

MEANS OF COMBATING THE THEFT OF AND ILLEGAL TRAFFIC
IN WORKS OF ART IN THE NINE COUNTRIES OF THE EEC

by

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STUDIES
CULTURAL SECTOR

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This study, prepared at the request of the Commission of the European Communities, also constitutes a contribution, however partial and modest, to the struggle steadfastly waged by UNESCO since its inception to protect cultural property from the many varying perils which threaten it. Illegal traffic is not the least of these perils, being merely a particular instance of the general type of improper speculation of which it is the subject. This speculation, even if it does not always adversely affect the actual fabric of the objects concerned, nevertheless corrupts and pollutes them morally, by detracting from their true role as the expression and symbols of the different civilizations which have moulded contemporary human society throughout the world and over a time scale of millennia. At the beginning of this study, the author wishes to pay tribute to all those - whether within or in cooperation with UNESCO - who are struggling to restore to cultural property the only value which ought to constitute its true price: spiritual value.

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ANNEXES

Works of art have been stolen throughout recorded history. Long before archaeologists existed, pyramids and tombs were desecrated by persons in search of precious objects, while wars, revolutions and social disturbances have constituted a pretext for pillage of the dwellings of the rich and the powerful. A burglar does not need to be educated to know that, in the absence of anything better, an ancient object or a picture is a good thing to make off with. However, public opinion for a long time remained relatively indifferent to such incidents, except in the case of notorious thefts like that of the Mona Lisa. On the whole, thefts remained small in number, and, in particular, they appeared to affect merely superfluous property whose social value was not appreciated. At a time when wealth was distributed even more unequally than it is today, private collectors remained few in number, above all giving the impression of being a mysterious class of idlers and cranks whose misfortunes were of little importance to public opinion. Thefts from churches remained uncommon as long as the latter were protected by traditional respect; if articles were stolen from museums, this was an occasion not so much for complaint or regret but for making jokes about the estrangement of curators - erudite and honourable though they were - from the practical ways of the world.

The situation has profoundly changed within a short period. Within less than twenty years thefts of works of art have multiplied to such a point that they have ceased to be merely picturesque incidents or occasional misfortunes but have become a new and serious form of misfeasance affecting the new nations, whose archaeological sites and ethnographical relics are subject to systematic depredations, as much as the older countries, where churches, museums, public collections and commercial galleries have become habitual targets. At the same time there developed the feeling that cultural property, which took on a wider connotation than the older concept of a work of art, constituted a common heritage whose preservation, irrespective of legal status, was of importance to all.

This trend explains why the international and national institutions responsible for the protection of this cultural heritage now devote so much attention to thefts of cultural property and the various forms of illegal traffic therein.

For example, in 1964 UNESCO, the highest-level international institution concerned, drew up an initial recommendation on the measures to be taken to prohibit or limit such traffic, followed in 1970 by a convention on the same subject. It also instigated the 1973 Brussels meeting of a committee of experts to consider the hazards confronting works of art, and in 1975 it produced a special issue of "Informations UNESCO" on the same subject, entitled "L'Art sur le marché - Profits et pillages".

The subject arose at several successive meetings of the General Assembly of the International Criminal Police Organization (Interpol) - in 1971, 1972 and 1973 - and the Organization devoted several articles to it in the International Criminal Police Review before undertaking in 1975 a large-scale survey of eighteen national bureaux particularly concerned with this new peril.

The organizations of the various groups concerned also acted. The International Council of Museums (ICOM) organized several national or international colloquia on the subject and in 1975 published a compilation of national legislations on the protection of the cultural heritage; action was also taken by the International Confederation of Art Dealers (CINOA), and round table meetings of the art trade were organized in Brussels in 1974 and 1976.

Because Europe is so directly affected, concern was in turn aroused in the European institutions. On a particular point, a European Convention on the Protection of the Archaeological Heritage was adopted in 1969, and the European Parliament¹ and the European Communities are now concerning themselves with the illegal traffic in works of art; this study is simply a modest manifestation of this concern.

It is hardly necessary to justify this concern. Even if the European Communities were to be regarded as bodies having merely a technical function, the justification would already be plain. On the economic level alone, the art trade is an important activity which every year involves tens of thousands of works and objects whose

¹ The European Parliament has several times shown interest in the subject; in particular, in an initial resolution dated 13 May 1974, it "invited the Commission to suggest to the Member States that they should take all appropriate measures to render more effective the struggle against the theft of and traffic in works of art and archaeological objects"; it returned to this subject in a resolution dated 8 March 1976 in which, in particular, it approved the working document submitted by the Commission of the European Communities on Community action in the cultural sector; in particular, this working document contained an item (item 8) entitled "Control of thefts of works of art".

value has increased substantially in the last twenty years, so that its regularization is in itself no mean objective. However - and more importantly - Europe is not only an area of economic activity: it has been, is still, and will only survive if it remains, the seat of a culture which, in its essentials, is common to all its members. Every country in Europe has participated in the same major currents of history: the Pax Romana, the barbarian invasions, medieval Christianity, the Renaissance, the Reformation, and the sweeping current of emancipation which originated with the French Revolution. Each of these broad currents is embodied in physical manifestations of which works of art constitute merely the most precious and magnificent form: Roman statues, Merovingian arms and jewels, the Pietà at St Peter's in Rome, "The Anatomy Lesson" and "Liberté sur les barricades" are from this point of view common property, as are the thousands of works of even much less famous artists, the study of which teaches us increasingly that many centuries of intensive exchanges and contacts have contributed to moulding our culture - the thought and the very soul of Europe, whose disappearance would mean the end of Europe itself. It is therefore hardly surprising that Europe is concerned about anything liable to affect - both morally and materially - this common heritage and wishes to combat illicit traffic in this cultural property.

This traffic is not only material, and does not consist only in thefts and illicit transfers of art objects and works. There are other traffics which are just as dangerous for the European spirit: infringements of copyright, as in the case of illicit dissemination or reproductions, and, on a wider scale, the whole traffic in fakes - the latter is serious because it not only harms artists and purchasers but also falsifies the essential element of the cultural heritage, namely, the knowledge

of art and its evolution throughout the centuries. However, it was felt preferable not to consider fakes in this study, for fear of excessively broadening its scope, and, in particular, of diluting it by dividing attention between two evils which are substantially different both in themselves and in regard to the means of eradicating them. We shall therefore concern ourselves only with material forms of illicit traffic and essentially, but not exclusively, with those originating in a theft.

Even with these limitations, the subject remains vast. We shall begin by outlining its extent and complexity; possible remedies will then be examined; finally, we shall consider what mechanisms might facilitate the application of these remedies within the European Community. The three parts of this study will therefore relate to "The Disease" (Part I), "The Remedies" (Part II) and "The Doctors" (Part III).

PART I. THE DISEASE

As everyone knows, the theft of and traffic in art objects have now reached epidemic proportions in Europe. By virtue of old habits of thought, however, these have little impact outside specialized circles except for notorious thefts of famous masterpieces, whereas the greatest danger perhaps lies rather in the scope and variety of these incidents. Before specifying the limits of this study on a more abstract level, therefore, it will be useful to indicate the exact nature of the practical problem with which we are concerned, by presenting some hard facts.

Section I. Facts

Western Europe has amassed a prodigious heritage from centuries of wealth and culture; it has thousands, if not tens of thousands, of churches, museums, art galleries, historic palaces and stately homes. For this reason, having for a long time enriched itself with the products of other civilizations, western Europe is now a favoured centre for and one of the foremost victims of this plunder.

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1. Extent of the problem

Of the nine member countries of the European Communities, there is no doubt that Italy stands far

ahead of the other countries in this deplorable league table of thefts. This is because its territory accommodates two sources of wealth which are usually divided between the other nations. From antiquity it has retained remains and archaeological sites which have been only partially exploited, or not exploited at all, and which lend themselves to the activity of clandestine excavators. Later on, it was the cradle of the rebirth of culture and art in the western world, and therefore, by the sheer weight and concentration of wealth accumulated in its towns, villages, churches and palaces, constitutes the biggest museum in the world and the most tempting target for thieves.

The theft statistics are alarming. Since the end of the war, 44,000 works of art have been stolen in Italy, the number increasing from year to year: 2466 in 1970, 5927 in 1971, 5843 in 1972, 8520 in 1973 and 10,952 in 1974. Systematic war is apparently being waged against works of art in Italy - large and small, ancient and modern. The churches - whether cathedrals or chapels - are the chief targets, because there are so many of them and because tradition requires them to be kept open; for example, the cathedral of Castelfranco Veneto was robbed in December 1971 of an altarpiece by Giorgione ("Enthroned Madonna"), which measures as much as 2 metres by 1.40 metres, and a triptych by Titian was stolen from a chapel in Trevignano in 1973. Private collections, however, also pay their tribute (17 modern paintings from the Guggenheim collection in December 1971, a Rubens, a Van Dyck and gold and silver objects from the Borromeo collection in 1974), and museums and official palaces, in theory better protected, are no longer so in fact. On 6 February 1975, three famous masterpieces, one Raphael and two Piero dello Francescas, were stolen from the Ducal Palace at Urbino, and ten days later it was the turn of twenty-eight canvases from the

Milan gallery of modern art. The latter were recovered almost immediately and returned to their place, only to be promptly snatched again. Presumably in order to make this second trip worth while, the thieves this time took care to steal a few other paintings as well.

In addition to all these recorded thefts, there is an infinitely larger number relating to archaeological objects from clandestine excavations. These thefts cannot be precisely enumerated because, of course, these objects were unknown until the time of their illicit abstraction. Again, quantitative figures are less meaningful here than in other fields: the products of clandestine excavations carried out under conditions which are obviously precarious are often fragments, so that a single object may thus be multiplied. Be that as it may, some impression of the extent of the problem is afforded, not by the number of objects whose disappearance has been reported - as this is impossible - but by the number of objects recovered by police and other agencies. In the five years from 1970 to 1974, the number of archaeological objects thus recovered was 41,592, out of a grand total of 81,929. It may thus be concluded that this class of thefts is by itself equal in number to all the others combined (pictures, sculptures, old coins, etc.). Finally, disregarding these 41,592 archaeological objects, the number of objects recovered in these other categories was 40,337, whereas over the same period only 33,710 objects were officially reported stolen: this indicates that many thefts are not even reported, or that sometimes incomplete declarations are made covering only the most important items. For instance, as regards paintings alone, 8440 disappearances were reported from 1970 to 1974, whereas 9336 were

recovered, and an Italian specialist put the true number of paintings stolen during this period at about 18,000. All these figures are, of course, approximate (the paintings recovered from 1970 to 1974 include some stolen before 1970), but they suffice to indicate the scale of the problem in general and the importance of clandestine excavations in particular.

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Although unable to challenge the primacy of Italy, France is a good runner-up. The following figures give some idea of the scale of the problem and its rate of growth: the number of works of art and art objects stolen was 1261 in 1970, 1824 in 1971, 2712 in 1972, 3300 in 1973 and 5190 in 1974. The toll was made up of easily negotiable standard works as well as famous masterpieces, the most obviously unsaleable being Martin Schongauer's "Virgin in the Rose Bower", which disappeared from the Collégiale at Colmar in January 1972; both easily transportable objects and monumental pieces were represented. The Colmar Schongauer measures 2.10 m by 1.10 m, but this is dwarfed by the Claude Vignon stolen from the church of Saint Gervais at 2 m by 3 m, while the statue of Maillol snatched from the Tuileries Gardens weighs 80 kilograms. The list of recorded crimes in this field covers a comprehensive range of works, methods and victims. Not only isolated works taken from churches or museums, possibly by casual thieves, but also large-scale raids organized by gangs in the privileged repositories of precious masterpieces; commercial galleries (8 paintings from the Galerie Tomenega alone in September 1972, and 40 canvases from the Galerie Hervé in November 1973); private collections: 31 canvases from a Parisian collector in April 1972, 41 from a provincial collector in November 1973, and 27 from the critic Douglas Cooper in October 1974; the museums, too, are obviously not neglected either. The feat of the thieves of the

Musée de l'Annonciade in Saint Tropez who removed virtually its entire collections in 1961 has not been exceeded on a percentage basis, but 15 pictures vanished all together from the museum of Bagnols sur Cèze in November 1972, 60 paintings, statuettes and art objects disappeared from the Musée du Vieux Logis at Nice in February 1973, and several hundred statuettes, porcelain articles and old coins were abstracted from the Musée de Bailleul in April 1974; the ne plus ultra, however, was the theft of the 119 Picassos from the Palais des Papes in Avignon on 31 January 1976.

The scale of the problem appears to be less daunting in the other seven member countries of the European Community, but it nevertheless exists in these countries, where it is manifested both by ordinary thefts and, from time to time, by an exceptional event. Over 300 incidents were reported in Belgium between 1970 and 1973. Concerning one of these, the theft of the Utrecht quartz statue from Notre Dame de Sainte Foy, near Dinant, the press found the situation scandalous: "Thefts of sacred art objects are multiplying disquietingly and it appears that temporary and highly localized indignation never turns into concrete measures of protection". Luxembourg reports 140 thefts since 1965. The UK had the Stone of Scone stolen; it also witnessed the disappearance of Goya's portrait of Wellington with his sword and decorations, and the Vermeer from Kenwood House. The Netherlands lost one of its finest Vermeers at an exhibition in Brussels, and, at home, four Brueghels together in December 1975. In Germany, the Düsseldorf Museum lost a Rubens and a Frans Hals during the course of a single theft. Finally, Ireland distinguished itself by an armed raid on the Belt collection, in which the haul included masterpieces by Vermeer, Frans Hals,

Goya, Rubens and Velázquez, valued at the time of the theft at a total of nearly 20 million dollars¹.

2. Variety of thefts

Having established the extent of the problem, we must now look into its causes so that we may choose the best remedies. The bodies concerned with the problem - in particular, the International Criminal Police Organization (Interpol) and the professional organizations of curators (such as the ICOM) - are working on this point. Firm conclusions are far from being reached, because this new form of misdeed is certainly the result of a combination of different factors whose complexity precludes simple remedies.

¹ We have deliberately laid stress on the worst thefts in order to highlight the seriousness of the problem. Such incidents naturally trigger the most active countermeasures, and, furthermore, the works involved are often masterpieces which are not readily negotiable. The chances of recovering the works concerned are therefore best in such cases. In fact, most of the works mentioned in the text have been recovered - for example, in Italy, the Castelfranco Giorgione and the Urbino paintings; in France, the Colmar Schongauer and the Claude Vignon; in the Netherlands, Vermeer's "Letter"; in the UK, the Kenwood Vermeer; and, in Ireland, the entire Belt collection. The booty is sometimes recovered quickly - in some cases almost immediately: the Belt collection within 8 days of the theft; and sometimes a longer period elapses before recovery: 13 months for the masterpieces from the Urbino Palace and 15 months in the case of the Colmar "Virgin in the Rose Bower". Some of the works recovered have suffered from the conditions under which they were taken, transported and stored. For example, Vermeer's wonderful "Letter", found in Brussels 13 months after its disappearance, suffered irreparable damage in spite of the skill and competence of the international

experts called in to supervise its restoration. The fact is that most stolen works cannot be recovered by their owners, either because they have been destroyed or because they have not been identified at their place of destination reached after long and obscure peregrinations.

It is tempting to start by adopting the old-established method of analysing a problem or a phenomenon of breaking it down into a series of questions: who? when? how? where? why? etc. In fact, the essential point is the first of these questions, because the answer that can be given to it in the present situation leads to the possible answers to the other questions.

Who, then, is responsible for the theft of cultural property? Many people. They range from confirmed miscreants to persons who would be astonished at being called thieves, with a whole gamut of shades in between. Let us consider the various cases, starting with the least guilty. First of all, there is the casual amateur thief who steals unconsciously for fun, opportunistically, and at the limit compulsively. Those concerned are basically the thousands of tourists who "swipe" a souvenir from an archaeological site, a church or even a museum, as they would an ashtray from a hotel room, a stone block from a mosaic, a tassel or a fragment of wainscoting. None of these amateurs alone is dangerous, but they become much more so when there are a hundred, a thousand or ten thousand of them. Another example is the minister of religion who disposes of a few old objects which he thinks detract from his church for a small sum of money which he will devote to repairs or good works. Then there is the crank who wants to take home a work which he covets. There was the visitor to the Louvre who, one afternoon, in the middle of the Grande Galerie, enquired of his neighbours "I'd like to have one of these little paintings at home - which one do you advise me to take?" before making off at full speed with the one suggested - was he a genuine thief pretending to perform a practical joke so as to allay suspicion or a madman who dreamt of having a Louvre painting on his wall all to himself?

The genuine thieves know perfectly well that they are thieves, and why: for gain. However, this group breaks

down into several categories. Firstly, there are opportunist thieves, i.e., those who, during a burglary, take whatever they find - cash and jewelry first, but also, in the absence of anything better, works of art and collector's pieces. A closely related class are the church and museum thieves, who are not specialists but who observe that they can easily enter these premises, or get themselves locked in, and take their pick. These people, too, are not very sure of the value of what they steal, but they have read enough in the newspapers, about a gift to the museum, or an exhibition, or even another theft, to know that works of art and antiques are worth money and to expect to gain something from the proceeds.

Finally, there are the high-flying gangsters, whose targets are the places where they know they will find specific articles - paintings, tapestries, sculptures. They have planned their theft and their escape route; they have reconnoitred the field and prepared a detailed plan. These are the people who carry out the type of raids discussed earlier on art galleries and museums regardless of their defences, because they do not hesitate to use fully fledged gangster techniques: drilling through walls, violent subjugation of guards, etc.

It is not yet clear whether gangs specializing in thefts of art works exist, as they do in the field of narcotics. The police forces of the countries most concerned, only a few years ago, were disinclined to this belief - thieves of cultural property then seemed to operate more or less arbitrarily and opportunistically. The massive depredations of the last few years are raising fresh doubts on the subject. It may be assumed that, even if there is not yet a systematic organization of the

thefts themselves, there are at least channels of disposal and clandestine buying centres which enable thieves to dispose of their hauls relatively easily. Channels seem to exist in Italy for the disposal of archaeological objects; again, a succession of thefts of old tapestries in France and Germany suggests that there might be a network specializing in this field as well.

Finally, between the two extremes of petty pilferers and serious thieves, a new category has appeared in the last few years: not people who thirst for art or money but passionate defenders of political justice - as they see it. They wish to draw attention to a cause or secure for it a ransom or a measure which they regard as fair. These are fanatics who are all the more redoubtable because they are not recruited from the ranks of professional gangsters and only attempt outrageous feats, since their aim is precisely to obtain maximum publicity. To take the latest examples, the Brussels thief of Vermeer's "Letter" was after a ransom for refugees from Bengal, whilst the person who stole the Vermeer from Kenwood House in England wanted to help the population of Grenada in the West Indies; the armed gang which seized the Belt Collection in Ireland, shouting "capitalist pigs", were demanding the transfer to Northern Ireland of four Irish prisoners held in England and the payment of a ransom of £500,000.

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Because of this variety of types of thieves, the other questions - what is stolen? how? why? - can only be answered in vague terms.

What is stolen? Anything, chosen more or less deliberately depending on whether the perpetrator is a tourist, a crank, a political fanatic, an opportunist thief, or a thief with a specific target. All that can be said, on the basis of the records forwarded to Interpol by national police forces, is that the most coveted objects appear to be, first of all, paintings, and, in particular, the Dutch and Italian masters of the 16th and 17th centuries, followed by the products of excavations, especially in Italy, and then by the other categories - tapestries, furniture, old coins, etc.

How does one steal? In many ways, depending on the circumstances. The petty thief - tourist or crank - does not break into premises, but simply enters a church, which is open to all and usually not guarded, or the museum or historic monument - again, not usually well guarded - and takes what he can. The deliberate thief often uses the convenient technique of allowing himself to be locked into the premises: he thus has time to work and perhaps to choose before leaving either when the doors reopen or - most often - at a time and by a route he will have chosen (it is usually much easier to break out than to break in). Some thieves take advantage of these facilities to prevent the disappearance of the stolen objects from coming to light too quickly. For example, one thief allowed himself to be locked into a French cathedral for about ten consecutive nights, during which he carefully removed the crystal parts of a chandelier and replaced them by worthless pieces of glass. Another, having stolen a picture from a friend's flat, took care to replace it by a photographic reproduction.

On the next highest level, the usual techniques of burglars and gangsters - breaking and entering - will be used. Quite often, in large cultural buildings such as castles, museums and cathedrals, where restoration

works are almost constantly in progress, the burglar finds on the spot, to facilitate his task, ladders, scaffolding and tools used during the daytime by workmen and left without supervision at night. As a last resort, forcible entry will be effected by armed criminals, or else guards alerted by the noise will be attacked. No one has yet been killed, but there have been woundings, some of them serious.

Why do people steal? We may disregard the case of political theft as being of only marginal importance. In all other cases, there is but a single motive: cupidity; however, this covers different aims, which must be distinguished because they significantly influence the chances of recovering the stolen works.

The first aim is to keep the object for oneself or at least not to sell it. This is the case of the tourist who collects souvenirs, and even more so of the crank, so that unless they are caught in the act there is little chance of recovering the stolen object for a very long time because it does not reappear on the market.

The second aim is the wish to acquire the object in order to turn it to account, either by obtaining a ransom from the owner or insurer or by selling it.

Both good and bad publicity about cultural property merely feeds these two forms of cupidity in respect of such objects.

The good type of publicity, which is laudable in its intention, is that which extols the value of archaeological finds and the evocative power of ancient objects, infusing aesthetic sensibility into modern life. However, applied indiscriminately to a

huge public without any countervailing reminder of elementary moral rules, this publicity is also liable to engender passions and desires which are gratified without looking too closely at them. How many tourists have hidden in their cases archaeological objects which they have been assured originate from clandestine excavations (and which, fortunately, have in most cases been specially manufactured for them)? How many decent people, who, moreover, have no more understanding of popular culture than of the Mass, have some ecclesiastical statue at home to demonstrate their taste for the past, without ever having concerned themselves about how it came into the possession of the secondhand shop or antique dealer who sold it to them?

Bad publicity is the type which is blazoned about the prices of works of art, in the manner of indecent exposure, in all countries. No one can be unaware that a Cézanne was sold for 6 million francs, a Rembrandt for 2,300,000 dollars (New York 1961, "Aristotle contemplating the bust of Homer"), a Velázquez for 5,544,000 dollars (London 1970, "Portrait of Juan de Pareja") and a Da Vinci for over 5 million dollars ("Portrait of Ginevra de Benci" sold by the Prince of Liechtenstein to the New York Metropolitan Museum); that a Chinese porcelain flask fetched 970,000 dollars (London 1974); and that a Pollock was bought for 3 million Australian dollars by the National Gallery of Canberra - for these prices were either fixed at public sales or intensively publicized by the purchasers themselves.

Again, these are all purchasers who are competent in the field of art. However, it is not necessary to be an initiate to know that works of art have become investments, considered safer and more remunerative than any other. Many European legislations allow banks and insurance companies to

invest a part of their reserves or underwriting funds in works of art. In December 1974, a representative of British Railways refused to confirm that BR had bought a Giampolo Panini and a Giambastita Tiepolo for £200,000, but admitted that "the Board considers that works of art are a good hedge against inflation...". Again, during the last few years, investment trusts specializing in works of art - e.g., "Artémis" and "Modarco" - have proliferated; the aim of these trusts is the purchase, storage and resale of superb masterpieces which their fortunate owners, the shareholders of these enterprises, will never go to see in the armoured vaults in which they are prudently locked away. On a more modest scale, merchants, brokers and middlemen smugly proclaim in their advertising material that works of art and antiques are the best investment, and they justify this by taking a pride in the ever higher prices reached in each succeeding sale. In their thousands, all over Europe, antique and secondhand dealers, insurance brokers, hauliers and customs agents know that works of art are worth their weight in gold. There have always been gold thieves, and so why should there not also be thieves of art works?

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Section II. Analysis of problem

One of the main aspects of this study concerns the appropriate legislative measures to prevent thefts of and illegal traffic in works of art. An initial examination of the terms of this programme indicates that the latter calls for interpretation and additional remarks in certain respects.

1. We shall not dwell on the interpretation of the concept of an "art object". One could certainly argue about its exact definition - and even more so about that of "cultural property", which is justifiably tending to supplant it - but hesitations about a precise definition are of little consequence provided that there is general agreement that it must in any case cover the essential categories which comprise the principal targets of thieves and traffickers: archaeological objects, paintings, engravings, ecclesiastical statues and cult objects (ciboria, sacerdotal ornaments, etc.), antique furniture and old coins and medals. (The term "old" also lends itself to differing interpretations: on the basis of examples afforded by several national legislations, an "old" object can conveniently be considered as one more than one hundred years old.)

2. No great difficulty attaches to the definition of "theft" either. Theft is suppressed and punished by the legislation of the various European countries in roughly the same terms, and it consists everywhere in the abstraction, i.e., removal, of a movable object from its rightful holder without his consent - that is, without his knowledge or against his will.

The only point that should be made is that the same legislations place beside theft similar offences which also have the result of depriving the rightful holder of his property, but with at least his apparent and provisional consent. These are cases of swindling or breach of trust in which the holder of the property yields it up himself against illusory promises or on the basis of misplaced trust. Intellectually and penally, deprivation of possession is also fraudulent and punishable, and traffic in objects abstracted from their possessors is also

illegal. In this connection it should merely be noted that, from the point of view of prevention, the precautions which may be taken against theft are ineffective against cases of fraud and breach of trust. There is no point in locking up precious objects in a safe if they are taken out and handed over direct to the miscreant who covets them.

Note, too, that theft, like all offences, presupposes a fraudulent intention, i.e., that of improperly appropriating the stolen goods. A judge may sometimes have to consider whether what at first sight appears to be a theft really is one - for example, the removal of an article from a museum in order to draw attention to inadequate security, or to a political situation. In this study, we shall consider only obvious cases of theft where there is no doubt that the perpetrator intends to appropriate the object, whether to keep it or to sell it.

3. The concept of "illegal traffic", on the other hand, is harder to interpret, for two reasons:

a) The concept of illegal traffic extends beyond that of theft. Traffic in a stolen object is obviously, owing to the origin of the object, illegal traffic as long as this original vice is not covered by prescription or by the good faith of the holder. Thus, anyone who receives, resells or acquires an object which he knows to have been stolen within a period not covered by prescription becomes an accomplice of the thief and engages in illegal traffic.

However, illegal traffic may take place without there having been a prior theft. This happens in all countries where export controls apply, even

if the object is exported by or at the request of its rightful holder. The traffic resulting from this irregular operation automatically becomes illegal. It should also be noted that from the point of view of preservation of the cultural heritage of the exporting country, the loss resulting from illegal exportation is the same whether the offender is a thief or the owner himself. This means that a study of the preservation of cultural heritages cannot disregard forms of illegal traffic resulting simply from fraudulent exports where no other offence is involved.

b) Illegal traffic often has an international character. Admittedly, after a theft, for example, there may be illegal traffic on the territory which was the scene of the theft, but more frequently the traffic is complicated by the crossing of a border. This is true by definition in the case of simple fraudulent export, and it is also very often the case in theft, because one of the first precautions taken by a thief who is not simply an amateur is to get the object out of the country. In fact, it is only when an international dimension is involved that such a traffic truly concerns the international community, whether worldwide or regional.

If thieves go abroad with stolen property or send it to accomplices resident abroad, it is because they have learnt from experience that it is appreciably more difficult to trace and punish an offence where it is complicated by an international dimension. This complication is due to the fact that penal control is organized on a national basis; it is therefore essential to consider certain elementary points in this connection:

In principle, as the international community is currently organized, it is the responsibility of each State to maintain order in its territory and, in particular, to enforce the penal laws which it has itself enacted. Of course, an offender does not become immune from action against him merely because he goes abroad. State A may impose penal sanctions on a thief who has taken refuge in State B, but it cannot enforce them beyond its frontiers, i.e., it cannot send its agents on to the territory of State B to arrest the thief or recover the stolen property; for this purpose, it must obtain the cooperation of State B.

This cooperation is not in principle withheld from State A. For a very long time States have found it to their mutual advantage to collaborate in the suppression of offences, but this collaboration is hampered by the involvement of complex legal machinery and limited by traditional exceptions.

For instance, if there is no express agreement between the two States, it will normally be necessary, before the State of refuge agrees to hand over the offender to the State wishing to arrest him, for the offence to be punishable by both the legislations concerned. Similarly, it is necessary for the offence to have reached a certain level of gravity: offenders are not extradited for minor offences or for ones which are not punishable in the State of refuge.

If there is an extradition or cooperation treaty, matters are in principle more straightforward, since the aim of the treaty is precisely to facilitate the solution of such problems. Nevertheless, these treaties, which modify the principle of the sovereignty of each State in penal matters, must be interpreted restrictively, and hence meticulously.

Again, such treaties normally have traditional exceptions whereby, for example, for each State, the extradition of its own nationals¹, or extradition for political offences, is precluded. Finally, it is very unusual in an international community of any size for the same treaties to be applicable to all parties. For instance, in the case of Europe, although there is a 1957 European convention on extradition, it has only been signed by eight of the nine countries, and only four have ratified it; the 1959 convention on mutual penal aid has been signed by seven and ratified by four countries (only three of which ratified the first text). A final convention, dating from 1970, on the international value of repressive sentences (whose aim is to allow a sentence passed in one country to be executed by another without extradition of the convicted person) has only been signed by five countries and ratified by only one. In the absence of a multilateral treaty, recourse must be had to bilateral treaties (between nine States, there may be thirty-six of these), and in the absence of bilateral treaties reference must be made to the national laws of the various countries concerned. It will therefore be readily understood that criminals have much to gain by crossing frontiers, and also that the effective suppression of international traffic affecting several countries is not a simple and easy matter to formulate clearly.

