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PROPOSALS FOR THE IMPLEMENTATION OF THE CONVENTION  
ON THE MEANS OF PROHIBITING AND PREVENTING  
THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP  
OF CULTURAL PROPERTY

SUMMARY

Part I of this document contains information received from certain Member States on the problems encountered concerning the implementation of the above-mentioned Convention as well as information on the experience acquired by other states with respect to these issues. Part II contains the report of the Committee on Conventions and Recommendations of the Executive Board in which are set out the proposals for the implementation of the Convention formulated by that Committee in pursuance of resolution 4/7.6/4 adopted by the General Conference at its twentieth session. The decision which the Executive Board adopted at its 116th session after examining the above-mentioned report is given in Part III. In Part IV the Director-General submits to the General Conference a draft resolution on this question.

Point for decision: paragraph 29.

17 AUG 1983

## INTRODUCTION

1. At its twentieth session (October-November 1978), the General Conference, after examining 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 Recommendation on the same question, adopted resolution 4/7.6/4, whereby it:

'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' and

'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'.

2. In pursuance of the above resolution, the Director-General invited Member States, by circular letter CL/2649 of 22 May 1979, to forward to the Secretariat a description of any difficulties that had arisen for the competent authorities in their countries with respect to the implementation of the Convention, asking them to refer not only to the legal but also to the administrative and practical aspects of the question. Furthermore, a study was also undertaken on the present situation and problems prevailing in Member States, whether or not they are parties to the Convention, with respect to illicit traffic of cultural property. The study<sup>1</sup> reviewed the present situation and problems encountered (a) in countries which are experiencing important losses through the illicit export of parts of their cultural heritage, (b) in those through which illegally exported objects most frequently transit, as well as (c) those countries to which illegally exported cultural property is conveyed. It also contained a series of recommendations on ways and means of strengthening action to combat more effectively illicit traffic of cultural property.

3. A consultation of experts and of representatives of intergovernmental and international non-governmental organizations was held at Unesco Headquarters from 1 to 4 March 1983 for the following purposes:

- (i) to examine the difficulties with respect to the implementation of the Convention to which Member States had referred in their replies to the Director-General's circular letter CL/2649 of 22 May 1979, and
- (ii) to draw up draft proposals in the light of the recommendations of the above-mentioned study for strengthening action, at the national and international levels, to combat more effectively illicit traffic of cultural property.

The meeting was attended by nine experts invited in their individual capacity from the following countries: Australia, Canada, Ecuador, Federal Republic of Germany, Iraq, Mali, Poland, Sri Lanka and the United States of America, as well as by representatives from five international organizations, namely the Commission of European Communities, the Customs Co-operation Council, the International Criminal Police Organization, the International Institute for the Unification of Private Law and the International Council of Museums. The International Confederation of Art Dealers was also invited but was not represented.

4. A summary of the problems of interpretation and implementation of several provisions of the Convention, to which certain Member States who have not ratified the Convention have referred, is given in Part I of this document, which also provides information on the experience acquired by other states with respect to these matters and, in particular, on the interpretation given to these same provisions. Part II contains the report of the Committee on Conventions and Recommendations of the Executive Board which met during the 116th session of the Executive Board; in this report are set out the proposals for the implementation of the Convention which that Committee formulated in pursuance of resolution 4/7.6/4 adopted by the General Conference at its twentieth session. The decision which the Executive Board adopted at its 116th session after examining the above-mentioned report is given in Part III. In Part IV the Director-General submits to the General Conference a draft resolution on this question, in pursuance of the above-mentioned decision of the Executive Board. The list of states which had deposited an instrument

1. The study entitled 'National legal control of illicit traffic in cultural property' by Dr L.V. Prott and Mr P.J. O'Keefe, which is available in English, can be obtained from the Division of Cultural Heritage. A French version is under preparation.

of ratification or acceptance of the Convention, as at 30 June 1983, is given in Annex I. A brief description of activities undertaken by Unesco as well as by other international bodies which are related to the prevention of illicit traffic of cultural property is given in Annex II to this document.

PART I - INFORMATION RECEIVED FROM CERTAIN MEMBER STATES ON THE PROBLEMS ENCOUNTERED CONCERNING THE IMPLEMENTATION OF THE CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY AS WELL AS INFORMATION ON THE EXPERIENCE ACQUIRED BY OTHER STATES WITH RESPECT TO THESE ISSUES

A. DIFFICULTIES ENCOUNTERED BY CERTAIN MEMBER STATES WITH RESPECT TO THE ABOVE-MENTIONED CONVENTION

5. A summary is given below of the problems relating to some provisions of the Convention which as indicated by certain Member States make it difficult for them to ratify it. These problems were referred to either in the reports of Member States on the action taken to implement the Convention and the Recommendation on the same question (document 20 C/84) and/or in the replies received to the Director-General's circular letter CL/2649 of 22 May 1979.<sup>1</sup>

6. On the definition of cultural property for the purposes of the Convention (Article 1), the Federal Republic of Germany states that in its opinion 'the term "cultural property" is open to interpretation by each individual country so that it is not possible to define exactly the scope of protection for cultural property of special importance'; it considers, furthermore, with respect to Article 4 that 'the definition of cultural heritage is too wide . . . only property of special significance for the nation's cultural identity should be protected'. Finland<sup>2</sup> finds that the definition of cultural property in the Convention is somewhat different from that for which protection is needed in Finland.

