

LBL/MJR/gr *007*

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)
Chief Rest Economics Division
APO 742

ED 007 (RES/MFAA)

8 August 1946

SUBJECT: Plan for Recovery of Stolen Art Objects

TO
VAR
DMG
Det

Economics Division
Office of Military Government for Bavaria
APO 170, U. S. Army
Attn: MFA&A Section

Economics Division
Office of Military Government for Greater Hesse
APO 633, U. S. Army
Attn: MFA&A Section

Economics Division
Office of Military Government for
Wuerttemberg-Baden
APO 154, U. S. Army
Attn: MFA&A Section

Economics Division
Office of Military Government for Bremen
APO 751, U. S. Army
Attn: MFA&A

Economics Division
Office of Military Government, Berlin District
APO 755, U. S. Army
Attn: MFA&A Section

1. The Theater Provost Marshal recommends that a complete list be made, with detailed data on each subject, of all "cultural objects" (as defined in MGR 18-100.2), about which you now have information, and which were allegedly stolen or looted from territory occupied by United States troops or agencies. It is intended to disseminate said list to all pertinent law enforcement agencies.



123

111443

RG *260*
Entry *ECONOMIC*
File _____
Box *46*

DECLASSIFIED
Authority *NND 765036*
By *7J* NARA Date *8/31/99*
REPRODUCED AT THE NATIONAL ARCHIVES

DMC FILES - Capt. Regan - MFA&A Sect., Rest BR

Plan for Recovery of Stolen Art Objects
ED 007 (RES/MFAA), CMGUS, 8 August 1946

2. To aid this Section in compiling the recommended list, it is requested that you complete, under pertinent headings (as indicated in Inclosure), a Property Card-Art for each such cultural object allegedly stolen or looted from your Land or District by "United States troops or agencies". Under History And Ownership should be included, if known, the name of the person or organization suspected of looting, the name of the place from which the object was removed, the date of looting, and other information considered helpful in effecting recovery of the object.

3. It is further requested that you submit, under separate communication, your recommendations as to how this program can be amplified and made more effective.

FOR THE DIVISION DIRECTOR:

1 Incl: Property
Card Art
Telephone BERLIN 42531

JOHN H. ALLEN
Colonel GSC
Chief, Restitution Branch

2

123

111444

RG	260	DECLASSIFIED
Entry	ECONOMIC	Authority NND 765 036
File		By 75 NARA Date 8/31/99
Box	46	REPRODUCED AT THE NATIONAL ARCHIVES

70-5110

**GENERAL INFORMATION SHEET CONCERNING THE
PROTECTION OF AMERICAN PROPERTY IN GERMANY**

Restitution of Property and War Losses.

The Department of State is not yet in a position to indicate what procedures will be adopted to deal with either (1) the establishment of rights asserted to property in Germany of which the former owners or their heirs were deprived during the Nazi regime by forced sale or otherwise, or (2) losses resulting from war damage in Germany. It may become necessary for the interested parties to take action on their own behalf before the appropriate authorities in Germany or elsewhere when the necessary procedures have been established. Due publicity will be given in the press to any such measures as are adopted.

**Investigating Status of Property and Informing
Authorities of American Interest.**

The Department is now endeavoring, when so requested, to assist American owners of property in Germany to the extent of directing its representatives in that country to make an investigation of the status of the property involved and to inform the appropriate authorities of the American interest therein. There is attached a leaflet containing the points that should be covered in furnishing the Department with necessary information, and indicating the form to be followed in submitting the information, in order that an investigation of the property may be made. Besides the information called for, there should be submitted a certified copy of a birth certificate in cases of native-born American citizens; in instances of naturalized American citizens, the property owner should request the Immigration and Naturalization Service, Department of Justice, Franklin Trust Building, Philadelphia 2, Pennsylvania, to send directly to the Department of State confirmation of naturalization. In the latter case, the Immigration and Naturalization Service should be supplied with the full name of the naturalized person, the name of court in which naturalized, and the date and number of the naturalization certificate.

It is to be stressed that this service can be rendered only to American nationals and American concerns. The mere fact that a property owner is a resident of the United States and has taken out his first papers for naturalization is not sufficient to enable the Department to take action.

Recently-acquired American Citizenship.

The Department has been receiving many requests for assistance by American citizens who have been naturalized in the last several years and subsequent to the time when they were deprived of property in Germany or suffered damage to their property. While the Department has been rendering the service mentioned under the preceding heading, it should be stressed that according to international law and practice, a government of a country is unable effectively to espouse claims on behalf of its nationals who were not nationals of such country at the time the claim arose.

Claims.

The Department is not as yet encouraging the filing of formal claims with respect to property losses in Germany. However, in cases in which claimants desire to file such claims for possible future consideration the Department will, upon request, furnish suggestions for preparing claims.

Control of Property by Military Authorities.

All property in Germany owned or controlled in whole or in part by persons outside Germany, as well as that property which is subject to eventual restitution proceedings, namely, property which has been the subject of forced sale or transfer, is placed under the protective custody of the Military authorities, and can not be sold, transferred or otherwise dealt in without a special license from those authorities. When the procedures shall have been established for the restitution of property which has been the subject of forced sale or transfer, publicity will undoubtedly be given thereto.

The requisitioning of property for the needs of the occupation forces and the levying of taxes are matters wholly under the jurisdiction of the Military authorities and the Land Governments. The costs of billeting and housing the occupation forces are borne by the German economy, and it cannot be expected that foreign exchange will be made available to persons outside of Germany whose property is so requisitioned. In such cases, rents are paid by the Land Governments into a blocked account in the name of the absentee owner.

Communications regarding the requisitioning and custodianship of property in Germany by the Military authorities should be addressed to the Finance Division, Property Control Branch, Military Government for Germany (U.S.), APO 742, care of Postmaster, New York, New York.

Transfer of

111445

RGS9
Lot 620-4
Box 22

DECLASSIFIED	
Authority	NWD 968071
By	AWT
NARA Date	2/7/77

Transfer of Funds or other Property out of Germany.

Germany still falls within the purview of Executive Order 8389, as amended, and more particularly the Treasury Department's General Banking No. 11. Accordingly, unless a special license therefor is issued by the Secretary of the Treasury, it is not possible for persons in the United States to conduct business transactions within Germany or to transfer funds or other types of property from Germany to the United States or other countries at this present time. A special license for such transfers must also be issued by the Military Government authorities in Germany. It is the Department's understanding that such licenses are being issued only in exceptional cases. Moreover, in view of the present disruption of Germany's national economy and the heavy demands which will be made upon that country for reparations and other payments it may not be possible to effect the transfer of funds out of Germany for an indefinite period of time.

Claims against Private Individuals and Institutions, Including Insurance Companies.

The Department is not in a position to take action with respect to this type of claim, the enforcement of which, under normal circumstances, would require resort to the usual measures available for adjustment of claims against private individuals and institutions. It is not possible at this time to state when the resort to these procedures may again become practicable.

Pension Claims Against the German Government.

It is the Department's understanding that the question of pension claims against the German Government is being considered by the Allied Control Authority and that no conclusion has as yet been reached as to whether such claims will be recognized as valid.

Bank Deposits and Securities.

A leaflet is attached regarding bank deposits and securities in Germany.

Estates.

A leaflet is attached regarding estates in Germany.

Mortgages.

A leaflet is attached regarding American-held mortgages on property in Germany.

Correspondence with Persons in Germany.

It is now possible to correspond directly with persons in Germany on informational matters, but restrictions on transactional matters are still in force. The existing restrictions are outlined in the attached press release No. 5-197, issued by the Treasury Department, dated January 2, 1947.

Powers of Attorney.

It is also possible in a leaflet dealing with the sending of powers of attorney to Germany on property matters. It is noted that in press release No. 5-197, it is necessary to obtain a license from the Treasury Department in order to send a power of attorney to Germany.

Department of State

February 4, 1947.

111446

RG59
Lot 620-4
Box 22

DECLASSIFIED
Authority NND 968071
By [Signature] NARA Date 7/7/99

REPRODUCED AT THE NATIONAL ARCHIVES

Excerpt

TITLE 18

MONUMENTS, FINE ARTS AND ARCHIVES

Part 1

POLICY AND ORGANIZATION
SECTION A

DEFINITIONS AND ORGANIZATION

18-101

Cultural Objects: The term "cultural objects" includes all movable goods of importance or value either religious, artistic, documentary, scholarly or historic, the disappearance of which constitutes a loss to the cultural heritage of the country concerned. This definition includes recognized works of art, as well as such objects as rare musical instruments, books and manuscripts, scientific documents of a historic or cultural nature, and all objects usually found in museums, collections, libraries and historic archives.

18-104

Looted Cultural Materials: The term "looted cultural materials" includes all cultural objects and materials which have been acquired since 1 January 1933, by Nazis within Germany or those acquired in territories occupied by the Germans or their allies, either:

- a. Directly by duress or wrongful acts of confiscation, dispossession or spoliation, whether pursuant to legislation, or by procedure purporting to follow forms of law, or otherwise; or
- b. Indirectly by purchase or other transactions regardless of whatever consideration may have been employed.

18-106

Restitution: Identifiable looted works of art and cultural materials will be restituted to the governments of the countries from which they were taken. "Loot" refers to objects which have been the subject of an act of dispossession by the enemy and which were in existence and located in an occupied territory and removed by the Germans subsequent to the date of commencement of the German occupation of that territory (see MGR Title 19).

- 1 -

111447

RG 260
Entry Ardelia Hall Coll.
Box 250

By AT MARA Date 7-22-77
Authority NNN 775057
DECLASSIFIED

TITLE 18

SECTION B

OBJECTIVES

18-110

Restitution: To reconstitute identifiable looted works of art and cultural materials to the governments of the countries from which they were taken.

18-116

Replacement in Kind: To make such cultural materials available for replacement in kind as may be ordered by OMGUS.

18-118

Unidentifiable Cultural Materials: Ultimately to dispose of residue of unclaimed and unidentified materials in collecting points and archival depots.

111448

RG 260
Entry Ardelia Hall (W)
Box 250

DECLASSIFIED
Authority NNN 775057
By AT NARA Date 7-22-99

TO E...
DECLASSIFIED
Authority NND 775 057
By Y.C. NARA Date 7/28/98

Title 18 : Dr. Hoffmann
has done MFF/17

RESTITUTIONS TITLE 19

TITLE 19
RESTITUTIONS

19-1 C-1 Scope

PART 1

DEFINITIONS: OBJECTIVES

- 19-100 C-1 Definitions
- 19-100.1 C-1 Property Subject to Restitution
- 19-100.2 C-1 Interpretation of Definition of Property Subject to Restitution
- 19-100.3 C-1 Claimant Nation
- 19-101 C-1 Policy
- 19-102 C-1 Method of Achieving Objective
- 19-102.1 C-1 Investigation and Search
- 19-102.2 C-1 Custody and Preservation of Restitutable Property
- 19-102.3 C-1 Cooperation with Visiting Missions

PART 2

CLAIMS

Section A

Receipt of Claims

- 19-200 C-1 Channel for Receipt of Claims
- 19-201 C-1 Claims Through Unauthorized Channels to be Rejected
- 19-202 C-1 Form and Substance of Claims

Section B

Processing of Claims

- 19-250 C-1 Control of Visiting Missions
- 19-250.1 C-1 General Provisions
- 19-251 C-1 Validity of Claims
- 19-251.1 C-1 Recommendation as to Validity
- 19-251.2 C-1 Determination as to Validity
- 19-252 C-1 Protection and Release of Property Subject to Restitution
- 19-253 C-1 Dismantling, Packing and Transporting Property
- 19-254 C-1 Receipt for Property Released

PART 3

INFORMATION TO BE OBTAINED FROM GERMAN POPULATION

- 19-300 C-1 Requirement for Enactment of Law
- 19-301 C-1 Definition of Term "Property Removed From an Area Occupied by German Forces"
- 19-302 C-1 Place for Submission of Declarations
- 19-303 C-1 Responsibility for Printing and Distribution of Declaration Forms
- 19-304 C-1 Receipt, Registration and Forwarding of Declarations

Change 61 of 4 October 1948
(Supersedes p. 71, C-60, GTC)

DECLASSIFIED
Authority NND 775 057
By K.C. NARA Date 7/28/98

TITLE 19 RESTITUTIONS

19-305 C-1 Filing and Processing of Declarations

19-306 C-1 Cooperation With German Authorities in Enforcing the Declarations Law

19-405 C-1 Transportation

19-406 C-1 Freight Points and Bills of Lading

19-407 C-1 Delegation of Functions

PART 4

PHYSICAL REMOVAL OF PROPERTY

19-400 C-1 General

19-401 C-1 Costs

19-402 C-1 Safeguarding and Insurance

19-403 C-1 Dismantling, Crating and Loading

19-404 C-1 Repairs

PART 5

REPORTS AND FORMS

19-500 C-1 General

19-501 C-1 Authority for Release

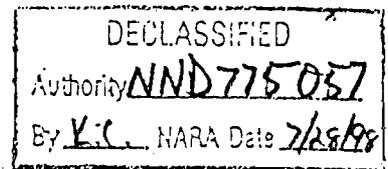
19-502 C-1 Receipt and Agreement for Delivery of Identifiable Property Other than Cultural Objects

19-503 C-1 Declared Property Card

19-503.1 C-1 Instructions Relating to Declared Property Cards

19-504 C-1 Proclamation and Notice

Change 61 4 October 1948
(Supersedes p. 72, C-60, GTC)



OFFICE OF MILITARY GOVERNMENT FOR GERMANY (US)

Office of the Military Governor
Berlin, Germany
APO 742

MILITARY GOVERNMENT REGULATIONS

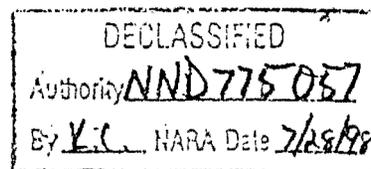
TITLE 19

Restitutions

TABLE OF CONTENTS

19-1	Scope		
	PART 1		PART 3
	DEFINITIONS: OBJECTIVES		INFORMATION TO BE OBTAINED FROM GERMAN POPULATION
19-100	Definitions	19-300	Requirement for Enactment of Law
19-100.1	Property Subject to Restitution	19-301	Definition of Term "Property Removed From an Area Occupied by German Forces"
19-100.2	Interpretation of Definition of Property Subject to Restitution	19-302	Place for Submission of Declarations
19-100.3	Claimant Nation	19-303	Responsibility for Printing and Distribution of Declaration Forms
19-101	Policy	19-304	Receipt, Registration and Forwarding of Declarations
19-102	Method of Achieving Objective	19-305	Filing and Processing of Declarations
19-102.1	Investigation and Search	19-306	Cooperation With German Authorities in Enforcing the Declarations Law
19-102.2	Custody and Preservation of Restitutable Property		
19-102.3	Cooperation with Visiting Missions		
	PART 2		PART 4
	CLAIMS		PHYSICAL REMOVAL OF PROPERTY
	Section A		19-400 General
	Receipt of Claims		19-401 Costs
19-200	Channel for Receipt of Claims		19-402 Safeguarding and Insurance
19-201	Claims Through Unauthorized Channels to be Rejected		19-403 Dismantling Crating and Loading
19-202	Form and Substance of Claims		19-404 Repairs
	Section B		19-405 Transportation
	Processing of Claims		19-406 Freight Points and Bills of Lading
19-250	Control of Visiting Missions		19-407 Delegation of Functions
19-250.1	General Provisions		
19-251	Validity of Claims		PART 5
19-251.1	Recommendation as to Validity		REPORTS AND FORMS
19-251.2	Determination as to Validity		(See Part 5 for Table of Contents)
19-252	Protection and Release of Property Subject to Restitution		
19-253	Dismantling, Packing and Transporting Property		
19-254	Receipt for Property Released		

Change 1: 4 October 1948
(Supersedes Title 19)

**TITLE 19****Restitutions**

19-1

Scope. This Title covers the methods and procedures applicable to restitution of property in any form (except Monuments, Fine Arts and Archives, for which see Title 18 MGR) to governments of claimant nations as defined in MGR 19-100.3.

PART 1**DEFINITIONS: OBJECTIVES**

19-100

Definitions.

19-100.1

Property Subject to Restitution. Restitution will apply to all property covered by the definition contained in this paragraph as same is interpreted in MGR 19-100.2.

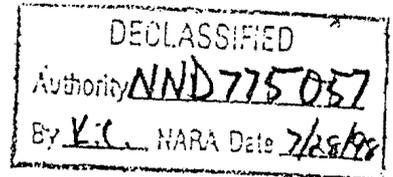
- a. The question of restitution of property removed by the Germans from Allied countries must, in all cases, be examined in light of the Declaration of 5 January 1943 (see MGR 23-50).
- b. Restitution will be limited, in the first instance, to identifiable goods which existed at the time of occupation of the country concerned and which have been taken by the enemy by force from the territory of the country. Also falling under measures of restitution are identifiable goods produced during the period of occupation and which have been obtained by force. All other property removed by the enemy is eligible for restitution to the extent consistent with reparations. However, the United Nations retain the right to receive from Germany compensation for this other property removed as reparations.
- c. As to goods of a unique character, restitution of which is impossible, special instructions will fix the categories of goods which will be subject to replacement, the nature of these replacements, and the conditions under which such goods could be replaced by equivalent objects.

19-100.2

Interpretation of Definition of Property Subject to Restitution. In applying the definition set forth in MGR 19-100.1 of property subject to restitution, the following interpretation will be used:

- a. With respect to paragraph b of MGR 19-100.1, where an article has been removed by force at any time during the occupation of a country, and is identifiable, the right to its recovery is an absolute one. The word "force" covers duress which may occur with or without violence. In this concept are also included looting, theft, larceny and other forms of dispossession whether they were carried out by an order of the German authorities, or by officials of the German civil or military administration, even when there was no order of the German authorities, or by individuals. Also included

Change 1: 4 October 1948
(Supersedes Title 19)

**19-100.2 (cont'd)**

are acquisitions carried out as a result of duress, such as requisitions or other orders or regulations of the military or occupation authorities.

b. In paragraph b of MGR 19-100.1, by use of the words, "all other property removed by the enemy" it was desired to include all property which was removed in any other way. This implies that restitution of property may be claimed whatever may have been the means or the reasons of dispossession. But the property removed in such manner does not entail an "absolute right" to restitution, which may be granted only within the limits consistent with reparations.

c. These "limits consistent with reparations" must be understood in the following manner: If property claimed on account of restitution is indispensable for the operation of a whole factory allocated on account of reparations, this property may be retained and not restituted. Restitution will be made only if the removal of the equipment does not seriously diminish the production capacity of the plant and does not destroy the completeness of the equipment to such an extent that when this plant is delivered on account of reparations it loses all value owing to the fact that restitution has been made.

19-100.3

Claimant Nation. The term "claimant nation" is applied to any nation which presents a claim for property alleged to be subject to restitution, as defined in MGR 19-100.1 and 19-100.2, provided such nation has been recognized as eligible to receive restitution under appropriate directives binding upon the Office of Military Government for Germany (U.S.). The forwarding of any claim to an Office of Military Government for any Land, to OMG Bremen Enclave (U.S.) or to the Commanding General, Berlin District (U.S. Sector) by the Office of the Military Government for Germany (U.S.) shall be deemed sufficient evidence that the nation submitting such claim is a "claimant nation" within the meaning of this paragraph.

