

IN THE INTERNATIONAL COURT OF JUSTICE

March 1986

Between:

MISRA Applicant

and

AVON Respondent

MEMORIAL FOR THE APPLICANT

Team 6-4

Agents for Misra

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## JURISDICTION

By agreement the Governments of the Republic of Misra and the Kingdom of Avon (the "Parties") submit the present dispute to this Court. The Parties expressly agree to accept the compulsory jurisdiction of the International Court of Justice. Under Article 36(1) of the Statute of the International Court of Justice, the Court has jurisdiction over all disputes which the parties refer to it. In addition, under Article 36(2) of the Statute, the Court has jurisdiction to resolve legal disputes concerning any alleged breach of international law or other international obligation between States which have accepted the compulsory jurisdiction of the Court. Since the Parties have accepted this compulsory jurisdiction, the Court is empowered to resolve this dispute.

## QUESTIONS PRESENTED

### I.

Whether Avon or any of its nationals ever legally acquired title to the Sloane Collection under customary law?

### II.

Whether the UNESCO Convention requires Avon to return the Sloane Collection to Misra?

### III.

Whether state practice subsequent to the Convention's adoption establishes a jus cogens norm requiring specific restitution?

### IV

Whether Misra has a duty to extradite Erich Weiss and Madame Z when the crime charged against them does not constitute a crime under Misran law?

Whether Misra's refusal to extradite Madame Z and Erich Weiss and return the bust of Queen Theslon is in conformity with its treaty obligations and general principles of international law?

Whether Madame Z is entitled to diplomatic immunity while she is traveling to her ambassadorial post?

#### STATEMENT OF FACTS

The Republic of Misra was once the resting ground for precious relics of one of the world's oldest civilizations. (Compromis at 1). However, Avon's repeated debauchment of Misra's territory over the past two centuries has stripped Misra of her most culturally germane artifacts. (Compromis at 1-5).

In the seventeenth century the Salamic Empire invaded and occupied Misra. (Compromis at 1). During the battle, the Salamis army occupied Misra's ancient city of Tannis converting the principal temple of the city into an ammunition storage area. (Id.). However, the ancient city remained untouched until 1802 when the Kingdom of Avon appointed Major Harrison Sloane as consul to the Salamic province of Misra. (Id.).

Major Sloane was a well-known art collector who sought permission from the Provincial Bey to undertake historic preservation of the ancient city. (Id.). The Bey allowed Sloane to study and report on the ancient city but denied Sloane's request to undertake preservation measures. (Id.) Unsatisfied with the Bey's restrictions Sloane went to the Emir of the Salamis, Sejam Fezgrina to request unrestricted access to the city. (Compromis at 2). The Emir replied with a Directive, which, in its French translation granted Sloane permission to study and remove "quelques pieces de pierre avec inscriptions et figures." (Id.). This French translation of the Fezgrina Directive is the only evidence remaining of the original document. (Id.).

Acting upon this Directive, Sloane immediately employed Salamic workers to remove statues, friezes, frescoes, and other artifacts from ancient Misra. (Id.). The Emir of Salamis immediately called upon Avon to put a stop to Sloane's excavations. Yet, neither Avon nor the Salamis government effectively restrained Sloane. Leading Misran citizens protested Sloane's activities but were powerless to stop him. (Id.). By 1806, Sloane had shipped to Avon two hundred crates containing ancient relics from Misra's ancient city. Sloane effectively stripped the Ancient City of its cultural heritage. (Id.).

Subsequently, Sloane was forced to sell the collection to the Avon government because he was in need of money. (Id.). An Avon-appointed commission recommended the purchase of the entire collection for a sum equivalent to 20,000 U.S. dollars. (Compromis at 2-3). After the purchase, Avon placed the collection in a government institution—the Avon National Museum. (Compromis at 3).

As a result of Sloane's atrocities, when Misra finally gained independence in 1826, most of its ancient relics were either destroyed or relocated to the wealthy countries that colonized much of Africa and Asia during the nineteenth century. (Id.).

A successful revolution against Salamis led to Misra's independence. (Id.). Misra immediately demanded that Avon return the Sloane Collection to Misra. Since 1826, Avon has continually denied Misra's requests. Additionally, Misra restored and preserved what was left of the ancient city. (Id.).

In 1827, Misra enacted regulations to govern all excavations of ancient locations. (Compromis at 4). The regulations prohibited removal without the government's consent of, any object "of historical value or significance." In spite of these efforts, Misran art continued to find its way out of the country. (Id.).

In 1908, Avon launched a punitive expedition against Misra in retaliation for anti-western rioting which caused the death of several Avonians. (Id.). No evidence connected Misra with these riots. During this retaliatory effort, Avon appointed art expert D. Van Dean to accompany the Avonian forces against Misra. Once again Avonians removed valuable artifacts from Misra. (Id.). These relics were later ceded to Avon in a peace treaty as war reparations. The most precious relics were added to the Sloane Collection in the Avon Museum. The remainder were sold to private collectors. (Id.).

In 1913 the Avon National Museum announced the excavation and acquisition of a unique marble bust of Theslon, an ancient Misran queen. (Id.). This was the last and the most priceless relic removed from Misra and added to the Sloane Collection. (Id.). Most experts consider the bust to be one of the world's greatest works of art. The facts surrounding the statue's acquisition from Misra were not fully disclosed. (Id.). However, Misra's investigation revealed that a customs official was purposefully deceived when a case concealing the statue was camouflaged with worthless artifacts. (Compromis at 4-5). While the possibility of bribery existed, the evidence was inconclusive. (Compromis at 5). Thereafter, when the statue was first displayed in the Avon Museum, the Misran government immediately protested and demanded its return. (Compromis at 4). The Museum refused, claiming the bust was purchased legitimately from an anonymous finder who had obtained Misra's custom clearance to export the object. (Id.)

In 1984, Madame Z, Misra's former Ambassador to Avon, stopped in Avon on her way to assume her new post in Paris. (Compromis at 6). Madame Z studied and taught in Avon for some years. (Compromis at 5). Madame Z is well respected in Misra. In addition to her ambassadorial duties she is a lawyer and the president of a growing nationalist movement in Misra, the Misra National Organization ("MNO").

During her stay in Avon she gave a lecture, attended concerts and viewed the Sloane Collection at the National Museum with Erich Weiss. (Compromis at 6). Erich Weiss was an Avonian art historian and a close intimate friend of Madame Z. (Id.).

Later it was found that the bust of Theslon was missing (Id.). Three days later the bust reappeared in Misra. At a press conference the Misran Minister of Cultural Affairs reported that "the bust of Queen Theslon, the country's pride and an integral part of its natural patrimony, has found its rightful place back in Misra." (Id.). The Minister declined to present details about the miraculous recovery of this great work of art. He did announce, however, that the bust would stay in Misra and would not be returned to Avon. (Id.).

