

JUSTITIA ET PACE
INSTITUT DE DROIT INTERNATIONAL

Session of Basel - 1991

**The International Sale of Works of Art from the Angle
of the Protection of the Cultural Heritage**

(Twelfth Commission, Rapporteur : Mr Antonio de Arruda Ferrer-Correia)

(The French text is authoritative. The English text is a translation.)

The Institute of International Law,

Considering the increasing importance given by international society and by national or regional communities to the protection and preservation of the cultural heritage ;

Considering that every country has the right and the duty to take measures to preserve its cultural heritage ;

Considering that in a number of cases such measures entail restrictions on the free movement of works of art which are considered integral elements of the cultural heritage of the country ;

Considering that such measures, while being justified by the need to safeguard this heritage, should be reconciled as far as possible with the general interests of the international trade of works of art ;

Considering that such measures, which interfere with the export of works of art, should be justified by the general interest in protecting the national cultural heritage or the common cultural heritage of international society ;

Considering it desirable that measures to protect the cultural heritage which are in force in the country of origin of the work of art be recognized in other countries, in particular in those in which such property is actually located ;

Convinced that it is opportune to propose to States guidelines for the development of their internal law, including rules of private international law, governing the subject matter with a view to ensuring adequate protection of other interests involved,

Underlining that this Resolution is without prejudice to situations which have occurred prior to its adoption,

Reserving the application of the proper law of the contract to contractual claims which the buyer may have against the seller,

Recalling its Resolutions of Wiesbaden (1975) on the Application of Foreign Public Law and of Oslo (1977) on Claims Based by a Foreign Authority and by a Foreign Public Agency on Provisions of its Public Law,

Adopts the following Resolution :

Article 1

1. For the purpose of this Resolution :

a) a "work of art" is a work which is identified as belonging to the cultural heritage of a country by registration, classification or by any relevant internationally accepted method of publicity ;

b) "country of origin" of a work of art means the country with which the property concerned is most closely linked from the cultural point of view.

2. This Resolution relates to sales concluded before or after the property has been exported from the territory of the country of origin in breach of the non-retrospective legislation of the latter on the export of cultural property.

3. This Resolution applies to all future cases where a work of art has been stolen or otherwise taken away illegally from its owner or holder, or illegally exported.

Article 2

The transfer of ownership of works of art belonging to the cultural heritage of the country of origin shall be governed by the law of that country.

Article 3

The provisions of the law of the country of origin governing the export of works of art shall apply.

Article 4

1. If under the law of the country of origin there has been no change in title to the property, the country of origin may claim, within a reasonable time, that the property be returned to its territory, provided that it proves that the absence of such property would significantly affect its cultural heritage.

2. Where works of art belonging to the cultural heritage of a country have been exported from the country of origin in circumstances covered by in Article 1, the holder may not invoke any presumption of good faith. The country of origin should provide for equitable compensation to be effected to the holder who has proved his good faith.

3. For the purposes of paragraph 2, a holder in good faith is a person who at the time the property was acquired was unaware of, and could not reasonably be expected to be aware of, the defect in title of the person disposing of such property, or of the fact that the property had been exported in breach of the provisions of the country of origin on export. In case of gift or succession, the holder may not enjoy a status more favourable than that of the previous holder.

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(3 September 1991)