7. For two states, some difficulty arises from the provisions of Article 5 (b) concerning the establishment 'on the basis of a national inventory of protected property' (of) a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage'. Austria makes the following statement:

'If ratification of the present Convention does not ensue despite the far-reaching rules already long embodied in Austrian law, this is above all because it is extremely difficult to draw up the basic and essential lists of "National cultural property" provided for in the Convention with the required coverage. The publicly and privately owned cultural property existing in Austria is so extensive that compiling an inventory is bound to meet with the greatest difficulties. Furthermore, Austrian legislation concerning the export ban provisions has chosen the considerably safer path, i. e. that of making any (significant and less significant) cultural property subject to an export ban, except where, upon application by the owner, the Federal Office for the preservation of monuments expressly grants permission to export. The export bans on cultural property in force in Austria thus by no means only include such cultural property as appears in a previously established inventory. A switch to the system laid down in the Convention would bring about a worsening of the practice applied in Austria, whilst a dual system (application of lists also required by the Convention) would lead to legal uncertainty as a result of duplication'.

On the same subject, the Federal Republic of Germany indicates that:

'No comprehensive national inventories of cultural property are maintained in the Federal Republic of Germany. They are not deemed necessary.

The decision as to the importance of a cultural object or archive item for the German cultural heritage is taken by the Länder in the Federal Republic of Germany. They are responsible for ensuring that cultural property or archive material in their area, the export of which would mean a substantial loss, is entered in an inventory of cultural property or archive material of national value. The age and financial value of the object is immaterial. However, the law restricts this inventory to privately owned cultural property and archive material. It does not apply to publicly or church-owned objects since their sale is subject

1. Replies to the Director-General's circular letter were received from the following Member States: Austria, Bulgaria, Czechoslovakia, Finland, Federal Republic of Germany, India, Japan, Luxembourg, Netherlands, Poland, Saudi Arabia, Spain, Switzerland, Syrian Arab Republic and Yugoslavia.

2. See document 20 C/84.

to the approval of the respective supervisory bodies and thus, in the legislator's view, under adequate control. Corresponding provisions are contained in the constitutions and budgetary regulations of the 11 Länder of the Federal Republic of Germany.

This explains why the Federal Republic of Germany has no inventories which cover both privately and publicly owned cultural property and archive material. Moreover, the number of privately owned objects registered is intentionally kept as low as possible in view of the liberal approach to this matter. There do not appear to be any moves at the present time to bring about major changes in the law. The Federal Republic of Germany is therefore not in a position to establish the lists of cultural property provided for in Article 5 (b) of the Convention'.

8. On Article 3 of the Convention which reads as follows: 'The import, export or transfer of ownership of cultural property effected contrary to the provisions adopted under this Convention by the States Parties thereto, shall be illicit', the Federal Republic of Germany makes the following statement:

'The non-observance of the Convention even in one point only cannot be the sole criterion for the inadmissibility of legal action in connection with the import, export and transfer of ownership of cultural property, at any rate not if this is to be linked with the far-reaching consequence of the nullity of such legal act'.

9. Difficulties have been mentioned by several states concerning the provisions in the Convention relating to the import of cultural property. Six countries namely France,<sup>1</sup> the Federal Republic of Germany, Japan, the Netherlands,<sup>1</sup> Switzerland<sup>1</sup> and the United Kingdom,<sup>1</sup> have referred to the problems of improving the effectiveness of customs control. As expressed by the Netherlands:

'With regard to the obligation to prevent the import of movables stolen from museums and the like in other countries, checks by customs officials have appeared impractical, if not impracticable. Controls, in order to be effective, should imply factual examinations of all transports upon importation, with the purpose of checking whether they contain any goods noted on a world base as stolen property. In fact, examining shipments on such a large scale as to allow for a deterring effect is regarded neither practically possible nor desirable, because it would considerably hamper the flows of trade. Moreover, the breaking off of tariff and non-tariff barriers between a large number of countries in Western Europe--including the Netherlands--goes along with the desire to simplify or even abolish customs formalities in the relations between these countries, and consequently goods, today, are in fact only examined at random, if at all. A system of international co-operation would have to be designed in order to solve this difficulty in so far as the existing co-operation between the national police forces is insufficient in this respect'.

10. The Federal Republic of Germany states on the question of import control:

'The extensive protection provided for in Article 7, which covers all categories of cultural property specified in Article 1, may create considerable uncertainty for all persons concerned in trading in works of art. Doubts may also arise in individual cases in the application of this provision of the Convention if the question as to whether property has been stolen and innocently or otherwise lawfully acquired is open to different assessments depending on the law applicable (*lex rei sitae*)'.

11. With respect to Article 7 (b) (ii) of the Convention which provides for the recovery and return of cultural property stolen from a museum or religious or secular monument or similar institution and for the compensation to an innocent purchaser or to a person who has valid title to the property, two states, Finland<sup>1</sup> and the Netherlands, have indicated that there is some incompatibility with the provisions of their national legislation on the bona fide purchaser. The Netherlands states that a fundamental rule of Dutch civil law protects 'the person who obtains, in good faith, a movable object, to the effect that he need not restitute this object after three years will have elapsed since the loss or theft of the object took place'. However, the statement continues as follows:

'The Dutch Government has already informed parliament that, in principle, the Convention will be submitted for ratification. The government, however, is preparing an act aimed at creating an exception to the above-mentioned fundamental rule of Dutch civil law, and intends to submit the Convention and that act, the existence of which is a prerequisite for the

1. See document 20 C/84.

implementation of the Convention, as one package to parliament. This does, however, have the drawback that national proceedings have a direct influence on proceedings at the international level'.

