International Aspects of Cultural Property

An Overview of Basic Instruments and Issues

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INTRODUCTION

The significance of cultural property as "a basic element of civilization and national culture"1 and its interchange among countries for scientific, cultural and educational purposes has been acknowledged in a number of legal instruments prepared under the aegis of UNESCO, an intergovernmental organization dedicated to the preservation of the world's cultural heritage.2 As the Preamble of the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property3 asserts: "...[the interchange] increases the knowledge of the civilization of man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations." Moreover, the 1995 adopted UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects further attests to the: "...fundamental importance of the protection of cultural heritage and of cultural exchanges

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The views expressed are those of the author and not necessarily those of the United States Congress.


2 Art. 1, ¶ 2(c), of the Constitution of UNESCO states that one of its functions is to "assure the conservation and protection of the world's cultural heritage and to this effect recommend to nations to adopt the necessary international convention."

3 Supra note 1, 823 UNTS 231; 10 ILM 271 (1971).
for promoting understanding between peoples, and the dissemination of
culture for the well-being of humanity and the progress of civilization."  

The concept of mankind's cultural heritage as cultural property that
transcends the interests of nations or individuals was embodied for the first
time in the 1954 Hague Convention for the Protection of Cultural Property
in the Event of Armed Conflict. The Convention asserts that "cultural
property belonging to any people whatsoever" belongs to "the cultural
heritage of mankind." 5 Ensuing international legal instruments such as the
1972 UNESCO Convention of the World Cultural and Natural Heritage
also embraces the concept of cultural property that forms part of the
"world heritage of mankind." 6

DEFINITION OF CULTURAL PROPERTY

During the 19th century, the traditional definition of cultural property
which comprised movables as well as immovables of cultural significance was
expanded to include prehistoric and important historic remains. Currently,
the term cultural heritage is preferred since it includes intangible heritage,
such as crafts, folklore, and skills which also warrant protection.7

Cultural property and cultural heritage are both terms which have
been used in UN and UNESCO Conventions and Recommendations.8 The
term cultural property was used for the first time in a legal document in the
of Armed Conflict.9 Similarly, the 1970 UNESCO Convention on the Means
of Prohibiting and Preventing the Illicit Import, Export and Transfer of
Ownership of Cultural Property uses the same term. On the other hand, the

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5 Preamble of the Convention, ¶ 2, 249 UNTS 240-88.
6 1037 UNTS 1972.
1972 UNESCO Convention on the World Cultural and Natural Heritage uses the term cultural Heritage. Its Preamble refers to "the existing international conventions, recommendations and resolutions concerning cultural and natural property," whereas the rest of the text refers to cultural heritage.10

Each legal instrument has used a different definition for its purposes.11 The 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property12 provides one of the most frequently mentioned definitions of cultural property which is defined as follows:

(a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of paleontological interest; (b) property relating to history, including the history of the science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of natural importance; (c) products of archaeological excavations...; (d) elements of artistic or historical monuments or archaeological sites which have been dismembered; (e) antiquities more than one hundred years old, such as inscriptions, coins and engraved seals; objects of ethological interest; (g) property of artistic interest, such as (i) pictures, paintings and drawings...; (II) works of statuary art and sculpture; (iii) original engravings, prints and lithographs; (iv) original artistic assemblages and montages in any material; (h) rare manuscripts and incunabula, old books...; (i) postage, revenue and similar stamps...; (j) archives...; (k) articles of furniture more than one hundred years old and musical instruments.

The 1970 Convention introduced the term cultural heritage in its article 413 which includes:

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10 Preamble, ¶ 5, of the Convention.
11 Strati, supra note 8.
12 Supra note 1.
13 For a further discussion regarding these two terms used in the same convention see K. Jote, INTERNATIONAL LEGAL PROTECTION OF CULTURAL HERITAGE 204, 205 (1994).
• cultural property created by the individual or collective genius of a country's nationals or stateless residents;

• cultural property found within the national territory;

• cultural property acquired by archaeological, ethnological or national science missions with official permission;

• cultural property received in a freely agreed exchange; and

• cultural property acquired by gift or legal purchase and secured with the consent of the country of origin.

The 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage,14 as its title indicates, shifted to the term cultural heritage. It also narrowed the scope of cultural property to be protected through the establishment of the World Heritage List, which identified particular objects to be protected.

The concept of regional cultural property as cultural property of nations of a certain geographical area that share similar historical and archaeological links can be discerned in Europe and in the American States.15 In the former, both the Council of Europe and the European Union have advanced the concept of European cultural heritage; while in the latter, the Organization of the American States aims to protect the cultural heritage of the American nations.16 The 1985 Convention of the Council of Europe for the Protection of Architectural Heritage of Europe explicitly emphasizes that "the architectural heritage constitutes an irreplaceable expression of the richness and diversity of Europe's cultural heritage."17 The Treaty on European Union, in article 128(1), stipulates that while respecting the national and regional diversity of the Member States, "the Community shall contribute to the flowering of the cultures of the Member States" and shall bring "the common cultural heritage to the fore."18 Furthermore, paragraph 2 states that the Community shall act to encourage cooperation between Member

14 27 UST 37; 11 ILM 1358.
15 Strati, supra note 8, at 9; see also, Prott & O'Keefe, supra note 9.
16 15 ILM 1350 (1976).
17 ETS No. 121.
The first part of this article briefly reviews the available international and regional legal instruments for the protection of cultural property in time of war and in time of peace. It also examines certain aspects of cultural property, such as regulation of traffic and repatriation. The second part surveys some aspects of the freedom of movement of cultural property within the European Union and in relation to third countries and the legislative measures that the Union has taken so far as part of its effort to introduce a Community wide system to effectively protect the cultural treasures in the Member States.

I. INTERNATIONAL ASPECTS

At the international level, a number of conventions and recommendations exist which lay down the rules that states are expected to follow either at war or peace to ensure the protection of cultural property. Under the aegis of UNESCO, the three major conventions mentioned above that have been adopted, are:


- the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and

- the 1972 World Heritage Convention.

In 1995, the International Institute for the Unification of Private Law (UNIDROIT) adopted the Convention on the International Return of Stolen or Illegally Exported Cultural Objects.