So far our argument has been confined to the field of penal law. Although it is true that what is apparently the simplest way of combating dangerous activities is

¹ According to international custom in this case, the State of which the offender is a national will try him. Thus, the German thief of the Rembrandts from the French museum of Bayonne, who had taken refuge in Germany, was arrested and tried by the authorities and courts of the Federal Republic.

for a State to make them penal offences, all States nevertheless adopt measures falling within the purview of other branches of law for the protection of their cultural heritage. Many States, for example, have regulations controlling excavations, the art trade, or exports, these regulations sometimes being purely administrative in character. Again, the rightful owner's possibilities of obtaining restitution of recovered stolen property are determined not by penal law but by civil law, for instance, in France or in Belgium by Articles 2279 and 2280 of the Civil Code. Hence, in all cases involving a complex activity which has taken place on the territory of several States, the same problem of determining the national law applicable may arise for each of these individual systems of regulations. Moreover, such complex cases are far from being merely hypothetical. For example, consider an object stolen in France, sold in Germany and recovered in Belgium: is action for its restitution governed by Belgian, German or French law? This matter of "conflicts of laws" has been abundantly studied in all countries, but is complicated by the fact that, except where there is a relevant international treaty between the States concerned, capable of providing a common solution, these conflicts are resolved by the court seized of the matter on the basis of the national conception of private international law. Thus, to take the same example, it will be up to the Belgian judge to solve the problem, of course in accordance with the requirements of Belgian law; if, however, the object is recovered in Denmark and action is taken for its restitution in the same country, it will be up to the Danish courts to rule on the matter, in conformity with Danish law.

This is not all. The law is not merely an abstract construction. Application of the clearest

and most widely accepted rules is effective only if the essential practical conditions are actually met. There is little point in attributing probative force to an inventory if this inventory has not been kept up to date. There is no point in having close legal links between two States for the suppression of certain offences if the telephone or telex does not operate properly between their police forces. All this obviously applies in our field, and there can be no question of effective prevention of illegal traffic without a minimum of concrete measures to facilitate it.

Thus the mere prevention of physical cross-frontier traffic involves provisions of the penal, administrative, civil and private international law of each of the States concerned, possibly modified by treaties concluded between these States and made effective by the existence of certain material conditions relating, in particular, to the organization in each country of the bodies responsible for protection of the cultural heritage, police forces and possibly also other agencies.

The author cannot claim to be thoroughly familiar with all these points as they relate to the nine countries of the EEC. This outline does, however, show that our study cannot be more than an introduction paving the way for more detailed and more precise work in each individual country. Nor can this introduction lay claim to novelty, because it necessarily repeats what others - jurists, policemen and art dealers - have already said elsewhere. The aim

of this study is therefore primarily to throw light on certain matters. We acknowledge this with humility but without false modesty, because we are convinced that there is no simple solution to a complex and profound problem, and that only the combination of a number of solutions, none of them by itself decisive, can gradually make it possible, with patience and perseverance, to reduce the present traffic in Europe's common heritage to acceptable limits.

PART II. REMEDIES

Over and over again the discovery of a miracle cure for a particular disease is announced. In most cases, it is found after a few months or a few years that the germs are cleverer and more tenacious than had been thought, that they have found the answer to the new weapon used against them; and that more complex and varied means of control must be brought back into action. It is just the same in our field. At first sight, the simplest and most effective means of combating a new form of dangerous activity appears to be to designate it an offence subject to severe penalties, but the experience of centuries has shown that prohibition and punishment are not sufficient to prevent transgressions. Here again, therefore, more varied and more partial action must be taken, none of the individual measures being by itself decisive, but their combination at least limiting the evil and allowing it to be contained within acceptable limits. A complex offence such as the international traffic in art objects lends itself particularly well to such an approach, because, involving as it does a number of distinct stages, it affords several possibilities for intervention, in the form of both prevention and sanctions.

Again, the two words "prevention" and "sanctions" represent two ways rather than two phases of intervention. In principle, of course, prevention comes before the offence and sanctions after it; in fact, however, the two actions combine and merge. Some means of prevention not only have a practical effect but also contribute to making the sanctions more severe. For instance, housebreaking is

judged more severely than simple theft, and hence the legal efficacy of the padlock on the door. Similarly, severe sanctions are often defenced on the grounds of their deterrent effect on potential criminals; this is one of the justifications, for example, for the death penalty.

We shall not therefore waste time in making idle and disputable distinctions, but shall simply consider the various conceivable methods in overall chronological order. Preventive measures will be examined first, followed by controls at certain nodal points or destinations of the traffic in art objects, and finally we shall consider the penal and civil aspects of suppression - i.e., punishment of those responsible and recovery of the stolen property.

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Section I. Preventive measures

The following will be considered in succession:

1. Security devices
2. Identification of missing objects
3. Control of archaeological sites and excavations

1. Security devices

The first precaution to be taken against thefts is to make them difficult to commit - i.e., to protect premises and objects liable to attract thieves. Such protection has long been afforded by traditional, simple methods: solid doors, bars on low-level windows, keepers, domestics and guard dogs usually provided sufficient security for 19th century residences or museums, while churches were protected simply by their religious character. All this has vanished, or is tending to vanish, whilst the risks are increasing. New formulas and new devices have therefore had to be invented. The number of potential customers, both private and public, for such devices is now so large that manufacturers and installers are doing their utmost to attract them by constantly offering new types of systems. The situation is thus in constant flux, and the field concerned is a technical one. However, it is so important to our subject that it could not be completely disregarded. We shall merely consider the essentials of these devices and, in particular, examine possible ways of developing their use.

a) Essentials of security devices:

- Variety. A wide and constantly increasing variety of devices currently exists. To facilitate comprehension, these can be classified in accordance with several criteria.

The first criterion is place of application. There are peripheral means of protection for the "boundaries" of the zone to be protected (fences, doors and windows); volumetric means of protection

covering the interior of this zone; and local means of protection, which are confined to a very limited zone or a single object.

The second criterion concerns technical operating characteristics. Thus we may first distinguish passive devices which confront the thief with an inertial force (armoured doors, bars, etc.) from active devices which trigger a response (audible or visual alarm, automatic locking of doors). These active systems were originally based on mechanical arrangements (e.g., a bell set in motion by the opening of a door) or electrical devices (interruption of a circuit by the opening of a door or a window); these devices were relatively simple. Electronics are now involved, but the very flexibility of the resulting system adds constantly to the number of devices on the market and makes it more difficult to classify them.

The two criteria can be used simultaneously to provide a more detailed classification. For example, passive devices may be peripheral (armoured doors, barred windows), volumetric (interior doors) or local (display cabinets, securing of statuettes to a foundation); there are, of course, also electronic devices in each of the three classes.

As stated, the whole situation is changing rapidly. Each advance in defence results in new and ingenious countermeasures by thieves, which in turn lead to even more sophisticated systems of protection. Only a few years ago, a genuinely effective alarm system covering doors and windows afforded serious protection; however, once thieves began to drill through the walls of certain art galleries, it became necessary

to design devices which respond to vibrations of the walls themselves, etc. Again, it is obvious that the rapid progress in consumer electronics in general is also having repercussions in this particular field.

- Complexity of security systems. Many security devices exist, but there is not one which can cope with all risks by itself; security problems are by their very nature complex, involving various aspects which, considered separately, would each call for a different approach - the overall solution must therefore needs be a compromise reached after thorough analysis of the problem. We shall merely outline some of its complex aspects.

First of all, there is the frequent clash between the requirements of security against theft and fire safety. To meet the former contingency, there must be many doors, difficult to penetrate, and the objects must be difficult to remove. The second contingency, however, requires free access by "rescue" personnel, who must be able to remove the endangered objects easily. Intermediate solutions must therefore be adopted, selected on the basis of the extent and probability of the risks. In this connection, it should be remembered that for a long time the risk of fire, which can destroy a complete collection in a few moments, was regarded - at least in the large public institutions - as more serious than that of theft, which was exceptional and limited.

Another complicating factor is the security paradox that cultural buildings and property can only serve

their purpose if they are exposed to certain risks. In other words, it is relatively easy to ensure the security of an object which is merely precious, by hiding it away in a safe in the depths of an armoured vault; it is much less easy to do so if at the same time one wishes to enjoy the object, and even less if as large a public as possible is also to be allowed to enjoy it. The trend of museology in this respect has been characteristic. To make works more attractive and more viewable, and museums less forbidding, it was felt desirable to dispense with barriers and cabinets; opening hours were increased and attendants were required to be more discreet. All this is highly praiseworthy on the cultural level, but does not contribute to the security of collections; it is all very well to bring art objects within the reach of all, but at the same time one must be confident of the honesty of all.

Here again it is necessary to be realistic. For a long time works of art were protected by their religious character in ecclesiastical buildings and by their mysterious and quasi-mythical character in important monuments or museums open to the public. Now that, in an increasingly materialistic world, they have become primarily precious and expensive assets, they must be treated as such and surrounded by protective devices which will inevitably make them less accessible and less pleasant to see. Alternatively, if the dissemination of culture is to rank before security, the resulting risk must be taken, as in department stores which prefer to put up with a certain percentage of thefts rather than turn customers away by excessively strict security.

Finally, the most efficient devices involved an inherent contradiction connected with their conditions of use. If they are set for extremely high sensitivity, they

are liable to trigger false alarms, but if they are set to be less sensitive, they may be rendered ineffective. The best arrangement is therefore to cover a single risk by two or more devices, the simultaneous triggering of which will almost certainly indicate that the alarm is genuine (for example, a single infrared ray may be interrupted by a falling leaf or small animal; it is most unlikely that two parallel rays 20 cm apart can be broken simultaneously other than by the passage of a large object or body). As already stated, in most cases several risks have to be countered simultaneously; this means that there is no perfect device, but instead there are security systems which combine a number of devices. Inevitably, however, these raise other problems: complexity of installation, adjustment and technical maintenance.

- Human intervention. Human intervention remains very important in all circumstances, however much sophisticated equipment is installed. It is and will remain fundamental for at least three reasons:

. The most sophisticated security system remains ineffective if no-one responds to the alarm. Staff are therefore always necessary "at the end of the line" in order to intercept the thieves detected by the equipment. One of the problems of the advanced countries such as those of Europe, however, is to obtain such staff on a continuous basis, i.e., including Sundays and holidays, day and night.

. Sophisticated systems call for specialized and careful adjustment and maintenance. Hence, while they save

unskilled watchmen, they require the intervention of skilled technicians to keep them continuously in working order, because a security system which does not work perfectly is more dangerous than no system at all owing to the false sense of security engendered.

. Most security systems can be switched off temporarily for cleaning, transfer of exhibits from one case to another, etc. There is a great temptation for security staff to switch off systems so that they are not bothered by alarms, justified or otherwise, calling for their intervention. This surely explains the mysterious thefts which have taken place in premises featuring sophisticated security equipment which, for no obvious technical reason, has failed to operate at the critical time.

b) Measures to promote the use of security systems

Being in the no man's land between dreams and reality, the world of art and culture, more than many other worlds, is one of contradiction between proclaimed intentions and practical actions. The extent to which security equipment is used is a perfect illustration here. The importance of protecting the cultural heritage is loudly proclaimed; but the negligence displayed by so many persons responsible for important collections, both private and public, remains astonishing. In the case of private owners, who surely have a direct interest in protecting their own property, this negligence is presumably due both to a long period of impunity and to the difficulty of obtaining information. Burglaries remained

the exception for a very long time, and the vast majority of people spent their entire lives without ever suffering one. Over the last few years, the danger has increased considerably, and no one is any longer immune; but most owners of even valuable property only become aware of this when they are eventually robbed. Again, it is not always easy for them to obtain reliable information about the best devices to install and how they work. Almost all private dwellings have virtually no serious means of protection. Almost the only exceptions are the commercial galleries, which have learnt the hard way by many experiences of theft, and a few major collectors, artists or families of artists who know the value of the property in their possession.

It may at first sight be assumed that the situation of public collections is much better in this respect.

This is probably not the case, although the interpretation of the documents obtained clearly shows the difficulty of reaching precise conclusions. The results of an Interpol survey of a number of national bureaux are given on page 41, and the relatively optimistic statements about France and Italy will be noted. But at the same time the record of thefts declared in the two countries is alarming:

<u>Thefts committed in</u>	<u>1970</u>	<u>1971</u>	<u>1972</u>	<u>1973</u>	<u>1974</u>
France: Museums	37	36	67	53	68
Churches	227	211	212	245	320
Italy: Museums	13	52	40	41	29
Churches	116	165	165	194	373

The contradiction between these relatively optimistic statements and the alarming true figures is presumably due

to the reluctance of those in charge of public collections to publicize their misfortune, exacerbated by the fear of attracting even more thieves by drawing their attention to their weakness in confronting them.

In fact, on the basis of numerous personal contacts in the last twelve years, it is certain that the situation of public collections, although better than that of private collections, is very far from satisfactory, and it is not improving. Although modern technical facilities are increasingly being used, at least in large museums, this increased security certainly does not make up for the growing inefficacy of the old means of protection. For instance, churches were for a long time protected both by traditional respect and by the fact of their being living institutions firmly entrenched in the everyday life of society. But thieves are no longer afraid of hellfire, and throughout Europe thousands of churches are now virtually abandoned, with no congregations and no regular priests, in the middle of a deserted countryside. Again, the fundamental element of security in museums remains that of human supervision, which is in most cases provided by honourable, responsible men who, however, are selected largely on the grounds of being unable to do a more active job: war invalids, the victims of industrial accidents and pensioners are perfectly respectable and capable of maintaining order amongst groups of schoolchildren or tourists, but they cannot stand up to organized and determined thieves. Again, recruitment for jobs of this kind today is becoming more and more difficult, and working hours and conditions are becoming less arduous; hence, this relaxation of human supervision, in the face of ever increasing

risks, is far from being offset by the progress of technical facilities. To conclude on this point, there is no getting away from the fact that the scale of thefts from public collections is unprecedentedly high today. It is therefore surely worth while considering measures to arouse interest in security problems and devices, because such interest often seems to arise today only after an initial loss. The most important of these measures can be classified under three headings:

- Information and advice. Safety devices are of varying degrees of complexity. They become much more effective when several different types are used in combination, but the choice of individual devices and, even more, the choice of a combination of devices, must be based on the nature of the objects to be protected and the premises in which they are housed. If a security system is to be effective, therefore, a prior technical study by an able specialist is essential. This study will not be complete unless it also gives a fairly accurate idea of the cost of the system, including installation, and the operating cost, including that of maintenance and replacement of the most delicate components. Such a study must be carried out by a team including specialists in both security problems and the technical equipment used.

As the risk has increased, so, too, has the number of firms concerning themselves with security problems. The disadvantage is that they supply both advice and the hardware, so that, without casting doubt on their good faith, there is nevertheless a risk that they will tend to recommend the use of their own equipment, even if it

is not the most suitable for the particular problem in hand. Again, many new firms are relatively inexperienced in the field. It is therefore highly desirable that the possessors of art objects, and indeed also the security system firms themselves, should be able to benefit from the experience and documentation of objective official agencies.

As Table 2 shows, such agencies now exist in several countries. They do not exist in all countries, and they are also not always open to all potential users. It is therefore highly desirable that they should be set up in every country and should be open to all. They should not, however, be concerned merely with theory and design, without direct contact with practical situations. The answer is not to set up information and advisory services devoted solely to this task but an agency specializing in the wider field of security services for works of art. The various activities concerned will emerge from this study. Our aim has been to draw attention to the particular importance of this information and advisory function.

- Direct or indirect financial intervention (in the form of subsidies) is the only approach which can be recommended for public collections in the widest sense of the term (churches, museums, public historic monuments, etc.). It is the responsibility of the State to provide its own protection for collections under its own control and to help other bodies subject to its authority or control to take the same action. In this connection, we wish merely to draw attention to the abysmal situation of many public collections and the vital need for action to be taken on a large enough scale to provide a measure of genuine security: the precise action to be taken will vary according to the countries,

regions and collections concerned, but can be classified under three main headings:

- . systematic development of technical security devices (matched to specific conditions and, in particular, possibilities of human intervention);
- . raising the standard of security staff (not only improving pay but also coordination of methods of selection, service and training with the police force and fire service);
- . elimination of risks which cannot be guarded against without excessive expenditure - i.e., closure of small museums, removal of valuable objects at present in churches or other premises without serious security, possibly replacing them by copies or various substitutes.

The action to be taken is admittedly large in scale and extends beyond current practice in most European countries. It is bound to meet with resistance and economic, financial and psychological objections¹. In any case, there is no getting round the fact that effective control of illegal traffic in works of art will probably be impossible as long as thousands of churches and museums throughout Europe are left open and exposed for criminals to help themselves and to use as training grounds.

¹ The latter apply particularly to the closure of small museums and the grouping together of objects belonging to churches which have been almost abandoned. But the grouping of objects in this way, whether from museums which have been closed or from virtually deconsecrated churches, is the only economic way of protecting objects which are currently left defenceless.

- For private collections, in addition to the information and advisory campaign recommended above, there could be two forms of incentive:

. The first incentive would be fiscal. The machinery would be the same as that used in all countries wishing to induce individuals to collaborate in a scheme which is in the public interest, namely, to grant tax relief on all or part of the capital expended on security systems. Such arrangements are already used in most countries to facilitate the upkeep of privately-owned historic monuments; there is therefore no reason why they should not be extended to security systems. It should merely be noted that the public aid which tax reliefs constitute is felt to be more acceptable for the upkeep of buildings which, irrespective of their legal status, form a physical part of the national heritage in which they are rooted, than for the protection of art objects which can more easily be exported and which are too often felt to be primarily a vehicle for purely financial speculation.

. The second incentive would be via the insurance companies. Art objects contained in a private property are usually insured against theft, but in two different forms. The most common is a global insurance which covers all the objects contained in a property up to a certain limit, it being the responsibility of the victim, in the case of theft, to prove the existence and value of the stolen objects. The second form is approved-value insurance, which covers specifically identified objects for a predetermined sum. This is the only form of insurance which provides a genuine guarantee, at least for important objects, and it also enables the insurance company to stipulate that serious security measures be taken, consistent with the nature and situation of the objects covered. However -

inevitably, because it provides better cover - it is appreciably more expensive, so that many owners do not use it (in fact, it seems to be used only by the possessors of particularly rare and valuable objects). A possible approach would be new regulations requiring the approved-value insurance formula to be used for all art objects above a certain value (or, in negative terms, it might be stipulated that, in the event of loss or theft of art objects, the compensation payable could only exceed a certain value provided that an explicit approved-value form of insurance cover existed) - insurance companies would probably furnish this approval only for objects covered by a suitable protection system.

It seems that such an arrangement need not be based on government regulations but could result simply from concerted action by the principal European insurance companies; however, it also appears that the latter are not yet all inclined to take this concerted action and that they would appreciate an official stimulus, so that they could not be accused of using protection of the cultural heritage as a pretext for stipulating a form of contract involving higher premiums.

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TABLE 1. USE OF MODERN SECURITY SYSTEMS

In 1975 Interpol carried out a survey of 18 countries particularly concerned by thefts of art works on the use made of modern technical devices for protecting public collections.

For the six countries of the EEC included in this survey, the information obtained can be summarized as follows:

GERMANY: The principal museums are equipped with mechanical and electronic protective systems; electronic systems are seldom used for churches, galleries and private collections, and mechanical systems are insufficient although the situation is improving. Many museums protected by a combination of several electromagnetic systems may be regarded as adequately protected.

BELGIUM: Electromagnetic protection systems have been installed in an increasing number of museums during the last few years (the Belgian office of the ICOM gives a detailed analysis of the various systems and the results obtained). Well equipped buildings may be regarded as reasonably protected, but the effectiveness of the protection always depends on the speed of human response, which cannot always be guaranteed.

DENMARK: Electromagnetic protection systems are used. To cover the response time, i.e., the time elapsing between the triggering of the alarm signal and the arrival of the police, a conventional internal alarm system (bells, whistles, etc.) is also used, to combat vandalism and sabotage in particular. The equipment installed is considered appropriate.

FRANCE: The main museums are equipped with a variety of devices. Churches mostly have neither modern security systems nor even, in most cases, passive mechanical protection (barred windows or reinforced entrance doors). Private galleries are usually satisfactorily equipped, mainly owing to pressure from the insurance companies. Private collections are mostly poorly defended, sometimes lacking even the most elementary protection.

ITALY: Most large museums have closed-circuit television systems and nighttime volumetric protection type alarms. The most valuable works are often also protected by local type devices. Similar devices - except for television - are used in churches and by individuals. On the whole, these devices are regarded as adequate "even if criminals succeed in circumventing the obstacles placed in their path to protect works of art".

UNITED KINGDOM: A large variety of devices are used in museums.
Some galleries and private collections have similar equipment
Churches, on the other hand, are usually unprotected and are for
this reason extremely vulnerable.

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Table 2. Information on security systems

The same Interpol survey also enquired about the possibilities open to public or private users for obtaining objective information on the most suitable security methods and systems for their situation.

The answers given by the EEC member countries consulted were as follows:

GERMANY: Each Landeskriminalamt, as well as the police forces of certain towns, have advice bureaux open to the public. The insurance companies make the conclusion of certain contracts conditional upon the adoption of security measures, or grant premium reductions where appropriate devices are installed. In some provinces, the advisory function is performed by the police.

More generally, the police play an informative role: lectures, distribution of information, and checking of alarm systems. The police mount information campaigns using the press and audiovisual media.

BELGIUM: Until 1973, there was a national association for the prevention of violence, thefts and all forms of acquisitive crime (ANPAMA), which carried out studies and provided recommendations in the field of security from its foundation in 1966 until 1973, when it was forced to close owing to lack of funds.

DENMARK: A Crime Prevention Council exists under the auspices of the Ministry of Justice, made up of representatives of the various interests concerned. Police laboratories are also empowered to act as advisers.

FRANCE: A system of collaboration has been instituted between the police and the museum authorities for the study and dissemination of information about security.

The author wishes to add that a specialized security bureau has been set up in the Direction des Musées de France; this is an internal body which cannot be consulted by outside users.

ITALY: A commission under the Ministry of Education existed for several years and performed a similar function to that of ANPAMA in Belgium.

UNITED KINGDOM: There is a security adviser responsible for security matters in national galleries and museums.

The Metropolitan Police have a special department; regional and local police forces also act as advisers within the limits of their areas.

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2. Identification of missing objects

Clearly, there can be no serious chance of recovering a missing object unless its precise description is available. Here again, the negligence of owners reaches astounding proportions: a high percentage of theft victims are unable to give a detailed description of the objects of which they have been robbed. "A landscape.... with cows....", "an old chest of drawers....", "a negro statuette....", without any further details. Public collections are more adequately covered in this respect, the objects comprising them normally featuring in a descriptive inventory. But even in this case the description may not be very detailed, and formulas of the type "a Greek vase....", "the prow of a dugout....", "a female nude....", afford a somewhat limited basis for a systematic search. It therefore becomes clear why so much importance is attached at colloquia and seminars and in articles on thefts of art works to as detailed as possible a description of objects liable to attract thieves.

Of course, it is impossible to know in advance which objects are going to be stolen or sold illegally. Because a description must be given once the crime has been committed, it is essential for a description of the objects likely to be involved - i.e., of all objects - to exist in advance. Hence the idea, at first sight convincing, of compiling general inventories of cultural property in all countries.

On this point, too, it is essential to remain clear and realistic. Various concepts must be clearly distinguished from each other.

1) First of all, the instrument and the objective of the work undertaken should be examined separately - the instrument being the method of analysis and description of the objects, and the latter the inventory itself.

The method of analysis is therefore a prerequisite: the agreed language which must enable the various agencies concerned with art objects to understand each other without ambiguity and to exchange information easily. Now this method, or methods since they must necessarily differ according to the type of object concerned, are not currently standardized in Europe, nor indeed within any of the European countries (at least as regards all the main categories of art objects).

This does not mean that such standardization is inconceivable, and in fact, its achievement is not all that remote. After all, Europe has sufficient cultural and artistic unity for identical conceptions to exist of the essential characteristics of the main categories of art objects. Again, professional and corporate relations between specialists in the different sectors (paintings, drawings, antiques, etc.) are already frequent and trustful. Adoption of a common language is therefore not inconceivable: but one has to know what one wants to say and to whom.

At present, methods of analysis and description are normally conceived and applied by specialists, who are often highly qualified in their own - primarily scientific - fields, so that they naturally tend to be as precise and comprehensive as possible. The fact that this is a general phenomenon is borne out by the

increased volume of catalogues of temporary exhibitions in the last twenty or thirty years. This objective of maximizing precision was for a long time held back by the rudimentary nature of the means used. As long as it was necessary to write cards which an ordinary person - even if specialized - could himself prepare and consult, limitation of the amount of material included on them was unavoidable. With the appearance of more sophisticated equipment for their physical preparation and for consulting them, the tendency is naturally to make the analysis as detailed as possible. Although we do not dispute the value of these elaborately detailed analyses for scientific purposes, they do not necessarily meet - or rather, they go beyond - the needs of the location of stolen objects (or objects liable to be involved in illegal traffic). The type of broad outline description required can, of course, be derived from an elaborately detailed description, but only if the latter includes all information regarded as essential by the agencies responsible for checking illegal traffic - i.e., at present, the customs and the police.

With regard to methods of analysis and description, therefore, we may conclude that it is essential for absolutely identical terminology to be used in all European countries, descriptions being compiled by teams comprising not only specialists in art, archaeology and ethnography, but also the police. Computer personnel must also be involved, because a method of inventorization not suitable for computerization is inconceivable today. In other words, the police and computer representatives

on these study groups should not play merely a secondary part and sit at the bottom of the table: instead, their opinion should be a decisive element in the choice of methods of analysis and description.

2) Once a common language has been adopted, a start can be made on the systematic compilation of cards, and then of inventories, which are merely a combination of all cards prepared for a particular group or category of objects. After this, publications can if appropriate be drawn up from these cards and inventories. With regard to the latter, in particular, there are three possible levels:

a) The highest level, which is intellectually the most tempting, is obviously a complete inventory of the cultural property existing in each country (this would automatically provide a complete inventory of the entire cultural property of Europe if the national inventories were compiled on identical bases). This objective is not considered to be feasible, for reasons of logic, law and fact:

- Logic: a complete inventory can only be drawn up of a precisely defined category. However little agreement exists on the precise content of the concept of a "prie-dieu", it is possible to inventorize all prie-dieus existing at a specific time in the churches of a given town or province. On the other hand, it is impossible to make a complete inventory of an ill-defined category. But it is hardly necessary to emphasize that the concepts of "cultural property" or "art objects" are everywhere vague and subject to fluctuations in research, taste or fashion.

- The second objection is connected with the legal status of art objects. A high proportion of them

belongs to public or quasi-public institutions: states, provinces, regions, départements, municipalities, public establishments, churches, etc., or to nonprofit associations. For all such institutions, the State may compulsorily require registration in an inventory of all the articles which they hold, or may recommend such registration using pressure or persuasion. This registration is unlikely to meet with serious objections on the part of owners acting on behalf of the community. In the free societies of Europe, however, private property is important, and there are indeed a large number of private collections in Europe, where there is also an active trade in art. While it may be possible to wish for and to propose the registration in official inventories of privately owned objects which obviously form part of the national cultural heritage just as much as their publicly owned counterparts, it is not possible to make such registration compulsory, as this would involve powers to verify the exact status of private collections and monitor changes of ownership - i.e., the imposition of close and continuous control of private property in a manner totally inconsistent with liberal beliefs. However, the latter does not preclude voluntary participation by private collectors in the compilation of general inventories, but there is no concealing the fact that, in some countries at least, many owners would be reluctant to cooperate for fear of arousing the interest of the tax authorities or even of potential thieves.

- Finally, the third obstacle is a practical one. However, since it is already encountered at the next level of possible inventories, we may go on direct to discuss that level:

b) The second level is that of specialized inventories of categories of articles of specified legal status and physical location. The logical obstacles mentioned above disappear, as also do the legal obstacles, if it is decided to limit the inventories to public collections or to parts of private collections subjected to precise controls under specific regulations. Much more progress has been made at this level: wherever special rules apply to the protection of certain objects, one or more inventories are kept of them; similarly, inventories of public collections exist everywhere. For the nine countries covered by this study, this means that there are several thousand inventories which, at first sight, it may be thought could easily be used to compile national, or even European, inventories of publicly-owned objects and protected privately-owned objects. However, although such an aim is more modest than that of the general inventories considered earlier, it is still far from feasible, this time for purely practical reasons - chiefly, the total inadequacy of resources of both staff and equipment. To consider museums alone, of which there are several thousand in Europe, all in principle have one or more inventories. In theory, therefore, their consolidation in a single document is conceivable, but closer inspection shows that these inventories were often compiled very long ago and, except for the major establishments, tend to be exceedingly rudimentary. For example, whole series of objects have either not yet been photographed at all or have not been photographed in accordance with standard rules. For a true consolidation, therefore, it would be necessary not only to adopt uniform rules of description for all establishments as from a given date but also to revise all existing inventories

so as to adapt them to these new standards. With the present situation of museum staff and documentation in Europe, there is no doubt that such a task is in practice not feasible. Again, we have only considered museums, which in this connection are probably in a better position than other public collections.

As in the case of security systems, there is once again a big gap between possibilities and intentions on the one hand and actual action on the other: intellectually and technically, it is already perfectly feasible, at least for certain categories of less numerous and more intensively studied works, such as paintings, to compile complete inventories of public collections at national level and hence at European level, if identical rules of description were adopted from the beginning. In practice, however, such an undertaking would not be feasible at present owing to the inadequacy of the management resources of public collections in much of Europe. Such a programme would be of inestimable value not only as regards security but also - if we may be allowed a slight digression - for the achievement of a more profound knowledge of European art and culture. It is true that the masterpieces of Europe's collections are known and disseminated in hundreds of widely differing publications - differing because of the variety of their aims - but there are still tens of thousands of more modest and relatively unknown works and objects which are scattered in museums, historic monuments and churches, and are expressions of the underlying currents of European thought and civilization, just as much as the well known masterpieces. At present, these works are inventorized

by different techniques and methods; they have not all been photographed, and are mostly unpublished. A European programme of systematic inventorization followed by publication, of a few categories of works only, would certainly be a far better demonstration of Europe's determination to defend and exploit a vast common heritage than declarations of principle.

c) A third possible level of inventorization brings us back to the subject of this study. This would be an inventory of stolen or missing objects (except, of course, for unidentified objects such as the products of clandestine excavations). Modest as such a project might initially appear, there is no doubt that the tracing of a stolen work is greatly facilitated by wide publicization of its description. Such publicization is at present still effected by exceedingly unsophisticated means.

