



# Association of Student International Law Societies

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THE 1986 PHILIP C. JESSUP INTERNATIONAL LAW MOOT COURT COMPETITION

THE ART TREASURES CASE

REPUBLIC OF MISRA

v.

KINGDOM OF AVON\*

## THE PROBLEM

The Governments of the Republic of Misra and the Kingdom of Avon have submitted the following matter by special agreement to the International Court of Justice. The parties have stipulated that the Statement of Facts is true.

This is a hypothetical problem drafted exclusively for use in the 1986 Jessup Competition. The Statement of Facts is not necessarily intended to portray actual situations.

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## COMPROMIS

The Republic of Misra is a poor country in whose territory lie the remains of one of the world's oldest civilizations. The Kingdom of Avon is a wealthy country that colonized much of Africa and Asia during past centuries.

Throughout its history Misra has been conquered and settled by invaders, who have gradually and thoroughly replaced the earliest inhabitants. The Empire of Salamis overran and forcibly incorporated Misra in the seventeenth century. During the battles to acquire Misra, Salamic forces bombarded and then occupied Misra's ancient capital of Tannis. The ruins were converted into a fortress whose ammunition storage area had been the principal temple of the city. Salamic troops destroyed ancient columns in target practice and burned many marble statues to create lime whitewash.

The ruined fortifications of Tannis remained substantially untouched until 1802 when the Kingdom of Avon appointed Major Harrison Sloane as consul in the Salamic Province of Misra. Major Sloane was a well-known classical scholar and collector of antiquities. Upon his arrival in Tannis he sought and, after difficult negotiations, obtained permission from the provincial Bey to study the ancient ruins of the city. The Bey, however, denied Major Sloane's subsequent requests to undertake measures for historic preservation. Indeed, the Bey explicitly restricted

the activities of Major Sloane to studying and reporting on the ruins. Acting on his own, Major Sloane then applied directly to Sejam Fezgrina, the Emir of Salamis, to gain unrestricted access to the ancient city. The Emir replied with a Directive to the Bey ("The Fezgrina Directive"), which, in its French translation, granted Sloane permission to study and remove "quelques pieces de pierre avec inscriptions et figures." This French translation is the only remaining documentation of the original Directive.

When Sloane received his copy of the Fezgrina Directive, he immediately took action. During the following year some three hundred Salamic workers labored continuously to remove statues, friezes, frescoes, and other artifacts of ancient Misra. It does not appear that the Salamis government, which protested Sloane's activities to the Government of Avon, did anything effective to restrain Sloane and his workers. Although several leading Misrans protested the removal of the objects, they lamented both their powerlessness to back up their protests with force and the failure of the Salamis government to come to the rescue.

In all, some two hundred crates of remains were taken and shipped to Avon. Only the shells of buildings were left and some of the most significant of these suffered architectural damage as a result of the confiscation. By 1806, all of the art taken by Sloane had arrived in Avon. As a result of personal financial hardship, Sloane was forced to offer the collection for sale to the government of Avon. It appointed a study commission, which found that Sloane's act was "an absolutely necessary and virtuous act of salvage to preserve the priceless heritage of an ancient

civilization." Upon the commission's recommendation, the government purchased the entire collection from Sloane for a sum equivalent at that time to \$20,000 U.S. and placed it in the Avon National Museum, a government institution, where it remains today.

The Sloane Collection contributed to an upsurge of interest in ancient artifacts, a public understanding of them, and a brilliant new school of Avonian painting. The new interest in Misran art also seemed to encourage aggressive acquisition of Misran art by private collectors, museums and government officials in Avon and other European countries. Of greatest interest were preserved human remains in their elaborate caskets and Misran obelisks. The human remains were often taken for dissection to foreign laboratories or were destroyed in an effort to locate ancient documents and jewelry. By the time of Misran independence, most of its ancient obelisks stood in Avon as well as in London, Paris, Rome and Berlin, in all of which they became items of national pride.