Foreign journalists covering the story envisaged in their accounts a tale whereby Madame Z and Erich Weiss arranged for the theft of the bust. They reported how she transported the bust in her luggage and that she passed customs without being searched. (Id.). The popular press also reported that Erich Weiss now lives in Misra and his status is that of an honorary citizen and permanent resident. They also report that Erich Weiss is regarded as somewhat of a national hero. (Id.).

The only investigation of this incident, however, has been by such foreign journalists. Nevertheless, the government of Avon has charged Madame Z and Erich Weiss with the theft of the bust and are demanding extradition pursuant to an extradition treaty between Avon and Misra. (Id.). Misra refuses to extradite. (Id.).

#### SUMMARY OF ARGUMENT

Avon's title to the cultural property is void. Therefore, Misra is entitled to the return of its cultural heritage property. Although Avon has had Misra's cultural property for many years, Avon acquired such property through conduct illegal under customary international law. Illegally obtained

title is void under customary law. Consequently, Avon has no title to Misra's cultural property.

The UNESCO Convention on the Means of Prohibiting the Illicit Import, Export and Transfer of Ownership of Cultural Property (the "UNESCO Convention") ~~codifies customary international law existing prior to the Convention.~~ The UNESCO Convention demands that cultural property constituting cultural heritage be returned to its country of origin. The cultural property in the Sloane Collection comprises part of Misra's cultural heritage. Therefore, it must be returned pursuant to the UNESCO Convention. Equity principles and jus cogens principles also demand this result.

Since Avon has no title to Misra's cultural property, Avon's demand for extradition is unfounded. Moreover, Misra's refusal to extradite Erich Weiss and Madame Z is legal under international law. It is a well-established principle of international law that there is no duty to extradite except by contract or agreement between the States. As a party to the Avon-Misra Extradition Treaty of 1950 (the "Extradition Treaty"), Misra has no obligation to extradite since Avon has not made a sufficient claim for an extraditable offense. Furthermore, diplomatic immunity and the political offense doctrine support Misra's decision not to extradite. Since Misra's decision not to extradite was legal under the Extradition Treaty and principles of customary international law, Avon cannot compel Misra to extradite Erich Weiss and Madame Z.

I. NEITHER AVON NOR ANY OF ITS NATIONALS EVER LEGALLY ACQUIRED TITLE TO THE SLOANE COLLECTION UNDER CUSTOMARY LAW.

A. Major Sloane's Method Of Acquiring Misra's Cultural Property Constitutes Common Theft Under Customary Law.

1. Major Sloane's conduct during peacetime constitutes common theft under customary law.

The taking of a sovereign's property without the Sovereign's consent constitutes common theft under customary law.<sup>1</sup> Historically, the only exception to this rule was taking "booty" from a vanquished nation. Taking "booty" was considered a legal by-product of war in the Greco-Roman period.<sup>2</sup> Booty was defined as property taken to prosecute the war effort.<sup>3</sup>

Pillage, on the other hand, has never been adopted as a legal act under customary law. Pillage was defined as the taking of property not necessary for war.<sup>4</sup> Under customary law pillage was the equivalent of common theft except that the act of taking occurred during war. Major Sloane removed Misra's property without Misra's consent while Misra was occupied by an alien sovereign. Since Misra was not at war with Avon, Sloane's acts constitute common theft.

The distinction drawn in international law between property legally acquired and not legally acquired can be traced to natural law principles of property.<sup>5</sup> An enemy could seize or destroy property in pursuit of war objectives, but this did not cut-off the property rights of the sovereign.<sup>6</sup> Unless

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<sup>1</sup> D.P. O'Connell, International Law 844 (1965).

<sup>2</sup> L. DuBoff, The Deskbook of Art Law 129 (1977).

<sup>3</sup> Id.

<sup>4</sup> Id.

<sup>5</sup> G. Martens, Summary of the Law of Nations 1748-1795 339 (W. Cobbett trans. 1795) [hereinafter cited as Martens].

<sup>6</sup> Id. at 291.

the sovereign consented it had a right to seek the return of property from the enemy and any third parties that derived title through the enemy.<sup>7</sup> Since Major Sloane acquired Misra's cultural property without Misra's consent, Misra has a right to seek the return of its property from Avon as a third party.

Alternatively, this Court should find that Major Sloane's conduct was illegal because he acted ultra vires of his duties. By using his official position, Sloane gained unrestricted access to the ancient city of Tannis under the false pretext of undertaking historic preservation measures. Once Sloane gained access to Tannis, his true motives—to increase his personal wealth—surfaced. Sloane sold the artifacts as soon as he encountered financial problems.<sup>8</sup> Since Sloane's acts constitute common theft they are ultra vires of the duties of a consul under customary law.<sup>9</sup>

2. The Fezgrina Directive did not grant Sloane a right to export cultural property.

No reasonable interpretation of the Directive could sanction the willful destruction and theft of Misra's ancient city of Tannis by Sloane. The French meaning of the Directive is "to study and remove a few pieces of statues, pillars, plaster paintings and other artifacts." Given the context in which the Directive was issued, it is certainly more reasonable to interpret the Directive as allowing Sloane only to remove some art for closer study. Even if the Directive is interpreted to permit the export of some cultural property, the removal of two hundred crates and the irreparable damage caused to the buildings exceeded the right granted.

3. The Fezgrina Directive is not binding on Misra.

Belligerent occupation does not affect the Sovereignty of an occupied

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<sup>7</sup>Id. at 290.

<sup>8</sup>Compromis of the Art Treasure Case, signed 1985 (Misra v. Avon) 1.

<sup>9</sup>I. Brownlie, Principles of Public International Law 449-452 (3d ed. 1979). [hereinafter cited as Brownlie].

State.<sup>10</sup> The occupying power is not the legitimate sovereign since sovereignty based on force violates the principle of self-determination.<sup>11</sup> Under the rules of belligerent occupation, executive and administrative powers may be exercised by alien authorities.<sup>12</sup> Sovereignty is not transferred notwithstanding these developments.<sup>13</sup> The principle of self-determination establishes a presumption in favor of Misra which Avon must rebut.<sup>14</sup>

When a legitimate sovereign returns to power, all territory and property returns to it under the doctrine of reversion.<sup>15</sup> In the eighteenth and nineteenth century this principle was adhered to strictly.<sup>16</sup> As a result, under the doctrine of reversion a Sovereign cannot be bound by the acts of a conquering nation unless the sovereign consents or acquiesces.