12. On the question of the regulation of trade in cultural property (Article 10 of the Convention), the Federal Republic of Germany states that 'such monitoring and control of the art and antique market is not consistent with the German legal view' and 'Where trade in goods is concerned, this is an area of competence which has passed to the European Communities. The Federal Republic of Germany can, therefore, only deal with such matters after consultation with the institutions and the other members of the European Community'. This latter point has also been taken up by France.<sup>1</sup>

13. Other reasons put forward by states for not ratifying the Convention relate to the incompatibility of certain of its provisions with constitutional principles and the practical and administrative aspects. Switzerland<sup>1</sup> has declared 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. Denmark<sup>1</sup> has expressed concern with respect to the practical and administrative measures that would be required to fulfil the obligations under the Convention and New Zealand<sup>1</sup> has specifically referred to the problems of the manpower required. The Federal Republic of Germany has declared that ' . . . the practical implementation of the Convention with regard to the maintenance of inventories, frontier controls, customs investigation, accounting and control of the art trade would require the establishment of an administrative machinery of untenable proportions'.

14. In concluding its comments on the Convention, the Federal Republic of Germany states that 'In the Federal Government's view no country with a liberal legal system is likely, on account of legal and practical difficulties, to be able to implement the Convention. The current Unesco survey will therefore indicate whether an amendment of the Convention is desirable. This the Federal Republic of Germany would welcome because in principle it supports the aims of the Convention'.

B. EXPERIENCE OF OTHER STATES WITH RESPECT TO THE DIFFICULTIES REFERRED TO IN SECTION A ABOVE (in particular with respect to the interpretation and implementation of certain provisions of the Convention)

15. The replies received to the Director-General's circular letter CL/2649 of 22 May 1979 provided very little information on the experience acquired by states with respect to the problems of interpretation or implementation which have been referred to by certain other states which have not ratified the Convention. It was therefore considered that it would be useful to bring together a group of experts<sup>2</sup> to examine these problems and to give their views thereon. It should be emphasized that the nine experts who attended the meeting did so in their individual capacity and did not represent their governments. The views expressed by this group of experts on these matters, as contained in the final report of the meeting,<sup>3</sup> are reproduced below for the information of the General Conference:

'(a) Definition of cultural property and establishment of inventories (Articles 1, 4, 5 (b) and 7 (b))

1. Although the definition of "cultural property" given in Article 1 was found to be rather awkward, none of the experts considered that it presented any insurmountable problems. It was flexible, in that it left it to the initiative of each state to designate the property which it considered to be of importance within the parameters given in the Article.

2. It was noted that Article 4 defined a different term, namely "cultural heritage" which was not used in any of the binding provisions of the Convention. In addition, Article 9 referred to specific categories of cultural property, namely archaeological and ethnological materials.

1. See document 20 C/84.

2. See paragraph 3 above which refers to the consultation of experts and representatives of international organizations which took place in Paris from 1 to 4 March 1983.

3. Document CLT/CH/CS. 51/4 available in English and French.

3. With respect to Article 5 which calls on states to set up national services for the protection of the cultural heritage to carry out certain functions, including the establishment of a national inventory and a list of important cultural property, attention was drawn to the phrase "as appropriate for each country", contained in the introductory paragraph of that article. Two experts stated that their countries had interpreted this phrase as leaving it to the discretion of each state party to determine the action to be taken under this article which did not, in their opinion, contain any specific obligation.

(b) Statements of principle (Articles 2 and 3)

4. One expert held that Article 3 referred to the provisions adopted by the States Parties themselves. It thus gave those states discretion as to the action they took on condition that such action did not contravene the provisions of the Convention and that the actual obligations contracted under the Convention were met.

(c) Export control

5. It was emphasized that developing countries often did not have the means to establish effective control over export. It was suggested that the first step should be to establish control lists of categories of objects subject to export control for customs purposes. Another useful aid to the developing countries would be the establishment of model export certificates which would be internationally accepted. It was furthermore suggested that information on persons suspected of smuggling cultural property as well as on the categories of objects subject to smuggling should be exchanged between the appropriate authorities. One participant indicated that in his country cultural objects for which an export permit had been obtained were sealed and delivered to the exporter at the customs.

6. There was discussion concerning the involvement of persons benefiting from diplomatic immunity in illicit export of cultural goods. Experts with direct knowledge of certain blatant cases of attempted wrongful export by diplomats and officials of international organizations described these examples. It was emphasized that such cases were exceptional and that in the absence of sufficient specific evidence one could not generalize. While the participants fully understood and endorsed the important principle of diplomatic immunity, it was felt that steps should be taken to sensitize persons benefiting from diplomatic immunities to the requirements to obey the local law on cultural property. It was also considered that a study was needed to establish how big a problem this avenue of illicit traffic was.

(d) Import control (Article 7)

7. The way of controlling the import of cultural property stolen from a museum or a religious or secular public monument or similar institution gave rise to a lengthy discussion. Two experts held that it was not necessary to place an additional burden on the customs but that it was essential for states to pass legislation to prohibit the import of such cultural property and to make provision for its recovery and return. One of these experts explained that the Canadian Cultural Property Export and Import Act was administered by a very small permanent secretariat and that, to his knowledge, it had not been necessary to increase customs staff. No elaborate checks on imports at points of entry had been set up to enforce the Act. It was up to the importer to know whether or not the cultural property being imported had legally left its country of origin and to obtain expert permits when required. He also stated that the provisions of the Canadian Act went beyond the Convention in that all cultural property illicitly exported from a reciprocating state was considered as illicitly imported cultural property.

8. However, another participant was of the opinion that more customs officers, specially trained to handle cultural property, would be required to meet the obligations under the Convention.

9. It was considered that the question of customs control should not be invoked as a reason for not ratifying the Convention. The representative from the Customs Cooperation Council emphasized, in particular, the importance of training and information of customs officers. The representative from the Commission of European Communities pointed out that the necessary infrastructure existed in the countries of the European Economic Communities and coercive sanctions could be applied in the case of customs offences; however, the customs administrations would need to have at their disposal precise lists of cultural property prohibited for export and import.

10. Several experts referred to the problems of obtaining adequate documentation on stolen cultural property to enable action to be taken in countries to which such cultural property has been conveyed, to recover and return such property.