At a regional level, a number of agreements have been concluded in Europe and the Americas. A good number of states have also resorted to bilateral agreements to protect cultural property. These include the Cultural Agreement between Brazil and Spain, the Cultural Convention between the United Kingdom and Spain or the 1970 Treaty of Cooperation Between the United States and Mexico Providing for the Recovery and Return of Stolen
Archaeological, Historical, and Cultural Properties (Mexican Treaty). Lastly, at the national level, UNESCO through a series of recommendations, has elaborated on the standards and the principles that states should follow to effectively protect the cultural property within their own territory.

A. CULTURAL PROPERTY IN TIME OF WAR

The first efforts to protect cultural property culminated in international treaties prohibiting the destruction and removal of art objects during times of war. The 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict with its Protocol and Regulations for its execution was adopted following the extensive destruction that cultural

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19 22 UST 494; TIAS No. 7088.
20 UNESCO's recommendations, whether of a national or international character, contain norms which are not subject to ratification but the Member States are invited to apply. Recommendations possess great authority since they are adopted by the General Conference. Some of the most significant UNESCO Recommendations are the following: Recommendation on International Principles Applicable to Archaeological Excavations (1956); Recommendation Concerning the Most Effective Means of Rendering Museums Accessible to Everyone (1960); Recommendation Concerning the Safeguarding of the Beauty and Character of landscapes and Sites (1962); Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property (1964); Recommendation Concerning the Preservation of Cultural property Endangered by Public or Private Works (1968); Recommendation Concerning the Protection at National Level of the Cultural and Natural Heritage (1972); Recommendation Concerning the International Exchange of Cultural Property (1976); Recommendation Concerning the Safeguarding and Contemporary Role of Historic Areas (1976); Recommendation for the Protection of Movable Cultural property (1978); Recommendation for the Safeguarding and Preservation of Moving Images (1980); and Recommendation on the Safeguarding of the Traditional Culture and Folklore.

21 For instance, the Lieber Code adopted in the United States in 1863 stated that cultural property was not to be "seized, sold, given away, wantonly destroyed, damaged, or privately appropriated until such time as peace treaty determined the ultimate ownership of the property." The Hague Conventions of 1899 and 1907 on the Laws and Customs of War on Land also encompassed a series of provisions intended to safeguard cultural property during war. In 1935, the Washington Treaty on the Protection of Artistic and Scientific Institutions and Historic Monuments (the Roerich Pact) was signed [A. Roberts & R. Guelff, DOCUMENTS ON THE LAWS OF WAR 339 (1989)].
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heritage suffered during World War II. It lays down rules on the protection of both movable and immovable cultural property during war.\textsuperscript{22}

The Convention distinguishes between \textit{general protection} afforded to all cultural objects enumerated in article 1 and \textit{special protection} granted to a limited number of refuges and centers of great significance in article 8. Member States have dual legal obligations to safeguard and to protect cultural property.\textsuperscript{23} The former includes any measures that the Member States must undertake during peace time in order to protect the cultural property which is located within their territory against the predictable consequences that an armed conflict may have on cultural property. The latter arises in armed conflict and encompasses the obligation to abstain from endangering the cultural property by using it for purposes which are likely to expose it to destruction and refrain from any act of hostility against such property.\textsuperscript{24}

The Convention grants special protection only to a limited number of refuges which are used to provide shelter to cultural property in case of armed conflict and centers which contain monuments or other immovable property of great significance.\textsuperscript{25} Such refuges and centers qualify to enter the \textit{International Register of Cultural Property Under Special Protection} which is under the administration of UNESCO. Upon entry in this Register, cultural property is immune from any act of hostility.\textsuperscript{26} The contracting states are obliged to mark cultural property with a distinctive emblem. Immunity is withdrawn from cultural property in case of unavoidable military necessity and if the State uses the cultural property for military purposes.\textsuperscript{27}

Thus far, the 1954 Convention has not enjoyed universal ratification. The United States has not signed it yet. The Department of State explained that "the major difficulty is that adherence to the Convention would seriously

\begin{itemize}
\item \textsuperscript{22} \textit{Id.}
\item \textsuperscript{23} The difference between these two forms of protection is that the respect of cultural property may be waived in case of \textit{military necessity}.
\item \textsuperscript{24} Art. 4, \textit{¶} 1, of the Convention.
\item \textsuperscript{25} Art. 8, \textit{¶} 1, of the 1954 Convention.
\item \textsuperscript{26} \textit{Id.} art. 9.
\item \textsuperscript{27} \textit{Id.} art. 11, \textit{¶¶} 1 & 2.
\end{itemize}
limit the options of the United States in the event of nuclear war or even in some cases of conventional bombardment."^{28}

The Protocol prohibits the Contracting States from exporting cultural property from territories under their occupation and urges Member States to take all necessary measures to prevent the exportation of such property.^{29} If a cultural object is exported from an occupied territory, it must be returned to the competent authorities of the territory concerned at the end of the hostilities.^{30} Furthermore, the Protocol states that cultural property removed from an occupied territory shall not be used as war reparations.

1977 Protocols to the 1949 Geneva Conventions

Article 53 of Protocol I and article 16 of Protocol II prohibit any act of hostility against works of art or places of worship which constitute the cultural or spiritual heritage of people, the use of such objects to support military efforts or to subject such objects to reprisals.^{31}

It has been asserted that since the principle of special protection of cultural property in time of war has been established for a long time and has been generally accepted by the states and has been reaffirmed by the 1977 Protocols of the 1949 Geneva Conventions, it may be considered as a part of customary international law.^{32}

B. CULTURAL PROPERTY IN PEACETIME

The Convention Concerning the Protection of the World Cultural and Natural Heritage,^{33} also known as the World Heritage Convention (1972)^{34}
encompasses the protection of cultural monuments and sites and extends its protection to the natural heritage as well. In order to fall within the scope of this Convention, cultural and natural property must be of outstanding universal value from the point of view of history, art, science, aesthetics, anthropology, conservation, ethnology or natural beauty. It falls within the domain of the State Parties to identify and draw up an inventory of their heritage of outstanding value so that it can be under the protection of this Convention.