The theft victim gives as detailed a description as he can of the stolen objects to the national police forces. The latter circulate this description at national level and, if they see fit, also internationally. At national level, it is normally circulated to police and customs authorities and the relevant professional circles (dealers, auctioneers and museums). Descriptions are circulated internationally through Interpol to the various national police forces outside the country where the theft took place, where it is considered that the object might go to the countries concerned, and they are then circulated from police headquarters throughout these countries. In addition to this official information, there are reports in the press, on radio and on television, but only in the case of major incidents.

All this is by no means ineffective, but there is nevertheless no systematic procedure; in particular, descriptions are mostly incomplete, and they are circulated by printed documents, photocopies or duplicated copies which are often indistinct. A much more widespread and systematic circulation could be achieved today by modern techniques - in particular, computers. Although the compilation of a complete index or inventory of objects liable to be stolen appears to be out of the question in view of the vast number and variety of the objects concerned, it certainly appears that such an index might be established in a specific area such as the EEC exclusively for those objects whose disappearance has been reported, because, in spite of the increase in such crimes, there are far fewer of them.

However, if the preparation and use of such an index are to be truly effective, individuals, experts or, more probably, mixed teams of specialists must be involved: methods of criminal detection, of course, but also a knowledge of the main categories of objects concerned in the usual illegal channels - i.e., adequate artistic and archaeological training - and, finally, experience of computer techniques. It is quite unrealistic to imagine that a large number of such teams could be set up at various points throughout Europe. What would be feasible is a two-tier organization, based, incidentally, on the system which more or less exists at present (see below), as follows:

- on top, a European agency for the suppression of illegal traffic in art works (whatever name it may be given);

- in each country an equivalent national agency.

The formation of mixed teams - policemen, art experts and computer specialists - as suggested above, would be necessary only in these agencies: the national agencies would liaise between the normal police and customs authorities in each country and the central European agency.

Let us consider a practical example. If a theft is reported in the area of a police force, the latter would transmit the details to national police headquarters, giving as full a description as possible, but drafted in ordinary language. On the basis of these particulars, national police headquarters would draw up a missing objects record card using the agreed methods of description which can be computerized and would pass it on to the European agency, which would maintain a complete file of missing objects throughout Europe. The latter would in turn forward the details to the national police forces concerned, using the same "modern" language.

Similarly, the normal authorities, when confronted with a doubtful object, would consult the national agency in "ordinary" language; the latter, having "translated" the description of the doubtful object, could ascertain whether or not it featured in the central index of missing objects.

This proposal would, therefore, not mean revolutionizing but modernizing existing methods, so that the circulation of information and the tracing of missing objects would be considerably facilitated by means of ten teams of competent men well equipped with computers (nine national teams and one European). However, in the future as in the past, there can only be a serious chance of recovery if a proper description of the missing object

exists, together with a sufficiently detailed photograph.

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Our conclusion on this matter of identification is therefore that the essential requirement - which is perfectly feasible - is the development of common methods of description of objects by mixed teams.

If such methods were used, extensive files and inventories could be compiled; this has hitherto been impossible because of the variety of unsophisticated methods currently used.

These files and inventories, prepared on a uniform basis throughout the nine countries of the EEC, would constitute an effective means of identification. At the same time they would greatly facilitate the control of illegal traffic, by aiding the reporting and tracing of missing objects. In this particular case, the paradox that an art object can only be used by exposing it to danger is resolved. On the contrary, the best cultural use here coincides with the development of security. This is perhaps one reason to hope that Europe will take positive action in this respect.

It should be stressed that the relative importance of record cards and inventories differs as between public and private collections. For the former, which by definition must not be in any way secret, the two concepts merge, the inventory being merely a compilation in a certain order of the cards drawn up for each item in the collection. In the case of private collections, on the other hand, the vital point for many owners is the preservation of confidentiality. It is readily understandable that these owners are hesitant about inventories drawn up and used by persons other than themselves, which would entail the divulcation of their property. However, if the same owners were themselves to draw up cards conforming to the same methods of analysis and description as would be adopted by the public collections, there would be no disadvantage as long as they kept the cards in their own possession. Indeed, far from being dangerous, these cards would substantially improve the chances of retrieving the objects if stolen, by enabling the authorities concerned quickly to give a comprehensible description. At present, however, many owners do not clearly distinguish between inventories and record cards and, being worried about the former, they do not bother to compile the latter. It would therefore be useful for the official bodies in charge of protection of the national heritage to undertake a publicity campaign on this point in each country. Once again, the cooperation of the insurance companies would probably be helpful in promoting a campaign of information and encouragement.

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Table 3. Schedule of inventories of art objects and cultural property

Germany: Inventories of public collections are kept by the managing authorities.

Under the law of 6 August 1955 on the protection of the German cultural heritage against export, works of art and other cultural property the export of which would represent a substantial loss to the German heritage must be registered, in the Land in which it is kept, in a list which must be regularly updated (by additional entries or deletions where appropriate). These inventories, compiled on a Land basis, are consolidated at Federal level.

Belgium: Under Article 17 of the law of 7 August 1931 on the conservation of monuments and sites, "an inventory of movable objects belonging to the State, provinces, municipalities and public establishments, the conservation of which is in the national interest from the artistic point of view, shall be drawn up at the request of the Minister of Science and Art by administrations or public establishments or the royal commission on monuments and sites...."

All kinds of museums draw up their own inventories. There are standard forms of record cards, but their use is neither compulsory nor systematic. Since its inception, the Institut royal du patrimoine artistique has been compiling a systematic inventory of the national artistic heritage. For this purpose it undertakes, in particular, systematic campaigns to photograph monuments and public collections, and also private collections where the owners agree.

Belgium thus appears to be the most advanced country in Europe in this respect.

Denmark: There are several inventories for particular categories of art objects and works, in particular:

- an inventory of ancient art objects discovered, which in principle are the property of the State (unless an individual can establish a rightful claim), wrecks more than 150 years old, and buried gold and silver objects and old coins;
- an inventory of Danish churches, covering both buildings and objects;
- ethnographic objects from the National Museum and the provincial museums are also subject to general inventorization rules, which are in fact applied with some flexibility.

France: Art objects, both public and private, subject to a special protection measure (listing or registration in a supplementary inventory) are inventorized by the Service des monuments historiques, which is an agency of the Secrétariat à la Culture (about 80,000 objects).

All museums are required to keep an inventory. The inventories are kept by the main establishments in accordance with their own individual practices. Provincial museums (run by départements, municipalities or nonprofit cultural associations) keep their inventories in registers supplied by the Direction des Musées de France and in accordance with the rules stipulated by that body.

Under the decree of 4 March 1964, together with the orders of 25 May and 8 June 1971, a general inventory agency for the monuments and art treasures of France was finally set up in the Secrétariat d'Etat à la Culture. Its very ambitious aim is to establish and publish a complete inventory of public and private cultural property (the latter subject to the owners' consent). The agency has prepared standard forms for the description of the main categories of property and has already drawn up and published a number of inventories covering specific geographical areas. For the present it is impossible to fix a term for this enterprise, which is by its nature a long-term operation.

Ireland: Protection of monuments and archaeological objects is provided for in the National Monuments Act 1930 (26 February) as amended on 22 December 1954. A list of the monuments covered by these texts is kept. Discoveries of archaeological objects must be reported within 14 days to the Keeper of Irish Antiquities.

Museums and other institutions keep an inventory of the objects in their possession.

Italy: The legislation and situation are similar to those of France (although State powers are more extensive in certain respects).

A procedure exists for the special protection of public or private property of particular interest to "political or military history, literature, art and culture in general". The list of objects notified is kept at the Ministry (at present, the Ministry of Cultural Property and the Environment) and in each regional prefecture concerned.

Museums and other public institutions maintain inventories of the property in their keeping. The Central Institute for Cataloguing and Documentation, which is a department of the Ministry (of Cultural Property), has instituted a project for the consolidation, revision and unification of these inventories, no term for which can be fixed. In addition, the State has published several volumes of inventories of the artistic property of several provinces, but these may be regarded as out of date.

Luxembourg: The principal body concerned in this field is the National Museum, which has established standard forms of record cards and inventories which it uses itself and whose use it also recommends to other museums and to private collectors.

Netherlands: The list of property (movable and immovable) covered by special protection measures is kept by the "Monuments Council", which sends copies to the relevant provincial and municipal administrations.

The various bodies managing collections keep inventories thereof in accordance with their own standards. The Ministry of Culture has set up a study group for the rationalization of cards and inventories.

United Kingdom: The system is extremely flexible. There is no "listing" for movable objects. The various institutions keep their own inventories by their own rules. This high degree of legal flexibility is tempered by the influence of the big institutions (National Gallery, British Museum, etc.) and corporate associations.

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The following conclusions may be drawn:

- 1) No country has a legally compulsory system of cards or inventories.
- 2) In countries where certain property is subject to special protection, inventories are kept, usually at several levels - central and local. These inventories may cover privately-owned property where the latter may be subjected to this special protection.
- 3) The inventories for public collections are kept by the authorities responsible for them.

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3. Regulation of excavations and archaeological sites

Throughout the world, public opinion has now become very conscious of the plunder of archaeological sites. The newly independent countries bitterly recall the pillage of objects from their soil not so long ago by the rich and powerful of the time, which was perfectly consistent with contemporary legal and ethical conceptions; and the spoliation of ethnographical and archaeological remains still continues in many of these countries. Those of the old societies which, not long ago seemed to have arrived at the scepticism of maturity are now feeling the dangers of overfast technical progress and suddenly regaining a taste for their past. Both the old and the new nations, therefore, now agree that the archaeological remains which bear witness to this past should be respected. This explains the number and precision of the international instruments concluded in this field over the last twenty years: a recommendation on the international principles to be applied in archaeological excavations adopted by UNESCO in 1956; the 1968 recommendation on the preservation of cultural property endangered by public or private works; and the 1970 convention which aims more generally to prevent all forms of illegal traffic in cultural property but also expressly refers in several places to the problem of excavations. Within Europe, the 1969 Convention on the Protection of the Archaeological Heritage is specifically devoted to this problem. World opinion therefore now seems to be unanimous in considering that each country has not a right but a duty to protect archaeological sites against clandestine, or merely clumsy, excavations.

The foundations of the relevant regulations are roughly the same wherever precise texts exist: excavation is prohibited without permission even on one's own land; the State may authorize scientific institutions to excavate on land belonging to third parties; and treasure trove, found, for example, during public or private works, must be declared. However, the degree of precision and detail of the provisions varies according to the seriousness of the risk of clandestine excavations in the different countries. Thus - quite naturally - the Italian legislation is the strictest: it provides, in particular, that in all cases - excavations organized by the State or on its behalf, excavations by owners with permission, or treasure trove - the finds belong to the State, and the owner of the site is entitled merely to compensation. The French legislation is also very detailed. Other countries, on the other hand, have no special provisions regarding excavations and simply apply the more general provisions intended for the protection of ancient monuments (UK) or sites of historic, artistic or scientific interest (Belgium).

The views prevailing on this subject are thus already almost identical, as is also borne out by the existence of international agreements. The first of these has only the force of a recommendation, adopted by UNESCO at its ninth session in 1956, but it is noteworthy among instruments of its kind for the precise and concrete nature of many of its provisions. The second document, which is binding on the countries which have ratified it (all the Nine except, for the time being, Ireland and the Netherlands), is the European Convention on the Protection of the Archaeological Heritage, signed in London in 1969. Given the existence of such a recent agreement, one may wonder whether it is appropriate to contemplate measures other than

the straightforward application of this agreement by each party to it: all that is necessary, it might be thought, is for the contracting parties to be more vigilant about the trade in art objects and purchases by museums and official institutions, and for them to cooperate more intensively in pursuance of Article 5c of the Convention¹.

It must, however, be admitted that this is one of the points on which purely legal provisions are considered least effective, because several factors easily combine to render them ineffective.

At international level, once an object has entered the commercial circuit, it is very difficult to stop it if its description is not known from the beginning, as in the case of the products of clandestine excavations; identification from a description will, in any case, not be easy, except with famous objects. It is virtually impossible to verify statements made about the origin of a statuette or fragment of a vase which looks the same as hundreds of others, at least to anyone who is not an absolute expert.

The traffic must therefore be prevented at the beginning, but here again several factors conspire to impede the application of the protective laws. There is the physical factor that it is difficult to keep watch over archaeological sites whose boundaries are ill defined and which are often remote from centres of population. In addition, there are psychological factors: the clandestine excavator does not consider himself to be a real thief, and he is not always regarded by others as such; an owner digging on his own land feels that he is exercising his legitimate rights, and it is he who

¹ "Each party undertakes to c) do everything possible to bring to the knowledge of the competent agencies in the State of origin, being a contracting party to this Convention, any offer suspected of having originated from clandestine excavations or from misappropriation from official excavations, together with all relevant details."

considers that he has been robbed if what has been found on his land is taken away from him in return for often derisory compensation. This brings us, finally, to the economic factor, which is important particularly in the case of finds made during large-scale public or private works: the high cost of interrupting work on a modern construction site. For all these reasons, the protective regulations often tend to be honoured in the breach, as is borne out by the example of Italy, which has both the strictest legislation and the worst record of spoliation.

This does not mean that nothing can be done: every measure likely to limit the traffic in art objects in general can contribute to limiting that in archaeological finds; however, these controls are liable to be effective almost exclusively in the case of highly characteristic objects, such as the famous Euphronius krater¹, and this is why such measures should be retained in principle, in readiness for such cases should they arise. Apart from this, the only means of retaining the products of less important excavations, if this is considered desirable, is to deploy substantial resources to organize official excavations on a number of well-guarded sites and to obtain the cooperation of owners and contractors by promising them substantial compensation if they collaborate, rather than threatening them with fines for deception.

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¹ The Euphronius krater was bought for a million dollars in 1972 by the Metropolitan Museum of New York. The Italian police regard it as the product of illegal excavation and export. The official vendor, however, is a Lebanese collector who obviously obtained it from a lawful source (Informations UNESCO No. 679/680-1975).

Section II. Spot checks

The usual aim of thieves and miscellaneous traffickers is, of course, to obtain profit from their illegal activity and hence to sell the objects which are its vehicle. The property concerned is most frequently sold through a chain of intermediaries, so that in passing from the original fence to an intermediary who asks no questions, and from him to an honest dealer, the object gradually becomes "whitewashed" before being acquired by a purchaser whose good faith, in the absence of scientific curiosity, cannot be called into question. This complex traffic, whose status is gradually transformed from the illegal to the legal, may all take place in the territory of a single country. Criminals who are at all shrewd or organized, however, know (and we shall return to this point) how helpful it is to get the suspect objects across one or more frontiers in order to conceal their tracks and make it more difficult to retrace the chain back to its source. Border-crossing is therefore a common stage in the illegal traffic¹ even if it does not occur in all cases; it is also very common for the final destination of the object to be the shop of an honest antique dealer, or it may even end up in the hands of such erudite and respectable customers as museums. The next three subsections will therefore be devoted to border controls, control of the art trade, and control of museums.

1. Border controls

When crossing a border, however easy-going the checks, even the most innocent traveller cannot fail to realize that it constitutes in itself a control zone in which

¹ Of course, border-crossing may also constitute the entire offence, as in the case of fraudulent exports by or on behalf of an object's owner.

customs men and police are in a position of power based both on their legal prerogatives and on long experience, which enables them to detect travellers whose credentials are questionable even if they try to conceal the fact.

The border is thus a control zone for the import and export of art objects as for any other commodity, and it is the obvious place for the practical application of import and export regulations¹. However, such regulations must exist in the relevant field. An examination of prevailing legislations and practices shows that the systems operated vary substantially. The control of imports hardly exists any longer for the circulation of art objects between European countries; as regards exports, the nine member countries of the Community can be grouped in three categories.

The first category is made up of those countries which exercise no control, either in law or in fact. These countries are Denmark, where this is true without reservation, Belgium, which, it is true, has a law, dated 16 May 1960, which stipulates measures "to safeguard the cultural heritage of the nation..." (Art 1), which, however, has never taken effect owing to the absence of implementing regulations, and the Netherlands, where the regulations in force, which are inspired more by economic than by cultural considerations, merely require the production of a certificate of "no objection" for paintings worth more than 80,000 guilders and other art works worth more than 20,000 guilders.

¹ In some cases controls may not take place physically at the border itself but at customs offices within the country, as for example with goods carried by air or those placed in lead-sealed containers after examination. The same remarks apply to internal control points.

A second group consists of countries which have and apply a system of flexible control which allows a large number of objects to pass unhindered. This group includes Ireland and Luxembourg, which are not important centres of the art trade, the UK and West Germany. Compared with the two former countries, the two latter are centres of prime importance for international trade, including the art trade. Both have flexible regulations allowing for a wide range of exceptions. In the UK, a licence is not necessary for articles worth less than £4000 (although there are exceptions to this exception) or those imported less than 50 years ago; where a licence is necessary, in deciding whether to grant or refuse it, account is taken of the possibility of "formulating a reasonable purchase offer to keep it in the country", and in fact permission to export is not refused if it is impossible to purchase. In the Federal Republic of Germany, there is, in principle, a ban only on the export of works of art whose departure from the country would represent a serious loss to the cultural heritage and which have been or are in consequence registered in inventories. If permission to export is refused, the authorities of the Land in which the object is located may, if the possessor of the object is forced to sell it for economic reasons, take account of the prejudice caused to him by this refusal by granting him tax concessions. Finally, in both countries, the application of these regulations is a matter for committees and boards on which members of the art trade are represented. The spirit is, therefore, one of control and limitation for vital works, but not of a systematic barrier to exports.

The last group is composed of the two countries in which the Latin tradition of State power and the extent of the problem confronting them combine to bring about a much more restrictive policy: France and Italy. For these two countries, the regulations are

in principle extremely restrictive. The export of certain articles is totally prohibited (except for official temporary exhibitions), and for other articles the field of application of controls is very wide, covering virtually all archaeological property and art objects of any age; finally, State powers are extremely wide, ranging from permission to export to categorical refusal without compensation, although there is provision for the purchase by authority of the object submitted for exportation in transit at the price declared by the exporter.

At international level, it should be noted that the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property adopted by UNESCO in 1970 attaches great importance to such control of exports. As we shall see later, the countries of Europe are confronted with problems in reconciling this convention with the Treaty of Rome, one of whose foundations is the free circulation of goods, including art objects, as the European Court of justice has formally ruled¹.

There are, therefore, substantial differences both between national legislations and between international instruments, so that it appears difficult to formulate a clear common policy in this field.

¹ In Case 7/68, judged on 10 December 1968, Commission of the European Communities vs Italian Republic. Recueil des arrêts de la CJE, Volume XIV, pp. 625-628. The Court decided that "goods" were to be understood as products capable of being valued in money and, as such, of forming the subject of commercial transactions the products covered by the Italian law (objects of an artistic, historic, archaeological or ethnographical character).... regardless of the qualities distinguishing them from other articles of commerce, nevertheless share with the latter the characteristic of being capable of valued in money and thus of being able to form the subject of commercial transactions.

The following remarks may perhaps contribute to such a formulation.

On the practical level, it is difficult to evaluate exactly the effectiveness of the control of exports of art objects. In Italy, for example, control is in principle very strict, but that country's record for clandestine exports - either definite or suspected - is the worst of all. And, of course, everyone knows how easy it is to transport any art object which will fit into a case or car boot right across Europe. Nevertheless, one should not be too sceptical. On the practical level alone, border controls are not entirely lacking in efficacy, and there is no doubt that this efficacy would be greatly enhanced by better training and information for customs and police personnel in the specific field of art objects.

In law, control of exports (and possibly also correlative control of imports) remains very important, because it makes the illicit exporter or importer into an offender. The Italian or French authorities - to take the two countries with the strictest regulations - have many times learned of the presence on a foreign market of objects which, a few months earlier, were still in their own territory and which had not been exported with official consent. The authorities were thus able to act either against the holder of the property abroad or, in particular and very easily and effectively, against the national owner or intermediary, who could thus be convicted of illegal activity. Of course, the presence of the object in the territory of the country must have been known and the owner must not

have been deprived of it by a thief. But masterpieces, which, in the last analysis, are the only works which really concern the national heritage, are in fact almost always known and not all the owners are the victims of thieves. Hence the effectiveness of regulations on the circulation of art objects must not be judged only on the basis of the results of control at the time of transfer but also over a considerable period after transfer.

In law, again, the extent of the control must not be confused with its strictness. In France, for example, control may be said to be strict in law, but, on the basis of the results, lenient in fact. Tens of thousands of objects are presented for export every year. There are very few categorical refusals; these relate only to exceptional objects such as paintings by the greatest masters or furniture from the old royal residences; purchases at the declared price do not exceed a few dozen per year. Eventually, the vast majority of objects presented for export leave France, but after formalities which take anything from a few weeks to six months; it is indeed true that this delay irritates both French vendors and foreign buyers, but this criticism could be mitigated by an improvement in this respect, thus enabling effective control to be combined with true economic liberalism.

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The foregoing remarks thus indicate that control of the circulation of art objects may be

effective by its direct or indirect results in combating illegal traffic, without being excessively restrictive. For this purpose, the main requirements are, firstly, a reasonable system of regulation which subjects only a few categories of vital goods to control and, secondly, an organization of the control system enabling it to operate quickly. On the latter point, the vast majority of lawful exports probably suffer more at present, in countries where controls exist, from the resulting delays and uncertainties than from the existence of the controls.

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Table 4. Control of exports

National legislations are examined and a summary table of their principal provisions is given in Mr J. Duquesne's 1975 report on the regulations governing trade in cultural property in the EEC, prepared for the Commission of the European Communities (see pages 46 to 61 of that document).

It need only be added here that export controls were stiffened in France by a notice to exporters published in the Journal Officiel on 30 October 1975.

According to this notice:

1) An export licence must be applied for in respect of all works by a dead artist which are more than 20 years old on 1 January of the year of export (thus, in 1976, a licence is required for the export of works executed before 1 January 1956 by an artist who is no longer living).

2) A licence is not required for art and collection objects worth less than 5000 francs. However, these objects remain subject to customs inspection by museum representatives.

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x x

2. Control of the art trade

Just as streams naturally flow towards a river, the products of illegal traffic in art objects normally end up - even if by a circuitous route - in the legal and public art trade. To say this is not to call into question the honesty of the dealers themselves: the stolen painting, statue or article of furniture end up in the secondhand shop, antique shop or sale room just as a precious stone ultimately reaches the jeweller. This is merely a statement of obvious fact.

This obvious fact is the reason why the art trade is controlled almost everywhere. However, this control differs in form from country to country, two different techniques being involved.

The first form and the first technique are those of common law and police methods. There is no need for special texts for thieves' accomplices - and, in particular, receivers - to be kept under observation and arrested where appropriate, or for the exercise of stricter surveillance in places where there is more likelihood of finding them than elsewhere. Hence the art trade is controlled even in places where this is not stipulated in any specific legal text, in the normal forms and under the normal conditions of police supervision. Again, such control is often supplemented by purely practical measures adopted within the police force - e.g., the keeping of an index of dubious dealers and intermediaries, and a redoubling of vigilance concerning them.

Other countries go further, subjecting the art trade to particular supervision additional to

the general supervision. This is the case in Denmark, France, and now also Italy¹. The provisions are similar in each case. The art trade is subject, if not to authorization, at least to declaration, whereby those engaging in it can be more easily identified; in particular, art dealers are required to keep not only the normal business records but also a special register of particulars of objects purchased, their origin and the identity of the vendor. Negligence in the keeping of this register gives rise to specific sanctions and, in particular, constitutes serious grounds for doubting the good faith of the dealer should it appear that he has held or sold objects not mentioned therein.

These special provisions thus facilitate control of the art trade. However, like any other legal provision or regulation, they are not sufficient in themselves to ensure respect for the law unless other conditions are also met. First of all, the police must be effective - i.e., they must not be too busy with other work to be able to devote sufficient resources to this task; this, however, is a general problem, which arises not only in our field. Another requirement is for the art trade to cooperate, or at least not to be too reluctant in helping the police. The problem here is presumably a result of very fast growth. The large sale rooms, well-known galleries, and, indeed, serious dealers have an interest in their dealings remaining above board and being regarded as such; however, all over Europe, in large towns as well as along holiday routes, antique and secondhand dealers, some of them casual and some of them serious, have mushroomed forth; again, because of the current fashion for the picturesque, there has been a proliferation of "antique fairs" and "flea markets", open not only to recognized dealers but also to casual vendors.

¹ Law of 1 March 1975 on measures to protect the national archaeological, artistic and historic heritage (Art. 10).

It is much more difficult to control these temporary or fringe activities than a regular trade.

In addition, the serious trade must itself be organized so that it can impose respect for a high professional ethical standard by means of corporate discipline. Although those in charge of the trade organizations such as the International Confederation of Art Dealers (CINOA) are confident that they themselves conform strictly to precise ethical rules, they are not always followed so enthusiastically by all their members.

Several forms of action must therefore be pursued simultaneously: surveillance and penal measures on the one hand, but trust and cooperation as well. The latter already exists: descriptions of stolen objects are circulated by national police forces to dealers' organizations and passed on by them to their members. Serious dealers report dubious offers made to them to the police. Everything liable to develop this cooperation by serious dealers must be encouraged:

At international level, the 1970 convention on the means of preventing illicit traffic adopted the system of specific control of the art trade (Art. 10b). As we have seen, such control does not exist in most of the member states of the Community, and it is unlikely that, of itself, it would suffice to turn a dishonest trade into an honest one. On the other hand, it is not felt that this is a punitive or a scandalous requirement. On the contrary, it seems that, in particular, it could help in distinguishing between serious dealers and others, and that its adoption can therefore be recommended.

3. Control of museums

It may appear odd, in discussing those suspected of illegal traffic, to mention not only thieves, receivers and miscellaneous smugglers but also that peaceable and respectable class of people made up of the curators and other persons in charge of museums. Nevertheless, they are mentioned in many documents on the preservation of the cultural heritage: the 1956 UNESCO recommendation on archaeological excavations, the 1969 European Convention on the Protection of the Archaeological Heritage, the 1970 convention on illicit traffic, and the report of the UNESCO committee of experts on the risks incurred by works of art (1973).

The reason is that museums have contributed, or are still contributing, to illegal traffic in two ways: active or passive, by commission or by omission.

Active participation lies in the acquisition of cultural property of doubtful origin. Let there be no misunderstanding on this point: those in charge of museums are almost without exception men of irreproachable integrity. Indeed, among those participating in the art trade in the widest sense of the term, they constitute an island of virtue and decency in every country; nevertheless, they are at the same time imbued with an altruistic passion to enrich the collections in their charge, and this passion is sometimes strong enough to tempt them to transgress a professional ethic which was for long less demanding on this point than it is now tending to become. Let us make ourselves perfectly clear: we do not imply that any curator would wittingly purchase a stolen object; however, the concept of theft varies in strictness according to the remoteness and uncertainty of the origin of the article offered.

Just as a decent man would not harm his neighbour, but might agree for a good cause to press the button which would kill an unknown person on the other side of the planet, so a curator is not always reluctant to acquire an object whose origin is remote and uncertain. Hence the temptation is particularly strong in the case of ethnographic or archaeological pieces of extra-European origin. The temptation, or, more precisely, the tendency to give way to it, is less in the case of an object whose provenance is closer to home. It would, however, be rash to assert that no museum - even in Europe - has ever agreed, even in recent years, to purchase some Etruscan piece, some fragment of romanesque or Gothic architecture, obviously originating from Italy, France or some other European country.

Passive participation - connivance by omission - occurs when a museum does not take up a doubtful proposition made to it, but takes no other action either - in particular, it does not alert the authorities. Deep-rooted habits, the fear of being involved in unpleasant procedures, the wish not to lose sources which may perhaps have been negligent or unwise on a single occasion only, indifference to the conduct of barbarians - i.e., all those who are not museum people or at least friends of museums - mean that this sin of omission is certainly not exceptional, even on the part of the most respected curators.

Because museums set the example - and this is a tribute to them - such an attitude has particularly serious consequences even when it is passive, but all the more so when it is active. When a large museum accepts a piece of dubious origin, or fails to report a probable fraud, it gives many other art lovers, collectors or dealers a seemingly legitimate excuse to do the same.

This exemplary role also explains the importance attached by the international documents mentioned above to the behaviour of museums. Indeed, the museum world is becoming more and more aware of it, and the International Council of Museums has adopted an unequivocal stance on the matter by laying down ethical rules for acquisitions in its 1975 manual on protection of the cultural heritage.

It is not, however, felt that the use of a specific legal instrument is to be recommended here. For the problem is not one of law. There is no need to have a specific text to prohibit those in charge of museums from actively or passively making themselves accessories to theft, receiving or illegal traffic of any kind, since the texts which impose sanctions for these offences obviously apply to them as well as to anyone else. The problem is an ethical one: those in charge of museums must become increasingly aware of their exemplary role, and must realize that they must be stricter and more vigilant than all other parties involved in the art trade, because the museums to which they are dedicated constitute the most disinterested and hence the most respectable outlet for the art trade.

Concretely, it is felt that all that is necessary is to emphasize that the International Council of Museums (ICOM) has committed itself unequivocally and without reservation to this effort to strengthen this particular aspect of professional ethics¹. The European Communities can probably best intervene by helping the ICOM to redouble its efforts in this field, by the organization of colloquia and by the issue of publications to be widely circulated amongst museums.

¹ See Appendix 5: Ethical rules for acquisitions recommended by the ICOM.