11. With respect to Article 7 (b) (ii), one expert referred to the difficulty in civil law of obliging a bona fide purchaser of a cultural object to hand it over to a state even against compensation. Another expert stated that at the Special Committee of Governmental Experts which had drawn up the text of the Convention in April 1970, no one had suggested that the question of the bona fide purchaser would present any problem in civil law, particularly since compensation had been foreseen. He went on to say that in the jurisdictions of the United States, a thief could not pass title to a bona fide purchaser, although some individual states did have prescription periods which would apply. One expert explained that the Canadian Act provided that at the request of a reciprocating state an action could be instituted in the courts for the recovery and return of illicitly exported cultural property. Compensation could be ordered by the court when it was satisfied that the possessor was a bona fide purchaser who had no knowledge at the time of purchase of the illegal export or that the possessor had a valid title to the property and had no knowledge of the illegal export at the time the title was acquired. The court may fix an amount it considered just in the circumstances to be paid as compensation by the requesting state before the property may be returned to it. The act thus placed the onus on the person or institution who had the property to prove its good faith.

12. The representative from the International Institute for the Unification of Private Law explained the basic principles of the Draft Uniform Law on the acquisition in good faith of corporeal movables drawn up under the auspices of Unidroit. Since some questions had been raised in recent years as to whether the non-transfer of title in stolen goods--one of the principles of the Draft Uniform Law--was appropriate for international trade except in the case of stolen cultural property, he referred to the possibility of modifying the text to deal only with the passage of title in cultural property.

13. One expert was of the opinion that Article 7 was too restrictive, in that it covered only cultural property which had been stolen from a museum or similar institution and did not deal with the crucial question of the recovery and return of illicitly exported products of clandestine excavations.

(e) Illegal excavations (Article 9)

14. The importance of the provisions of Article 9, which foresees the protection of archaeological and ethnological materials looted from archaeological sites was underlined. One expert stated that the United States' authorities interpreted this article as imposing an obligation to negotiate on a case-by-case basis when crisis situations arise, i. e. when illegal excavations and looting were such that the cultural heritage of a state party was being jeopardized. In explaining the provisions of United States' legislation in this respect, he referred to the need for a concerted effort on the part of art-importing states, whether parties or not to the Convention, to respond to such emergency situations. He went on to refer to the essential role to be played by Unesco: (i) in assembling documentary evidence on the scale of looting and international trade in the cultural objects concerned, whenever such crisis situations became known in a given country and (ii) in bringing into effect concerted action by art-importing countries.

(f) Regulation of trade in cultural property (Article 10)

15. In reply to concerns expressed by certain states concerning Article 10 which refers to obliging antique dealers to maintain a register recording their transactions, attention was drawn to the phrase "as appropriate for each country" which preceded the reference to the dealers. In this connection, three experts from countries with a federal system stated that, due to their constitutions, their federal governments did not have the power to regulate trade in cultural property in the way advocated in Article 10.

(g) Article 13

16. One expert indicated, with respect to Article 13 (d), that there was an increasing tendency in the United States of America to recognize the property rights claimed by foreign states in archaeological materials, even those still in the ground. Another expert indicated that the Federal Government of Canada would have constitutional difficulty in enacting legislation to implement Article 13 (a) as such legislation would

encroach on the exclusive provincial jurisdictions over property and civil rights; however, by containing the phrase "as consistent with the laws of each state" the article provided accommodation for national legislation.

(h) Reservations

17. The Chairman drew attention to the possibility of formulating reservations to certain provisions of the Convention in accordance with the principles set out in the Vienna Convention on the Law of Treaties (1969).

(i) Conclusion

18. The experts recognized that the Convention did present some legal difficulties but they were of the opinion that, if the political will existed, these difficulties could be overcome. The Convention, which was not retroactive in nature, was sufficiently flexible in that it conceded very large discretion to states in many articles. The advisability of revising the Convention was discussed, since several experts felt that the provisions relating to the illicit export of the products of clandestine excavations were too weak. However, the consensus of opinion was that it would not be opportune to revise the Convention since fifty states were already parties thereto and more particularly because it was at present expected that several countries whose participation was considered important would soon ratify the Convention, preparations to this effect being well advanced. It was considered that priority attention should be given to encouraging other states to ratify it in its present form, particularly in the light of the progress in implementation which was being made. It might, however, be possible at a later stage to consider the preparation of a protocol to the Convention to cover some of the outstanding issues'.

PART II - PROPOSALS FOR THE IMPLEMENTATION OF THE CONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY: REPORT OF THE COMMITTEE ON CONVENTIONS AND RECOMMENDATIONS

16. The Executive Board's Committee on Conventions and Recommendations met on 9 and 23 June 1983, in the course of the Board's 116th session, to examine proposals for the implementation of the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, in pursuance of resolution 20 C/4/7.6/4. For this purpose, the Committee had before it document 116 EX/CR/CLT/1 containing information received from certain Member States on the problems encountered concerning the implementation of the above-mentioned Convention, information on the experience acquired by other states with respect to these issues, and the Director-General's preliminary suggestions concerning proposals to be addressed to Member States with respect to the implementation of the Convention.

17. After the Chairman had opened the meeting, the Assistant Director-General for Culture presented document 116 EX/CR/CLT/1 referring briefly to the reports in which several states had indicated the difficulties and experience acquired concerning interpretation of some provisions of the Convention and to the subsequent action taken by the Director-General to obtain additional information on these issues. He informed the Committee of recent steps towards ratification of the Convention which have been taken by several countries at the national level, and stated that as at 15 May 1983, fifty-two states were parties to the Convention. In addition, he drew the Committee's attention to recommendations concerning this matter that had been adopted by the Intergovernmental Committee for Promoting the Return of Cultural Property to its Countries of Origin or Restitution in Case of Illicit Appropriation which met in Istanbul in May 1983. That Committee had recommended that actions to combat illicit traffic be strengthened on an international and national level, that codes of ethics of acquisition be adopted by museums and that bilateral agreements be drawn up between states of the same region. In concluding, the Assistant Director-General invited the Committee to examine the difficulties with respect to the implementation of the Convention to which certain Member States have referred, and, taking into consideration the preliminary suggestions of the Director-General which had been prepared with a view to assisting the Committee in their task, to formulate proposals for the implementation of the Convention as foreseen in Article 17 thereof for submission to the Executive Board and the General Conference.

