However, since it had been discussed in the Executive Council and appeared to have the approval of the President of the Republic, it may be considered to have regulatory force.

As a matter of fact these radical provisions have been impossible to enforce. Great confusion has ensued and has rendered the previously enacted measures theretofore regularly observed - ineffective."

B. Reports received from States not Parties to the Convention

AUSTRIA

"Under the terms of Federal Law No. 90 of 5 December 1918 of the Penal Code, with regard to prohibiting the export of objects of historical, artistic and cultural importance, as specified in Federal Laws Civil Code Nos. 80/1923, 533/1923 and 282/1958, the export of all objects of historical, artistic and cultural importance (antiquities, paintings, miniatures, drawings and graphic works, statues, reliefs, medals and coins, tapestries and artistic craftwork items other than those of recent make, archaeological and prehistoric objects, objects in archives, ancient manuscripts and engravings and so forth) is prohibited (Article 1 of the Law). In certain cases the Federal Historical Monuments Department may grant authorizations to export objects of this nature (Article 3).

Export without prior authorization granted in writing by the Federal Historical Monuments Department (export authorization) is, consequently, totally prohibited. This prohibition is enforced by the Austrian Customs.

In addition to the penal provisions of the law prohibiting the export of cultural property, the illicit sale and purchase of such property incurs penalties under the general provisions of Austrian criminal and civil law.

Article 164 of the Penal Code designates as 'receivers' those who receive, market or purchase objects stolen by other persons. Article 165 of the Penal Code also prescribes penalties for those guilty of such offences by negligence, that is, those who should have had suspicions when receiving or purchasing the objects in question.

The above offences are also regulated under civil law by the provisions of Article 879 of the Civil Code, which provides that the purchase of stolen goods, in addition to all contracts 'in violation of legal prohibitions or the principles of morality', shall be considered null and void.

Obviously, these provisions apply equally well to cultural property stolen abroad.

As a safeguard against illicit purchases for federal museums, such purchases may only be made if the owner is considered to be trustworthy or if the transaction is carried out by reliable dealers or through international auctions. As an illustration of the precautions that have been taken in this regard it may be noted that, at least since the end of the Second World War, no instance of illicit purchases for a federal museum has been recorded.

Despite the strict provisions that have prevailed in Austrian law for many years, as matters stand the Convention in question has not yet been ratified, since it would be extremely difficult to prepare the exhaustive lists of national cultural property it requires. Austrian legislators have chosen the much more effective means of adopting provisions prohibiting export - that is, formally prohibiting the export of all cultural property of any importance without specific authorization from the Historical Monuments Department upon request by the owner. The prohibition in Austria against exporting cultural property does not, therefore, concern only cultural property included on a pre-established list. Applying the regulations prescribed in the Convention would be tantamount to a deterioration in regard to customary practice and, by entailing the additional preparation of exhaustive lists, would merely confuse the issue, leading to duplication of efforts and legal uncertainty."

DENMARK

"As regards the Recommendation [on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property] it is recalled that Denmark abstained from voting when the Recommendation was adopted by the General Conference at its thirteenth session. This position was based on the opinion that it would not be possible, primarily for practical and administrative reasons to give effect to the provisions of the Recommendation. No specific measures have consequently been taken by the Danish authorities in this respect.

As regards the Convention [on the same question], it is recalled that Denmark abstained from voting when the Convention was adopted by the General Conference at its sixteenth session.

In an intervention at the General Conference, the Danish delegation stated that it regarded the Convention as a step forward with a view to solving the great problems in connection with the illicit export and import of cultural property. It was, however, the opinion of the Danish delegation that problems existed as regards the interrelation between the measures proposed and the national legislative and administrative principles and that further consideration was necessary before any decision could be made as to an eventual ratification of the Convention.

The above-mentioned questions are still being considered by the Danish authorities. In this connection it may be mentioned that problems relating to the field covered by the Convention have recently been raised at Nordic level and that it is expected that these questions will be examined in consultation with other Nordic countries in the course of 1978."

FINLAND

"Legislation restricting the export of cultural property has been prepared in the Ministry of Education. It is expected that a governmental bill on this issue will be submitted to Parliament in the near future.

The ratification of the Convention [on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property] does not seem to be topical at present. The definition of cultural property in the Convention does not correspond entirely to the need for protection in Finland. Also there might be some discrepancies between the Convention and the national legislation concerning the provisions in regard to innocent purchasers (Article 7). It might therefore be necessary to modify the national legislation in order to be able to accede to the Convention."

FRANCE

"The study initiated with a view to ratifying the Convention [on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property] has been delayed by considerations of a legal nature and questions of fact:

first, with respect to the compatibility of the provisions of the Convention with those of the Treaty of Rome regarding the free movement of goods within the European Economic Community; and

second, with respect to the difficulties involved in improving the effectiveness of the supervisory measures taken along national frontiers without thereby unduly hampering and delaying the operations in question.

It appears that solutions are being found for these problems."

GUINEA-BISSAU

"Guinea-Bissau was finally liberated from colonial occupation only in 1974, after an armed struggle that lasted for more than ten years.

At the dawn of independence our country had to face all the problems of national reconstruction in every field: the return of refugees from exile, the reconstruction of devastated regions, resettlement of the inhabitants and the resumption of agricultural production activities, the re-opening of roads and educational establishments, the training of teachers and so forth.

Amilcar Cabral, the founder of our nation, wrote: 'National liberation is necessarily an act of culture whatever the ideological or idealistic characteristics of its manifestations may be. It is consequently an essential element in the history of a people and evolves, perhaps, like a plant. Like history - or because it is history - the material basis of culture is constituted by the level of the productive forces and the means of production'.

For us, culture is far from restricting itself to artistic, cultural or intellectual expressions; rather, it is the motivating force of all our actions.

Accordingly, in 1976 the Republic of Guinea-Bissau established the National Cultural Council, which joins together, under the direction of the President of the Republic, those in charge of the nation's principal sectors of activity. This Council is responsible for laying down the guidelines for cultural policy and supervising its implementation. Our cultural policy is formulated in accordance with the path we have chosen for our socio-economic development, which, in turn, is consonant with the requirements of the modern world. Its essential aim is to bring about continuous and widespread cultivation of the sentiments of humanism, solidarity and devoted respect for human personality, a task which, given our recent emergence from a devastating war of liberation, presupposes constant and unlimited creativity.

The programme formulated by the National Cultural Council has been designed to meet the enormous needs of our people and has specifically assumed responsibility for cultural property while paying heed to regional particularities.

The inventory of national cultural property we have undertaken began with the National Library. This was followed by a regrouping of traditional art objects in the Museum, which will shortly be opened to the public.

Our principal concern, however, is to provide our people with the means and resources required for recovering and developing their own culture. To this end the first People's Cultural Centre was opened in April 1977 in Bissau. Others are being built and organized in the principal towns in different regions of the country.

These Cultural Centres are expected to provide the points of departure for travelling audio-visual cultural displays for the benefit of the rural inhabitants, who we hope will in return reveal to us the important cultural objects, etc. still in their possession.

