

genuss ist, wenn im Sommer 1899 das neue Gebäude auf dem  
Bild bezogen werden kann. Die innere Ausgestaltung und Möblierung  
Kaufhaus bildete ein beinahe ständiges Traktandum der Kommission  
gen und auch die Bibliothekverwaltung musste auf das Studium  
fragen viel Zeit verwenden. Ebenso wurde mit den Vorstudien für  
lung des Lesesaals mit den notwendigen literarischen Hilfsmitteln  
und Handbüchern, sowie für zweckmäßige Einrichtung des Lesesal-  
ners.

## International Transfer of Cultural Objects

an Stelle des am 1. Juli 1897 verstorbenen Prof. Dr. Herzog  
wurde als Mitglied der Schweizerischen Bibliothekskommission  
Herr Dr. Gustav Tobler, Professor der Geschichte an der berni-  
schen Hochschule gewählt, der sein Amt auf 31. März 1898  
antrat.

## UNESCO Convention of 1970 and Unidroit Convention of 1995

Die Kommission hielt im Laufe des Jahres 18 Sitzungen,  
welchen sie ausser den wichtigeren Geschäften der laufenden  
Erhaltung und den Fragen öffentlicher Angelegenheiten zu be-  
schäfteln hatte, die ihr vom Eidg. Departement des Innern zur  
Regutachtung überwiesen wurden.

Bedeutend mehr als die Gesamtkommission wurde in  
Präsident in Anspruch genommen, der mit der Bibliotheksver-  
waltung eine beständige Verbindung zu unterhalten suchte und  
dieselbe öfters beim Eidg. Departement des Innern zur Ver-  
handlung brachte.

## Report of the Working Group

Die ziffermässige Darstellung des Zuwachses und des  
Bestandes müssen wir vordehand verzichten. Sie wird später  
in der Donatorenliste in einem besonderen ausführlichen Ber-  
icht folgen.

Die Ordnung und Katalogisierung der eingelaufenen Druck-  
werke machte im verlossenen Jahre befriedigende Fortschritte, be-  
sondere wurden die verfügbaren Arbeitskräfte dadurch so sehr abso-

# **International Transfer of Cultural Objects**

**UNESCO Convention of 1970 and Unidroit Convention of 1995**

**Report of the Working Group**

## II

Published by Federal Office of Culture on behalf of the Working Group

Translated by Lyn Shepard and Eric Leake

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**International Instruments**

**UNESCO Convention 1970**      UNESCO Convention of 14 November 1970 on Measures to Forbid and Prevent Illicit Import, Export, and Acquisition of Cultural Objects

**Unidroit Convention**      Unidroit Convention of 24 June 1995 on stolen or illicitly exported cultural objects

**EC Directive**      Directive No. 93/7 of the Council of 15 March 1993 on return of cultural objects exported illegally from the territory of a member state

**EC Regulation**      Council Regulation No. 3911/92 of 9 December 1992 on export of cultural objects

<b>Legal Opinions</b>
-----------------------

**Given on behalf of the Confederation**

- Aubert**      Jean-François *Aubert*: *Avis de droit relatif à la ratification, par la Confédération suisse, de deux conventions internationales concernant le trafic illicite des biens culturels (Convention de l' UNESCO, de 1970, et Convention d'Unidroit, de 1995)*, 29 February 1996
- Prof. Aubert was assigned to analyze constitutional issues in regard to the UNESCO and Unidroit conventions.
- Schnyder**      Bernhard *Schnyder*: *Gutachten zur Unidroit-Konvention vom 24. Juni 1995 über gestohlene oder rechtswidrig ausgeführte Kulturgüter*, 25 March 1997
- Prof. Schnyder was assigned to research private law issues in connection with the Unidroit Convention.
- Volken**      Paul *Volken*: *Gutachten zur Unidroit-Konvention vom 24. Juni 1995 über gestohlene oder rechtswidrig ausgeführte Kulturgüter*, 25 March 1997
- Prof. Volken was assigned to research international private law issues in connection with the Unidroit Convention.
- Hänni**      Peter *Hänni*: *Gutachten zur Frage der Auswirkungen auf das kantonale Recht bei der Umsetzung völkerrechtlicher Verpflichtungen der Schweiz auf dem Gebiet des Kulturgüterschutzes*, 2 July 1997
- Prof. Hänni was assigned to consider the impact on cantonal law in implementing the two conventions.

**Other Opinions**

Other opinions included are:

- Knoepfler**      François *Knoepfler*: *Convention Unidroit sur les biens culturels volés ou illicitement exportés*, 17 April 1996<sup>1</sup>
- Vischer**      Frank *Fischer*: *Die Unidroit Convention on Stolen or Illegally Exported Cultural Objects und das Schweizerische Recht*, 29 December 1995<sup>2</sup>

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<sup>1</sup> Client: Canton Neuchâtel, submitted as an appendix to the canton's opinion at the Unidroit Convention 1996 hearings.

<sup>2</sup> Clients: Swiss Association of Art Collectors, Public Art Collection of Basel, and Kunsthhaus, Zurich.

## List of Working Group Members

Representatives of the following departments took part in the Working Group under the chairmanship of Dr. Claudia **Kaufmann**, general secretary of the Department of the Interior:

Department	Office	Staff Representative
Interior (EDI)	<i>Federal Office of Culture</i>	Dr. Andrea F.G. <b>Raschèr</b> , J.D., deputy head of legal service
Justice and Police (EJPD)	<i>Federal Office for Justice</i>	Dr. Monique <b>Jametti Greiner</b> , J.D., deputy director, division of international affairs [ deputy: Hans <b>Kuhn</b> ]
	<i>Federal Office for Police Affairs</i>	Attorney Beat <b>Frey</b> , section head, international legal aid
Foreign Affairs (EDA)	<i>Directorate for International Public Law</i>	Dr. Paul <b>Seger</b> , J.D., head of international public law section [ deputy: Sylvie <b>Hofer-Carbonnier</b> ]
	<i>Political Department V</i>	Rudolf <b>Bärfuss</b> , ambassador, head of political department V [ deputy: Daniel <b>Knecht</b> ]
Foreign Affairs/ Economic Affairs	<i>Integration Bureau</i>	Pascal <b>Strupler</b> , section head, cooperation and coordination [ deputies: Manuela <b>Jost Ernst</b> , Ralph <b>Friedländer</b> ]
Military and Sport (VBS)	<i>Federal Office of Civil Defense (VBS)</i>	Nicholas <b>de Diesbach</b> , head of section on protection of cultural objects
Finance (EFD)	<i>Federal Customs Administration</i>	Roland <b>Hirt</b> , head of customs procedures section
Economic Affairs (EVD)	<i>Federal Office for Foreign Economic Affairs</i>	Dr. Birgit <b>Thomsen Guth</b> , J.D., legal service

## Foreword

At its meeting of 17 June 1996 the Federal Council decided to sign the Unidroit Convention of 24 June 1995 on stolen or illegally exported cultural objects. At the same meeting it set up an interdepartmental working group to review legal aspects related to the Unidroit Convention and the UNESCO Convention of 14 November 1970 on measures to forbid and prevent illicit import, export, and acquisition of cultural objects.

The Federal Council assigned the working group eight basic issues which contained several other sub-issues for legal clarification. These were dedicated primarily to the relationship of the conventions to Swiss law as well as to their specific implementation by Switzerland at the legal and extralegal level. In order to illuminate these issue complexes over their total legal range, it was necessary to present the fundamentals in a detailed and differentiated manner.

International transfer of cultural objects involves a very complex body of law. In addition to private and public law standards, national and international law also interlink. There is also little literature, most of it widely scattered, which considers the various international instruments in totality and studies the interaction of various instruments. This document is an exhaustive summary of the working group report's original version published in German, French, and Italian in August 1998 (Sales outlet: BLL/EDMZ, CH-3003 Berne, Fax: ++41 31 992 99 23; Form No. 304.250). All relevant information on the subject can be found in this document. Finally a tabular comparison of the two conventions' basic elements as well as of EC law is found in the appendix.

We hope this report will illuminate details presented and particularly the legal significance of the two international instruments on cultural object transfer — *i.e.*, the UNESCO Convention of 1970 and the Unidroit Convention.

For the Working Group  
The Chairperson

Claudia Kaufmann

Berne, 15 April 1999

## I. Introduction

### 1. International Transfer of Cultural Objects

#### a) Baseline Situation

Cultural objects are especially closely linked to the social development and tradition in which they are created, found, or preserved over a long time, and they become an important expression of and witness to it. Whether human products or natural history relics, they are unique and irreplaceable. Cultural objects are important bearers of information and identification: They are visible signs from which each human being can note his membership in society as well as its past and present and can thus better understand it.

Due to their uniqueness, cultural objects face special risks from dangers such as armed conflicts or illegal art transactions. During recent decades, international trading and trafficking in cultural objects has increased notably. The growing turnover in art dealing has also been accompanied by expansion of illegal trade.<sup>1</sup> Increasing demand for cultural objects has led to stealing and looting them from Mediterranean countries with a wealth of cultural objects as well as such nations in Asia, Africa, and Latin America, especially by large-scale systematic looting excavation. Theft from museums, castles, churches, and collections are not only increasing abroad but also in Switzerland.

Protecting its cultural heritage is one of the basic cultural policy interests of any country. This involves protection of one's own cultural heritage while respecting that of other states. International society has to lend its support cooperatively where danger exists for cultural objects of historic, artistic, or sociohistorically relevant importance. Many of the countries affected must first be in the position to move their cultural heritage in order to protect, research, and exhibit it. One problem in the illegal international transfer of cultural objects arises in relation to worldwide gaps in wealth. It should not be forgotten in this regard that Switzerland was in this victim role itself more than 100 years ago: the Swiss National Museum was founded in the late 19<sup>th</sup> century, not least as a measure to counter the export of Swiss cultural objects abroad.