The World Heritage Committee which was established by this Convention designates the items based on inventories submitted by the States that are included in the World Heritage List.

The Convention established the World Heritage Fund which is financed by contributions from signatory Member States on the basis of a percentage of their yearly dues to UNESCO. The funds are used to provide advice and financial assistance for the preservation of sites of cultural significance.

The United Nations Convention on the Law of the Sea (1982) which entered into force on November 16, 1994,\textsuperscript{35} contains two clauses in regard to the protection of cultural property lying on the sea-bed. Briefly, article 149 states that all archaeological or historical objects found in the deep seabed shall be preserved for the benefit of mankind. Particular regard is to be paid to the preferential rights of the country of origin, or cultural origin or of historical and archaeological origin. Article 303 of this Convention establishes rules for the protection of objects found in the international zone beyond the limit of a State’s jurisdiction.

\textsuperscript{35} ETS No. 143.
II. REGIONAL PROTECTION

A. EUROPE

a. Council of Europe

The European Cultural Convention (1954) 36

The Convention calls each contracting State to consider the objects of European cultural significance in its territory as an integral part of the common cultural heritage of Europe and to take appropriate measures to safeguard them. Moreover, each party shall undertake to promote cultural activities of European interest and to facilitate the movement and exchange of persons and objects of cultural value. Each member is obliged to implement policies to protect its own cultural heritage.


This Convention replaces the 1969 European Convention on the Protection of the Archaeological Heritage, 38 the scope of which was limited to the protection of monuments, groups of buildings and sites. The revised Convention aims to protect the archaeological heritage as a source of the European collective memory and as an instrument for historical and scientific study.

The European Convention on Offenses Relating to Cultural Property (1985) 39

The members of the Council of Europe signatory to this Convention in "recognizing their common responsibility and solidarity in the protection of the European cultural heritage" agreed to take all necessary measures to prevent and punish offenses against cultural property.

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36 218 UNTS 140 (1955).
37 ETS No. 143.
Convention for the Protection of the Architectural Heritage of Europe (1985)\textsuperscript{40}

The scope of this Convention is the protection of architectural heritage "which constitutes an irreplaceable expression of the richness and diversity of Europe's cultural heritage, bears inestimable witness to our past and is a common heritage of all Europeans." The architectural heritage comprises monuments, groups of buildings and sites. State Parties undertake a variety of obligations such as identification of the properties to be protected, the adoption of statutory measures to protect such properties and financial support for maintaining and restoring it.

Draft European Convention on the Protection of the Underwater Cultural Heritage 1985\textsuperscript{41}

Under the definition of this Convention, underwater cultural property includes "...all remains and objects and any other traces of human existence located entirely or in part in the sea, lakes, rivers, canals...or recovered from any such environment" which are at least 100 years old. The Convention establishes a number of obligations for the States Parties to protect, document and conserve underwater cultural property. It also provides special rules to control the traffic and to curb its illicit circulation.\textsuperscript{42}

b. European Union

In the early 1990s the European Community (EU) became deeply concerned about the issue of escalating art thefts in Europe.\textsuperscript{43} Awareness of the problem was heightened because of the impending removal of borders in

\textsuperscript{40} 121 ETS (1985).

\textsuperscript{41} The final draft was sent to the Committee of Ministers of the Council of Europe in Mar. 1985 for approval. However, due to Turkey's objection concerning the territorial scope of application, it has not yet been opened for signature [Strati, \textit{supra} note 8, at 87].

\textsuperscript{42} \textit{Id.} at 88.

\textsuperscript{43} Art thieves steal approximately 60,000 works of art in Europe annually. The black market is made up of art dealers who are experts in the laundering of stolen artifacts. See, V. J. Vitrano, \textit{Protecting Cultural Objects In an Internal Border-Free EC: The EC Directive and Regulation for the protection and Return of Cultural objects}, 17 FORDHAM INT. L.J. 1164 (1994).
1992. As a result, the EU sought to protect the cultural property of its Member States in an internal market free of borders. Among the Members, the source countries, which are enormously rich in cultural treasures, such as Italy, France, Greece, Spain wanted the imposition of strict limits in the exportation of cultural objects. The acquiring nations such as Belgium, Germany and the Netherlands sought less rigid controls. The need for a Community-wide system to protect cultural treasures became more pressing in the absence of a uniform system to recover national treasures unlawfully removed from the territory of a Member State. The situation was made more necessary since a number of Member States had not signed the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property; and the European Convention on Offenses related to Cultural Property has not yet been ratified.

Ownership of stolen cultural property is a particularly intricate issue, and the core of the issue is whether the original owner or the *bona fide* purchaser is to be favored. The European Community, under article 222 of the Treaty of Rome as amended, has no competence to "prejudice the rules of Member States governing the system of property ownership." Thus, the common and civil law legal systems of the Member States diverge with regard to the conveyance of title in case of stolen property which is purchased in good faith. Under the common law system, since a thief does not have good title, good title cannot be transferred to the purchaser of stolen property, and the chain of good title is interrupted. As a result, the original owner has the right to recover the stolen property from the purchaser, since the purchaser did not get good title from the thief. On the other hand, in certain Member States which follow the civil law system, a *bona fide* purchaser acquires good title in a case regarding stolen property. A common phenomenon which has been observed in Europe is that art thieves aware of these legal technicalities often take cultural property from common law

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44 *Id.* at 1164 & 1175.
46 The majority belong to the civil law tradition with the exception of England and Ireland.
countries to civil law countries where they find a system more favorable to selling stolen art objects and where good title can be obtained. 49

LEGISLATIVE MEASURES

Prior to the Treaty on European Union cultural policy was not expressly covered by the EEC Treaty. The Treaty on European Union includes a separate title on Culture (title IX). It consists of a sole article which reads as follows:

The Community shall contribute to the flowering of the cultures of the Member States, while respecting their national and regional diversity and at the same time bringing the common cultural heritage to the fore.

Action by the Community shall be aimed at encouraging cooperation between Member States and, if necessary, supporting or supplementing their action in the following fields, including the preservation and safeguarding of cultural heritage of European significance.