The Guinean Cinema Institute (IGC) has been established primarily with a view to rehabilitating and making more widely known our cultural assets. The films we are beginning to produce deal with regional problems and are intended to provide knowledge of Guinea, its needs, its problems and its economic and cultural wealth, first of all to the Guinean people. Motion pictures are thus also engaged in the national quest for knowledge and recognition of our national and cultural identity.

Subsequent to a campaign organized to create awareness among the public, 1977 ended with the institution of a number of essential legal measures designed to safeguard and protect cultural property.

PROJECT FOR THE PROTECTION OF CULTURAL PROPERTY

Under the terms of the law, the following items are hereby declared to be cultural property:

- (a) Property relating to history, including the history of science and technology and military and social history, to the lives of national leaders, thinkers, scientists and artists, and to events of national importance.
- (b) Elements of historical and artistic monuments which have been dismembered.
- (c) Objects of ethnological interest.
- (d) Artistic property, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings and prints;
 - (iv) original artistic assemblages and montages in any material.
- (e) Rare manuscripts and books, documents and publications of special interest (historical, artistic, scientific, literary, etc.), singly or in collections.
- (f) Postage, revenue and similar stamps, singly or in collections.
- (g) Archives, including sound, photographic and cinematographic archives.
- (h) All old musical objects and instruments.

The following items form part of the national cultural heritage:

- (a) Cultural property created by the individual or collective genius of nationals of the State of Guinea-Bissau, and cultural property of importance to Guinea-Bissau created within the country by foreign nationals or Stateless persons resident within the national territory.
- (b) Cultural property found within the national territory.

- (c) Cultural property acquired by 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."

HUNGARY

Report submitted in 1972

The principles set forth in the Recommendation are fully enforced in the Hungarian People's Republic, by virtue first and foremost of the following legislative texts:

- (a) Decree-Law No. 10 of 1963 on the protection of cultural property;
- (b) Decree No. 2/1965/I. 8/MM on the protection of cultural property.

The measures taken to implement the various chapters and articles of the Recommendation are as follows:

Chapter I of the Recommendation - Definition

Cultural property to be protected is defined by Article 1 of the Decree-Law as follows:

All objects, written documents or other property considered to constitute an important monument (hereinafter referred to as cultural property) related to history, science, literature, the arts and the development of production shall be protected, scientifically studied and placed within reach of the entire population in the manner prescribed in the Decree-Law. Responsibility for ensuring that this is done shall rest with the Minister of Education and Culture.

Chapter II of the Recommendation - General Principles

Paragraph No. 2 of Article 13 of the Decree-Law stipulates that property or collections protected by the Decree-Law may not be exported from the country except with the authorization of the Minister of Culture. Pursuant to Article No. 28 of the

Remarks and modifications concerning the present situation (1977)

The following observations do not add any essentially new elements to the 1972 report. Nevertheless, they do modify it with respect to certain points, as follows:

The amendments made to the legislative texts referred to in items (a) and (b) opposite have further reinforced the measures taken to protect cultural property.

Correction: The Decree-Law erroneously mentioned in item (a) of the 1972 report as Decree-Law No. 10 is in reality Decree-Law No. 9.

Amendment:

The expression "Minister of Education and Culture" should be replaced by "Minister of Culture", inasmuch as the responsibilities of the former Ministry of Education and Culture are now divided between two separate national authorities, the Ministry of Culture and the Ministry of Education.

Implementation of the Decree-Law is the responsibility of the Minister of Culture.

Additional observation:

Subsequent to the entry into force of the aforementioned legislative texts concerning the protection of cultural property, two other important texts were adopted in 1969 with respect to archives and the protection of archive documents: Decree-Law No. 27 of 1969 and Decree No. 30/1969/IX. 2/Korm. on the implementation of Decree-Law No. 27 of 1969. These two legislative texts comprise the detailed regulations for the protection of documents of important historical value from the standpoint of, *inter alia*, economy, social life, the sciences, technology and culture.

Regulations governing the export of property of cultural value have been formulated in Decree No. 3/1977/III. 29, issued by the Minister of Culture. This Decree provides that objects of cultural value may not be sent abroad without an export

Decree, such authorization must be requested of the Minister of Culture through the competent national museum. In the case of authorizations granted for temporary export, the Minister will also designate the length of time for which export is approved.

Paragraph No. 1 of Article 13 of the Decree-Law specifies that in the case of protected objects or collections, transfer of ownership may be effected only with the authorization of the Minister of Culture. In cases in which transfer of ownership involves payment of the exchange value, the State is entitled to the right of pre-emption.

When application is made for authorization of the transfer of ownership of protected objects, great care will be taken in every case to ascertain the origin of the cultural property in question and establish the right to ownership.

Under the terms of the agreements concluded with other States, the Hungarian People's Republic makes loans of its cultural property for exhibition abroad. Depending on the condition of the cultural property in question, it also meets ad hoc requests to this effect. In conformity with established practice, cultural property loaned for exhibitions abroad is accompanied by a Hungarian specialist (art historian, restorer). The foreign institution organizing the exhibition guarantees the cultural property on local against all risks during the entire period of time required for both transportation and exhibition abroad.

The measures in force in Hungary are of such a nature as to implement the spirit of the Recommendation, particularly with regard to preventing the illicit export, import and transfer of ownership of cultural property. At the same time, they place no obstacles on the possibilities for legal exchange of cultural property.

Chapter III of the Recommendation - Recommended measures

Article No. 11 of the Decree-Law provides that cultural property and collections to be protected are under the supervision of the Minister of Culture, who is responsible for having them registered in a national inventory.

Under Article No. 12 of the Decree-Law, the owners of objects and collections to be protected are under an obligation to provide for the integrity, safe keeping, suitable treatment and conservation of such objects and collections. No procedures involving the conservation, restoration or transformation of such objects or collections may be undertaken by their owners without the authorization of the Minister of Culture.

In pursuance of the provisions of paragraph No. 3 of the Decree, all State, social and cooperative organizations, in addition to any other corporate bodies or citizens owning or holding such objects or collections in their possession are required to declare them prior to the date set by the Decree. In the event they become owners or holders of such objects or collections after that date, they must declare them within thirty days following such acquisition.

authorization. Detailed regulations concerning export procedures are also contained in the Decree.

Article No. 6 of the Decree provides that the administrative procedures to be followed regarding the inventory of cultural property, the necessary preparatory work for their classification and the registration and supervision of protected objects are the responsibility of the competent national museums or institutions, depending on the nature of the object in question.

Thanks to these provisions the registration of cultural property has been carried out and, in conformity with the spirit of the Recommendation, the protection of cultural property is now ensured by State organizations.

In conformity with Article No. 19 of Chapter III, all this work is being carried out not only with a view to stimulating appreciation of national cultural values but also to enable the population to become acquainted with and appreciate the cultural property of other peoples as well.

The importance of Decree-Law No. 15 of 1976 on libraries and Decree No. 17/1976/VI, 7/MT regarding its implementation should also be noted.

The provisions contained in the regulations referred to above emphasize the need for libraries and library services to contribute to satisfying cultural needs and the demand for professional reading matter in all build-up areas and working premises throughout the country.

