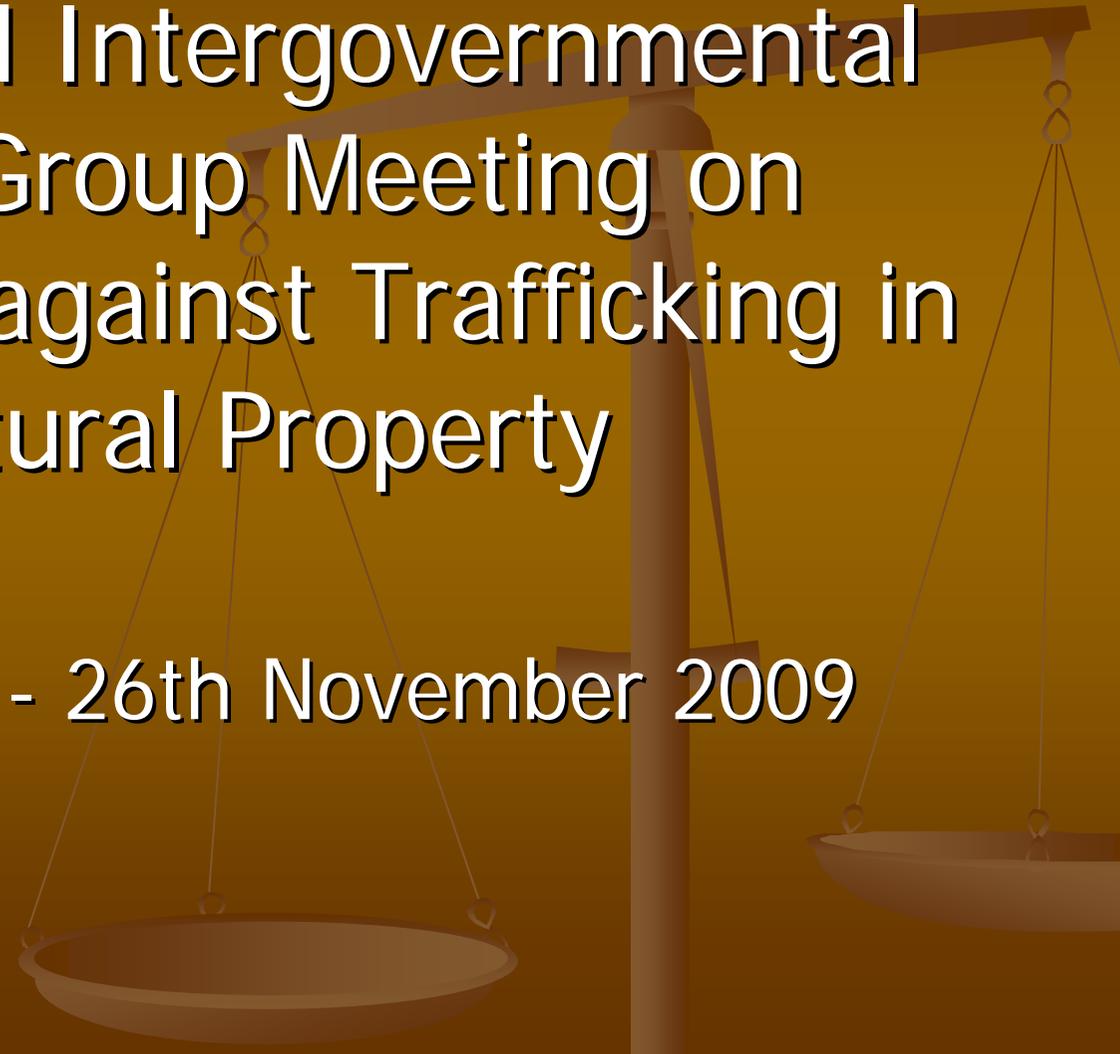


# UNODC



## Open-ended Intergovernmental Expert Group Meeting on Protection against Trafficking in Cultural Property

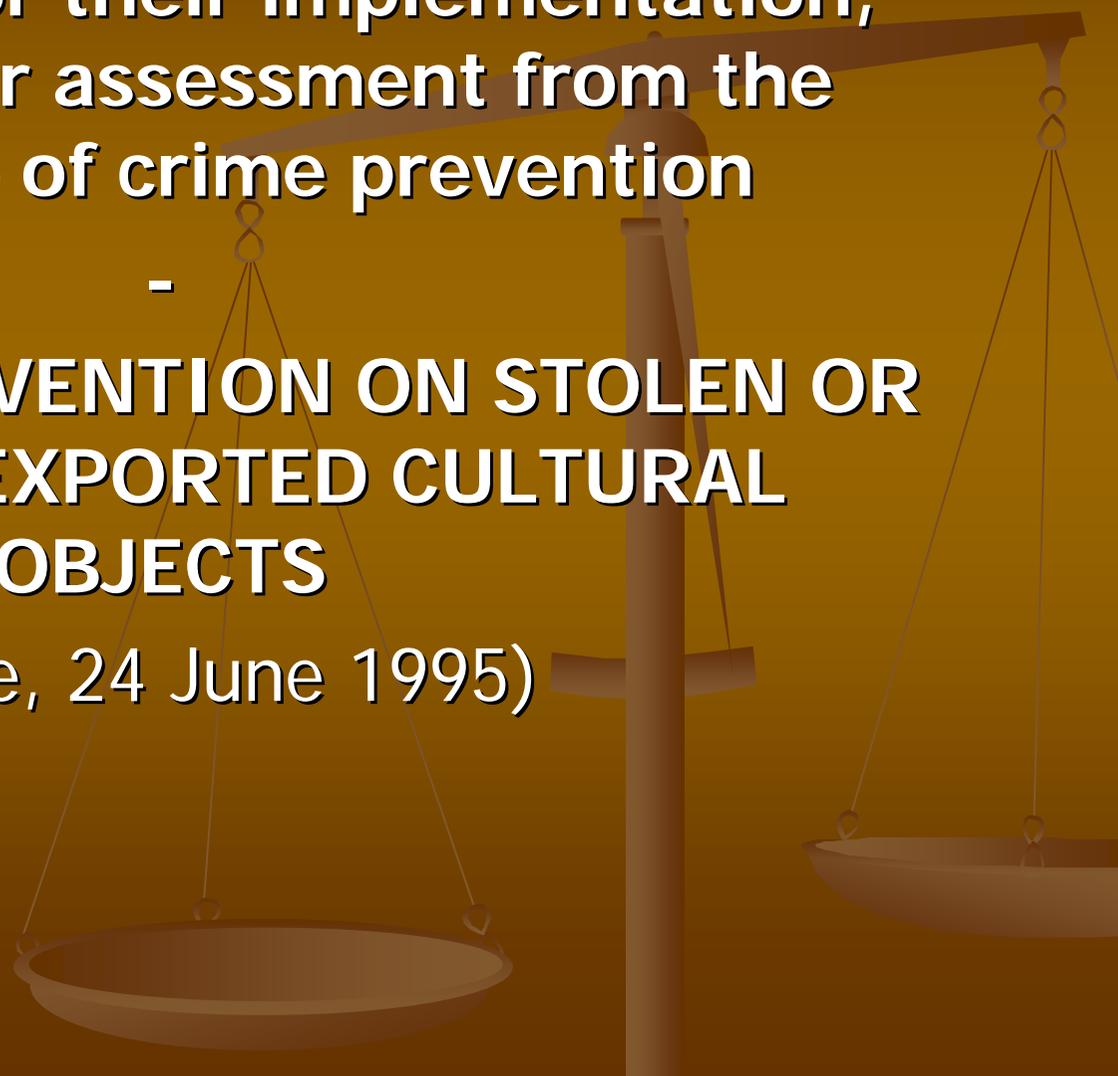
Vienna, 24th - 26th November 2009

**Existing international instruments and mechanisms for their implementation, including their assessment from the perspective of crime prevention**