Member States, under the terms and within the limits of article 36 of the Treaty, still have the authority to place limits on the free movement of goods in order to protect their cultural treasures in the internal market. Article 36 of the Maastricht Treaty provides:

...the provisions of Arts. 30 to 34 shall not preclude prohibitions or restrictions on imports, exports or goods in transit justified on grounds of public morality, public policy or public security; the protection of health and life of humans, animals or plants; the protection of national treasures possessing artistic, historic or archaeological value; or the protection of industrial and commercial property. Such prohibitions or restrictions shall not, however, constitute a

49 Vitrano, supra note 43, at 1172.
means of arbitrary discrimination or a disguised restriction on trade between Member States.\textsuperscript{50}

The Community adopted a Regulation (EEC) No. 3911/92 on the export of cultural goods\textsuperscript{51} and a Council Directive on the return of cultural objects unlawfully removed from the territory of a Member State.\textsuperscript{52} These legislative measures introduce a Community wide system to protect the cultural treasures of the Member States. The adoption of these measures was deemed necessary in order to balance the need to promote the free commerce among Member States, to ensure that exports of cultural goods are subject to uniform controls at the external borders of the Community and at the same time to monitor the return of cultural objects which were unlawfully removed from the territory of a Member State.

**REGULATION**

The Regulation which is "binding in its entirety and directly applicable in all Member States" provides that the export of all cultural goods outside the customs territory of the Community is subject to an export license. The export license is issued at the request of the person concerned by the competent authorities of the country of origin\textsuperscript{53} and is valid throughout the Community.\textsuperscript{54} The Annex which is common to the Regulation and the Directive clarifies the categories of cultural goods which should be especially

\textsuperscript{50} This article is similar to Art. XX of the General Agreement on Tariffs and Trade (GATT) which provides:

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

... 

(f) imposed for the protection of national treasures of artistic, historic or archaeological value....


\textsuperscript{52} Id. L74/74 (1993).

\textsuperscript{53} Supra note 51, art. 2, ¶ 2.

\textsuperscript{54} Id. art. 2, ¶ 3.
protected in trade with third countries. National art treasures classified as such by a Member State and which do not fall within the Annex are exempt from the export license requirement.

The export license requirement safeguards cultural property of the Member States from illegal exportation. Thus, the potential buyer of an object found outside the Community without an export certificate should be aware that there is a likelihood that it has been unlawfully removed or that it was exported before January 1, 1993.

According to article 7 of the Regulation, the Commission was required to prepare legislative measures to implement the regulation. Such measures were adopted through Commission Regulation No. 752/93 on licensing. The license regulation contains a sample license form and rules concerning drawing up, issuing and using the form.

DIRECTIVE

The Directive aims to facilitate the return of cultural objects and establishes the procedure to be followed within the European Union for the return of such objects that have been unlawfully removed from the territory of a Member State and later appear in another Member State. The Directive applies only to cultural objects unlawfully removed either on or after January 1, 1993. Member States are required to adopt laws, regulations or administrative provisions to comply with its provisions.

DEFINITION OF CULTURAL PROPERTY

The Directive defines cultural objects as those items which have been classified under domestic legislation as "national treasures possessing artistic, historic or archaeological value" before or after their unlawful removal from the territory of a Member State. Such objects are found among the cultural

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55 Id. see Preamble, ¶ 10.
56 Id. art. 2, ¶ 4.
57 Vitrano, supra note 43, at 1168.
58 Supra note 51, L77/24 (Mar. 31, 1993).
59 Supra note 52, art. 13.
goods listed in the Annex, and cultural objects also form an integral part of public collections or the inventories of ecclesiastical institutions.

**Repatriation of Cultural Property**

Article 4 of the Directive establishes as an initial step a cooperation and consultation procedure between the competent authorities of the Member States for the return of cultural objects. The language of article 4, "upon application of the requesting Member," indicates that claims for return may be made by a Member State and not an individual. The requested and requesting Member State has certain obligations. The requesting Member State must include in the application all the information necessary to facilitate the search. On the other hand, the national authorities of the requested State must notify the requesting state when a cultural object is found which most likely has been unlawfully removed and must enable the appropriate authorities of the requesting Member State to verify that the object is the cultural object in question. The requesting State has a time limit of two months upon notification to do the investigation. If the requesting State conforms to the above period, the requested State is obliged to take the following further steps to:

- take any measures necessary for the protection of the object; and
- to ensure the safe return of the object and to act as an intermediary between the possessor and/or the holder of the object and the requesting state.

Should the cooperation procedure fail to produce the desired results, the requesting State, in order to secure the return of the cultural object, has the right to initiate court proceedings against the possessor or the holder of the object. The Directive defines the *possessor* as the "person physically holding the cultural object in his own account" and the *holder* as the "person physically holding the cultural object for third parties.\(^63\)

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\(^{60}\) The Annex includes fourteen categories of objects classified as national treasures.

\(^{61}\) *Supra* note 52, art. 1.

\(^{62}\) *Id.* art. 5.

\(^{63}\) *Id.* art. 1, ¶¶ 6 & 7.
The Directive includes a specific period of limitations. The requesting state has the right to initiate return proceedings within one year after it became aware of the identity of the possessor or holder of the cultural object and its location. Otherwise return proceedings may be initiated within 30 years after the object was unlawfully removed. Ecclesiastical items are subject to a 75-year limitation period except in Member States where there is no time limit on proceedings or there are bilateral agreements providing more than a 75-year period.

The competent court of the requested State orders the return of the cultural object in question and awards the possessor a fair compensation. On the other hand, the requesting State is responsible for compensating the possessor upon return of the object and for any expenses accruing from implementing the return of the cultural object in question as well as the cost of the measures provided in article 4. The possessor has to exercise "due care and attention" in acquiring the object. Issues of burden of proof fall within the domain of the legislation of the requested State. Ownership issues arising after the return of the cultural object are regulated by the law of the requesting Member State.

The legislative action by the Community aims to augment the preservation of Europe's cultural patrimony and the free circulation of goods within the Community. It may also provide some degree of uniformity within the Community and facilitate trade between Member States and in relation to third countries.