Particular attention should be drawn to the provisions of Law No. V on culture. This Law, enacted in 1976, assigns the responsibility for providing universal access to the achievements of national and world culture to public cultural institutions. (Provisions for implementing the legislation referred to above are contained in Governmental Decision No. 1035/1976/XI, 13/MT).

JAPAN

"On paragraph 11 (Institutions for the protection of cultural property)

The National Commission for Protection of Cultural Property, a governmental institution which had been responsible for the protection of cultural property in Japan, was abolished in 1968. Instead, the Agency for Cultural Affairs was established to play a role as the governmental institution in charge of the protection of cultural property.

Attached to the Agency are three national museums and two national research institutes, and also the Council for the Protection of Cultural Property, an advisory body aimed at investigating and deliberating on important matters concerning the preservation and utilization of cultural property.

On paragraph 6 (Establishment of general principles)

The preservation and utilization of cultural property is governed in Japan by the Law for the Protection of Cultural Property (1950, Law No. 214). This law also covers the control of the export of cultural property. It was drastically revised in 1975.

On paragraph 1 (Definition of cultural property)

The cultural objects covered by the Law for the Protection of Cultural Property are divided into the following categories ('Groups of historic buildings' were newly included as a result of the 1975 revision of this law):

1. Tangible cultural property: Tangible components of the cultural heritage of high historical and/or artistic value in and for Japan (including land and other objects combined with them to embody such value) and archaeological specimens and other historical materials of high scientific value.

(1) Buildings,

(2) Pictures, sculptures, applied arts and other tangible cultural products.

2. Intangible cultural property: Intangible components of the cultural heritage of high historical and artistic value in and for Japan.

(1) Performing art,

(2) Artistic technology.

3. Elements of folk culture: Manners and customs related to food, clothing and housing, etc., folk-entertainments and objects used therefor which are indispensable for understanding changes in the life style of the Japanese people.

- (1) Intangible elements of folk culture: Manners and customs related to food, clothing, housing, to occupations, religious faiths and festivals, and folk-entertainments,
 - (2) Tangible elements of folk culture: Clothes, implements, houses and other objects used for their production, construction and decoration.
4. Monuments: Historic sites of high historical and/or scientific value; gardens, bridges and other places of scenic beauty, which possess high value from the point of view of art or visual appreciation in and for Japan; and animals, plants, geological features and minerals of high scientific value in and for Japan.
- (1) Historic sites: shell mounds, ancient tombs, sites of palaces, sites of forts or castles, monumental dwelling houses, etc.
 - (2) Places of scenic beauty: gardens, bridges, gorges, sea-shores, mountains, etc.
 - (3) Natural monuments: animals, plants and geological features and minerals.
5. Groups of historic buildings: Groups of historic buildings of high value which form a certain antique beauty in combination with their environments.
6. Buried cultural property.

On paragraphs 2 & 10 (Designation and protection of cultural property)

The Agency for Cultural Affairs has designated important items of the above-mentioned categories (excluding buried cultural property) as important cultural property. The Agency is empowered to restrict the alteration of the existing state of these designated items of cultural property, and also extends financial or technical assistance for their repair or restoration and the prevention of disasters.

In addition to the above-mentioned designated cultural property, there are the works of art which were designated as important objects of art under the provisions of the former law concerning the Preservation of Important Objects of Art (1933, Law No. 43).

Criteria have been established respectively for the designation of national treasures, important cultural property, etc.

The Agency for Cultural Affairs has compiled a list of items designated under the Law for the Protection of Cultural Property and items designated under the former Law concerning the Preservation of Important Objects of Art.

Even where privately owned items of cultural property are designated, the owners do retain ownership of them.

(Remarks)

- I. Items of cultural property designated by the State (as of 1 December 1977)
 - (1) Tangible cultural property: 10,740 items (8,867 works of art, 1,873 buildings).
 - (2) Monuments: 2,177 items.
 - (3) Elements of folk culture: 172 items (122 tangible elements, 50 intangible elements).
 - (4) Intangible cultural property: 62 items.
 - (5) Groups of historic buildings: 9 items.
- II. Important objects of art designated by the State (as of 1 December 1977): 6,819 items.

On paragraphs 3 & 11 b(ii) (Export control of national treasures, important cultural property, important objects of art, etc.)

In order to prevent the outflow from Japan of national treasures and important items of cultural property, their export is prohibited, except for the case where the Commissioner of the Agency for Cultural Affairs has given permission in recognition of the special necessity from the viewpoint of international exchange of culture or from other considerations. (Article 44, Law for the Protection of Cultural Property)

The export of important tangible elements of folk culture must be reported in advance to the Commissioner of the Agency for Cultural Affairs. (Article 56-13, Law for the Protection of Cultural Property)

The export of important objects of art designated by the State requires approval from the Commissioner of the Agency for Cultural Affairs. (Article 1, Law concerning the Preservation of Important Objects of Art, and Article 116, Law for the Protection of Cultural Property)

Old objects of art can be exported from Japan only after the Agency for Cultural Affairs has certified, upon request, that they are not included in the list of national treasures, important cultural property or important objects of art designated by the State.

On paragraph 5 (Control of transfer of ownership of national treasures, important cultural property, etc.)

In Japan, the sale of national treasures, important cultural property and important tangible elements of folk culture is restricted.

Under the provisions of Articles 46 and 56-14 of the Law for the Protection of Cultural Property, any person who intends to sell any of the above-mentioned items must first make an offer of sale to the State by filing it with the Commissioner of the Agency for Cultural Affairs, and is prohibited from selling the items in question to a person other than the State until the State notifies him that it has no intention of purchasing them. (The State must give notification to that effect within 30 days.)

On paragraph 9

The following are the exhibitions of old Japanese art held abroad between 1 January 1968 and 1 December 1977, under the sponsorship of the Agency for Cultural Affairs.

1969-1970:	Travelling Exhibition of Old Japanese Art (Switzerland, Federal Republic of Germany)
1970 :	Zenrin-School Art Exhibition (Boston Museum)
1972-1973:	Travelling Exhibition of Japan's 100 Representative Earthenwares (United States of America)
1975 :	Exhibition of Japanese Art in the Momoyama Era (Metropolitan Museum)
1975 :	Exhibition of Japanese Calligraphy (Museum of Far Eastern Art, Cologne)
1976-1977:	Exhibition of Shinto Arts (Japan House Gallery, Seattle Museum)
1977 :	Exhibition of Japanese Earthenwares (United States of America)

On paragraph 12 (Purchase by the State of national treasures, important cultural property, etc.)

The Agency for Cultural Affairs has purchased a number of national treasures, important items of cultural property and other cultural objects, and has preserved and utilized them for the benefit of the general public. The items purchased include: (1) those which the State deems it necessary to purchase regularly as the common heritage of the people; (2) those which the owner called on the State to purchase; (3) those which it is feared may be lost or damaged due to poor preservation; and (4) those which have almost the same value as important items of cultural property and which it is feared may otherwise be exported from Japan.

In addition, national museums regularly purchase objects of art for display.