18. In the general discussion which ensued, the Committee underlined the importance of this matter and stressed the need for concerted international action in order to effectively curb illicit traffic. Cases in point were presented to illustrate the Committee's view that protection



measures taken at the national level are of limited use unless they are backed up by a system of international co-operation. Concern was expressed over the fact that reservations and difficulties which prevent ratification still prevail in several countries.

19. Those members whose governments had not yet been able to ratify the Convention stated that this did not mean that they disagreed with its purpose or substance. The illicit movement of cultural property was a matter of serious concern to these governments who through measures taken at the national level participated in the fight against it.

One member indicated that financial, administrative and legal obstacles had prevented his government from ratifying but that it was seeking to comply with the provisions of the Convention for instance by persuading the art trade to fully comply with ethical standards in their transactions which were already applied by the museums of his country. Another member emphasized that in his country the existing legal and administrative system is largely compatible with the Convention. However, his government was of the opinion that ratification was only possible if all relevant laws and regulations were revised to assure the full implementation of the Convention.

20. The discussion showed that several new ratifications could be expected in the near future and that in the light of recent developments several other governments were reconsidering their approach. In addition, satisfaction was expressed with the results of the consultation of experts held at Headquarters in March 1983. It was generally held that this was a positive step towards finding solutions to the difficulties which some countries are still experiencing with regard to the ratification.

21. The greater part of the discussion centred on Part II of document 116 EX/CR/CLT/1 and on the six preliminary suggestions made by the Director-General for the implementation of the Convention which are set out in paragraph 17. There was general agreement among members of the Committee with the suggestions of the Director-General, however, two members stated that their government needed more time to study them, before they could pronounce themselves. Commenting on the first suggestion one member stated that flexible interpretation of domestic laws is not sufficient to surmount the difficulties that Member States experience in applying the Convention. According to the cultural tradition of his country it was necessary to faithfully implement all its provisions. As to the second suggestion which proposes regional agreements, the contents and relation to the Convention did not seem sufficiently explicit; with regard to suggestions four and five the terms 'illegally exported cultural property' needed to be more clearly defined and it was difficult to determine what was meant by 'cultural property which has been the subject of illicit traffic'. He added that these comments should not be interpreted as objections to efforts being deployed in the suggested directions. Another member indicated his agreement with these comments.

Suggestion number three, namely that efforts should be made 'to sensitize all persons benefiting from diplomatic immunity to their duty to obey the laws of the host state with regard to the export of cultural goods' gave rise to questions by several members. It was felt that the explanatory text to this suggestion could be interpreted in a manner that would be in conflict with the Vienna Convention on Diplomatic Relations and might even encourage abuse. One member of the Committee referring to paragraph 6 of document 116 EX/CR/CLT/1 felt that too much emphasis was placed on this aspect which concerned only 'episodic cases'. In his view this could divert attention from the main issues of illegal export.

22. In view of these questions the Committee decided that in order to avoid any possibility of misinterpretation of suggestion number three a revised version should be prepared by the Secretariat in consultation with the Chairman and to meet again to consider the revised text.

23. At its second meeting the Assistant Director-General for Culture presented to the Committee the revised text of suggestion number three which he hoped took fully into account all the concerns which had been expressed earlier.

24. The Committee agreed with the revised text which it adopted as follows:

3. That states and intergovernmental organizations should draw the attention of all persons benefiting from diplomatic immunity to the importance of preserving the cultural heritage of all countries

All persons, including those benefiting from diplomatic immunities, should be fully aware of the need to preserve the cultural heritage and to respect the laws governing the export of cultural goods in their host country. Article 41 (1) of the Vienna Convention on diplomatic

relations stipulates in regard to diplomatic agents that 'without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state'.

25. The Committee then examined the text of a draft decision which had been prepared by the Secretariat. One member stated that the Russian text of the proposals contained in the draft decision was not acceptable in its present form and needed to be adjusted. It was therefore agreed that the Russian version would be revised so as to correspond exactly to the English version which had been presented to the Committee by the Assistant Director-General for Culture.

26. With regard to proposal number one contained in the draft decision, some members of the Committee felt that it would be preferable not to refer to specific countries, since the difficulties encountered by some states may be of a different nature than those of the countries mentioned. Therefore, a more general wording should be found for the last part of the explanatory text. The Committee agreed with this suggestion and after briefly discussing possible wordings decided to revise the explanatory text of proposal one as follows:

In particular, those states which have so far considered that they could not become Party to the Convention because they felt that certain of its provisions raised problems should be invited to review the question in the light of the experiences acquired by some countries which have surmounted similar problems.

27. The Committee then decided that the proposals thus revised should be submitted to the General Conference for consideration.