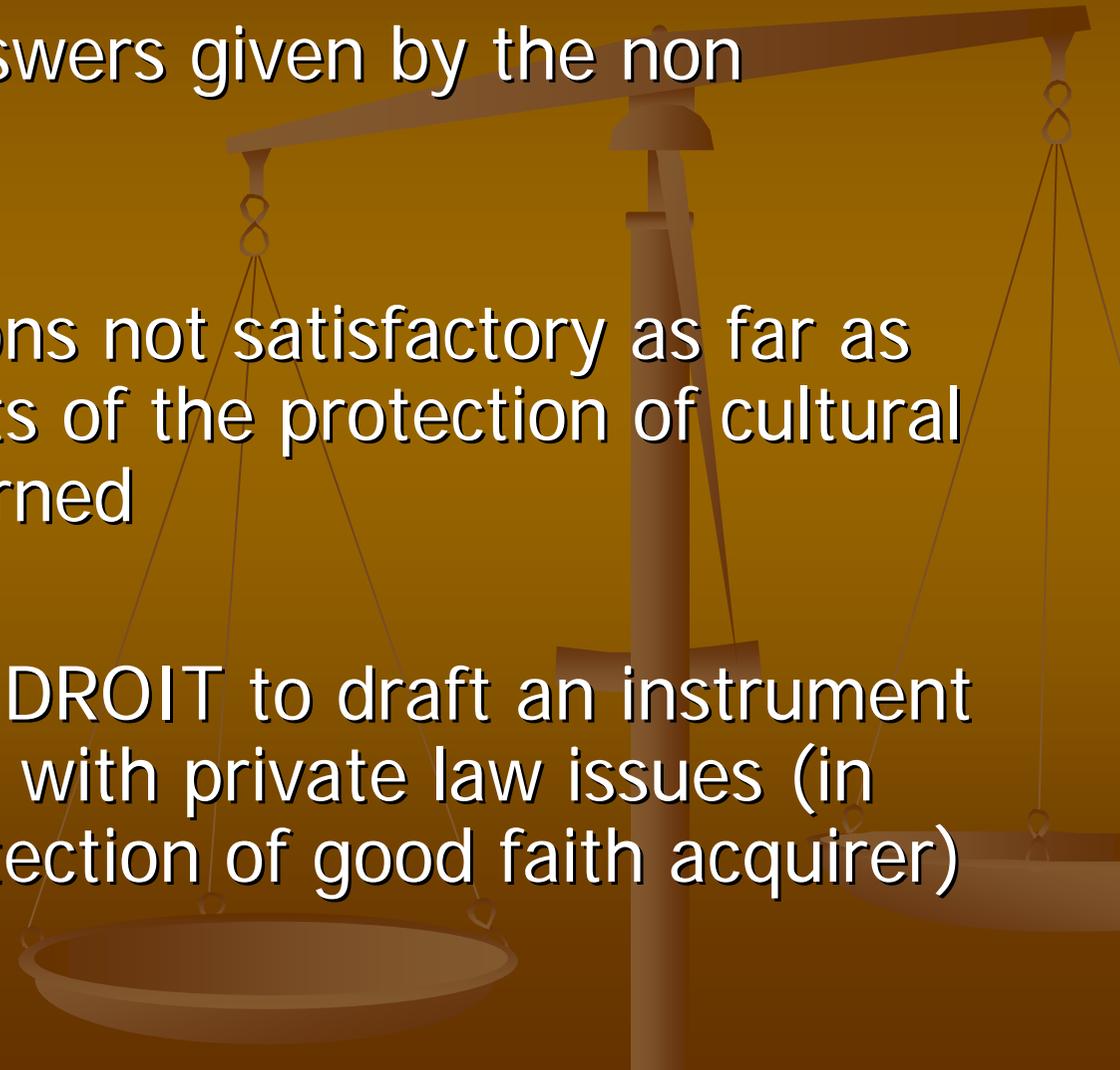
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**UNIDROIT CONVENTION ON STOLEN OR ILLEGALLY EXPORTED CULTURAL OBJECTS**

**(Rome, 24 June 1995)**



# Why a new Convention ??