Section III. Sanctions

These may be of two kinds:

- Penal level: Penalties imposed on those responsible for illegal traffic

- Civil level: Compensation for damage caused by their illegal activities. This compensation is also of two types: firstly, restitution of the stolen objects constituting the material vehicle for the traffic, and, secondly, possible payment of damages. For our purposes, however, this latter point is only of secondary importance: as far as culture is concerned, it is important for the objects to be recovered and not their value in money. Again, the deterrent effect of possible financial sanctions is certainly less than that of possible penal sanctions, although even the latter are certainly not decisive. For this reason, the following points only will be discussed:

1. Penal sanctions

2. Restitution of stolen property

x

x x

1. Penal sanctions

The penal law is merely a reflection of the particular preoccupations of a given society. Certain actions

- e.g., modes of dress or of feeding - do not normally have any significant social consequences. They therefore remain immaterial as far as the law is concerned, although they may, of course, be controlled by other social constraints such as morality or fashion. Should they come to assume importance, they are eventually subjected to regulations, controls and authorizations. If these actions finally come to be regarded as serious, they are controlled even more strictly, by punishing transgressions of the regulations thus laid down by penal sanctions - fines, imprisonment, etc. - whose severity itself varies with the importance attached to the rules respect for which it is desired to impose.

This applies equally to our field, and the penal law merely backs up and fortifies the rules adopted on the points already considered. For example, Denmark has no restrictive legislation on the export of works of art, so that there is no possibility of infringement of such rules in that country. Italy, the worst hit victim of illicit exports, has for a long time stipulated penalties for such exports, and since the situation is becoming steadily worse, it has recently passed a law (1 March 1975) substantially increasing the penalties for such offences, which now carry a term of imprisonment of up to four years and a fine of 4,500,000 lire, whereas in the past the only penalty was a much lighter fine (225,000 lire maximum in the previous legislation).

Consequently, in our field, the penal law is as complex as the various forms of regulations intended to limit activities regarded as pernicious can be. To take but a single example, the French penal law on protection of the cultural heritage includes

not only general provisions such as those which stipulate penalties for theft or receiving of any property, whether cultural or not (Articles 379 and 401 of the Penal Code), but also specific provisions, included either in the Penal Code (Articles 254 and 255, concerning the removal of items from public deposits, or Article 257, on the defacement of public monuments) or in particular laws. For example, the important law of 31 December 1913, which, with many additions, still constitutes the protective charter for historic monuments, includes in its Chapter V sanctions for, for example, the sale, purchase or export of a listed item of public property (Art. 31) or negligence by the keeper of such an item (Art. 34); however, there are also penal provisions in the legislation concerning archaeological excavations (law of 27 September 1941, Arts. 19, 20 and 21), the legislation on the administration of maritime wrecks (law 61-1262 dated 24 November 1961, Arts. 3 and 4) or the legislation governing the export of works of art (law of 23 June 1941, Art 4). Again, to establish the precise situation of positive law, it is necessary not only to refer to texts but to consider how they are applied. For instance - again considering the situation in France - Articles 254 and 255 of the Penal Code, which provide for severe penalties for the removal of items from public deposits (3 months' or 1 year's imprisonment for a negligent depositary, 5-10 years' penal servitude for thieves, and 10-20 years if the thief is the depositary himself), were at one time applied to people who stole books or objects from libraries or museums, even though it was not immediately obvious that these provisions were applicable to such cases; these articles were then, it seems, forgotten, so that today, without any amendment having been made to the texts, theft from a museum is no longer deemed to be anything other than an ordinary theft (except where there are aggravating circumstances so that the offence has the status of housebreaking or burglary, etc. - but these are not specific to the case of museums). The same conclusion

may be drawn as regards the legislations of other countries. To confine ourselves to recent texts, for example, there are penal provisions in the Netherlands' law of 22 June 1961 on the protection of historic and artistic monuments (Chapter VI), in the Luxembourg law of 8 August 1966 on excavations and safeguarding the movable cultural heritage (Part C), and in the Italian law of 1 March 1975 already mentioned (Title II, Arts. 15-21). An exhaustive study of all these texts and the ways in which they have been applied is obviously beyond the scope of this initial study, and would call for the collaboration of specialists in penal law and criminology in all the nine countries concerned. We shall therefore confine ourselves here to a general review, which will, however, enable us to outline a proposal.

Our first consideration is whether particularly severe penal sanctions are likely to be effective in our field. Instead of taking up the general argument about the effectiveness of penal sanctions, we shall merely make one point. National jurisdictions today do not seem particularly concerned to impose particularly severe sanctions for the theft of cultural property and art objects, even where famous works are concerned. The thieves of Vermeer's "Letter", or of the Rembrandts from the French museum of Bayonne, got away with a few months' imprisonment. In France, an auctioneer, i.e., a public official, who abused both his position and the facilities which he enjoyed by virtue of his duties by building up a large-scale organization for the theft and receiving of art objects, was sentenced to thirty months' imprisonment, 15 of which were suspended. The gang who stole the Belt collection in Ireland received heavier sentences (7 years' imprisonment), but their leader already had a criminal record and the gang was made up of dangerous extremists. On the whole, the courts do not seem particularly inclined towards severity; this is presumably because they

merely reflect public opinion in general, outside the circles directly concerned. To most people, an art object is a luxury article, which, moreover, very easily lends itself to speculation. For these reasons, no one is inclined to feel excessively sorry for the victims or to wish to punish the criminals very severely. This may be regretted, but it would be foolish to deny it. A penal law is only applied in all its rigour if it concerns matters which profoundly arouse public opinion. One may conceive of draconian texts on hijacking or on the taking of hostages, with some chance of seeing them applied. There is little realistic possibility of this being so in our field.

A second consideration is the complexity of the relevant national legislations. This does not merely have the obviously minor disadvantage of complicating their study, but also that of complicating international cooperation and rendering it arbitrary and fragmentary. As already stated in the preliminary considerations, this international cooperation is based on certain principles resulting from the practice followed in many bilateral or multilateral treaties. One of these principles is that a State will only cooperate in imposing sanctions for an offence committed in another State if the acts concerned are regarded as offences under both legislations concerned. Admittedly, a treaty may decide as to cooperation on a particular point, but even a treaty can only be effective if the signatories all agree to impose penal sanctions for certain acts, and this agreement will normally be forthcoming only on matters already covered by their own internal legislations in terms which are, if not similar, at least closely allied. In other words, there can only be serious chances of achieving true international cooperation in regard to the penalization of

traffics or acts which all the relevant States already regard as punishable.

However, even a cursory examination of national legislations suggests that this identity of views already exists on certain points. This appears to be the case, as stated, as regards archaeological excavations: all national legislations prohibit and punish anarchic excavation and empower the State to exercise control over excavations. The legislations are probably also not far apart as regards the protection, not of the cultural heritage in general, but at least of the public heritage, i.e., of that belonging to the State, other authorities, and certain nonprofit and public-interest bodies¹.

The objections to excessively systematic penalization of traffic in works of art are then invalidated. These objects, which are the property of public authorities, are normally identified and inventorized, and are either inalienable or at least subject to extremely restrictive rules and controls as regards their possible alienation, so that they cannot form the subject of speculative operations. Finally, they are intended for use by the public itself, or, at least, this is their essential intention. Thus severity towards the thief appears as a legitimate counterpart to the ease of access enjoyed by the thief as a result of the public utilization of the property. We have already referred to this paradoxical characteristic of cultural property - that it is only satisfactorily

¹ Under this heading we may also include private property subjected to measures of special protection, such as listing, because such property is also well defined and is a matter of general concern, and, by virtue of the restrictions on it - in particular, prohibition of export - it is substantially immune from straight speculation.

used if it is placed at risk, by leaving it in a church or exhibiting it in a museum rather than locking it in a vault. It does not appear unjust to make up for the risk so taken by more severely punishing the thief whose task has thus been rendered easier.

As yet, it seems that few provisions of this kind exist. The most characteristic appears to be that of Article 243 of the German Penal Code, which increases the penalty for theft to imprisonment for between three months and ten years "if objects of particular importance in the field of science, art, history or technical development have been taken from a public collection or one exhibited to the public"¹.

Consider, too, the old French jurisprudence under which thefts from libraries and museums are liable to the severe penalties provided for in Articles 254 and 255 of the Penal Code "in the event of the removal of effects from public deposits". In our opinion, these precedents, and those afforded by the many specific texts protecting public property against particular actions in each European country, can serve as the foundation for a draft joint system of regulations which, in all these countries, would protect property belonging to public collections from the essential risks - defacement, theft and export - and which would at the same time provide a firm basis for international

¹ Under the provisions of Art. 194 of the Danish Penal Code, "a person who removes, destroys or damages objects belonging to public collections is liable to simple detention or imprisonment for a period of up to three years"; although these provisions make use of the concept of "public collections", they seem to us to serve a different end, as far as is evident without thorough familiarity with their practical application. Their aim is not to impose severer penalties for theft where a public collection is involved, but rather to penalize specific acts, and in particular the "removal" of an object, which would not constitute a theft, principally because it would not be based on the desire to secure illicit gain, which is one of the factors constituting theft as defined in Article 276 of the Danish Penal Code.

cooperation in the imposition of penal sanctions for offences committed. Admittedly, we are concerned here with the field of penal law, in which States are particularly jealous of their sovereignty, and which calls for very precise definitions - of the concept of a public collection, of protected property, of punishable acts, and of applicable penalties. Nevertheless, it is considered that this point could constitute a virtually unanimous basis of opinion for the establishment of common regulations.

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2. Restitution of stolen property

The final aim of all these precautions and measures against theft and illegal trafficking - and their most important aspect from the cultural point of view - is, where a theft has nevertheless been committed or illegal traffic taken place, to re-establish the original situation and restore the property concerned in the offence to its public or private owner. However, this desirable outcome is not always feasible, even if the objects have not left the country; it is even more difficult to bring about if they have.

a) The property cannot always be restored to the owner who has been deprived of it, even if the stolen objects have not left the country.

The legal systems of the different countries adopt different approaches in this respect. Again, it should be noted from the outset that these approaches are always extremely subtle, and that the subject has spawned an abundant literature in every country; for this reason we shall again be compelled to confine ourselves to describing the broad outlines of the

main systems; this is bound to involve approximations, and in a field which is so much a theatre for legal arguments on fine points, we must apologise for this.

In general, the problem of action against the thief or his accomplices for recovery of the property can be eliminated from the beginning. Such action is obviously always possible in principle. However, certain practical and theoretical difficulties arise, connected with the distinction between theft and related offences such as fraud and breach of trust, and the distinction between the principal in the first degree, coprincipal and accomplices; perhaps the greatest difficulty lies in the rules of prescription laid down in all legal systems, whereby situations which were originally illicit become regularized on the expiry of a period of shorter or longer duration, for reasons of social harmony¹. The day therefore eventually comes when the thief and his accomplices can enjoy in peace the fruits of their misdeeds, because, although this may be immoral, it is preferable to a situation in which long-established circumstances are called into question and old investigations are ceaselessly reopened although the chances of a successful conclusion diminish as the years go by. In any case, thieves and other criminals in fact do their utmost to get rid of stolen property as soon as they can. If, therefore, they are caught still in possession of the property, it is almost always before the expiry of any time limit; and if the property is only found after several years have elapsed, it will have changed hands, having passed into the possession of holders who can normally plead

¹ These rules operate in two ways. In the penal field, action is barred by prescription after a certain time limit which varies according to the seriousness of the offence. In civil matters, the effect of acquisitive prescription is that after a certain period has expired, possession, even if initially vitiated by mala fides, is transformed into legitimate ownership.

good faith because the objects came into their possession through a chain of successive intermediaries, so that they could not be accused of having been aware of the illicit origin of the goods purchased.

The real problem is therefore that of action for recovery from the (at least presumably) bona fide possessor. No country has a clear-cut solution to this problem, because it is always necessary to effect a compromise between two contradictory considerations. The first is both moral and legal: a right cannot originate in illegality: the thief cannot transmit a legitimate right on property acquired illegally. This first consideration thus ultimately protects the owner who has been robbed by allowing him to take action for the recovery of his property wherever he finds it, since the possessor, even if bona fide, ultimately has it only from an illegitimate source. On the other hand, to protect trade in the broad sense, at least those acquisitions which have been made clearly, overtly and under the normal conditions of life must be deemed to be legitimate and definitive. Customers in a department store cannot be expected to verify the exact legal status of the articles displayed on its shelves. This second consideration thus ultimately tends to protect the bona fide acquirer, even to the detriment of the owners.

Both these considerations are therefore valid, the former morally and the latter economically; indeed, all legislations take account of both, adopting compromise approaches which may lay more stress on either of the two. Thus, legislations which in principle favour protection of the owner also include guarantees in favour of bona fide acquirers, whilst those which favour the latter do not completely exclude any possibility of action for recovery by the deprived owner. These fundamental compromises may themselves

be applied differentially - i.e., the same system need not necessarily be applied to all property or to all owners¹. A large variety of subtly differing solutions is therefore possible, lending themselves to wide-ranging differences of interpretation both by jurisdictions and by commentators. In classifying these solutions in three categories, we are therefore making a rough and ready approximation.

The first group comprises legislations based, at least in principle, on the Roman law axiom "nemo plus in jure transferre potest quam ipse habet". The relevant EEC countries are the UK, Ireland, Denmark and West Germany. In these countries, therefore, owner protection in principle takes priority, because theft cannot give rise to a valid right in favour either of the thief or of successive holders who obtain the property from him directly or indirectly. However, the principle having been established, the requirements of trade have necessitated exceptions.

Anglo-Saxon law here combines principles of common law and of various specific acts, the latest of these being the Theft Act 1968. The fundamental common law principle is that the deprived owner may institute proceedings for the return of his property or for

¹ For example, most legislations distinguish between tangible and intangible property. We are concerned here only with movable tangible property, among which many legislations accord a particular place to property which fundamentally constitutes evidence of indebtedness (e.g. banknotes or negotiable instruments) or other property which resembles immovable property in that its transfer is subjected to administrative formalities (e.g., aircraft, ships and motor vehicles). Similarly, as regards owners, legislations - or at least those of the French type - give a special place to the State and its divisions, certain public institutions, etc.

damages against the holders, even if bona fide, who are acting in violation of his rights; such actions for "conversion" or "detinue" are barred after a time limit of six years, and, in particular, are liable to be invalidated by a wide range of exceptions (for example, as a rule, a purchase made in a covert market is exempt from any action for recovery, a covert market being defined broadly as any public market legally constituted by a law, a concession, or the effect of prescription; by special custom, all shops in the City of London belong in this category). On the other hand, owners who are the victims of theft are in principle strictly protected, the protection even extending to purchases made on covert markets and apparently not being subject to a time limit. However, it is essential for the owner to have been deprived of his property by theft and not by a similar offence, and, as always in Anglo-Saxon law, the judge has considerable powers of discretion¹. The bona fide possessor of the object claimed in law must then return it without compensation, but may himself proceed against the person from whom he obtained it, even if the latter was also in good faith.

¹ According to Section 28 of the Theft Act 1968, "where goods have been stolen, and a person is convicted of any offence with reference to the theft (whether or not the stealing is the gist of his offence), the court by or before which the offender is convicted may on the conviction exercise any of the following powers: a) the court may order anyone having possession or control of the goods to restore them to any person entitled to recover them from him" This means that any holder, even if bona fide, may be required to restore the goods; however, the subsequent provisions of the Act and the comments thereon stress that the judge must exercise great discretion in ordering such restoration: "in practice, this power shall be exercised only if there is no dispute as to ownership. It would be a considerable impediment to the work of criminal courts if they had to examine disputed titles at the end of a judgment".

Danish law is based on identical principles. Possession of an item of movable property acquired "a non domino" is not guaranteed as an absolute rule, but it is also very often guaranteed in fact where the article has been obtained from a merchant selling similar articles. However, this protection does not apply in the case of theft: the deprived owner may, by virtue of the Danish Law of 1685, take action for recovery of the object, without compensation, by proving his title; the bona fide possessor may in turn proceed for compensation against the person from whom he obtained the object.

German law regulates the transfer of movable property by extremely detailed and precise provisions. Such a transfer has two components: the agreement and consent of the transferor and transferee, and the physical transfer to the possession of the transferee (delivery); certain conventions may apply to the latter. A bona fide possessor who has obtained an object from someone who is not its owner is as a rule protected, but the conditions of this protection are complex. In all cases, Art. 935 of the Civil Code provides that "acquisition of the property in pursuance of Articles 932-934 (which govern the normal conditions of such acquisition) does not take place where the article has been stolen from its owner, lost by him or otherwise removed from him". A theft victim may therefore take action for the recovery of stolen property, the time limit for such action being ten years. However, such protection ceases where the object has been publicly auctioned to a bona fide purchaser after the theft; the latter is then immune from any action for recovery.

A second group comprises legislations of the French type, which follow more or less precisely the provisions of Articles 2279 and 2280 of the French Civil Code.

An intermediate approach is adopted in such legislations, in which the bona fide possessor and the theft victim are protected in turn.

The basic principle is protection of the bona fide possessor: "for movable property, possession is equivalent to title", so that a person who holds an object does not have to furnish any further proof of ownership.

Subsection 3 of the same article (2279), however, immediately re-establishes protection for the theft victim: "Nevertheless, a person who has lost or been robbed of an article may take action for its recovery for a period of three years from the date of the loss or theft against a person in whose hands he finds it; the latter may proceed against the person from whom he obtained it".

This time, then, the owner is safeguarded, but the holder is liable to find himself in an invidious position, his only remedy being against the person from whom he obtained the object; for this reason there is a further guarantee both for him and for trade in general, whose customers must be reassured in advance. This guarantee is provided by Article 2280: "If the present possessor of the stolen or lost article has purchased it in a fair or market, at a public sale, or from a merchant who sells similar articles, the original owner may only cause it to be returned to him by paying the possessor the price which it cost him".

In addition to these fundamental provisions, there are those which protect certain public or private goods. First of all, there is the application of the theory - originally jurisprudential - of public domain status: public goods, i.e., those belonging to a public authority and directly dedicated to the use of the public or the working of a public agency (service), are inalienable and imprescriptible; consequently,

Articles 2279 and 2280 are inoperative in the relevant circumstances, and such property can always form the subject of an action for recovery, at any time and whoever is in possession thereof, without compensation to the possessor - even a bona fide possessor. Finally, the special legislation for historic monuments also affects our field, by establishing special protection for those which are listed; by virtue of listing, all such objects become imprescriptible, and Articles 2279 and 2280 thus do not apply to them. For public property (other than items already subject to the rules governing public domain status, since these rules are stricter), the law establishes total or partial inalienability. In the case of theft, it provides that action may be taken for its recovery at any time, but subject to repayment of the purchase price where a bona fide possessor is concerned (i.e., without any requirement that he must have bought it at a fair, market, etc.).

Finally, these texts have been supplemented and interpreted over and over again by jurisprudence and doctrine. In particular, the requirement of bona fides in the possessor has been deemed to be obvious for the application of Art. 2279. Indeed, it was so obvious that the drafter of the Civil Code, normally a model of precision, forgot to mention it.

Identical or similar provisions exist in the legislation of the neighbouring countries of Belgium, Luxembourg and the Netherlands, and these have been in turn interpreted by national jurisdictions. To illustrate the differences, it may be noted that since 1919 the Netherlands' law has no longer accorded protection to a person who has purchased from a "merchant selling similar goods", in order to limit receiving; again, jurisprudence and doctrine both agree in allowing actions for recovery by a deprived owner against the bona fide possessor where the latter has acquired the property free of charge (as a gift or legacy) and not by purchase.

Lastly, Italian law, which was for a long time also modelled on the French Civil Code, has constituted a third group in itself since the 1942 reform of the Italian Civil Code. The principal innovation, which is fundamental from our point of view, was the elimination of all special protection for an owner whose property has been stolen. The possessor is therefore always in a privileged situation, but he is, of course, also subject to very strict conditions. He must be in actual possession of the object, and he must be bona fide - but the latter condition is interpreted very strictly. A purchaser who, having regard to the circumstances of the purchase (place, price, etc.), may have acted with false innocence by failing to seek fuller information about a dubious offer would be guilty of gross negligence (as distinct from penal complicity) and might therefore be ordered to restore the goods. Finally, it should be noted that public domain property is in principle inalienable and that the purchaser cannot therefore oppose any claim for recovery. However, the application of the theory of public domain status to movable goods remains in dispute, as it was at one time in France.

b) Restitution is made more difficult in the case of international traffic.

Apart from the obvious difficulties of fact, many legal factors may also be involved, of which only a few will be mentioned.

- International cooperation facilitates the control and punishment of acts regarded as penal offences in the various countries concerned. There is normally no international cooperation where the act concerned is deemed to be an offence only in the country in which it was committed, or where it is regarded as an economic offence. But an important

form of illegal traffic, fraudulent export (where not preceded by another offence), is not penalized in several countries, and may sometimes be regarded as a merely economic violation.

- Action for recovery of the stolen property from the bona fide possessor is rendered problematical by the international nature of the offence. As we have seen, such action is subject to different rules in each country. It is difficult to determine which law is applicable where an object is recovered abroad. The court competent to rule on the matter will normally be that of the country in which the object was found. This court will first of all have to rule on a problem of private international law: which law applies to the case? This question will be decided in accordance with the local system of private international law. Normally, the court will apply local law to the main issue as well, because the article being claimed is located within the country concerned; in some countries, however, the application of a foreign law may be decided upon. For instance, consider the case of an object stolen in State A and sold in State B to a bona fide purchaser, who then transports it to State C. Depending on the circumstances and on the local law, the court in State C may declare the law of State C to be applicable as regards protection of possession, or that of State B, where the property title was established. In short, it is difficult to determine in advance under what conditions action for recovery will be possible - and indeed whether it will be possible at all.

- A court considering a claim for restitution of an object stolen abroad will not normally take account of any special rules protecting this object which might exist

in the country of origin, where such rules are regarded as falling within the purview of public order in that country. This case can be illustrated by an ancient precedent, which aroused great attention at the time. At the end of the 19th century an action for recovery was laid in France against the bona fide purchaser of an object originating from Burgos Cathedral. The Spanish representative maintained that this object was inalienable under Spanish law; the French court had no occasion to be surprised by such a provision, because it also existed in France (by virtue of the theory of public domain status). However, it rejected the claim: "The social interest responsible for the rule stipulated in Art. 2279 requires that French law alone be applied".

Hence the exceptional measures protecting certain property, and in particular the imprescriptibility of certain public or private property, will not normally be effective outside the territory of the country which has adopted them, even if they are applied on its own territory by the receiving country for the protection of its own heritage.

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These uncertainties and limitations in regard to action for the return of stolen property have, of course, attracted the attention of specialists for a long time. It is therefore understandable that the circles concerned - dealers and, in particular, the keepers of public collections - have long striven to bring about international agreements in order to overcome them. These endeavours have not hitherto borne fruit, because, in trying to be too ambitious, they encounter the fundamental stumbling block consisting of the lack of a precise definition of an art object. It is possible to apply special rules to certain forms of movable property - banknotes, negotiable

instruments, aircraft, boats or motor vehicles - because, although very diverse, these objects are strictly defined and precise rules apply to their utterance, circulation or control. Art objects cannot be specially protected because they cannot be clearly distinguished from other similar or like objects. Hence, in order, for example, to standardize the rules for action for the recovery of stolen art objects, it would be necessary, in the last analysis, to standardize those concerning action for the recovery of stolen movable property in general; in other words, it would be necessary to standardize a particularly important and delicate area of civil law among states having different legal systems.

It will therefore be realized that the most serious proposals are those whose aims are deliberately circumscribed from the outset. For example, the Institut pour l'unification du droit has long advocated the establishment of a "uniform draft law on protection of the bona fide purchaser of tangible movable objects"; in spite of its wide-sounding title, however, this draft is not intended to cover the entire field, but applies only to certain cases of sale having from the outset a particularly marked international character. Most cases of action for the recovery of stolen art objects, as actually occurring, do not fall within its province¹.

The 1970 UNESCO convention on the prevention and prohibition of illegal traffic in cultural property (to be discussed further later) also contains provisions on this subject. In general, it advocates a strengthening of international cooperation in its normal forms, without laying down precise new arrangements.

¹ Text of Article 1 of the uniform draft law:

"1. The present law is applicable in the case of the sale of tangible movable objects between parties established on the territory of different States in each of the following cases:

- "a) where the contract implies that the object is or will be transported from the territory of one State to the territory of the other;
- "b) where the instruments constituting the offer and the acceptance have been executed on the territory of different States;
- "c) where delivery of the object is to be effected on the territory of a State other than that in which the instruments constituting the offer and the acceptance of the contract were executed."

The most frequent form of "disposal" abroad of a stolen art object is for it to be sold on this territory by an unspecified seller to a purchaser resident therein. This case is not provided for in the above text.

(Art. 13 a, b, c; we shall return to item d later); more particularly, however, it establishes a special procedure for action for recovery, and restoration, between States, of cultural property "stolen from a museum or public civil or religious monument or similar institution provided that it is proved that this property forms part of the inventory of this institution" (Art. 7). Although certain terms of the text are somewhat vague, the lack of precision stressed above is thus avoided here. It is not cultural property or art objects in general which are to be protected, but specific objects, defined and inventorized under the control of the public authorities. We therefore consider that the principle of this text merits approval. Its machinery, as outlined in the convention, remains somewhat equivocal: "Applications for seizure and restitution must be made to the State on which notice thereof is served through diplomatic channels".

It is not particularly surprising to find that this is the starting point, because the property concerned is either public or of equivalent status. However, this does not mean that the result of actions for recovery can be governed by the same approach: these actions will often involve legitimate interests, and, in particular, those of bona fide acquirers, whose natural defenders are the courts. The latter, too, are independent in the exercise of their functions and are subject directly only to the law. The states which are party to the 1970 convention ought, therefore, in order to render Article 7 applicable, to include in their internal law a provision allowing for actions for recovery by foreign states and establishing the conditions and limitations for these. Such a text is not in principle difficult to conceive. However, certain precise points must be very carefully considered. In our view, uncertainty attaches to the definition of a museum, public monument or similar institution; again, and in particular, Article 7 of the 1970 convention stipulates nothing about the period within which claims for recovery remain allowable, but a comparison with Art. 13d indicates that the drafters of the convention probably meant that there should be no time limit for such action. This should not be surprising, because many European national legislations currently apply the same principle in order to protect the public heritage. However, this principle is felt to be highly debatable and justified mainly by the somewhat sentimental notion of the majesty of the State whereby the latter is regarded as being outside time. In fact, and on the practical level, the idea of imprescriptibility is both unreasonable and unenforceable. It would be best to discard it and replace it by a time limit which, although long, would be reasonable, even in order to ensure the protection of national heritages. It would in any case be wrong to develop the field of application of this idea by the provisions necessary to implement Art. 7 of the 1970 convention.

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On this point, therefore, the same conclusion is reached as in the matter of penal sanctions. Art objects in general cannot be protected. On the other hand, it is both possible and desirable to protect certain art objects - which are listed, inventorized or indexed, are also placed at the disposal of the public, or intended to be so placed, and are therefore undoubtedly, by virtue of the fact, cultural property and not merely articles of commerce. Action at Community level is thought appropriate, therefore, only in respect of special protection for public cultural property and private cultural property listed by the public authorities.

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PART III. THE DOCTORS

In the foregoing, we have considered the use of nine possible ways of limiting the traffic in art works, namely:

1. Development of security systems
2. Evolution of common methods of inventorization
3. Compilation of a European index of stolen works
4. More effective control of excavations and their products
5. Control of exports of art works
6. Control of the art trade
7. Greater vigilance by museums in their purchases
8. Stiffening of penal sanctions for the theft of objects from public collections or subject to special measures of protection
9. Adoption of clearer and more coherent procedures for the restitution of stolen goods of the type mentioned in item 8.

Assuming that these remedies are effective, it is still necessary to determine in each individual case how the remedy is to be administered and in what dose. This is a matter for

the "doctors" whose action will now be examined - the legislators who will promulgate the necessary texts, administrators and officials who will ensure that they are applied, and, finally, of course, the European Communities, for whom this report has been written.

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Section I. Legislators

These are the people who will translate the proposed remedies into legislative form, in the broadest sense of the term. Since the action concerned must be taken in nine countries, these legislators will be at two different levels: firstly, there will be international legislators whose responsibility will be to draft treaties or conventions, and, secondly, there will be national legislators, responsible for producing internal instruments, laws, decrees or similar regulatory instruments¹.

1. International conventions

These may be grouped in three categories:

A. Conventions already signed and in process of ratification, which are relevant to our subject but do not concern it alone. These are instruments of more general purport than our subject alone; if they were applied by the nine countries of the EEC, this would facilitate the solution to some of the problems discussed above, but it is not considered necessary to examine them in detail here, as this was already done by such European bodies as the Council of Europe at the time when they were drawn up. We shall therefore merely

¹ The words laws, decrees and regulations are used here in their material and not their formal sense, i.e., they refer to general and impersonal decisions which are enacted by different procedures and in different forms from country to country - e.g., laws, decrees, acts, royal orders, etc.

refer to the four European conventions relevant to our subject: those on extradition (Paris 1957), mutual penal aid (Strasbourg 1959), repressive judgments (The Hague 1970), and repressive procedures (Strasbourg 1972), and show which had been ratified as at 15 June 1975.

	Extradition 1957		Mutual penal aid 1959		Repressive judgments 1970		Repressive procedures 1972	
	Signed	Ratified	S	R	S	R	S	R
Belgium	X		X		X		X	
Denmark	X	X	X	X	X	X	X	
France	X		X	X				
Federal Republic of Germany	X		X		X			
Ireland	X	X						
Italy	X	X	X	X	X			
Luxembourg	X		X				X	
Netherlands	X	X	X	X	X		X	
United Kingdom								

B. Two conventions directly and fundamentally affect our subject: the European Convention on the Protection of the Archaeological Heritage, signed in London on 6 May 1969, and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by UNESCO at the 16th session of its General Assembly in Paris in 1970. Both call for comments.

a) The 1969 European Convention on the Protection of the
Archaeological Heritage

This raises no serious difficulties, either of interpretation or of application.