19-101

Policy. The objective regarding "Restitutions" is expeditiously to locate and return to the appropriate claimant nations all property subject to restitution as defined in MGR 19-100.1 and 19-100.2 which has been identified.

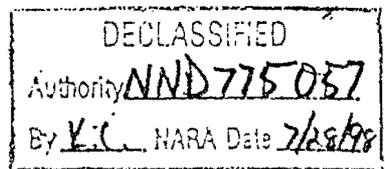
19-102

Method of Achieving Objective.

19-102.1

Investigation and Search. The Office of Military Government for each Land will ensure that appropriate investigations and searches are made to locate property alleged in a claim to be subject to restitution, or which (according to data obtained from German or other sources) might become the subject of such a claim. Such action will include:

Change 1, 4 October 1948
(Supersedes Title 19)



19-102.1 (cont'd)

- a. investigations of claims and information supplied by the Office of Military Government for Germany (U.S.);
- b. verification of data obtained from German declarations and accumulated by the Office of Military Government for Germany (U.S.) (see MGR 19-300 thru MGR 19-306 and MGR 19-504);
- c. examination of information available in Property Control Offices;
- d. examination of civil censorship reports; and
- e. prompt reporting to the Office of Military Government for Germany (U.S.), Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403, of all property within the Land believed to be subject to restitution and not otherwise previously so listed.

19-102.2

Custody and Preservation of Restitutable Property. Upon discovery of restitutable property, the Office of Military Government for the Land will take such property into custody in accordance with the provisions of Title 17 MGR, "Property Control".

19-102.3

Cooperation with Visiting Missions. The Office of Military Government of each Land will render suitable cooperation to such missions of claimant nations as may be authorized by the Office of Military Government for Germany (U.S.) to visit the location of restitutable property for purposes of identification, examination, supervision of packing and shipping and signing of necessary receipts and other documents (see MGR 19-250).

PART 2

CLAIMS

SECTION A

RECEIPT OF CLAIMS

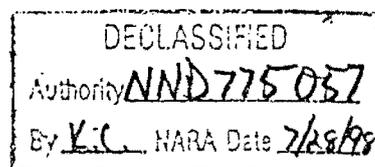
19-200

Channel for Receipt of Claims. After a claimant nation has, upon invitation, appointed a mission to the Theater Commander, to be known as "The (name of claimant nation) Mission for Restitution," and after such mission has reported to the Theater Commander and has been received, all claims for that nation will be presented through such accredited mission to the Office of Military Government for Germany (U.S.), Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403, which will give notice to the appropriate Office or Offices of Military Government.

19-201

Claims Through Unauthorized Channels to be Rejected. Any claim received by any Office of Military Government for restitution otherwise than through the Office of Military Government for Germany (U.S.), (Property Division, Reparation and Restitu-

Change 1 4 October 1948
(Supersedes Title 19)



19-201 (cont'd)

tion Branch, Karlsruhe, APO 403) will be referred to the latter Office and no other action will be taken until receipt of instructions from that Office.

19-202

Form and Substance of Claims. Claimant nations will have been instructed through appropriate channels to submit their claims in accordance with this paragraph.

- a. Claims may be submitted in a form which sets forth as much as possible of the following data:
 1. description of item claimed for restitution;
 2. maximum available identification data such as factory serial number, specifications and any special marks or characteristics of the item;
 3. last known location of claimed items within claimant country prior to removal to Germany and approximate date of such removal;
 4. last known location of claimed item in Germany;
 5. last known resident of claimant country who was owner or custodian of claimed item prior to its coming into control of the enemy within the territory of claimant country; and
 6. whether or not the property was in existence at the time the occupation of the claimant country, began.
- b. Each claim must include a statement, setting forth so far as possible, the facts and circumstances surrounding the removal of the claimed item from the territory of the claimant country.

SECTION B

PROCESSING OF CLAIMS

19-250

Control of Visiting Missions.

19-250.1

General Provisions. The Office of Military Government for Germany (U. S.), ((Rear) Reparations and Restitution Liaison Office, APO 757) will notify the Office of Military Government for each Land of the expected arrival, within its area, of accredited mission representatives (see MGR 19-200). Accredited mission representatives will carry letters of introduction from the Office of Military Government for Germany (U. S.); ((Rear) Reparations and Restitution Liaison Office, APO 757). The Office of Military Government for the Land will, upon receipt of such notification, assist such accredited missions in locating and identifying property subject to restitution and will at all times control and supervise the activities of such missions. If notification has not been received regarding any mission such mission will be returned to the Office of Military Government for Germany (U. S.), ((Rear) Reparations and Restitution Liaison Office, APO 757). The Office of Military Government for each Land will maintain a record of missions within its area of jurisdiction. Violations of instructions by any mission will be reported to Office of Military Government for Germany (U. S.), ((Rear) Reparations and Restitution Liaison Office, APO 757).

Change 1 4 October 1948
(Supersedes Title 19)

DECLASSIFIED
Authority NND 775 057
By K.C. NARA Date 7/28/98

19-251

Validity of Claims.

19-251.1

Recommendation as to Validity. The Office of Military Government for each Land will examine and investigate the data contained in and submitted with claims forwarded to it by the Office of Military Government for Germany (U.S.), and will make recommendations to the Office of Military Government for Germany (U.S.), (Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403), regarding the validity of such claims as follows:

- a. in regard to claims recommended to be considered valid, each recommendation will state whether the property subject to restitution was, in the opinion of the Office of Military Government for the Land, removed by force from the territory of the claimant nation (see MGR 19-100.1 and 19-100.2); and
- b. in cases where the recommendation is that the claim be declared invalid or that the property be found not to have been removed by force from the territory of the claimant nation, the Office of Military Government for the Land will append a concise statement setting forth the basis of such a recommendation.

19-251.2

Determination as to Validity. The Office of Military Government for Germany (U.S.), Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403, will make final determination as to the validity of each claim and the fact of removal by force, and, when appropriate, will issue Authority for Release (see MGR 19-501).

19-252

Protection and Release of Property Subject to Restitution. The Offices of Military Government for the Länder will take appropriate measures to protect and control property subject to restitution, and will ensure that no property is released or shipped except property specified on forms of Authority for Release issued by Office of Military Government for Germany (U.S.), Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403 (see MGR 19-251).

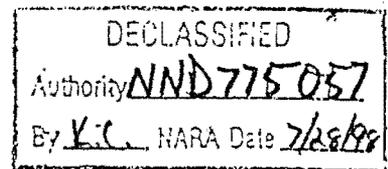
19-253

Dismantling, Packing and Transporting Property. The Offices of Military Government for the Länder will direct the Ministerpräsidenten to furnish adequate facilities for, and handle the dismantling, crating and packing of all property described in forms of Authority for Release (see MGR 19-251) as well as to arrange for the transportation to the frontiers of the U.S. Zone of all such property. The Office of Military Government for the Länder will be responsible for supervision of all such activities of the German authorities.

19-254

Receipt for Property Released. The Offices of Military Government for the Länder will obtain from the accredited represent-

Change 1, 4 October 1948
(Supersedes Title 19)



19-254 (cont'd)

itive of the claimant nation, a receipt for all property released against delivery or against shipping documents. Such receipts will be in the form prescribed in MGR 19-502 and copies thereof will be transmitted as directed in specific instructions to be issued by Office of Military Government for Germany (U.S.), Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403, for each lot of property to be released.

PART 3**INFORMATION TO BE OBTAINED FROM GERMAN****POPULATION**

19-300

Requirement for Enactment of Law. The Office of Military Government for each Land has directed the Ministerpräsident to enact and immediately place in force and effect a law in the form of the "Proclamation and Notice" as set forth in MGR 19-504. Such laws require that all persons, natural or juridical, within the U.S. Zone in Germany (except members of the U.S. or Allied forces) who have information or who have reasonable cause to believe they have information relative to "Property Removed from an Area Occupied by German Forces" as defined in MGR 19-301 prepare and submit the "Declaration" hereinafter described (see MGR 19-303). Such laws provide that failure to make this declaration properly and completely will subject the offender to the penalties provided in the law (see MGR 19-504).

19-301

Definition of Term "Property Removed from an Area Occupied by German Forces." The term "Property Removed from an Area Occupied by German Forces" means all property, tangible and intangible, movable and immovable, acquired in any way by Germans or German agents or persons resident in Germany from territory outside of "Das Deutsche Reich" as it existed on 31 December 1937 when such territory was occupied, governed or controlled by Germany or the German Forces.

19-302

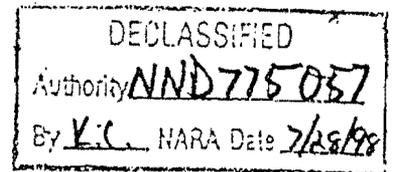
Place for Submission of Declarations. All declarations when completed will be signed by the declarant and mailed by registered Reichspost to such address as the Ministerpräsident of the Land may designate. The full name and address of the declarant must appear on the outside of the envelope in which the declaration is mailed (see MGR 19-504).

19-303

Responsibility for Printing and Distribution of Declaration Forms. The "Declaration" forms will be provided by the Office of Military Government for Germany (U.S.), Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403, to the Office of Military Government for each Land and the latter Offices will in turn furnish such forms for distribution to the respective Ministerpräsidenten of the Länder together with directions that such German officials make the "Declaration" forms available

Change 1: 4 October 1948
(Supersedes Title 19)

111457



19-303 (cont'd)

to the population of the area under their jurisdiction at local Kartenstellen or such other places of distribution as the German officials may designate (see MGR 19-504, Article I, para 2).

19-304

Receipt, Registration and Forwarding of Declarations. The Office of Military Government for each Land will direct the Ministerpräsident to receive all declarations and, after making a record of the name and address of the declarant (see MGR 19-302), the Post Office Registry number, the date when and the Post Office at which it was registered and mailed, to forward within four days after receipt all such declarations in the original unopened envelope to the Office of Military Government for the Land which will in turn forward such unopened envelopes to Office of Military Government for Germany (U.S.), (Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403).

19-305

Filing and Processing of Declarations. All declarations will be finally processed at a central point at Karlsruhe by the Office of Military Government for Germany (U.S.), Property Division, Reparations and Restitution Branch.

19-306

Cooperation with German Authorities in Enforcing the Declarations Law. All representatives of the Office of Military Government for the Land will be instructed to give maximum cooperation to German civilian authorities in the enforcement of the "Proclamation and Notice" regarding Declarations (see MGR 19-504). In cases where the discovery of property, interrogation in the field or other events disclose persons who have failed to file declarations or have failed to declare all pertinent data and facts as required, the names of such persons will be reported through the Office of Military Government for each Land to the Office of Military Government for Germany (U.S.), (Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403) which will then forward such names together with Declaration forms, if any, and such other relevant data as may be available, to the Office of Military Government for the Land where the person or persons suspected of violations reside. The Office of Military Government for the Land will thereupon turn over such data to the appropriate German authorities for prosecution.

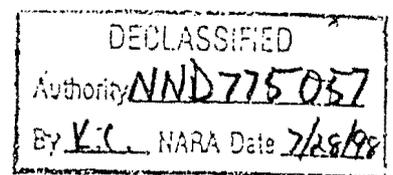
PART 4

PHYSICAL REMOVAL OF PROPERTY

19-400

General. Relevant transportation expenses within the present German frontier and any repairs necessary for proper transportation including the necessary manpower, material and organization, are to be borne by Germany and are included in restitutions. Expenses outside Germany are to be borne by the recipient country.

Change 1 4 October 1948
(Supersedes Title 19)



19-401

Costs. The Office of Military Government for each Land will instruct the Ministerpräsident that all costs incident to restitution incurred within Germany, except the cost of insurance, will be borne by the German government of the Land from which the property is shipped, and that all costs beyond the German frontier will be borne by the claimant nation.

19-402

Safeguarding and Insurance. The Office of Military Government for each Land will instruct the Ministerpräsident to ensure that all necessary and practicable precautions are taken for protecting the property during dismantling, crating, loading, and shipment; and that responsible German officials will be held accountable for sabotage or lack of care. Claimant nations will provide insurance when they so desire at their own expense. No liability, either material or financial will be assumed by the United States.

19-403

Dismantling, Crating, and Loading. The Office of Military Government of each Land will hold the Ministerpräsident, or his representative, responsible for such dismantling, crating and loading of property subject to restitution as is deemed necessary. It is expected that representatives of the claimant nations will assist and advise in such operations. The Ministerpräsidenten will be informed that all materials such as lumber, wire, nails, and protective compounds and materials will be provided by the German authorities without cost to the claimant nation; and that property will be marked and packing lists prepared in accordance with the instructions of the claimant nation's representative.

19-404

Repairs. The Ministerpräsidenten will be instructed that repairs to prevent further damage during movement to the territory of the claimant nation and such other repairs as may be deemed by the Office of Military Government for Germany (U.S.), Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403, to be necessary or practicable under the circumstances will be considered necessary to restitution and that the cost of same will be borne by the government of the Land in which such repair becomes necessary.

19-405

Transportation. The Ministerpräsidenten will be instructed to obtain and pay for transportation to the frontiers of Germany except when claimant nations provide their own transportation. When transportation is provided by German agencies, rail and water transportation will be used in preference to road transport. Claimant nations may at their own discretion provide transportation at their own expense.

19-406

Freight Points and Bills of Lading. The Office of Military Government for each Land will request the accredited repre-

Change 1: 4 October 1948
(Supersedes Title 19)

DECLASSIFIED
Authority NND 775 057
By K.C. NARA Date 7/28/88

19-406 (cont'd)

representatives of the claimant nations to designate the freight points on the frontiers of Germany to which property is to be shipped, as well as to transmit Bills of Lading and shipping documents.

19-407

Delegation of Functions. The Office of Military Government for each Land will instruct the Ministerpräsident that he may delegate the carrying out of responsibilities placed upon him and enumerated in this Title 19 MGR to the Minister of Economics, the Land Economic Office and to other appropriate German agencies; and that such agencies may utilize private individuals and companies to dismantle and pack the property for shipment.

PART 5

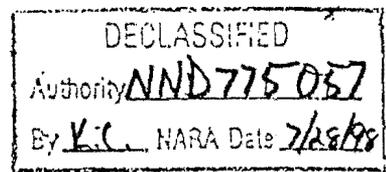
REPORTS AND FORMS

19-500

General. The Forms listed below and reproduced in the following paragraphs of this Part 5, are prescribed for use in the administration of Restitution in the U. S. Zone:

- a. **Authority for Release** — (see MGR 19-501);
- b. **Receipt for Property Released** — (see MGR 19-502 and 19-254);
- c. **Declared Property Card** — (see MGR 19-503, 19-503.1 and 19-504); and
- d. **Law to be Enacted by Germans Regarding Declarations of Property Removed from an Area Occupied by German Forces** — (see Part 3 of this Title and MGR 19-504).

Change 1134 October 1948
(Supersedes Title 19)

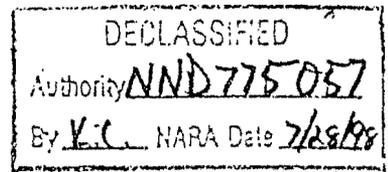


19-501 (cont'd)

Instructions:

1. Only accredited representatives of the receiving country are authorized to receive and receipt for property described in this "Authority for Release".
 - a. Accredited representatives will identify themselves by presentation of:
 1. a copy of this release, and
 2. a letter from the Office of Military Government for Germany (U.S.), Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403 authorizing them to sign in the name of their government for the specific property described herein.
 2. The accredited representative must at the time you release the property described herein sign four copies of the standard form of receipt in the presence of an officer of the United States Armed Forces.
 - a. The conditions stated in the body of the receipt must not be altered, added to, or amended without written authority of the Office of Military Government for Germany (U.S.), Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403.
 - b. Schedule "A" of the receipt form will include a complete listing of items delivered under this release. Statement as to condition of property may be made in Schedule "A" if the accredited receiving representative so desires. Detailed description of each item is not necessary, if reference is made to the release number and item number. The accredited representative must initial Schedule "A".
 - c. Name, rank and serial number of all persons signing the receipt will be clearly lettered or typed below the signature.
3. Distribution of executed receipts:
 - a. one copy will be retained by the officer releasing the property from his custody.
 - b. one copy to Office of Military Government for the Land in which the property was located.
 - c. two copies to the Office of Military Government for Germany (U.S.), Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403.

Change 1 4 October 1948
 (Supersedes Title 19)



19-502

RECEIPT AND AGREEMENT FOR DELIVERY OF IDENTIFIABLE PROPERTY OTHER THAN CULTURAL OBJECTS

(Place)

(Date)

1. Receipt of items described in schedule "A", attached hereto, from the Commanding General, United States Forces, European Theater, is hereby acknowledged on behalf of the Government of

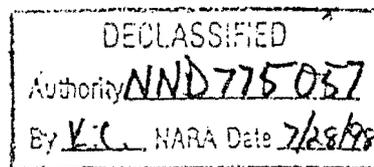
by the undersigned who is a duly accredited representative of said Government, authorized to receive said items on its behalf and to execute this receipt and agreement.

2. Said Government hereby accepts the item(s) described in said schedule "A" attached; by the acceptance of said items, said Government hereby waives any further claim as reparation or otherwise based upon the removal of the item(s) concerned by the Germans or the exaction of funds used by the Germans to pay for it and also agrees to save harmless the United States and all its agents and representatives from any claim for loss, damage or deterioration suffered by any item at any time whatever.

3. Should the Commanding General, United States Forces, European Theater determine that any item or items described in said schedule "A" were mistakenly delivered (which determination must be made within one (1) year from the date hereof), such item or items will be disposed of according to the instructions of said Commanding General. In the event of such determination, said Government will take whatever steps may be necessary to make any such item available to said Commanding General.

4. Said Government further agrees that the "Appraised Value" of the item(s) described in the attached schedule "A" as therein set forth is a fair and proper value of the said item(s).

Change 1. 4 October 1948 (Supersedes Title 19)



19-502 (cont'd)

Instructions:

1. Only accredited representatives of the receiving country are authorized to receive and receipt for property.

a. Accredited representatives will identify themselves by presentation of:

1. a copy of "Authority for Release", and

2. a letter from the Office of Military Government for Germany (U.S.) authorizing them to sign in the name of their government for the specific property described herein.

2. The accredited representative must at the time you release the property described herein sign four copies of the standard form of receipt in the presence of an officer of the United States Armed Forces.

a. The conditions stated in the body of the receipt must not be altered, added to, or amended without written authority of the Office of Military Government for Germany (U.S.).

b. Schedule "A" of the receipt form will include a complete listing of items delivered. Statement as to condition of property may be made in Schedule "A" if the accredited receiving representative so desires. Detailed description of each item is not necessary, if reference is made to the release number and item number. The accredited representative must initial Schedule "A".

c. Name, rank and serial number of all persons signing the receipt will be clearly lettered or typed below the signature.

3. Distribution of executed receipts:

a. one copy will be retained by the officer releasing the property from his custody.

b. one copy to Office of Military Government for the Region in which the property was located.

c. two copies to the Office of Military Government for Germany, (U.S.), Property Division, Reparation and Restitution Branch, Karlsruhe, APO 403.