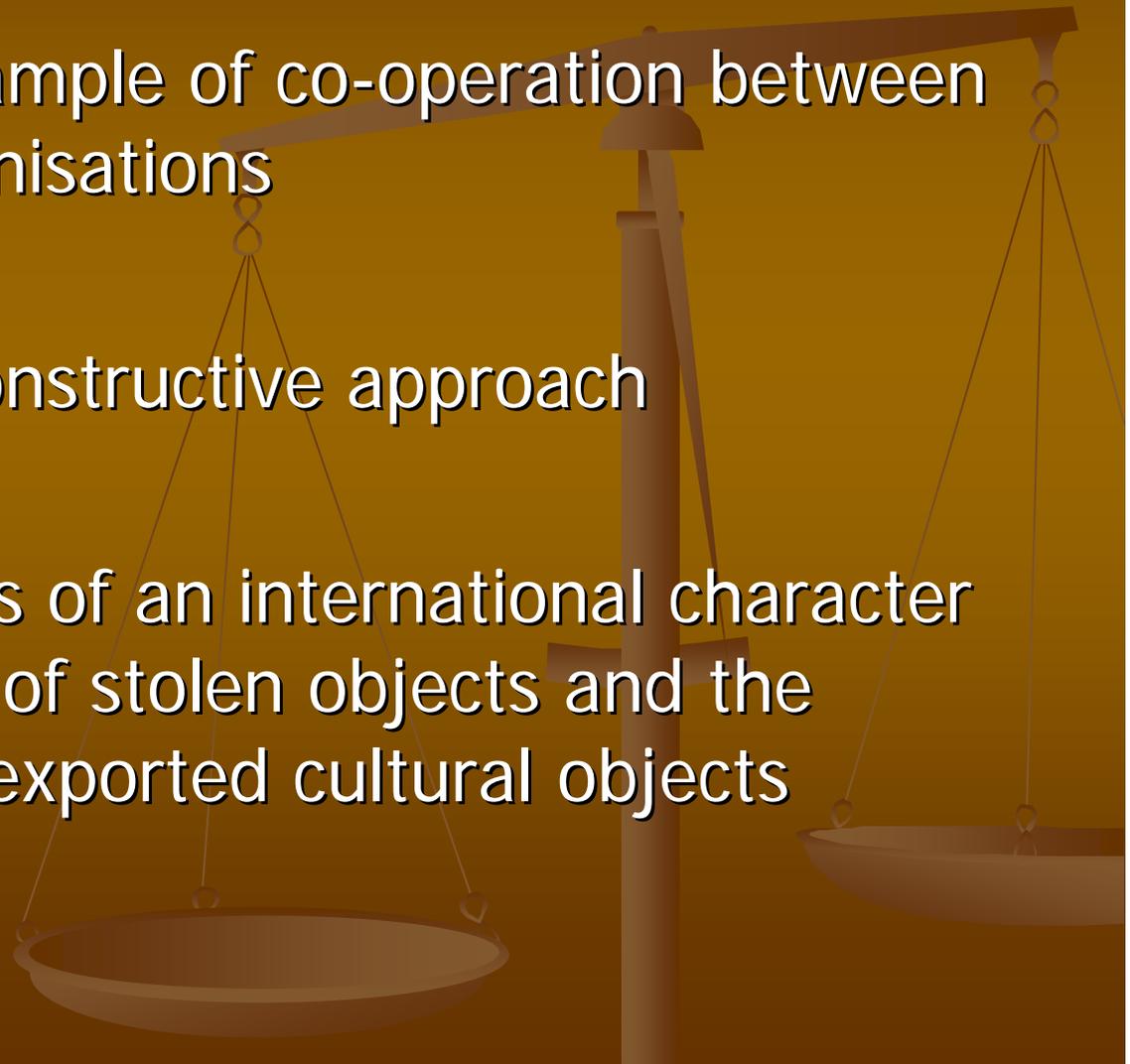
- Unsatisfactory answers given by the non conventional law
- Existing conventions not satisfactory as far as private law aspects of the protection of cultural objects are concerned