On the first point, one need only refer to the text, which is perfectly clear. A reading of this text confirms our stated view that a common opinion exists on the preservation of excavations and archaeological sites. Most, if not all, of the measures recommended are already applied in the countries party to the convention, which thus merely consolidates provisions to be found more or less scattered throughout national legislations or practices.

These measures relate primarily to internal activity in each country (supervision of sites and setting up of stores (Art. 2); prohibition of clandestine excavations or, simply, badly run excavations, or controlling the results (Art. 3); recording and publication of objects (Art. 4)), etc.

However, some provisions are aimed more particularly at the suppression of illegal traffic. These break down basically into three areas: education of public opinion to turn it against such traffic, whether national or international (Arts. 5d and 6c); informing the State of origin of any suspicious offer of objects from excavations (Art. 5c); and supervision of museum acquisitions (Art. 6, 2a and 2b). Regrettably, it will be noted that the convention only indirectly mentions the export of objects from excavations (Art. 5a); we shall return to this point in considering the 1970 UNESCO Convention. All in all, the 1969 Convention is therefore a useful instrument, but is not really innovatory. If it is effective,

this will be due more to the way it is applied than to its actual text.

The convention was signed in 1969 and came into force on 20 November 1970 after the first three ratifications. In June 1975, it had been ratified by seven of the member states of the EEC, the two exceptions being Ireland and the Netherlands. These two countries had already instituted systems of control of excavations (Ireland by the National Monuments Act 1930, sections 23 foll., and the Netherlands by the 1961 Monuments Law, Chapter V), and they will probably also ratify the convention.

No problems of compatibility arise between the 1969 Convention and the Treaty of Rome. The convention hardly affects the international circulation of goods, and, furthermore, it is less ambitious than certain national legislations as to border controls which might limit this circulation. Any uncertainty on this point is in any case removed by Article 8 of the convention: "The measures taken by this convention cannot constitute a limitation to legal trade in and ownership of archaeological objects or affect the legal rules governing the transfer of these objects".

b) 1970 UNESCO Convention

This is a much more ambitious text than the European Convention, firstly because it is worldwide in scope, since it originates from the UNESCO General Assembly, secondly, because its field of application is much wider: cultural property in general instead of archaeological objects only, and thirdly because it provides for much more vigorous machinery for action. Since the first point is self-evident, we shall discuss the second and third only.

The field of application of the convention is very wide, being based on an extremely comprehensive definition of cultural property in Article 1. A glance at the text itself shows that ultimately it is easier to specify what it excludes than what it includes. Leaving aside objects of purely natural origin (botany, zoology, mineralogy) and considering only objects created or fashioned by man, we find that only a few limited categories are excepted: pictures, paintings and drawings not made entirely by hand, industrial drawings, manufactured articles, even if handmade (Art. 1g i), reproductions of sculptures, engravings, prints and lithographs (i.e., ones which cannot claim the status of originals) (Art 1g iii), antiques such as inscriptions, coins and seals, and articles of furniture, in each case less than 100 years old (Art. 1c and k).

Among all these objects, each State party to the convention determines the ones which it deems "of importance for archaeology, prehistory, history, literature, art or science". Finally, Art. 4 defines the criteria for selecting the particular items of cultural property which form part of the cultural heritage of each State (for example, those created by a national, or on the national territory). We thus have a system of compartmented definitions dovetailing into each other, but based on extremely wide initial concepts. This merely bears out our repeated statement that it is impossible to define cultural property accurately. This also gives rise to an undeniable difficulty in application of the convention: because its field of application is virtually unlimited, it may appear to be a potential obstacle to any international trade other than that in raw materials and industrial products.

Again, numerous and varied forms of machinery for action are provided for. They include both internal and external measures, the former group encompassing both legislative and purely administrative measures. In fact, all the measures advocated earlier in this study are to be found: the establishment of effective and well equipped conservation agencies (Art. 5c), national inventories (Art. 5b), supervision of excavations and archaeological sites (Art. 5d), supervision of the art trade (Arts. 5c and 10a), supervision of museums (Art. 7a), and legislation designed to facilitate the restoration of stolen property (Art. 13b and c). In spite of the difficulties likely to be met with in their application and possible reservations as to their effectiveness, these measures can obviously only be approved. The linchpin of the control machinery provided for by the 1970 Convention, however, remains export controls (Art. 6), but, for European countries acceding to the Convention, these would raise problems of compatibility between this provision and the principle of free circulation of goods which is the very foundation of the Treaty of Rome.

It should, however, be noted first that, despite first appearances, the philosophies of the two texts are not opposed since they lead to the same final result: the development of lawful exchanges only and prohibition of illegal traffic only.

However, the techniques of the two instruments are radically different. For the Treaty of Rome, the basic principle is freedom of circulation, and exceptions must be interpreted restrictively: everything which is not prohibited is legal. For the 1970 Convention, on the other hand, everything which is not specifically permitted is prohibited. The importance of this difference of approach should be neither exaggerated nor minimized. The main point is that if the two texts were applied with systematic inflexibility they would indeed be

difficult to reconcile. If both are to be applied, some degree of flexibility in their application must be accepted. Fortunately, this can be done without stretching interpretations by virtue of the actual terms of Article 36 of the Treaty of Rome and of Article 1 of the 1970 Convention. The former provides that the abolition of quantitative restrictions (on the circulation of goods) "shall not preclude prohibitions or restrictions on imports justified on grounds of protection of national treasures possessing artistic, historic or archaeological value"¹. Art. 1 of the 1970 Convention, for its part, allows each State to designate objects "of importance for archaeology, prehistory, history, literature, art or science" within very wide and varied categories. All that is necessary, therefore, is to interpret reasonably, on the one hand, the term "treasures", which has no precise legal meaning, at least in our field and, on the other hand, the concept of "objects of importance for archaeology" so as to be able to apply both texts at the same time. Ideally, of course, it would be best for those who are to comment on and, in particular, to implement, these measures if they were the same for all the nine member countries of the EEC - i.e., if they were to compile a common list of these important objects which constitute treasures. At first sight, such a formula appears difficult to apply between States some of which practise very extensive controls (France and Italy) whilst others practise none, in law or in fact (Denmark and Belgium). As we have seen, however, the two approaches converge on certain points; for instance, concerning the

¹ The same Article stipulates that "such prohibitions or restrictions shall not, however, constitute a means of arbitrary discrimination or a disguised restriction on trade between Member States". In its judgment of 10 December 1968 (Commission of the European Communities vs Italian Republic), the European Court of Justice ruled in particular that "to take advantage of Art. 36, Member States must remain within the limits set by this provision as regards both the end to be reached and the nature of the means".

² Under French law, "treasure is any hidden or buried object which no one can prove to be his property and which is discovered purely by chance" (Art. 716 of the French Civil Code). The Treaty of Rome is obviously using the word in its conventional sense of a particularly precious article or group of articles.

particularly precious character of the product of excavations, it is thus conceivable that if some countries were to broaden their control while others institute or tighten it, a common solution could be arrived at which would place the European "art market" on a solid legal foundation. Because, as we have seen, the application of the Treaty of Rome is directly involved this is the key point on which Community directives to approximate national legislations might be contemplated.

So far our argument has been based on the simultaneous application of both documents. However, the 1970 Convention has not yet taken effect for the European States, since none of them has yet ratified it. It is obviously not possible to determine in detail why these States, acting in the exercise of one of their most obvious prerogatives of sovereignty, have adopted this negative attitude. However, the fact that they have all displayed the same reluctance points to certain general reasons.

First of all there are the technical imperfections of the convention, for example, the excessively wide and vague definition of cultural property given in Article 1. The disadvantages of its virtually unlimited scope have already been referred to; this is surely one of the points on which ratification might be accompanied by reservations.

Still on the technical level, it will be noted that the control of the circulation of goods instituted by Art. 6 is vitiated by a fundamental inconsistency. A system involving an export certificate alone is bound to be unbalanced unless it is

complemented by import control, so that the receiving State refuses to admit an object not covered by an export certificate issued by the State of origin. Import controls of this kind had been contemplated in the early stages of drafting of the 1970 Convention, but were rejected. As a result, technically, the export certificate is now no more than a mere permit allowing the goods to leave the country, which has significance for the State of origin but no international status, because once the goods have left the country of origin, the certificate no longer has to be produced. However, this is also liable to give rise to misunderstandings and friction: States issuing export certificates expect importing States to attach importance to them - this would be a logical corollary of the convention - whereas they are not bound to do so according to the letter of the convention.

However, the main reason for the reluctance to ratify the 1970 Convention is the fear that, by undertaking to combat illegal traffic in the future, one might be opening up past traffics to re-examination - legal though these may have been according to the ethics and international law of the last few centuries, they would certainly no longer be so under the 1970 Convention. In short, the fear is that the 1970 Convention might be regarded as retroactive, and the simplest way of preventing this appears to be not to apply the convention. Textual arguments - in particular, those based on exegesis of Art. 7, which returns several times to the terms "after the entry into force of the convention" - seem to be insufficient to allay this fear¹. In our view, it is wiser to confront the facts squarely. It is obvious that many new States which, rightly or wrongly, consider themselves to have been exploited over the last few centuries, in particular by colonization, wish to recover the cultural property which was taken from their territories at the time. Nor do they make any secret of

¹ Particularly as other textual arguments may operate in the reverse direction. For example, Art. 13d recognizes the imprescriptible right of each State to facilitate the recovery (of certain cultural property) should it have been exported.

this, since, under their pressure, the General Assembly of the United Nations on 18 December 1973 passed

a resolution to this effect¹. In our view, therefore, failure to ratify the 1970 Convention is devoid of genuine tactical value: the matter of claims for the restitution of objects taken from the former colonial territories has been definitively raised and will inevitably recur in the forums of UNESCO and the United Nations. The countries of Europe might indeed be in a better position to resist such claims, should they wish to do so and have the necessary means, if, while refusing to allow past issues to be raised again, they showed their willingness to combat illegal traffic in the future - which they at present seem to condone by refusing to ratify the 1970 Convention.

c) Proposal of a Community initiative for the protection from theft of public cultural property and cultural property of public interest.

Since international conventions are drafted and applied so slowly, caution should be exercised in resorting to unwieldy instruments. On the other hand, it is easier to take effective action in the more restricted framework of a more homogeneous European Community endowed with institutions having powers of deliberation, control and decisionmaking. The intervention of the Community can, therefore, it is felt, be proposed with a view to solving - initially within the context of the nine countries of the EEC - the problems of restoration of stolen cultural property and also of penalization of theft and illegal traffic.

Scepticism was expressed above as to the efficacy of such penal sanctions by themselves. Those who engage in illegal traffic know perfectly well that with the law as it stands they run the risk of prosecution and conviction: they accept this in return for the profits they hope to make. If this risk is merely augmented in the future by stiffening the penalties, they will be more likely to become more ambitious

¹ The latest resolutions of the United Nations on this point are given after the 1970 Convention in the Appendix. The proliferation of these resolutions clearly shows that mere refusal to ratify the 1970 Convention is an ineffective weapon.

than to give up their activity. On the other hand, the purchasers of the illegally trafficked goods - or at least those at the end of the line - are not hard-core criminals. They are lovers of art objects, who usually do not enquire too closely about their precise origin, but whose mala fides is not normally complete and is in all cases hard to prove. These people thus risk nothing from the penal law; however, it is they who ultimately give illegal traffic its raison d'être, by their thoughtless purchases. They must therefore be compelled to exercise greater vigilance, and since penal sanctions cannot easily be inflicted on them, civil sanctions must be used: restitution of the property acquired, even if in good faith, when it has been stolen.

This argument applies to all goods and all traffics. However, it would be quite out of the question to modify whole fundamental chapters of the European corpora of civil law merely with the aim of limiting the traffic in art objects. The proposed action must therefore be restricted by assigning precise bounds to it. The concepts of "illegal traffic" and "art objects" are themselves vague. For this reason it is proposed to tackle only theft and public or public-interest cultural property, these terms being defined respectively as articles belonging to public collections and private articles which are, in spite of their private status, subject to measures of special protection as a result of which they have been identified ("listed" objects). For these objects are defined and inventorized. Furthermore, in both cases it has already been established that they merit special protection, because they are normally not susceptible to speculation and are intended more or less directly for the use of the public¹.

¹ These statements apply absolutely to public cultural property, but less obviously to listed private objects. The latter, however, although remaining private property, are subject to restrictive rules regarding transfer of ownership; again, in most cases they will ultimately end up in a public collection.

It is therefore proposed that special legal rules should apply to these objects only as regards their restitution if they are stolen. But these rules can only be genuinely effective if they are common to several States, failing which the present difficulties will recur once the stolen object has crossed a border; it is therefore suggested that action should be taken in the form of a Community instrument, without prejudging its precise form - decision, regulation or directive.

The essential provisions of such an instrument should be as follows:

1) Precise definition of field of application. Definition of the concept of theft raises no substantial difficulties; such a definition is, however, necessary in order to avoid discrepancies in interpretation. The definition of protected goods is more difficult. On the one hand, the concept of a "public institution" is in nearly all countries uncertain at the point where it shades into certain private institutions (as in the case of foundations, nonprofit organizations, the Italian "enti", etc.). On the other hand, it is necessary to determine which of the property of these public institutions is to be regarded as "cultural" property subject to special protection. All these points must be dealt with in detail, but do not raise important difficulties.

2) A clear commitment is necessary on the protection due to the bona fide purchaser. We for our part are convinced that genuinely effective protection of the property concerned is impossible without total abolition of protection for purchasers - i.e., by stipulating restitution without compensation in all cases. For speculation in art objects is such that after several successive sales they can quickly fetch considerable prices. If the legitimate owner is to be obliged to pay back the purchase price, recovery will often be impossible. Again, this would constitute indirect protection not only of the final purchaser but also of all those through whose hands the object has passed

in successive sales since it was stolen, because the final purchaser, if he receives his money back, will no longer have to seek a remedy from his predecessor, etc.

Conversely, with restoration without compensation, the final purchaser will have to seek a remedy from the person who sold the article to him. Obviously, such action will only be worth while if the latter is a person who can take responsibility for his acts and not some poorly identified or insolvent middleman - but the aim is precisely to eliminate these dubious middlemen. A person who obtains an article from an honest dealer or at an auction will have a remedy against the dealer or auctioneer. Whoever has taken the risk of buying from a dubious seller in order to bring off a good deal will have to bear the consequences. The argument extends all along the line, since a seller who is ordered to refund the price may in turn seek a remedy from the person from whom he obtained the object, and will be left without resources should he have made the mistake of accepting the article from a dubious vendor.

3) A third point is that of prescription. As stated earlier, several European legislations stipulate no time limit for actions for the recovery of certain public or public-interest property. As also stated earlier, this rule seems to us to be excessive and is in fact seldom applied. How many items of public property have been located and claimed forty or fifty years after their disappearance? An excessively short time limit would render the proposed rule inoperative. Conversely, the absence of prescription would certainly be excessive. A time limit of thirty years from the date of the theft appears reasonable, and is accepted by all legislations for most acts.

¹ An owner who has had to "buy back" his own property can certainly do so, but he is less well placed for this purpose than the final possessor, who, of course, is perfectly familiar with the precise conditions under which he obtained the object.

To return now to the question of penal sanctions, as already stated, it is not thought necessary to propose a particular instrument for this field alone. However, once it is thought appropriate to adopt such an instrument for restitution in the case of theft, it would appear logical and convenient to include provisions concerning penal sanctions. Basically, all that is necessary is to stipulate that the theft of an item of public or public-interest property shall constitute a circumstance aggravating the offence.

The precise form that this instrument should take remains to be determined. It would in our view be premature to put forward a conclusion on this point before the European institutions have had an opportunity of considering the matter. For the form adopted will depend on the effectiveness which the decision taken is intended to have. Our conclusion on this point will simply be that we would welcome the most positive formula.

2. NATIONAL LEGISLATIONS

Where Community instruments or international conventions are operative, they should be complemented by internal measures, and where they are not operative, the latter are the only source of law. We must therefore examine the importance of these measures to our subject.

Two limits must be imposed for this examination. Firstly, the term "internal legislations" is to be understood in its broadest sense, i.e., as including general and impersonal decisions which are not

formal laws in the strict sense of the term - namely, decrees, arrêtés royaux, Orders in Council, etc.

On the other hand, not all conceivable regulations will be examined. These may apply to every field, however technical - e.g., a text laying down standards for technical security devices. Such internal regulations will therefore be considered only where their function appears to be essential and not merely complementary. We shall be concerned with the controls, considered earlier, of excavations and archaeological sites, at border crossings, of internal trade, and of museums.

a) Control of excavations and archaeological sites

We shall not dwell on this matter because it is more one of fact than of law; there is no point in drafting draconian legislation on excavations if effective means of enforcement are lacking.

Having made this reservation, it will be remembered that, firstly, all States are unanimous in wishing to protect archaeological excavations, but that internal legislations differ in their degree of completeness, the most recent being in general more precise than the older legislations. Secondly, common regulations, at least in principle, on archaeological research throughout the Community would assist excavators in their activities in each country and would thus contribute both psychologically and practically to laying a more solid foundation for Community archaeology, which is itself one of the cornerstones of European culture.

The actual content of these parallel legislations is practically given by Articles 2 to 7 of the European Convention for the Protection of the Archaeological Heritage.

As regards form, this is one of the cases in which a Community objective can be attained indirectly through convergent national legislations. A first approach might therefore be to recommend a directive issued in pursuance of Art. 100. It may be objected that it is more a question of protecting each national archaeological heritage than of influencing the "establishment or functioning of the common market". It is up to the Commission, since Art. 100 calls for action by that body, to choose between a "proposal for a directive" and a simple recommendation.

b) Control of intra-Community circulation of cultural property

The initial obstacles in the way of an approximation of the relevant rules will be recalled: these relate to the diversity of national legislations, these rules being either nonexistent or not applied, as in Denmark and Belgium, or very general and strict, as in France and Italy; other difficulties arise out of differences in approach between the Treaty of Rome, based on the free circulation of goods, and the 1970 UNESCO Convention. These difficulties apparently preclude simple solutions, but instead necessitate a compromise both on the issue itself and on form.

1) Concerning the issue itself, two matters appear to be fundamental. It is necessary to decide whether what is required is a definition of goods international trade in which is subject to common control in the nine States, or a definition proper to each State, or alternatively a common basic definition which could, however,

be complemented in each country by individual national provisions. The advantages of the first approach are obvious, since it is most consistent with the Community spirit, and the drawbacks of the second are equally evident. The third approach is probably the essential compromise.

The second problem of substance is to decide whether all that is required between European States is control of goods leaving each State (export control), or whether this should be complemented by import control. The technical objections raised in the UNESCO Convention to import control (in particular, the fact that the authorities in the receiving State cannot know whether the article presented at its border is or is not subject to export controls in its country of origin) do not apply in the case of a limited Community applying uniform rules. Import control is therefore technically feasible between European States, but would represent a new obstacle to trade between them contrary to the spirit of the Treaty of Rome (but not to its letter, by virtue of Article 36). However, non-EEC countries, and in particular those of the Third World, would certainly be shocked to see the countries of Europe apply effective control between each other while at the same time refusing to grant them the benefit of such control. For these reasons, it seems to us that import controls must be rejected.

On the other hand, it remains of fundamental importance for international cooperation in the field of penal suppression to operate without impediment in the event of fraudulent exports, even when unaccompanied by another offence. The arrangement adopted must therefore require each State to cooperate in imposing penal sanctions for the fraudulent export of cultural property from other States. This is the general rule accepted for all offences sanctioned

unanimously throughout the world, e.g., theft. There is nothing shocking about applying it to the fraudulent export of cultural property; by contrast, it would be shocking to maintain the present situation in which the illegal export of cultural property is mostly regarded as a minor offence, essentially economic in character, concerning only the State which is its victim and not warranting the cooperation of other States. This affirmation of the duty of cooperation is much less constraining in its application than import control; however, for our purposes it would already be highly effective because it would deprive the offender of the assurance that once he has crossed the border he no longer runs much of a risk.

2) With regard to form, there is in our view no doubt that this field directly affects the application of the common market and warrants the intervention of the Community authorities. This intervention can, however, be visualized as taking two different forms. The first is the directive aimed at the approximation of national legislations provided for in Art. 100 of the Treaty of Rome. The second is Community action, which would in this case take the form of a regulation, to attain one of the objectives of the Community as provided for in Art. 235 of the Treaty. This approach is advocated, in particular, by Mr Duquesne in his study on the regulations governing trade in cultural property in the nine countries of the EEC. The decision on form is obviously largely dependent on the options chosen for the substance. Again, since the same institutions (Commission, Council and European Assembly) will be involved whether the basis is Art. 100 or Art. 235.

there seems to us to be little point in arguing about this matter, which these institutions will in any case have to resolve for themselves¹.

c) Control of the art trade within each country

In our opinion this raises few difficulties, other than the protests which might be heard where such control does not yet exist and the more general criticism that it might constitute an obstacle to freedom of trade. These objections can probably be met in advance if it is recalled that in fact control already exists everywhere, at least as regards the general police power of supervision, and, moreover, its strengthening is amply justified both by the increase in illegal traffic and by the proliferation of new dealers and miscellaneous intermediaries who are either unaware of, or simply fail to observe, the rules of caution of the traditional art trade.

On the issue itself, the foundations of a reasonably effective form of regulation are to be found in the national legislations which provide for such control², as well as in Art. 10a of the 1970 UNESCO Convention: "obliging antique dealers to keep a register etc.". There is therefore no serious technical difficulty.

¹ Art. 235 provides that the Assembly must always be consulted; it must also be consulted under Art. 100 if the proposed directive entails a modification of legislative provisions in one or more Member States; this is the case here, because many of the nine States have detailed legislative provisions on the control of exports of cultural property.

² As an example, French decree 70-788 dated 27 August 1970 is reproduced in the Appendix.

As to form, the situation is similar to that described in section 1) above: the Commission must choose between a recommendation to the Member States or a proposal for a directive forwarded to the Council in pursuance of Art. 100.

d) Control of museum acquisitions

The reasons why those in charge of museums and other cultural institutions should be called upon to exercise vigilance have already been mentioned. A highly topical example¹ shows the value of such an appeal. On the other hand, it is not necessary to resort to new legislation. It is the duty of public institutions not only not to be a party to, but also to combat, illegal activities, and it is the duty of cultural institutions to strive for the protection of the cultural heritage of all countries and not only their own. These considerations are self-evident.

It may be mentioned that the International Council of Museums (ICOM) several years ago launched a campaign for a tightening of professional ethics. Anything liable to strengthen the ICOM will at the same time contribute indirectly to combating unwise purchases by museums. Action in this field is not ultimately a matter for legislation, since the relevant rules already exist, but rather for administrative action.

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¹ An altarpiece stolen in November 1973 from the church of Fresles in France was found in June 1976 in a West Berlin museum. It had just been bought for the sum of DM 105,000 ("Le Monde", 10 June 1976).

SECTION II. ADMINISTRATIVE BODIES

The discussion in this section is kept very general, for two reasons.

Firstly, this is a highly concrete and practical field, and a comprehensive treatment would involve discussing the nuts and bolts of procedure; everyone with experience of management knows the importance of these, but they do not readily lend themselves to theoretical exposition. On this point, mention may be made of the importance not only of legal systems of regulation but also of physical elements - resources of equipment and staff available to the bodies concerned - and the consequent absolute necessity, where an agency is to be studied, of having details not only of its statute but also of its budget.

Secondly, it was felt that our suggestions should remain at all times realistic and that overambitious suggestions should be avoided. In the matter of administration, there is a great temptation to build up vast structures from nothing. In fact, the counsel of wisdom is normally to start from what already exists and to make the best use of such agencies as are already in operation. In spite of first appearances, this approach is probably not only the most economic but also the most effective, because, with regard to the specific action to be taken, the fact that the existing agencies are established means that the benefit of their experience can be brought to bear; again, more generally, as regards the smooth running of the administration as a whole, a situation is avoided in which poorly equipped and underemployed old agencies continue to exist side by side with the new bodies which have been set up.

Having made these reservations, some suggestions will now be given as to international and national agencies.

1. International agencies

Three forms of administrative activity must be undertaken or continued at Community level: cooperation in detection and the imposition of penal sanctions; drafting and discussion of uniform rules for the description of works of art and the compilation of inventories; and the institution of a Community index of stolen works. The first task has already been undertaken, in particular through Interpol, but on a wider scale than that of the Community, while at the same time the resources devoted to this activity are modest. The other two tasks are new and are not at present being performed by any agency.

Because of the importance of these tasks and the novelty of some of them, some months ago the then Italian government, at the instigation of an "international congress on the preservation of art works and religious cultural property" held in Florence in October 1975, proposed the setting up of an International Bureau for the Safeguarding and Recovery of Cultural Property (see Appendix 4). Similar proposals have been made by certain sectoral organizations such as CINOA (the International Confederation of Art Dealers).

The formation of this new body would certainly be consistent with most of the recommendations made in this study. However, such a project is not felt to be desirable for the general reasons already stated, while two bodies competent to act in this field already exist: the ICOM and Interpol.

a) The ICOM (International Council of Museums) is one of the most vigorous of the international nongovernmental organizations existing on the fringe and with the cooperation of UNESCO. It has members, both

individuals (curators, restorers, etc.) and legal entities (museums and similar institutions), throughout the world, and it is managed by bodies which are broadly representative of its membership. For day-to-day activities, the ICOM has an effective general secretariat and a documentation centre which it runs on behalf of UNESCO and which is remarkably well equipped and effective for its somewhat limited resources. All in all, the ICOM is very much a living organization, whose influence in the world of museums is undeniable. It also maintains good relations with Interpol, which it has for several years involved in its meetings and colloquia on security.

The European Communities and the ICOM could cooperate in our field in the following ways:

- 1) A study contract could be drawn up for the development of methods of definition and inventorization to allow, in particular, the preparation of both European and national indexes of stolen works. For this purpose Interpol and computer specialists would have to cooperate on the study, but it is felt that the ICOM is the specialized body most qualified to be in charge of this project.

- 2) This study, or, more generally, documentation on the legal rules governing the cultural heritage of Europe, could then be pursued in greater depth. As already stated, mere comparison of the texts in force is not in itself sufficient to give a complete picture of the relevant legislations; additional information is also required on administrative law, civil law and private international law in the States concerned. These essential documents are not always easy to obtain, and they are normally drafted only in the language of the country concerned. We are not, of course, advocating the formation of a new institute of comparative law of the type already existing in several European capitals. It is, however, felt that a cooperation agreement between the Commission of the European Communities and the ICOM/UNESCO documentation centre would, without excessive cost, enable much greater use to be made of the large body of documentation already maintained by the centre, which could thus become an important seat of research originating studies, papers and theses for the good of the Community.

This agreement could certainly involve mutual undertakings: on behalf of the centre, to make a particular effort to complement its documentation on the European cultural heritage, and, on behalf of the Communities, to translate documents which are at present not readily accessible into at least two of the main Community languages. This cooperation could also cover the provision by the Communities of scholarships for students to conduct research at the centre.

- 3) In addition, the Community could easily obtain ICOM help for any action to be taken concerning the museums of Europe. Once again, although the influence of the ICOM in museum circles is undeniable, its resources for action remain modest. The capabilities of the ICOM could be more fully utilized if it were to be given limited material aid in the form of a subsidy. To take a concrete example, if the Community agreed to implement all or part of the measures advocated in this study, there is no doubt that publication by the ICOM of these measures, with their comments, would be a very effective means of action not only in museums but also throughout the art trade.

b) The International Criminal Police Organization, or Interpol as it is usually called, is surely better known than the ICOM, and this is why more

mistakes are generally made as to its exact nature and functions. Initially, it was also a mere association, but official involvement has played a fundamental part since its inception. Since the reform of its statutes in 1955, it must be regarded as a nongovernmental international organization. The lay public usually sees it as a sort of supranational police force empowered to act directly throughout the world, whereas in fact it is merely - and does not pretend to be other than - a body which liaises between national bureaux which are in fact the national police forces themselves. Be that as it may, Interpol is an effective organization which plays an important part in the international suppression of crime and - in the field with which we are concerned - of illegal traffic in works of art, in particular by circulating descriptions of stolen works, at least in the case of important works.

Here again, the instrument for action already exists, but its resources are still limited. An agreement with the European Community would therefore again be possible here, in particular on the establishment, at first, of the European index of stolen works which it is proposed should be set up (or rather developed, since it in fact already exists, but using techniques which are far too unsophisticated).

We therefore advocate the conclusion between the EEC and Interpol of a study contract to determine the conditions for establishing and keeping up to date a) a European index of stolen works and b) national indexes for each country. This study does not coincide with that recommended above for the ICOM, because their objectives are different, but they must be closely coordinated. The scientific record cards and inventories must, of course, be more comprehensive than the stolen property cards, but it is essential for it to be possible for the latter

to be compiled from the former if necessary. Particular attention should be devoted to procedures and methods of communication between the European and national indexes. Telex and facsimile transmission systems could perhaps be used for this purpose, but it is up to the Interpol specialists (in consultation with art and computer experts) to determine the most effective forms of communication for the description of a stolen work and the relevant details.

Implementation can only be contemplated once this study has been completed. In our view, there should be an agreement on implementation between each of the nine European countries and Interpol. The latter would administer the index and be responsible for its actual use, while the former would provide Interpol and the national bureaux concerned with the essential resources. Hence the European Community need not be involved in this second stage. If, however, it is not involved in the first stage, there is a strong risk that no advance beyond the present unsophisticated methods will be made.

Conclusion of this first study contract appears unlikely to raise any legal difficulties, either for the Commission or for Interpol, since Art. 41 of the latter's statutes provides that the Organization shall establish relations and collaborate with other international, intergovernmental and nongovernmental organizations.

2. National agencies

We shall be even more circumspect about the national agencies, because it would be inappropriate to try to give lessons in good management to the old-established States, which have long ago attained a high level of administrative development. We shall therefore confine ourselves to a few general remarks.

The first of these concerns the need to distinguish clearly between two concepts: the agencies responsible for conservation and protection on the one hand, and the existence or otherwise of a body responsible for coordinating the former, on the other.