4. Neither the Emir of Salamis, nor Avon acquired title to Misra's cultural property by prescription.

Under customary international law, mere possession does not extinguish natural law property rights between states absent the original owner's consent.<sup>17</sup> Prescription does not constitute a natural right rather; it is the natural consequence of any other owner to prove a title superior to that of the possessor.<sup>18</sup> This theory has no application in this case.

Even if prescription is a customary doctrine, the conditions necessary to

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<sup>10</sup>3H. Grotius, De Jure Belli Ac Pacis Libri Tres 701 (F. Kelsey trans. 1964) [hereinafter cited as De Jure Belli].

<sup>11</sup>Brownlie, supra note 9, at 83 n. 1.

<sup>12</sup>Id. at 376.

<sup>13</sup>Id. at 83.

<sup>14</sup>Id. at 131-133, 593-596 (tracing history of the self-determination principle to the eighteenth century).

<sup>15</sup>De Jure Belli, supra note 10, at 701.

<sup>16</sup>Martens, supra note 5, at 292.

<sup>17</sup>Id. at 339.

<sup>18</sup>Id. at 64.

apply it have not been established. Prescription requires peaceful possession for a period of years prescribed by the practice of states.<sup>19</sup> Under present law a period of years has not been established.<sup>20</sup> Second, Misra's continual demands vitiate the application of the doctrine because Avon did not have peaceful or uncontested possession.<sup>21</sup> In addition, it has never been suggested that prescription is applicable to cultural property. The concept of possession by force evolving into title by prescription violates Misra's natural law property rights.

B. The Peace Treaty Between Misra And Avon Regarding The Artifacts Acquired By Avon During Its Illegal Punitive Expedition Is Invalid And Therefore Conferred No Title

1. The acquisition of cultural property by Avon during its punitive expedition violates international law.

It is a well-settled principle of international law that two conditions must be established for a State to commit an act of reprisal. First, under international law a delict must be committed. Second, the reprising State must demand satisfaction for the delict prior to commencing the reprisal. Once these conditions have been established, an act of reprisal is considered valid only if the actions taken are proportional to the delict committed.<sup>22</sup>

Avon conducted its punitive expedition to retaliate against a wave of anti-western rioting in which several Avonians were killed. However, no facts indicate Misra was responsible for these acts. Avon also failed to demand satisfaction for injuries suffered by Avonian nationals. The fact that art expert D. Van Dean accompanied the Avonian troops when they invaded Misra suggests that Avon's true motives for using force was to steal Misra's cultural

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<sup>19</sup> J. Moore, Digest of International Law § 83 (1906).

<sup>20</sup> Brownlie, supra note 9, at 161.

<sup>21</sup> Chamizal Boundary Dispute, (U.S. v. Mex.), 11 R. Int'l Arb. Awards 316 (1911)(U.S. claim of prescription denied because possession had not been peaceful or without challenge).

<sup>22</sup> Naulilaa Incident, (Port. v. Ger.), 2 R. Int'l Arb. Awards 1012 (1928).

property. In light of these facts, Avon's conduct violates customary law. In addition, even if Avon's act of reprisal was legal under customary law, taking cultural property was not proportionate to the harm suffered by Avon. Therefore, doubt is cast on the legality of the act of reprisal itself.

Assuming arguendo that Avon's punitive expedition is legal, Avon's pillage of Misra's cultural property violates the most fundamental laws and customs of war. Article 47 of the 1899 Hague Convention on the Laws and Customs of War formally prohibits pillage as a custom of war.<sup>23</sup> Article 36 also prohibits any private property from being confiscated. Article 53 provides that "an army of occupation can only take possession of . . .property . . .which may be used for military operations." Article 55 makes the protection of public property belonging to a hostile State the responsibility of the occupying State. Article 56 requires public property to be treated as private property and prohibits "seizure . . .destruction, or intentional damage done to historical monuments . . .[and] . . .works of art." Article 56 also provides for a cause of action if such offenses occur. The 1907 Hague Convention on the Laws and Customs of War contains identical provisions.<sup>24</sup> The common thread running through these Conventions is that State property is to be considered private property and the pillage of any property is formally prohibited.

Judges<sup>25</sup> and publicists<sup>26</sup> agree that the Hague Conventions of 1899 and 1907 contain the customary law of nations existing at the time of Avon's

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<sup>23</sup>Hague Convention With Respect To The Laws And Customs Of War On Land, July 29, 1899, 32 Stat. 1803, T.S. No. 403 [hereinafter cited as Hague Convention of 1899].

<sup>24</sup>Hague Convention Respecting The Laws And Customs Of War On Land, Oct. 18, 1907, 36 Stat. 2277, T.S. No. 539 [hereinafter cited as Hague Convention of 1907].

<sup>25</sup>Menzel v. List, 49 Misc. 2d 300, 267 N.Y.S. 2d 804 (Sup. Ct. 1966) aff'd per curiam, 28 A.D.3d 516, 279 N.Y.S. 2d 608 (1967).

<sup>26</sup>Nafziger, Int'l Penal Aspects of Protecting Cultural Property, 19 Int'l Law. 835, 839 (1985) [hereinafter cited as Penal Aspects].

acts. From the facts there is little doubt that Avon violated these Conventions. Van Dean removed artifacts from Misra which were not used for military purposes. This was an act of pillage. Even if it can be established that these artifacts had a military purpose Avon did not have the right to confiscate the property.

2. The Cession Treaty does not confer a valid title to Avon because it was concluded under duress and ceded cultural property as war reparations.

Article 2, paragraph 4, of the Charter of the United Nations justifies the conclusion that a treaty procured by the threat or use of force in violation of the Charter shall be void. The 1969 Vienna Convention on Treaties states the same rule.<sup>27</sup> Although the codification of these rules occurred recently, all civilized nations have recognized since time immemorial that agreements entered into by force, duress or coercion are void.<sup>28</sup>

Requiring the cession of cultural property as war reparations is also illegal.<sup>29</sup> Article 3 of Protocol I of the 1954 Hague Convention on the Laws and Customs of War absolutely prohibits the retention of cultural property as war reparations.<sup>30</sup>

C. Avon's Purchase Of The Bust Of Theslon Is Void.

Article 38(c) of the Statute of the International Court of Justice states that the Court may apply "general principles of law recognized by civilized

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<sup>27</sup>Vienna Convention On The Law Of Treaties, Art. 52, opened for signature May 23, 1969, U.N. Doc. A/CONF. 39/27. [hereinafter cited as 1969 Vienna Convention].

<sup>28</sup>1 L. Oppenheim, International Law § 449 (H. Lauterpacht 7th ed. 1948).