UNESCO asks UNIDROIT to draft an instrument to deal essentially with private law issues (in particular the protection of good faith acquirer)

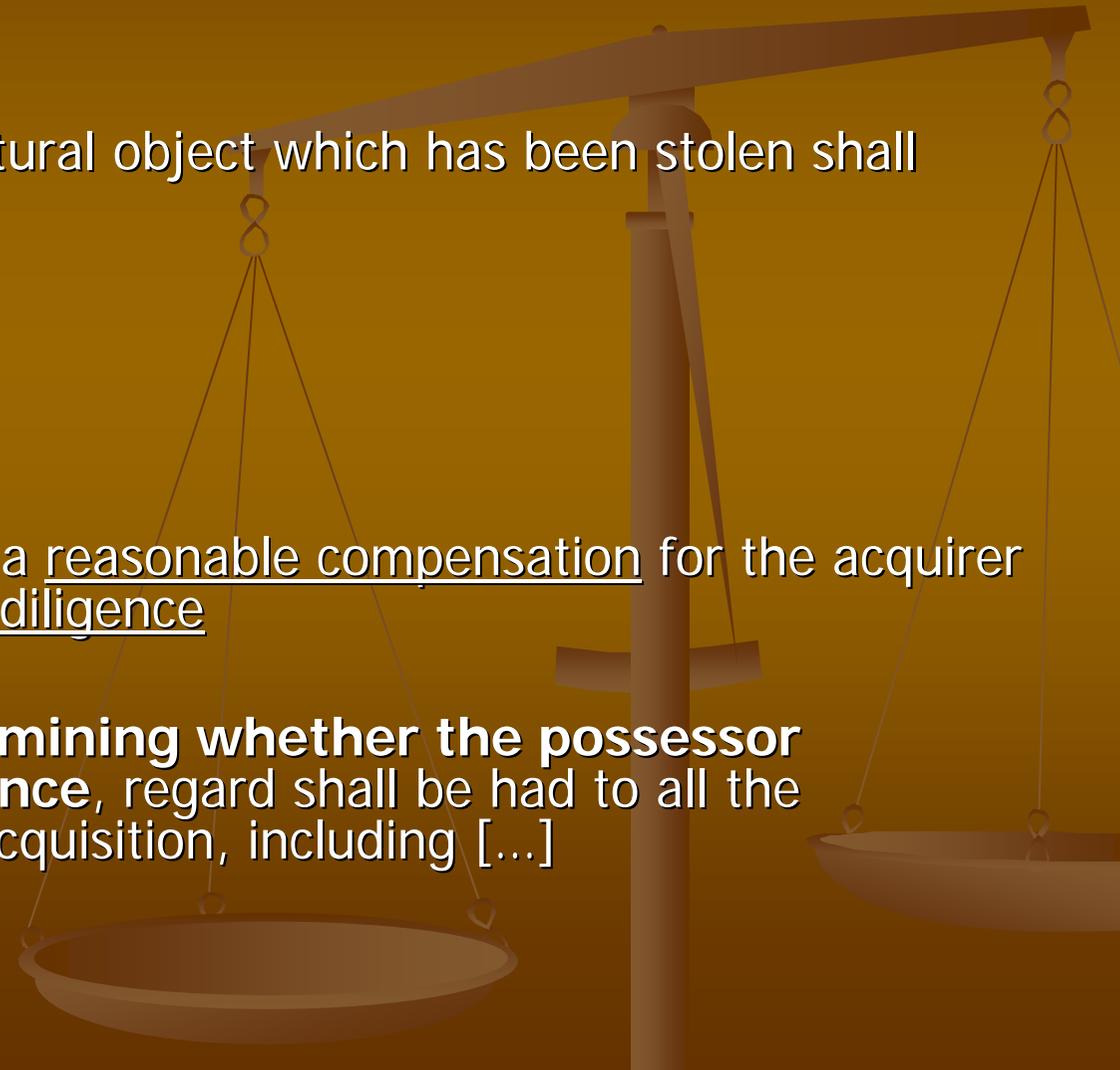
# The UNIDROIT Convention

- is a very good example of co-operation between international organisations
- adopts a highly constructive approach

It applies to claims of an international character for the restitution of stolen objects and the return of illegally exported cultural objects