Change 1 of 4 October 1948
(Supersedes Title 19)

DECLASSIFIED
Authority NND 775 057
By V.C. NARA Date 7/28/89

19-503

Class of Item: **DECLARED PROPERTY CARD**

German Land Economic Office for Declaration No.

Description of Item: Source Outside Germany if known

Present Condition:

Date reported:

Present holder:

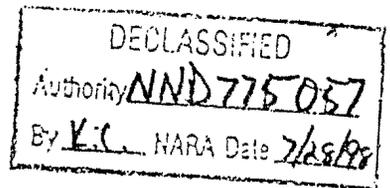
Address of present holder:

Method by which present holder came into possession of property

Purchase price or estimated value

Disposition

Change 1, 4 October 1948.
(Supersedes Title 19)



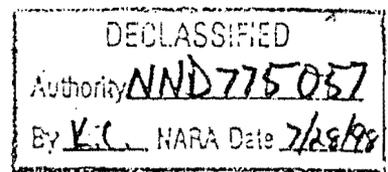
19-503.1

Instructions Relating to Declared Property Cards. The Office of Military Government for Germany (U.S.), Economics Division (Rear), Restitutions Control Branch, Declared Property Section, will prepare from the data secured from the Germans (see MGR 19-300), Declared Property Cards as follows:

- a. all information will be in English and will be lettered in plain block letters, or typed;
- b. classification of the property will be made within the following categories:
 1. livestock,
 2. agricultural machinery (including farm wagons, etc.),
 3. transportation equipment (including passenger cars, passenger busses, trucks, motorcycles, etc.), other than railway,
 4. railroad equipment,
 5. boats, ships, etc.,
 6. communications equipment,
 7. electrical equipment other than telephone and machinery,
 8. metal and woodworking machinery and equipment,
 9. textile and leather goods working machinery (including looms, sewing machines, cutters, etc.),
 10. metals, ores, rolled sheets and shapes,
 11. oils, paints, varnishes, dyes, and chemicals,
 12. wood, lumber, pulp, paper,
 13. construction materials and hardware (other than lumber),
 14. raw and semi-processed materials other than those included in 7, 8, and 9,
 15. construction machinery and equipment,
 16. steam driven engines (other than railway, boats, and constructive),
 17. scientific equipment (other than hospital and surgical),
 18. hospital, surgical and medical equipment,
 19. household and office equipment and furnishings,
 20. works of art, cultural objects,
 21. archives, books,
 22. gold, silver, radium, and other precious metals and jewelry,
 23. currency,
 24. securities, bonds, negotiable paper,
 25. other types of property not included in any of the above.
- c. immediately upon completion of Declared Property Cards, they will be screened to determine appropriate action and instructions to the field.

Change 1 4 October 1948
(Supersedes Title 19)

111467



19-504

Proclamation and Notice.**ARTICLE I**

1. It is ordered that all persons who
 - a. possess, hold or shelter,
 - b. have possessed, held or sheltered,
 - c. have or believe they have knowledge of the present location of, or
 - d. have moved, assisted in moving, ordered moved or transmitted instructions to move

any "PROPERTY REMOVED FROM AN AREA OCCUPIED BY GERMAN FORCES" as defined in Article III below make a written declaration of all such property, knowledge and acts.

2. Declarations will be sent by registered mail to.....
* on forms obtainable from.....*

* Address to which declarations are to be mailed and place or places where forms are obtainable to be filled in by Minister-präsident.

3. Declarations will be filed prior to 1 June 1946. (The words "Property Declaration" and the full name and address of the Declarant must appear on the outside of the envelope in which the Declaration is mailed.)

ARTICLE II

4. All custodians, curators, officials or other persons having possession, custody or control of "PROPERTY REMOVED FROM AN AREA OCCUPIED BY GERMAN FORCES" as defined in Article III below are required, in addition to making a declaration required by Article I above, to:
 - a. hold all such property pending directions of Military Government and pending such direction, not to transfer, deliver or otherwise dispose of the same;
 - b. preserve, maintain and safeguard, and not to cause or permit any action which will impair the value or utility of such property;
 - c. maintain accurate records and accounts with respect to all such property.

5. No person shall do, cause or permit to be done any act of commission or omission which results in damage to or concealment of any of the properties covered by this order.

ARTICLE III

6. The term "PROPERTY REMOVED FROM AN AREA OCCUPIED BY GERMAN FORCES" for the purpose of this Notice shall mean all property, tangible and intangible, movable and immovable, acquired in any way directly or indirectly by Germans or German agents or persons resident in Germany from territory outside of "Das Deutsche Reich" as it existed on 31 December 1937, while such territory was occupied, governed or controlled by Germany or the German Forces.

Change 1 4 October 1948
(Supersedes Title 19)

111468

DECLASSIFIED
Authority NND 775 057
By V.C. NARA Date 7/28/98

19-504 (cont'd)

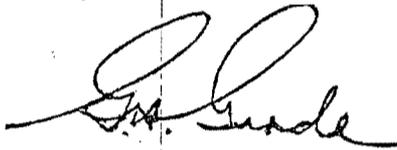
7. The word "Person" for the purpose of this Proclamation and Notice shall mean any natural person, collective person and any juridical person under public or private law, and any government, including all political subdivisions, public corporations, agencies and instrumentalities thereof.

8. Any person failing to comply with the provisions of this Proclamation and Notice shall upon conviction be punishable by imprisonment for not less than six months and by a fine of not less than 5,000 RM.

ARTICLE IV

9. This Proclamation and Notice shall become effective 1 June 1946.

BY DIRECTION OF THE MILITARY GOVERNOR:



G. H. GARDE
Lieutenant Colonel, AGD
Adjutant General

Telephone BERLIN 45 226

DISTRIBUTION "M"



Change 1 4 October 1948
(Supersedes Title 19)

E-110

OFFICE OF MILITARY
GOVERNMENT FOR GERMANY
(U. S.)

Military Government Regulations

Title 18

Monuments, Fine Arts and
Archives

Change No. 1

(Supersedes Title 18)

Berlin, Germany

APO 742

12 February 1947

111470

RG	260	Authority AND 77507 DECLASSIFIED
Entry	Ardelia Hall	
Box	250	

By AT HARA Date 7-22-99

TITLE 18

MONUMENTS, FINE ARTS AND ARCHIVES

TABLE OF CONTENTS

18-1 Scope of Title

Part 1

POLICY AND ORGANIZATION

SECTION A

DEFINITIONS AND ORGANIZATION

18-100 Cultural Structures
18-101 Cultural Objects
18-102 Archives, Books and Miscellaneous Documents
18-102.1 Modern Archives
18-102.2 Books
18-102.3 Miscellaneous Documents
18-103 Cultural Materials
18-104 Looted Cultural Materials
18-105 Monuments, Fine Arts and Archives Officers
18-106 Restitution
18-107 MFA&A Organization and Channels
18-107.1 MFA&A Elements of OMGUS
18-107.2 MFA&A at OMG's of the Länder
18-108 Intelligence

SECTION B

OBJECTIVES

18-110 Restitution
18-111 Preservation
18-112 Protection of Cultural Structures
18-113 Transfer of Administrative Responsibility
18-114 Implementation of Control Council Order No. 4 and Directive No. 30
18-115 Interzonal Exchange
18-116 Replacement in Kind
18-117 Release of Cultural Materials and Structures
18-118 Unidentifiable Cultural Materials

Part 2

PROTECTION AND PRESERVATION OF CULTURAL STRUCTURES

18-200 Structures to be Protected
18-201 General Responsibility of Military Government
18-202 Inspections by MFA&A Officers
18-203 Inspection Reports
18-204 Use of Cultural Structures
18-204.1 General Prohibition
18-204.2 Duties of MFA&A Officers
18-205 Prohibition of Demolition
18-206 Preservation of Historic Castles as Museums
18-207 Nazi and Militaristic Structures and Memorials

Change 1 12 February 1947
(Supersedes Title 18)

Part 3

RECONSTITUTION AND CONTROL OF CIVIL ADMINISTRATION

18-300 Reconstitution of German Agencies
18-301 Return of Administration to German Agencies
18-302 Supervision of German Agencies
18-303 German Religious Structures and Objects

Part 4

PROTECTION AND CONTROL OF CULTURAL MATERIALS

SECTION A

GENERAL PROVISIONS

18-400 General
18-401 "Freeze" of Cultural Materials
18-401.1 Transfer of Works of Art or Cultural Materials of Value or Importance
18-401.2 Location and Report of all Cultural Materials
18-401.3 Regulation of Sale or Export of Cultural Materials of Value or Importance in Germany
18-401.4 Collections in Situ
18-401.5 Numismatics
18-401.6 Nazi and Militaristic Collections
18-401.7 Licensing of Art Dealers
18-401.8 Art Dealers' Reports

SECTION B

REPOSITORIES AND CULTURAL MATERIALS

18-430 Current List of Repositories
18-431 Discovery and Report of Repositories
18-432 Security
18-432.1 Guards
18-432.2 Visitor Control
18-433 Evacuation from Repositories
18-434 Spot Surveys

SECTION C

COLLECTING POINTS AND DEPOTS

18-440 Purpose of Central Collecting Points and Depots
18-441 Establishment and Operation of Central Collecting Points
18-442 Personnel
18-443 Inventorying
18-443.1 Looted Cultural Materials
18-443.2 German-owned Cultural Materials
18-444 Photographic Records
18-445 Preparation for Restitution of Looted Cultural Materials
18-445.1 Custody
18-445.2 Records
18-445.3 Restitution of Identified Loot
18-446 Preservation of Cultural Materials
18-447 Archives
18-448 Libraries
18-449 Exploitation

Change 1 12 February 1947
(Supersedes Title 18)

111471

DECLASSIFIED
Authority NND 775017
By AT HARA Date 7-22-99

RG 260
Entry Access Hall
Box 250

SECTION D

INTERZONAL EXCHANGE OF CULTURAL MATERIALS

- 18-450 Claimants
- 18-451 Procedure as to Materials Subject to Interzonal Exchange
- 18-451.1 Transfer of Custody
- 18-451.2 Transportation
- 18-451.3 Limitation of Disposition
- 18-451.4 Material Removed in Error
- 18-452 Receipts
- 18-453 Screening

SECTION E

TRANSFER OF GERMAN-OWNED CULTURAL MATERIALS TO GERMAN CUSTODY

- 18-460 Church Property
- 18-461 Other Identified Cultural Materials
- 18-462 Report of Releases

Part 5

REPORTS & FORMS

- 18-500 General
- 18-510 Monthly Consolidated Field Report, control symbol MG/MFAA/1/F, Jan 47
- 18-520 Receipt for Interzonal Exchange of Works of Art and Other Cultural Materials
- 18-530 Custody Receipt
- 18-540 Inventory and Sale Card for the Art Dealers, control symbol MG/MFAA/7/F, Nov 46
- 18-550 Receipt for Cultural Objects, DRDR/P(45)13 Revise
- 18-560 Property Card Art

Title 18

MONUMENTS, FINE ARTS AND ARCHIVES

18-1 **Scope of Title.** This Title 18 covers the policies and instructions concerning cultural structures and materials found in the U.S. Zone of Occupation of Germany.

Part 1

POLICY AND ORGANIZATION

SECTION A

DEFINITIONS AND ORGANIZATION

18-100 **Cultural Structures.** The term "cultural structures" includes monuments and other buildings or sites of religious, artistic, archaeological, historic, or similar cultural importance, such as: statues and other immovable works of art; churches, palaces and similar public or private buildings of architectural or historic importance; museum, library and archival buildings; parks and gardens attached to such buildings; and ruins of historical or archaeological importance.

18-101 **Cultural Objects.** The term "cultural objects" includes all movable goods of importance or value either religious, artistic, documentary, scholarly or historic, the disappearance of which constitutes a loss to the cultural heritage of the country concerned. This definition includes recognized works of art, as well as such objects as rare musical instruments, books and manuscripts, scientific documents of a historic or cultural nature, and all objects usually found in museums, collections, libraries and historic archives.

18-102 **Archives, Books and Miscellaneous Documents.** The term "cultural and historic archives" includes all accumulations of documents, public, private or ecclesiastical, which relate to the functions of institutions now inactive which are not within the province of other military authorities.

18-102.1 **Modern Archives.** The term "modern archives" includes all accumulations of documents, public, private or ecclesiastical, which relate or contribute to the functions of institutions now or recently active which are not within the province of other military authorities.

18-102.2 **Books.** The term "books" includes printed or otherwise duplicated volumes and pamphlets, except those primarily considered to be works of art (cultural objects).

111472

DECLASSIFIED

Authority NND 775057

By AT HARA Date 7/22/99

RG 240

Entry Area in Hall

Box 250

REPRODUCED AT THE NATIONAL ARCHIVE

18-102.3

Miscellaneous Documents. The term "miscellaneous documents" includes collections of papers, photographs, ephemera and the like which are not, however, the ordered official records of an institution.

18-103

Cultural Materials. The term "cultural materials" includes both cultural objects and archives, books and miscellaneous documents as defined in MGR 18-102.1, 18-102.2 and 18-102.3, except current commercial archives.

18-104

Looted Cultural Materials. The term "looted cultural materials" includes all cultural objects and materials which have been acquired since 1 January 1933, by Nazis within Germany or those acquired in territories occupied by the Germans or their allies, either:

- a. Directly by duress or wrongful acts of confiscation, dispossession or spoliation, whether pursuant to legislation, or by procedure purporting to follow forms of law, or otherwise; or
- b. Indirectly by purchase or other transactions regardless of whatever consideration may have been employed.

18-105

Monuments, Fine Arts and Archives Officers. The term "Monuments, Fine Arts and Archives officer" refers to a functional specialist designated as such by OMGUS, or by OMG's of the Länder. The term as used in this Title is abbreviated as "MFA&A officer." The assignment to a particular OMG, or category of such officers is indicated where appropriate (e.g., "Land MFA&A officer").

18-106

Restitution. Identifiable looted works of art and cultural materials will be restituted to the governments of the countries from which they were taken. "Loot" refers to objects which have been the subject of an act of dispossession by the enemy and which were in existence and located in an occupied territory and removed by the Germans subsequent to the date of commencement of the German occupation of that territory (see MGR Title 19).

18-107

MFA&A Organization and Channels.

18-107.1

MFA&A Elements of OMGUS. The MFA&A Section of the Restitution Branch, Economics Division, OMGUS is responsible, subject to the Deputy Military Governor and the Division Director, for supervision in the field of Monuments, Fine Arts and Archives.

18-107.2

MFA&A Officers at OMG's of the Länder. Under direction of the Director of OMG for each Land, under supervision of MFA&A, OMGUS, MFA&A officers will take such direct action and will

Change 1 12 February 1947
(Supersedes Title 18)

18-107.2 (cont'd)

exercise such supervision and make such inspections of the operations of German agencies as are appropriate to ensure that the objectives stated in MGR 18-110 to 18-118 are carried out and to carry out the instructions set forth in this Title 18.

18-108

Intelligence. In locating cultural material MFA&A officers will request assistance from the intelligence personnel of all units in the areas and arrange with them to forward to the MFA&A officers any information or "lead", which might assist in the discovery of cultural materials. Specially trained MFA&A personnel attached to OMGUS will be made available, on request, to subordinate OMG's to render specialists' advice and to conduct investigations for missing collections or objects.

Change 1 12 February 1947
(Supersedes Title 18)

111473

DECLASSIFIED
Authority NND 775017
By AT HARA Date 7/22/00

RG 260
Entry Adeline Hall
Box 250

REPRODUCED AT THE NATIONAL ARCHIVE

SECTION B

OBJECTIVES

18-110

Restitution. To restitute identifiable looted works of art and cultural materials to the governments of the countries from which they were taken.

18-111

Preservation. To protect and preserve German-owned cultural materials and works of art, and the contents of museums, libraries and archives pending transfer of custody and responsibility for administration thereof to responsible German agencies.

18-112

Protection of Cultural Structures. Appropriate German authorities are responsible for protection and preservation of certain structures of architectural, artistic or historic importance in accordance with EUCOM directives.

18-113

Transfer of Administrative Responsibility. To complete the transfer of administration of German-owned museums, collections, libraries and archives to responsible German agencies.

18-114

Implementation of Control Council Order No. 4 and Directive No. 30. To advise upon the destruction or liquidation of monuments, museums and collections of Nazi inception or which are devoted to the perpetuation of militarism, and to supervise the public use of cultural structures and objects, including exhibitions, to insure the exclusion of material prejudicial to Military Government in accordance with Control Council Order No. 4 and Directive No. 30.

18-115

Interzonal Exchange. To effectuate interzonal exchange of German-owned works of art and cultural materials (in accordance with U.S. — British interzonal agreement and such other similar agreements as may be entered into) so as to return such objects or materials to the zone of ownership.

18-116

Replacement in Kind. To make such cultural materials available for replacement in kind as may be ordered by OMGUS.

18-117

Release of Cultural Materials and Structures. To release to other agencies of the U.S. Government such cultural materials and cultural structures as may be directed by competent authority.

18-118

Unidentifiable Cultural Materials. Ultimately to dispose of residue of unclaimed and unidentified materials in collecting points and archival depots.

Part 2

PROTECTION AND PRESERVATION OF CULTURAL STRUCTURES

18-200

Structures to be Protected. MFA&A officers will ensure that appropriate action is taken for the protection of all structures listed in the Supreme Headquarters Allied Expeditionary Forces "Official List of Protected Monuments in Germany," the "Official List (SHAEF List Revised) of Protected Structures or Installations of Architectural, Artistic, Historical or Cultural Importance in the United States Zone of Germany" (see letter EUCOM AG 007 (ED), 16 March 1947, subject: Protection of Cultural Structures in Germany), or any subsequent official list as well as any additional structures which in their judgment are cultural structures. They will consult the more comprehensive list of cultural monuments in Germany contained in Army Service Forces Manual M 336-17, "Atlas on Churches, Museums, Libraries and other Cultural Institutions in Germany." Structures which should be added to the Official List of Protected Structures because of their historic, cultural or architectural value, should be reported to MFA&A Section, Restitution Branch, Economics Division, OMGUS.

18-201

General Responsibility of Military Government. The Ministerpräsidenten of the Länder are responsible for the protection and preservation of all cultural structures in the Land and for the activation or establishment of appropriate German civilian agencies for this purpose. Upon request of German administration, the OMG for each Land, in coordination with unit commanders, may make available to the Ministerpräsident such assistance in the protection of cultural structures as appears appropriate, including:

- a. Posting of notices placing cultural structures or areas off limits to all personnel;
- b. Posting of guards; and
- c. Aiding in the procurement of critical supplies for emergency restoration and protection of cultural structures and materials.

18-202

Inspections by MFA&A Officers. MFA&A officers assigned to OMG's of the Länder will be responsible for the inspections of cultural structures in their areas for the following purposes:

- a. To record the physical condition;
- b. To observe the progress of any repairs undertaken and to check on security measures; and
- c. To obtain photographic records showing all damage, structural faults or facts, methods of repair, and the condition before and after repairs.

18-203

Inspection Reports. MFA&A officers will render reports of inspections made pursuant to MGR 18-202 as provided in Part 5 of this Title.

111474

DECLASSIFIED
Authority: UNND 775017
By: AT HARA Date: 7-22-99

RG 260
Entry Access Hall
Box 250

REPRODUCED AT THE NATIONAL ARCHIVE

18-204

Use of Cultural Structures.