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<sup>1</sup> The worldwide annual turnover in trade with stolen cultural objects is estimated at several billion Swiss francs: Depending on the source, estimates start from Sfr. 1.3 billion (*Art Loss Register*) and more than Sfr. 2.6 billion (US government) to Sfr. 9 billion (British magazine *Trace*). See **Müller-Katzenburg** (1996), p. 56 footnote 146 with further evidence; **Schümperli Younossian** (1997), p. 278 f.

Due to their intrinsic value, their limited numbers, their irreplaceable nature, and above all their fundamental significance for the cultural identity of a society, cultural objects must be subjected to other legal regulations than current commercial goods. In contrast to them, cultural objects are originals, irreplaceable and therefore of special historic and emotional value. Internationally organized black marketeers in the art world profit from the differing laws and particularly from the loopholes in them among the various nations: usually stolen or illegally excavated cultural objects are imported to another country where other laws prevail in order to deposit these objects, then to remarket them locally. International regulations are necessary in order to deal with such abuses.

## **b) Optional Solutions**

The change in consciousness regarding the specific nature and uniqueness of cultural objects which occurred after World War II induced the community of nations to place cultural objects under special regulations and to create international instruments to protect moveable cultural objects. The increasing sensitivity has brought about crucial changes in legal standards which are being implemented increasingly at the international level. This is illustrated by the international agreements and also the case law of many countries during the past 30 years in this area. All international instruments have in common that protection of cultural heritage is their central concern and that they are not retroactive.

### *Worldwide (multilaterally)*

- The UNESCO Convention on the means of prohibiting and preventing the illicit import, export, and transfer of ownership of cultural property of 13 November 1970 (hereafter UNESCO Convention of 1970) is a charter concerning international protection of cultural objects which aims to protect and preserve the common cultural heritage of humanity through international cooperation of all nations.
- The Unidroit Convention on stolen or illegally exported cultural objects of 24 June 1995 (hereafter the Unidroit Convention) governs the return of stolen cultural objects or the restitution of illicitly exported ones.

### *European Union*

- Council Regulation 391/92/EEC of 9 December 1992 on the export of cultural objects (hereafter EC Regulation) aims to protect national cultural objects from being brought outside the EU illegally by creating a uniform export-control system.
- Council Directive 93/7/EEC of 15 March 1993 on the return of cultural objects exported illicitly from the jurisdiction of a member state (hereafter EC Directive) governs the restitution of cultural objects which have been brought illegally from an EU member state.

### **c) Situation in Switzerland**

Switzerland is an internationally important art-dealing center: It ranks in fourth place behind the USA, England, and France. Due to the attractive framework conditions such as its central location and its well-developed infrastructure, Switzerland was able to become an important international hub in the legal and illegal art market after World War II. Due to lack of international instruments in this area, Switzerland faces the danger of becoming a more attractive center for illegal transfer of cultural objects.

While Switzerland has ratified and implemented the appropriate international instruments in the area of cultural objects protection during wartime<sup>2</sup>, international protection of moveable cultural objects during peacetime is relatively weakly developed. Moveable cultural objects are seen in Switzerland as commercial goods which legally cannot be handled other than as normal wares.<sup>3</sup> The same legal rules are applied to cultural objects as to other moveable objects. At the federal level as well there are no regulations on import and export of cultural objects.

In this connection, a temporary decree of 10 December 1945 on return of assets should be noted.<sup>4</sup> It concerned all types of assets, among them cultural objects which were seized illegally in territories occupied during wartime and sold to private and public collections in Switzerland.<sup>5</sup> The decree envisioned that assets seized illegally would be

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<sup>2</sup> The Hague Convention of 14 May 1954 to protect cultural objects in case of armed conflicts (including added protocol): Systematic Register (SR) 0.520.3/32.

Art. 1, Paras. 1 and 3 of the protocol obligate parties to the convention to prohibit the export of cultural objects from an occupied territory; if cultural objects should nonetheless be exported, they are to be return to the state of origin after cessation of hostilities.

Art. 1, Para. 4 of the protocol obligates the return of such cultural objects even when they have been acquired in good faith by a third party. The state which should have prevented the export must pay compensation to the good-faith acquirer.

<sup>3</sup> The sole exceptions are discoveries of unclaimed natural curiosities or antiques of substantial scientific value and local origin; see Art. 724 of the Swiss Civil Code.

<sup>4</sup> AS, 1945 (61) 1,052 ff.; the decree was abrogated on 21 December 1952.

<sup>5</sup> Swiss dealers and collectors could acquire some modern classic masterworks in this way at “bargain prices”. During the chaos brought on by the war, art dealing gained enormous momentum.

returned to the owner by the good faith acquirer as “fair” compensation (Art. 1 and 4). A solution to the special situation of the postwar era was created in Swiss law which, to the extent that it affected theft of cultural objects, largely indicated legal parallels to the principles of the Unidroit Convention. Yet an important distinction to the Unidroit Convention consisted in the fact that the decree was retroactive.

The instruments pending action today (the UNESCO Convention of 1970 and the Unidroit Convention) are directed exclusively at prospective countering of illegal transfer of cultural objects. The fact that they are not retroactive is an important principle: Clear rules and procedures should make clear to the persons involved what applies and how the requirements can be met.

Since the mid-1980s, Switzerland has taken part in work on the Unidroit Convention: It has played a leading and mediating role in two specialized groups as well as in the diplomatic conference. In 1992 a motion by National Councilor Ruth Grossenbacher invited the Federal Council to create legal conditions as swiftly as possible to counteract further development of cultural objects being transferred illegally into Switzerland: Ratification of the UNESCO Convention of 1970 should occur immediately, and a corresponding law implementing it should be drafted.<sup>6</sup> As a result, the Federal Council has launched consultation procedures on both the UNESCO 1970 and Unidroit conventions. During both consultation procedures, an overwhelming majority of cantons and cultural organizations spoke out for ratification, through art dealers opposed it.<sup>7</sup>

## **2. Federal Council Decrees**

### **a) Baseline Situation**

At its meeting of 17 June 1996 the Federal Council decided to sign the Unidroit Convention because a need for action existed from both a cultural and foreign policy standpoint. At the same time it set up a working group under the overall leadership of the Federal Department of Home Affairs to review legal aspects concerning the UNESCO and Unidroit conventions (issues 1 to 7). Already on 17 January 1996 it had

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<sup>6</sup> Grossbacher motion of 18 June 1992: Switzerland as controversial hub of international dealing in cultural objects (92.3259).

Ratification of the UNESCO Convention 1970 as a binding Federal Council task is contained in the version of the motion passed by both houses of Parliament.

Keep in mind the identical phrasing of the National Council's and Council of States' postulates approved by the Science, Education, and Culture Committees: they asserted that the UNESCO Convention 1970 should be ratified immediately and legal regulations be enacted to prevent loss of nationally significant cultural objects as well as to support foreign countries by respecting their cultural heritage.

<sup>7</sup> See text and explanatory report as well as results of consultation procedures on the UNESCO Convention 1970, Federal Office of Culture, 1995; text and explanatory report and results of the consultation procedures on the Unidroit convention, Federal Office of culture, 1996.



decided to tackle the special issues connected with customs law within the framework of a working group (issue 8).

### **b) Tasks**

The working group had to analyze the following issues thoroughly:

1. What is the relationship between the UNESCO Convention of 1970 and the Unidroit Convention?
2. How do European countries and the USA regulate international transfer of cultural objects, and what is the position of these countries to the two conventions?
3. What is the relationship of the two conventions to EC law, and what would result from an isolated approach by Switzerland?
4. What would result if the UNESCO Convention of 1970 were ratified, and what legal adaptations would be needed to implement it?
5. What would the impact of ratifying the Unidroit Convention have on the Swiss legal order, and under what overriding public interest is it covered?
6. What international and domestic legal measures could be taken in order to assure that application of the Unidroit Convention would harmonize as much as possible with the principles of Swiss law?
7. With what domestic and foreign policy measures could the goals of the conventions be realized in case Switzerland decided not to ratify them?
8. What special legal precautions could be taken within the customs law framework in regard to needs to deal with cultural objects?

### c) Expert Opinions

The working group was presented legal expert opinions from Professors Jean-François **Aubert**, Bernhard **Schnyder**, Paul **Volken**, and Peter **Hänni** which were commissioned by the federal government as a basis for the group's work. It also considered opinions from Professors François **Knoepfler** and Frank **Vischer** which were commissioned by outside parties.<sup>8</sup>

### d) Working Group

Cooperative representatives were appointed to the working group from the Departments of Home Affairs, Justice and Police, Foreign Affairs, Finance, and Economic Affairs as well as the Office of Civil Defense. The group was chaired by the Department of the Interior.<sup>9</sup>

### e) Approach

Meeting in four plenary sessions and in various working languages, the working group studied the issues in subcommittees and wrote this report. The report was approved unanimously by the working group in April 1998.

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<sup>8</sup> For titles, clients, and dates of the expert opinions, see p. IX; opinions commissioned by the Confederation are published as *Internationaler Kulturgütertransfer / Trarfert international de biens culturels / Trasferimento internazionale di beni culturali: Dokumentation - documentation - documentazione*, Berne, 1998 (Sales outlet: BLL / EDMZ, CH-3003 Berne, Fax: ++41 31 992 99 23; Form No. 304.251).

<sup>9</sup> For staffing composition of the working group, see p. X.