<sup>29</sup>Duboff, supra note 2 at 132. (At Paris Convention in 1815, Allies required Napoleon to return the cultural property gained through treaties.)

<sup>30</sup>Protocol I to the Final Act of the Intergovernmental Conference on the Protection of Cultural Property in the Event of Armed Conflict, done May 14, 1954, 249 U.N.T.S. 215 [hereinafter cited as Hague Convention of 1954].

nations." It is agreed among States, judges and publicists that one may not transfer more title than one possesses (nemo dat quod non habet) and that no benefit can accrue from an illegal act (ex injuria non oritur).<sup>31</sup> Since Avon's title to the bust derives from illegal acts, Avon has not acquired title.

In 1827, Misra enacted laws governing all excavations in Misra. These laws were in effect at the time Avon's museum announced the excavation of the bust.<sup>32</sup> The excavation took place in Misra's territory. Misra's laws prohibited any removal of any object of "historical value or significance without its consent."<sup>33</sup> Since the anonymous finder did not acquire Misra's consent his title is void under Misran law. This violates customary law.<sup>34</sup> The acts of Misra's customs official is not evidence of Misra's consent because, but for the bust's concealment by the finder, it would not have been exported.<sup>35</sup>

## II. THE UNESCO CONVENTION COMPELS AVON TO RETURN THE SLOANE COLLECTION TO ITS RIGHTFUL OWNER, MISRA.

### A. The UNESCO Convention Is Binding Upon Avon As A Matter Of Treaty Law.

Both Avon and Misra are signatories to the UNESCO Convention<sup>36</sup> and as such have demonstrated their intention to be bound to a good faith attempt as to its eventual ratification.<sup>37</sup> Misra has ratified the Convention whereas Avon

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<sup>31</sup>Brownlie, supra note 9, at 128-129, 511-512.

<sup>32</sup>Clarifications to Compromis of the Art Treasure Case, signed 1985 (Misra v. Avon), released Jan. 1986, 1.

<sup>33</sup>Compromis supra note 8, at 4-5.

<sup>34</sup>P. Bator, The International Trade in Art 10 (1983).

<sup>35</sup>Compromis supra note 8, at 4.

<sup>36</sup>UNESCO Convention On The Means Of Prohibiting And Preventing The Illicit Import, Export And Transfer Of Ownership Of Cultural Property, adopted, Nov. 14, 1970, 823 U.N.T.S. 231. [hereinafter cited as UNESCO Convention].

<sup>37</sup>Brownlie, supra note 9, at 603.

has not yet ratified it.<sup>38</sup> However, non-ratification does not sanction Avon's disregard of the Convention. Article 11 of the 1969 Vienna Convention on Treaties provides that consent of a State to be bound by a treaty may be expressed by signature.<sup>39</sup> Avon did not express any reservations when signing or subsequent to its signing of the Convention.<sup>40</sup> Furthermore, in anticipation of the Convention's ratification Avon adopted domestic legislation consistent with Articles 6, 7, 8, and 13 of the Convention. Ratification by Avon was "considered likely" until this dispute arose.<sup>41</sup> Since Avon has signed the Convention and has not withdrawn its signature, Avon has implicitly consented to be bound by its provisions.<sup>42</sup>

B. Even If The Entire UNESCO Convention Is Not Binding Upon Avon, Articles 6, 7, 8 And 13 Of The Convention Are Binding.

Even if Avon is not bound by all the provisions of the Convention, it is bound by Articles 6, 7, 8 and 13. Article 38, paragraph 1(b) of the Statute of the International Court of Justice states this Court shall apply "international conventions expressly recognized by contesting states." Both Avon and Misra have adopted legislation consistent with Articles 6, 7, 8 and 13. The terms "expressly recognized" have not been defined. Both parties' adoption of consistent legislation may qualify for these terms.

Similarly, Avon should be bound to act in accordance with Articles 6, 7, 8 and 13 because as a member of the United Nations it is obligated to promote

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<sup>38</sup>Compromis supra note 8, at 9.

<sup>39</sup>1969 Vienna Convention, supra note 27, at art. 11.

<sup>40</sup>UNESCO Convention, supra note 36 (Articles 23-24 permit signatories to express reservations or denounce the Convention in whole or in part).

<sup>41</sup>Compromis supra note 8, at 9.

<sup>42</sup>See North Continental Shelf (Den. v. W. Ger.; Neth. v. W. Ger.), 1969 I.C.J. 118.

international cultural cooperation when necessary for peaceful resolutions.<sup>43</sup> Article 18 of the 1969 Vienna Convention on Treaties also directs States to refrain from acts that would defeat the purpose of the Convention.<sup>44</sup>

C. Alternatively, The UNESCO Convention Is Binding Upon Avon Because It Codifies Customary International Law.

The Final Act of a conference of States presents cogent evidence of the state of customary law on the subject.<sup>45</sup> The Convention's general provisions provide evidence that it is declaratory of customary international law existing prior to its finalization. Specifically, the Preamble cites prior United Nations recommendation.<sup>46</sup>

The practice of States in the Greco-Roman period offers irrefutable evidence prohibiting the illegal acquisition of cultural property.<sup>47</sup> The earliest evidence of state protection of cultural property can be traced to the papal states in 1464.<sup>48</sup> The Hague Conventions of 1899, and 1907 on the Laws and Customs of War all demand that cultural property must be protected during war. The Convention is merely a codification of these principles during peace.

D. The Return Of Cultural Heritage Property Is Required Under The UNESCO Convention Even If Avon Can Establish Valid Title To The Sloane Collection.

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<sup>43</sup>U.N. Charter art. 55, para. 1.

<sup>44</sup>1969 Vienna Convention, supra note 27.

<sup>45</sup>Akehurst, Custom as a Source of Int'l Law, 47 Brit. Y.B. Int'l L. 17 (1974-75); Brownlie, supra note 9, at 14; Baxter, Multilateral Treaties as Evidence of Customary Int'l Law, 41 Brit. Y.B. Int'l L. 275, 277 (1966).

<sup>46</sup>UNESCO Convention, supra note 36 (see Preamble).

<sup>47</sup>Address by Melina Mercouri, Minister of Culture and Sciences of Greece, to the World Conference on Cultural Policies, on the Draft Recommendation on the Return of Cultural Property to its Country of Origin, in Mexico City, p. 6 (July 29, 1982); Duboff, supra note 3, at 129.

<sup>48</sup>Nafziger, Penal Aspects, supra note 26, at 836.

Article 1 of the UNESCO Convention defines cultural property as property "which is . . . of importance for archaeology, prehistory, history, literature, art or science." Article 4 recognizes that all cultural property originally found within a nation's territory constitutes cultural heritage property. The cultural property in this case clearly falls under the Convention's definition of cultural heritage property.