18-204.1

General Prohibition. Cultural structures in the U. S. Zone will not be used for any purposes other than those for which they are normally intended. Exceptions for military, American Red Cross, Allied, or UNDP's use, may be made only on the explicit permission in each case of the Director of the OMG for the Land concerned, who will normally act upon the advice of his MFA&A officers. For German requests, exceptions will be made by the competent German official responsible for cultural monuments, with Military Government retaining the right of review.

18-204.2

Duties of MFA&A Officers. Where cultural structures are utilized for military purposes, the MFA&A officer of the Land OMG concerned will ensure, by regular inspections, that the commanding officer of the unit using the building is informed of the necessity of protecting it and its contents from pilfering and defacement; that portions of the building particularly liable to pilferage or defacement are placed off limits; and that valuable movable contents of the building are placed off limits or collected in locked rooms.

18-205

Prohibition of Demolition. The further demolition by military personnel of damaged cultural structures is prohibited except as a measure of public safety, and then only under supervision of an MFA&A officer.

18-206

Preservation of Historic Castles. Instructions on policies of Military Government concerning the preservation and protection of historic castles and palaces as required by USFET directive will be issued by OMG's of the Länder and Berlin Sector, especially with regard to the following:

a. Certain castles and palaces preserved and designated as museums may have been administered as part of Land or Reich trusts. Their operation by German agencies will be subject to present or future policy concerning the continuation or modification of such trusts (MGR 17-312).

b. When furnishings or collections which were housed in such buildings before 1939 are not now in situ, the location and return to their point of origin will be effected under the provisions of MGR 18-433. In reassembling such collections, supervision will be exercised by the Land OMG to insure that the exhibits do not extol German militarism or NSDAP doctrines.

c. If any building designated and preserved as a museum is presently in use by military units, civilian agencies (other than the normal occupant before 1939), or displaced persons, these units, agencies, or persons will be moved unless the Director of OMG of the Land decides that no satisfactory accommodations are available elsewhere, that such a move would be prejudicial to the execution of their assigned mission, and that continued use will not destroy the character of such building for future use as a museum.

Change 1 12 February 1947
(Supersedes Title 18)

18-207

Nazi and Militaristic Structures and Memorials. The Land MFA&A officer will be prepared to render such advice as the Demilitarization Branch of Armed Forces Division may request in the event of an appeal for the retention of structures, memorials and monuments on the basis of great esthetic value which might otherwise be destroyed through the implementation of Control Council Directive No. 30.

[Faint, illegible text]

[Faint, illegible text]

[Faint, illegible text]

[Faint, illegible text]

Change 1 12 February 1947
(Supersedes Title 18)

111475

DECLASSIFIED
Authority NND-775057
By AT HARA Date 7/21/94

RG
Entry
Box
260
Archie Hall
250

REPRODUCED AT THE NATIONAL ARCHIVE

RECONSTITUTION AND CONTROL OF CIVIL ADMINISTRATION

18-300

Reconstitution of German Agencies. The Ministerpräsident is responsible for the establishment of MFA&A agencies in the Land governments. Former organizations, records and specialist personnel may be utilized, to the extent available, in accordance, however, with the provisions of the Law for Liberation from National Socialism and Militarism (MGR 24-500), and implementation (see Title 24, MGR, Title 2, MGR, and Part 8, Title 9, MGR).

18-301

Return of Administration to German Agencies. OMG's of the Länder will return to German custody as rapidly as possible all clearly German owned materials (see MGR 18-530). They will however satisfy themselves:

- That investigation and search for loot in the collection of cultural materials involved has been made and that the looted cultural materials so discovered have been made secure; and
- That all pertinent German public and private records pertaining to the collection involved have been screened for information relating to Nazi looting activities and the dissemination of militaristic & NSDAP doctrines.

18-302

Supervision of German Agencies. Land OMG's after authorizing the return of MFA&A administrative responsibility to German agencies, will advise and assist the latter in their operations to ensure that they comply with instructions from the Land OMG and with policies set forth herein. To this end the MFA&A officers will:

- Make necessary inspections to ensure that cultural structures and materials in the Land are preserved and protected from deterioration and spoliation;
- Direct German administration to make available information necessary for official MG reports; and
- Supervise important operations such as the evacuation of repositories containing valuable looted cultural materials.

18-303

German Religious Structures and Objects. Land OMG's may require ecclesiastical organizations to submit inventories and/or reports necessary to the fulfilment of the restitution mission of MFA&A.

PROTECTION AND CONTROL OF CULTURAL MATERIALS

SECTION A

GENERAL PROVISIONS

18-400

General. The Land OMG's will take the necessary measures to identify and take under control and into custody all Nazi and looted cultural materials and may "freeze" all cultural materials within their areas, regardless of ownership, pending decision regarding their disposition (see Title 17, Property Control, MGR).

18-401

"Freeze" of Cultural Materials.

18-401.1

Transfer of Works of Art or Cultural Materials of Value or Importance. The OMG for each Land will ensure the observance of paragraph 3(d) of Article II, MG Law No. 52, as implemented by AG Letter 007 (ED), 6 December 1946; Transfer of Works of Art or Cultural Materials of Value or Importance, and will instruct the Ministerpräsident of the Land, or appropriate German authority in Berlin Sector, in the administration of the regulations for the licensing of art dealers and the establishing of conditions under which sales and transfers of works of art are permissible as set forth in said letter which regulations are essential to the fulfilment of the restitution mission of MFA&A.

18-401.2

Location and Report of all Cultural Materials. Land OMG's will require surveys and inventories, necessary to the fulfilment of the restitution mission, of all cultural materials at repositories and of all collections of cultural materials which have remained in situ.

18-401.3

Regulation of Sale or Exports of Cultural Materials of Value or Importance in Germany. All transactions will conform with the provisions of MG Law No. 52 as implemented by AG Letter: Transfer of Works of Art or Cultural Materials of Value or Importance, OMGUS, 6 December 1946; USFET Circular 140, 26 September 1946; and such other regulations and directives as may be issued from time to time.

18-401.4

Collections in Situ. All collections of cultural objects found in situ will be closed to the public until the survey required by MGR 18-401.2 is completed, after which they may then be reopened to the public when authorized by the OMG of the Land involved, on recommendation of the MFA&A officer.

111476

DECLASSIFIED
Authority NND-775057
By AT KARA Date 7/22/00

RG 260
Entry Admin. Hall
Box 250

18-401.5

Numismatics. Collections of coins and medals in which the numismatic value exceeds the face or intrinsic value will be considered as cultural objects and a responsibility of the MFA&A officer. Such collections will be deposited in the Land Central Bank to be held intact under the provision of MG Law No. 53 and current directives. Publicly owned collections of museums and private collections on loan to museums will be held intact in the museums under the custody of the museum director and in conformity with MG Law No. 53 and prevailing directives. It is further provided that collections now deposited in the Land Central Bank may be withdrawn and deposited in a museum with the responsible museum official as custodian.

18-401.6

Nazi and Militaristic Collections. All collections of works of art or other cultural objects the intent and purpose of which are the perpetuation of Militarism or Nazism will be closed and their contents taken into custody for later examination individually with a view to the possible inclusion of objects of purely cultural or historic value in general museum collections according to their class.

18-401.7

Licensing of Art Dealers. Art dealers will be licensed by such agency as the Ministerpräsident of each Land may direct with the right of review and revocation retained by the Land OMG.

18-401.8

Art Dealers Reports. Such reports as may be required will be furnished on Inventory and Sale Card for Art Dealers (MG/MFAA/7/F November 1946) (See MGR 18-540).

SECTION B

REPOSITORIES OF CULTURAL MATERIALS

18-430

Current Lists of Repositories. OMGUS will maintain consolidated records of the location and contents of reported and inspected repositories of cultural materials in the U. S. Zone and will supply information relating thereto, on request, to Land OMG's.

18-431

Discovery and Report of Repositories. MFA&A officers of the Land OMG's will investigate repositories of cultural materials discovered or reported and render reports of such investigations on Monthly Consolidated Field Report Form (MG/MFAA/1/F) (See MGR 18-510) to OMGUS.

18-432

Security.

18-432.1

Guards Where deemed necessary by the Land MFA&A officer repositories containing suspected or identified loot or works of art of great value or importance will be placed under adequate security

18-432.1 (cont'd)

guard, until evacuated (see MGR 18-440); and repositories not containing such materials will be placed under the care of qualified Germans against custody receipt or, if of minor importance, locked and sealed, until released against custody receipt to responsible German officials or civilians.

18-432.2

Visitor Control. Visitors will not be admitted to any repository without the express written permission of the responsible Land MFA&A officer or of such civilians as may be designated by proper authority.

18-433

Evacuation from Repositories. Cultural materials in repositories may be evacuated to Central Collecting Points (see MGR 18-440) or to other locations only after approval of the appropriate Land OMG. Where movement is so authorized, cultural materials liable to damage or deterioration in their present locations will be evacuated first; thereafter, looted materials; and finally, other cultural materials.

18-434

Spot Surveys. MFA&A officers will ensure that spot surveys of closed crates and of objects not crated will be made of each repository before evacuation. Such surveys will be checked against the custodian's records, and reports thereof will be included in the Monthly Consolidated Field Report (MGR 18-510) to OMGUS.

SECTION C

COLLECTING POINTS AND DEPOTS

18-440

Purpose of Central Collecting Points and Depots. OMGUS will establish Central Collecting Points for the purpose of receiving, surveying and preparing for directed disposition:

- a. Looted cultural materials;
- b. Cultural materials evacuated from temporary repositories; and
- c. Any other materials which the MFA&A officer of the Land OMG may designate.

18-441

Establishment and Operation of Central Collecting Points. The Land OMG will establish additional Central Collecting Points if required and will supervise and control, through their MFA&A officers, the operation of all Central Collecting Points giving due regard in the selection of buildings, to adequacy of space, condition of weather proofing, temperature and humidity, and providing for their custody, maintenance, security and operational functions.

18-442

Personnel. The MFA&A officers in charge of Central Collecting Points may employ and utilize properly vetted German or other

111477

DECLASSIFIED
Authority: NND 775057
By: AT HARA Date: 7-22-99

RG
Entry
Adelia Hall
Box 250
260

REPRODUCED AT THE NATIONAL ARCHIVE

18-442 (cont'd)

foreign civilian personnel, in addition to U. S. military and civilian personnel.

18-443

Inventorying. Land OMG's will ensure that cultural materials in collecting points within their areas are inventoried as provided in MGR 18-443.1 and 18-443.2.

18-443.1

Looted Cultural Materials. Unopened cases containing cultural materials clearly identifiable by their markings as loot from one of the United Nations need not be inventoried, but records will be kept to identify the cases and the nature of their contents. Cases containing cultural materials, the contents of which cannot be identified otherwise, will be opened and their contents spot checked or inventoried as and when directed by OMGUS.

18-443.2

German-owned Cultural Materials. Cultural materials in collecting points which are owned by German organizations or nationals will be inventoried and recorded as and when directed by OMGUS.

18-444

Photographic Records

a. Photographic reproductions in appropriate size will be made of all cultural materials inventoried whether looted or German-owned. The photographs will be attached to the inventory card (see MGR 18-560). At the discretion of the MFA&A officers, larger size in black and white and color photographs suitable for study and research may be made of all important objects of which no such record is available to be forwarded to the War Department when so instructed by OMGUS.

b. All photographs made will be used exclusively by Military Government or the War Department or such agencies as may be authorized by OMGUS.

18-445

Preparation for Restitution of Looted Cultural Materials

18-445.1

Custody. All suspected or identified looted cultural materials will be taken into custody (see MGR 18-400) and may be evacuated to a Central Collecting Point, upon the advice of the MFA&A officer.

18-445.2

Records. Land OMG's will continue to require custodians of all German-owned collections of cultural materials to submit to them lists of accessions since 1 January 1933 and will require such lists to be checked by their MFA&A officers, for the purpose of identifying and locating looted cultural materials.

Change 1 12 February 1947
(Supersedes Title 18)

18-445.3

Restitution of Identified Loot. Clearly identified looted cultural materials will be released on the authority of OMGUS to the authorized representative of claimant nation against receipt (see MGR 18-550).

18-446

Preservation of Cultural Materials. Only such restorative measures to cultural materials will be effected as is necessary to prevent further deterioration or damage.

18-447

Archives. Archives as defined in MGR 18-102 are subsumed under cultural materials as defined in MGR 18-103 and are thus to be considered as cultural materials throughout this Title 18.

18-448

Libraries. The delineation of responsibility between the Education and Religious Affairs Branch, IA&C Division, and the MFA&A Section, Economics Division at all levels, for public, church, factory, technical, school, university and all other libraries (except commercial lending libraries) is as follows:

a. MFA&A is responsible for library materials stored inactively in MFA&A custody, or discovered at some future time to be subject to restitution.

b. Education and Religious Affairs Branch is responsible for control of library materials which have been placed on public deposit in a library, whether the library is independent or part of a larger organization, and for control of operation of such libraries.

c. A library from which the general public is excluded by official order, and which is for the exclusive use of a restricted group of persons associated with an organization of which the library is a part, will be subject to the supervision of the authorities which normally control the organization as a whole. If such a restricted organization is in any way educational, and one to which any successful applicant is admitted as a member or student, the responsibility for the library materials and for operations will be exercised by the Education and Religious Affairs Branch (see MGR 8-443).

18-449

Exploitation. Preliminary exploitation in situ of libraries, collections, records, archives, miscellaneous books and papers by U. S. intelligence services and technical personnel, or by those accredited through the U. S. intelligence services may be authorized by the OMG for each Land. No removal of libraries, collections, records, archives, miscellaneous books and papers, or parts thereof by U. S. intelligence services or technical personnel, or by those accredited through U. S. intelligence services may ordinarily be effected without prior approval in writing of the OMG for the Land concerned.

Change 1 12 February 1947
(Supersedes Title 18)

111478

DECLASSIFIED
Authority NND-775057
By AT RARA Date 7/22/00

RG
Entry
Box
260
098
250

REPRODUCED AT THE NATIONAL ARCHIVE

SECTION D

INTERZONAL EXCHANGE OF CULTURAL MATERIALS

450

Claimants. Upon request of Military Governor of another Zone, cultural materials which have been moved into the U.S. Zone for war time security and are not "looted materials" as described MGR 18-104 may be removed from the U.S. Zone in return for the withdrawal of similar material from the requesting Zone, with the following exceptions:

- a. Scientific equipment not easily identifiable as part of a museum collection.
- b. Property of private individuals unless such property has been on loan to a public institution for educational purposes, for exhibition, or for war protection.
- c. Cultural materials, the safety of which would be endangered under the conditions of moving.
- d. Cultural materials, the normal location of which is Berlin.

451

Procedure as to Materials Subject to Interzonal Exchange.

451.1

Transfer of Custody. When such materials are located, accredited representatives of the requesting Zone, invited through OMGUS, assume custody and responsibility against receipt and return of such materials and their representatives effect immediate removal.

451.2

Transportation. The removal of materials from the U.S. Zone shall be effected entirely by personnel and transportation designated and provided by the Military Governor of the requesting Zone.

451.3

Limitation of Disposition. The materials will be held in custody in Germany by the Military Governor of the receiving Zone under equivalent conditions of protection and preservation subject to any termination of their ultimate disposition by the Allied Control Council.

451.4

Material Removed in Error. The Military Governor of the receiving Zone will undertake to restore to the Zone from which removal has been made any object delivered in error.

452

Receipts. Properly accomplished Receipt for Interzonal Exchange of Works of Art and Other Cultural Materials will be accomplished and distributed as indicated on the form set forth MGR 18-520.

18-453

Screening. OMGUS may direct the screening by U.S. personnel of materials subject to interzonal exchange prior to the transfer or may conclude an agreement with the requesting Zone whereby such screening will be the responsibility of the latter. The OMG of the Land concerned will be given notice in either event. Should looted material be found after transfer it will be restituted under agreed Allied procedures. Unless the material has been screened, material shipped into the U.S. Zone will be screened and looted material restituted under agreed Allied procedures.

SECTION E

TRANSFER OF GERMAN OWNED CULTURAL MATERIALS TO GERMAN CUSTODY

18-460

Church Property. OMG's of the Länder may release against receipt clearly identifiable cultural property of religious organizations found in repositories to the authorized representatives of such religious organization (see MGR 18-530 for receipt form).

18-461

Other Identified Cultural Materials. Cultural materials clearly of German ownership will, on the authority of the OMG of each Land, be released against receipt to the custody of the owner or a responsible German official of the Land in which it is now located (see MGR 18-530).

18-462

Report of Releases. All releases effected pursuant to MGR 18-460 and 18-461 will be reported in the Monthly Consolidated Field Report (see MGR 18-510).

111479

DECLASSIFIED
Authority NND 771017
By AT NARA Date 7/22/00

RG
Entry
Box
260
Adels Hall
250

REPRODUCED AT THE NATIONAL ARCHIVE

REPORTS & FORMS

18-500

General. The report and forms listed in this Part 5 of Title 18 and which are reproduced in the paragraphs indicated, are prescribed for use in MFA&A administration in the U.S. Zone. Reports made out by German governmental or civilian agencies will follow the same forms.

SECTION A

REPORTS

Monthly Consolidated Field Report of Land MFA&A Officer, control symbol MG/MFAA/1/F Jan. 47 (see MGR 18-510).

SECTION B

FORMS

- a. Receipt for Interzonal Exchange of Works of Art and Other Cultural Materials (see MGR 18-452 and 18-520).
- b. Custody Receipt (see MGR 18-460, 18-461 and 18-530).
- c. Inventory and Sale Card for the Art Dealers, control symbol MG/MFAA/7/F Nov. 46 (see MGR 18-401.8 and 18-540).
- d. Receipt for Cultural Objects, DRDR/P(45)13 Revise. (see MGR 18-445.3 and 18-550).
- e. Property Card Art (see MGR 18-443, 18-443.1, 18-443.2 and 18-560).

18-510

**Monthly Consolidated Field Report of Land MFA&A Officer.
MILITARY GOVERNMENT — GERMANY
UNITED STATES ZONE**

MG/MFAA/1/F, Jan. 47

Monthly Consolidated Field Report of Land MFA&A Officer.
Twenty-two copies will be submitted in mimeograph form by the MFA&A officer of each Land to OMGUS, APO 742, Attention: MFA&A Section, Restitution Branch, Economics Division. In addition, 1 copy will be sent to each of the other 3 Länder.

Part I

Give following data on personnel in Land MFA&A Office:

- 1. No. of U.S. military and civilian employees:
 - a. Officers
 - b. Enlisted
 - c. Civilian
- 2. Names of Allied representatives and countries they represent:
- 3. Number of Germans employed in MFA&A activities:
 - a. Professional
 - b. Other
- 4. Requirements and Recommendations:

Part II

Provide general information on repositories and German cultural activities as indicated:

- 1. Summary, statistics on repositories.

	Cumulative from beginning through the last day of the reported month	During current month
1. No. reported		
a. No. completely evacuated		
b. No. completely turned over to Germans on custody receipt		
c. No. requiring further action as of 31st of current month		
2. No. of false reports concerning alleged repositories		
3. No. inspected		

* No. 1 should be total of a, b and c above.