#### PART III - DECISION ADOPTED BY THE EXECUTIVE BOARD

28. At its 116th session, the Executive Board examined the report of the Committee on Conventions and Recommendations on proposals for the implementation of the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property (document 116 EX/20) and adopted, with some amendments, the decision which that Committee had proposed. The text of the decision adopted by the Executive Board on this question is set out below:

'The Executive Board,

1. Having examined the report of the Committee on Conventions and Recommendations on proposals for the implementation of the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property (116 EX/20),
2. Having noted with satisfaction the progress made since 15 September 1978 in implementing the Convention, which, as at 10 June 1983, has been ratified or accepted by fifty-two states,
3. Considering that action against illicit traffic in cultural property urgently needs to be strengthened at the international and national levels,
4. Considering that the action proposed by the Committee on Conventions and Recommendations in pursuance of resolution 20 C/4/7.6/4 of the General Conference can improve the implementation of the Convention,
5. Endorses the following proposals:
  - (a) That all states which have not yet done so become Parties to the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property. In particular, those states which have so far considered that they could not become Party to the Convention because they felt that certain of its provisions raised problems, should be invited to review the question in the light of the experiences acquired by some countries which have surmounted similar problems;
  - (b) That states should enter into regional agreements which would protect the cultural heritage of the region. Such agreements could specify that the illicit export of cultural property originating from any state in the region would be prohibited and any action designed to bring about such illicit traffic would be punished by any state in that region;

- (c) That states and intergovernmental organizations should draw the attention of all persons benefiting from diplomatic immunity to the importance of preserving the cultural heritage of all countries. All persons, including those benefiting from diplomatic immunities, should be fully aware of the need to preserve the cultural heritage and to respect the laws governing the export of cultural goods in their host country. Article 41 (1) of the Vienna Convention on diplomatic relations stipulates in regard to diplomatic agents that "without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state";
  - (d) That those states to which illegally exported cultural property is often conveyed should offer assistance to those states which suffer from illicit export of cultural property in training of specialized personnel and in drawing up of national inventories of cultural goods;
  - (e) That states take measures to ensure that cultural property which has been the subject of illicit traffic is not provided with services of authentication, evaluation and conservation which may in any way serve to legitimize such traffic. These provisions should be particularly drawn to the attention of states where these services are concentrated. The International Council of Museums (ICOM) should also be asked to pursue its efforts towards a wider application of ethical standards to this effect;
  - (f) That states should adopt the measures advocated in the Recommendation concerning the international exchange of cultural property (1976) to develop the circulation of cultural property among cultural institutions in different countries as a means of discouraging the spread of illicit trading;
6. Accordingly invites the Director-General to submit to the General Conference, at its twenty-second session, a draft resolution based on these proposals and taking into account the observations and suggestions made in the course of the debate'.

(Decision 5.4.3)

#### PART IV - DRAFT RESOLUTION SUBMITTED TO THE GENERAL CONFERENCE

29. The Director-General hereby submits to the General Conference for its consideration the following draft resolution which is based on the proposals for the implementation of the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property set out in decision 5.4.3 adopted by the Executive Board at its 116th session and which takes into account the observations and suggestions made in the course of the debate in the Executive Board on this question:

The General Conference,

Having examined document 22 C/93 which contains, in particular, the report of the Committee on Conventions and Recommendations of the Executive Board on proposals for the implementation of the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property,

Having noted the Executive Board's decision concerning the said report (116 EX/Decision 5.4.3) by which it invited the Director-General to submit to the General Conference, at its twenty-second session, a draft resolution based on the said proposals and taking into account the observations and suggestions made in the course of the Executive Board's debate,

Having noted with satisfaction the progress made since 15 September 1978 in implementing the Convention which as at 30 June 1983 had been ratified or accepted by fifty-two states,

Considering however that action against illicit traffic in cultural property urgently needs to be strengthened at the international and national levels,

Considering that the action proposed by the Committee on Conventions and Recommendations in pursuance of resolution 4/7.6/4 adopted by the General Conference at its twentieth session could improve the implementation of the Convention,

Invites all states which have not yet done so to become Parties to the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property and, in particular, calls upon those states which have so far considered that they could not become party to the Convention because they felt that certain of its provisions raised problems to review the question in the light of the experiences acquired by some countries which have surmounted similar problems;

Invites states to enter into regional agreements which would protect the cultural heritage of the region, by, for instance, specifying that the illicit export of cultural property originating from any state in the region would be prohibited and any action designed to bring about such illicit traffic would be punished by any state in that region;

Invites states and intergovernmental organizations to draw the attention of all persons benefiting from diplomatic immunities to the importance of preserving the cultural heritage of all countries and in particular to the need to respect the laws of their host country governing the export of cultural property, reminding such persons of the provisions of Article 41 (1) of the Vienna Convention on diplomatic relations which stipulates in regard to diplomatic agents that 'without prejudice to their privileges and immunities, it is the duty of all persons enjoying such privileges and immunities to respect the laws and regulations of the receiving state';

Invites those states to which illegally exported cultural property is often conveyed to offer assistance to those states which suffer from illicit export of cultural property in training of specialized personnel and in drawing up of national inventories of cultural property;

Invites states to take measures to ensure that cultural property which has been the subject of illicit traffic is not provided with services of authentication, evaluation and conservation which may in any way serve to legitimize such traffic, drawing in particular the attention of those states where these services are concentrated to these provisions, and calls on the International Council of Museums (ICOM) to pursue its efforts towards a wider application of ethical standards to this effect;

Invites states to adopt the measures advocated in the Recommendation concerning the international exchange of cultural property (1976) to develop the circulation of cultural property among cultural institutions in different countries as a means of discouraging the spread of illicit traffic.