When it achieved independence on July 4, 1826 after a successful revolution against Salamis, Misra acted immediately to restore and preserve what was left of the archeological sites in Tannis and elsewhere. In addition, the government demanded that the Kingdom of Avon return the Sloane Collection for reintegration of the artifacts into their original sites. Avon denied Misra's request, and since then has always denied repeated requests by subsequent governments of Misra.

In 1827, Misra enacted strict regulations to govern all excavations. These regulations prohibited removal without the government's consent of any object "of historical value or significance." In spite of these efforts, major pieces of Misran art continued to find their way out of the country, including those acquired during a punitive expedition by Avon against Misra in 1908. Avon launched this expedition in retaliation against a wave of anti-western rioting that had resulted in the deaths of several Avonians, including diplomatic personnel. Noted art expert D. Van Dean accompanied the troops of Avon, acquiring many artifacts along the way. These were later enumerated in a peace treaty between Avon and Misra ("The Peace Treaty"), in which Misra ceded them to Avon as "war reparations." The best of these objects were added to the Avon National Museum; the remainder were sold to private collectors in Avon.

In 1913 the Avon National Museum announced the excavation and acquisition of a unique marble bust of Theslon, an ancient Misran queen. This was the last and most important item from Misra to be acquired for the Sloane Collection. Most art scholars and historians consider the bust to be among the world's greatest works of art. When the statue was first documented as inventory of the Museum and displayed there, the Misran government immediately protested and demanded its return. The Museum countered that the bust had been purchased legitimately from an anonymous finder, who had obtained Misran customs clearance to export the object. Misra's own investigation revealed that the customs official had been presented with a case filled with minor artifacts, among which, unbeknownst to him, was the statue of

Queen Theslon. The finder had not presented an itemization of the contents of the case. There was some inconclusive evidence of bribery. The location of the find in Misra and the circumstances of the statue's acquisition have never been fully disclosed.

The government of Misra has consistently maintained that because the Sloane Collection is part of its national cultural heritage, it must be returned. In the government's view, neither Avon nor any of its nationals ever legally acquired title to works of art in the Collection; consequently, immediate restitution is appropriate. Avon maintains that its national museum legally acquired the art, and that it is part of the world's, rather than any nation's, cultural heritage. Thus, Avon claims that the foremost objectives are to preserve and display the artifacts properly for widespread viewing. Avon claims that it alone, not Misra, can best accomplish these objectives. Given current high levels of pollution in and around Tannis, scientists concur that some valuable objects in the Collection would be at risk of environmental destruction if they were returned for outdoor display in Misra.

The Misra National Organization (MNO), a nationalist movement, has been gaining ground in the political arena. Two of its leaders hold portfolios in the coalition government of Misra. MNO, above all, stands for restoring cultural heritage and national pride. The organization's president is a lawyer, popularly known as Madame Z, who studied and taught in Avon for a few years; later she became Misra's Ambassador to Avon. She is now Misra's Ambassador to France.

In July 1984, Madame Z stayed for three days in Avon, en route from Tannis to Paris. While in Avon, she gave a lecture and attended two concerts. Toward the end of her stay she and her lover, the Avonian art historian Erich Weiss, visited the Sloane Collection at the Avon National Museum. Immediately afterward, it was discovered that both the bust of Queen Theslon and Erich Weiss had vanished from Avon. Three days later at a press conference in Tannis, the Misran Minister of Cultural Affairs cheerfully announced 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." He refused to answer questions on the circumstances surrounding the object's removal from Avon, and declared unequivocally that it would never be returned there.

Subsequent investigative reporting by foreign journalists in Misra disclosed that Madame Z, with the help of her lover, Erich Weiss, had arranged the theft of the statue and its transfer to Misra in Madame Z's luggage. According to reports in the popular press, neither security nor customs officials searched her luggage at the airport when she left Avon. How Weiss took the piece out of the Museum remains a mystery. Having fled Avon, he now resides in Misra, where he is regarded as a national hero. He has been made an honorary citizen of Misra and given permanent residence there.

The government of Avon has charged Weiss and Madame Z with the theft, and has demanded that Misra extradite them and return the statue to Avon under an extradition treaty between the two countries. Without explanation, Misra has refused.