On paragraph 19 (Campaign for the protection of cultural property)

In order to stimulate and develop among the general public interest in and respect for the cultural heritage, the Agency for Cultural Affairs has been holding various seminars, and also producing movies, slides and other educational materials, relating to cultural property. Furthermore, the Agency has established a 'model area for the protection of cultural property' in each prefecture across the country in order to disseminate the idea of protecting cultural property."

NEW ZEALAND

"1. Under the New Zealand Historic Places Amendment Act 1975, no one can damage or destroy an archaeological site without the permission of the Historic Places Trust which is also required to record all archaeological sites.

2. In addition, the Antiquities Act 1975 further protects historic articles by defining ownership, requiring registration of collectors and dealers and imposing controls over export.

3. These provisions indicate New Zealand's accord with the general provisions of the Convention, but the various relevant provisions in New Zealand law still fall far short of full compliance with the articles of the Convention. While there is general agreement with the purposes and terms of the Convention, it is not possible, especially in terms of manpower required, to meet the obligations of the Convention in full and, regretfully, New Zealand must continue to refrain from ratifying the Convention."

SWITZERLAND

"1. Assessment of the present situation

1.1 There is no disputing the fact that the State cannot effectively act within the framework of the 1970 Unesco Convention without establishing a proper constitutional basis for this purpose and enacting a federal law. In this respect Switzerland's federative structure presents obstacles of a psychological, political and practical nature; consequently any initiative by the federal government would have little chance of success. Furthermore, the federal constitution guarantees freedom of commerce and industry (Article 31), and in addition specifies those cases in which it is possible for such freedom to be restricted (Article 31bis). However, the considerations providing the basis for these restrictions have no relation to those of the Convention.

1.1.1 Nevertheless, the draft revision of the federal constitution (which has just been published) includes an article concerning the encouragement of culture. The final version of this revision will perhaps make it possible to legislate on more comprehensive protection of cultural property.

1.2 Under the federal law of 6 October 1966 on the protection of cultural property in the event of armed conflict, the 'Confederation may prescribe compulsory measures for the protection of cultural property which, as a State, it is interested in conserving'. In conformity with the Hague Convention of 14 May 1954, on which this law is based, such measures may be of a technical and conservative nature only (inventories, documentation, construction of shelters, evacuation plans and so forth).

1.2.1 By virtue of this law it is incumbent on the Confederation and the cantons to draw up scientific inventories of movable or immovable cultural property worthy of protection. The Confederation enjoys supervisory powers in this regard and for this purpose has established a unit for the protection of cultural property within the Office of Cultural Affairs of the Federal Department of the Interior.

1.3 The unanimous opinion of the competent authorities and organizations is that the absence of legal provisions as prescribed by the 1970 Convention has no doubt facilitated a number of regrettable exports; however, it has also strengthened Switzerland's position with regard to the art trade, thereby enabling it to recover a large number of works of art of Swiss origin. Switzerland's neutrality and political stability have also enabled it to earn a reputation as a safe place for the conservation of valuable cultural property. Consequently, the idea of regulating exports has met with little sympathy.

1.3.1 Implementation of a system of authorizations or even of simple surveillance would require establishing a complicated and costly administrative apparatus whose effectiveness would be necessarily only relative in view of Switzerland's intense border traffic as a transit country and the difficulties involved in customs surveillance in the mountain regions.

1.4 On the other hand, however, it does appear possible to step up the control of imports of cultural property and to pay closer attention to commerce, particularly with regard to public sales. For this purpose the Swiss authorities - primarily the customs service and the organizations responsible for cultural property, in addition to private institutes and associations - must be well acquainted with foreign legislation and the lists of objects being sought for. Increased efforts would be possible and justified since it is an established fact that cultural property of doubtful

origin is frequently imported into Switzerland, the more easily inasmuch as antiquities (objects more than 100 years old) are exempt from customs duties and high prices are paid for art objects.

1.4.1 A joint study undertaken with the Federal Departments of Justice and Police and of Public Economy will make it possible to determine what legal conditions must be fulfilled in order to require an official certificate of origin or an export authorization for the purpose of selling valuable cultural property of foreign origin.

1.5 The Swiss Government will take all necessary measures, particularly the measures prescribed in the European Convention on Mutual Assistance in Criminal Matters, when any request is made to trace foreign cultural property illicitly brought into Switzerland. Such assistance, however, is not provided in the case of tax offences.

1.5.1 Example: On 2 June 1976 the Federal Council accepted a request for assistance from an examining magistrate in Rome who wished to recover a fragment of the Madonna Rondanini by Michelangelo. Since the article in question was res nullius, Italian law considered it to be the property of the State. The fragment was confiscated in Chiasso and returned to the Italian authorities. In March 1976, also in Chiasso, Swiss customs officials confiscated an entire load of marble statues from the Roman era. These objects, which had been concealed in a truck, were immediately returned to the Italian Government.

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In conclusion, we would like to emphasize the fact that although Switzerland does not have the legal means of enforcing the 1970 Unesco Convention, which it has not yet signed, it has deep respect for the cultural heritage of other nations. The possibilities for improving administrative control will be studied. In addition, the debate on the wholesale revision of the federal constitution will make it possible to study the question of including the protection of cultural property within the constitution."

UNITED KINGDOM

The United Kingdom states that it has nothing to add to the terms of its initial report of 1966 relating to the Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (1964) and that its attitude to the Convention on the same question has not substantially changed from that given in its report of 1972, although it "continue[s] to review the question of ratification at appropriate intervals". For easy reference, these two reports are reproduced below, with the modifications transmitted by the United Kingdom:

"Initial Special Report - Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (1964)

Introductory Note

The competent authorities in the United Kingdom are the Foreign Office, H. M. Customs and Excise, the Board of Trade and the Department of Education and Science. In general, it has been considered that it would not be practicable to implement the steps envisaged in the Recommendation, although certain requirements are already covered by existing legislation. The competent authorities have asked to have the following brought to notice.

Export Control

There has existed in the United Kingdom for many years a system of control on exports to all destinations of antiques over 100 years old, which anticipated the Unesco Recommendation in many particulars. In 1972 control was extended to documents, manuscripts, archives and photographic positives and negatives, over 70 years old. All exports of archaeological material, diamonds, diamond jewellery, documents, manuscripts, archives and photographic positives and negatives are subject to individual licensing control while other items are subject to individual licensing control only when the value of any item, or matching set of items, is £4,000 or more: all exports to Southern Rhodesia are subject to licensing control, irrespective of value.

Before the Department of Trade grants a licence for such a work of art, it is examined by the Board's independent Expert Adviser, who may recommend that a licence be refused on the grounds of national importance - in which case it is referred for consideration to the Reviewing Committee on the Export of Works of Art. This Committee includes experts in the artistic field among its permanent members, and for each case that it considers it also co-opts specialists on the particular type of object in question. The Committee, in deciding whether to recommend that an export licence be granted or not, has recourse to three criteria.

These are:

- (i) Is the object so closely connected with our history and national life that its departure would be a misfortune?
- (ii) Is it of outstanding aesthetic importance?
- (iii) Is it of outstanding significance for the study of some particular branch of art, learning or history?