Article 13(d) of the UNESCO Convention recognizes the indefeasible right of each party to classify and declare "certain cultural property" as inalienable. Cultural property classified as such should ipso facto not be exported. Article 13(d) further obligates State parties to facilitate "recovery" of such property when it has been exported. Since Misra has declared that the Sloane Convention comprises part of its cultural heritage, return is required under the Convention.

E. Equity Principles Favor Return Of Cultural Heritage Property.

Every country is entitled to possess cultural property which is essential to an understanding of itself and its origin.<sup>49</sup> States that have acquired cultural property as a result of military occupation have a special duty to return property to its original state.<sup>50</sup> Where return is possible it should be accomplished.<sup>51</sup>

These Equity Principles weigh heavily in favor of Misra. The Sloane collection constitutes part of Misra's cultural heritage and was taken during a period of military occupation. Therefore, Avon has a special duty to return this property.

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<sup>49</sup>Id.

<sup>50</sup>Id.

<sup>51</sup>Id.

Since the cultural property in this case comprises part of Misra's cultural heritage, the preservation and the study of the property in its original location is essential to Misra's historical significance. Misra has demonstrated that it will sufficiently protect the property and therefore, it should be returned.

III. STATE PRACTICE SUBSEQUENT TO THE UNESCO CONVENTION'S ADOPTION ALSO ESTABLISHES A JUS COGENS NORM REQUIRING THE RETURN OF CULTURAL HERITAGE PROPERTY.

The jus cogens principle states that if a preemptory norm of general international law emerges, any existing treaty or rule which is in conflict with that norm is void.<sup>52</sup> Four generally accepted criteria necessary to invoke the principle have been articulated: A foundation in morality, an importance to world peace and order, a general acceptance in the international community and the serving of global interests rather than of an individual State.<sup>53</sup>

A. The Criteria Necessary To Invoke The Jus Cogens Principle Are Present In The Return Of Cultural Heritage Property Requirement.

1. The return of cultural heritage property is founded on moral principles.

The jus cogens doctrine recognizes that moral concepts exist which are inherent and essential to the maintenance of an ordered community. The Preamble to the UNESCO Convention instructs the world community to recognize their moral obligation to return the cultural heritage of all nations. The Convention was adopted to accomplish this moral objective.

2. The return of cultural heritage property requirement is necessary to maintain peaceful relations among States.

The Preamble to the Convention makes clear that the illicit import, export and transfer of cultural property is an obstacle to maintaining close

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<sup>52</sup>1969 Vienna Convention, supra note 27, at art. 64.

<sup>53</sup>Verdross, Jus Dispositivum And Jus Cogens In Int'l Law, 60 Am. J. Int'l L. 55, 58-63 (1966).

cooperation among States. Without State cooperation the cultural heritage of the world community is destined to be removed from art-rich nations. This will ultimately decrease the world's knowledge of early civilizations. The return requirement is essential to the maintenance of mutual respect and peaceful relations among States.

3. The return of cultural heritage property is generally recognized by the international community.

The general acceptance of the return requirement by the international community is evidenced by numerous General Assembly Resolutions, multilateral treaties and the practice of States since its adoption.<sup>54</sup> In fact, the International Council of Museums, which has been very influential in the return of cultural heritage property, has indicated the "reassembly of dispersed heritage through return . . . [is] [a] . . . jus cogens principle."<sup>55</sup>

4. The return of cultural heritage property serves global interests rather than those of one State.

A principle of international law which is self-serving to some States cannot be considered a jus cogens principle. The Convention's Preamble makes clear it attempts to serve global interests by seeking the return of all cultural heritage property to its original location. This goal far outweighs national interests Avon may have. Avon's only national interest is economic. Therefore, Avon should not be allowed to defeat the purposes of the Convention.

The return of cultural heritage requirement meets the four criteria of a jus cogens norm. Avon's decision not to return Misra's cultural heritage violates this norm which demands the condemnation of the world and this Court. Only the return of Misra's cultural heritage will serve the interests of

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<sup>54</sup>Nafziger, The New International Framework For The Return, Restitution or Forfeiture of Cultural Property, 15 Int'l Law & Politics 789, 799-811 (1983) [hereinafter cited as Legal Framework]; Nafziger, Penal Aspects, supra, note 26, at 840-846.

<sup>55</sup>Nafziger, Legal Framework, supra note 54, at 804.

justice and the international community.

IV. MISRA WAS NOT IN VIOLATION OF INTERNATIONAL LAW, OR THE EXTRADITION TREATY, WHEN IT REFUSED TO EXTRADITE ERICH WEISS AND MADAME Z SINCE THE CRIME CHARGED DOES NOT CONSTITUTE A CRIME UNDER ITS LAW.

A. ~~The "Double Criminality"~~ Of The Act Charged Must Be Established Beyond A Doubt Before An Extradition Can Be Granted.

Misra is not bound to surrender Erich Weiss or Madame Z, because under the Extradition Treaty Avon has not submitted a claim for an extraditable offense. Double criminality as provided for in the Extradition Treaty requires that the offense charged be proscribed as a serious offense in both the requesting State and the requested State.<sup>56</sup> The double criminality requirement has also been established in customary international law.

1. International law allows States to apply their own standards in order to ascertain whether the alleged offense constitutes a crime.

Misra does not regard the conduct of Madame Z and Erich Weiss as theft, contrary to the label assigned by Avon. Madame Z and Erich Weiss did not steal Avonian property because the bust of Theslon is a rightful part of Misran patrimony.<sup>58</sup> The Eisler Extradition Case<sup>59</sup> illustrates the double criminality principle in operation. The Court held that English law would not uphold a conviction if Eisler were tried in England, thus extradition would violate the double criminality principle.

Similarly, extradition of Madame Z and Erich Weiss would violate double criminality because Misra does not characterize their conduct as criminal.

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<sup>56</sup>I. Shearer, Extradition in International Law 132-149 (1971). [hereinafter cited as Shearer].

<sup>57</sup>See, e.g., European Convention on Extradition, art. 2, Europ. T. S. No. 24, 359 U.N.T.S. 273 (1957) [hereinafter cited as European Convention]; 6 M. Whiteman Digest of International Law 773 (1968). [hereinafter cited as Whiteman].

<sup>58</sup>See, Compromis, supra note 8, at 6.

<sup>59</sup>Eisler v. United States, 170 F.2d 273 (D.D.C. 1948); See Whiteman, supra note 57, at 797-98.