111480

DECLASSIFIED
Authority NND-775057
By AIC MARA Date 7-22-00

RG 260
Entry Accepted
Box 250

2. German Cultural Affairs:

- a. Exhibitions (title, place, brief statement of the nature of the exhibition, attendance for the reporting period and total to date, receipts, and 10 copies of the catalogue).
- b. Lectures (speaker, title, place, attendance, any additional comments).
- c. Newspaper clippings, magazine articles, transcripts of radio broadcasts and other material reflecting opinion and attitude toward MFA&A activities will be forwarded.

Part III
OPERATIONS

1. Report all cultural monuments inspected during month, covering following points:

- | | |
|---|-----------------------------|
| a. Location (town, Kreis, Regierungsbezirk and map coordinates) | f. Contents |
| b. Name of structure | g. Present use |
| c. Date of inspection | h. Name of German custodian |
| d. War history | i. Action taken |
| e. Condition in detail | j. Photographic record |
| | k. Name of inspector |

2. Report all repositories inspected during month, covering following points:

- a. Location (town, coordinates, Regierungsbezirk, Kreis) and name of repository
- b. Reported (date, source)
- c. Inspected (date, name of inspector)
- d. Security (military, civilian)
- e. Type of contents (objects of art, books, archives, scientific collections, mixed)
- f. Ownership of contents (looted, German-owned, mixed)
- g. Custodian (name, title)
- h. Source of contents (name(s) of public or private collection(s) and place(s) of origin)
- i. Degree of evacuation (unevacuated, partly or wholly evacuated, place to which evacuated)
- j. Movements of evacuated contents
 - (1) Number of truck loads moved (specify size of truck)
 - (2) Number and names of persons engaged (U.S., German, other)
- k. Places falsely reported as repositories
 - (1) Location (town, coordinates, Regierungsbezirk, Kreis) and name of alleged repository
 - (2) Date investigated and comments

3. Report all collections inspected during month, covering following points:

- a. Location (town, coordinates, Kreis, Regierungsbezirk) and name of collection

- b. Type (museum, library, archive, etc.)
- c. Contents remaining in building
- d. Evacuation of contents (extent and present location)
- e. Condition of building (destroyed, badly damaged, slightly damaged, intact)
- f. Condition of contents (description)
- g. German personnel
- h. Security (military, civilian)
- i. Movements of evacuated contents
 - (1) Truck loads moved ($\frac{3}{4}$ -ton, $2\frac{1}{2}$ -ton trucks, or other specified)
 - (2) Persons engaged (U. S., German, other)

4. German Cultural Affairs:

- a. Brief statement of important German cultural activities, during the reporting period.

5. Report on each collecting point, covering:

a. Administration:

- (1) Personnel
 - (a) U. S. (officers, enlisted, civilian, recommendations)
 - (b) German (MFA&A specialists, administrative)
 - (c) Other (MFA&A specialists, liaison officers, administrative)

(2) Building(s):

- (a) Security (military, civilian)
- (b) State of repair
- (c) Normal maintenance
- (d) Heating supplies

(3) Important visitors or events

(4) Operations (other than restitutions) e. g. exhibits

(5) Miscellaneous

(6) Recommendations

b. Summary of Operations:

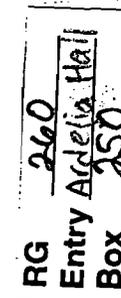
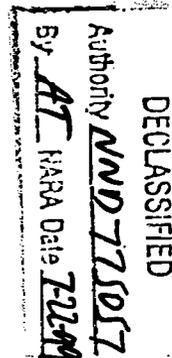
- (1) Estimated total number of objects on hand:
 - (a) Works of art and art objects
 - (b) Books
 - (c) Archives (running feet)
- (2) Total number of objects inventoried to date
- (3) Number of objects inventoried during reporting period
- (4) Estimated percentage of total inventoried during reporting period
- (5) Estimated percentage of total inventoried
- (6) Number of inventory cards forwarded to Berlin
- (7) Number of photographs produced
- (8) Number and type of objects restituted during month
- (9) Interzonal exchange

6. Give a brief statement of other activities, with statistics.

Part IV

1. Describe supply situation during month
2. Comment on important developments not listed above

111481



**MILITARY GOVERNMENT — GERMANY
UNITED STATES ZONE**

**RECEIPT FOR INTERZONAL EXCHANGE OF
WORKS OF ART AND OTHER CULTURAL MATERIALS**

I. The undersigned, _____ Officer representing the Military Government of the _____ Zone of Occupied Germany hereby acknowledges the receipt from the C. in C. United States Forces in Germany, of the items described in Schedule "A" on the reverse hereof on behalf of the C. in C. _____ Forces in Germany.

II. The delivery of these items is subject to the following conditions:

1. That the materials are bona fide property of a public or otherwise recognized cultural institution located in the Zone of the Receiving Power; or, if property of a private individual, have been on loan to such institution for educational purposes, for exhibition, or for war protection.
2. That the material be retained in Germany in the custody of such public or otherwise recognized institutions whose property they are, or of the Commander of the Receiving Zone under adequate conditions of protection and preservation, subject to any future determination of their ultimate disposition by the Allied Control Authority.
3. Notwithstanding Par 2 above, the Military Government Authorities of both the Delivering and Receiving Zones shall be deemed exempt from any claim for loss, damage or deterioration suffered by any item during the period of its storage within their respective Zones of Occupation in Germany.
4. The Commander of the Receiving Zone undertakes to restore to the Zone from which delivery has been made any material, which has been delivered by mistake.

..... Witness Signature of Transferring Officer Signature of Receiving Officer
..... Date Signature typed Signature typed
..... Place Title & Capacity of Signer Title & Capacity of Signer

Change 1 12 February 1947
(Supersedes Title 18)

SCHEDULE "A"

From Repository at:

ITEM	DESCRIPTION (Including Statement of Condition of Materials)	OWNER

111482

DECLASSIFIED
Authority WMD-725057
By AT NARA Date 7-22-90

RG
Entry
Box
260
Acclia Hall
250

**MILITARY GOVERNMENT — GERMANY
MILITÄRREGIERUNG — DEUTSCHLAND**
SUPREME COMMANDER'S AREA OF CONTROL
KONTROLLGEBIET DES OBERSTEN BEFEHLSHABERS

18-530 Custody receipt

Form of Receipt for works of Art, Antiquities or Objects of Cultural Value.
Empfangsbestätigungsformular für Kunstwerke, Antiquitäten und Gegenstände von kulturellem Wert
and Undertaking for their Safe Custody.
und Maßnahmen für deren sichere Aufbewahrung.

Date
Datum
Place
Ort

I,, holding the office of
Ich, (name in BLOCK CAPITALS) in folgender Amtsstellung (insert name
(Name in großer Druckschrift) (Bezeichnung)

of office held) in the of
der Amtsstellung eintragen) in (City, town, village) in (insert district)
(Stadt, Gemeinde, Ort) (Bezirk eintragen)

and I,, holding the office of
und ich, (name in BLOCK CAPITALS) in folgender Amtsstellung (insert
(Name in großer Druckschrift) (Bezeichnung)

name of office held) in the of
der Amtsstellung eintragen) in (City, town, village) in (insert district)
(Stadt, Gemeinde, Ort) (Bezirk eintragen)

Individually and on behalf of
persönlich und im Namen von (Name of institution or public body)
..... (Name der Gesellschaft oder Behörde)

hereby acknowledge receipt of the works of art, anti-
quities or objects of cultural value listed below in
Schedule "A" which have this day been delivered

bestätige hiermit den Empfang der in der Liste "A" be-
zeichneten Kunstwerke, Antiquitäten und Gegenstände
von kulturellem Wert, die heute übergeben wurden

by
von (insert name of officer, including unit, making delivery)
(Namen des Offiziers [einschließlich der Einheit], durch den die Uebergabe erfolgte, eintragen)

It is understood and agreed that the delivery of such
works of art, antiquities or objects of cultural value is
for the purpose of safe custody, and that the said works
of art, antiquities or objects of cultural value will be
kept under adequate guard and proper conditions at the
address shown in the said Schedule, and will be delivered
against detailed receipt in accord only with the direc-
tions of Military Government.

Es ist vereinbart, daß die Uebergabe dieser Kunst-
werke, Antiquitäten und Gegenstände von kulturellem
Wert zwecks sicherer Aufbewahrung erfolgt und daß
diese unter ausreichender Bewachung und unter an-
gemessenen Bedingungen an dem in Liste "A" angegebe-
nen Platz aufbewahrt werden müssen und daß diese
Gegenstände nur gegen Einzelheiten angegebene Empfangs-
bestätigung den Anweisungen der Militärregierung ent-
sprechend ausgeliefert werden dürfen.

Any transaction or other dealing in, or any destruction
or alternation of any work of art or cultural property
covered by this receipt, except as expressly permitted
hereby, is prohibited by Military Government Law No. 52,
and is an offense triable by Military Government Courts.

Jedes Geschäft, jeder Handel, jede Vernichtung oder
Änderung der Kunstwerke oder anderer kultureller
Gegenstände ist, entsprechend dieser Empfangsbestäti-
gung, insofern es nicht ausdrücklich erlaubt wurde, ge-
mäß Gesetz Nr. 52 der Militärregierung, eine Straftat, die
von den Gerichten der Militärregierung abgeurteilt wird.

(If receipt is signed on behalf of an institution, type
in its name.)

(Falls die Empfangsbestätigung im Namen einer Ge-
sellschaft unterschrieben ist, ist der Name der Gesellschaft
einzutragen.)

Signature
Unterschrift
Office
Amtsbezeichnung
Address
Anschrift
Witness (Zeuge)
or Attested (Beglaubigt)

Signature
Unterschrift
Office
Amtsbezeichnung
Address
Anschrift

18-530 (cont'd)

111483

RG 260
Entry Adelia Hall
Box 250
By AT NARA Date 7-22-79
Authority NND 77507
DECLASSIFIED

Change 1 12 February 1947
(Supersedes Title 18)

Change 1 12 February 1947
(Supersedes Title 18)

INSTRUCTIONS FOR THE EXECUTION OF RECEIPTS.

1. The persons who should sign a receipt will differ according to the authority or legal entity which they represent and are listed in the following Table:

<ol style="list-style-type: none"> a. Gemeinde (Town, Municipality) b. Landkreis (in case of smaller communities) d. Land Central Bank c. Province e. Aktiengesellschaft (AG) f. Gesellschaft mit beschränkter Haftung (GmbH) 	<p>Oberbürgermeister or his legal representative (gesetzlicher Vertreter), usually his assistant (Beigeordneter) or the Town treasurer (Stadtkämmerer).</p> <p>Landrat or his superior Regierungspräsident Oberpräsident</p> <p>Two members of the Direktorium Two members of the Vorstand Two Geschäftsführer</p>
---	--

2. Method of signing the receipt is as follows:
 - a. Gemeinde:

Der Bürgermeister
handwritten signature: SCHMIDT
or in case he is not available:

Der Bürgermeister
In Vertretung
Meyer
Beigeordneter
or
Stadtkämmerer.

- b. Above instructions apply also to 1 b; and 1 c. above, except that the titles of the legal representatives will vary.
- d. Landzentralbank

	Landzentralbankhauptstelle in Frankfurt/M
	SCHMIDT Meyer
	Direktionsmitglieder.
- e. Aktiengesellschaft:
These entities should sign by typing or writing the corporate name followed by the individual signatures thus:

	Phoenix A.G.
	SCHMIDT Meyer
	Vorstandsmitglieder.
- f. A GmbH should sign by typing or writing the corporate name followed by the individual signatures thus:

	Osram GmbH
	SCHMIDT Meyer
	Geschäftsführer.

3. The individual signatures should always be handwritten.

4. In the case of signatures on behalf of a public body (1 a—d), an official of that body should countersign as a witness thus:

(Witness) Zeuge or (attested) Beglaubigt	} Kuntze, Title and Address.
--	------------------------------------

5. The impressment of a seal is not necessary but not objectionable if it conforms to MG Law No. 7.

1. 12 February 1947
Revised Title 18)

Change 1. 12 February 1947
(Supersedes Title 18)

111484

RG	260
Entry	Ardelia Hall
Box	250

Authority	ANN 77507
DECLASSIFIED	BY AT HARA Date 7/20/99

18-540

Inventory and Sale Card for Art Dealers control symbol
MG/MFAA/7/F

November 46

MILITARY GOVERNMENT — GERMANY
United States Zone

INVENTORY AND SALE CARD FOR ART DEALERS

MG/MFAA/7/F

November 46

Classification: (check) Painting <input type="checkbox"/> Prints <input type="checkbox"/> Sculpture <input type="checkbox"/> Dec. Arts <input type="checkbox"/> Drawing <input type="checkbox"/> Misc. <input type="checkbox"/>	Artist:	Dealer Name: Address:
Measurements:	Material:	Photo: (if available)
Identifying Marks:	Description:	
Bibliography:	For MG use:	

Each licensed art dealer is required to complete this card for each work of art or cultural material in his possession that has a sales price or value of 10,000 RM or more within 30 days of application for license. In addition he is required to submit this card on accession or sale of any such object by the 10th of the month following such transaction. For further instructions see Law No. 52, 3 and 3 (d) and AG Letter, "Transfer of Works of Art or Cultural Materials of Value or Importance".

(Back)

History and Ownership:

Condition and Repair (if restored by you, describe work done):

If sold, to whom:

Address:

Date:

For MG use:

This card will be reproduced locally in the German language.
(Size: 21 X 13 cm.)

Change 1 12 February 1947
(Supersedes Title 18)

18-540 (cont'd)

(Vorderseite)

MG/MFAA/7/F

November 46

INVENTAR UND VERKAUFSKARTE
FÜR KUNSTHÄNDLER

Art des Gegenstandes: Gemälde <input type="checkbox"/> Graphik <input type="checkbox"/> Kunstgewerbl. Skulptur <input type="checkbox"/> Gegenstand <input type="checkbox"/> Zeichnung <input type="checkbox"/> Sonst. Gegenst. <input type="checkbox"/>	Künstler:	Händler Name: Adresse:
Abmessungen:	Material:	Lichtbild: (falls vorhanden)
Besondere Kenn- zeichen zur Iden- tifizierung des Stückes:	Beschreibung:	
Bibliographie:	Freizulassen für Anmerkungen der Militärregierung:	

Jeder zugelassene Kunsthändler ist verpflichtet, diese Karte für alle in seinem Besitz befindlichen Kunstwerke oder Kulturgegenstände, die einen Verkaufspreis oder Wert von RM 10,000.— oder höher haben, innerhalb von 30 Tagen nach Stellung des Zulassungsantrages auszufüllen. Außerdem hat er diese Karte beim Erwerb oder Verkauf derartiger Gegenstände bis zum 10. des darauf folgenden Monats vorzulegen. Weitere Anweisungen sind Absatz 3 und 3 (d) des Gesetzes Nr. 52 und dem AG Brief betr. "Übertragung von Kunstwerken oder Kulturgütern von Wert oder Bedeutung" zu entnehmen.

(Rückseite)

Geschichte und Eigentümer:

Zustand und Restaurierung: (Falls von Ihnen Restaurierarbeiten ausgeführt sind, Beschreibung derselben)

Falls verkauft, an wen?

Adresse:

Name:

Freizulassen für Anmerkungen der Militärregierung:

Diese Karte ist an Ort und Stelle anzufertigen (Format: 21 X 13 cm)

Change 1 12 February 1947
(Supersedes Title 18)

111486

DECLASSIFIED
Authority NND-775057
By AT HARA Date 7-22-89

RG
Entry
Box
260
Agencia
HAI
098
JSD

Receipt for Cultural Objects, DRDR/P(45)13 Revise

RECEIPT FOR CULTURAL OBJECTS
ALLIED CONTROL AUTHORITY
REPARATIONS, DELIVERIES AND RESTITUTION
DIRECTORATE
RECEIPT FOR CULTURAL OBJECTS

The undersigned, duly accredited by
the Government, hereby acknowledges the receipt on
behalf of the said Government, from the Comman-
der in Chief in Germany, for the items described in schedule A
attached hereto.

1. The delivery of these items is subject to the following
conditions:

- a. In the event of the items coming within the ambit
of a general restitution procedure that may later be
established by the Allied Powers, the receiving Govern-
ment will agree to the transfer being submitted for con-
firmation by a restitution Commission or other internati-
onal body which may be established to deal with this
matter and will abide by its decision.
- b. In the event of such confirmation, the transfer will be
subject to all the conditions laid down for restitution deli-
veries generally.
- c. In the event of items not coming within the ambit of such
restitution procedure, the transfer shall be dealt with in
accordance with such procedure as may be established
for other deliveries.

2. The receiving government undertakes to restore any object
which has been delivered to it by mistake:

- a. To the government of the allied state if the property was
removed by the enemy from the territory of that state;
- b. To the Headquarters of the Zone from which it was
shipped, if it had not been removed from the Territory
of an Allied State.

3. The receiving government agrees that the occupying power
and all its agents and representatives shall be saved harmless from
any claim for loss, damage or deterioration suffered by any item
from the time of its removal from the jurisdiction or custody of
the country receiving restitution until its return thereto.

..... Witness Signature
..... Date Signature typed
..... Place Title or Capacity of Signer

111487

REPRODUCED AT THE NATIONAL ARCHIVE

DECLASSIFIED

Authority NND-775057

By AT HARA Date 7-22-99

RG

Entry 260 250 250

Box

SCHEDULE A

ITEM	DESCRIPTION (Including Statement of Condition of Object)

Property Card Art

Instructions. This card (Property Card-Art) will contain all information prescribed in specimen form set out below, and will be filled out for each cultural object inventoried at a repository or collecting point. One copy will be forwarded monthly by the appropriate Land OMG to OMGUS, APO 742, Attention: MFA&A Section, Restitution Branch, Economics Division.

MILITARY GOVERNMENT — GERMANY
United States Zone

Classification		Property Card Art	
Author:	Subject:	Presumed Owner:	
Measurements: L W H	Material:	Inv. No.	Cat. No.
Weight:	Arrival Condition	PHOTO	
Depot possessor:	Description		
Depot Cat.		FOR OFFICE USE	
Identifying Marks:		Claim No.	
		Other Photos: Yes, No.	
		Neg. No.	
Bibliography:		File No.:	
		Movements:	
Copies of cards	Arrival Date	Exit	
Forwarded: 194			

History and Ownership

Condition and Repair Record

Location:
House:
Floor:
Room:

111488

REPRODUCED AT THE NATIONAL ARCHIVE

DECLASSIFIED

Authority WWD-775057

By AT NARA Date 7/22/09

FOR OFFICE USE

Claim No.

Other Photos: Yes, No.

Neg. No.

File No.:

Movements:

RG Entry Box

096

250

International Protection of Works of Art and Historic Monuments

FOREWORD

These essays on the International Protection of Works of Art and Historic Monuments by the eminent Belgian jurist, Charles De Visscher, professor of international law at the University of Louvain and a judge on the International Court of Justice, are based upon the well-established thesis that the protection and preservation of artistic and historic resources arises not only from national interest but from a superior international responsibility: a continuing responsibility which each generation bears in turn as it assumes its trusteeship from the past.