# The restitution of stolen objects



## The principle

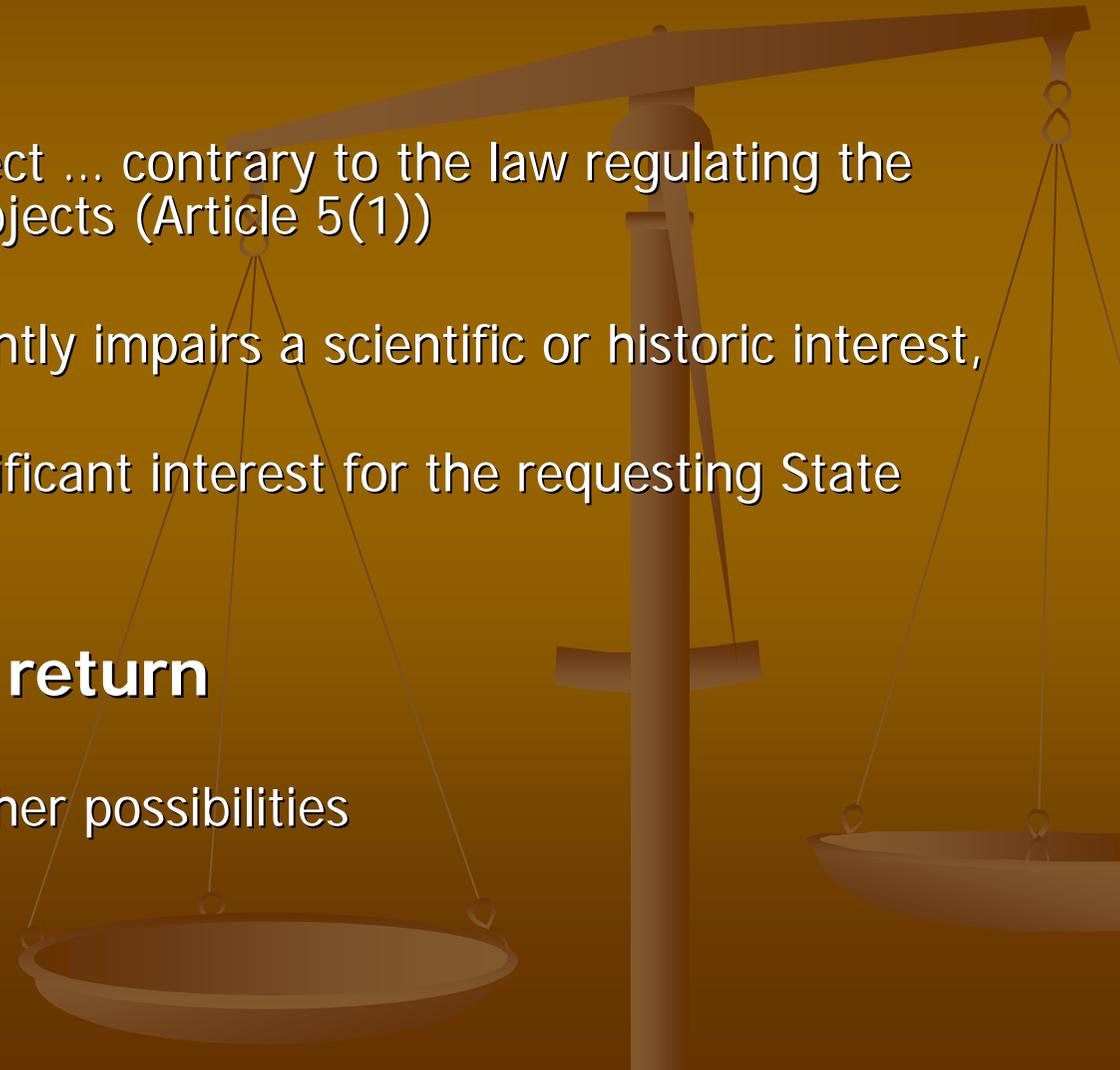
The possessor of a cultural object which has been stolen shall return it (Article 3(1))

## Two accessory rules

- 1) Time limitations
- 2) Right to payment of a reasonable compensation for the acquirer who exercised due diligence

Article 4(4) - **In determining whether the possessor exercised due diligence**, regard shall be had to all the circumstances of the acquisition, including [...]