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64 Id. art. 7.
65 Id. art. 9, ¶ 1. With regard to the amount of compensation, the Commission has stated the following:

The amount of compensation will not necessarily be equivalent to the purchase price paid by the acquirer. According to the case in point, it may be more or less than the purchase price because the court also has to take other factors into account, e.g. the objective value of the object, its sentimental value for the acquirer, the costs he has incurred in preserving it and above, whether or not he remains - under the law of the requesting Member State (see Article 12) - owner of the cultural object once returned [Nicholas, supra note 45, at 162 & 163].

66 Supra note 52, art. 12.
B. THE NORDIC COUNTRIES

In 1971, the Nordic Cultural Agreement was adopted by the Nordic Council. It urges the Member States to cooperate at the inter-Nordic and international level in the cultural field. It specifies areas of cooperation with a special emphasis in the fields of archives, museums and libraries.

C. THE ORGANIZATION OF THE AMERICAN STATES (OAS)

The American States were pioneers in protecting cultural property. In 1935 a regional agreement, the Washington Treaty (also known as the Roerich Pact) was signed by 21 American States. It grants protection to immovable cultural property during wartime. A year later the Pan American Treaty followed, and its scope includes the protection of movable cultural property of historical significance. The Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations (1976), also known as the San Salvador Convention was adopted. It aims to identify, register, protect and safeguard that property which makes up the cultural heritage of the American nations, to prevent illegal exportation or importation of cultural property and to promote cooperation among the American States. The General Secretariat of the OAS is responsible for ensuring the enforcement of the Convention, to establish an Inter-American Registry of Cultural Property and to promote the exchange of cultural property among parties.

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67 Jote, supra note 13, at 181.
68 Roberts & Guelff, supra note 21.
69 15 ILM 1350. Seven countries are parties to the Convention, the United States is not yet a party.
III. BASIC ISSUES OF CULTURAL PROPERTY

ESTABLISHMENT OF OWNERSHIP OF CULTURAL PROPERTY

Ownership issues involving cultural property fall within the domain of the national legislation of the states. Respect for the sovereign right of each state on regulating ownership is reflected in a number of conventions such as the Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations (1976). It emphasizes that regulations on the ownership of cultural property and its transfer within the territory of each state shall be governed by domestic legislation. Moreover, the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage in its call to the Member States to cooperate in protecting the world heritage clearly states that it:

...fully respects the sovereignty of the state on whose territory the cultural and natural heritage is situated; and without prejudice to property rights provided by national legislation.

REGULATION OF TRAFFIC IN CULTURAL PROPERTY

The illicit movement of cultural property, that is movement in violation of a country’s import, export or transfer of ownership regulations, has been characterized as one of the most serious problems of cultural property. Art theft in particular has become a problem of tremendous

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70 The Preliminary Report of the Director-General of UNESCO on the 1956 UNESCO Recommendation on International Principles Applicable to Archaeological Excavations recommends that ownership question be left undisturbed. Its ¶ 24, reads:

Any recommendation cutting across the property laws in force in each State would meet with strong opposition and that therefore it was best to leave States complete free to adopt whatever principle they thought preferable [Strati, supra note 8, at 100].

71 Art. 7 of the Convention.

72 Art. 5 of the Convention.
dimensions. There is an international network of art dealers which specializes in the laundering of stolen artifacts. Art laundering has been described as the process by which a seller of stolen or dirty art makes it clean by selling it in a country in which legislation conveys good title to a bona fide purchaser of stolen art.

The 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, which is the first global agreement that was adopted in an attempt to control the trade of illicitly acquired cultural property, specifically recognizes that:

...the illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin.

The Convention imposes a number of national and international duties on the Member States to prevent illegal trafficking of cultural property. Nationally, the Member States are required to set up national services, to prepare laws and regulations with the purpose to protect the cultural property of each state, and to introduce an export certificate system. Internationally, under article 9 of the Convention, States Parties are required "to participate in an international effort to determine and carry out" control of the import and export and international commerce of cultural property, to establish a fund for the protection of cultural heritage, to become signatory to a bilateral or multilateral agreements on restitution of cultural property.

Article 3 of the UNESCO Convention declares the import, export and transfer of ownership of cultural property effected by States Parties contrary to its provisions illegal. Article 6 of the Convention introduces an authorization certificate that must accompany all exported items of cultural property. Any export of cultural property without this certificate is

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73 Worldwide, 45,000 to 53,000 art thefts occur annually. Only about 10% of all stolen art is ever recovered [see, K. T. Burke, SUPRA NOTE 48, AT 427.]


75 The legislative history of this article indicates that the participatory states disagreed with its wording. One argument was that it would interfere in the domestic domain of other states by obliging the importing state to impose the law of the exporting state [Jote, supra note 13, 207].
prohibited. The United States was against this clause because it imposed a heavy commitment on exporting nations to perform luggage checking. Unfortunately, the Convention did not introduce a corresponding import control system which would ensure the more effective protection for cultural property.\footnote{Id. at 210.}

Articles 7 and 9 are the core of the Convention and contain its most substantive provisions. Article 7(b) deals with the issue of stolen property and requires the parties to prohibit the import of cultural property stolen from museums, or religious or public monuments or similar institutions and to take appropriate steps to recover and return such property.\footnote{It specifically reads as follows: \begin{quote} The States Parties to this Convention undertake: (i) to prohibit the import of cultural property stolen from a museum or secular public monument or similar institution in another State Party to this Convention...provided that such property is documented as appertaining to the inventory of that institution. \end{quote}}

This particular article has been criticized because it confines its import prohibitions to a limited category of cultural property. In order to exercise the import ban, the cultural property must have been stolen "from a museum or a religious or secular public monument or similar institution." Moreover, the cultural property must be "documented as appertaining to the inventory of that institution." If one of these conditions is not met, a State Party has no obligation to recover and return illegally exported cultural property.\footnote{Burke, \textit{supra} note 48, at 437.}

In spite of the fact that the Convention has been ratified by more than eighty states, which to a large extent are source or exporting states, its effectiveness on the issues of illicit traffic and restitution has been insignificant for a number of reasons.\footnote{34 ILM 1322 (1995).} Of the large importing countries,
only Australia, Canada and United States\textsuperscript{80} have become parties to the Convention.