The actual conservation, inventorization, excavation and other agencies exist in nearly all the old nations of Europe, but they are mostly endowed with extremely modest if not derisory resources. As already stated, it is in theory perfectly possible to draw up general inventories for each country of the main categories of public cultural property, but this is in fact for the time being impossible; it was also stated that there is little point in having draconian legislation on excavations in the absence of the physical means of supervising the most famous and most exposed sites. More could be said on this point, but we shall merely conclude that the problem is primarily budgetary.

The second problem is that of coordination between the agencies which must collaborate in their different capacities in the suppression of illegal traffic. Here the situation is probably much less favourable. In most countries at present, technical conservation bodies, the police, customs authorities and art dealers are also concerned to combat illegal traffic; liaison between them, although improving, is still inadequate, and hence the advocacy, not so much of entirely new agencies, but of coordinating organizations. These would be responsible, in particular, for managing the national indexes of stolen works already mentioned several times and for liaison with the central European index. For this reason, although we recommend that the latter should be run by Interpol, we consider that the national indexes should be kept by the national bureaux of that organization, which in fact form part of the national police forces of each country.

This is the form in which it is in our view necessary to implement the recommendations of the UNESCO Convention (Art. 5) and those set out in the minutes of the 1973 meeting of experts which advocated the formation of specialized customs and police departments.

This will entail breaks with powerful traditions: that of financial parsimony (in the modern world, museums, historic monuments and churches are poor institutions, whose role is from time to time exalted but for which funds are voted much more reluctantly than for more modern and more immediately profitable institutions); and that of social and intellectual compartmentalization (policemen, customs men, dealers and curators certainly find sometimes that they have common interests, but they usually live completely separate lives from each other). These are the traditions which must above all be changed, and to ensure that the reforming intentions do not remain merely theoretical, the appropriate funds and new resources will be an essential catalyst.

This conviction that what is needed is not so much a spirit of innovation as the genuine and profound determination to take effective action is the main reason for an omission which the author wishes to justify before he is accused of it. Many documents - especially international ones - refer to the importance in our field of information and education programmes (European Convention on the Archaeological Heritage, Art. 7d, 1970 UNESCO Convention, Art. 5f, 1973 experts' report, Part V). One may wonder why more attention has not been given to it here. There are two reasons: the first is, if we may be excused the word, decency. Of course it is a fundamental duty of the countries of Europe to make their cultural heritage known; not, however, because it is threatened, but because it is one of the foundations of Europe. For this reason, we are reluctant

to mix up protection against the most sordid risks with the duty of education, since the latter is on the highest moral level; we do not wish to behave like the keepers of collections who only realize their value when they have been stolen from them. The second reason is prudence. We have already said that in the field of culture it is easy to be content with words. One may fear that paying lip service to the role of education and information in our field is just a convenient way of abstaining from other action. The author very much hopes that the countries of Europe will in the near future be able to launch a wide-ranging information campaign in order to take full advantage of the action they will have taken to protect their cultural heritage; but he feels that it would be inappropriate to begin with such a campaign.

On all these points, of course, Community action must be by way of recommendations to the Member States, because internal agencies and activities are involved.

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SECTION III. ACTION BY THE EUROPEAN COMMUNITIES

We do not wish to engage in theoretical arguments about the nature of the European Community: a federal state or a confederation; a European national state or a Europe of nation states. Without committing ourselves to any of these conceptions of Europe, it seems to us reasonable that the role of the European institutions in our field should be primarily to encourage action in the individual countries and the coordination of these actions.

The relevant objects of this stimulatory function have already been discussed; we need now only recapitulate, specifying the form that these actions could take on the different points.

1. International conventions

A. Ratification of the 1969 European Convention on the Protection of the Archaeological Heritage should not raise any serious technical difficulties.

Again, the implementation of this convention by appropriate internal legislation does not appear particularly difficult. Approximation of national legislations is recommended as much for psychological as for technical reasons: it would be good for an archaeological heritage originating from the same sources (although, of course, the importance of these sources has varied from country to country) to be governed by a more homogeneous legislation, which would thus be more easily comprehensible to workers in the field than it is at present.

It therefore seems appropriate to suggest that the Commission:

- 1) should recommend to the two States which have hitherto hesitated that they should ratify this convention;
- 2) should consider formulating either a proposal for a directive forwarded to the Council or a recommendation to the Member States in favour of standardization or approximation of legislations on excavations (preferably the proposal for a directive).

B. Ratification of the 1970 UNESCO Convention raises much more serious difficulties, firstly, on account of the technical inadequacies of the convention itself and, secondly, owing to the possibility of clashes between the convention and the Treaty of Rome if the two texts were to be interpreted very narrowly. On the other hand, the persistent refusal of all the States of the Community to ratify this convention is liable to provoke the hostility, in this particular field of the protection of cultural heritages, of the majority of member states of the United Nations, without constituting a truly effective defence against claims for the return of property acquired during earlier centuries.

For these reasons it appears that ratification of the convention by the Member States of the Community is to be recommended, although this ratification could perhaps be accompanied by reservations, in particular, concerning the following three points:

- "Cultural property" is defined too broadly, and this definition would be liable to bring trade in goods other than raw materials or manufactured products to a standstill.
- A clear distinction should be made between export controls, which are provided for in the text, and import controls, which are not. Acceptance of the former thus by no means implies that of the latter.
- It is important that the 1970 Convention should not be retroactive: there should be no possibility of the terms of Art. 7, in which this is stipulated, being called into question by the application of other provisions - in particular, those of Art. 13d.

Although it obviously has consequences for the art trade, the 1970 Convention cannot in our view be regarded as a commercial agreement or an instrument relating to export policy within the normal meaning of these terms. Community ratification therefore appears impossible in the form of an agreement of the type mentioned in Articles 113 and 114 - which would, moreover, be disputable in regard to national legislations. Each Member State would therefore have to ratify the convention on its own account. The Commission could recommend ratification to them, by encouraging them to agree on common reservations accompanying ratification.

For each State which ratifies the convention, the measures for its application will be both numerous and varied (see below).

C. It has been suggested that a "Community instrument for the protection of public or public-interest cultural property against theft" might be useful. The essential provisions which this instrument might include have also been put forward: a common definition of theft and of protected property; the possibility of taking action for recovery of stolen property from the possessor, even if bona fide; and a maximum time limit of thirty years for such action for recovery.

2. National legislations

A. Particular importance attaches to parallel legislations for the control of exports of cultural property.

The essentials of such legislations have been spelt out above (common definition of goods to be controlled

with national additions; cooperation in combating illegal exports, in particular by declaring exports in violation of the legislation of the State of origin to be illegal in another State).

The matter directly affects international trade and the functioning of the common market. We therefore consider that it is a case in which a Council directive is possible in pursuance of Art. 100, although Art. 235 could also be relevant, as proposed in another study.

B. Control of excavations and archaeological sites was discussed above in connection with the implementation of the 1969 European Convention. As stated, implementation calls for the approximation of national legislations, which, depending on the Commission's decision, could take the form either of a proposal for a directive forwarded to the Council or of a recommendation to Member States.

C. Stricter legislation on control of internal trade in art objects is one of the means of action against illegal traffic. This could usefully be based on national legislations already existing in this field (Denmark, France and Italy), and would conform in advance to the provisions of Art. 10a of the 1970 UNESCO Convention, should the latter be ratified.

As in the case of item B above, it is for the Commission to decide on the most appropriate form of action - either a proposal for a directive forwarded to the Council or a recommendation to the Member States.

3. Administrative measures

The essential measures, which are interrelated in that the second substantially depends on the first, are the development of uniform methods of description and inventorization and the compilation of European and national indexes of stolen property.

On the first point, our recommendation is for the conclusion of a study contract with the ICOM, Interpol and computer experts being involved in the work concerned.

On the second point, a study contract with Interpol is advocated. Thereafter, within Interpol, the Member States of the Community should adopt the necessary measures for keeping the Community index and also each take the necessary action to maintain its own index.

In addition, it is felt appropriate to recommend the conclusion of a cooperation agreement between the Community and the ICOM on development of documentation on the Community cultural heritage at the UNESCO/ICOM centre and on facilitation of its use.

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At national level, each State should be invited to increase the resources devoted to the following:

- a) The bodies responsible for protection of the cultural heritage (museums, historic monuments, excavations, inventorization, etc.). These bodies should be so equipped that they can provide genuine protection of public collections; at the same time they could conveniently and effectively act as advisers to private owners concerning, in particular, the choice of security systems and methods of compilation of record cards.
- b) Agencies responsible for suppressing thefts; specialized agencies could possibly be set up.

The States' attention should be drawn to the need to establish or develop constant and close collaboration between the protective bodies mentioned in item a) and the antitheft agencies mentioned in b).

- c) States should remind museums and institutions under their authority or control of their obligation not only to be strict and vigilant in their own acquisitions but also to report to the competent authorities any offer of suspect origin made to them.

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ANNEXES (*)

Annex 1 - European Convention on the protection of the archaeological heritage
(6 May 1969)

Annex 2 - Convention on the means of prohibiting and preventing the illicit
import, export and transfer of ownership of cultural property
(UNESCO, 14 November 1970)

Attached is the Resolution adopted by the U.N. in 1975

Annex 3 - Final report of the Committee of Experts on the risks incurred by
works of art and other cultural property
(UNESCO, 19-22 November 1973)

Annex 4 - Proposition du gouvernement italien en date du 18 décembre 1975
proposant la création d'un Bureau international pour la sauvegarde
et la récupération des biens culturels

Annex 5 - Règles d'éthique des acquisitions - Recommandations de l'ICOM

Annex 6 - Règles de la profession d'antiquaire et négociant en oeuvres d'art
originales (en France)

Annex 7 - Décret français n° 70-788 du 27 août 1970 relatif à la police du
commerce de revendeurs d'objets mobiliers

(*) For technical reasons, some of the annexes are only in the original
French version of the Study.

EUROPEAN CONVENTION
ON THE PROTECTION OF
THE ARCHAEOLOGICAL HERITAGE

The member States of the Council of Europe, signatory hereto,

Considering that the aim of the Council of Europe is to achieve a greater unity between its Members for the purpose, in particular, of safeguarding and realising the ideals and principles which are their common heritage;

Having regard to the European Cultural Convention, signed at Paris on 19 December 1954, and inter alia Article 5 of that Convention;

Affirming that the archaeological heritage is essential to a knowledge of the history of civilisations;

Recognising that while the moral responsibility for protecting the European archaeological heritage, the earliest source of European history, which is seriously threatened with destruction, rests in the first instance with the State directly concerned, it is also the concern of European States jointly;

Considering that the first step towards protecting this heritage should be to apply the most stringent scientific methods to archaeological research or discoveries, in order to preserve their full historical significance and render impossible the irremediable loss of scientific information that may result from illicit excavation;

Considering that the scientific protection thus guaranteed to archaeological objects:

- (a) would be in the interests, in particular, of public collections, and
- (b) would promote a much-needed reform of the market in archaeological finds;

Considering that it is necessary to forbid clandestine excavations and to set up a scientific control of archaeological objects as well as to seek through education to give to archaeological excavations their full scientific significance,

Have agreed as follows :

ARTICLE I

For the purposes of this Convention, all remains and objects, or any other traces of human existence, which bear witness to epochs and civilisations for which excavations or discoveries are the main source or one of the main sources of scientific information, shall be considered as archaeological objects.

ARTICLE 2

With the object of ensuring the protection of deposits and sites where archaeological objects lie hidden, each Contracting Party undertakes to take such measures as may be possible in order :

- (a) to delimit and protect sites and areas of archaeological interest;
- (b) to create reserve zones for the preservation of material evidence to be excavated by later generations of archaeologists.

ARTICLE 3

To give full scientific significance to archaeological excavations in the sites, areas and zones designated in accordance with Article 2 of this Convention, each Contracting Party undertakes, as far as possible, to :

- (a) prohibit and restrain illicit excavations;
- (b) take the necessary measures to ensure that excavations are, by special authorisation, entrusted only to qualified persons;
- (c) ensure the control and conservation of the results obtained.

ARTICLE 4

1. Each Contracting Party undertakes, for the purpose of the study and distribution of information on archaeological finds, to take all practicable measures necessary to ensure the most rapid and complete dissemination of information in scientific publications on excavations and discoveries.
2. Moreover, each Contracting Party shall also consider ways and means of :
 - (a) establishing a national inventory of publicly-owned and, where possible, privately-owned archaeological objects;
 - (b) preparing a scientific catalogue of publicly-owned and, where possible, privately-owned archaeological objects.

ARTICLE 5

With a view to the scientific, cultural and educational aims of this Convention, each Contracting Party undertakes to :

- (a) facilitate the circulation of archaeological objects for scientific, cultural and educational purposes;
- (b) encourage exchanges of information on :
 - (i) archaeological objects,

- (ii) authorised and illicit excavations
between scientific institutions, museums and the competent national departments;
- (c) do all in its power to assure that the competent authorities in the States of origin, Contracting Parties to this Convention, are informed of any offer suspected of coming either from illicit excavations or unlawfully from official excavations, together with the necessary details thereon;
- (d) endeavour by educational means to create and develop in public opinion a realisation of the value of archaeological finds for the knowledge of the history of civilisation, and the threat caused to this heritage by uncontrolled excavations.

ARTICLE 6

1. Each Contracting Party undertakes to co-operate in the most appropriate manner in order to ensure that the international circulation of archaeological objects shall in no way prejudice the protection of the cultural and scientific interest attaching to such objects.
2. Each Contracting Party undertakes specifically :
 - (a) as regards museums and other similar institutions whose acquisition policy is under State control, to take the necessary measures to avoid their acquiring archaeological objects suspected, for a specific reason, of having originated from clandestine excavations or of coming unlawfully from official excavations;
 - (b) as regards museums and other similar institutions, situated in the territory of a Contracting Party but enjoying freedom from State control in their acquisition policy :
 - (i) to transmit the text of this Convention, and
 - (ii) to spare no effort to obtain the support of the said museums and institutions for the principles set out in the preceding paragraph;
 - (c) to restrict, as far as possible, by education, information, vigilance and co-operation, the movement of archaeological objects suspected, for a specific reason, of having been obtained from illicit excavations or unlawfully from official excavations.

ARTICLE 7

In order to ensure the application of the principle of co-operation in the protection of the archaeological heritage which is the basis of this Convention, each Contracting Party undertakes, within the context of the obligations accepted under the terms of this Convention, to give consideration to any questions of identification and authentication raised by any other Contracting Party, and to co-operate actively to the extent permitted by its national legislation.

ARTICLE 8

The measures provided for in this Convention cannot restrict lawful trade in or ownership of archaeological objects, nor affect the legal rules governing the transfer of such objects.

ARTICLE 9

Each Contracting Party shall notify the Secretary General of the Council of Europe in due course of measures it may have taken in respect of the application of the provisions of this Convention.

ARTICLE 10

1. This Convention shall be open to signature by the member States of the Council of Europe. It shall be subject to ratification or acceptance. Instruments of ratification or acceptance shall be deposited with the Secretary General of the Council of Europe.
2. This Convention shall enter into force three months after the date of the deposit of the third instrument of ratification or acceptance.
3. In respect of a signatory State ratifying or accepting subsequently, the Convention shall come into force three months after the date of the deposit of its instrument of ratification or acceptance.

ARTICLE 11

1. After entry into force of this Convention :
 - (a) any non-member State of the Council of Europe which is a Contracting Party to the European Cultural Convention signed at Paris on 19 December 1954 may accede to this Convention;
 - (b) the Committee of Ministers of the Council of Europe may invite any other non-member State to accede thereto.
2. Such accession shall be effected by depositing with the Secretary General of the Council of Europe an instrument of accession which shall take effect three months after the date of its deposit.

ARTICLE 12

1. Each signatory State, at the time of signature or when depositing its instrument of ratification or acceptance, or each acceding State, when depositing its instrument of accession, may specify the territory or territories to which this Convention shall apply.

2. Each signatory State, when depositing its instrument of ratification or acceptance or at any later date, or each acceding State, when depositing its instrument of accession or at any later date, by declaration addressed to the Secretary General of the Council of Europe, may extend this Convention to any other territory or territories specified in the declaration and for whose international relations it is responsible or on whose behalf it is authorised to give undertakings.

3. Any declaration made in pursuance of the preceding paragraph may, in respect of any territory mentioned in such declaration, be withdrawn according to the procedure laid down in Article 13 of this Convention.

ARTICLE 13

1. This Convention shall remain in force indefinitely.

2. Any Contracting Party may, in so far as it is concerned, denounce this Convention by means of a notification addressed to the Secretary General of the Council of Europe.

3. Such denunciation shall take effect six months after the date of receipt by the Secretary General of such notification.

ARTICLE 14

The Secretary General of the Council of Europe shall notify the member States of the Council and any State which has acceded to this Convention of :

- (a) any signature;
- (b) any deposit of an instrument of ratification, acceptance or accession;
- (c) any date of entry into force of this Convention in accordance with Article 10 thereof;
- (d) any declaration received in pursuance of the provisions of paragraphs 2 and 3 of Article 12;
- (e) any notification received in pursuance of the provisions of Article 13 and the date on which denunciation takes effect.

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

adopted by the General Conference at its sixteenth session
Paris, 14 November 1970

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

Having decided, at its fifteenth session, that this question should be made the subject of an international convention, Adopts this Convention on the fourteenth day of November 1970.

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Paris from 12 October to 14 November 1970, at its sixteenth session,

Recalling the importance of the provisions contained in the Declaration of the Principles of International Cultural Co-operation, adopted by the General Conference at its fourteenth session,

Considering that the interchange of cultural property among nations for scientific, cultural and educational purposes increases the knowledge of the civilization of Man, enriches the cultural life of all peoples and inspires mutual respect and appreciation among nations,

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

Considering that it is incumbent upon every State to protect the cultural property existing within its territory against the dangers of theft, clandestine excavation, and illicit export,

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

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

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

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

Considering that the Unesco General Conference adopted a Recommendation to this effect in 1964, Having before it further proposals on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, a question which is on the agenda for the session as item 19,

Article 1

For the purposes of this Convention, the term "cultural property" means property which, on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science and which belongs to the following categories:

- (a) Rare collections and specimens of fauna, flora, minerals and anatomy, and objects of palaeontological interest;
- (b) property relating to history, including the history of science and technology and military and social history, to the life of national leaders, thinkers, scientists and artists and to events of national importance;
- (c) products of archaeological excavations (including regular and clandestine) or of archaeological discoveries;
- (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;
- (f) objects of ethnological interest;
- (g) property of artistic interest, such as:
 - (i) pictures, paintings and drawings produced entirely by hand on any support and in any material (excluding industrial designs and manufactured articles decorated by hand);
 - (ii) original works of statuary art and sculpture in any material;
 - (iii) original engravings, prints and lithographs;
 - (iv) original artistic assemblages and montages in any material;
- (h) rare manuscripts and incunabula, old books, documents and publications of special interest (historical, artistic, scientific, literary, etc.) singly or in collections;
- (i) postage, revenue and similar stamps, singly or in collections;
- (j) archives, including sound, photographic and cinematographic archives;

- (k) articles of furniture more than one hundred years old and old musical instruments.

Article 2

1. The States Parties to this Convention recognize 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 of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom.

2. To this end, the States Parties undertake to oppose such practices with the means at their disposal, and particularly by removing their causes, putting a stop to current practices, and by helping to make the necessary reparations.

Article 3

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

Article 4

The States Parties to this Convention recognize that for the purpose of the Convention property which belongs to the following categories forms part of the cultural heritage of each State:

- (a) Cultural property created by the individual or collective genius of nationals of the State concerned, and cultural property of importance to the State concerned created within the territory of that State by foreign nationals or stateless persons resident within such territory;
- (b) cultural property found within the national territory;
- (c) cultural property acquired by archaeological, ethnological or natural science missions, with the consent of the competent authorities of the country of origin of such property;
- (d) cultural property which has been the subject of a freely agreed exchange;
- (e) cultural property received as a gift or purchased legally with the consent of the competent authorities of the country of origin of such property.

Article 5

To ensure the protection of their cultural property against illicit import, export and transfer of ownership, the States Parties to this Convention undertake, as appropriate for each country, to set up within their territories one or more national services, where such services do not already exist, for the protection of the cultural heritage, with a qualified staff sufficient in number for the effective carrying out of the following functions:

- (a) Contributing to the formation of draft laws and regulations designed to secure the protection of the cultural heritage and particularly prevention of the illicit import, export and transfer of ownership of important cultural property;
- (b) establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage;
- (c) promoting the development or the establishment of scientific and technical institutions (museums, libraries, archives, laboratories, workshops. . .) required to ensure the preservation and presentation of cultural property;
- (d) organizing the supervision of archaeological excavations, ensuring the preservation "in situ" of certain cultural property, and protecting certain areas reserved for future archaeological research;
- (e) establishing, for the benefit of those concerned (curators, collectors, antique dealers, etc.) rules in conformity with the ethical principles set forth in this Convention; and taking steps to ensure the observance of those rules;
- (f) taking educational measures to stimulate and develop respect for the cultural heritage of all States, and spreading knowledge of the provisions of this Convention;
- (g) seeing that appropriate publicity is given to the disappearance of any items of cultural property.

Article 6

The States Parties to this Convention undertake:

- (a) To introduce an appropriate certificate in which the exporting State would specify that the export of the cultural property in question is authorized. The certificate should accompany all items of cultural property exported in accordance with the regulations;

- (b) to prohibit the exportation of cultural property from their territory unless accompanied by the above-mentioned export certificate;
- (c) to publicize this prohibition by appropriate means, particularly among persons likely to export or import cultural property.

Article 7

The States Parties to this Convention undertake:

- (a) To take the necessary measures, consistent with national legislation, to prevent museums and similar institutions within their territories from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of this Convention, in the States concerned. Whenever possible, to inform a State of origin Party to this Convention of an offer of such cultural property illegally removed from that State after the entry into force of this Convention in both States;
- (b) (i) to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to this Convention after the entry into force of this Convention for the States concerned, provided that such property is documented as appertaining to the inventory of that institution;
- (ii) at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of this Convention in both States concerned, provided, however, that the requesting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property. Requests for recovery and return shall be made through diplomatic offices. The requesting Party shall furnish, at its expense, the documentation and other evidence necessary to establish its claim for recovery and return. The Parties shall impose no customs duties or other charges upon cultural property returned pursuant to this Article. All expenses incident to the return and delivery of the cultural property shall be borne by the requesting Party.

Article 8

The States Parties to this Convention undertake to impose penalties or administrative sanctions on any person responsible for infringing the prohibitions referred to under Articles 6 (b) and 7 (b) above.

Article 9

Any State Party to this Convention whose cultural patrimony is in jeopardy from pillage of archaeological or ethnological materials may call upon other States Parties who are affected. The States Parties to this Convention undertake, in these circumstances, to participate in a concerted international effort to determine and to carry out the necessary concrete measures, including the control of exports and imports and international commerce in the specific materials concerned. Pending agreement each State concerned shall take provisional measures to the extent feasible to prevent irreparable injury to the cultural heritage of the requesting State.

Article 10

The States Parties to this Convention undertake:

- (a) To restrict by education, information and vigilance, movement of cultural property illegally removed from any State Party to this Convention and, as appropriate for each country, oblige antique dealers, subject to penal or administrative sanctions, to maintain a register recording the origin of each item of cultural property, names and addresses of the supplier, description and price of each item sold and to inform the purchaser of the cultural property of the export prohibition to which such property may be subject;
- (b) to endeavour by educational means to create and develop in the public mind a realization of the value of cultural property and the threat to the cultural heritage created by theft, clandestine excavations and illicit exports.

Article 11

The export and transfer of ownership of cultural property under compulsion arising directly or indirectly from the occupation of a country by a foreign power shall be regarded as illicit.

Article 12

The States Parties to this Convention shall respect the cultural heritage within the territories for the international relations of which they are responsible, and shall take all appropriate measures to prohibit and prevent the illicit import, export and transfer of ownership of cultural property in such territories.

Article 13

The States Parties to this Convention also undertake, consistent with the laws of each State:

- (a) To prevent by all appropriate means transfers of ownership of cultural property likely to promote the illicit import or export of such property;
- (b) to ensure that their competent services cooperate in facilitating the earliest possible restitution of illicitly exported cultural property to its rightful owner;
- (c) to admit actions for recovery of lost or stolen items of cultural property brought by or on behalf of the rightful owners;
- (d) to recognize the indefeasible right of each State Party to this Convention to classify and declare certain cultural property as inalienable which should therefore ipso facto not be exported, and to facilitate recovery of such property by the State concerned in cases where it has been exported.

Article 14

In order to prevent illicit export and to meet the obligations arising from the implementation of this Convention, each State Party to the Convention should, as far as it is able, provide the national services responsible for the protection of its cultural heritage with an adequate budget and, if necessary, should set up a fund for this purpose.

Article 15

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

Article 16

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

Article 17

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

- (a) Information and education;
- (b) consultation and expert advice;
- (c) co-ordination and good offices.

2. The United Nations Educational, Scientific and Cultural Organization may, on its own initiative conduct research and publish studies on matters relevant to the illicit movement of cultural property.

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

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

5. At the request of at least two States Parties to this Convention which are engaged in a dispute over its implementation, Unesco may extend its good offices to reach a settlement between them.

Article 18

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

Article 19

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

Article 20

1. This Convention shall be open to accession by all States not members of the United Nations Educational, Scientific and Cultural Organization which are invited to accede to it by the Executive Board of the Organization.
2. Accession shall be effected by the deposit of an instrument of accession with the Director-General of the United Nations Educational, Scientific and Cultural Organization.

Article 21

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

Article 22

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

notification to take effect three months after the date of its receipt.

Article 23

1. Each State Party to this Convention may denounce the Convention on its own behalf or on behalf of any territory for whose international relations it is responsible.
2. The denunciation shall be notified by an instrument in writing, deposited with the Director-General of the United Nations Educational, Scientific and Cultural Organization.
3. The denunciation shall take effect twelve months after the receipt of the instrument of denunciation.

Article 24

The Director-General of the United Nations Educational, Scientific and Cultural Organization shall inform the States members of the Organization, the States not members of the Organization which are referred to in Article 20, as well as the United Nations, of the deposit of all the instruments of ratification, acceptance and accession provided for in Articles 19 and 20, and of the notifications and denunciations provided for in Articles 22 and 23 respectively.

Article 25

1. This Convention may be revised by the General Conference of the United Nations Educational, Scientific and Cultural Organization. Any such revision shall, however, bind only the States which shall become Parties to the revising convention.
2. If the General Conference should adopt a new convention revising this Convention in whole or in part, then, unless the new convention otherwise provides, this Convention shall cease to be open to ratification, acceptance or accession, as from the date on which the new revising convention enters into force.

Article 26

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

Done in Paris this seventeenth day of November 1970, in two authentic copies bearing the signature of the President of the sixteenth session of the General Conference and of the Director-General of the United Nations Educational, Scientific and Cultural Organization, which shall be deposited in the archives of the United Nations Educational, Scientific and Cultural Organization, and certified true copies of which shall be delivered to all the States referred to in Articles 19 and 20 as well as to the United Nations.

The foregoing is the authentic text of the Convention duly adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization during its sixteenth session, which was held in Paris and declared closed the fourteenth day of November 1970.

IN FAITH WHEREOF we have appended our signatures this seventeenth day of November 1970.

The President of the General Conference

ATILIO DELL'ORO MAINI

The Director-General

RENE MAHEU

**Certified copy
Paris,**

*Director, Office of International
Standards and Legal Affairs,
United Nations Educational,
Scientific and Cultural Organization*

RESOLUTION ADOPTEE PAR L'ASSEMBLEE GENERALE

[Sans renvoi à une grande commission (A/L.766/Rev.1 et Rev.1/Add.1 et 2)]

3391 (XXX). Restitution des oeuvres d'art aux pays victimes d'expropriation

L'Assemblée générale,

Consciente des desseins primordiaux des Nations Unies et notamment de leur foi dans les droits fondamentaux de l'homme et dans la dignité et la valeur de la personne humaine,

Rappelant la Déclaration sur l'octroi de l'indépendance aux pays et aux peuples coloniaux 1/,

Rappelant la Convention concernant les mesures à prendre pour interdire et empêcher l'importation, l'exportation et le transfert de propriétés illicites des biens culturels, adoptée le 14 novembre 1970 par la Conférence générale de l'Organisation des Nations Unies pour l'éducation, la science et la culture, lors de sa seizième session 2/,

Rappelant la résolution 3187 (XXVIII) de l'Assemblée générale, en date du 18 décembre 1973, relative à la restitution des oeuvres d'art aux pays victimes d'expropriation, dans laquelle l'Assemblée a notamment invité le Secrétaire général, agissant en consultation avec l'Organisation des Nations Unies pour l'éducation, la science et la culture et les Etats Membres, à présenter un rapport à l'Assemblée, lors de sa trentième session, sur les progrès accomplis à cet égard,

Prenant acte du rapport du Secrétaire général 3/,

1/ Résolution 1514 (XV) de l'Assemblée générale.

2/ Organisation des Nations Unies pour l'éducation, la science et la culture, Actes de la Conférence générale, seizième session, vol. I, Résolutions, p. 141 à 146.

3/ A/10224.

75-23834

/...