If the Committee finds that a given work qualifies under one or more of these criteria, it will recommend that no export licence should be issued, provided that a public institution within the United Kingdom makes an offer to buy the work in question within a stated period at a stipulated price considered to be fair to all parties. If such an institution wishes to buy the work but is unable to find the money, it may apply to the Treasury for a special purchase grant. The Reviewing Committee submits an annual report to the Secretary of State for Education and Science, in which they keep the working of the system under review.

Import Control

It has been considered that it would not be practicable to impose the import controls envisaged by the Recommendation and we have consequently taken no action under its terms.

Our view throughout has been that control of this sort if needed should be at the export end and not passed to the importing countries. The Recommendation in paragraph 4 states that no import should be authorized until cleared from any restrictions on the part of the competent authorities in the exporting State; this would mean wider import controls with the production to the import authorities of some appropriate export certificate, inevitably leading to delays, particularly as different countries are likely to have differing interpretations of what is to be controlled as 'cultural property'.

We already operate export licensing control over a wide field of antiques and works of art, but if other countries were operating import controls of the kind visualized, it would be necessary for our exporters to obtain, in addition to the export licence, some form of certificate for the authorities abroad. This would involve more paperwork and control. We feel any import control would be difficult to operate.

Protection of Cultural Property

The protection of the nation's cultural heritage is promoted by the system of estate duty concessions in respect of objects of national, scientific, historic or artistic interest. Such objects are not included in the value of the estate for reckoning duty payable so long as they are not sold, and the exemption continues if they are sold by private treaty to a public collection or government department. Also, a work of art 'pre-eminent for aesthetic merit or historical value' may be accepted by the Treasury in lieu of estate duties in such a way that the estate benefits by a quarter of the duty otherwise payable thereon. All these concessions have the effect of encouraging testators and heirs to transfer valuable works to the nation rather than to sell them abroad.

Multilateral and Bilateral Agreements

The following cultural agreements to which the United Kingdom is a signatory contain some provision for the preventing of illegal traffic in works of art, etc.:

- (i) The European Cultural Convention, Paris, 19 December 1954 (Cmd. 9398). Article 5 of this Convention reads as follows:
'Each Contracting Party shall regard the objects of European cultural value placed under its control as integral parts of the common cultural heritage of Europe, shall take appropriate measures to safeguard them and shall ensure reasonable access thereto'.

- (ii) The Anglo-Spanish Cultural Convention, London, 12 July 1960 (Cmd. 1513) Article 10 of this Convention reads:

'The Contracting Governments undertake to maintain close co-operation between their administrations with the object of preventing and suppressing illegal traffic of works of art, documents and other objects of historic value'.

- (iii) The European Convention on the Protection of the Archaeological Heritage, 1969, ratified by the United Kingdom on 8 December 1972 (entered into force for the United Kingdom on 9 March 1973).

Educational Action

The Government White Paper, 'A Policy for the Arts', published in February 1965, emphasizes the importance of making 'all that is best in the Arts' more widely appreciated and devotes a whole section to the role of education, including the mass media, in accomplishing this task.

Report to the United Nations Educational, Scientific and Cultural Organization following receipt of the 'International Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property' adopted by the General Conference of Unesco at its sixteenth session in 1970

1. The Convention has been submitted to the competent authorities in the United Kingdom in accordance with Article IV, paragraph 4 of the Constitution and Article I of the Rules of Procedure concerning Recommendations to Member States and International Conventions. The authorities concerned are: the Department of Trade and Industry, Department of the Environment, Department of Education and Science and HM Customs and Excise.
2. HM Government supports the intentions behind the Convention, principally the discouragement of illicit trade in objects stolen from archaeological sites. It was for this reason that HM Government voted for the adoption of the Convention at the sixteenth session of the General Conference of Unesco in November 1970, although it is thought that responsibility for the control of cultural treasure could be most effectively exercised through the countries of origin.
3. The present system in the United Kingdom is already particularly effective in regard to two of the main purposes of the Convention, namely (a) the preservation of cultural property inside the territory of each country, and (b) the operation of a system of export control.
 - (i) One aspect of the preservation of cultural property is its collection, control and availability for study, research and enjoyment, which is developed in the United Kingdom through the national, local authority and other museums and galleries. Although the Standing Commission on Museums and Galleries is not a 'competent authority' as defined in Article IV of the Unesco Constitution, it is an important body for the co-ordination of policy and it is relevant to record that it has, in consultation with the British Academy, the British Museums and the Museums Association, considered the Convention and stated their joint views in a declaration a copy of which is attached as Annex A.
 - (ii) Certain aspects of the protection of buildings of historic importance, structural antiquities, ruins and archaeological sites of national importance, to which Article 5 (d) of the Convention refers, are subject to the provisions of the Town and Country Planning Acts and the Ancient Monuments Acts under which there is provision for the maintenance of an effective and comprehensive schedule of ancient monuments and a list of buildings of historical importance. Furthermore, under these Acts it is mandatory to give notice (and obtain consent in the case of a listed building) in respect of any work done which will affect an ancient monument or listed building and failure to give such notice or obtain such consent is an offence. In this way archaeological excavations are supervised and preservation in situ of certain cultural property is ensured. Equally, it is possible to ensure protection of certain areas for future archaeological research.
 - (iii) A system of export control already exists in the United Kingdom. (See section on 'export control' in the above initial special report relating to the Recommendation.)

4. It is on the question of import control and related measures that HM Government would find difficulty in carrying the Convention into legislative and practical effect. It is not possible for HM Government to take measures against individuals or organizations unless the law of the United Kingdom is broken. If there are grounds for believing that a particular object is stolen property, then a remedy can be sought under the law. There is no provision in the laws of the United Kingdom for proceedings to be taken against persons suspected of having infringed the export controls of other countries. The practical difficulty seen to implementing the measures which are called for in the Convention to supplement the export controls of other countries are primarily that there are no ways of distinguishing at the point of importation goods which have infringed the laws or export controls of other countries. Until some practical way can be found of meeting this deficiency, it remains the view of HM Government that the main reliance must be on the export controls of each of the countries concerned.

Annex A

The Standing Commission on Museums and Galleries, in consultation with the British Academy, the British Museum and the Museums Association (representing the other relevant museums in the United Kingdom), having considered the Unesco Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted in Paris in November 1970, and the aims underlying it, have declared that:

- (i) they attach the highest importance to preventing the destruction of the records of man's past and the despoliation of archaeological and other historical sites;
- (ii) they recognize the importance, in the scientific and scholarly study and interchange of archaeological and other cultural material, of mutual confidence and will do everything in their power to promote it;
- (iii) they affirm that it is and will continue to be the practice of museums and galleries in the United Kingdom that they do not and will not knowingly acquire any antiquities or other cultural material which they have reason to believe have been exported in contravention of the current laws of the country of origin."