As the first comprehensive summary of the substantial but little-known achievements of the past, it is a learned work of permanent value. It is also a provocative study showing the need for further guaranties to safeguard cultural resources under international law. The wide diffusion of these ideas is shown in an historical survey of the subject. The present attainments under international law are reviewed, and an impartial interpretation of conventional and national law is given. Many juridical phases of the subject are discussed: the basis in law of the immunity universally accorded to cultural institutions and cultural property; the significant advances made in modern peace treaties; the measures adopted for the protection of historic property in time of conflict; the recent legislation for the preservation of national treasures.

The endeavors under the League of Nations in this regard during the thirties before the impending disaster of war are to be found in two international conventions drafted by the International Museums Office: one on the protection of national collections of art and history and the other on the protection of monuments and works of art in time of armed conflict.¹ Although the measures recommended in these conventions must be altered with the crucial experience of World War II, the high objectives are still valid and urgent.

The restitution of art and all types of cultural property plundered or displaced during World War II on a scale that would never have been believed possible has been achieved through the cooperation of the Allied nations. The same international cooperation in the recovery of national treasures illegally alienated from

an owner nation in time of peace only remains to be formally assured in an international convention as was recommended by Judge De Visscher in these essays.

The whole problem of the preservation of historic cities and famous buildings must be reassessed, and new solutions sought in the light of the inadequacy of the measures provided under the Hague Conventions and the failure during World War I and World War II to prevent tragic and irreparable losses. Every possible means should be weighed and considered, in view of the devastation of modern warfare, to preserve the historic and artistic monuments, which are the heritage of mankind held in admiration and affection by all the world.

Judge De Visscher's essays are a milestone in that endeavor. They are a point of departure in planning for the future. Through a familiarity with past achievements and efforts there is a growing appreciation of the problems and a better understanding of the importance of marking the advances and accepted principles and practices in international law. Through the wider dissemination of knowledge, there is an increasing awareness of the great and enduring spiritual values enshrined in the cultural achievements of all countries and a growing will to safeguard these symbols of civilization through international cooperation.

The English edition of these essays has been issued in order that they may reach a wider audience in the United States, whose people, with the rest of the world, share a deep concern for the safety of these great works of art and history. The translation, prepared by the Central Translating Division of the Department of State, has been prepared for government reference and publication with the approval of the author. The essays first appeared in the *Revue de droit international et de législation comparée* in 1935. The English translation, however, was made from a revised text, published in 1939 and 1940, by the International Museums Office of the International Institute of Intellectual Cooperation in the volumes, *Art et Archéologie: Recueil de législation comparée et de droit international*.

ARDELIA RIPLEY HALL

¹ See appendixes A and B.

UNITED STATES DEPARTMENT OF STATE



Documents & State Papers

Contents:

INTERNATIONAL PROTECTION OF WORKS OF ART AND HISTORIC MONUMENTS	821
U.S. DELEGATION REPORT ON FAO	872
CALENDAR OF INTERNATIONAL MEETINGS	888
Annotations	892
CUMULATIVE CONTENTS	895

Vol. I, No. 15

June 1949

111489

REPRODUCED AT THE NATIONAL ARCHIVES
 AUTHORITY: DDD 999096
 BY: T1 NARA DATE 7/6/98
 DECLASSIFIED
 59
 RG Entry Box 5383

PART I. HISTORIC MONUMENTS AND WORKS OF ART IN TIME OF WAR
AND IN THE TREATIES OF PEACE¹

Introduction

The vicissitudes suffered by works of art, archives, and objects of every type of collection form a most interesting chapter in diplomatic history and international law. Memoirs and documents of the past, international treaties, contemporary judicial compilations attest the place that such objects and monuments have continuously occupied in the historic claims of princes and peoples and in transactions between private individuals as well. The problems that have arisen in connection with them are varied and complex. Some of them, which are the result of destruction in war, acts of spoliation through a policy of conquest, or partitions of territory, come under public international law. Others originate in divergencies between civil laws concerning alienation and claims to movable property, particularly property that is rendered inalienable by law or is set apart for public use; these problems belong in the realm of comparative legislation and that of international private law. The most recent problems are the outcome of a relatively new idea—which can attain its fullest development only through regulation by means of conventions between states—that of preserving a nation's artistic and historic patrimony. This objective has been largely responsible for a whole body of recent laws to safeguard works of art and monuments. These laws are designed to protect the latter from theft and from the carelessness or cupidity of those who own them or have them in their custody as the result of various procedures placing them under the control of public administrations, rendering them inalienable, or prohibiting their exportation to foreign countries.

We have considered it of interest to make a composite study of the observations and ideas relating to the protection of ancient monuments and works of art in time of peace as well as in time of war from the standpoint of the relationship such protection has to international law.

Certain famous works of art and collections appear to have had the singular privilege of epitomizing in their eventual histories all of these dif-

¹ See also *Revue de Droit International et de Législation comparée*, Nos. 1 and 2, 1935: "La protection internationale des objets d'art et des monuments historiques."

ferent aspects of the protection of art. Suffice it to recall the extraordinary vicissitudes of the Library of Mathias Corvinus, which was removed to Buda by the Turks, and certain portions of which were the subject of quite recent negotiations between Austria and Hungary; or the no less curious vicissitudes of the famous Palatine library that was taken to Heidelberg by Maximilian of Bavaria and offered to Pope Gregory XV.

Among works of art, none is perhaps so representative in this respect as the renowned polyptych of the Mystic Lamb, a work of the van Eyck brothers deposited in St. Bavon Cathedral at Ghent. *Habent sua fata tabellae*. The misfortunes it suffered provide an illuminating example of the dangers constantly threatening the work of art in time of peace as well as in time of war. This reredos was completed in 1432; by the following century one part of it, a predella which appears to have been damaged beyond repair during an unskilful process of cleaning, had been cut off. In 1794 the four great central panels were carried off to Paris by the French and were not returned until 1815. The work had scarcely been reassembled when it was subjected to a serious division: in 1816 the wings, except for two, were sold by the Chapel of St. Bavon for an absurdly small sum. Later they were acquired by the King of Prussia, Frederick William III, and placed in the galleries of the Berlin Museum until 1920.

The War of 1914 would doubtless have brought this priceless reredos into greater peril if certain citizens of Ghent had not had the courage to conceal it during the German occupation in a hiding place which long remained a secret. The obligation imposed on Germany by the Treaty of Versailles to repatriate the panels that had been sold in 1816 provided the unhopd-for opportunity of completely restoring this famous work, parts of which appeared to have been separated forever. Some years later, another misfortune befell it: one of the finest panels, The Honest Judges, was stolen, and despite an intensive search, no trace of it has ever been found.

Following the outbreak of World War II, the Belgian authorities determined in May 1940 to send the altarpiece to the Vatican for safekeeping. However, when Italy entered the war on the German side, it was judged more prudent to accept the

offer, which had been made by the French Government for its safe custody, and it was finally transported to the Château de Pau, in the south of France. In the summer of 1942, the Germans forced the Vichy Government to surrender the painting to a personal envoy of Hitler. It was transferred by the Nazis to one of the great salt-mine repositories, the Salzbergbau at Alt-Aussee. When these repositories were taken into custody by the United States Army, the American Monuments, Fine Arts and Archives officers discovered that the panel on which Saint John is represented had been broken along its left joint during its war travels.

In August of 1945, the panels were packed in ten cases for immediate return to Belgium by the United States Army. It was to become a symbol of the great Allied program of recovery and restitution of art and cultural property plundered by the Nazis. Flown by plane from Munich to Brussels, it was delivered with formal ceremonies to H. R. H. Prince Charles, Regent of Belgium on September 3, 1945, in the presence of the United States Ambassador, the Belgian Prime Minister, the Bishop of Ghent, American Monuments officers, and about one hundred guests.

Today this great masterpiece has once again been restored to the Cathedral of Saint Bavon.

Chapter I. The Immunity of Cultural Institutions and Cultural Property

War has exposed historic monuments and works of art to two principal dangers: the danger arising out of the practice of taking spoils during or at the close of hostilities, and the danger of destruction from acts of war, especially artillery action and aerial bombardment.

The removal of works of art by the military command during hostilities, or by the occupant, or by the victor at the close of the war, is a practice that modern international law has explicitly condemned, but one which it has long been possible to claim rested upon famous precedents. It is fair to add here that, in all ages, this practice has also been denounced in the name of political as well as moral considerations by men who set against spoliation enterprises the higher principle of respect for the artistic treasures of the nations.

In a classic study of rare impartiality, Eugene Muntz gives a long account of the seizure and appropriation of works of art from ancient times

WORKS OF ART AND HISTORIC MONUMENTS

to the first Empire.² Rome, which was later to suffer so much from the pillage of her monuments and collections, had made a systematic practice of carrying off the works of art belonging to the peoples subjugated by her. Bronzes and marbles taken from the Orient and Greece made the triumphal procession of her generals completa. In Polybius' eloquent protest we find both moral condemnation of this practice and a principle, which has not been given enough attention, of the distinction of art from other wealth, the validity of which has been recognized by modern international law: "One may perhaps have some reason for amassing gold and silver; in fact, it would be impossible to attain universal dominion without appropriating these resources from other peoples, in order to weaken them. In the case of every other form of wealth, however, it is more glorious to leave it where it was, together with the envy which it inspired, and to base our country's glory, not on the abundance and beauty of its paintings and statues, but on its sober customs and noble sentiments. Moreover, I hope that future conquerors will learn from these thoughts not to plunder the cities subjugated by them, and not to make the misfortunes of other peoples the adornments of their own country."

It was long before the Greek historian's hope was to find fulfillment. The Roman tradition, which ranked art objects first among the spoils of the vanquished and the trophies of the victor, was reestablished with the Renaissance as soon as the taste and eager search for artistic and literary treasures flourished anew in the West. The Italian wars gave Charles VIII and Louis XII a pretext for confiscating great numbers of manuscripts, statutes, tapestries, and paintings from captured towns. There were numerous treaties stipulating the transfer of those collections to the victor. "At no previous time," says Muntz, "had works of art held so large a place in diplomatic negotiations."

The same acts, coupled with destruction and pillage, marked the Thirty Years' War. A case of plundering which has remained celebrated above all others was the removal, in 1622, of the

² "Les annexions de collections d'art ou de bibliothèques et leur rôle dans les relations internationales, principalement pendant la Révolution française," *Revue d'histoire diplomatique*, 1894, p. 481; 1895, p. 375; 1896, p. 481.

DECLASSIFIED
Authority: AFD 99096
BY: T1 MARA Date: 7/6/99

RG 59
Entry Box
385

WORKS OF ART AND HISTORIC MONUMENTS

famed Palatine Library at Heidelberg, which subsequently was offered by Maximilian of Bavaria to Pope Gregory XV *Utī victoriae monumentum*.¹

During the eighteenth century, a new concept of war appeared. Envisaged as a relation between States, war should, as far as possible, limit its effects solely to the destruction of the enemy's armed forces. In principle, therefore, armies should seize only that which can strengthen those forces and enable the enemy to prolong the war. That is what Vattel taught.² In certain cases, it is true, the victor's restraint seems to have been inspired by considerations of personal courtesy, collections being spared for the same reason as the royal or princely residences to which they belonged.³

Whatever the reasons may have been, the practice of plundering works of art was in fact given up almost entirely during the eighteenth century. Soon, however, the lust for spoliation revived once again, bursting forth with unprecedented violence.

The wars of the Revolution, the Consulate, and the Empire show us that France, with her well-known ruthlessness, plundered palaces, museums, and churches in the provinces conquered by her armies. Belgium was systematically ravaged in the second French invasion (1794). The Revolution "abandoned humanitarian idealism . . . it no longer aspired to liberate peoples, but to rule them: it became openly imperialistic."⁴ The

¹ Many of the Palatine manuscripts subsequently suffered other vicissitudes. Having been taken from the Vatican by the French in 1798 and removed to Paris, they were restored to Heidelberg in 1815.

² *Le Droit des Gens*, Book III, chap. IX, par. 160 ff: "Du droit de la guerre à l'égard des choses qui appartiennent à l'ennemi."

³ W. E. Hall, *International Law*, 8th edition (A. Pearce Higgins), p. 505.

⁴ H. Pirenne, *Histoire de Belgique*, vol. VI, p. 57.

⁵ The unused leaves of the polyptych had been relegated to a depository of the Cathedral, next to the chapter house.

⁶ "Lettres au général Miranda sur le préjudice qu'occasionneraient aux arts et à la science le déplacement des monuments de l'art de l'Italie, le démembrement de ses écoles et la spoliation de ses collections galeries, musées, etc." Paris, 1796. These letters were reproduced in 1815 on the occasion of the restitution demanded of France by the Allies.

carrying off of works of art in Belgium was an action of disorderly, brutal looting. Moreover, it met with little resistance or protest from a nation completely exhausted and driven to despair. The central part of the polyptych of the Mystic Lamb in the Cathedral of St. Bavon at Ghent was sent to the Louvre in 1794 and was not returned until 1815.⁷

A few enlightened, independent thinkers of the day spoke out against such practices. Of their protests, that of Quatremère de Quincy, with its loftiness of spirit, is still justly famous, for it was inspired by ideas that in the following century were definitely to assure the immunity of artistic treasures and place them under the express protection of international conventions. "The arts and sciences have long formed in Europe a republic whose members, bound together by the love of and the search for beauty and truth, which form their social contract, are much less likely to isolate themselves in their respective countries than to bring the interests of those countries into closer relation, from the cherished point of view of universal fraternity." He adds: "It is as a member of this universal republic of the arts and sciences, and not as an inhabitant of this or that nation, that I shall discuss the concern of all parts in the preservation of the whole. What is this concern? It is a concern for civilization, for perfecting the means of attaining happiness and pleasure, for the advancement and progress of education and reason: in a word, for the improvement of the human race. Everything that can help toward this end belongs to all peoples; no one of them has the right to appropriate it for itself, or to dispose of it arbitrarily. . . ."

In Italy, works of art were appropriated by France under somewhat different conditions. Generally, as Muntz observes, she went about doing so with a methodical thoroughness that bears the stamp of Napoleon's organizing genius. Without any doubt, on numerous occasions the carrying off of works of art was pure and simple confiscation, based solely on the claim to booty. Frequently, however, the victor made sure of at least formal and more explicit title to them. Sometimes the transfer of artistic treasures appears, instead, as a war contribution or as the supplement to such contribution. Sometimes it was stipulated by an armistice convention and later

confirmed by a formal peace treaty.⁸ At still other times the transfer was exacted as reparations, as in the case of the collections of Pope Pius VI and the Houses of Albani and Braschi after the murder of General Duphot in Rome.

However, while the methods of carrying off works of art differed, the idea dictating them remained the same. Just as Rome once did, Paris was destined to enrich herself with the artistic treasures of conquered peoples; those treasures were regarded as trophies of victory and the adornments of a nation that, by initiating the love of freedom in Europe, deserved to become the center of the sciences and arts.⁹

It must be added that in Italy, at least, this policy of taking spoils met with the desperate protests of the people. In certain towns, notably Perugia, the resistance to the carrying off of their works of art reveals, sometimes touchingly, the admiration and deep attachment lavished upon them by public sentiment.¹⁰ Certain cases of excess—we are happy to note—troubled the learned Frenchmen who were made responsible for carrying out the confiscation program. "It is neither just nor politic," wrote Daunou, "to increase unduly confiscations of this sort. The most esteemed patriots of this country regard them with nothing but sorrow, and it must be admitted that, if we were in their position, we should be no less sensitive. There must be a limit to everything, and especially to the right of conquest."¹¹

The lawfulness of such seizures has been regarded in many different ways from the point of view of international law. Muntz cites the petition of eight members of the Third Class of the Institute of France calling the attention of the Executive Directorate to the question of "whether it is advisable for France and advantageous to the arts and artists in general to remove from Rome the monuments of antiquity and the masterpieces of painting and sculpture composing the galleries and museums of that capital of the arts. We shall not permit ourselves," wrote the petitioners, "to express any thoughts on this subject, which has already been submitted to public opinion by learned discussions; we shall merely request, Citizen Directors, that before anything is removed from Rome, a commission formed by a certain number of artists and men of letters appointed by the National Institute, partly from

WORKS OF ART AND HISTORIC MONUMENTS

within the Institute and partly from outside, be charged with making a general report for you on this subject. It is on the basis of that report, in which every consideration will be discussed and weighed with the wealth of reflection and knowledge that is so indispensable to the development of a subject so broad and so worthy of you, that you will pronounce on the fate of the fine arts in future generations. Yes, the decision that you make will settle their destiny forever, you may be sure . . ."

As we see, from that time on, the problem was presented in its most general terms. As with Quatremère de Quincy and Daunou, it was the principle of the integrity of the artistic heritage of nations against any attempt at violence that the signers of the petition brought forward in all its ramifications. The reservations formulated by them, in language in which prudence does not exclude firmness, are applicable to any measures of force, whether physical or moral, tending to disperse the elements of such heritage.

It is certain that, since then, men of independent spirit, alluding to the enlightened practice of the eighteenth century, have condemned the confiscation of works of art when appropriation was based solely on the alleged right to spoils. But, as we have seen, the transfer of Italy's art treasures to France was frequently approved by treaties concluded in good and due form. Was it unlawful to keep those treasures which, strictly speaking, appeared to have been acquired in a

⁸ Bologna Armistice Convention of June 23, 1796, and Treaty of Tolentino of Feb. 18, 1797, between France and Pope Pius VI. Armistice Convention of May 8, 1796, with the Duke de Parma. Milan Treaty of Peace of May 16, 1797, with the Republic of Venice (secret art. V) See Muntz, *loc. cit.*; Pradier-Fodéré, *Traité de droit international public*, vol. VII, no. 3008; Ernest Nys, *Le droit international*, vol. III, pp. 276 ff.

⁹ Berthier's proclamation of 22 Pluviôse an VI to the Government of Rome, recorded by Muntz (*Revue d'histoire diplomatique*, 1896, p. 485, note) curiously connects the spoliation of artistic treasures with worship in ancient times. It requires the commissioners to appropriate all works of art which they deem worthy of removal to Paris and at the same time orders: "Art 13. The French Army shall proceed to the Capitol in order to pay tribute there to the great men who made the Roman Republic famous. That tribute shall be handed down to posterity by an inscription on the Capitol."

¹⁰ Muntz, *loc. cit.*, p. 481-483.

¹¹ Letter dated Apr. 15, 1798.