2. Under Misran Law Double Criminality was not met.

The lack of double criminality goes beyond a mere assertion that the two State's label their crimes differently.<sup>60</sup>

Cases supporting the proposition that it is not essential that the offense be labelled by the same name in both States are distinguishable.<sup>61</sup> These cases involve situations where an actual offense was committed. Misra's assertions go beyond the situation described in those cases. The label "theft" insinuates that the bust of Theslon belonged to Avon and was wrongfully taken. On the contrary, the bust belongs and has always belonged to Misra. Although Avon had possession of the bust, proper title to the bust belongs to Misra.

3. Removing the bust of Theslon from the Avon Museum more accurately represents an act of self-help.

Retrieving the bust of Theslon represents an act of self-help, undertaken to right a wrong after other avenues of relief were exhausted.<sup>62</sup> The government of Misra has always maintained that the Sloane Collection, including the bust of Theslon is part of Misran cultural heritage.<sup>63</sup> Misra's consistent protest and demand for its return indicates that it has never accepted Avon's auto-interpretation that it legally acquired the collection.<sup>64</sup> Misra's refusal to return the bust is evidence of this fact.

B. The Offense Charged Is Not Extraditable Under Article 2 Of The Extradition Treaty

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<sup>60</sup>Whiteman, supra note 57, at 773.

<sup>61</sup>See, e.g., In re Arton [1896] 1 Q.B. 509, 517; In re Budlong, [1980] 1 ALL E.R. 701.

<sup>62</sup>Sheehan, The Entebbe Raid: The Principle of Self-Help in Int'l Law as Justification for State Use of Armed Forces, 1 Fletcher Forum 135-153 (1977).

<sup>63</sup>Compromis, supra note 8, at 5.

<sup>64</sup>Compromis, supra note 8, at 6; See Gross, States as Organs of International Law and the problem of Auto-interpretation, in Law and Politics in the World Community 88 (G. Lipsky ed. 1950).

Neither Erich Weiss nor Madame Z have committed any of the offenses listed in the Appendix of the Extradition Treaty because the property taken rightfully belongs to Misra.<sup>65</sup> Therefore, Article 2(1) of the Treaty has not been met. Article 2(3) of the Extradition Treaty requires extradition for acts punishable in accordance with the laws of both contracting parties. While Misra has passed legislation consistent with the UNESCO Convention, it has done so pursuant to its ratification of the Convention.<sup>66</sup> Avon has not ratified the Convention and therefore, cannot take advantage of Misra's laws executing the Convention.<sup>67</sup>

C. A Prima Facie Case Is Required Before Extradition Will Be Granted.

Article 8 of the Extradition Treaty binds Avon to present a prima facie case before extradition may be granted. Avon, as the requesting State, must present sufficient evidence for trial as would be required by Misra for trial within its own jurisdiction.<sup>68</sup> The evidence proffered by Avon does not reasonably prove Madame Z and Erich Weiss' guilt. The only evidence available is based on the reports of journalists.<sup>69</sup> Avon has not presented enough evidence to link Erich Weiss and Madame Z with the offense it has charged.

V. MISRA'S REFUSAL TO EXTRADITE MADAME Z AND ERICH WEISS IS IN CONFORMITY WITH THE AVON-MISRA EXTRADITION TREATY AS WELL AS GENERAL PRINCIPLES OF INTERNATIONAL LAW.

A. Misra's Sovereign Right To Refuse Extradition Is Embodied In The Extradition Treaty.

1. The language of the extradition treaty does not create an obligation to extradite nationals.

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<sup>65</sup> See supra at p. 13.

<sup>66</sup> Compromis, supra note 8, at 9; UNESCO Convention, supra note 36.

<sup>67</sup> See Compromis, supra note 8, at 9.

<sup>68</sup> Compromis, supra note 8, at 8; Shearer, supra note 56, at 150-165.

<sup>69</sup> Compromis, supra note 8, at 6.

- a) The phrase "Neither contracting party shall be bound to deliver up its own nationals" specifically creates a right to refuse extradition.

The Extradition Treaty embodies the general international law principle that a State is not obligated to extradite its own nationals.<sup>70</sup> Article 12 of the Extradition Treaty is explicit in its denial of any obligation on the part of the contracting parties to surrender their own nationals for extradition. Since the legal right to demand extradition and the correlative duty to surrender exists only when created by treaty, there is no duty to extradite nationals under the Extradition Treaty between Misra and Avon.

- b) The Extradition Treaty contains a discretionary clause which demonstrates its non-mandatory nature.

A treaty should be interpreted according to the "ordinary meaning" of its terms and intent of the parties.<sup>71</sup> The second clause of Article 12 reflects a deliberate choice by the parties to specifically allow discretion to the requested State to grant or refuse a request for extradition. It does not restrict how the individual contracting party may exercise its discretion. Misra has exercised its discretion in good faith by deciding that extradition is not warranted in this case.

2. Customary international law creates no obligation to extradite.

Modern practice dictates that the legal duty to extradite cannot exist in the absence of a treaty.<sup>72</sup> An extradition treaty creates an avenue for consensual cooperation between the two parties. It is a contract designed to

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<sup>70</sup>R. Rafuse, The Extradition of Nationals (1939); Harvard Research in International Law, Draft Convention on Extradition, 29 Am. J. Int'l L. 51 (Supp. 1935).

<sup>71</sup>1969 Vienna Convention, supra note 27, at art. 31.

<sup>72</sup>M. Bassiouni, International Extradition and World Public Order 7 (1983) [hereinafter cited as Bassiouni].

preserve State sovereignty while promoting cooperation.<sup>73</sup> Publicists agree and clearly enunciate that a demand for extradition need not be granted unless it conforms with the conditions prescribed in the treaty.<sup>74</sup> Since exempting nationals from extradition is a condition specified in this treaty,<sup>75</sup> Misra has no affirmative duty under the treaty or customary international law to surrender its two nationals.

B. Erich Weiss And Madame Z Are Nationals Of Misra And Therefore Are Not Subject To Extradition Under the Treaty.

1. Madame Z is a national of Misra.

Madame Z, as a Misran national, comes within the purview of Article 12 of the Extradition Treaty and therefore is not subject to extradition.<sup>76</sup> Madame Z has retained cabinet and diplomatic appointments usually reserved for nationals.<sup>77</sup> She is also an active political leader of a nationalist movement in Misra. These facts amply evidence her status as a Misran National.

2. Erich Weiss is a national of Misra by virtue of Misra's naturalization laws.

Questions of nationality fall within the domestic jurisdiction of each State.<sup>78</sup> Absent a waiver of jurisdiction, a State has jurisdiction over all

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<sup>73</sup>A. McNair, The Law of Treaties 668 (1961).