ANNEXLIST OF STATES HAVING DEPOSITED AN INSTRUMENT
OF RATIFICATION, ACCEPTANCE OR ACCESSION

15 June 1978

States	Date of deposit of ratification (R) acceptance (Ac) or accession (A)	Date of entry into force
Algeria	24. 6.1974 (R)	24. 9.1974
Argentina	11. 1.1973 (R)	11. 4.1973
Bolivia	4.10.1976 (R)	4. 1.1977
Brazil	16. 2.1973 (R)	16. 5.1973
Bulgaria	15. 9.1971 (R)	24. 4.1972
Canada	28. 3.1978 (Ac)	28. 6.1978
Central African Empire	1. 2.1972 (R)	1. 5.1972
Czechoslovakia	14. 2.1977 (Ac)	14. 5.1977
Democratic Kampuchea	26. 9.1972 (R)	26.12.1972
Dominican Republic	7. 3.1973 (R)	7. 6.1973
Ecuador	24. 3.1971 (Ac)	24. 4.1972
El Salvador	20. 2.1978 (R)	20. 5.1978
Egypt	5. 4.1973 (Ac)	5. 7.1973
German Democratic Republic	16. 1.1974 (Ac)	16. 4.1974
India	24. 1.1977 (R)	24. 4.1977
Iran	27. 1.1975 (Ac)	27. 4.1975
Iraq	12. 2.1973 (Ac)	12. 5.1973
Jordan	15. 3.1974 (R)	15. 6.1974
Kuwait	22. 6.1972 (Ac)	22. 9.1972
Libyan Arab Jamahiriya	9. 1.1973 (R)	9. 4.1973
Mauritius	27. 2.1978 (Ac)	27. 5.1978
Mexico	4.10.1972 (Ac)	4. 1.1973
Nepal	23. 6.1976 (R)	23. 9.1976
Nicaragua	19. 4.1977 (R)	19. 7.1977
Niger	16.10.1972 (R)	16. 1.1973
Nigeria	24. 1.1972 (R)	24. 4.1972
Panama	13. 8.1973 (Ac)	13.11.1973
Poland	31. 1.1974 (R)	30. 4.1974
Oman	2. 6.1978 (Ac)	2. 9.1978
Qatar	20. 4.1977 (Ac)	20. 7.1977
Saudi Arabia	8. 9.1976 (Ac)	8.12.1976
Syrian Arab Republic	21. 2.1975 (Ac)	21. 5.1975
Islamic Republic of Mauritania	27. 4.1977 (R)	27. 7.1977
Tunisia	10. 3.1975 (R)	10. 6.1975
United Republic of Cameroon	24. 5.1972 (R)	24. 8.1972

States	Date of deposit of ratification (R) acceptance (Ac) or accession (A)	Date of entry into force
United Republic of Tanzania	2. 8. 1977 (R)	2. 11. 1977
Uruguay	9. 8. 1977 (R)	9. 11. 1977
Yugoslavia	3. 10. 1972 (R)	3. 1. 1973
Zaire	23. 9. 1974 (R)	23. 12. 1974



General Conference
Twentieth Session, Paris 1978

20 C

20 C/84 Add.1
15 September 1978
Original: English, French

Item 30 of the provisional agenda

REPORTS OF MEMBER STATES ON THE ACTION TAKEN BY THEM TO IMPLEMENT THE RECOMMENDATION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT EXPORT, IMPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY (1964) AND THE CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY (1970)

SUMMARY

This document transmits to the General Conference for its examination reports forwarded by Member States on the action taken by them to implement the above-mentioned Recommendation and Convention, and received after 15 June 1978.

A. Report received from a State Party to the Convention

Kuwait

Recommendation

"The Department of Antiquities and Museums, Kuwait, has applied the following provisions of the Law on Antiquities promulgated by Royal Decree No. 11, 1960:

1. Kuwait takes measures to safeguard cultural property on its territory so as to preserve the cultural heritage passed on to it over the course of history. It also takes measures outside its territory to safeguard the cultural property of the Arab peoples and the other Arab nations in accordance with the provisions of the conventions and treaties which it has signed.

16 JUL 1978

2. With regard to the importation of cultural property, it is stipulated in Article 22 of the Law on Antiquities that persons who import cultural property into Kuwait must notify the Department of Antiquities and Museums within three days and can retain possession of such property provided they intend to keep it and not negotiate it.
3. The Department of Antiquities and Museums applies the provisions of Article 36 of the Law on Antiquities concerning the importation and exportation of cultural property. In this article it is stipulated that no one shall have the right to engage in trade in cultural property without first obtaining an official permit for the purpose, which is valid for one year and renewable. Such cultural property must be registered and the owner must have an authorization to have it in his possession. Any unregistered property in the possession of an antique dealer shall be confiscated and proceedings shall be taken against him.
4. The Law on Antiquities mentioned above contains many of the provisions of the Recommendation.
5. The Department of Antiquities and Museums has refrained from purchasing any cultural property illicitly exported, imported or acquired.
6. With regard to the national service for the protection of cultural property mentioned in paragraph 11 of the Recommendation, Kuwait has not set one up as yet. The Department of Antiquities and Museums fulfils this function.
7. The Department of Antiquities and Museums has no fund for purchasing cultural property of exceptional importance, such as is mentioned in paragraph 12. However, there is provision for this in the budget of the Information Ministry.
8. With regard to paragraph 19 of the Recommendation concerning exchanges of cultural property, the Department of Antiquities and Museums has been making efforts in this direction ever since it was established, so as to enable the public to have access to the cultural heritage of mankind from the different regions of the world".

Convention

"The Department of Antiquities and Museums of Kuwait has applied the following provisions of the Law on Antiquities, promulgated by Royal Decree No. 11, 1960:

1. With regard to Article 4 of the Convention, the Department of Antiquities and Museums considers that cultural property discovered in Kuwait or property which has been the subject of an exchange, received as a gift or purchased legally forms a part of Kuwait's cultural heritage, and the Department endeavours to protect it by every available means.
2. Kuwait has no national service for the protection of the cultural heritage, as already mentioned in connection with the Recommendation. At present the Department of Antiquities and Museums fulfils most of the functions which would devolve on such a service.
3. With regard to Article 8 of the Convention, concerning the penalties to be imposed on anyone infringing the prohibitions referred to, the Department of Antiquities and Museums imposes various penalties on the illicit import, export and transfer of ownership of cultural property, in accordance with the provisions of Article 43 of the Law on Antiquities.

It is emphasized that Kuwait intends to apply all the provisions of the Unesco Recommendation and Convention on the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property".

B. Report received from a State not Party to the Convention

Australia

"The Unesco Recommendation on the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property (1964) and the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property (1970) have been carefully noted by the Australian Government. The question of ratification of the Convention is at present under review by the Government. Some degree of control of the export of cultural property from Australia is exercised through the Customs (Prohibited Exports) Regulations. There is however at present no control, with one significant exception, over the import of items of cultural property. The exception concerns items of cultural property from Papua New Guinea, the importation into Australia of which is subject to the issue of an export certificate by the National Museum of Papua New Guinea.

Australia supported resolutions in 1973, 1975 and 1977 at the United Nations General Assembly in support of the restitution of works of art to countries victims of expropriation. The Government has taken action to draw the attention of relevant authorities and others to the Director-General's recent appeal for the restitution of an irreplaceable cultural heritage to those who created it".