Notant avec intérêt les dispositions prises par certains Etats tendant à la restitution des oeuvres d'art aux pays victimes d'expropriation conformément à la résolution 3187 (XXVIII),

Soulignant que l'héritage culturel d'un peuple conditionne l'épanouissement de ses valeurs artistiques et son développement intégral, qui sont les gages de son authenticité,

Persuadée que la promotion de la culture nationale peut accroître l'appétitude des peuples à comprendre la culture et la civilisation d'autres peuples et donc exercer d'honnêtes effets sur la coopération internationale,

1. Affirme que la restitution prompte et gratuite à un pays de ses objets d'art, monuments, pièces de musée et manuscrits par un autre pays, autant qu'elle constitue une juste réparation du préjudice commis, est de nature à renforcer la coopération internationale;
2. Reconnaît à cet égard les obligations spéciales incombant aux pays ayant eu accès à ces valeurs, soit par des revendications particulières soit par d'autres prétextes, du fait de leur domination ou de leur occupation d'un territoire étranger;
3. Demande à tous les Etats intéressés de protéger et de sauvegarder les oeuvres d'art qui se trouvent encore dans les territoires sous leur domination;
4. Invite les Etats Membres à ratifier la Convention concernant les mesures à prendre pour interdire et empêcher l'importation, l'exportation et le transfert de propriétés illicites des biens culturels, adoptée en 1970 par la Conférence générale de l'Organisation des Nations Unies pour l'éducation, la science et la culture;
5. Attend avec intérêt la réunion du Comité d'experts sur la restitution des oeuvres d'art aux pays victimes d'expropriation, créé par l'Organisation des Nations Unies pour l'éducation, la science et la culture, qui aura lieu au Caire au début de l'année 1976, et exprime l'espoir que ledit Comité adoptera des méthodes adéquates pour la restitution des oeuvres d'art aux pays victimes d'expropriation;
6. Demande aux Etats intéressés qui ne l'ont pas encore fait de procéder à la restitution aux pays d'origine de leurs objets d'art, monuments, pièces de musée, manuscrits et documents, restitution qui est de nature à renforcer l'entente et la coopération internationales;
7. Invite le Secrétaire général, agissant en consultation avec l'Organisation des Nations Unies pour l'éducation, la science et la culture et les Etats Membres, à présenter un rapport à l'Assemblée générale, lors de sa trente-deuxième session, sur les progrès accomplis à cet égard.

2410ème séance plénière
19 novembre 1975

Distribution: General

SHC/MD/22
PARIS, 8 January 1974
Original: EnglishUNITED NATIONS EDUCATIONAL,
SCIENTIFIC AND CULTURAL ORGANIZATIONCOMMITTEE OF EXPERTS
ON THE RISKS INCURRED BY WORKS OF ART AND
OTHER CULTURAL PROPERTYin particular the risks of theft and other forms
of illicit transfer of ownership

Brussels, 19-22 November 1973

FINAL REPORT

I. INTRODUCTION

1. The Director-General of Unesco, in co-operation with the Belgian National Commission for Unesco, convened this meeting at the castle of Van Ham at Steenokkerzeel near Brussels, in implementation of resolution 3.411 of the General Conference, adopted at its seventeenth session, authorizing the Director-General "... to study practical arrangements which could be adopted nationally and internationally: (1) to reduce the risks to work of arts, particularly the risk of theft ...". A previous meeting of representatives of international governmental and non-governmental organizations, also held at the castle of Steenokkerzeel from 13 to 15 September 1972, had made a preliminary examination of the questions to be studied by the present Committee.

2. The Committee was composed of experts in disciplines particularly affected by the problem of theft, vandalism and illicit transfer of ownership of works of art (museology, archaeology, law enforcement, the art trade, international law, together with representatives of international organizations concerned. A list of the participants will be found in Annex I to this document.

3. At the opening session after welcoming addresses Mr. Huysentruyt, Secretary of the Belgian National Commission for Unesco, and Mr. G. Bolla, Director of the Department for Cultural Heritage of Unesco, the Committee elected the following officers:

Chairman:	Mr. Walter J. Ganshof van der Mersch (Procureur Général à la Cour de Cassation, Belgium)
Vice-Chairmen:	H. E. Mr. Francisco Cuevas Cancino (Ambassador, Permanent Delegate of Mexico to Unesco)
	H. E. Dr. Gamal Mokhtar (Chairman of the Egyptian Antiquities Organization)
Rapporteur:	Mr. Jean Châtelain (Director of the Musées de France)

4. The Committee adopted the following agenda:

1. General discussion.
2. Physical procedures for security and for combat against theft, vandalism and wilful damage to cultural property.
3. Application of the 1970 Convention and other legal questions.
4. Education and information.
5. Adoption of the report.

II. GENERAL DISCUSSION

5. The Committee devoted two meetings to a general discussion of the risks of theft, vandalism and illicit traffic encountered by movable cultural property. The suggestions made during this general discussion have been incorporated in the pertinent chapters of the present report. The following general considerations may help in the understanding of the report as a whole.
6. It appears from the survey carried out by Interpol - a survey to which 37 countries replied - that:
 - (a) the great majority of thefts occur in public or private places where there is no system of technical protection or where the system of protection is insufficient.
 - (b) cultural property of great artistic and commercial value is recovered more easily than items of lesser value which are more easily negotiated;
 - (c) in the great majority of cases of cultural property which has been recovered, professionals in the art trade (second-hand dealers, retailers, antique dealers etc.) have, at one time or another been concerned;
 - (d) there is more international traffic in stolen art objects between neighbouring countries, while the market for such objects is generally located in large cities.
7. It therefore appears that the problem of thefts of art objects must first be dealt with at the national level and that the action of Interpol - which can intervene only in cases of possible interest to several countries, and only at the initiative of a national police organization or of the General Secretariat of Interpol acting in conjunction with national police - cannot be fully effective unless the national police possesses all the necessary structures and means of action.
8. Likewise, the representative of the Customs Co-operation Council called attention to the difficulties met with by international customs services in intervening in this field of illicit traffic in cultural property. In so far as national services are called upon to do so, customs intervention in the source country is necessarily much more effective than that of the customs of the country where objects are received; the services of the exporting country will, in fact, be able to know and interpret national legislation, knowing for example, that an export certificate is required for certain items; on the other hand, cannot, or can only with great difficulty, know whether the imported objects do or do not belong to a foreign national heritage and whether their export was lawful or not. Lastly, it must be noted that both at entry and on departure from a country, customs services of all countries visited by many tourists find it impossible to check effectively the travel of small objects.
9. Several experts remarked that, among the perils threatening cultural property, vandalism must, in certain respects, be considered in a distinct way. While in fact certain measures for the protection of art works are effective for both theft and vandalism, thieves and vandals have profoundly different motivations. The result is that the mere fear of repression - which might have a certain effectiveness with regard to theft - is ineffective where vandalism is concerned. The preventive measures must be different, since they must aim at doing away with different kinds of motivations.

III. PHYSICAL PROCEDURES FOR SECURITY AND FOR COMBAT AGAINST THEFT, VANDALISM AND WILLFUL DAMAGE TO CULTURAL PROPERTY

10. It is necessary to call attention from the start to the both complex and shifting character of the concept of cultural property as defined in Article 1 of the 1970 Convention, and to the variety of dangers that threaten them:

The licit and normal utilization of cultural property itself contains an internal contradiction. The desire that a broad public should benefit by them leads to masking protection measures as discreet and as slight as possible, whilst the concern for conservation leads to reinforcing them.

Items of cultural property are located in extremely different countries, whose means of protecting them are often not comparable with one another. Many developing countries are, in this respect, in a difficult position, for they possess a very considerable property constituting a fundamental element of their personality, along with limited means of protection.

Lastly, the dangers to which this property is subject vary greatly: vandalism founded on political or religious motives; systematic theft organized, in certain regions, with the use of the most modern equipment; simple plundering by occasional thieves; or the fondness of average tourists for procuring "souvenirs"; the considerable and constant increase in the price of collectors' items; the weakening of the respect by which certain cultural property used to benefit, traditionally, in most countries; the increase in communication facilities of all kinds; the development of mass tourism. All this helps each day to multiplying the opportunities for theft, vandalism and wilful damage. Conscious of this augmentation of the dangers, and of the complexity of the problems, the experts were in agreement about stressing the importance of the following measures relating to both prevention and repression of such illicit traffic.

(a) Preventive measures

11. The survey undertaken by Interpol to which 37 countries have replied shows that the great majority of thefts take place in public or private places where no technical system of protection exists or where the system of protection is insufficient. Taking extremely varied forms, preventive measures all come down to the same idea of the need to ensure adequate surveillance of cultural property under a general system of security comprising basic recourse to adequate installations. Surveillance can assume extremely diverse forms according to the nature of the property in consideration. The simplest and most traditional means is guarding by human beings. Sophisticated systems call for the latest electro-mechanical or electronic techniques: electric eyes, television, radar or the laser ray.

12. Several experts pointed out the importance of the following difficulties. Human guards face different kinds of difficulties according to the degree of economic development of their country. In the less rich ones, which it is relatively easy to recruit staff, guards may be poorly qualified. In the richer countries, it becomes harder to recruit, for mere tasks of execution, staff that is both ill-paid and repulsed by non-specialized functions. On the other hand, the use of sophisticated techniques involves the risk of creating a false sense of security if one loses sight of the fact that any security system, to be effective, must in the last resort lead to human intervention.

13. With regard to this point, the experts concluded that it would be useful for Unesco:

to promote the study, in each country considered, of the best means of protecting the cultural heritage, account being taken of the conditions peculiar to each country;

to sponsor or carry out the publication of technical "fiches" on the various kinds of security equipment and methods - for the use of national administrations, which will be responsible for their distribution of the information - their advantages and disadvantages, and the way in which they are used;

publish a manual on requirements for training and in-service training of surveillance staff;

to centralize information received from such specialized bodies as ICOM, ICOMOS, INTERPOL, etc.

(b) Measures for recovery or repression

14. Subject to the legal problems studied below, measures for repression or recovery all assume that the reality of the illicit fact (theft, vandalism, etc.) could be established with certainty and that the infraction could be made rapidly and widely known.

15. The experts were unanimous in pointing out here the importance of the following measures:

(i) establishment of national inventories of cultural property

Any more or less restrictive regulation of the circulation of cultural property supposes, in order to be effectively applied, that such property is not only defined in general terms, but accurately recorded. Such is the purpose of inventories on the basis of which lists can be drawn up of objects subject to more or less strict supervision, such as the "national treasures of certain countries".

Attention should be drawn to the following points:

the need to establish these inventories in precise terms. They must start from data which is sufficiently clear and to permit identification of such objects. In this connexion, the value of supplementary inventories with photographs has been stressed;

the need to keep within reasonable limits the type of property subject to prohibition of shipment abroad owing to both cultural and technical circumstances. From the cultural standpoint, while it is right that each country should protect its cultural heritage, this protection ought not to go so far as to forbid a desirable exchange of objects between countries of different cultures. From a practical standpoint, a system of prohibition or control pretending to be unduly extensive would in fact become ineffective because it would be impossible to verify effectively the legal status of the object in each case;

special attention was given to the use of scientific methods in the preparation of inventories to facilitate retrieval. They permit the use of inventories containing a great many objects, but the difficulties which their use involves must not be lost sight of: the cost of the equipment, the need for skilled staff to provide at the start sufficiently accurate and detailed information for it to be handled usefully by the computer; lastly and especially, the difficulty of establishing criteria for distinguishing objectively an unauthentic object or one of minor importance from an object that is authentic or of cultural importance.

(ii) Dissemination of the ascertaining of the facts

Recovery or repression is possible only if illicit acts are made very rapidly and widely known. It is extremely hard for a country on whose territory a work subject to illicit traffic is sought to intervene effectively if notification of the illicit act accompanied by sufficient accurate descriptions of the object is not received from the country which has been victim of the act.

(c) Establishment in the various countries - those of departure or of arrival - of services specialized in the repression of traffic in cultural property within the police or customs services or those responsible for cultural property

16. Police and customs services, whether national or international - were not originally competent in these highly special fields. The example, noted by the experts, of the creation of such special services in a few countries linked to the Interpol system (France, Federal Republic of Germany, Italy, United Kingdom, etc.) shows that the system is extremely effective. These special services, whatever their exact status, must work in close liaison with official cultural services in collaboration with the professional organizations concerned and must be able to utilize documents prepared by these services, especially inventories.

(d) Supplementary measures

17. The basic document prepared by the Unesco Secretariat quite rightly draws attention to the interest to be seen in curtailing illicit traffic at its source and in establishing licit and supervised circulation of cultural property between States.

18. The experts were unanimous in noting both the value and the limitations of the following measures:

- (a) Development of international travelling exhibitions, they allow a broad foreign public to get better knowledge of the culture of the country of origin. Some such activities, in particular exhibitions of archaeological property of the first importance, can be pointed out as exemplary. The limitations lie in the impossibility of too frequently circulating works or objects, which are usually the most fragile and the most important.

- (b) Long-term exchanges or gifts of cultural property between specialized institutions certainly constitute a valuable instrument for the communication of cultures. For the moment, it is little employed, each side tending to overvalue what it gives compared to what it receives. An extension of the few activities undertaken in this domain is certainly desirable and ought to be encouraged and aided.
- (c) The creation, by the competent services, of copies, maquettes or models having all the scientific qualities required in order for them to be used effectively. The obstacle here is traditional reticence, even among the most official services and most disinterested persons, as to the use of these materials, however remarkable they may be. Though it may unconsciously be due to an unconscious interpretation of ideas of cultural value as compared with commercial value, this reticence constitutes a fact of which we must be aware; it must also be understood that the use of such material can only be a supplementary resource and could not justify a total prohibition of licit circulation of original cultural property, which alone permits, in the present state of things, a real intellectual and emotional interpenetration of the various national cultures.

IV. APPLICATION OF THE 1970 CONVENTION AND OTHER LEGAL QUESTIONS

19. The Committee examined the question of whether new measures should be contemplated at the international level in order to reduce the risks of illicit traffic in cultural property.
1. The 1970 Convention
20. In a general way, the Committee considered that the Convention on the means of prohibiting and preventing the illicit import, export and transfer of ownership of cultural property, adopted by the General Conference of Unesco at its sixteenth session (November 1970) remained the best instrument for reducing risks of illicit traffic, provided that this Convention - which resulted from a compromise - was widely accepted by the various countries of the world. In this connexion, the Committee regretted that only 17 States, almost all of them developing countries suffering from illicit export, had ratified the Convention. For this instrument really to produce the effects expected of it, that is, a very substantial reduction in illicit traffic, it was indispensable for many other States to adhere to it, especially States which, at the present time, could be considered as "importing countries" or "transit countries".
21. The Committee was unanimous in recommending that new efforts should be made by the Unesco Secretariat to obtain such ratifications, acceptance or adhesions.
22. According to one expert, the hesitations of certain "importers" stemmed from the following two considerations:
- on the one hand some national circles feared that the Convention might reopen the closed book of history: in other words, that an interpretation might be put on it that it applied retroactively;
- on the other hand, it was feared that the text of the Convention might adversely affect perfectly lawful transactions because the categories of objects to which it applied were not defined with sufficient precision.
23. In answer to these two sources of concern, it was observed that the intention of the authors of the Convention was not to call the past back into question and not to give the instrument a retroactive effect. Likewise, there were no categories of objects clearly defined and included in inventories which should be affected by its provisions. It was also understood that a State might schedule and consider as protected objects of art of foreign origin found on its territory.
24. It was specified that Interpol could, at the request of one of its national central offices, intervene with police services members of Interpol, not only when, in the country of origin of the art object, a theft had occurred coming under the penal legislation of that country, but also when an art object was presumed to have been exported illegally, contrary to regulations of the country of origin, for example, legislation protecting the cultural heritage, when that legislation considered such export to be illegal, as an infraction giving rise to penalties.

2. Knowledge of national legislations

25. The fact that foreign national legislations concerning the protection of the cultural heritage were not always known was mentioned as another difficulty with regard to the ratification and implementation of the Convention, whose application would depend on the content and date of entry into force of such foreign laws.

26. In this regard, the Committee considered that it would be useful for the Unesco Secretariat to publish national legislations or, if such an undertaking were impossible because of its cost, that at least a document should be disseminated containing a synthesis of the main provisions of all national legislations in force.

27. One expert stressed that the highly restrictive legislation now existing in some countries could lead to unfortunate results, for example, to preventing cultural property removed in former times from being repurchased and brought back to its country of origin.

3. Possible changes in domestic legislation

28. During a preliminary meeting, the question was raised of a possible change in internal legislations with a view, in civil law, to facilitating claims to property which had been the object of illicit traffic, and in criminal law, to increasing the punishment incurred by the authors of such traffic, and in so far as the legislation of the receiving country granted the same character to an act justifying intervention.

29. The Committee considered that it would be difficult to get States to adopt special provisions about cultural property where the transmission of the property was concerned. Likewise, more severe penal sanctions for thefts of cultural property could not easily be decreed, and the increased penalties provided for in the case of theft of cultural property or vandalism would not necessarily have the desired effect. A greater awareness of public opinion as regards the seriousness of these acts would more easily induce to give harder sentences.

30. An expert pointed out that, at the practical level, it would be desirable for auctioneers and organizers of public sales to be responsible for the origin of objects of art sold at auctions.

31. It was pointed out that the application of the 1970 Convention and the prevention and repression of illicit traffic in cultural property were closely linked to the definition of the bona fide acquirer, a question which was the subject of a proposal for international regulations made by the International Institute for the Unification of Private Law in Rome. The Unesco Secretariat should keep the work of this Institute under observation.

4. Status of cultural property and regulations governing the market in works of art

32. Divergent opinions were expressed as regards the status of cultural property. One expert was of the opinion that all cultural property should be nationalized and become the property of the State, and that trade in such property - which should not have commercial value, but only cultural value - should be abolished. Several other experts felt that, for the very development of art, private individuals should continue to have the right to be owners of art objects, and that trade in such objects also sustained such development.

33. The situation in a country which had undertaken extensive nationalizations was described to the Committee: while all cultural property in castles and other residences of great landowners was, as part of a land reform, considered to be State property, this measure was not applied to other collections which remained private property. The State in question, wished, moreover, to encourage private collectors whose works of art remained, however, under State supervision. As regards trade in works of art, several systems coexisted: shops run by the State, others by religious bodies and still others which were purely private; but all these shops were under the strict supervision of the State, and their purchases and sales had to be recorded in special registers.

34. After the representative of CINOA had suggested that official markets in cultural objects should be organized in order to prevent the creation of networks of illicit traffic or at least reduce their scope, an expert explained the difficulties which had been met with when his country tried to organize official sales of cultural objects. Other experts considered that the organization of such official markets was contrary to their national legislation and, moreover, not desirable.

35. The Committee considered that the adoption of codes of ethics by certain groups concerned was highly desirable. Such was in particular the case for museums, where rules of ethics had existed for a long time under the auspices of ICOM; however it might be hoped that there would be stronger requirements concerning especially the origin of archaeological and ethnographic objects. If the museums of the world with largest budgets undertook to exercise strict control over the origin of items proposed to them and to refuse strictly any item whose origin was even contestable, possibilities for illicit traffic would certainly be much diminished. As regards art dealers, the representative of CINOA specified that his organization had already drawn up such a code. The Committee considered that such codes of ethics were highly desirable.

36. The representative of the Commission of the European Economic Communities pointed out that the Treaty which had established the European Economic Community had stipulated for the elimination of administrative barriers to the free flow of cultural property, as well as of all other property. However, it would be possible for the Community to accompany measures for the liberalization of trade in works of art with special provisions concerning works of art capable of limiting illicit traffic. The Committee took note with interest of this possibility.

V. EDUCATION AND INFORMATION

37. The question of making public opinion more sensitive to theft, vandalism and illicit traffic in works of art was given lengthy attention by the Committee, which was unanimous in recognizing the importance of such action, at both the national and the international levels, and with respect to education and information. The aim of this action should first of all be to inspire a respect for national cultural property which is easiest to arouse, but should lead to respect for foreign cultural property.

38. As regards school education, the proposed action would concern textbooks and study programmes at all levels, and particularly in the fields of history and human geography. The Committee recommended that Unesco, in its educational activities, should stimulate, in teaching at all levels knowledge and respect for the cultural heritage, the national heritage and that of mankind as a whole.

39. While it was true that cultural tourism could be a factor for international understanding, it must nevertheless be recognized that tourists were often the cause of grave damage to cultural property, especially on archaeological sites. The Committee thought that the possibility should be studied of preparing tourists for the idea of respect for cultural property. Indications in travel guides or tourist leaflets would be helpful in this matter, and the collaboration tourist offices, publishers of guidebooks and air transport companies should be sought.

40. As regards the general public, it must be made more aware of the importance of protecting the cultural heritage and of the evils of harming this heritage by thefts, vandalism or illicit traffic.

41. The Committee noted that the information media usually reported only cases of theft, vandalism and illicit traffic taking place in the industrialized countries. The Committee believed that efforts should also be made in developing countries, the greatest sufferers from the traffic, in order to inform the press and other information media of cases of theft, vandalism and illicit traffic, so that international opinion might be informed and realize the gravity of the problem.

42. The Committee recommended that Unesco, through its own publications, or through the promotion of publications, films and radio and television broadcasts, should endeavour to provoke a much greater awareness in public opinion. It would appear that the press and radio and television organizations were interested in the problems of the risks incurred by works of art, and it would be well to profit in each country, by our interest.

43. One expert pointed out, however, that in his country the moment had not yet come to draw the attention of the public to the importance of cultural property for the authorities feared that in the absence of legislation and a protective inventory, such a campaign would have an effect contrary to the one sought.

44. Another expert said that information media usually limited themselves to pointing out the importance of thefts when they were discovered. The Committee felt that the public should also be informed that, in a great majority of cases, works of art were recovered and that these thefts were

not profitable to their authors, owing to the difficulty of disposing of the works. This information might discourage thieves.

45. The representatives of Interpol and the Customs Co-operation Council both insisted on the fact that a greater awareness in the public was also capable of making the task easier, in this field, for police and customs authorities.

VI. In general

46. The representatives of international organizations present at the meeting, in particular those of Interpol and the Customs Co-operation Council, all hoped that still closer collaboration would be developed between their organizations and Unesco, in order to facilitate the implementation of the recommendation of the Committee.

Proposition du Gouvernement italien en date du
18 décembre 1975 proposant la création d'un bureau

Ministero degli Affari Esteri

International pour la sauvegarde
et la récupération des biens culturels

Le Congrès international sur "La conservation des oeuvres d'art et des Biens Culturels Religieux" et sur "La sauvegarde et la récupération des oeuvres d'art" ayant procédé à un échange de vues approfondi sur les moyens juridiques les plus propres à améliorer la coopération internationale en matière de sauvegarde et de récupération des oeuvres d'art, selon les principes plusieurs fois affirmés au sein des différents sièges internationaux et, en particulier, au cours du premier Congrès qui a eu lieu à "Palazzo Vecchio" les 27 et 28 novembre 1971, adopte, au cours de la séance de clôture du 22 octobre 1975 à "Palazzo Vecchio" la suivante

R E S O L U T I O N

ayant entendu le rapport de la commission des experts relatif aux moyens juridiques aptes à améliorer la coopération internationale en matière de sauvegarde et de récupération des oeuvres d'art;

constatant l'exigence que le mouvement international des oeuvres d'art et des biens culturels en général ne doit pas porter préjudice à l'instance de conservation des patrimoines artistiques des peuples;

constatant la nécessité que le mouvement des oeuvres d'art doit donc être entourée de toutes précautions, tel qu'il a été largement affirmé dans plusieurs accords internationaux et notamment dans la Convention de l'U.N.E.S.C.O. du 14 novembre 1970;

constatant que la proposition de confier à un organisme international, en cours de réalisation, tous les interventions opérationnelles, d'informations et d'étude aptes à assurer la sauvegarde et la récupération des biens culturels objet de trafic illicites, répond largement à l'exigence susmentionnée;

pris acte de la volonté manifestée par la Région Toscane et par la Municipalité de Florence de faciliter de toute façon la création de ce bureau international;

propose

la création d'un Bureau international pour la sauvegarde et la récupération des Biens culturels, dont les tâches sont définies dans ^{le} projet de Statut ci-joint;

recommande

l'adoption immédiate d'une convention internationale instituant le-dit Bureau, doté de moyens financiers adéquats, et tout cela à la charge des Etats intéressés à la protection et à la récupération des biens culturels;

donne mandat

au Président de l'Accademia des Arts du dessin, le Ministre Rodolfo Siviero, de soumettre la résolution adoptée par les participants, aux compétentes autorités de l'Etat italien pour les formalités requises.

Art. 1 Un Bureau international pour la sauvegarde et la récupération des oeuvres d'art et des biens culturels en général (ici dénommé Bureau) est créé pour la réalisation des buts définis dans la Convention de " La Haye du 14 mai 1954 pour la protection des biens culturels en cas de conflit armé", dans la Convention de Paris de l'UNESCO du 14 novembre 1970, dans la résolution de l'ONU du 18 décembre 1973 et dans l'accord de Helsinki du 30 août 1975.

Pour biens culturels l'on entend les biens énumérés à l'art. 1 de la Convention adoptée par l'UNESCO le 14 novembre 1970, relative aux mesures à prendre pour empêcher et interdire l'importation, l'exportation et le transfert de propriété illicites des ces biens.

Art. 2 Les buts spécifiques du Bureau sont les suivants:

- a - Prendre note des signalations relatives aux biens culturels qui ont été objet d'activité illicite de toute sorte et en tout lieu en les inscrivant dans un catalogue spécial;
- b - Prendre note des infractions aux dispositions relatives aux transferts de propriété d'oeuvres d'art, communiquées par les services de protection du patrimoine culturel des Etats adhérents à la Convention, en inscrivent dans un catalogue nominatif spécial les infractions commises par les opérateurs du secteur et les éventuelles sanctions infligées;

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- c - Prêter toute assistance possible, sur demande de l'Etat intéressé à la restitution, ou bien sur initiative du Bureau avec l'approbation de l'Etat intéressé, dans l'action de récupération des biens volés ou exportés illicitement du territoire dudit Etat.
- d - S'occuper du recueil systématique et de la mise à jour des dispositions (de loi) en vigueur et des orientations juridictionnelles existants dans les Etats intéressés par le commerce international des oeuvres d'art;
- e - Organiser, au bénéfice des Etats adhérents à la Convention qui veulent l'utiliser, un service de renseignement et de documentation sur l'état de la législation (et relative jurisprudence) sur la protection des oeuvres d'art en égard notamment aux problèmes de l'art sacré;
- f - Assister les Etats membres, qui en font demande, dans la préparation et, le cas échéant, dans l'exécution des mesures législatives et administratives aptes à prévenir et à réprimer les trafics illicites des oeuvres d'art;
- g - Promouvoir des campagnes internationales pour l'harmonisation des législations nationales relatives à la sauvegarde et à la récupération des oeuvres d'art, en favorisant la formulation de projets de recommandation et de convention, à soumettre à l'approbation dans les sièges compétents.

- Art. 3 - Pour l'accomplissement des fonctions mentionnées aux paragraphes (d, e, f, g,) de l'art. 2 ~~ci-dessus~~, le Bureau se sert de l'avis d'un comité inter-gouvernemental formé par des experts désignés par les Etats adhérents à la Convention.
- Art. 4 - Le Comité prévu par le précédent article adopte son règlement interne et fixe les dates des ses réunions et l'ordre du jour de ses travaux.
- Art. 5 - Le Bureau fonctionne sous la responsabilité d'un Secrétaire Général, nommé par les Etats adhérents à la Convention, aux conditions établis par les Etats mêmes et pour la durée de six ans.
- Art. 6 - Le personnel nécessaire au fonctionnement du Bureau est engagé avec un contrat d'emploi, dans les limites des disponibilités du bilan.
- Art. 7 - Le Secrétaire Général envoie au Président de la Conférence Générale de l'UNESCO un rapport annuel sur l'activité du Bureau.

Règles d'éthique des acquisitions. Recommandations de l'Icom

1. Le musée d'aujourd'hui n'est pas un simple dépôt d'objets : il a la mission d'acquérir des objets dans le cadre d'un programme spécifique de :

- a) recherche scientifique,
- b) éducation,
- c) préservation,
- d) mise en valeur de l'héritage national et international, naturel et culturel.

2. Quelques musées peuvent couvrir tous les aspects de ce vaste programme, tandis que d'autres se spécialisent dans certaines de ses parties. En conséquence, un objet ne saurait être acquis s'il ne joue pas de rôle pour la réalisation des objectifs du musée tels qu'ils ont été décrits dans le programme de celui-ci.

3. L'objet que l'on envisage d'acquérir peut être rangé dans un vaste éventail de catégories dont les deux extrêmes peuvent être brièvement définis comme étant :

- a) des objets qui ont été reconnus par la science et/ou par la communauté dans laquelle ils possèdent leur pleine signification culturelle,

comme ayant une qualité unique et comme étant par là inestimables. (Cette définition comprend notamment une grande partie des œuvres acquises par les musées des beaux-arts.)

b) des objets qui, bien que n'étant pas nécessairement rares par eux-mêmes, n'en ont pas moins une valeur qui dérive de leur environnement culturel et naturel.

4. L'objet n'a une signification (culturelle et scientifique) que s'il est complètement documenté. Aucune acquisition ne devrait être faite en l'absence de cette documentation, bien que des exceptions puissent être admises en ce qui concerne certains objets qui se rapprochent de la définition donnée au paragraphe 3. a), lorsque l'essentiel de la documentation relative à ces derniers peut être reconstituée par une étude systématique postérieure à l'acquisition.

5. Dans la plupart des domaines, c'est au cours de missions de recherches scientifiquement menées que l'on peut le mieux effectuer des acquisitions directes. Ces missions peuvent opérer dans leur pays d'origine ou à l'étranger. Dans ce dernier cas, elles doivent être menées avec l'accord ou la coopération du pays hôte, et dans le respect de ses lois.

6. Les acquisitions directes peuvent aussi être effectuées en coopération avec un musée ou avec l'institution responsable de la protection du patrimoine national, dans le pays d'origine des objets recherchés. Les mêmes principes peuvent s'appliquer, « mutatis mutandis », aux objets qui se rapprochent de la définition donnée au paragraphe 3. a).

7. L'objet acquis directement a toutes chances d'être aussi bien documenté que possible tandis que ce n'est pas toujours le cas pour les acquisitions indirectes. Tandis que les acquisitions directes, effectuées comme il est décrit aux paragraphes 5 et 6, seront donc conformes aux normes éthiques, les procédures indirectes risquent de ne pas se trouver en accord avec ces mêmes normes.