<sup>74</sup>S. Bedi, Extradition in International Law and Practice, 34 (1968) [hereinafter cited as Bedi]; 5 J. Verzijl, International Law in Historical Perspective, 269-323 (1972).

<sup>75</sup>Compromis, supra note 8, at 8.

<sup>76</sup>See, e.g., Whiteman, supra note 57, at 867-8.

<sup>77</sup>Compromis, supra note 8, at 6; See Vienna Convention on Diplomatic Relations, opened for signature April 18, 1961, 23 U.S.T. 3227, 500 U.N.T.S. 95 [hereinafter cited as 1961 Vienna Convention].

<sup>78</sup>Nationality Decrees in Tunis and Morocco (Tunis v. Morocco), 1923 P.C.I.J., Ser. B, No. 4.

individuals within its territory.<sup>79</sup> International law recognizes nationality acquired by adoption or naturalization.<sup>80</sup> However, international law does not govern this area of State activity nor does it impose any limitation on a State's freedom to confer this status on any individual.<sup>81</sup> Thus, each State is free to determine who is its national.

- a) International law requires Misran municipal law to govern questions of nationality acquired by naturalization.

Erich Weiss is a naturalized citizen by grant of Misra and therefore exempt from extradition. Naturalization is a matter regulated by each State according to its own conception of the degree to which its national interest will be promoted by extending its nationality to outsiders.<sup>82</sup> In the Czechoslovakian Extradition Case,<sup>83</sup> the Hungarian government refused to extradite a person described as a Czechoslovakian national. The Hungarian Government posited that the accused was also a Hungarian national and therefore could not be extradited, even though he may have lived in Czechoslovakia for some time prior to his repatriation. The Tribunal agreed. Consequently, since Erich Weiss has, by law of Misra, acquired Misran nationality, his extradition may be refused under the treaty provisions even if he also possesses Avon nationality.

- b) Under the governing municipal law and the applicable international law, Misra's naturalization measures are lawful.

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<sup>79</sup>Schooner Exchange v. McFaddon, 2 U.S. (7 Cranch) 116 (1812).

<sup>80</sup>Bedi, supra note 74, at 90.

<sup>81</sup>Nottebohm Case (Liechtenstein v. Guat.), 1955 I.C.J. 4, 23 (Stating "it is for every sovereign state, to settle by its own legislation the rules relating to the acquisition of nationality and to confer that nationality by naturalization granted by its own organs in accordance with that legislation. . . .").

<sup>82</sup>Id.

<sup>83</sup>Extradition (Czech. Request) Case 3 Ann. Dig. 303 (Resolution of the Minister of Hungary 1926); See generally H. Van Panhuys, The Role of Nationality in International Law 137 (1959).

Naturalization must be based on an explicit voluntary act of the individual combined with an express grant by the State.<sup>84</sup> The fact that Erich Weiss is now a permanent resident of Misra is evidence of the type of voluntary act required to show his intent to become a Misran national. Additionally, Misra, as a sovereign, has demonstrated its intent to confer Misran nationality to Weiss by granting him honorary citizenship and permanent residence status.<sup>85</sup>

Moreover, since the Extradition Treaty does not define the term "national" it must be read to include all nationals even those who have acquired nationality through naturalization.<sup>86</sup> It is a familiar rule that the obligation of treaties should be liberally construed so as to give effect to the apparent intention of the parties.<sup>87</sup> The provisions of Article 12 were not intended to restrict or curtail State decisions concerning nationality.

Furthermore, Erich Weiss is a Misran national because he has substantial and effective connection with the State.<sup>88</sup> The connections between Erich Weiss and Misra go beyond a mere desire to be associated with the State. It encompasses an identification with the particular social, economic and political environment of Misra. Misra has extended citizenship to Erich Weiss, and therefore Misra may refuse his extradition as a national under the Treaty.

3. The material moment for determining nationality is the time of the extradition proceeding.

Although Erich Weiss became a Misran national after the alleged offense was committed, the nationality exemption still applies. The Extradition

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<sup>84</sup>I. Brownlie, supra note 9, at 390-91.

<sup>85</sup>Compromis, supra note 8, at 6.

<sup>86</sup>In re Del Porto, 6 Ann. Dig. 307 (Switz. Fed. trib. 1931); See also, European Convention, supra note 57, at art. 6(c) ("Nationality shall be determined as of the time of the decision concerning extradition.")

<sup>87</sup>Valentine ex rel Neidecker v. United States, 299 U.S. 5 (1936); 1969 Vienna Convention, supra note 27, at art. 31.

<sup>88</sup>Nottebohm Case, 1955 I.C.J. 4, 23.

Treaty lacks a specific provision regarding the relevant time to determine who qualifies as a national.<sup>89</sup> In Re D.G.B.<sup>90</sup> examined a similar treaty which failed to specify the relevant time of nationality. The court held that since no distinction is made in the treaty the relevant time frame is the extradition proceeding. Because Erich Weiss was granted citizenship prior to the hearing, Misra may decline to surrender him as a national.

C. Alternatively, Misra Has The Right To Grant Erich Weiss Political Asylum.

Even if Erich Weiss is not found to be a national of Misra, the Government of Misra has the right to grant him asylum. It is a rule of customary international law that a State may grant asylum to any person in its territory at its own discretion.<sup>91</sup> Political asylum may be granted by refusing to extradite in order to protect individuals from prosecution in their home state for political reasons.<sup>92</sup>

Erich Weiss' alleged offense is both predicated and dependent upon certain political beliefs which brought about his complicity in the alleged offense. Assuming that the criminality of Erich Weiss' alleged offense is established in Avon, he clearly is in danger of political persecution. Avoiding political persecution is a legitimate justification for Misra's grant of asylum.<sup>93</sup> Therefore, Misra's refusal to extradite Erich Weiss implicitly represents a grant of territorial asylum and is justified under international law.

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<sup>89</sup>Cf., In re A, 18 I.L.R. 324 (Fr., Ct. App. Aix 1951) (treaty specifies material point of time to determine who qualifies as a national).

<sup>90</sup>In re D.G.B., 7 Ann. Dig. 335 (Greece, Ct. of Thrace 1933).

<sup>91</sup>Bassiouni, supra note 72, at 99.

<sup>92</sup>See generally, Lauterpacht, The Universal Declaration of Human Rights, 25 Brit. Y.B. Int'l L. 354 (1948); Bassiouni, supra note 74, at 107; Morgenstern, The Right of Asylum, 26 Brit. Y.B. Int'l L. 327 (1949).

<sup>93</sup>See, European Convention, supra note 57, at art. 3 (Article 3 prohibits on a multilateral basis extradition for political offenses and of persons likely to become victims of persecution.)