# The return of illegally exported cultural objects



## ■ The principle

- Removal of the object ... contrary to the law regulating the export of cultural objects (Article 5(1))
- The export significantly impairs a scientific or historic interest, or  
the object is of significant interest for the requesting State (Article 5(3))

## ■ The conditions for return

- Time limitations
- Compensation or other possibilities

# Archaeological objects

## Preamble

Deeply concerned by [...] the irreparable damage [...] and in particular by the pillage of archaeological sites and the resulting loss of irreplaceable archaeological, historical and scientific information

## Illicit excavation = theft

....., a cultural object which has been unlawfully excavated or lawfully excavated but unlawfully retained shall be considered stolen, when consistent with the law of the State where the excavation took place (Article 3(2))

## Article 5(3)

[...] the removal of the object significantly impairs [...]:

- a) the physical preservation of the object or of its context;
- b) the integrity of a complex object;
- c) the preservation of information of, for example, a scientific or historical character;
- d) the traditional or ritual use of the object by a tribal or indigenous community,

or establishes that the object is of significant importance for the requesting State.

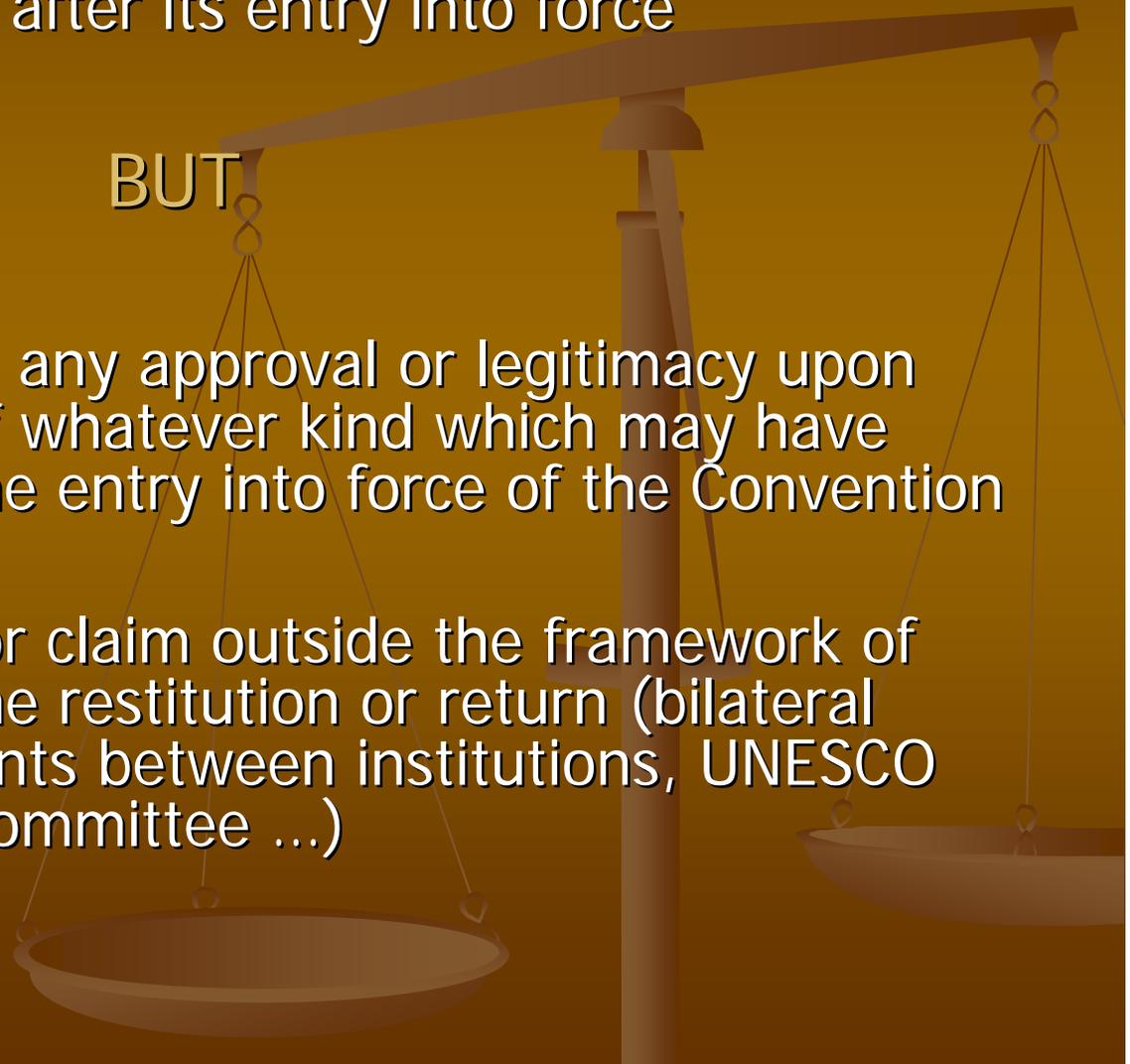
# No retroactive application

The Convention only applies to objects stolen or illegally exported after its entry into force