## **II. Bases**

### **1. UNESCO Convention 1970**

The UNESCO Convention of 1970 formulates basic principles for international protection of cultural objects. It contains minimum standards on organizing protection and measures to prevent illegal trafficking in cultural objects. It is assigned to public law and is not self-executing, *i.e.*, the convention requires legislative specification. At the same time it is formulated very freely and enables convention states to adapt obligations to their situation and their legislative options. In addition, there is a possibility of ruling out certain obligations or restricting their material scope of application.

The UNESCO Convention of 1970 has been ratified by 89 countries to date, among them five member states of the EU (Italy, Greece, Portugal, Spain, and France) as well as Australia, Canada, and the USA.

This convention's content obligates the contracting states to a broad spectrum of measures. An import regulation is envisioned for illegally exported cultural objects (Art. 3). An export control requirement must also be enacted (Art. 6). Museums and similar institutions are to be prevented from acquiring illegally exported cultural objects. Import of cultural objects which were removed from a museum in another contracting state is to be prohibited. The cultural object is to be restituted to the extent that the good-faith acquirer is paid reasonable compensation (Art. 7). Great importance is paid to international cooperation: It consists of a duty to take part in jointed campaigns to prevent looting of archaeological or ethnological objects (Arts. 9 and 13).

### **2. Unidroit Convention**

The Unidroit Convention sets uniform minimum standards on return of stolen and tracing of illegally exported cultural objects. It aims to standardize the civil law (Section II) and administrative law (Section III) regulations of contracting states. The Unidroit regulations are basically self-executing and must not be implemented into national law.

The Unidroit Convention has been ratified by five states to date (Lithuania, Paraguay, Peru, Hungary, and Romania); two countries (China and Ecuador) have acceded to the convention; the convention entered into force on 1 July 1998. Some 22 states have signed it — among them France, Italy, Portugal, the Netherlands, and Switzerland.

The modalities, the circle of potential addressees, as well as the time limitations are regulated differently, depending on whether the cultural object was stolen (Section II) or illegally exported (Section III):

- A cultural object which has been stolen in a contracting state and then imported into another contracting state must be restituted according to Art. 3, Para. 1. This claim for restitution is a matter of private law and is subject to a relative time limitations of three years and basically an absolute limitation of 50 years (Art. 3, Para. 3); notwithstanding that provision, in special cases any contracting state may declare at the time of ratification that a claim is subject to a time limitation of 75 years or such longer period as is provided in its law (Art. 3, Para. 4 and 5). The party obligated to restate an object can claim reasonable compensation as long as he has acted with due diligence when acquiring the object (Art. 4, Para. 1). All relevant circumstances for the acquisition will be considered in testing this diligence, particularly the contractual parties, the purchase price, and whether the register of stolen cultural objects has been checked.
- In case of illegal export of cultural objects from a contracting state, it can request another contractual state according to Section III to order their return (Art. 5, Para. 1). The action is based on public law according to Art. 5 and constitutes a reciprocal assistance procedure for enforcement of a right. A return procedure presumes proof that the removal of the cultural object essentially impairs certain scientific or cultural interests (Art. 5, Para. 3). Concerning the term illegal export, Art. 1, let. b refers to the legal rules of the state of origin which govern export of cultural objects in regard to protection of cultural heritage. The good-faith possessor of cultural objects for which return has been ordered can claim reasonable compensation which is to be paid by the requesting state (Art. 6). The request for return is subject to a relative three-year time limitation and an absolute 50-year limitation (Art. 5, Para. 5).

### **3. Similarities and Differences between the UNESCO and Unidroit Conventions**

Neither the UNESCO nor Unidroit conventions are retroactive. Their impact develops only after they enter into force for the country involved. Both conventions have adopted the same concept of “cultural objects”. They presuppose the principle that a good-faith acquirer who is obligated to return a cultural object has a claim on fair and reasonable compensation (Art. 7 b [ ii] , UNESCO Convention of 1970, and Art. 4 and 6 of the Unidroit Convention). Overlaps exist, since Art. 7, Para. 2 of the UNESCO

Convention of 1970 is also concerned with the restitution of certain stolen cultural objects; this problem is dealt with in detail in Chapter II of the Unidroit Convention.

The purpose and scope of application of the two conventions agree in essence; however, the instrument used by them differs:

- The UNESCO Convention of 1970 is not self-executing. It seeks to gain control of the problem with export and import regulations and institutionalized international cooperation.
- The Unidroit Convention is basically self-executing. It guarantees the bases valid in international private and procedural law to implement the principles anchored in UNESCO immediately. The UNESCO Convention of 1970 gains a supplement in Unidroit through minimum standards for restitution or returning of cultural objects.

The two conventions function independently but supplement each other by achieving a common purpose with different means. Therefore they are complementary.

#### **4. EC Law**

The European Community has enacted two complementary instruments in the sphere of cultural object protection which create a protective and cooperative order between member states. This concerns EC Directive 93-7 (hereafter “EC Directive”) and EC Regulation 3911-92 (hereafter “EC Regulation”).

The EC Directive and EC Regulation apply materially to national cultural objects which are categorized according to the specific national law of the state of origin as national cultural objects in the sense of EC Treaty Art. 36. This general definition is referred to in greater detail in the annex to the EC Directive and EC Regulation which is divided into two sections. The first section describes 14 categories of cultural objects; the second one indicates the financial thresholds which apply for the individual categories.

##### **a) EC Directive**

The EC Directive seeks to ease the consequences of EU free circulation of goods and the related potential of smuggling cultural objects. Its purpose is the return of cultural objects which have been brought illegally from a member state. It requires implementation into national legal systems. It creates a right to return if a national cultural object as defined by EC Treaty Art. 36 has been brought illegally within the EU from one member state into another. A claim for return (Art. 5, Para. 1) is available to

the member state which sees the object referred to as its national cultural object. If the owner has acted with due diligence in acquisition, he can claim a reasonable compensation (Art. 9, Para. 1). The right to request return expires one year after the requesting state receives acknowledgment on location of the object and the identity of the possessor or owner and 30 years after the illegal transfer. In case of cultural objects from public collections as well as church objects, the time limitation is extended to 75 years, but it is also conceivable to foresee no limitation at all.

#### b) EC Regulation

The EC Regulation concerns protection of national culture objects from illegal transfer out of the EU by creating a uniform export control system. It makes export of cultural objects from EU territory dependent on the presence of an export permit. If a cultural object which falls under the EC Regulation is exported from the customs jurisdiction of the EC, according to Art. 2 of the EC Regulation, an export license must be delivered by the responsible authorities of the state of origin.

#### c) Relationship between EC Instruments and UNESCO or Unidroit Conventions

The EU was greatly inspired in developing the EC Directive by the first draft of the Unidroit Convention. Hence substantial similarities exist:

- Neither the Unidroit Convention nor the EC Directive are retroactive.
- The two instruments recognize a short relative statute of limitations as well as a long absolute one.
- The concept of reasonable compensation is found in both the EC Directive and in the Unidroit Convention. According to both instruments, reasonable compensation is to be paid step by step in returning cultural objects.
- Finally neither the EC Directive nor the Unidroit Convention addresses the issue of properly relations after successful return. This is determined by the law of the requesting country.

The main difference between the EC instruments and the Unidroit Convention as well as the UNESCO Convention of 1970 is the EC law's limited scope of application. These are seen worldwide as a merely regional solution, while the two conventions have basically universal validity. The material scope of application of EC law is also limited, because it only involves cultural objects which were illegally exported, not with stolen ones.

Other differences exist on:

- scope of application: the EC instruments envision financial thresholds.
- statute of limitation: the EC Directive envisions longer terms or even unlimited ones for illegally exported cultural objects.
- the conditions for return: in the EC Directive's case, the criterion of illegal export is set according to the law of the country of origin. The cultural object's significance for the state affected is only to be considered in relation to the proportionality test foreseen by the EC Treaty Art. 36 and does not evolve explicitly from the EC Directive. Conversely, the criteria set in Unidroit Art. 5 explicitly prevent implementation and recognition of excessive national export bans (especially the condition that the object must be of essential cultural importance for the requesting state). Nevertheless it can be said that the Unidroit Convention and the EC Directive—including the general restrictions of EC Treaty Art. 36—come very close in their objective scope of application and can absolutely be interpreted in a compatible manner in practice.

The “*clause de déconnexion*” in the Unidroit Convention's Art. 13, Para. 3, is to be noted for the relationship of EC law to the Unidroit Convention. This permits contracting states to plan differing regulations where the material scope of application of certain instruments overlaps. Such a regulation occurs in this or similar ways within numerous national treaties. EC law intersects with the Unidroit Convention's Section III (illegal export) but not with Section II (theft). Individual member states can declare that the EC Directive takes priority over the Unidroit Convention's Section III. Since the material scope of application for Section III and the EC Directive are not identical in their coverage, the Unidroit Convention can also be applied in relations between two EU states which are also Unidroit Convention member states as long as cultural objects do not fall under the EC Directive. It would be wrong, it must be stressed, to derive from Unidroit Convention Art. 13, Para. 3, that EC law does not authorize ratification of the Unidroit Convention by the EU member states.

Neither the EC Directive nor the EC Regulation stand in the way of accession to the UNESCO or Unidroit conventions.

## **5. The Situation in EFTA and EU Member States as well as the USA, Canada, and Australia**

To date, 89 countries have ratified the UNESCO Convention of 1970. Many of these states have implemented obligations of the convention by passing laws on protection of cultural objects. In some, these regulations show the broad flexibility which exists for implementing the convention's obligations. Practically everywhere, trading in cultural objects was already subject to the UNESCO Convention's regulations. Many of these laws date back to the turn of the century or even earlier.