General Conference
Twentieth Session, Paris 1978

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20 C/84 Add.2
2 November 1978
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Item 30 of the provisional agenda

REPORTS OF MEMBER STATES ON THE ACTION TAKEN BY THEM TO IMPLEMENT THE RECOMMENDATION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT EXPORT, IMPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY (1964) AND THE CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY (1970): REPORT OF THE COMMITTEE ON CONVENTIONS AND RECOMMENDATIONS

SUMMARY

Part A of this document contains the report which the Executive Board's Committee on Conventions and Recommendations, with Mr. Gunnar Garbo (Norway) as Chairman, prepared for the General Conference upon its examination of the reports submitted by Member States on the action taken by them to implement the above-mentioned Convention and Recommendation.

Part B of the document contains the resolution adopted by the Executive Board at its 105th session on this question.

PART A

REPORT OF THE COMMITTEE ON CONVENTIONS AND RECOMMENDATIONS

1. The Executive Board's Committee on Conventions and Recommendations met on 18 September 1978, in the course of the Board's 105th session, to examine the reports submitted by Member States on their implementation of the above-mentioned Convention and Recommendation, in pursuance of resolution 19 C/4.122.

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For this purpose, the Committee had before it, on the one hand, document 20 C/84 and Add.1 containing the reports submitted by Member States and, on the other hand, the Director-General's preliminary observations on the reports and suggestions on future action that might be taken with respect to illicit traffic in cultural property, set out in document 105 EX/CR/CC/1.

2. After the Chairman had opened the meeting, the representative of the Director-General presented documents 105 EX/CR/CC/1 and 20 C/84 and Add.1, referring briefly to the objectives of the Convention and Recommendation and to the impact of the two instruments in the fight against the illicit import, export and transfer of ownership of cultural property. It was evident from the 29 reports received that the Convention and the Recommendation had created an awareness in many countries of the need for action to control illicit traffic in cultural property, as witness the many references to the measures adopted at the national level. However, only 39 States were Parties to the Convention as at 15 September 1978. It would, in fact, appear that difficulties of a practical nature had arisen in connection with the implementation of certain provisions of the Convention and it was for this reason that the Director-General had suggested that further information be sought on the difficulties encountered by some States and on the experience acquired by other States on these issues.
3. A general discussion followed during which the Committee underlined the need to view the question of illicit traffic in cultural property in a very wide perspective. On the one hand, States should be able to protect cultural property of national importance. On the other hand, the action taken to combat the illegal export and import of works of art should in no way inhibit international exchanges of cultural objects which are of paramount importance in furthering knowledge and respect for the cultural heritage of other peoples. Members of the Committee drew attention in addition to the concept of the universal value of cultural property which constitutes an essential element of the Organization's overall policy relating to the protection of the cultural heritage.
4. The Committee expressed regret over the fact that so few States had so far ratified the Convention. In addition, the Committee noted with concern that less than half of the States Parties and only 10 other States had responded to the request of the General Conference to submit reports on the action taken by them to implement the Convention and Recommendation, despite the constitutional obligations of States in this connection.
5. The Committee expressed particular concern with the situation prevailing in developing countries which were constantly experiencing great losses, as parts of their cultural heritage were being illegally exported. This led to a discussion of two questions in particular, namely the establishment of inventories of cultural property in those countries and the need to strengthen control in the importing countries.
6. The practical difficulty of drawing up inventories, especially in countries with a great wealth of cultural property, was raised. The Committee felt that only unique and rare items of particular significance should be included in such catalogues, and a policy of "intelligent retention" could be adopted by those countries. The Committee called on the Organization to assist in drawing up a standard format for inventories and, in addition, to provide technical assistance to developing countries for the establishment of inventories of their cultural property.
7. The Committee stressed the need for concerted action at the international level so that the developing countries might not be dispossessed of their cultural heritage. An extremely important measure that would be complementary to action taken by the "exporting" countries would be some form of control in the

"importing" countries. The Committee wishes to draw attention to the essential contribution that can be made by these countries to the fight against international illicit traffic in cultural property.

8. There was general agreement among members of the Committee with the suggestion of the Director-General to assemble additional information on the difficulties that had arisen in connection with the implementation of the Convention. Some discussion ensued on the advisability of envisaging a revision of the Convention to render it more widely acceptable, but this was not considered desirable at the present time.

9. In reply to questions raised during the general discussion, the Director-General's representative indicated that normative action of the Organization was only one element in the activities undertaken at the international level to combat illicit traffic in cultural property. Equally important were educational and public information activities which helped to create a general awareness of the situation and technical co-operation activities. In this connection, technical co-operation could certainly be made available to the developing countries for the establishment of inventories of important cultural property. With respect to the preparation of a standard format for inventories, the Director-General's representative stated that some work had already been undertaken at the regional level and this work would be extended to cover other regions. In response to a question on the definition of the illicit export of cultural property, he referred to the method adopted by several countries for determining which objects could be legally exported, namely the introduction of an export permit. He expressed agreement with the important role to be played by the importing countries which could greatly contribute to the fight against illicit traffic by instituting some form of control on objects imported. In concluding, the Director-General's representative suggested that the proposed study should take the form of case studies based on both exporting and importing countries.

10. The Committee then proceeded to formulate the conclusions and recommendations set out below.

CONCLUSIONS AND RECOMMENDATIONS OF THE COMMITTEE

11. The Committee notes that reports have been received from only 29 Member States and that, of these, 18 were submitted by States Parties to the Convention, that is, less than half of the States Parties (as at 15 September 1978, 39 States had deposited their instrument of ratification or acceptance of the Convention). It is thus difficult for the Committee, on the basis of the data available to formulate any detailed conclusions and, a fortiori, any precise recommendations.

12. However, the reports received from Member States do reveal the growing concern of those States over the problems of illicit traffic in cultural property and their determination to protect this part of the cultural heritage of mankind, not only by measures taken at the national level, but also by closer international co-operation.

13. The fact that the majority of States reporting have, in conformity with the terms of the Recommendation and Convention, taken action to prepare lists or inventories of their cultural property, to institute some form of control on the export of cultural property and on the transfer of ownership thereof, is indicative of the value they attach to their cultural patrimony and of their resolve to afford it adequate protection. The measures taken to this effect may be conveniently grouped under three headings, namely, the export of cultural property, the transfer of ownership of cultural property and the educational and public information activities.