Certain \textit{art market} states have not ratified the Convention because the obligations contained in the Convention would place an undue burden upon their customs authorities. Others argued that it would be difficult to oblige a bona fide purchaser of a cultural object to return it to a requesting state even if the latter provides compensation. Most Members of the European Union are not signatories to the UNESCO Convention.

The practical difficulty seen to implementing the measures which are called for in the [UNESCO] 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.\textsuperscript{81}

The Convention also places an undue burden on source countries which are often less developed and have scarce financial resources.\textsuperscript{82} A number of countries may lack the financial means to prepare the inventories as provided for in article 7(b)(i).

Two additional agreements that have a bearing on the export and import of the cultural heritage are the \textit{Convention on the Protection of the Archaeological, Historical and Artistic Heritage of the American Nations} (1976); and the \textit{European Convention on Offenses Relating to Cultural Property} (1985).\textsuperscript{83} The former to a large extent has been ineffective, since

\textsuperscript{80} The United States reserved the right to determine whether or not to impose export controls over cultural property and under the understanding that it does not alter property rights under the laws of the states [M. N. Leich, \textit{Contemporary Practice of the United States Relating to International Law}, 76 \textit{Am. J. Int'l. L.} 611 (1982)].


\textsuperscript{82} Mastalir, \textit{supra} note 28, at 1033 & 1054.

\textsuperscript{83} 25 ILM 44 (1986).
the United States, as a major *art market* in the area has not yet become a party, and the latter Convention is not yet in force.

**REPATRIATION OF CULTURAL PROPERTY**

Removal of cultural property from its source country - which may occur either under abnormal situations, such as war, occupation, colonization or during peace through theft or in violation of export regulations - has in turn raised the issue of whether or not cultural property should be returned to the source countries. The repatriation question, a very controversial and complex issue, entails a number of secondary issues such as appropriate definition, time limitations, compensation of the bona fide possessor and the like.

Two opposing and competing views have been advanced surrounding the right to cultural heritage: cultural nationalism versus cultural internationalism. For the so-called source nations, the protection and repatriation of cultural property is a human rights issue. For acquiring nations, it is a property question. Cultural nationalists argue that cultural property should remain within the nation since it defines a people and their society and constitutes a link with their past. On the other end of the spectrum, cultural internationalists, while recognizing the significance cultural

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85 For an elaborate description of restitution in the context of war, see Jote, *supra* note 13, at 261.
86 For a discussion of the terms restitution or return, see Jote, *supra* note 13, at 261.
88 See Universal Declaration of Human Rights, arts. 1, 27; art. 1 of the International Covenant on Civil and Political Rights; and art. 1 of the International Covenant on Economic, Social and Cultural Rights stating that all people have the right of self-determination, which has political, economic, social and cultural aspects.
90 R. W. Mastalir, Supra note 28, at 1033, 1058.
property holds for a specific country, contend that cultural property is part of a common heritage of mankind. Thus, based on this idea, cultural property may be removed from the country of origin, be accessible to other nations and serve as missionary art.\textsuperscript{91}

Repatriation has long been included in the agenda of the United Nations. The discussions which have been initiated mainly by developing nations which have experienced frequent incidents of looting and plundering of cultural property have led to the adoption of several General Assembly resolutions. Beginning in 1973, the General Assembly adopted a series of Resolutions calling for the restitution of cultural property. Recently adopted Resolution No. 48/15 of 1993 on the Return or Restitution of Cultural Property to the Countries of origin also reaffirmed:

...that the restitution to a country of its objects d'art, monuments, museum pieces, archives, manuscripts, documents and any other cultural or artistic treasures contributes to the strengthening of international cooperation and to the preservation and flowering of universal cultural

\textsuperscript{91} Merryman, \textit{supra} note 87: The distinction between these two schools of thought has also been reflected in the Conventions. The 1970 UNESCO Convention on the Protection of Cultural Property explicitly espouses a nationalist stance. The Convention, while it acknowledges the significance of interchange of cultural property, states that:

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

On the other end of the spectrum, the 1954 Hague Convention and the World Heritage Convention, as its title indicates, espouse the international culturalism stance. The Hague Convention proclaims that:

...damage to cultural property belonging to any people whatsoever means damage to the cultural heritage of all mankind, since each people makes its contribution to the culture of the world...and that the preservation of the cultural heritage is of great importance for all peoples of the world and that is importance that this heritage should receive international protection.
values through fruitful cooperation between developed and developing countries.\textsuperscript{92}

Under the aegis of UNESCO, the first global instrument to deal with the issue of restitution of cultural property to victim countries was adopted. This is the Protocol to the 1954 Hague Convention which applies during armed conflict and requires States Parties to "return at the end of hostilities cultural property that is removed from the occupied territory." The Protocol does not apply retroactively. Thus, restitution cases arising before its adoption are outside its scope.\textsuperscript{93}

In 1978, UNESCO established an Intergovernmental Committee which is responsible for the cultural property issues. In 1985, discussions on restitution led to the adoption of a Standard Form Concerning Requests for the Return or Restitution of Cultural Objects. The requesting state must submit the completed form to the Committee Secretariat in Paris which in turn forwards this to the requested country. The latter has to respond within a year of receiving the request. Since the adoption of this form, several countries have submitted requests, including Greece (for the return of the Elgin Marbles), Iran, Turkey, and Ecuador.\textsuperscript{94}

The UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property\textsuperscript{95} deals specifically with the issue of restitution in peace time.

The obligation of the contracting states to ensure the return of illegally exported cultural objects to countries of origin was limited to a great extent by article 7.\textsuperscript{96} The duty to recover cultural property applies only to cultural property that has left countries of origin due to "theft from museums, religious or secular or public monuments or from similar institutions." Thus, the Convention does not apply in instances involving the recovery of objects from privately-owned institutions, or objects which have been illegally exported other than through theft.