### **a) Specific Regulations on Protecting Cultural Objects**

A broad spectrum of solutions is found among specific regulations on protecting cultural objects. Almost all countries regulate export of cultural objects. Switzerland is an exception. No federal regulation recognizes import or export of cultural objects.

Conversely countries such as Great Britain and Germany, in which protection of cultural objects is rather poorly developed, also have a permit system for exporting certain cultural objects. In France, Italy, Spain, and Portugal, protection of cultural objects has been expanded comprehensively: These countries have differentiated systems for controlling export and import of cultural objects. In the EU context, it should also be noted for the record that the EC Regulation has been applied in contrast to other member states: this means that export of a cultural object from EU territory is only permission in agreement with export laws of the state of origin.

The United States issued a series of reservations or gave interpretative explanations when ratifying the UNESCO Convention of 1970. The obligation to control imports was implemented in a differentiated manner based on the significance of object categories and allowed room for supplemental agreements between states. By contrast, Canada adopted the UNESCO Convention of 1970 practically unaltered. It is worth noting in the case of the Canadian solution in particular that imports into Canada always apply as illegal if the object has been exported illegally from a UNESCO Convention of 1970 contracting state.

### **b) General Property Law on Movable**

The possibility to acquire property from non-entitled parties also depends on the strength of good faith. In various countries a wide spectrum of possible solutions can be found: Italy assumes far-reaching recognition of good-faith acquisition by non-entitled parties. Germany, Austria, France, and Switzerland provide for the possibility of good-



faith acquisition by non-entitled parties, whereby Swiss law tends to go beyond Austrian and particularly German law. The common-law nations basically fail to recognize the possibility of good-faith acquisition by non-entitled parties.

c) Position of Various States regarding the UNESCO and Unidroit Conventions

There is no common position of West European nations, North America, and Australia on the issue ratifying UNESCO and Unidroit conventions. On 26 May 1998 the Parliamentary Assembly of the Council of Europe recommended to the Committee of Ministers that it call upon member states to ratify the Unidroit Convention. It remained open for signatures until 30 June 1996 and was signed in Europe by Finland, France, Italy, the Netherlands, Portugal, and Switzerland; the ratification process is also under way in these countries. Even if comments on the status of these processes are not binding, three groups are still forming:

- France, Greece, Italy, Portugal, Spain, the USA, Canada, and Australia have ratified the UNESCO Convention and are open or prepared to ratify the Unidroit Convention.
- Belgium, Denmark, Finland, Ireland, Luxembourg, the Netherlands, Norway, Austria, and Great Britain have not ratified the UNESCO Convention of 1970 but are currently reviewing ratification of the two conventions.
- Germany and Sweden have not ratified the UNESCO Convention of 1970 and hold reservations or reject the idea of ratifying the two conventions.

### **III. Implementing and Applying Both Conventions in Switzerland**

#### **1. The UNESCO Convention of 1970 and Switzerland**

##### a) Bases

The UNESCO Convention of 1970 is not self-executing but requires specific legislation by the contracting parties. Those addressed by the convention are the contracting states and not individual people. The discretionary leeway for legislation is broad; above all the Convention does not obligate contracting states to introduce import and export prohibitions. In deciding on federal or cantonal authorities, it is assumed that the import issue is a federal matter; introducing export control is a cantonal matter. If necessary the Confederation can enact supplementary regulations to implement these cantonal export prohibitions. Other measures reserved to federal law concern cultural objects of significance to all Switzerland.

##### b) Legislative Provisions to Implement the UNESCO Convention of 1970

###### aa) International Cooperation

The convention enacted in Art. 9 obligations for cooperation between states in connection with emergency procedures. A multilateral framework will be created with this process for cases which must be dealt with rapidly and across national borders if the cultural heritage of a contracting state is acutely endangered by archeological or ethnological looting.

A two-step approach is planned in the course of this: In a first step, the procedure is paraphrased in a general abstract standard. In a second step, this procedure is specified in the form of bilateral agreements with requesting states in which objects falling under the request are described precisely. This two-step approach permits obtaining the highest degree of precision and legal security. At the same time the requesting states are held responsible. The initiative for an import agreement must begin with them.

## bb) Transborder Trading in Cultural Objects

### aaa) Import Regulations

Switzerland must not only consider legal factors concerning the issue of import regulations. The effectiveness and feasibility of such import controls for Switzerland must be considered doubtful, not least due to their geographic situation. Hence a global import prohibition which goes beyond that of the UNESCO Convention's Art. 9 is to be avoided.

### bbb) Ban on Acquisition by Museums

The obligation according to the UNESCO Convention's Art. 7 let. *a* to prevent museums from acquiring illegally exported cultural objects can be implemented without any formal basis —by directive in the case of museums with public donors. This applies at the federal level as well as at the cantonal and community levels. Museums with major co-funding or private cultural institutions can be called upon to comply with the ban. If subsidies are provided, conditions can be attached.

### ccc) Return of Stolen Cultural Objects

Swiss property law on movables includes a procedure to restitute objects stolen or which were otherwise taken away against the will of the entitled owner (Art. 934 ff. Swiss Civil Code). Due to the limited material scope of application of Art. 7 let. b (ii) (obligation to restitute cultural property which has been stolen from a museum or similar institution), creation of an independent procedure would only be necessary if the UNESCO Convention of 1970 were ratified alone. If the Unidroit Convention is ratified, an effective and handy instrument would be available to bring about restitution of stolen cultural objects in general.

### ddd) Export of Swiss Cultural Objects

Basically, regulating the export of Swiss cultural objects does not fall within the competence of the Confederation. Exceptions are essential cultural objects of Swiss natural history, *e.g.*, the original of an alliance treaty, but not, *e.g.*, paintings of famous masters. An inventory of cultural objects important to Switzerland as a whole is to be compiled which the Federal Council will incorporate in the form of a legal ordinance and make available to the public. Export of objects in this inventory would only be possible with a permit or not at all.

The possibility of exporting other cultural objects, *i.e.*, the great majority of them, depends on the various cantonal regulations: many cantons have already enacted export regulations for cultural objects; the UNESCO Convention of 1970 already suffices for these cantons today. After ratification of the UNESCO Convention it remains up to the other cantons if they want to legislate in this area or not; in any case, there is no corresponding obligation to do so in the convention.

#### cc) Additional Measures

According to Art. 10 let. *a*, the contracting states obligate antique dealers to keep records of the cultural objects they handle. Introduction of a general obligation for antique dealers to compile a list appears excessive. But since global import control is to be avoided (see above), such a duty to record is justified in selling archeological or ethnological objects. Such a measure should bear in mind the special need to protect these cultural objects which are particularly endangered because of increasing excavation looting.

#### dd) Other Cultural Policy Obligations

The convention's other cultural-policy obligations and general duties regarding education and information can be attended to by government centers based on prevailing law.

#### c) Customs

Switzerland is a classical transit country in the heart of Europe. For this reason, global control of import and export is neither possible, nor does it make sense.

#### aa) Import

The customs procedure permits precise implementation of specific import restrictions based on bilateral export agreements to be enacted under the UNESCO Convention's Art. 9 without burdening commerce with added formalities and placing heavy tasks on customs administration. An object is to be cleared through customs; the customs administration has the option of checking the declaration. If it involves a banned cultural object in the sense of an implementation agreement, it should be turned back if not sequestered.

#### bb) Export

Customs law measures to implement Swiss export prohibitions are not imposed, since most cultural objects of importance to Switzerland as a whole are today under public ownership.

#### cc) Free Ports

Free ports are considered foreign customs territory. The objects stored there are not specifically under the control of the customs administration. Certain sensitive goods may only be stored there with a corresponding permit. For purposes of international transfer, storage in free ports of archeological or ethnological cultural objects which fall under the implementation agreement according to the UNESCO Convention's Art. 9 is handled identically to importation into Switzerland. Hence these objects must be declared and can be controlled under the same conditions as if they were to be imported definitively. Moreover, a legal basis is to be created for mandatory registration if archeological, ethnological, and possibly even other cultural objects should be stored in free ports.

## 2. The Unidroit Convention and Switzerland

### a) Compatibility with Swiss Law

#### aa) Definition of Cultural Objects

For the purpose of defining the term cultural objects, the Unidroit and UNESCO Convention of 1970 use identical descriptions. The Unidroit Convention (as is the case for the UNESCO Convention of 1970) was intended as a global instrument; as such the international breadth of the concept of cultural objects resulted in a correspondingly broad description of the term. The Unidroit Convention encompasses a more broadly or narrowly defined concept of cultural objects depending on whether the cultural object in question was stolen or illegally exported. For the purposes of chapter III, the definition provided under chapter II is significantly limited by the provisions of the Unidroit Convention, Art. 5, para. 3.

Both **Volken** and **Hänni** consider the Unidroit Convention's definition of cultural objects as a concrete expression of the term as understood under Article 1 of the Hague Convention of 1954 and the Hague Protocol of 1954 which has represented valid positive law in Switzerland since 1962. Furthermore, this open definition has found its place among cantonal legislation pertaining to protection of cultural objects.

## bb) Burden of Proof and Good Faith

The plaintiff shall prove theft, illegal excavation, or the illegal export of a cultural object. Rules of evidence regarding the basis for a claim are the same under the Unidroit Convention and Swiss civil law. For theft or illegal excavations this implies that the damaged party must prove the contentious cultural object was in his or her possession or that he or she retained rightful title to the object and that the object was either stolen or illegally excavated. For illegal export, the state that requests return of the item must prove that the specific cultural object was located within its territory and exported illegally.

Only when these facts are successfully established does the burden of proof, under certain circumstances, shift to the defendant. In this case, the defendant must prove that he or she exercised due diligence in the event that the defendant petitions for compensation.