BUT

it **in no way** confers any approval or legitimacy upon illegal transactions of whatever kind which may have taken place before the entry into force of the Convention

**nor** limits any right or claim outside the framework of the Convention for the restitution or return (bilateral agreement, agreements between institutions, UNESCO Intergovernmental Committee ...)



# Implementation

- Importance of international co-operation
- Status of the Convention



# Status of the Convention



- **30 States Parties**

Afghanistan, Argentina, Azerbaijan, Bolivia, Brazil, Cambodia, China, Croatia, Cyprus, Ecuador, El Salvador, Finland, Gabon, Greece, Guatemala, Hungary, Iran, Italy, Lithuania, New Zealand, Nigeria, Norway, Panama, Paraguay, Peru, Portugal, Romania, Slovakia, Slovenia, Spain

- **2 new accessions (instruments to be deposited)**

Algeria, Colombia

- **Decisions to become Party already taken**

Denmark, Ireland, Sweden

# ECOSOC 2008/23 Resolution

« need, where appropriate, to strengthen and fully implement mechanisms for the return or restitution of cultural property [...] »

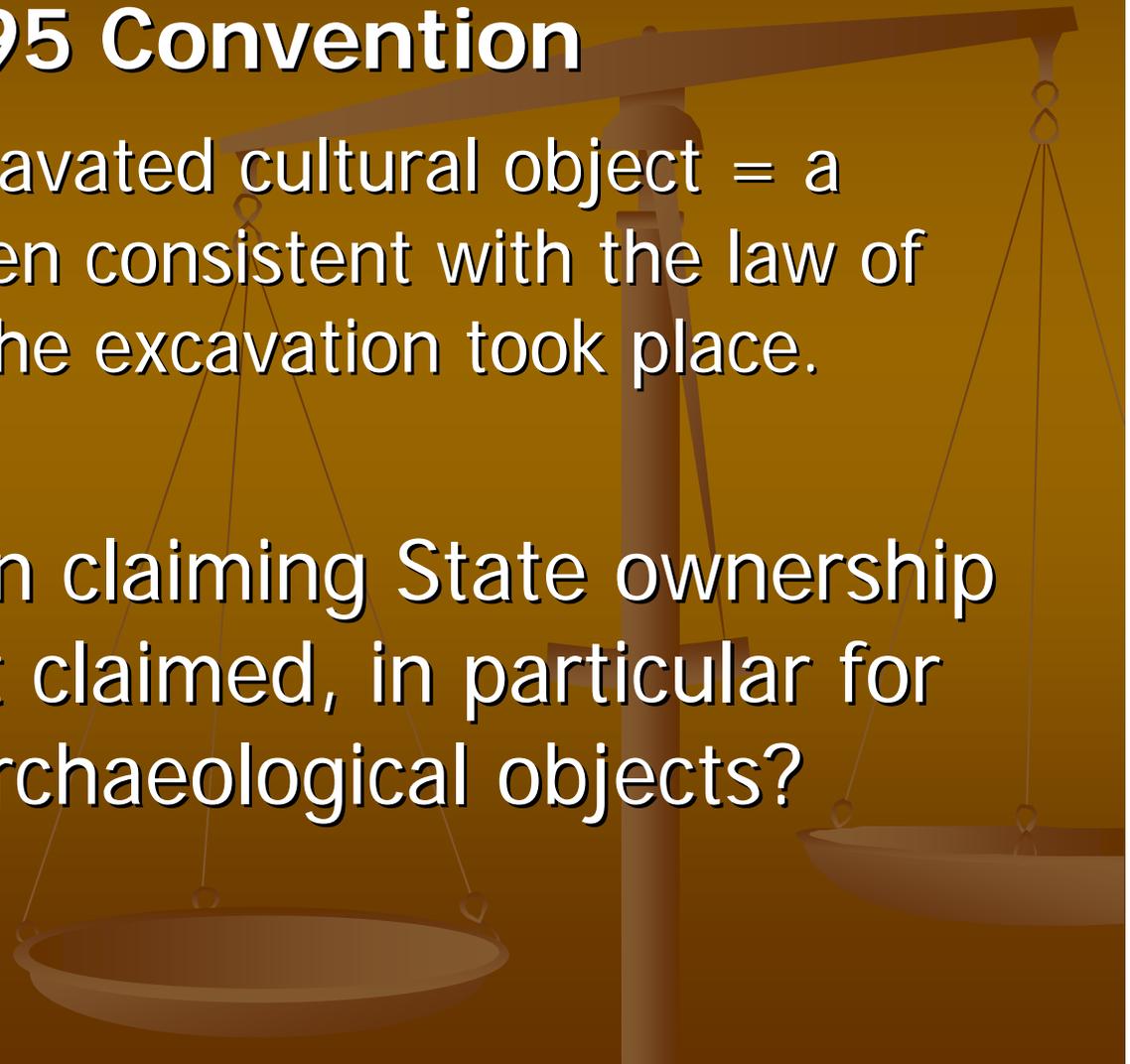
« 4. *Encourages* Member States asserting State ownership of cultural property to consider means of issuing statements of such ownership with a view to facilitating the enforcement of property claims in other States; »