ANNEX ICONVENTION ON THE MEANS OF PROHIBITING AND PREVENTING THE ILLICIT  
IMPORT, EXPORT AND TRANSFER OF OWNERSHIP OF CULTURAL PROPERTY

(Paris, 30 June 1983)

List of states having deposited an instrument of  
ratification, acceptance or accession

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 Republic	1. 2. 1972 (R)	1. 5. 1972
Cuba	30. 1. 1980 (R)	30. 4. 1980
Cyprus	19. 10. 1979 (R)	19. 1. 1980
Czechoslovakia	14. 2. 1977 (Ac)	14. 5. 1977
Democratic Kampuchea	26. 9. 1972 (R)	26. 12. 1972
Democratic People's Republic of Korea	13. 5. 1983 (R)	13. 8. 1983
Dominican Republic	7. 3. 1973 (R)	7. 6. 1973
Ecuador	24. 3. 1971 (Ac)	24. 4. 1972
Egypt	5. 4. 1973 (Ac)	5. 7. 1973
El Salvador	20. 2. 1978 (R)	20. 5. 1978
German Democratic Republic	16. 1. 1974 (Ac)	16. 4. 1974
Greece	5. 6. 1981 (R)	5. 9. 1981
Guinea	18. 3. 1979 (R)	18. 6. 1979
Honduras	19. 3. 1979 (R)	19. 6. 1979
Hungary	23. 10. 1978 (R)	23. 1. 1979
India	24. 1. 1977 (R)	24. 4. 1977
Iran	27. 1. 1975 (Ac)	27. 4. 1975
Iraq	12. 2. 1973 (Ac)	12. 5. 1973
Italy	2. 10. 1978 (R)	2. 1. 1979
Jordan	15. 3. 1974 (R)	15. 6. 1974
Kuwait	22. 6. 1972 (Ac)	22. 9. 1972
Mauritania	27. 4. 1977 (R)	27. 7. 1977
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

States	Date of deposit of ratification (R) acceptance (Ac) or accession (A)	Date of entry into force
Nigeria	24. 1. 1972 (R)	24. 4. 1972
Oman	2. 6. 1978 (Ac)	2. 9. 1978
Pakistan	30. 4. 1981 (R)	30. 7. 1981
Panama	13. 8. 1973 (Ac)	13. 11. 1973
Peru	24. 10. 1979 (Ac)	24. 1. 1980
Poland	31. 1. 1974 (R)	30. 4. 1974
Qatar	20. 4. 1977 (Ac)	20. 7. 1977
Republic of Korea	14. 2. 1983 (Ac)	14. 5. 1983
Saudi Arabia	8. 9. 1976 (Ac)	8. 12. 1976
Socialist People's Libyan Arab Jamahiriya	9. 1. 1973 (R)	9. 4. 1973
Sri Lanka	7. 4. 1981 (Ac)	7. 7. 1981
Syrian Arab Republic	21. 2. 1975 (Ac)	21. 5. 1975
Tunisia	10. 3. 1975 (R)	10. 6. 1975
Turkey	21. 4. 1981 (R)	21. 7. 1981
United Republic of Cameroon	24. 5. 1972 (R)	24. 8. 1972
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

ANNEX II

ACTIVITIES UNDERTAKEN BY UNESCO AS WELL AS BY OTHER INTERNATIONAL BODIES RELATED TO THE PREVENTION OF ILLICIT TRAFFIC OF CULTURAL PROPERTY

A. Activities undertaken by Unesco related to the prevention of illicit traffic of cultural property

1. By virtue of its very Constitution which calls on the Organization to 'maintain, increase and diffuse knowledge, by assuring the conservation and protection of the world's inheritance of . . . works of art and monuments of history and science', Unesco has, since its establishment, undertaken long-standing and complementary efforts to improve the protection of the cultural heritage against all the dangers which threaten it and, in particular, against the threats of theft, clandestine excavations and illicit traffic. The activities undertaken can be described under three main headings: standard-setting, exchange of information and operational action.
2. With respect to standard-setting activities, the General Conference of Unesco has adopted, in addition to the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property (1970), the following six international instruments which are related to the protection of those elements of the cultural heritage of nations which are often subject to illicit traffic:

Convention for the protection of cultural property in the event of armed conflict and protocol (1954);

Recommendation on international principles applicable to archaeological excavations (1956);

Recommendation on the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property (1964);

Recommendation on the international exchange of cultural property (1976); and

Recommendation on the protection of movable cultural property (1978).

Activities are undertaken to stimulate the implementation of these instruments.

3. As an example of action to facilitate the exchange of information, mention may be made of the preparation of the Compendium of legislative texts governing the protection of movable cultural property. This Compendium, the first two volumes of which were published in French in 1979 and 1981 respectively, contains extracts from national legislation divided under such headings as: definition of protected cultural property; scope of protection (including the export and import regulations and the regulation of trade in antiquities), and archaeological excavations. Another example is the technical handbook entitled 'The Guarding of Cultural Property' which gives practical and technical advice for the improvement of security measures in museums.
4. At the operational level, Unesco has been involved in working with national authorities in the preparation or revision of protective legislation and the drawing up of national inventories of cultural property (a prerequisite in most cases for the identification of 'non-exportable' cultural property). A poster calling on the local population and visitors to 'stop the culture smugglers--buy only what is legally exported' has been widely disseminated among Member States.
5. Closely linked with the problems of illicit traffic in cultural property is the question of the return of cultural property to its countries of origin which have lost a substantial part of their cultural heritage as a consequence of colonial or foreign occupation. This question is being dealt with mainly in the framework of an intergovernmental committee which was created by the General Conference of Unesco in 1978 for the purpose, inter alia, of seeking ways and means of facilitating bilateral negotiations for the restitution or return of cultural property to its countries of origin and which will examine requests (and offers) from Member States for the return or restitution of cultural property.

B. Related activities of other international bodies

(a) The Customs Co-operation Council

6. The International Convention on mutual administrative assistance for the prevention, investigation and repression of customs offences, established under the auspices of the Customs Co-operation Council in June 1977, provides for co-operation between customs administrations.

Annex XI thereto foresees assistance in action against the smuggling of works of art, antiques and other cultural property. Specifically, it provides: for the exchange of information by customs administrations concerning smuggling operations, persons engaged or suspected to be engaged in smuggling, and new means or methods used; for assistance relating to surveillance over the movements of particular persons, of cultural property and particular means of transport used for smuggling; for inquiries to obtain evidence concerning smuggling and for action by customs officials in the territory of another Contracting Party (e.g. appearance before a court as witnesses).