Given this background, we can assess the compatibility of these provisions with Swiss Law as follows:

- **Aubert** concludes in his legal opinion that there is no constitutional duty to observe certain civil law provisions: This includes provisions of civil law pertaining to good faith and establishing good faith which are deeply ingrained within the Swiss legal culture. In other words, they do not represent (implied) constitutional rights, but rather are statutory in nature.
- **Schnyder** believes that under both the Unidroit Convention and Swiss law a person acting in good faith (someone who did not know about the illegal provenance) will be considered as having acted in bad faith when he or she was inattentive; to this extent, both the Unidroit Convention and Swiss law agree. In light of recent federal cases involving trade in antiquities (BGE 122 III 1), Schnyder concludes that the Unidroit Convention and Swiss law differ only in nuance (if at all) with regard to art trading by experienced dealers.

More recent decisions by the Federal Tribunal (BGE 122 III 1) have largely relativized the presumption of good faith under Swiss Civil Code Art. 3, para. 1, for business branches such as the antique trade: in consideration of the type of purchased objects and the expertise required for these types of transactions, the courts have, under certain circumstances, significantly raised the bar of due diligence. In this sense, the system Unidroit provides is neither unknown or new under Swiss law.

For serious art dealers, the rules of Unidroit give concrete expression for the most part to the ethical codices previously established by the associations. For museums, this

represents a consequential elaboration of the code of conduct drafted by the "International Council of Museums" (ICOM).

#### cc) Fair and Reasonable Compensation

The possessor of stolen or illegally exported cultural objects has the right to fair and reasonable compensation when the item is restituted or returned, provided he or she acted in good faith at the time the item was acquired. The Unidroit Convention, however, does not extend retroactively. In other words, the convention does not impugn on any assets of any person who owns or possesses cultural objects at the time the convention enters into force in Switzerland. This raises the question as to whether this provision constitutes a violation of private property rights under the Swiss Federal Constitution, Article 22, upon ratification regarding the restitution or return of such items; to that extent, a report by the Federal Office of Justice determined that the provision would not violate the constitution. A review of the preliminary negotiations leading up to the convention clearly indicates that the provision represents a compromise between those delegations requesting a more comprehensive compensation and groups who demanded restitution without any form of compensation. The term fair and reasonable compensation is intended to provide the courts, that are ultimately responsible for setting the level of compensation, with a certain degree of flexibility:

- **Aubert** considers the obligation to restitute stolen cultural objects (even by good-faith purchasers) as an elementary consequence of guaranteed private property rights. Restitution of a stolen cultural object to the victim is an expression of a more comprehensive understanding of these rights: thus the person from whom the cultural object was stolen is protected. This obligation to restitute the object defines the protection that the owner enjoys at the moment ownership is transferred to him and therefore does not constitute a new restriction to the right of ownership (Swiss Civil Code, Art. 714, para. 2). Fair and reasonable compensation is the appropriate settlement procedure for the good faith purchaser.
- With regard to illegal export, the Unidroit Convention assumes that a state has enacted export regulations for certain cultural objects. If the requirements of the Unidroit Convention's Article 5 ff. are fulfilled, the contracting state from whose territory the item was illegally exported may request return of the cultural object. If the purchaser acted in good faith, then he or she is entitled to fair and reasonable compensation. The obligation to return illegally exported cultural objects does not directly impact on private property rights *per se*, since the convention only calls

for the physical return of the item. The convention does not make provisions for the title of the object following successful return of the object; private property relationships are subject to the law of the requesting state. While it is true that return of the object does impact to a certain extent on the rights of the owner to dispose of the chattel as desired, the title itself is not revoked. **Aubert** considers the provisions on return of illegally exported cultural objects as a possible violation of private property guarantees effectively amounting to a material expropriation of the property. However, the Federal Office of Justice, concluded in its report that in the event of ratification, the process for returning the cultural object would neither represent a formal nor a material expropriation of the property. Public policy (*ordre public*) remains reserved in order to take account of the fact that an application for return of the item leads to a confiscation, an application for return of the item; in this event, the Swiss courts will have the power to decree appropriate measures and impose additional obligations.

In terms of the question of fair and reasonable compensation, location of the forum for adjudicating claims for return or restitution can play an important role:

- For restitution of stolen cultural objects, the Unidroit Convention's Art. 8 calls for non-exclusive jurisdiction at the location of the contentious object. Contracting states to the Lugano Convention allow the plaintiffs to file suit under Art. 5, para. 3, at the location where the object was stolen. For that reason, Switzerland should consider whether to establish through use of an interpretive declaration that fair and reasonable, as a rule, refers to full compensation.
- In contrast to the civil law restitution process for stolen cultural objects, return of cultural objects is a public law process which calls for mandatory jurisdiction of the courts at the location of the illegally exported object. As a public law procedure, the Lugano Convention is not applicable (refer to Art. 1, para. 1 accordingly). On decisions pertaining to return of cultural objects located in Switzerland, Swiss courts will have to exercise jurisdiction.

The process of returning cultural goods under the Unidroit Convention is compatible with private property rights and can be applied in a fashion that is in harmony with them. Swiss courts or authorities can apply the spirit and purpose of the convention while simultaneously considering fundamental principles of Swiss constitutional and civil law.



#### dd) Time Limitations

For theft, the Unidroit Convention provides for an absolute statute of limitations of 50 years or no statute of limitations whereas the latter can be limited through a declaration at the time of ratification to 75 years. These limits are significantly longer than suits involving moveable objects under Swiss civil law. Additionally, these long absolute statutes of limitation are made relative by short statutes of limitations of three years (Article 3, para. 3 as well as Article 5, para. 5).

- **Aubert** concludes that there is no constitutional duty to comply with certain civil law provisions. Therefore, the federal legislator can alter these statutes without amending the constitution.
- **Schnyder** notes that the federal legislator provides for longer statute of limitations and even no statute of limitations for special obligations or in deference to special circumstances (refer to Swiss Civil Code, Art. 521, 533 and in particular Art. 641, para. 2). Rules governing statutes of limitations represent a balance of the protective interests between property owners and commerce. He concludes that, with regard to the statute of limitations, the Unidroit Convention is more advantageous to the injured party than Swiss law.

For illegally exported cultural objects, the Unidroit Convention provides a statute of limitations of no more than 50 years. Swiss law does not specifically have a statute of limitations for illegally transferred objects. However, the legal consequences under Swiss law reach further than under the Unidroit Convention. This is particularly true regarding vindication claims by the owner which are not subject to a statute of limitations; illegal transactions are null and void, and the prescription by adverse possession of inalienable objects is not allowed under Swiss law.

#### ee) Consideration of Foreign Export Provisions

In contrast to the procedure under Art. 3 f. which is based on a civil claim, Art. 5, para. 1 deals with a request to grant international assistance for the enforcement of a right. Such procedures are not new to Switzerland: for example, in the areas of child support and protection of minors, the Swiss legal system has been familiar with such international procedures for quite some time.

Unidroit itself establishes substantive criteria in Chapter III for return or non-return of cultural objects. First, requested authorities do not reach their decision based on their own domestic law or the domestic law of the requesting state. Second, the fact that an object was illegally exported does not alone provide sufficient grounds for the

authorities to decree return of the object: more significant is that the qualitative criterion outlined in the Unidroit Convention, Art. 5 through 7, must also be fulfilled.

**Schnyder** points out that positive Swiss civil law contains an explicit provision in Swiss Civil Code, Art. 6, para. 2, which allows the cantons to limit or even prohibit circulation of certain objects. Furthermore, Swiss law also foresees a category of moveable objects which is either limited in circulation or prohibited from circulation altogether. The legal basis for the request to return an object under Unidroit Chapter III is found in foreign public law export prohibitions. This solution is likewise not foreign to Swiss law: public law prohibitions can at times have civil law implications: under Swiss Law of Obligations, Art. 20, para. 2, a contract of illegal content is null and void whereby a violation of public law can constitute illegal content. **Schnyder** thus determines that for all the specificity of the convention arising from its purpose, a series of solutions and principles have already been materialized under contemporary Swiss civil law.

#### ff) Compatibility with International Economic and Trade Agreements

In general, the Unidroit Convention is also compatible with international economic and trade agreements binding on Switzerland. Under the General Agreement on Trade and Tariffs (GATT), the compatibility is embodied in GATT 94 Art. XX let. f. Under this provision, the contracting states are free to institute measures (free of arbitrariness and legal abuse) to protect their national cultural property. The protective measure expressed in Art. XX let. f represents a real reservation favoring the sovereignty of member states. Compatibility with the Free Trade Agreement Switzerland-EC is derived from FHA Art. 20. In other words, EFTA member states retain the discretionary power to institute measures protecting their cultural heritage.

#### b) Consequences for the Swiss Legal System as a Result of Ratification

The central provisions of the Unidroit Convention (Chapters II and III) are self-executing, requiring no further implementation into domestic law. In spite of this, the legislature should clarify a few points. Under Art. 16, each state can declare which procedure will apply for claims arising from Art. 8:

- for individual claims under the Unidroit Convention's Art. 3 (theft), ordinary civil law remedies are available.
- The same remedies are available for claims under the Unidroit Convention's Art. 5 ff. (illegal export): in order to reach a uniform application of the law, this

approach appears the most reasonable one since, above all, claims involving archeological illegal excavations could also fall under both the Unidroit Convention's Art. 3, para. 2, and Art. 5.

After establishing that there are no legal barriers under Swiss law which would stand in the way of Unidroit ratification by Switzerland, we reviewed what international law and domestic measures may be implemented to ensure that application of the convention is optimally harmonized according to the principles of Swiss law.