# UNESCO - UNIDROIT

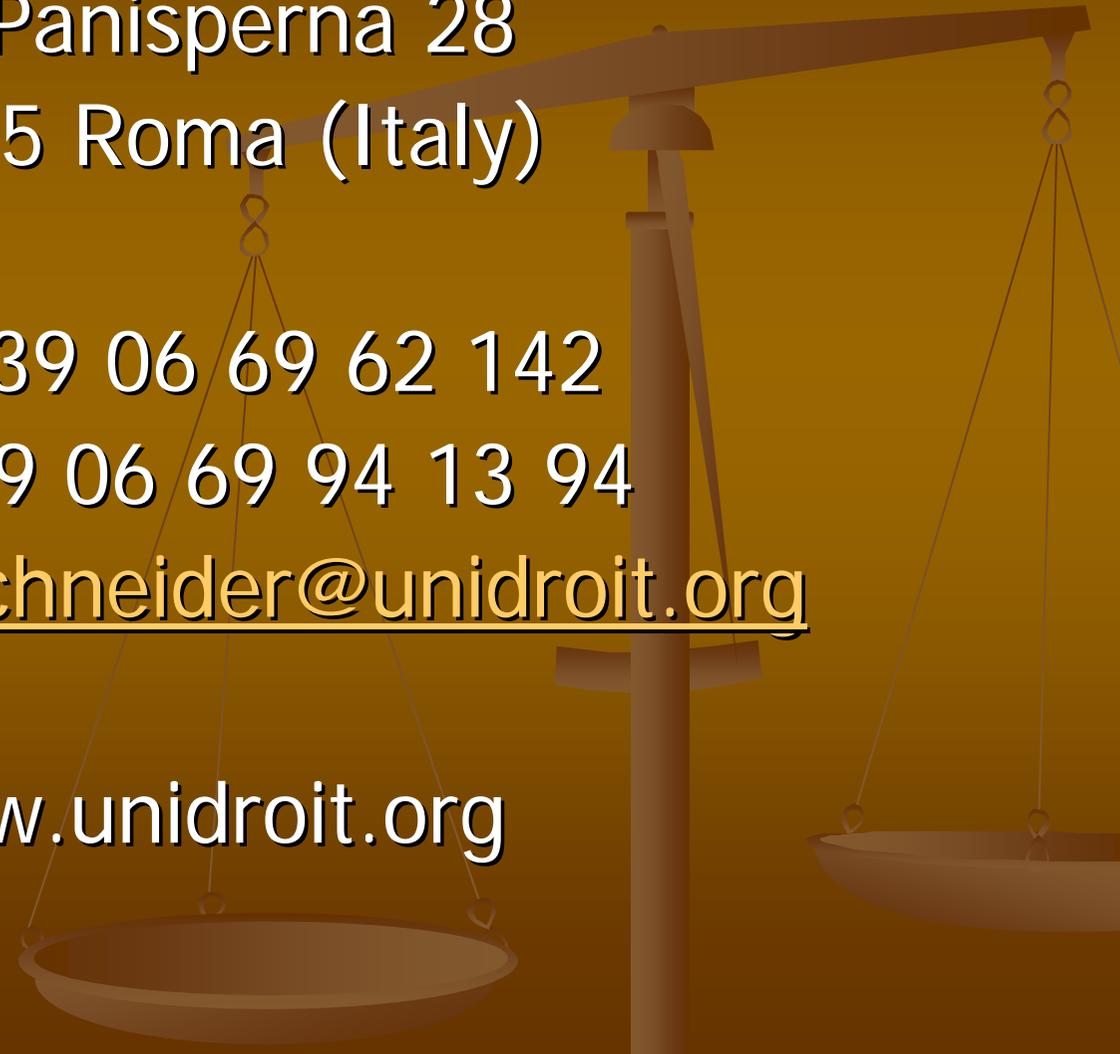
## Article 3(2) 1995 Convention

An unlawfully excavated cultural object = a stolen object, when consistent with the law of the State where the excavation took place.

Has the legislation claiming State ownership really the effect claimed, in particular for undiscovered archaeological objects?



# UNIDROIT



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