DECLASSIFIED
Authority: AUC 99096
By: T1 MARA Date: 7/1/99
RG 59
Entry 5383
Box 1

regular manner, and could their restitution be required? We know how the question was settled by the Allies in 1815, and the long discussions to which their decision gave rise. Certain legal aspects of that dispute are worth emphasizing.¹²

Diplomatic negotiations on the restitution by France of the collections of works of art taken from Italy, the Netherlands, and Germany began with a note of July 15, 1815, from Lord Liverpool to Viscount Castlereagh. In it, the head of the British Government raised the question of recovering them for the purpose either of returning them to the countries from which they had been removed, or of dividing them among the Allies. The alternative contemplated here as we see, denotes the lack of a clear idea of the grounds for their recovery: its author envisages apportionment by virtue of the right to spoils, and restitution to the original owner as well. On being sounded out by Viscount Castlereagh, the ministers of the other Allied Powers declared themselves in favor of the idea of recovery, but did not go so far as to require total restitution. The principle of a distinction seemed to prevail at that time. It is evident in Castlereagh's reply to Liverpool: "the idea of

¹² There have been various opinions on the conditions under which works of art were removed from the Louvre, particularly on the intervention of soldiers of the Allied Governments. Baron Paul Verhaegen's fine work, *La Belgique sous la domination française*, vol. V, pp. 277 ff., contains most interesting details on this subject. It is evident from this work that the Allies were encouraged in their claims by a petition from 39 artists staying in Rome. The signers insisted "on the necessity of leaving each school's works 'under the sky that had witnessed their birth' and in the surroundings intended for them by their creators." Cf. Rouard de Card, *La guerre continentale et la propriété*, pp. 99 ff., Pradier-Fodéré, *op. cit.*, no. 8010; Travers-Twiss, *The Law of Nations*, vol. II, no. 68; E. Nys, *op. cit.*, pp. 281 ff. In the aforesaid work, Baron P. Verhaegen shows that it was Louis XVIII's refusal to satisfy justified claims that finally led the Allies to resort to the use of force.

¹³ See especially Hall, *op. cit.*, p. 506.

¹⁴ Sir Travers-Twiss (vol. II; no. 68) recalls that when, during the War of 1812, a collection of Italian prints and paintings was captured by a British vessel on its passage from Italy to the United States, Sir Alexander Croke, Judge of the Vice-Admiralty Court of Halifax, had them returned to the Academy of Arts in Philadelphia, "on the ground that the arts and sciences are admitted amongst all civilized nations to form an exception to the severe rights of war, and to be entitled to favor and protection. They are considered not as the *peculium* of this or that nation, but as the property of mankind at large, and as

distinguishing between what are solely the fruits of conquest and what has been ceded by a treaty presents itself as a basis that might be adopted." However, the claims of the King of the Netherlands, the German Princes, the Pope, and the Grand Duke of Tuscany became more pressing. Castlereagh's note of September 11, 1815, to the ministers of the other Allied Powers was therefore much more categorical: it declared that the art objects which France had appropriated could not be left to her, "objects that all modern conquerors had invariably respected as being inseparable from the country to which they belonged." By placing the question on this plane of the integrity of an artistic heritage, the author of the note was led to disregard, in his conclusion, the distinction which he had originally contemplated. "It did not seem possible to adopt a middle course," he stated, "without recognizing a host of spoliations, under cover of treaties, which were more flagrant, if possible, than the overt acts of pillage whereby such remnants had generally been gathered together."

The note, therefore, refused to consider treaties themselves as a legitimate title to ownership. In this connection the conventions imposed upon the vanquished are considered only as a method of extortion, to be condemned on the same grounds as overt spoliation.

The rather dangerous consequences of such reasoning for the stability of all peace treaties can be foreseen. They were pointed out by Sir Samuel Romilly on February 20, 1816, during a debate in the House of Commons.

When viewed in the proper light, however, the solution which finally prevailed is all the more significant. From that time on, restitution to their owners of the artistic treasures transferred to France as a result of wars, and on any ground whatsoever, conformed with the dictates of the public conscience. Despite certain variations in doctrine, which scarcely permit representing it—as has been done—as a decision of high justice,¹⁴ the restitution ordered by the Allied Powers was based on the very general principle of the integrity of the artistic heritage of conquered nations; once recognized, this principle tends to condemn as having an unlawful purpose, any cession, even conventional, of an art object, which is imposed under moral duress.¹⁵

It is interesting to note that condemnation of the practice of confiscating works of art dates back more than a century, while condemnation of annexations of territory and populations is still quite recent. This fact, which seems to have disconcerted certain authors,¹⁶ can be accounted for especially by the symbolic meaning that the most ancient tradition had always attached to such confiscation; the appropriation of a people's artistic treasures, the fruits of its national genius, had been viewed in every age as a trophy helping to sustain the conqueror's exaltation in victory, as the humiliation of the conquered in defeat.¹⁷ Diplomatic correspondence bears witness to the fact that there had long been an awareness of the political dangers to international relations in this practice.¹⁸ From the sixteenth century on, the claims of pillaged cities and countries became numerous: coinciding with the awakening of national feeling, those claims attest the depth of their resentment.

During the nineteenth century, the doctrine of international law was accepted by all. While earlier writers, such as Alberico Gentili, conceded that a conquered people should be despoiled of its artistic treasures,¹⁹ we see that that practice of spoliation was clearly denounced by G. F. de Martens,²⁰ Dudley Field,²¹ and Bluntschli.²² That doctrinal movement led to the adoption by the Brussels Conference in 1874 of article 8 of the Draft Declaration, which reads as follows: "The property of communes, institutions devoted to religion, charity and education, to arts and sciences, even when State property, shall be treated as private property.

"All seizure of, and destruction of, or intentional damage to such institutions, to historical monuments, works of art or science, should be made the subject of proceedings by the competent authorities." Furthermore, article 53, par. 1 of the *Manual of Laws of War on Land*, published by the Institute of International Law is worded thus: "The property of municipalities, and that of institutions devoted to religion, charity, education, art and science, cannot be seized."

Since the first Peace Conference of 1899, this principle has become international conventional law. If this law has not abolished the spoliation of State property,²³ it has limited the practice to certain categories of property and securities

"which are strictly the property of the State" (article 53 of the Regulations Respecting the Laws and Customs of War on Land); moreover, it expressly exempts "the property of institutions dedicated to religious worship, charity, education, art and science, even when belonging to the State." "All such property," states article 56, par. 1, of the Regulations annexed to the Convention Respecting the Laws and Customs of War on Land, "shall be treated as private property."²⁴ Despite that rapprochement, which unfortunately is no longer of a nature to protect its immunity—the serious disregard of the respect due to private property during the World War is well-known—the scope of the principle is certain; it is clearly defined and expressly extended to historical monu-

belonging to the common interests of the whole species; and that the restitution of such property to the claimants would be in conformity with the law of nations, as practiced by all civilized countries."

¹⁶ See especially Fillet, *Le droit de la guerre*, 1894, p. 175.

¹⁷ "Victory runs," write the authors of *l'Histoire de la Société française pendant le Directoire*, "and at each stopping place in the Museum of the world, she makes out, on a drum, the waybills for certain masterpieces: Milan will lose the cartoon of the School of Athens by Raphael, and works by Giorgione and da Vinci; Parma will lose Correggio's, Veronese's, and Espagnolet's; Piacenza, Carracci's; Mantua, Mantegna's and Guercio's; and all the cities of Italy will weep for the pride of their walls and their chief glory." Quoted by Paul LaCroix, *Directoire, Consulat et Empire*, Paris, 1884, pp. 403-405.

¹⁸ "Concerning the collections in the Louvre, it is very desirable from a political point of view," wrote Lord Liverpool, "to have them removed, if possible, from French territory, for as long as they remain there, they cannot fail to keep alive in the French nation the memory of its former conquests, and to bolster its military spirit and vanity."

¹⁹ *De Jure belli*, book III, chap. VI: *Victis ornamentis spoliare*.

²⁰ *Précis du droit des gens moderne de l'Europe*, 1804, vol. II, p. 252.

²¹ *Projet d'un Code international* (trans. by Alb. Rolin), art. 840, p. 613.

²² *Le Droit international codifié*, art. 650.

²³ See the excellent study of Max Huber, "La propriété publique en cas de guerre sur terre," *Revue générale de droit international public*, 1913, pp. 657 ff.; cf. Alb. Rolin, *Le droit moderne et la guerre*, vol. I, pp. 547 ff.

²⁴ The principle of the inviolability of private property during hostilities has been formulated in article 23 (g): "It is particularly forbidden . . . to destroy or seize enemy property, except in cases where such destruction or seizure is urgently demanded by the necessities of war." The same principle is expressed with respect to the occupying authority, in article 46, par. 2.

WORKS OF ART AND HISTORIC MONUMENTS

ments and works of art in paragraph 2 of the same article: "All seizure of, and destruction, or intentional damage done to such institutions, historical monuments, works of art or science, is forbidden, and should be made the subject of legal proceedings."²⁸ Thus international conventional law has established such acts as genuine violations of the law of nations, the perpetrators of which are marked out for collective repression by the signatory States.

It must be recognized that the immunity covering such institutions is not limited to the buildings, or to the equipment and the collections housed in them: it extends to the whole of their assets; consequently to their currency, funds, and securities, even if the institutions are under the State's jurisdiction. This follows particularly from the fact that article 56 has placed the property of such establishments on the same footing as the property of the communes whose patrimony is safeguarded from all measures of seizure.²⁹

The property of the institutions enumerated in article 56 enjoys immunity solely because they are dedicated to an ideal purpose, and even when, according to the text, those institutions belong to the State; all the more in the case of the property of similar establishments which although possessing an endowment of their own, nevertheless come under the jurisdiction of the State.

Chapter II. Unity of Works of Art and Collections; the Reconstitution of Artistic and Historic Patrimony in Modern Treaties

Destruction of the unity or integrity of a work of art by removing one of its component parts and transferring it to a foreign country and the dispersal of collections, the historical or scientific interest in which rests, at least in part, either on the fact of their constituting a whole or on keeping

²⁸ The report of Edouard Rolin (now Baron Rolin Jacquemyns) states explicitly that these provisions restricting the power of the occupant apply *a fortiori* to the invader during the period preceding the establishment of regular occupation.

²⁹ See the aforementioned study by Max Huber, and Oppenheim's treaties (McNair edition, vol. II, par. 135).

³⁰ *Revue de droit international* (Paris), 1932, no. 3, p. 52 ff.

³¹ Lord Elgin set them forth in a curious article entitled, *Memorandum on the subject of the Earl of Elgin's pursuits in Greece*.

³² Seferiades, *loc. cit.*, pp. 56-57.

them together in the region where they were created or to which they relate, are practices condemned by the higher interests of science and art and are in fact being more and more generally abandoned. This is a principle which, despite certain derogations, found wide application in the nineteenth century and particularly in the peace treaties terminating World War I.

In 1816, only a year after the restitution demanded of France by the Allies, the British Parliament was called upon to pronounce on the convention whereby the Government proposed to purchase, for 36 thousand pounds sterling, the famous marbles removed from the Parthenon in 1800 by Lord Elgin, at that time Great Britain's Ambassador to Constantinople. The circumstances of their removal and the problem of the possible return of the fragments now in the British Museum were recently the subject of an interesting study by our colleague, S. Seferiades.³² Despite the reasons given by Lord Elgin to justify his action,³³ it was severely judged even in England. It is very doubtful, however, whether the arguments put forth can actually justify the irreparable damage resulting from his action. The fact is that the principle of the unity and integrity of a monument of such extraordinary artistic and historic value clearly outweighs any other consideration here. Neither the possibility of spoliation at the hands of foreigners, nor the likelihood of defacement or destruction of the monuments on the Acropolis—these were motives later cited by Lord Elgin—had the dual character of certainty and imminence that might have justified so serious a step. Nevertheless, the purchase agreement was approved by the British Parliament, although not without strong opposition.³⁴

The principle of the respect due to the integrity of historic and artistic collections has been applied in a particularly delicate manner in the matter of the recession of archive collections relating to annexed territories. A well-established practice recognized the right of the annexing State to that part of the local archives which is of interest for current administration. Surrender of such archives by the dismembered State is generally stipulated in the treaty establishing the annexation, but it should be considered as being automatic even if there is no such stipulation. Archive collections of an historic character must

be distinguished from such documents of current administration, the surrender of which to the annexing State is a direct result of the annexation itself. Formerly, conquerors hastened to pillage local records even during hostilities or occupation, and thus sought, by their possession, to establish titles that could uphold their territorial claims. Although such practices are no longer known in our time, other questions that are at times quite complex have been raised. One particular question has been whether the partition of a territory involves surrender of the historical archives relating to parts of the ceded territory. When Nancy was occupied by German troops during the War of 1870, the historical archives of Meurthe were taken into protective custody by the occupant. But while the Treaty of Frankfurt was being negotiated, the principle of the integrity of the historic collection of archives of Nancy, a principle defended by France, was recognized by Germany (art. 3 of the Treaty of Frankfurt and art. 8 of the Supplementary Convention).³⁵ This is a solution justified by both the scientifically recognized necessity of preventing the breaking up of historic collections and the absence of any political interest, on the part of the State making the annexation, in the surrender of documents of this type.

There is, on this point, a practice which is confirmed by the treaties stipulating the restoration to an archive collection or a collection of works of art, of certain items which have been separated therefrom in consequence of political vicissitudes. Such clauses in treaties are aimed at the reconstitution of an entity presenting historical or artistic interest. A number of them appear even in various treaties of the nineteenth century. For instance, article 18 of the Treaty of Vienna, of October 3, 1866, stipulated the restitution of the historical documents of the former Republic of Venice and of the "objects of art and science specially allocated to the ceded territory."

But it is in the Treaties of Versailles and Saint-Germain that we find the most important application of a concept that is for the first time fully developed. The following ideas will be noted in those treaties in connection with either the stipulated restitution of certain articles or the claims authorized for submission to the judgment of arbiters: (1) special reconstitution, as reparations,

WORKS OF ART AND HISTORIC MONUMENTS

of a work of art the component parts of which have become separated in the course of history, even if such separation was the result of regular transactions; (2) more general, reciprocal reconstitution of the artistic and intellectual heritage of regions dismembered through changes in territorial sovereignty; (3) subordination of the stipulated or contemplated restitution to a respect for the unity of collections and archives and to the existence or persistence of an historical or functional tie linking them with a given region.

Article 247 of the Treaty of Versailles and the reconstitution of works of art. Among the most significant provisions, mention must be made of article 247 of the Treaty of Versailles. By the terms of this article, "in order to enable Belgium to reconstitute two great artistic works" Germany undertook to return to Belgium "through the Reparation Commission, within six months of the coming into force of the present Treaty":

(1) The wings of the triptych of the Mystic Lamb painted by the van Eyck brothers, formerly in the Church of St. Bavon at Ghent, now in the Berlin Museum; (2) the wings of the triptych of the Last Supper, painted by Dierick Bouts, formerly in the Church of St. Peter at Louvain, two of which are now in the Berlin Museum and two in the Old Pinakothek at Munich.³⁶

The restitution here required of Germany did not mean the recovery of works of art taken away by force or appropriated by a treaty. The paintings mentioned in article 247 had gone into Germany through perfectly regular transactions. The wings of the polyptych of the Mystic Lamb had been sold in December 1816, by the Chapter of the Cathedral of St. Bavon to a second-hand dealer of Brussels by the name of Nieuwenhuis, for 3,000 florins. An English amateur, Solly, subsequently bought them at Aix-la-Chapelle; a few years later (1821), they were acquired by Frederick William III, King of Prussia. At approximately the same time, the same Brussels dealer bought, in Louvain, the outer panels of the painting of The Last Supper, by Dierick Bouts; in 1834, two of those panels were placed in the Berlin Museum; the other two were acquired by Munich and became part of the collec-

³⁶ See G. MAY, "La saisie des archives du Département de la Meurthe pendant la guerre de 1870-1871", *Revue générale de droit international public*, 1911, p. 22 ff.

111493

DECLASSIFIED
 AUTHORITY: 100-99909
 DATE: 11/16/99
 RG 59
 Entry 5383
 Box 1

tion in the Pinakothek. The Belgian Government refrained from contesting the regularity of those transactions. When the works were returned to Belgium, in execution of article 247 of the Treaty of Versailles, Mr. Destree, Minister of Science and Art, in an address delivered on the occasion of the van Eyck-Bouts exhibition at Brussels, acknowledged that the paintings had been acquired regularly. Their cession to Belgium therefore in nowise represented restitution or recovery, properly speaking. In principle, it was justified by Belgium's right to compensation for the works of art destroyed by the German armies during the war; this is indicated both by the place that article 247 occupies in the treaty and by the intervention of the Reparation Commission in the return of works of art (part VIII of the treaty: Reparations, section II. Special Provisions, articles 245 to 247). As for the choice of the works claimed, it carries out the thought, as expressly stated in the text, of restoring the integrity of two great artistic works.²¹

Since the return of the works of art specified in article 247 was required of Germany as reparation, it was, of course, to be without recompense. However, Germany later put forward a claim to have placed to her credit the total amount of their value, which she set at 11,500,000 gold marks and which she proposed to charge against the annual payment to which she was obligated for reparation. This claim was unanimously rejected by the Reparation Commission. The value of the panels returned by Germany was therefore not entered in the account, and one cannot speak, in this connection, of a "repurchase" made by Belgium.

The Treaty of Saint-Germain and the principle of the reconstitution of an "artistic and intellec-

²¹ The reconstituted polyptych of the Mystic Lamb is in the Vydts Chapel of the Cathedral of St. Bavo, in the very place where Josse Vydts, Mayor of Ghent, the donor, had it placed on May 6, 1432. It was from there that the panel of the Honest Judges was stolen in April 1934. The restored triptych of Dierick Bouts is in the Church of St. Peter at Louvain.

²² Article 193, par. 2: "The new States arising out of the former Austro-Hungarian Monarchy and the States which receive part of the territory of that Monarchy undertake on their part to hand over to Austria the records, documents, and material dating from a period not exceeding twenty years which have a direct bearing on the history or administration of the territory of Austria and which may be found in the territories transferred."

tual patrimony." The provisions of the Treaty of Saint-Germain relating to archives and works of art are of particular interest because of the extensive partitions of territory brought about by the dissolution of the Austro-Hungarian Empire, and also because the idea of reconstituting the artistic and intellectual heritage of regions affected by a change in territorial sovereignty is expressed therein in more precise and stronger terms than anywhere else.

Article 193 orders the reciprocal restitution of the records, documents, and material which relate to either the territories ceded by Austria or those which have remained Austrian. We find in it, up to a certain point, a desire to prevent the dispersion of collections of such material. However, we find differences in treatment, according to whether it is a matter of the obligation placed on Austria or of that imposed on the successor States, which are due chiefly to differences in the actual conditions. Austria must return "to each of the Allied and Associated Governments respectively all the records, documents and historical material possessed by public institutions which may have a direct bearing on the history of the ceded territories and which have been removed during the last ten years. This last-mentioned period, as far as concerns Italy, shall be extended to the date of the proclamation of the Kingdom (1861)." Obviously, the required restitution concerns documents of an historical character; but such restitution involves two restrictions; the existence of a direct relation of the documents to be restored, not according to their actual date or antiquity, but according to the length of time during which they were out of the territories to which they refer.

The obligation of restitution imposed on the successor States by paragraph 2 of the same article concerns documents both of historical and of administrative interest, but the treaty, with reference here to the dates of the documents themselves, orders the restitution of only such as date from a period not exceeding 20 years.²²

Under article 194 Austria acknowledges that she is bound, as regards Italy, "to execute the obligations referred to in Article 15 of the Treaty of Zürich of November 10, 1859, in Article 18 of the Treaty of Vienna of October 3, 1866, and in the Convention of Florence of July 14, 1868, concluded between Italy and Austria-Hungary, in-

sofar as the articles referred to have not in fact been executed in their entirety, and insofar as the documents and objects in question are situated in the territory of Austria or her allies." The common purpose of the earlier treaties referred to in this article was to bring back to Italian territory the archives, documents, and art objects that had been taken away at various times by the Austro-Hungarian authorities. Article 18 of the Treaty of Vienna of October 3, 1866, (confirming the reunion of the Lombardo-Venetian Kingdom with the Kingdom of Italy), stipulated, on the one hand, "the restitution of the archives of the ceded territories containing titles to property, administrative and civil justice documents" and, on the other hand, "the restitution of political and historical documents of the former Republic of Venice" and of "objects of art and science especially allocated to the ceded territory." The final restriction in article 194 is explained by the cessions of territory to Italy's advantage which occurred after the conclusion of the treaties and conventions referred to in the text.