14. Firstly, with respect to measures regulating the export of cultural property, it is manifest from their reports that all those 18 States Parties to the Convention and many of the States not Parties adhere to the principle of governing the export of cultural objects, since they indicate that legislation has been adopted in their respective countries to institute a system for this purpose. In this connection, the Committee draws attention to the fact that nine of these 18 States Parties assert that the legislation has been adopted in the last ten years, thus demonstrating the probable impact of the principles laid down in the two instruments.
15. It is not, however, possible to determine in every case the means by which such legislation is enforced in the countries. The Committee considers that it would have been useful for this purpose if more information on the practical and administrative measures taken had been provided in the reports.
16. As referred to in the report of one State Party, it would seem essential for any form of import-export control system at the international level for each State seeking to participate in any such system to establish and make available information on the cultural objects or types of cultural property, the export of which is prohibited by that State. The Committee notes that this is one question on which the information supplied in the reports of States is not of the same nature; some States indicate that the categories of the cultural property that cannot be exported are laid down in national legislation, but in few cases are these categories precisely defined; other States refer to the preparation of inventories without indicating whether all the objects registered will be subject to export control. However, a detailed list of cultural objects, the export of which is prohibited, has been made available by one State Party.
17. The Committee notes that, according to the reports of States, the introduction of an export certificate, which is one of the control measures advocated in the Recommendation and the Convention, has been adopted in 15 States. Additional information on the practical and administrative measures taken by States to "prohibit the exportation of cultural property from their territory unless accompanied by the ... export certificate" (Article 6(b) of the Convention) has been provided by few States, although some do refer, in this connection, to some form of border control.
18. The Committee draws attention to the additional measures adopted by some States to retain important cultural objects in their countries. Such measures reported on by some States include tax exemptions and estate duty concessions with respect to cultural property.
19. Secondly, according to the reports of States, some measures are taken with respect to the transfer of ownership of cultural property in 20 States. The measures referred to in the reports relate, on the one hand, to regulations concerning trade in works of art and, on the other hand, to the supervision of archaeological sites. In regard to regulations on commerce, measures adopted include the licensing of dealers in antiquities, the registration of cultural property held by these dealers and, in one case, the obligation for dealers to keep records of daily buying and selling operations. On the supervision of archaeological sites, few details are provided in the reports except in the case of eight States which assure that adequate supervision is carried out.
20. Thirdly, this awareness of the value of cultural property and of the need to protect it adequately against illicit traffic that is manifest in all the actions described above, is also demonstrated by the details provided by several States on the educational and public information activities that have been adopted to stimulate recognition among young people and the public at large of the

importance of their own cultural heritage and also respect for the patrimony of other States. The Committee was particularly interested by one report which indicates that, in order to spread knowledge about the objectives of the Convention, the text has been translated into the languages of all the peoples of the country.

21. In addition to the information provided on measures taken at the national level, the reports of States demonstrate that an ethical framework has now been created at the international level with respect to the international movement of cultural property. It is, for instance, becoming generally accepted that public museums should not acquire cultural objects which they have reason to believe were stolen or illicitly exported from a foreign country. This new ethical standard is evident from the reports of the majority of States, even in the case of those which indicate some difficulty in accepting certain of the provisions of the Convention and Recommendation. One indication is to be found in the expression of willingness on the part of many States to co-operate with other States in the case of objects illegally exported. It would thus appear that there is a growing awareness of the need for concerted action at the international level to combat illicit international trafficking in cultural property. The Committee considers that the Convention and Recommendation have contributed to this situation.

22. However, the Committee wishes to draw attention to the fact that the reports of some States indicate that questions, mainly of an administrative and practical nature, have arisen in connection with the implementation of these two instruments. Several questions relate to the importation of cultural property: one State expresses the wish to receive a list of the cultural property, which is prohibited for export by each State Party to the Convention; another stresses the need to harmonize measures among States in order that effective action may be taken against illicit traffic; yet another is more specific, referring to the difficulty of identifying at the point of importation goods which have infringed the laws or export controls of other countries. Other problems raised are connected with border controls in general, certain States fearing that systematic border checks on imports and exports would give rise to excessive delays because of the volume of border traffic. Questions have also been voiced on the definition of non-exportable cultural property and, in general, on the incompatibility of certain provisions of the two instruments with national legislation. According to the reports of some States not Parties to the Convention, several of these problems have proved obstacles to the ratification of the Convention.

23. It is not possible from the reports received to categorize these difficulties except under very broad headings. The Committee consequently suggests that more detailed information be assembled on the precise nature of the difficulties encountered by Member States, and on the measures taken by States Parties in that connection. The Committee considers this to be all the more important in view of the relatively low number of States which have so far ratified or accepted the Convention. The Committee recalls that the Convention provides in Article 17 that the Organization "may, on its own initiative conduct research and publish studies on matters relevant to the illicit movement of cultural property" and "make proposals to States Parties to the Convention for its implementation".

24. The Committee accordingly recommends to the General Conference:

- (i) that, in order to encourage a greater number of States to ratify or accept the Convention and, in addition, to enable States, as necessary, to strengthen their practical machinery for the implementation thereof, further information be sought on the problems raised for States by the implementation of the Convention and on the experience acquired by other States on these issues; this information should be assembled by the study of specific cases;

- (ii) that the Committee on Conventions and Recommendations be requested to submit to the General Conference at a subsequent session - on the basis of the additional and more comprehensive data assembled by means of the study referred to in subparagraph (i) above - proposals for the implementation of the Convention, as foreseen in Article 17 thereof, if accepted by the General Conference, these proposals would be transmitted to Member States;
- (iii) that Member States be invited to submit a second report on the action they have taken to implement the Convention, in good time for transmission to the General Conference at its twenty-fourth session.

PART B

RESOLUTION ADOPTED BY THE EXECUTIVE BOARD

25. At its 105th session, the Executive Board examined the report of the Committee on Conventions and Recommendations concerning the reports received from Member States on the action taken by them to implement the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property and the corresponding Recommendation (105 EX/18) and adopted the following resolution:

"The Executive Board,

1. Having examined the report of the Committee on Conventions and Recommendations concerning the reports received from Member States on the action taken by them to implement the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property and the corresponding Recommendation (105 EX/18),
2. Endorses the conclusions formulated by the Committee in its report,
3. Recommends that the General Conference adopt the following draft resolution:

"The General Conference,

Having examined the reports of Member States on the action taken by them to implement the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property and the Recommendation on the same question (20 C/84 and Add.1),

Having noted the report of the Committee on Conventions and Recommendations (20 C/84 Add.2) on this question,

Recognizing the importance and value of the action taken on the implementation of the Convention and Recommendation by those Member States which submitted reports,

Regretting however that as at 15 September 1978 only 39 States had deposited their instrument of ratification or acceptance of the Convention,

Regretting moreover that many Member States did not respond to the invitation launched in resolution 4.122 adopted at its nineteenth session whereby it invited Member States to submit reports on this matter for consideration at its twentieth session,

Noting that difficulties have arisen in connection with the implementation of the Convention,

Reasserting the urgent need to take effective action against illicit traffic in cultural property, not only at the national level, but also by closer international co-operation,

Considering it therefore of paramount importance that a greater number of States participate in the international effort to achieve this purpose,

1. Calls upon Member States to become Parties, if they are not so already, to the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property;
2. Requests the Director-General to seek further information on the problems raised for certain States by the implementation of the Convention and on the experience acquired by other States on these issues;
3. Invites the Executive Board to instruct its Committee on Conventions and Recommendations to formulate, on the basis of the additional and more comprehensive data referred to above, proposals for the implementation of the Convention, as foreseen in Article 17 thereof, and to submit these proposals, in due course, to the General Conference;
4. Decides that Member States will be invited to forward a second report on the action they have taken to implement the Convention for examination by the General Conference at its twenty-fourth session".