\textsuperscript{92} 47 YEARBOOK OF THE UNITED NATIONS 1027 (1993).
\textsuperscript{93} Jote, \textit{supra} note 13, at 304.
\textsuperscript{94} \textit{Id}.
\textsuperscript{95} 10 ILM 289 (1971), arts 7, 13 & 15.
\textsuperscript{96} M. Evans, \textit{The International Protection of Cultural property - The UNIDROIT Response}, 10TH COMMONWEALTH CONFERENCE 657 (1994).
The Convention protects bona fide purchasers by requiring in article 7(b)(ii) that "a requesting state...pay just compensation" to an innocent purchaser or to a person who has valid title to that property." This particular provision has been used as an argument by a number of countries for not ratifying the Convention. These countries claim that their domestic legislation was incompatible with the protection of bona fide purchasers. The developing countries have been dissatisfied with the requirements it imposes upon claimant countries since, according to article 7(b)ii, claimant countries should:

...prepare inventories to establish the validity of claims to be made; pay compensation to the bona fide owner; make claims through diplomatic channels; pay all expenses related to the return or recovery; furnish evidence of the claims and the expenses thereto.

Article 13 of the Convention requires that State Parties undertake to:

- cooperate in facilitating the earliest possible restitution of illicitly exported item to its owner;
- admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;
- recognize the right of each state to declare certain cultural property as inalienable and thus not subject to exportation; and
- facilitate recovery of such property to the country where it has been exported.

Article 15 of the Convention allows State Parties to conclude special agreements or to implement agreements already concluded with regard to the restitution of cultural property.

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97 On the other hand, the European Convention avoids the issue of compensation by requiring that "restitution should be subject to the law of the requested state."

98 When in early 1980s, the UNESCO Secretariat convened a meeting to review the function of the Convention, art. 7 was among of the provisions mostly criticized, see Evans, supra note 96, at 654.

99 Burke, supra note 48, at 439.
The OAS Convention also includes provisions on restitution. It provides that all cultural property illegally exported is recoverable. This Convention goes a step further in comparison to the UNESCO Convention. The OAS Convention expressly prescribes that "the ownership rights of each state over its cultural patrimony and any action taken to recover the objects which constitute that patrimony shall not be subject to prescription," in contrast to the UNESCO Convention which is silent on this issue.

While the UNESCO Convention was an important first attempt at the international level to curb the illicit traffic in cultural objects and to facilitate their recovery and return, the latter two issues along with compensation proved to be its "achilles’s heel," because its scope of application was limited to stolen cultural property. It also failed to resolve conflict of law issues involving bona fide purchasers and title. Thus, in the 1980s, UNESCO invited the International Institute for the Unification of Private Law "UNIDROIT" to draft another treaty which came into being on June 24, 1995.

The Convention on Stolen or Illegally Exported Cultural Objects deals with the restitution and return of stolen or illegally exported cultural objects. It aims, as does the 1970 UNESCO Convention, to decrease illicit traffic in cultural objects. However, in comparison to earlier conventions, it has expanded the rights on the basis of which return of cultural objects can be requested and has broadened the scope of objects under its protection. The Convention's preambular and operative provisions, due mainly to requests from the United States, Canada and Australia, recognize the detrimental effect of illicit trade to the cultural heritage of national, tribal, indigenous and other communities.

The Convention applies to claims of an international character for the restitution of stolen cultural objects, and the return of cultural objects illegally exported from the territory of a contracting state.

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100 Supra note 45, at 146.
101 Done at Rome, June 24, 1995. The Convention was approved by 37 States, five were against and seventeen states abstained, including the United States; 34 ILM 1322 (1995).
102 Id.
103 Id.
Its first part (arts. 3-4) deals with restitution of stolen objects, and its provisions apply to both public and private claims. Its second part on the return of illegally exported cultural objects deals only with public claims.

RESTITUTION OF A STOLEN CULTURAL OBJECT

The Convention defines a *stolen object* as a thing that "has been unlawfully excavated or lawfully excavated but unlawfully retained." 104

Under the Convention there is no bona fide acquisition of stolen property. Article 3, ¶ 1, explicitly states that "the possessor of a cultural object which has been stolen shall return it." The Convention provides for a fair and just compensation at the time of restitution to the bona fide possessor of a stolen object provided that he "neither knew nor ought reasonably to have known that the object was stolen and can prove that he exercised due diligence when acquiring the object." 105 It also provides a number of criteria to determine whether a possessor exercised due diligence, such looking into the character of the parties, the price paid or whether the possessor took any steps to consult any register of stolen cultural property. 106

Restitution claims are subject to prescription which commences within a period of three years from the time when the claimant had knowledge of the location of the object as well as of the identity of its possessor and in any case within a period of fifty years from the time of the theft. 107

RETURN OF ILLEGALLY EXPORTED CULTURAL OBJECTS

A contracting state may request the return of a cultural object illegally exported from the territory or legally exported for exhibition or other purposes but not returned.

The Convention in its requirement to return cultural property exported in violation of the national laws of the exporting country, calls for indirect

104 Art. 3, ¶ 2, of the Convention.
105 Id. art. 4, ¶ 1.
106 Id. art. 4, ¶ 4.
107 Id. art. 3, ¶ 3.
enforcement of foreign export laws. In that respect, it drastically departs from the 1970 Convention which failed to enforce foreign export rules "by equating violations of export law to violations of import law."109

The requesting state must establish the following two points:

- that a cultural object has been removed in violation of its export law of cultural objects for the purpose of protecting its cultural heritage; and

- that removal of the object affects one or more of the following interests:
  a) its physical preservation;
  b) its integrity;
  c) the preservation of information of a scientific or historical character; or
  d) the traditional or ritual use of the object by a tribal or indigenous community or establishes that the object of significant cultural importance.110

RESTITUTION CASES

States have, in general, utilized diplomatic channels in their attempts to retrieve lost or stolen cultural objects as the reports of the Secretary General of the United Nations explain regarding the return or restitution of