Provisions of the extradition treaty between Misra and Avon that may be pertinent to the issues in this case are as follows:

The Governments of the Kingdom of Avon and the Republic of Misra:

Desiring to cooperate more closely in the fight against crime and, to this end, mutually to render better assistance in matters of extradition;

Have agreed as follows:

ARTICLE 1  
Obligation to Extradite

The Contracting Parties agree to extradite, subject to the provisions of this Treaty, persons whom the authorities of the requesting Party have charged with an offense or have found guilty of committing an offense, or are wanted by said authorities to complete a judicially pronounced penalty of deprivation of liberty for an offense committed within the territory of the requesting Party.

ARTICLE 2  
Extraditable Offenses

1. - Extradition shall take place, subject to this Treaty, for willful acts which fall within any of the clauses of the Appendix and are punishable in accordance with the laws of both Contracting Parties, by a deprivation of liberty, the maximum of which shall not be less than one year.

....

3. - Extradition shall also be granted for willful acts, which, although not being included in the Appendix, are punishable, in accordance with the laws of both Contracting Parties, by deprivation of liberty the maximum of which shall not be less than one year.

.....

## ARTICLE 8

Extradition shall be granted only if the evidence be found sufficient, according to the laws of the requested Party, either to justify the committal for trial of the person sought if the offense of which he has been accused had been committed in that place or to prove that he is the person convicted by the courts of the requesting Party.

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## ARTICLE 12 Extradition of Nationals

Neither Contracting Party shall be bound to deliver up its own nationals, but the executive authority of the requested Party shall cooperate in good faith in delivering them up if, in its discretion, it be deemed proper to do so.

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## ARTICLE 22 Surrender of Property

To the extent permitted under the law of the requested Party and subject to the rights of third parties, which shall be duly respected, all articles, instruments, objects of value or documents relating to the offense, whether or not used for its execution, or which in any other manner may be material evidence for the prosecution, shall be surrendered upon the granting of the extradition even when extradition cannot be effected due to the death, disappearance, or escape of the accused.

The requested Party may condition the surrender of articles upon a satisfactory assurance from the requesting Party that the articles will be returned to the requested Party as soon as possible.

APPENDIX

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9. Robbery or burglary.

13. Receiving or transporting any money or other valuable securities, knowing the same to have been unlawfully obtained.  
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24. An offense against the laws relating to the importation, exportation, or international transit of merchandise.

25. Violations of customs laws.

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Misra, Avon, and Salamis are all members of the United Nations and original parties to all global agreements on the law of armed conflict currently in force. In 1975 Misra signed and ratified the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. Avon signed the agreement in 1975 but has not yet ratified it; its ratification had been considered likely until the present dispute arose, but that prospect is now somewhat uncertain. Each of the two countries has adopted legislation consistent with Articles 6, 7, 8 and 13 of the UNESCO Convention, but in the case of Avon, formally independent of the Convention. Corresponding penalties in the laws of both countries include sentencing of offenders for up to two years for each offense. Similarly, the laws of both countries provide penalties for offenses listed in the Appendix to the bilateral extradition agreement that include sentencing of offenders for up to two years. Other features of national laws corresponding to the UNESCO provisions and the bilateral extradition agreement are irrelevant in seeking a peaceful resolution of this dispute. The

government of Salamis has taken a keen interest in the dispute, but has not directly intervened.

The Government of Misra asks the Court:

1. for a declaration that the Sloane Collection results from common theft and that it comprises part of Misra's national patrimony and cultural heritage; and for an order for immediate restitution of the collection to Misra;
2. for a declaration that it is under no duty to extradite either Erich Weiss or Madame Z, nor to return the statue of Queen Theslon to Avon.

The Government of Avon asks the Court:

1. for a declaration that the Sloane Collection forms part of the common cultural heritage of mankind and is reposing legally in Avon;
2. for an order that Misra comply with international law by extraditing Erich Weiss and Madame Z and returning the statue of Queen Theslon to Avon.