#### c) Measures under International Law

Through institution of reservations or declarations, a state may unilaterally exclude or amend the legal consequences of its accession to a convention. Through the vehicle of interpretive declarations, a state does not exclude the legal consequences of a provision; rather the state establishes how it intends to enforce a certain provision of the convention. The Unidroit Convention's Art. 18 explicitly allows for reservations only to the extent that such reservations are expressly provided for in the convention: no such reservations are provided for in the convention. However, the Unidroit Convention does allow for declarations in accordance with the convention.

#### aa) Declarations in Accordance with the Convention

Cultural objects that form an integral part of an identified monument or an identified archeological site or belong to a public collection are not subject to an absolute statute of limitations under the Unidroit Convention's Art. 3, para. 4. However, the contracting state can eliminate the principle of non-limitations through declaration under Art. 3, para. 5: under this provision, an absolute statute of limitations of 75 years (or longer under domestic law) can be applied to claims for return of qualified cultural objects. Claims for restitution of stolen cultural objects must be limited through declaration in terms of Unidroit Art. 18 to 75 years for good-faith purchasers (bad-faith purchasers are not protected, as under Swiss Civil Code, Art. 936). Claims for restitution of inalienable archival objects are not subject to time limitations (refer to Federal Act on Archives, Art. 20).

#### bb) Interpretative Declarations

Switzerland should seriously consider making a series of interpretative declarations to the Unidroit Convention; this would provide Switzerland the advantage of clarifying ambiguous formulations or making use of interpretative or discretionary power to

Switzerland's benefit. Interpretative declarations establish decision-making guidelines for the authorities and the courts, subsequently increasing the legal certainty of the law for judges, authorities, claimants, and trade in general.

d) Domestic Law and Related Measures

aa) Informational Options

The Unidroit Convention is intended to ensure compliance of due diligence rules when purchasing cultural objects. The convention demands that purchasers of cultural objects actively clarify the legal origin and the power of disposal on the part of the seller. Providing information on the convention in general, export regulations on countries of origin as well as stolen cultural objects, are extremely important in regard to the entry into force of the convention. Additionally, a number of registers (*Art Loss Register, Trace, etc.*) already exist and are freely accessible via the Internet. We should encourage the widest possible dissemination of information at all levels (federal, cantonal) for all circles concerned (museums, trade, collectors in a broader sense) on the consequences of Unidroit Convention ratification. The Federal Office of Culture could achieve this goal by disseminating information sheets and/or organizing conferences on the subject.

bb) Creation of an Information Contact Bureau

In order to simplify access to sources of information, we recommend creation of an information contact bureau. This office would query publicly accessible registers for a modest fee on behalf of the potential purchaser to investigate whether the questionable cultural object has been registered as stolen. For archeological or ethnic objects where there is cause to believe that the item was taken from an illegal excavation, the bureau would consult or check excavation records in the respective cultural realm to review if any export restrictions were violated. Furthermore, the contact bureau should gather and provide information on export regulations of Unidroit Convention member states including what any required export documents would have to look like. The purchaser (or art dealer) would only have to submit one request. The purchaser would then, in the event of a negative answer (*i.e.* cleared for purchase), retain solid evidentiary documentation. As such, this simplified and non-bureaucratic procedure would sufficiently cover a portion of the relevant criteria for any review of necessary diligence required of potential purchasers under the Unidroit Convention's Art. 4, para. 4, or Art. 6, para. 2. Considering the political significance of the Unidroit Convention, the Federal

Government should be involved as a responsible agency in funding such a bureau in conjunction with the Associations of Art Dealers, museums, and collectors. This approach would ensure that the bureau enjoys the independence necessary for its purposes.

### **3. EC Law and Switzerland**

It is at least theoretically possible to make the changes necessary to adopt the content of the EC Directive by enacting federal legislation. These changes would oblige Switzerland to return to EC member states any cultural objects that illegally make their way into Switzerland in the spirit of the EC Directive. However, such actions would for various reasons appear unsatisfactory if not altogether meaningless. One missing issue is the question of reciprocity: In the absence of bilateral agreements, EC member states would not be obligated to return illegally exported Swiss cultural objects. The other consideration is lack of a common institutional framework, as the European Court of Justice has, in particular, no power to review official protective provisions.

As to giving effect to the EC Regulation to the Swiss legal system, for example, by enacting federal legislation requiring export approval for export of cultural objects from the Swiss customs zone, the question arises whether or not a formal adjustment to community export regulations is appropriate when the existing borders between the two markets remain intact. Again, there is a lack of reciprocal obligations which can only be mitigated through a bilateral agreement.

Finally, in light of the fact Switzerland could accede to two international agreements in this area, it is doubtful that the EU would seriously consider another Swiss proposal to open a new round of negotiations.

### **4. Overriding Public Interests**

We must also review what superior public interests are covered by ratification of the UNESCO and Unidroit conventions.

#### **a) Cultural Policy**

Increasing globalization enhances the importance of the cultural identity of individual countries. Switzerland is also concerned about protecting and nurturing its cultural heritage. It was in this spirit that the Federal Council decided to sign the Unidroit Convention in Rome in June of 1996. In terms of cultural policy, the agreement encourages international exchange, benefiting all participants provided they adhere to

the principles of reciprocity, equality, and cultural self-determination. Trust must be established in order to enable exchanges in a fair manner and without limitations. Under the current environment, international cooperation is one of the best means of achieving these goals.

As the titular holders of cultural sovereignty, the cantons play an important role. Several cantons have already established guidelines within their jurisdiction governing moveable cultural objects, and in particular, export regulations; it is already a cantonal responsibility today to enact such regulations; neither the UNESCO Convention nor Unidroit Convention obligates the cantons to take such action. The problem confronting cantons that have already enacted export regulations is the ease with which these regulations can be circumvented. Therefore, cantons should be provided the means to gain international acceptance of their protective measures regarding cultural objects.

Above and beyond superior public interests, there are other interests in protecting cultural objects that are of paramount practical importance for international transfer of cultural objects.

- It is in the self-interest of museums and collections to acquire only cultural objects of an impeccable provenance.
- The legal trade is a mandatory prerequisite for circulation of objects among public and private art collections in Switzerland. The legal trade has an interest in differentiating itself from illicit trade through clear legal standards.
- Archeology and ethnology are interested in regulation: the raising costs of cultural objects and the corresponding opportunity for profits is encouraging looting of culturally rich Mediterranean countries, Africa, Asia, and Latin America. Illicit trade in archeological goods sparks illegal excavations which in turn destroys critical pieces of the archeological puzzle.

#### b) Foreign Policy

International law and harmonization of law among nations have achieved preeminence as a result of internationalizing both economy and society. At the same time, and to some extent counter to regional and global efforts at integration, questions of cultural identity, cultural understanding among civilizations, as well as multicultural societies have emerged as important topics of international policy.

- Switzerland feels obligated out of a sense of international solidarity to return foreign cultural objects that are illegally acquired or exported illegally from the

country of origin to Switzerland. The often repeated viewpoint that cultural objects are merely goods whose trade should not be impeded and therefore should not be regulated was made relative during the 1960s when Switzerland ratified the 1954 Hague Convention to protect cultural property in the event of armed conflict. With its ratification, Switzerland signaled that cultural objects are irreplaceable individual objects requiring special protection — in contrast to other goods. Therefore, the international regulation of trade in cultural objects during peacetime represents an extension of this principle.

- As a trade nation, Switzerland has consistently endeavored to establish multilateral, legally binding rules governing international trade in goods and services.
- Finally, Switzerland can only play a decisive role in this field to the extent that it is itself integrated into an international system.

#### c) Legal Policy

Among legal policy considerations that would tend to justify ratification of both conventions, protecting existing owners of cultural objects is the most important. At first glance, this argument would appear to create a contradiction: increasing protection of the previous owner occurs at the expense of the new owner, who acquires the object in good faith from a person without title. However: protecting the newly acquired title of the good-faith purchaser is one thing; the opposite side of the coin is that the previous owner is confronted with the loss of the object without compensation. From our point of view, it goes without saying that the title of the good-faith purchaser is not necessarily entitled to more protection than the title of the previous owner. More important is that decisions are made based on a balance of interests. The Swiss legislator has undertaken a general balance of interests regarding moveable objects. Cultural objects are (as a rule) unique, irreplaceable goods: however, there is much to be said for a further refinement tipping the scales in favor of increased protection for the previous owner.

In the international arena, harmonized regulations play an important role in improving legal security and predictability.

For the return of illegally exported cultural objects, the interest of the state to protect its cultural heritage from looting overrides protection of property rights. Increased cooperation among states is the most efficient answer to the rapidly advancing internationalization of life: cooperation appears to be the only adequate response to cross-border problems. Examples of such successful cooperation are increasing; let us

simply mention examples here concerning international family and parent-child relationships or judicial assistance in civil and criminal matters.

#### d) Criminal Prosecution

The profit margins in illicit art trade are enormous due to uniqueness and inability to reproduce cultural goods. Switzerland is the fourth largest market for art behind only the U.S., England, and France. There are numerous cases where the trade route for cultural objects of dubious origin made its way through Swiss territory. Switzerland is in fact in danger of becoming an even more important hub for illicit trade in cultural objects. The raising number of requests for criminal assistance directed at Switzerland for stolen or illegally exported cultural objects provides ample evidence of this growing phenomenon. In essence, illegally acquired cultural objects must be laundered — similar to money laundering. In other words, people undertake activities that thwart investigations of origin or tracing and confiscation of questionable cultural objects.

Criminal law is unfortunately limited in a practical sense in its ability to combat the problem. While it is true that criminal law does enjoy unquestionable advantages regarding the search for stolen objects or precautionary seizure of the same, criminal law is less capable of ensuring restitution of cultural objects to their rightful owner: there are simply too many loopholes, such as when a criminal act cannot be proven, the thief is unknown, or when other reasons exist that prevent authorities from obtaining a conviction.