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108 The United States was unsuccessful in seeking an option for Member States which have become parties to the 1970 Convention not to enforce the rules of the Convention calling for application of foreign export law. See H. S. Burman Introductory Note on International Institute for the Unification of Private Law (UNIDROIT): Final Act of the Diplomatic Conference for the Adoption of the Draft Unidroit Convention on the International Return of Stolen or Illegally Exported Cultural Objects, supra note 101, at 1322.
109 Jote, supra note 13, at 296.
110 Art. 5, ¶ 3, of the Convention.
cultural property to the respective country of origin.\textsuperscript{111} On numerous occasions, disputes involving cultural objects are being settled at a non-governmental level on the basis of good will among museum authorities. Other more controversial cases are pursued through UNESCO’s Committee on Restitution.\textsuperscript{112} However, resort to these channels has not always resulted in the return of cultural property to the country of origin, as the case of the Parthenon Marbles or Elgin Marbles has shown. This is the classic example of a very controversial and much debated restitution case that has not been resolved, in spite of the efforts made by Greece.\textsuperscript{113} On the other hand, the recent return of cultural artifacts to the Greek Government by the United States represents a successful example of cultural objects returning to their country of origin. The objects were illegally exported and were offered for sale by a New York art dealer. The out-of-court settlement included return of the objects to the Greek Government and a charitable tax deduction that covered the dealer’s costs.\textsuperscript{114}

In other instances, foreign governments or private individuals resort to judicial remedies to recover stolen cultural property. The courts in transnational civil actions to recover stolen cultural property are confronted with a number of issues such as determination of applicable law, proof of foreign law, establishment of the lawful claimant and who can release cultural property to the possession of another, settlement of damages and the like.\textsuperscript{115}

\textit{Attorney-General of New Zealand v. Ortiz}; and the \textit{Autocephalous Greek-Orthodox Church of Cyprus v. Golberg} illustrate how national courts deal with issues involving public ownership of cultural property and its return to the country of origin where the objects are part of the country’s cultural heritage. While the first decision represents an unfortunate example of restitution, the latter provided an effective judicial remedy to a foreign government. In this case, Cyprus sought to recover stolen cultural property. It also demonstrates that good title to stolen cultural property may never be


\textsuperscript{112} Prott & O’Keefe, \textit{supra} note 9, at 891.

\textsuperscript{113} For historical background and an analysis of the historical, moral and legal arguments put forward by both parties see C. Hithens, \textit{The Elgin Marbles: Should They be Returned to Greece} (1988; \textit{see also}, Jote, \textit{supra} note 13.

\textsuperscript{114} WASHINGTON POST (Feb. 1, 1996), at 1.

\textsuperscript{115} Burke, \textit{supra} note 48, at 450; \textit{see also}, Mastalir \textit{supra} note 28, at 1043.
acquired unless the original owner shows no interest in reclaiming his property or a long period of time has elapsed.\textsuperscript{116}

The New Zealand case involved the illegal export of Maori wood carvings from New Zealand. These were subsequently sold to a private art collector.\textsuperscript{117} The government of New Zealand sought to obtain return in the English courts. The New Zealand Government based its claim on its law on Historic Articles Act of 1962 which bans the removal of a national historic object without a license and subjects the object to forfeiture if discovered. The English courts applying the above law held that the Government had not obtained ownership of the carvings under its own law. If the New Zealand Law provided for the automatic forfeiture of an historic article illegally exported from New Zealand, then New Zealand could recover this article in any country. However, based on England's view of the territorial theory of sovereignty, New Zealand could not obtain ownership in England.

The Cyprus case was decided in 1989.\textsuperscript{118} In this case, the Indiana court determined the issue of whether the Autocephalous Greek-Orthodox Church of Cyprus or the defendant, Golberg, an Indianapolis art dealer, would be granted possession of four Byzantine mosaics which were removed from the ceiling of the Kanakaria Church in Northern Cyprus in 1979. Golberg bought the mosaics from a dealer in Switzerland. In considering the replevin action, the court acknowledged the historical, cultural, and religious significance of the mosaics to the Republic of Cyprus. On the question of standing, the district court concluded that the Republic of Cyprus had "a legally cognizable interest in the mosaics sufficient to confer standing."

The court subsequently had to decide which substantive law was applicable, in this case whether the laws of Indiana or Switzerland applied. By comparing the Indiana and Swiss choice of law rules, it held that the substantive law which had the "most significant relationship" to the cause of action should apply. The court did not apply Swiss law, because the mosaics were placed in the free port in the airport of Geneva for only four days until

\textsuperscript{116} Q. Byrne-Sutton, \textit{The Golberg Case: A Confirmation of the Difficulty in Acquiring Good Title to Valuable Stolen Cultural Objects}, 1 INT. J. CULT. PR. 151, 166 (1992).


\textsuperscript{118} The District Court's judgment was made on Aug. 3, 1989 (717 F Supp 1374). The appeal judgment on Oct. 24, 1990.
they were transferred to the United States. According to Indiana law, since a thief does not acquire title of a stolen item, he cannot transfer a good title; thus a bona fide purchaser does not acquire title of a stolen property. On the other hand, under Swiss law, a bona fide purchaser acquires title to stolen property. Since Golberg failed to sufficiently investigate before she proceeded with the purchase, the purchase was not made in good faith. In this manner, the court ordered the restitution of the mosaics to Cyprus.

CONCLUDING REMARKS

The plethora of existing international and regional legal instruments designed to safeguard the cultural heritage during peace and war indicates the significance it holds among nations as a fundamental element of their civilization and national culture. Unesco, the main organ of the United Nations in charge of cultural matters has played, since its inception, a significant role in the preservation of cultural property. Among its achievements, the Convention on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property November 14, 1970 represents the first attempt at the international level to combat the problem of illicit export and transfer of ownership of cultural property. It impact however, has been limited because of its shortcomings and due to the fact that only a few of the "market" States have become parties. The recently concluded UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects constitutes a positive development in further curtailing theft of cultural objects and their illicit export.

At the European Union level the enacted measures established a Community-wide procedure for authorizing the export of cultural treasures system from the Community as well as a procedure for the restitution of national treasures illegally removed from the Member State of origin. The main thrust of these measures is basically to protect the cultural property of the Member States. In doing so, they have also harmonized to a certain degree the rules of the Member States for such protection.