8. Les acquisitions indirectes, qui comprennent les dons et legs, sont ce qui est acquis à travers un ou plusieurs intermédiaires. Lorsqu'un musée s'estime contraint d'acquérir un objet indirectement, il doit toujours le faire dans le strict respect des lois et des intérêts du pays de provenance, ou du pays d'origine quand le pays de provenance n'est qu'un lieu de transit commercial.

9. La responsabilité du muséologue dans les musées qui ont comme mission essentielle la préservation du patrimoine national est triple :

- a) acquérir et préserver pour le pays en question des collections exhaustives illustrant tous les aspects du patrimoine naturel et culturel de la nation ;

b) aider au contrôle du mouvement international des objets appartenant à ce patrimoine ;

c) coopérer avec les musées étrangers et les autres institutions scientifiques afin d'assurer une représentation correcte de sa culture au plan international.

10. Il est impératif, pour que le musée remplisse complètement ses fonctions d'éducation et d'instrument de la compréhension internationale, que son personnel scientifique respecte les normes éthiques les plus élevées, non seulement dans le domaine très important des procédures d'acquisition, mais aussi dans les autres domaines de son activité professionnelle. Plus particulièrement, et comme un principe absolu, un musée, une autre institution ou un collectionneur devrait toujours agir de bonne foi et s'efforcer autant que possible de ne pas acquérir directement ou indirectement, un objet quelconque que l'on aurait des raisons de croire, à cause de l'absence de documentation suffisante ou pour tout autre motif, illégalement exporté de son pays d'origine.

Suggestions pour l'application des Recommandations

11. Les objectifs et les programmes des musées devraient être publiés. Une telle mesure encouragera les échanges et l'aide extérieure.

12. L'acquisition d'objets par un musée quelconque ne devrait pas être limitée à ce qui est nécessaire pour la présentation dans les salles publiques, mais un nombre suffisant d'objets devrait être collecté en vue de leur conservation, des besoins de la recherche, de l'assistance aux musées locaux par échanges ou dépôts, et des échanges internationaux. Par contre doit être exclue la simple accumulation d'objets pour la seule raison de leur valeur économique.

13. Les collections rassemblées pour des échanges devraient comprendre des objets d'une qualité suffisante pour entraîner des contreparties de même qualité de la part des autres musées. Les échanges ne devraient pas s'effectuer seulement objets contre objets, mais aussi objets contre services ou équipement.

14. La documentation rassemblée au cours d'une mission scientifique devrait être mise à la disposition du musée compétent dans le pays où la mission a été réalisée, à l'issue d'un certain laps de temps fixé au préalable, pendant lequel les droits scientifiques sont réservés à l'inventeur. Cette même documentation sera, dans les mêmes conditions, mise à la disposition du musée intéressé dans le pays qui a organisé la mission.

15. Compte tenu des règles juridiques nationales et des recommanda-

tions et conventions de l'Unesco relatives au partage des produits de recherches sur le terrain, on s'efforcera de respecter au maximum l'intégrité écologique des ensembles d'objets.

Certains objets, certaines collections sont parfois prêtées à un musée ou à une institution scientifique d'un pays étranger, à des fins d'étude. Dans ce cas ils doivent être retournés à l'institution à laquelle ils appartiennent dans les délais les plus brefs.

16. Compte tenu des règles juridiques nationales et des recommandations et conventions de l'Unesco, le musée qui aurait des raisons de douter du caractère licite d'une acquisition antérieure prendra contact avec le musée ou avec une autre organisation professionnelle dans le pays d'origine, en vue d'examiner, dans chaque cas particulier, les mesures qui devraient être prises pour préserver au mieux les intérêts des deux parties.

17. Au cas où un musée se verrait offrir des objets, dont il aurait des raisons de mettre en doute le caractère licite, il prendra contact avec les autorités compétentes du pays d'origine en vue de l'aider à sauvegarder le patrimoine national de celui-ci.

18. Les dons et legs ne devraient être acceptés qu'avec une clause prévoyant que, si un objet quelconque se révèle avoir été exporté illicitement d'un autre pays, les autorités du musée auront le droit de prendre les mesures mentionnées plus haut.

19. Les musées de pays qui, par suite de circonstances politiques ou économiques, détiennent une part importante des biens culturels de pays qui n'étaient pas en mesure de sauvegarder efficacement leur patrimoine culturel, devraient rappeler à leurs autorités et à leurs collectionneurs qu'ils ont un devoir moral de remédier à cet état de choses.

20. Les musées de tous pays qui s'engageraient à appliquer les règles éthiques et les propositions pratiques formulées aux paragraphes 1 à 19 ci-dessus, se réserveront mutuellement un traitement préférentiel, pour toutes les activités professionnelles, compatibles avec les lois en vigueur.

SYNDICAT NATIONAL DES ANTIQUAIRES
NÉGOCIANTS EN OBJETS D'ART
TABLEAUX ANCIENS ET MODERNES

11, rue Jean-Mermoz - PARIS VIII^e

RÈGLES DE LA PROFESSION D'ANTIQUAIRE
ET NEGOCIAINT EN ŒUVRES D'ART ORIGINALES

US ET COUTUMES

PRÉAMBULE

L'antiquaire, qu'il soit négociant en œuvres d'art ou en meubles et objets d'art, quelle que soit sa spécialité, est dans une position particulière dans ses rapports avec les personnes avec qui il fait commerce. En effet, comme le médecin, par exemple, et d'autres membres des professions libérales, soit qu'il achète, soit qu'il vende, il a des connaissances spécialisées que l'amateur, sauf exception, ne possède pas. On doit pouvoir lui faire confiance. Cela lui crée des responsabilités particulières, parfois graves de conséquences.

Ce sont ces responsabilités, tant légales que morales, qu'il doit toujours avoir présentes à l'esprit dans ses rapports avec les vendeurs, avec les acheteurs, avec ses confrères, avec les intermédiaires.

Elles lui imposent de véritables devoirs et des obligations.

Le Conseil d'Administration du Syndicat National des Antiquaires a décidé de les rappeler à ses membres, et de leur demander leur engagement écrit de se conformer aux règles et usages de la profession.

C'est à cette condition seulement que les antiquaires pourront être distingués des revendeurs d'articles d'occasion. Ils doivent se considérer d'abord comme des spécialistes de la recherche, de l'identification, qui leur permettent et leur imposent de formuler des garanties sur leur diagnostic et leurs études.

L'acte commercial par quoi ils concluent leurs transactions, est fondé sur leurs connaissances spécialisées, historiques, techniques et professionnelles, qui sont la base de la profession.

Les règles qui suivent sont basées sur les lois qui régissent plus spécialement notre commerce, ainsi que sur ce qu'on appelle les Us et Coutumes de la profession, tels qu'ils ont été étudiés par le SYNDICAT NATIONAL DES ANTIQUAIRES, et tels qu'ils sont d'usage constant dans notre profession.

Elles ne sont pas relatives à la seule activité en tant que vendeur, de l'antiquaire ou du négociant en œuvres d'art originales, mais aussi à ses responsabilités et aux risques qu'il encourt lors de l'achat.

Elles sont complétées par des conseils annexes portant sur certaines modalités particulières de nos transactions.

Elles sont donc présentées de la façon suivante :

TITRE PREMIER

RAPPORTS AVEC LES VENDEURS

- I. — De la garantie.
 - a) achats à des particuliers,
 - b) achats à des confrères ou à des officiers ministériels.
- II. — Des conditions de l'achat.
 - a) origine des objets acquis,
 - b) identité des vendeurs,
 - c) cas particuliers et précautions à prendre.
- III. — Marchandises reçues en dépôt, confiées à la vente ou remises à condition.

TITRE DEUXIÈME

RAPPORTS AVEC LES ACHETEURS

- I. — De la garantie.
- II. — Modalité de la garantie.
 - a) des désignations,
 - b) de l'état des objets vendus, des restaurations et réparations,
 - c) des certificats d'authenticité et autres éléments annexes de la garantie,
 - d) vente à des Musées ou à des confrères.
- III. — Ventes à des étrangers.
Réglementation des exportations.

TITRE TROISIÈME

CONSEILS ANNEXES

- I. — Des acomptes et des arrhes.
- II. — Des affaires en compte à demi ou en participation.
- III. — Des commissions dues aux intermédiaires.
- IV. — Des honoraires dus aux experts.

TITRE PREMIER

RAPPORTS AVEC LES VENDEURS

I. — De la garantie.

a) Achats à des particuliers.

Le vendeur particulier n'est pas censé garantir un objet ou une œuvre d'art qu'il cède à un antiquaire ou à un négociant spécialisé. Il ne peut être répréhensible que si l'acheteur est en mesure de prouver la fraude ou l'intention dolosive. Dans tous les autres cas, il n'y a pas de recours contre le vendeur, en cas d'erreur de l'antiquaire lors de l'achat.

Par contre, si un antiquaire — qu'il soit négociant en objets d'art ou en œuvres d'art originales — profite de ses connaissances pour induire en erreur le vendeur sur la qualité de l'objet qu'il achète, et lui fait une offre sans rapport avec la valeur réelle dudit objet, il s'expose aux conséquences de réclamations fondées.

b) Achats à des confrères ou à des officiers ministériels.

Il est évident que ceci ne s'applique pas aux achats faits à d'autres antiquaires, qui sont censés fixer le prix de ce qu'ils vendent en toute connaissance de cause, ni à ceux qui sont faits en vente publique par les officiers ministériels, où la compétition entre les divers acquéreurs établit le juste prix (1).

II. — Des conditions de l'achat.

Nous mettons très vivement nos confrères en garde contre les conséquences qui peuvent découler d'un achat fait par eux soit à un inconnu, soit dans des conditions qui leur paraissent suspectes. Rares sont les antiquaires qui n'ont pas, une fois dans leur vie, acquis en toute bonne foi ou légalement un objet volé ou détourné.

a) Origine des objets acquis.

En vertu des obligations découlant de la loi du 15 février 1898, modifiée et complétée par le décret 70.788 du 27 août 1970, l'antiquaire ou le négociant en œuvres d'art originales — qui, en l'espèce, est assimilé au brocanteur — est tenu de s'assurer de l'origine des objets ou œuvres achetés, ainsi que de l'identité de leur propriétaire ou de leur vendeur. De ce fait, sont nuls tous achats d'objets mobiliers faits à des mineurs ou à des interdits : les objets provenant de succession ne peuvent être négociés qu'avec l'accord de tous les ayants-droit, de même que ceux qui appartiennent à un ménage en instance de divorce.

(1) Il convient de rappeler ici que ce qu'on appelle la « révision » est illégal, et constitue le délit de coalition ou d'entraves à la liberté des enchères. (art. 419 du code pénal).

Cet accord doit être précisé par le vendeur dans le reçu qu'il délivre à l'antiquaire acheteur, et dans lequel il se porte garant au nom des propriétaires indivisaires qu'il représente.

D'autre part, la loi du 31 décembre 1913 sur les monuments historiques et les sites, prévoit, en son article 18, que tous les objets mobiliers classés appartenant à l'Etat sont inaliénables, et, en son article 19, que les particuliers propriétaires d'un objet classé, doivent faire connaître à l'acquéreur l'existence du classement.

Selon une circulaire ministérielle N° 203 AD 4 du 23 avril 1948, les objets d'art appartenant à des collectivités ne peuvent être aliénés sans autorisation préalable du Ministère chargé des Affaires Culturelles.

Toutefois, dans tous les cas énoncés ci-dessus, l'acquéreur qui peut prouver cette bonne foi, notamment par la présentation de reçus en règle dont la rédaction indique que sa bonne foi a été surprise par le vendeur qui était présumé propriétaire de l'objet et libre de le négocier, ainsi que par l'inscription de l'objet acquis dans son livre de police (ou son livre de stock) feuillets numérotés et paraphés, a droit au remboursement de son prix d'acquisition.

Mais ce remboursement, toujours problématique, ne peut avoir lieu qu'après une procédure qui peut être longue, et la bonne foi de l'acheteur peut toujours être mise en doute par le propriétaire lésé, même si elle est réelle.

b) Identité des vendeurs.

Les dispositions de l'article II de la loi du 15 février 1898 sont impératives. Il spécifie :

« Il est défendu d'acheter à toute personne dont le nom et la demeure ne seraient pas connus, à moins que l'identité de cette personne ne soit certifiée par deux témoins connus qui devront signer sur le registre de brocanteur, sous peine d'emprisonnement de huit jours ou plus et d'une amende de 60 francs à 400 francs. »

L'identité des individus pouvant toujours aujourd'hui être affirmée par la production de leur carte d'identité nationale, l'acheteur peut en exiger la production, et les indications qu'elle mentionne être portées sur le reçu délivré à l'antiquaire. Celui-ci doit porter l'indication : Vendu à M... tel ou tel objet qui est ma propriété personnelle. En cas de vente par un intermédiaire, il doit porter la mention : que je suis chargé de vendre pour le compte d'un tiers.

Il est à noter que les prescriptions sur l'identité du vendeur ne s'appliquent pas seulement aux achats faits dans un hôtel comme l'indiquaient les anciens Us et Coutumes du Syndicat ;

mais à tous les achats faits hors de la demeure du vendeur et, par conséquent, à tous ceux qui pourraient être faits au domicile, magasin ou galerie de l'antiquaire acheteur.

Même en cas d'achats faits au domicile du vendeur, on n'est pas à l'abri de revendications imprévisibles par suite de manœuvres de celui-ci qui se trouveraient ne pas être le propriétaire réel des objets ou le mandataire régulier du propriétaire.

D'autre part, on ne saurait assez mettre nos confrères en garde contre des achats faits à toute personne, française ou étrangère, n'ayant pas sa résidence en France. Indépendamment d'autres risques, on encourt celui d'être considéré comme complice d'une importation frauduleuse.

Il est d'ailleurs rappelé que, sauf situation exceptionnelle, les étrangers de passage en France et généralement les non résidents n'ont pas le droit de recevoir le paiement en espèces ou en chèques même non barrés.

III. — *Marchandises reçues en dépôt, confiées à la vente ou remises à condition.*

Il est dans notre commerce un usage fréquent qui consiste en la remise à condition des objets d'art, soit par des confrères, soit par des particuliers désireux de s'en dessaisir.

Dans l'immense majorité des cas, le propriétaire de l'objet ou de l'œuvre le remet purement et simplement entre les mains d'un antiquaire ou d'un négociant en œuvres d'art, en qui il a confiance, à charge pour celui-ci de le restituer dans un certain délai ou d'en remettre le prix au propriétaire.

L'objet remis ainsi à condition reste la propriété du vendeur. L'acheteur éventuel n'est débiteur que du prix convenu, s'il ne rend pas l'objet à son revendeur. Sauf convention contraire, il peut, dans les délais du mandat de vente, transformer cette opération en achat à sa seule volonté.

La vente à condition s'accompagne obligatoirement (art. II § 2 du décret 70.788 du 27.8.1970) d'une inscription faite par l'antiquaire sur son registre de police et d'un reçu délivré par lui au déposant. Ce reçu peut être rédigé comme suit :

« Reçu en dépôt, pour être vendu pour le compte de M... l'objet suivant au prix de...

» Il est expressément convenu que je m'engage à restituer

» a) à la première demande de M...

» dans le délai de...

cet objet qui reste sa propriété, sauf vente au profit de M... au prix convenu.

» En aucun cas cet objet ne pourra figurer à mon actif en cas de saisie, faillite, ou règlement judiciaire (1).

Lu et approuvé

Signature

Date en toutes lettres. »

Il convient, en effet, d'éviter toute confusion entre « remise à condition » et « vente sous condition », cette dernière ne pouvant s'entendre dans les termes (articles 1168 et suivants C. Civ.) que d'une vente affectée d'une condition suspensive ou résolutoire. Le reçu, tel que rédigé ci-dessus, paraît devoir éviter toute confusion.

Le contrat de « confié à la commission » peut également prévoir que l'objet sera vendu par l'antiquaire pour le compte et au bénéfice du vendeur, moyennant une commission dont le pourcentage doit être précisé, lors de la remise à condition de l'objet et, éventuellement, le remboursement des frais avancés par le commerçant pour la vente de l'objet.

TITRE DEUXIÈME

RAPPORTS AVEC LES ACHETEURS

I. — De la garantie.

L'antiquaire ou le négociant en œuvres d'art se doit de donner, sur la facture qu'il remet à ses clients, une garantie explicite pour les objets ou œuvres d'art qu'il vend. Ne le ferait-il pas que les termes dans lesquels l'objet ou l'œuvre sont décrits ainsi que le prix auquel ils sont vendus peuvent être considérés comme une garantie implicite. Ainsi, on ne pourra prétendre, sauf si le contraire a été précisé, qu'un « bureau Louis XVI » surtout s'il a été vendu à un prix correspondant à ce qu'il est censé être, n'était, dans l'esprit du vendeur, qu'un bureau de style Louis XVI, sans époque déterminée.

Suivant la signification donnée à ce terme dans notre commerce, on dit d'un objet d'art ou d'ameublement, ou d'une œuvre d'art, qu'ils sont authentiques quand ils sont dans toutes leurs parties, de l'époque ou du maître (ébéniste, bronzier, orfèvre, décorateur sur porcelaine, tapissier, etc.) indiqués par leur style, et éventuellement, par la marque ou le poinçon de leur auteur.

Par contre, le terme d'œuvre d'art originale comporte une ambiguïté.

(1) Un tel reçu peut utilement être détaché d'un carnet à souches numérotées, qui reste entre les mains de l'antiquaire, et qui peut porter les indications : Restitué le... ou vendu le...

En effet, sont considérées par l'Administration comme œuvres d'art originales les œuvres de la peinture, du dessin, de la gravure et de l'art statuaire, même si on ne peut identifier l'artiste qui les a créées. En fait, sont considérées comme œuvres d'art originales, les œuvres dues à l'invention et à la main d'un artiste, même s'il est inconnu, par opposition à la création dite artisanale.

D'autre part, on dit d'une œuvre d'art d'un artiste donné qu'elle est originale quand elle est réellement de l'artiste (peintre, sculpteur, graveur — ou des artistes, en cas de collaboration) dont elle présente toutes les caractéristiques ou, le cas échéant, la signature. On peut également dire, dans ce cas, qu'il s'agit d'un original de tel ou tel artiste.

La garantie peut donc porter sur l'authenticité, le caractère original de l'œuvre ou l'indication de son auteur.

II. — Modalités de la garantie.

a) Des désignations.

Dans ces conditions, les désignations des objets ou des œuvres vendus ne doivent pas prêter à équivoque, et elles doivent comporter une description précise permettant leur identification.

Il faut se défier des termes génériques tels que « Boule » pour des meubles à marqueterie d'écaille et de cuivre, quelle qu'en soit l'époque, « Gobelins » pour des tapisseries quelle qu'en soit la manufacture, « gravures en couleurs » quand il peut s'agir d'une simple gravure en noir colorisée.

Nous rappelons ici le sens de certains termes couramment employés dans les descriptions.

L'indication de règne, sans autre précision, pourra toujours être interprétée comme une garantie d'époque. Ainsi a-t-on toujours avantage à préciser qu'un objet est « d'époque Louis XIV, Louis XV ou Louis XVI », par exemple : « d'époque Ming, Kang Hi ou Kien Long » lorsqu'il s'agit de Chine. La mention « style Louis XIV, Louis XV ou Louis XVI » ou de style signifie qu'il n'y a pas de garantie d'époque.

Pour un meuble, indiquer qu'il porte l'estampille d'un maître, revient à garantir que celle-ci a été apposée par lui, et qu'il est son œuvre. En cas de doute, on peut préciser que le meuble est attribué à tel ou tel ébéniste, et indiquer l'existence d'une marque (et non de sa marque). De même, pour les tableaux et dessins, préciser qu'ils sont signés est donner la garantie qu'ils sont des originaux. En cas de doute, on peut indiquer qu'ils comportent une « inscription ».

L'emploi du terme « attribué à » indique qu'on ne garantit pas l'œuvre ou l'objet comme étant du maître indiqué : mais il ne peut être employé pour désigner des œuvres ou objets d'une autre époque que celle de ce maître.

Le terme « atelier de » doit être pris dans son sens exact. C'est-à-dire que l'œuvre a été exécutée dans l'atelier de l'artiste désigné. Toutefois, il a existé des ateliers collectifs, dont les membres se sont succédé pendant une longue période. Ainsi, en Italie, les Ambriachi, dont l'atelier comportait des artisans dont on ne connaît, en général, pas le prénom, et qui ont travaillé du XIV^e au XVII^e siècle. Dans ce cas, il convient de préciser l'époque de l'objet vendu.

« Ecole de » ne peut s'appliquer qu'à des œuvres ou objets exécutés dans les générations qui ont immédiatement suivi la vie de l'artiste, et, sauf exception, dans son propre pays.

Enfin, l'appellation « genre de » ne comporte aucune garantie d'artiste, de date ou d'école.

Sauf précisions contraires, toutes ces mentions s'appliquent à la totalité de l'objet désigné ou décrit. Ainsi « un secrétaire en marqueterie garni de bronzes dorés d'époque Louis XV » est obligatoirement un meuble dont le châssis, la marqueterie et les bronzes sont de la même époque. A la rigueur, lorsqu'on décrit un secrétaire en marqueterie Louis XV orné de bronzes dorés, on peut admettre que la garantie d'époque ne s'applique pas aux bronzes. De même, si une porcelaine ancienne est surdécorée, convient-il de le préciser, ne serait-ce que par prudence.

b) Des restaurations et réparations, de l'état des objets vendus.

Les objets et œuvres d'art vendus par les antiquaires et négociants en œuvres d'art originales sont, sauf indication contraire, portés dans leur désignation sur la facture, réputés être en bon état de conservation, sans accidents, réparations, restaurations, de nature à altérer leur substance ou leur valeur. Ceux-ci pourraient, s'ils n'étaient pas déclarés, constituer des vices cachés (Art. 1643 du Code Civil).

L'importance des réparations ou restaurations qui n'altèrent pas la substance ou la valeur varie selon les catégories d'objets. Pour ne citer qu'un exemple, certaines poteries provenant de fouilles sont presque toujours accidentées, et ont même parfois dû être reconstituées sans que cela influe sensiblement sur leur valeur, tandis que des porcelaines européennes ou même chinoises, sont présumées être intactes pour avoir leur pleine valeur.

Ainsi, est-il nécessaire, par exemple, d'annoncer les fêlures et les réparations des porcelaines, les réargentures des objets en métal argenté ou les redorures des bronzes, les additions aux meubles, les restaurations importantes des tableaux et dessins, les taches et déchirures des gravures.

Mais, il n'est pas moins évident que les restaurations et réparations, quand elles ne constituent que des mesures conservatoires et de remise en état, qui n'altèrent en rien les caractères d'ancienneté et de style, et n'apportent aucune modification au caractère propre de l'œuvre ou de l'objet, ne sauraient être opposables au commerçant vendeur, et n'ont pas besoin d'être expressément déclarés sur la facture. Ainsi, en est-il des travaux de nettoyage, revernissage, remise en état, réentoilage ou parquetage des peintures, nettoyage des meubles et des bronzes...

D'ailleurs, il n'est pas un musée important au monde qui n'ait ses propres ateliers de restauration et de réparation.

c) Des certificats d'authenticité et autres éléments annexes de la garantie.

Il arrive assez fréquemment, surtout pour les œuvres d'art originales, que le négociant remette à son acheteur, au moment de la vente, un certificat d'authenticité signé d'un expert spécialisé ou d'un historien d'art. Sauf stipulations contraires expressément précisées dans la facture, la remise d'un tel document signifie que le vendeur endosse l'attestation ainsi remise, et qu'il ne la donne qu'à l'appui de sa garantie personnelle. Il en est de même, d'ailleurs, pour les œuvres vendues aux enchères publiques et accompagnées d'un certificat.

Toutefois, s'il est précisé que l'œuvre n'est qu'attribuée au maître, à son atelier ou à son école, et, dans ce cas seulement, l'attestation remise ne constitue plus qu'un élément d'appréciation soumis à l'acquéreur.

De même, s'il est indiqué que l'œuvre a figuré dans telle ou telle collection, a passé dans telle ou telle vente publique, cela implique, non seulement, qu'on a toutes raisons de considérer que c'est bien de cette œuvre qu'il était question ; mais encore que le vendeur reprend à son compte l'attribution sous laquelle elle y a été présentée. Dans le cas contraire, il convient de préciser qu'elle était alors considérée comme de tel ou tel maître.

La remise d'un tel certificat ou l'énonciation de telle provenance n'est pas suffisante pour décharger le vendeur de sa responsabilité propre.

d) Ventes à des Musées ou à des confrères

On peut admettre une dérogation aux règles ci-dessus énoncées en cas de vente à des Musées ou à des confrères, qui ont eu le loisir d'examiner les œuvres proposées. Ceux-ci peuvent, en effet, être considérés comme des spécialistes à l'égal du vendeur négociant et, sauf en cas de fraude ou de dissimulation, il leur est difficile d'intenter une action visant l'erreur sur la marchandise vendue, lorsqu'ils ont eux-mêmes commis cette erreur. Les vendeurs ne sont cependant pas, pour autant, à l'abri de toutes revendications de la part des Musées ou des confrères avec qui ils ont contracté.

e) Limite de la garantie.

La responsabilité de l'antiquaire ou négociant en œuvres d'art originales, qui garantit l'œuvre vendue, est fixée par la loi à trente ans, à dater du jour de la vente. Il en est de même, d'ailleurs, pour les objets ou les œuvres qu'il aurait pu acquérir dans des conditions irrégulières. Un procès a été intenté récemment, quelques mois avant la date limite de la prescription, à des antiquaires parisiens qui avaient acquis dans une vente publique organisée par l'Etat soviétique des œuvres d'art provenant de collections privées russes nationalisées.

En ce qui concerne la garantie, toutefois, nous considérons qu'on ne saurait opposer aux vendeurs une attribution ou une description erronée quand seuls les progrès de l'histoire de l'art postérieurs à la période de la vente ont permis de modifier cette attribution. Ainsi, en est-il des bronzes dorés d'époque Louis XV, dits « au C couronné » qu'on croyait être la marque de Caffieri, alors qu'on y voit aujourd'hui une simple indication de date.

1° De se faire préalablement inscrire sur les registres ouverts à cet effet à la Préfecture du Département où il exerce habituellement sa profession ou à la Préfecture de Police s'il exerce sa profession dans le ressort de cette dernière. Il lui sera remis un bulletin d'inscription qu'il sera tenu de présenter à toute réquisition ;

2° D'inscrire jour après jour, à l'encre et sans blanc ni rature, sur un registre coté et paraphé par le Commissaire de Police ou, à son défaut, par le Maire du lieu où il exerce habituellement sa profession, les nom, prénoms, surnoms, qualités et demeures des personnes à qui il achète, ainsi que la nature et le numéro de la pièce d'identité présentée, avec indication de l'autorité qui l'a délivrée. Il y mentionnera également la nature, la description et le prix des marchandises achetées. Les prix seront inscrits en toutes lettres. Il ne sera rien inscrit par abréviation. Le registre, tenu en état, devra être présenté à toute réquisition. Le modèle du registre sera fixé par arrêté conjoint des Ministres de l'Intérieur et de l'Economie et des Finances. Ces dispositions sont applicables aux objets confiés en dépôt en vue de la vente.

3° En cas de changement du lieu d'exercice habituel de sa profession de faire une déclaration au Commissariat de police ou à défaut, à la Mairie tant du lieu qu'il quitte que de celui où il va s'établir.

ARTICLE 4. — Le revendeur d'objets mobiliers n'ayant ni boutique ni emplacement fixe où il exerce habituellement sa profession, est tenu aux mêmes obligations. Dans ce cas, le lieu où il a fixé son domicile est considéré comme le lieu habituel de sa profession.

Il doit en outre présenter à toute réquisition une médaille sur laquelle figureront ses nom, prénoms et numéro d'inscription.

Il est soumis à toutes les mesures de police prescrites pour la tenue des foires et marchés par les arrêtés préfectoraux et municipaux.

Fait à Paris, le 27 Août 1970.

Par le Premier Ministre :
Jacques CHABAN-DELMAS.

Le Garde des Sceaux,
Ministre de la Justice :
René PLEVEN.

Le Ministre de l'Intérieur :
Raymond MARCELLIN.

Le Ministre de l'Economie
et des Finances :

Valéry GISCARD-D'ESTAING.

Le Secrétaire d'Etat
au Commerce :

Jean BAILLY.

Décret n° 70-788 du 27 août 1970

ARTICLE 1^{er}. — Les articles 2 et 4 du décret n° 68-786 du 29 août 1968 relatif à la police du commerce de revendeurs d'objets mobiliers sont abrogés et remplacés par les dispositions ci-après :

ARTICLE 2. — Tout revendeur d'objets mobiliers qui n'apporte pas la preuve par des factures et par la présentation de sa comptabilité tenue à jour qu'il alimente son commerce exclusivement par des achats effectués à des marchands patentés ou inscrits au registre du commerce, est tenu :

1° De se faire préalablement inscrire sur les registres ouverts à cet effet à la Préfecture du Département où il exerce habituellement sa profession ou à la Préfecture de Police s'il exerce sa profession dans le ressort de cette dernière. Il lui sera remis un bulletin d'inscription qu'il sera tenu de présenter à toute réquisition ;

2° D'inscrire jour après jour, à l'encre et sans blanc ni rature, sur un registre coté et paraphé par le Commissaire de Police ou, à son défaut, par le Maire du lieu où il exerce habituellement sa profession, les nom, prénoms, surnoms, qualités et demeures des personnes à qui il achète, ainsi que la nature et le numéro de la pièce d'identité présentée, avec indication de l'autorité qui l'a délivrée. Il y mentionnera également la nature, la description et le prix des marchandises achetées. Les prix seront inscrits en toutes lettres. Il ne sera rien inscrit par abréviation. Le registre, tenu en état, devra être présenté à toute réquisition. Le modèle du registre sera fixé par arrêté conjoint des Ministres de l'Intérieur et de l'Economie et des Finances. Ces dispositions sont applicables aux objets confiés en dépôt en vue de la vente.

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