The UNESCO Convention of 1970 and especially the Unidroit Convention provide the necessary instruments to supplement criminal law or international judicial assistance. In consideration of criminal prosecution, the Unidroit Convention appears to be the proper vehicle to fill the gaps between criminal and civil law and investigating and returning stolen cultural objects. The primary advantage of the Unidroit Convention is its deterrent effect; the Unidroit Convention is intended to apply to abuses of law by extending its legal impact to resale of cultural objects. Thus the Unidroit Convention impedes the sale of cultural objects of dubious origin and would reduce the attractiveness of Swiss territory for illicit art trade.



## **5. Consequences of an Isolated Swiss Approach in Europe**

### **a) Switzerland as the Sole European Unidroit Convention Member State**

If Switzerland were the only European state to ratify the Unidroit Convention, it would achieve a comparable regulatory regime within the European environment for illegally exported cultural objects. The Unidroit Convention's Chapter III creates a regime that is comparable in technical terms to the EC Directive. The Unidroit Convention is only applicable when the cultural object either originates or is located in a contracting state. In the event that Switzerland is the sole European contracting state to the Unidroit Convention, claimants would not be able to seek relief if the cultural object were located in a non-Unidroit Convention state. However, we should note that it is highly unlikely that Switzerland would remain the sole Unidroit Convention state in Europe, since a number of states are currently reviewing the convention for ratification.

### **b) Failure by Switzerland to Ratify the UNESCO and Unidroit Conventions**

It is considerably more difficult to calculate and quantify the consequences should Switzerland choose not to ratify UNESCO and Unidroit conventions. Under these circumstances, Switzerland would remain the only European country without any adequate regulation in this area. We can reasonably conclude that Switzerland would become more attractive as a hub for illicit trade of stolen and illegally exported cultural objects. The greater the gap in regulation, the more attractive Switzerland becomes. Finally, we can also reasonably expect that a growing number of shady transactions will not promote a positive image of Switzerland abroad.

Furthermore, Switzerland's position will almost certainly be influenced by development of legislative activities on the part of the EU and its member states. One likely scenario is the probability that pressure will grow on non-member states to provide some sort of minimum standards for the trade of cultural objects once the EC Directive has been implemented by all of its member states.

## **IV. Conclusions**

Implementation of the UNESCO and Unidroit conventions in Swiss law are presented in the following sections.

The premise is ratification of both the UNESCO and Unidroit conventions with enactment of corresponding introductory legislation. Ratification of only the Unidroit Convention or only the UNESCO Convention of 1970 (each with introductory legislation), assumption of EC law, and a solution on a purely autonomous basis were also reviewed. The advantages and disadvantages of each point are briefly outlined.

### **1. Ratification of the UNESCO and Unidroit Conventions**

The premise of considerations is ratification of both the UNESCO and Unidroit conventions. It is shown in detail that problems in international transport of cultural objects could be tackled effectively with the Unidroit Convention. Ratification of the UNESCO Convention of 1970 is especially justified because it would create a multilateral framework for international cooperation in the area of protecting cultural objects. Since the UNESCO Convention of 1970 is not self-executing, it requires introductory legislation to be implemented; national procedural rules necessary to implement the Unidroit Convention can be integrated into such a law.

Legislative bases need to be established by adaptation of provisional and protective measures, according to the UNESCO Convention's Art. 9. This procedure creates a multilateral framework for cases in which the cultural heritage of a contracting state is acutely endangered by archeological or ethnological looting. A two-step procedure is planned in this regard: paraphrasing the procedure in a general norm (step 1) and specifying in the form of bilateral agreements with the requesting countries (step 2). This two-step procedure permits a high degree of precision and legal security to be achieved.

A ban on acquisition of stolen cultural objects can be implemented by directive for museums with public funding without a formal legislative basis. This applies at the federal level as well as at the cantonal and community levels. Museums with important joint financing by public funds or private cultural institutions can be called upon to

comply with the ban: if subsidies are provided, related conditions can be linked to their use.

In accordance with the distribution of responsibilities foreseen by the Federal Constitution, the cantons are basically responsible for designating which cultural objects cannot be exported; about half the cantons have appropriate regulation in one way or another. Cultural objects of significance to all Switzerland are compiled in an inventory. Since most of these objects are in public custody, customs law measures to carry out such regulations should be avoided for the time being.

Procedural and organizational regulations are a priority of enacting legislation for both conventions. Among these are the authorities and courts responsible for arranging restitution according to the Unidroit Convention and establishing reasonable compensation. Also to be set up is the cooperation of Swiss federal officials with domestic and foreign officials (exchange of information, official assistance, data protection, etc.).

Imparting information deserves special importance: General information on the conventions and their consequences for trade, collectors, museums, and others involved can be assumed by the Federal Office of Culture. An information contact bureau should be created so that acquirers or dealers can have a simple and unbureaucratic means of covering an important part of the criteria for due diligence requirements in acquiring a cultural object. In view of the Unidroit Convention's political significance, the Confederation should work cooperatively with the Association of Art Dealers, museums, and collections in funding such an information contact bureau. This would also assure the independence required.

<b>Advantage</b>	Comprehensive instrument against abuses in international transfer of cultural objects by means of a convenient instrument in case of theft, looted excavations, and illegal export (the Unidroit Convention) and by involvement in a global system to protect cultural objects (the UNESCO Convention of 1970). No retroactivity. Greater standing for victims of theft.
<b>Disadvantage</b>	Weaker standing for good-faith acquirers.

**In regard to comprehensive regulation of the two conventions, the working group concluded that this is the best solution.**

## 2. Ratification of the Unidroit Convention Only

If the Unidroit Convention alone would be ratified, Switzerland would gain an effective instrument to deal with international dealing in stolen and illicitly exported cultural objects. However, refusal to ratify the UNESCO Convention of 1970 would have the disadvantage of providing no framework for multilateral international cooperation. In this case, imparting information would also have to be built up as an additional step.

<b>Advantage</b>	Effective and self-executing instrument against abuses in international transfer of cultural objects. No retroactivity.
<b>Disadvantage</b>	The framework for international cooperation with 89 nations at present would be lacking without the UNESCO Convention of 1970.

## 3. Ratification of the UNESCO Convention of 1970 Only

If the UNESCO Convention of 1970 were to be ratified alone, Switzerland would become involved in a global system to protect cultural objects. Above all, a framework for multilateral cooperation would become available. It is indisputable that the instruments of the UNESCO Convention alone are insufficient for restitution or return of stolen and illicitly exported cultural objects. Measures to control import and export of cultural objects stand in the forefront in connection with implementation. In addition, if the Unidroit Convention were not ratified at the same time, these measures' material scope of application would have to be expanded considerably, because no convenient instrument would be available in the convention to regain stolen and illicitly exported cultural objects. Measures to control trade in art and antiques would also have to be expanded.

<b>Advantage</b>	Involvement in a global system to protect cultural objects. Framework for multilateral cooperation. No retroactivity.
<b>Disadvantage</b>	Without the Unidroit Convention, the control measures of the UNESCO Convention of 1970 would need to be intensified.

## 4. Adoption of EC Law

The possibility was also considered of recasting both the content of the EC Directive and that of the EC Regulation in a federal law.

On one hand, such a law would obligate Switzerland to EU member states in the sense of the EC Directive to return cultural objects imported illicitly into Switzerland. However, such a regulation seems incomplete in various ways if not even meaningless. For one thing, it completely lacks reciprocity. Thus the Swiss and EC legal regulation would indeed be harmonized but not made reciprocal; mutual recognition would be lacking. The joint institutional framework would also be missing.

On the other hand, Switzerland would obligate itself in the sense of the EC Directive to request an export permit to export cultural objects from Swiss customs jurisdiction. Here too the question must be raised if formal adaptation to the EC export regulation is appropriate when domestic borders between the two markets remain the same for trading goods. The reciprocity of obligations is lacking once more.

<b>Advantage</b>	Adaptation to the EC law (compatibility with Europe). Switzerland would therefore become involved in the European system of protecting cultural objects.
<b>Disadvantage</b>	No reciprocity with the EU.

## 5. Autonomous Solution

The Working Group also considered the possibility of finding solutions without ratifying either convention, simply working within the framework of Swiss law. It concluded that this approach makes no sense and thus should not be pursued further.

The first argument against an autonomous solution is that no reciprocity can be achieved with other countries. Even if Switzerland enacted regulations on its own which approached those of the conventions, it could not call for protection of its property vis-à-vis third states. These rules would bind Switzerland but not third states. An autonomous solution can be defended if the basis of national law can be developed into an effective legal instrument. An instrument which prevents or seeks to make retroactive the theft of cultural objects (or looting of excavation sites) will necessarily delay weighing the interests of good-faith acquirers and previous owners in favor of the latter. The search for effective regulation based on autonomous law will lead to solutions which more or less imitate the content of the two conventions. Hence the same questions arise with this complex problem in regard to current regulation in Switzerland as emerged earlier with the two conventions. Above all, an autonomous solution could not simply ignore foreign export restrictions, because the legal policy interest of a state in

preserving its cultural heritage is not so much less important than that of protecting private property.

<b>Advantage</b>	Made-to-order regulation for Switzerland.
<b>Disadvantage</b>	No reciprocity with other countries. An effective autonomous regulation will lead to solutions which more or less imitate the content of the two conventions

**V. Answers**

Questions raised by the Federal Council to the interdepartmental working group can be answered as follows:

**To Question 1**

What is the relationship between the UNESCO Convention of 1970 and the Unidroit Convention?