7. As at 1 March 1983, six states (Jordan, Malawi, Malaysia, Morocco, Pakistan and Zimbabwe) had become Contracting Parties to the Convention and had accepted Annex XI.

(b) Council of Europe

8. The European Convention on the Protection of the Archaeological Heritage, adopted in May 1969 and ratified by fourteen European countries as at 31 January 1983 contains provisions concerning illicit excavations. These include the undertaking: to prohibit and restrain illicit excavations; to take necessary measures, as regards museums and other similar institutions whose acquisition policy is under state control to avoid their acquiring archaeological objects suspected, for a specific reason of having originated from clandestine excavations or of coming unlawfully from official excavations and to spare no effort to obtain the support of other museums for the same principles; to assure that the competent authorities in the states of origin, which are Contracting Parties, are informed of any offer suspected of coming from illicit excavations; and to restrict by education, information, vigilance and co-operation, the movement of archaeological objects suspected of having been obtained from illicit excavations.

9. Furthermore, a draft convention is under preparation in the Council of Europe on offences against cultural property. The draft text provides for co-operation among Contracting Parties with a view to the prevention of offences against cultural property (both private and public property) and the recovery of cultural property removed as the result of such offences. The offences in respect of which the implementation of the Convention would be of a mandatory nature are: (i) thefts of cultural property; (ii) appropriating cultural property with violence or menace; (iii) receiving of cultural property (pursuant to one of the offences listed above). However, the scope of application could be unilaterally extended by a Contracting Party to other offences (including unlawful exportation of cultural property). The draft text lays down procedural rules concerning the restitution of cultural property found on the territory of a Contracting Party after its removal from the territory of another Contracting Party as a result of one of the offences against cultural property covered by the Convention committed in the territory of a Contracting Party. The draft Convention also contains provisions concerning the enforcement of the part of a foreign judgement ordering the restitution of cultural property and concerning the extension of criminal jurisdiction of a Contracting Party to include offences committed outside its territory by one of its nationals or when the cultural property concerned belongs to that state or to one of its nationals or was originally found within its territory.

(c) The Organization of American States

10. One of the main objectives of the Convention on the protection of the archaeological, historical and artistic heritage of the American nations (known as the 'Convention of San Salvador'), which was adopted in June 1976 by the Organization of American States, is to prevent the illegal exportation of importation of cultural property. It stipulates that the exportation and importation of cultural property shall be considered unlawful unless the exportation is authorized by the state owning it. With a view to preventing unlawful trade in cultural property, the Convention foresees, inter alia, the registration of transactions carried out by establishments engaged in the sale and purchase of cultural property. Furthermore, the Convention sets out the procedure to be followed to obtain the restitution of cultural property exported unlawfully. As at 31 January 1983, the Convention had been ratified by seven states (Costa Rica, Ecuador, El Salvador, Guatemala, Nicaragua, Panama and Peru).

(d) Commission of European Communities

11. A study, prepared under the auspices of the Commission of European Communities, was published in 1976 on 'means of combating the theft of and illegal traffic in works of art in nine countries of the EEC'. It gives an analysis of the problems involved and advocates a number of measures which could be taken to improve the protection of cultural property at the national level and to strengthen co-operation among the countries of the EEC with a view to reducing illegal traffic in cultural property.



(e) The International Council of Museums (ICOM)

12. ICOM has been involved for some twenty years in the struggle against illicit traffic in cultural property. Since the early 1960s, the Council has pursued a vigorous line of action to curb the illicit export of museum objects from their countries of origin, to enforce the ethical principles that should rule the behaviour of those museum professionals who are responsible for acquisitions, and to improve security in museums.

13. In 1971, the Council adopted an ethical acquisition code in which it called on professional staff of museums to observe the highest ethical standards in the important process of acquisition and advocated, inter alia, that direct acquisitions (e. g. those obtained by scientifically conducted research missions) must be made with the agreement or the co-operation and according to the laws of the host country and that indirect acquisitions should always be made in observance of the laws and interests of the country from which the object is obtained or the country of origin. The code states furthermore that 'if a museum is offered objects, the licit quality of which it has reason to doubt, it will contact the competent authorities of the country of origin in an effort to help this country safeguard its national heritage'. This code has had wide repercussions in the museum world, as witness the policy statements, guidelines and regulations concerning acquisitions which have been issued by associations of museums and individual museums in Australia, Canada, Israel, New Zealand, the United Kingdom and the United States of America.

14. Several ICOM publications are directly relevant to this question: a handbook of national legislations concerning the protection of movable cultural property (1974), a handbook on museum security (1977) and a museum security survey. Furthermore, in co-operation with Interpol, the ICOM Bulletin contains special notices of major thefts of cultural property from museums.

(f) International Criminal Police Organization (Interpol)

15. Interpol has established a mechanism for the publication of international notices to trace stolen property. Details on the property stolen should be given on a standard form entitled 'Theft of cultural property' to facilitate identification; photographs, if available, should be attached. These notices are circulated among police organizations of member countries and it is for the police organization in each country to inform galleries, sales rooms, antique dealers, pawnbrokers, museums and customs authorities.

(g) International Foundation for Art Research

16. Under the auspices of the International Foundation for Art Research in New York, U. S. A., an art theft archive has been established and a newsletter 'Stolen art alert' (ten issues per year) is available by subscription. This newsletter provides a list of recently stolen objects with illustrations and an index as well as reports and information on legal developments relating to ownership of cultural property, security, prosecutions and convictions, and title conflicts. The Foundation expects that the art theft archive will become part of a computer system operating at Interpol in Ottawa, Canada.