D. Even If The Court Determines That The Disappearance Of The Bust Of Theslon Is A Crime Chargeable To Erich Weiss and Madame Z, The Offense Is a Political Offense Inextricably Linked To Their Political Ideology And Therefore Exempts Them From Extradition.

Madame Z and Erich Weiss' actions are prompted solely by ideological motives. It is a well established rule of international law that States may decline extradition of political offenders whose actions are motivated by political ideologies.<sup>94</sup> The political offense exception is now a standard clause in practically all extradition treaties and is contained in the municipal laws of many States.<sup>95</sup> Publicists support the principle of not extraditing political offenders.<sup>96</sup> Absent this provision in the Extradition Treaty, this court should apply the political offense exception as a matter of customary international law.

The absence of a specific political offense clause in the Treaty is not an intentional rejection of such a claim. The Treaty has a double criminality clause. Such a clause implicitly contains a political offense exception because it permits a nation to define acts, which are punishable as crimes in other states, as political acts which are not grounds for extradition.

1. The political element of the offense predominates over any hint of a common crime.

The retrieval of the bust of Theslon was done in furtherance of a political purpose, to return the bust to its cultural heritage and rightful owner. Erich Weiss and Madame Z's actions were singularly politically motivated and were not excessive in relation to the political end desired. In Re Kavic<sup>97</sup>

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<sup>94</sup>"[M]ost extradition laws and treaties provide that extradition need not or shall not be granted when the acts which the accused is charged constitute a political offense." Whiteman, supra note 57, at 799-800.

<sup>95</sup>Id.

<sup>96</sup>1 L. Oppenheim, International Law, 704-710 (H. Lauterpacht 8th ed. 1955). [hereinafter cited as Oppenheim].

<sup>97</sup>In re Kavic, 19 I.L.R. 371 (Switz. Fed. Trib. 1952).

involved the take-over of a Yugoslav passenger plane by crew members and its subsequent landing in Switzerland to escape from Yugoslavia. The court held that the motive justified the resulting injury to private property. Conversely, the court in In Re Peruzzo<sup>98</sup> held that the murder of a fascist in Italy after the hostilities had ended was not justified as a means to accomplish the suppression of fascism.

In the present case, the political element constitutes the actual purpose for the alleged crime. Following the rationale of In Re Kavic, it is clear that the political motive and the means used justified Erich Weiss and Madame Z's actions. Moreover, in the present case, there was no injury to private property, since the property rightfully belongs to Misra.

2. Misra's characterization of the charge as a political offense complies with accepted criteria defining a political offense under international law.

It is generally agreed that three criteria must be met in order to trigger the political offense exception: (1) the actor must be personally committed to the cause and the means of achieving its objectives; (2) there must be a link between the political motive and the crime committed; and (3) the political element must overshadow the intent to commit a crime.<sup>99</sup>

- a) Madame Z and Erich Weiss were personally committed to the ideology and the cause of the MNO.

Madame Z is the president of the growing nationalist organization, in Misra (MNO), which advocates restoring Misra's cultural heritage and pride.<sup>100</sup> Erich Weiss' involvement with Misran ideology is evidenced by his support for MNO activities. The retrieval of the bust of Theslon is undeniably the best manifestation of their commitment and conviction in the cause of Misran pride and patrimony.

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<sup>98</sup>In re Peruzzo, 19 I.L.R. 369 (Switz. Fed. Trib. 1951).

<sup>99</sup>See, Bassiouni, supra note 72, at 402-403.

<sup>100</sup>Compromis, supra note 8, at 5.

- b) Erich Weiss and Madame Z's offense is linked to a political motive.

The MNO is dedicated to restoring Misra's cultural heritage. Erich Weiss and Madame Z took the bust of Theslon in an attempt to return it to its natural patrimony and its rightful place in Misra.

- c) The political motive overshadows any intent to commit a crime.

The bust of Theslon was returned to the Republic of Misra.<sup>101</sup> Neither Madame Z nor Erich Weiss tried to keep or sell the bust for personal gain. Thus, appropriating the bust was not predominantly a criminal offense.

- E. Avon's Counterclaim For The Return Of The Bust Of Theslon Is Not Warranted Under The Treaty.

Article 22 of the Extradition Treaty specifically allows return of property connected with the charges, for evidentiary use only, when extradition has been granted.<sup>102</sup> Misra refuses to grant extradition. Therefore, there is no reason to return the property.

## VI. INTERNATIONAL PRINCIPLES OF SOVEREIGNTY ENTITLE MADAME Z TO IMMUNITY FROM SUIT IN AVON.

- A. Madame Z's Immunity Is Absolute.

The exemption of diplomats from jurisdiction is mandated in international law in order to protect the relations among States.<sup>103</sup> The doctrine of absolute diplomatic immunity maintains that diplomats have criminal and civil immunity from the jurisdiction of the receiving State.<sup>104</sup> The doctrine precludes evaluating a diplomat's actions in the courts of another State, unless the sending State consents.<sup>105</sup>

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<sup>101</sup>See Compromis supra note 8, at 6.

<sup>102</sup>Compromis, supra note 8, at 8.

<sup>103</sup>Oppenheim, supra note 96, at 790.

<sup>104</sup>Vienna Convention, supra note 77, at art. 31.

<sup>105</sup>Vienna Convention, supra note 77, at art. 32(1), (2).

B. Diplomatic Immunity Gives Misra The Right To Refuse The Extradition Of Madame Z.

Article 29 and Article 31 of the Vienna Convention extend immunity to diplomatic agents. As a representative of a sovereign state, a diplomat is inviolable and is not to be liable to any form of arrest or detention. Madame Z carries her immunity while she is in transit. Therefore, under Article 40 of the Vienna Convention,<sup>106</sup> Avon is required to accord Madame Z the same privileges and immunities of inviolability.

C. Misra Never Waived Madame Z's Immunity.

The singular exception whereby Avon could exercise jurisdiction over Madame Z is a waiver of immunity and consent to jurisdiction. Yet, at no time prior or subsequent to the extradition request did Misra waive Madame Z's immunity. Thus, in the absence of Misra's consent, Madame Z cannot be subject to the municipal law of Avon.

CONCLUSION

For the reasons stated above, it is respectfully requested that this honorable Court:

1. Find that Avon's acquisition of the Sloane Collection derives from acts of common theft;
2. Declare that the Sloane Collection comprises part of Misra's cultural heritage and national patrimony;
3. Order the immediate return of the collection to Misra.
4. Find that Misra has no duty to extradite Erich Weiss and Madame Z or return the bust of Theslon under the Extradition Treaty.

All of which is respectfully submitted,

Team 6-4  
Agents for Misra

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<sup>106</sup>Vienna Convention, supra note 77, at art. 40.