1. The Unidroit Convention complements the UNESCO Convention of 1970 and realizes its goals through comprehensive minimum standards on restitution and return of cultural objects. It guarantees the bases valid in international private and procedural law for immediate implementation of the principles anchored in the UNESCO Convention of 1970.
2. The purpose and scope of application of the two conventions are in essential harmony, whereby the instrument each uses is different. The two conventions thus complement each other but function independently.
3. The circle of state parties to the two conventions only overlaps partially.

**To Question 2**

How do the European countries and the USA regulate international transfer of cultural objects, and what is the position of these states toward the two conventions?

1. All European countries studied have had regulations on transfer of cultural objects — some for a long time. There is a great difference in terms of comprehensiveness, yet most countries regulate export. The EC Directive and EC Regulation apply for EU member states in regulating illicit export of cultural objects with which the UNESCO Convention of 1970 and Section III of the Unidroit Convention are comparable.

2. Most of these countries are examining ratification of one or both conventions, and are open or positive to them.
3. The United States has ratified the UNESCO Convention of 1970 but avoided enacting an export regulation in implementing it; import control was restricted to a few especially important categories. The United States appears open to ratifying the Unidroit Convention but wants to wait and see what other art-dealing nations do.

### **To Question 3**

What is the relationship of the two conventions to EC law, and what consequences would an isolated approach by Switzerland bring about?

1. The EC Directive concerns return of an illicitly exported cultural object. To this extent it is comparable to Section III of the Unidroit Convention. The Unidroit Convention goes further than it in regulating even restitution of stolen and illegally excavated cultural objects.
2. EC instruments do not prevent EC member states from acceding to both the UNESCO and Unidroit conventions.
3. If Switzerland were the only European nation to ratify the Unidroit Convention, it would attain a regulatory status which is prevailing law in Europe today. As a consequence of rejecting any regulation of trading in cultural objects, it can be predicted with some confidence that the importance of Switzerland as a hub for trade in cultural objects of dubious origin would increase.

### **To Question 4**

What would be the consequences of ratifying the UNESCO Convention of 1970, and what legal adaptations would be necessary to implement it?

1. The UNESCO Convention of 1970 is not self-executing: It requires implementation by domestic law.
2. Implementation of the UNESCO Convention of 1970 demands enacting legislation (independent federal law). This affects measures against acquisition of illicitly exported cultural objects by museums as well as legal regulation of the urgency



procedure according to the UNESCO Convention's Art. 9 (import regulations for archaeological and ethnological objects from especially endangered states).

3. Creation of a global import control mechanism for cultural objects, an independent procedure for restitution of certain stolen cultural objects, and comprehensive regulations for antiques and art dealing are to be avoided. This assumes simultaneous ratification of the UNESCO and Unidroit conventions.

**To Question 5**

What would be the effects on the Swiss legal order of ratifying the Unidroit Convention, and what overriding public interests cover them?

1. Indeed the Unidroit Convention is not in accordance with all the rules of prevailing Swiss law, but from a legal standpoint it indicates no special features which would conflict with ratification. The Unidroit Convention is not retroactive. Neither its concept of cultural objects nor the way it regulates burden of proof is unknown to Swiss law. The concept of reasonable compensation is a flexible solution which complies with the Swiss Federal Constitution, Art. 22, para. 3. Consideration of foreign export regulations and the statute of limitations are in harmony with Swiss law. There is also accord with international trade and economic agreements. Thus the Unidroit Convention is compatible with the federal constitution and the principles of Swiss law.
2. The Unidroit Convention is self-executing and basically needs no legislation to implement it within domestic law. Only specific procedural and responsibility questions need to be regulated by Parliament.
3. National, cultural, foreign, and legal policy reasons as well as Swiss prosecution interest speak for Unidroit Convention ratification. This would cover the federal (and cantonal) need to act on international transfer of cultural objects.

**To Question 6**

What international and national legal measures can be taken to assure that the Unidroit Convention is applied so as to harmonize as much as possible with the principles of Swiss law?

1. At the level of international law, a declaration is worth considering in keeping with the Unidroit Convention's Art. 3, para. 4 and 5, to restrict time limitations to 75 years for especially qualified cultural objects (or to waive a limit for objects in the Federal Archives).
2. It should be examined seriously if Switzerland, in case of ratifying the Unidroit Convention, should also issue a number of interpretative declarations to the convention.
3. Imparting information on the origin of a cultural object merits major importance: creation of an information contact bureau is planned as an added measure for the Unidroit Convention in order to enable simple and handy access for those interested in stolen cultural objects and foreign export regulations.

**To Question 7**

With what domestic and foreign policy measures could the goal of the conventions be realized in case Switzerland should decide not to ratify them?

1. Autonomous regulation must more or less orient itself to the convention solutions. Yet the central elements of international cooperation and above all reciprocity would be lacking.
2. The possibility of realizing the goals on an autonomous legal basis was examined and discarded as not viable.
3. Accession to the EC instruments would be impossible; an autonomous assumption would lack reciprocity.

**To Question 8**

What special legal precautions could be taken in terms of customs law regarding the needs of trading in cultural objects?

1. Procedures for clearing customs allow precise implementation of bilateral export agreements in the sense of the UNESCO Convention's Art. 9 (specific restrictions on importing). Cultural objects of archeological or ethnological interest in the sense of such export agreements are to be turned back if not sequestered at import points.
2. There is no pressing reason to enact customs law measures to implement Swiss export prohibitions.
3. Storage in free ports of cultural objects of archeological or ethnological interest which fall under an export agreement according to the UNESCO Convention's Art. 9 are handled identically to goods imported through domestic customs. There is also a registration duty for storage of such objects.

**Appendix: Synoptic Comparison of UNESCO-Convention 1970, Unidroit-Convention, EC Directive, and EC Regulation**

	<b>UNESCO 1970</b>	<b>Unidroit-Convention</b>	<b>EC Directive</b>	<b>EC Regulation</b>
<b>Content</b>	Formulation of basic principles on international protection of cultural objects  <i>Minimum standards to prevent illegal trafficking in cultural objects</i>	<i>Standardization of conditions</i>  <ul style="list-style-type: none"> <li>• on return of stolen or illegally excavated cultural objects</li> <li>• on restitution of illegally exported cultural objects</li> </ul>	Standardization of conditions  <ul style="list-style-type: none"> <li>• on restitution of illegally exported cultural objects: priority lies on harmonizing premises of technical procedure for restitution claims</li> </ul>	<i>Regulation of export of cultural objects from EU territory</i>
<b>Category</b>	predominately <i>public law</i>	<i>Private law (partially public law)</i>	<i>Public law</i>	<i>Public law</i>
<b>Character</b>	non-self-executing	<i>self-executing (basically)</i> certain enacting measures needed for procedure and organization	<i>non-self-executing</i>	<i>self-executing</i>
<b>Terminability</b>	<i>possible</i>	<i>possible</i>		
<b>Member states</b>	<i>ratification/accession: 89 countries</i>  among them Italy, Spain, France, USA, Canada, and Australia  [ No signature possible]	<i>ratification/accession: 7 countries</i>  Lithuania, Paraguay, Peru, Romania, Hungary, China, and Ecuador (entered into force on 1 July 1998)  <i>Signature: 22 countries</i>	<i>EU</i>  Not all EU member states have implemented the EC Directive.	<i>EU</i>
<b>Personal scope of application</b>	The convention obligates <i>contracting states</i>	Requests by the <i>owner</i> can be made for return of stolen cultural objects (either by states or natural/legal persons)  Illicitly exported cultural objects can only be requested back by <i>contracting states</i> .	Illicitly exported cultural objects can only be requested back by <i>EU member states</i> .	The EC Regulation obligates EU member states  Export of cultural objects from EU territory requires an <i>export permit</i> from responsible authorities of the state of origin.

	<b>UNESCO 1970</b>	<b>Unidroit-Convention</b>	<b>EC Directive</b>	<b>EC Regulation</b>
<b>Material scope of application</b>	<p>Applicable to all cultural objects which fall under a category in Art. 1 (general definition): objects with religious or secular character which are meaningful for archaeology, prehistory, history, art, literature, or science.</p> <p>The UNESCO basis of duty to return stolen cultural objects (Art. 7 lit. b (ii)) if they concern objects listed as inventory and are part of a public or religious collection.</p>	<p>Applicable to the same cultural objects as UNESCO (appendix to Unidroit is identical to UNESCO Art. 1)</p> <p>The basis of duty to return is extended to <i>all stolen or illegally excavated</i> cultural objects.</p> <p>Additional conditions according to <i>Unidroit</i> Art. 5, Para. 3, must be fulfilled for restitution of illicitly exported cultural objects (<i>restricted scope of application</i>: the requesting state must prove that a certain cultural object is of <i>essential cultural significance</i> to it).</p>	<p>Applicable to all cultural objects categorized by law of the state of origin as a <i>national cultural object</i> in the sense of EC Treaty Art. 36 and which correspond to one of the <i>conditions detailed in the appendix</i>:</p> <p>The appendix is divided into two paragraphs:</p> <ul style="list-style-type: none"> <li>• description of 14 <i>categories</i> of cultural objects</li> <li>• <i>data on value limitations</i> in ECUs which apply for the categories</li> </ul>	<p>Applicable to the same cultural objects as the EC Directive (identical appendix)</p> <p>Export of objects with <i>artistic, historical, or archeological value</i> only possible in <i>conformancy</i> with <i>national export regulations</i> of the <i>member states</i> concerned</p> <p>No export permit necessary for cultural objects of archeologically or scientifically restricted value (<i>trifling clause</i>)</p>
<b>Temporal scope of application</b>	<i>No retroactivity</i>	<i>No retroactivity</i>	<i>Transfer from 1 January 1993</i>	<i>Export from 1 January 1993</i>