Belgian and Czechoslovak claims (article 195, Treaty of Saint-Germain). Article 195 of the treaty instituted a committee of three jurists appointed by the Reparation Commission for the purpose of examining the merits of the various claims put forth by Italy (article 195, par. 1), Belgium, Poland, and Czechoslovakia (article 195, par. 2). The purpose of the claims was to restore to the said States the valuable artistic and historic treasures that had at various times been carried to Austria. The restitution contemplated could be ordered by the Reparation Commission only if the Committee of Jurists reached the conclusion that the removal of the objects claimed had been a violation of the rights of the countries concerned. The decision of the jurists on this point therefore amounted to a true arbitral judgment.²³

In fact, the only claims that went through this procedure were the following: (1) Two claims made by Belgium concerning, respectively, the triptych of St. Ildefonso, by Rubens, from the Abbey of Saint-Jacques-sur-Coudenberg at Brussels; and the Treasure of the Order of the Golden Fleece, formerly kept in the "Chapelle de la Cour" at Brussels (part VIII, section II, annex II); (2) Czechoslovakia's claim to a very im-

portant collection of documents and works of art which had at various times been taken from Bohemia and removed to Vienna (part VIII, section II, annex IV).²⁴

As regards Belgium's claim to the triptych of St. Ildefonso,²⁵ the point at issue was whether or not transferring the painting from Brussels to Vienna, after it had been purchased by Maria Theresa, and keeping it in Vienna, constituted a violation of the rights of the Catholic Netherlands, rights which Belgium was said to have inherited. Legally, the Belgian Government held that, since the purchase had been made with the help of regular funds of the Netherlands Government, only the State or the Belgian "public domain" could have benefited therefrom, and that property so acquired could not be separated from it for the benefit of the private patrimony of the Sovereign or his family. Irrespective of that legal argument, the Belgian Government asserted that actually Maria Theresa's intention had been, "or at least must be presumed to have been," to acquire the painting on behalf of the State or the Belgian public domain.

As for the first argument, the Committee of Jurists relying on an examination of the constitutional rights of the Sovereign of the Netherlands and of other monarchs of the time in connection with public moneys, and on the nature of the political sovereignty exercised by Maria Theresa over the "composite" State formed by her possessions, declared that the Empress was free not only to dispose as she wished of the financial resources of the Netherlands²⁶ and, consequently, to use those resources to acquire the painting, but also to employ the said revenue for any purpose whatsoever and, therefore, also to enrich the personal or family patrimony of the Hapsburg dynasty, the brilliance of which would reflect on

²³ See especially the excellent article published (under letter "O") in the *British Year Book of International Law, 1923-1924, International Arbitrations Under the Treaty of Saint-Germain*, p. 124 ff. The three jurists designated by the Reparation Commission were: Hugh A. Bayne, of the New York Bar; (now Sir) J. Fischer Williams, K. C.; and Jacques Lyon, attorney in the Court of Paris.

²⁴ Belgium's other claims and the restitution imposed in favor of Italy were settled amicably.

²⁵ Report of Oct. 21, 1921, of the Committee of Jurists.

²⁶ Subject to the special allocation of "aids and subsidies" voted by the Provincial States.

DECLASSIFIED
 AUTHORITY: JMD 999096
 BY: JI NARA DATE 7/6/99
 RG 59
 Entry Box 383

WORKS OF ART AND HISTORIC MONUMENTS

the entire monarchy. As for the Empress' intentions, the Committee, on the basis of a study of all the actual circumstances, and, more especially, of the correspondence concerning the purchase of the painting, expressed the opinion that Maria Theresa had deliberately wanted the work to be transferred to Vienna in order to enrich the art collections of the House of Austria permanently and in the interests of the dynasty. Moreover, the constitutional law of the time did not permit deducing, from the mere fact of the acquisition of the work through public moneys of the Netherlands, the intention to incorporate it into the public domain (assuming that there was one) of the Belgian provinces.

The claims of the Czechoslovak State rested in substances on like arguments, they were rejected for the same reasons.¹⁷ The Czechoslovak thesis did not contest the right of the Hapsburg sovereigns, as kings of Bohemia, to dispose freely of the royal revenue, but it contended that the systematic centralization, on the part of the Hapsburgs, of objects of art in Vienna should be regarded as a violation of law in the sense of article 195 of the peace treaty. Acquired through Bohemian revenues, those art treasures had belonged to the Hapsburgs only in the latter's capacity as kings of Bohemia; therefore, at least since the dissolution of the Dual Monarchy and the disappearance of the Crown of Bohemia, they should be returned to the Czechoslovak State, the heir to the kingdom of Bohemia. The Czechoslovak Government was anxious, in this connection, to show that the law which the Reparation Commission must take into

¹⁷ Report of the Committee of Jurists, Aug. 23, 1922. The Czechoslovak claims covered, in addition to certain documents, historical material, manuscripts, and maps removed by order of Maria Theresa, and a large number of art objects which, being part of the "furnishings" of the royal castles of Bohemia, had been removed from them by the Emperors Mathias, Ferdinand II, Charles VI, and Francis Joseph I (annex IV, section II, part VIII of the Treaty of Saint-Germain). The artistic interest in the integrity of the great collections assembled at Vienna was emphasized in the recorded proceedings. The reply of the Austrian Government pointed out that the Czechoslovak claims aimed at neither more nor less than "the dispersion of the incomparable entity that the Viennese collections had become after centuries." The answer of the Czechoslovak Government endeavored to contest the existence in Viennese galleries of collections the harmony and classification of which would be destroyed as a result of the restitution claimed.

consideration was not solely the Czechoslovak positive law, but, in conformity with paragraph 11 of annex II to section I (part VIII), "justice, equity, and good faith."

The Committee of Jurists pronounced itself as being clearly opposed to the Czechoslovak thesis on this last point, which was of paramount importance. Since it was vested with a purely juridical mission, it declared that it could decide the question submitted to it solely on the basis of the public law in force in Bohemia at the time when the objects claimed were transferred, and that it had no authority to deviate from this strictly juridical method in favor of concepts deduced from certain general ideas of justice, equity, and good faith. It was on this ground that the Committee's decision was handed down, declaring unfounded the Czechoslovak thesis whereby the works of art claimed belonged to the public domain of Bohemia, either by reason of having been acquired through local resources, or in consequence of their allocation to the royal castles of the country. In this case, just as in that of the St. Ildefonso, the works were declared the absolute private property of the princes of the House of Hapsburg.

Looking at the matter in its true light, the Czechoslovak claims were based, in the last analysis, on a right to amend for the *historic wrong done* to the Czechoslovak nation by the centralizing policy followed for centuries by the Hapsburgs. To return to Czechoslovakia the works of art that had been taken from it in order to adorn both the galleries of the common sovereign and the city that had been the seat of this policy, was to satisfy the national sentiment. When transferred to this plane, the discussion tended to leave the properly legal sphere to enter that of historical claims.

Lastly, as in the case of the triptych of St. Ildefonso, the Committee of Jurists declared that the thesis whereby "a country which is an integral part of a composite State has the right, in case the State should be partitioned, to claim the property acquired with the aid of the local revenues of the said country," was foreign to general international law and the peace treaties as well.

The Belgians and Czechoslovak theses had one point in common, which, in the eyes of the arbiters, constituted their weakness: both insisted on the

idea of a clear-cut distinction between the rights of a nation or of certain national communities and those of a reigning dynasty, a distinction, declared the arbiters, which may doubtless be found in the distant past, but which, as everywhere else in Europe, has gradually been wiped out in favor of monarchic absolutism and centralization. The Committee believed that in any case this distinction was no longer sanctioned by the law in force in the critical period; that is, when the debatable transfers took place.

Without going into a discussion that would be foreign to the subject of this study, reservations may nevertheless be made on the considerations of constitutional law invoked in the Committee's recommendation in connection with the relations which united the Netherlands with the Austrian Imperial Monarchy in the eighteenth century. The growing tendency to centralize the Austrian regime had not resulted in legally abolishing the special statute which the Belgian provinces kept until the end of the Ancien Régime. Based on a regime of personal union, the hereditary sovereignty of the House of Hapsburg-Lorraine was in its essence far removed from the absolutist sovereignties of the great contemporary monarchies. The Austrian Netherlands had, with their privileges, maintained a marked political individuality, their own finances, and their separate public domain which, although it was placed at the monarch's disposal, was nonetheless encumbered as a result of having been allocated to local uses and needs.

Belgium's claim to the famous treasure of the Golden Fleece raised similar problems. In its conclusions, the Belgian Government asserted that at the time of the emergency, that is to say, in 1794 (the date when the treasure, which had been kept in Brussels since the fifteenth century, was evacuated and taken first to Germany and then to Vienna) the Order of the Golden Fleece constituted "a political institution of the countries composing the heritage of Burgundy and finally forming the Netherlands, now the Kingdom of Belgium"; that at that same time it was "a national order essentially attached to the soil of the Netherlands, united with the sovereignty of the Netherlands . . . so that the principal condition for being called to head the Order was possession of the sovereign power of the heritage of

WORKS OF ART AND HISTORIC MONUMENTS

Burgundy." The claim for restitution of the treasure was therefore expressly justified by its "traditional statutory location." The claim was based primarily on the persistence of an historical bond linking the treasure to the Belgian provinces. According to Belgian reasoning, this bond appeared in two somewhat different forms: the national character of the Order and the establishment and maintenance of the seat of the Order in Brussels.

The Austrian Government, on the contrary, held that, as time passed, the Order had become "a purely aulic, dynastic and honorary institution . . . international in its composition . . . bound, not to a certain country, but to the seat of its Sovereign's government."

After a long, detailed study of the history of the Order, the Committee of Jurists, without handing down an opinion on the ownership of the treasure, which, it should be noted, was not claimed by Austria, decided in favor of the Austrian thesis.¹⁸ The Committee's conclusions state that the Order of the Golden Fleece has remained a chivalric order, that is to say, a dynastic or court order which, despite certain changes, never reached the point of becoming a national or political institution of the Netherlands and was never bound exclusively to the soil or the population of that country. The Committee was thus led to recognize that at the end of the eighteenth century a period in which one would have to place oneself in order to judge the legality of the treasure's transfer to Vienna and its retention in that city, the Order had for more than two centuries been a dynastic institution, all of whose rights and powers had passed to the "head and sovereign," who absorbed in his person whatever activity the Order still called for.

Here again, the historical arguments of the Committee's opinion would call for serious reservations. It was solely as Sovereign of the Netherlands that the Emperor retained his position as Head of the Order. In order to claim that position, it was a bond of *territorial* possession and not a *dynastic* bond that the House of Austria had always invoked. "There can be no doubt," wrote the Marquis de Prie in 1721, "that Philip the Good's desire was to attach this Order to the province of Flanders, the richest and most im-

¹⁸ Report of the Committee of Jurists, Oct. 21, 1921.

DECLASSIFIED
Authority: AFD 999096
By: T1 NARA Date: 7/6/99
5385
65
RG Entry Box

111495

WORKS OF ART AND HISTORIC MONUMENTS

portant province of his hereditary states, for himself and his successors, the sovereigns of the said countries. The rights and prerogatives of the founder of the Golden Fleece have beyond all question passed on to those who are his successors in those same countries."

The decisions we have just summarized were handed down unanimously; they were confirmed by the Reparation Commission, which limited itself to carrying them out. From various points of view, they present considerable interest, both juridical and historical. The disputes which they ended most certainly had an international character, in the sense that the contending parties were States, but, as the anonymous author of an article published in the *British Year Book of International Law* observes, their true origin was found, not in interstate relations in the present sense of the words, but in constitutional grievances which arose at the time from political concepts very different from those governing modern international relations."

Article 196 of the Treaty of Saint-Germain. The concept underlying article 196 of the Treaty of Saint-Germain makes it the most significant provision of the peace treaties relating to the restitution of objects and documents of an artistic, historic, or scientific character. This concept is

* Loc. cit., p. 129. There are curious similarities, from this point of view, between this suit and the one between Denmark and Norway, brought before the Permanent Court of International Justice, in the case of the sovereignty of certain parts of Eastern Greenland.

* Article 196, Saint-Germain: "With regard to all objects of artistic, archaeological, scientific or historic character forming part of collections which formerly belonged to the Government or the Crown of the Austro-Hungarian Monarchy and are not otherwise provided for in this present Treaty, Austria undertakes:

"(a) To negotiate, when required, with the States concerned for an amicable arrangement whereby any portion thereof or any objects belonging thereto which ought to form part of the intellectual patrimony of the ceded districts may be returned to their districts of origin on terms of reciprocity, and

"(b) For twenty years, unless a special arrangement is previously arrived at, not to alienate or disperse any of the said collections or to dispose of any of the above objects but at all times to ensure their safety and good condition, and to make them available, together with inventories, catalogues and administrative documents relating to the said collections, at all reasonable times to students who are nationals of any of the Allied and Associated Powers."

one of general "repatriation" to what the treaty rather vaguely calls "their districts of origin," of all or part of the objects from collections that had belonged to the Austro-Hungarian Government or the Crown and "which ought to form part of the intellectual patrimony of the ceded districts."

Therefore, unlike similar provisions of the treaty, article 196 did not confer on the successor states a definite right to any particular object, it merely granted them the right to invite Austria to be a party to negotiations with a view to the restitution of objects to be determined through an "amicable arrangement" concluded on a reciprocal basis. The leading idea is one of the reconstitution of the intellectual patrimony of the States concerned, through a general, reciprocal repatriation the negotiation of which is imposed upon Austria. Fulfillment of the obligation laid upon Austria, to be a party to such negotiation is guaranteed in the second part of the article (article 196, letter (b)), wherein Austria undertakes "not to alienate or disperse any of the said collections or to dispose of any of the above objects, but at all times to ensure their safety and good condition."

In fact, as we shall see, this provision did not have the serious consequences for Austria that it might have had. It was not long before the danger to the real interests of art in certain claims inspired by extreme nationalism was recognized.

Convention for the execution of the Italo-Austrian Treaty of May 4, 1920. An important convention signed at Vienna on May 4, 1920, definitively settled between Italy and Austria the execution to be given to articles 191 to 196 of the Treaty of Saint-Germain. The first article of this convention contains the following provision, the full import of which, from the point of view of the principle of the integrity of art collections and the protection thereof against recurrences of abusive appropriation is obvious:

"The Kingdom of Italy recognized the advisability of preventing, in the higher, general interest of civilization, the dispersion of the historic, artistic, and archaeological collections of Austria which in their entirety constitute an esthetic and historic entity, indivisible and celebrated; Italy, therefore, exercising under the present Convention the right provided for in article 196, par. (a) of the Treaty, an article to which Italy is giving the most limited

application, insofar as she is concerned, undertakes also to support, with respect to the other States to which this Article applies, the aforesaid interpretation, which she considers correct." Paragraph 2 of the same article even appears to indicate that the Italian Government meant to set itself up at that time as the defender of the Austrian collections against certain claims not justified by the Treaty of Saint-Germain: "Italy undertakes further energetically to oppose other claims of the said States, claims not provided for in the Treaty, from being accepted to the prejudice of the integrity of the Austrian collections, which must be preserved in the interests of science, and in no case will she dissociate herself from the fate of the said collections."

The other articles of the convention also gave Italy full satisfaction in the matter of the restitution that she might claim. Thus, under article 3, the Republic of Austria waived the objections and restrictions set forth in articles 1 to 5 of the Florence Convention of July 14, 1868; again, she consented to the removals made by the Italian armistice mission by virtue of the retrocessions provided for in the Treaties of Zürich and Vienna, of 1859 and 1866, respectively.

Similarly, the restitution of a certain number of art objects, manuscripts, jewels, scientific instruments, etc., referred to in the annex to article 195, was the subject of an amicable arrangement which resulted in avoiding examination of this question by the Committee of Jurists as contemplated in paragraph 1, article 195, of the Treaty of Saint-Germain. By article 4 of the convention of May 4, 1920, Austria did, in fact, recognize that "the juridical and historical status of those objects was of special character distinguishing it from that of the objects included in the other Annexes to the same Article and permitting it to be considered separately" (objects claimed by Belgium, Poland, and Czechoslovakia). Since both High Contracting Parties had declared their desire to be guided above all by "the principles of ethics, justice and right," the restitution provided for in annex 1 was made on the following basis: Austria consented to the return of the objects mentioned in the paragraphs entitled "Tuscany," "Modena," and "Naples"; Italy on her part, gave up her claim to the objects (mentioned in the paragraph entitled "Palermo") constituting the treas-

June 1949

839447-40-3

WORKS OF ART AND HISTORIC MONUMENTS

ure of the Norman kings and employed in the coronation of the Emperors.

Lastly, provision had to be made for carrying out article 192 (restitution by Austria of the objects of art, records, documents, and any scientific and bibliographical material taken from the ceded territories since June 1, 1914), and articles 193 and 196, par. (a), analyzed above. That was the purpose of article 5 of the convention of May 4, 1920. Particular mention must be made of the following provision, which limited considerably the effect of article 196, par. (a), of the Saint-Germain Treaty. The negotiations provided for in the last-named article, which were aimed at the repatriation, on the basis of reciprocity, of the objects of an artistic, archaeological, scientific, or historic character belonging to Austrian public collections, and which were to be considered as belonging to "the historic and intellectual patrimony of the ceded districts" did not fix the final date of the removals giving rise to such repatriation. Article 5 stipulates that the following articles are exempt from restitution: "objects coming from territories transferred to Italy and taken to Austria before January 1 of the year 1790, the year of the death of Emperor Joseph II." Articles 193 and 196, from the general character of their wording, appeared to include in the restitution to be effected objects freely transferred by the individuals owning them; article 5 rules out this interpretation by excepting such objects also.

Distribution of the collections of the House of Hapsburg (article 177, Treaty of Trianon). The final provision of article 177 of the Treaty of Trianon recognized Hungary's right to negotiate with Austria the necessary arrangements for the return to Hungary of the collections, documents, and miscellaneous objects which had belonged to the Government of the Austro-Hungarian Monarchy or to the Crown and which, because of their character or origin, should be considered as forming part of the "intellectual patrimony" of Hungary. The distribution of the collection of the House of Hapsburg contemplated in this provision was the subject of negotiations between the Austrian and Hungarian Governments, which, after 12 years of diplomatic conversations, finally ended in an agreement. They were characterized by the interminable discussions provoked by the words "intellectual patrimony" whose obvious lack of clar-

835

DECLASSIFIED
Authority: AWD 990926
By: TI NARA Date: 7/6/99

RG 59
Entry 5383
Box 1

111496

WORKS OF ART AND HISTORIC MONUMENTS

ity gave rise to the most contradictory interpretations. The discussion was complicated still more by the fact of the territorial subdivision of Hungary. As a result, the Hungarian Government could claim only the items that had a bearing on the territories at present still included within her boundaries, since the successor states that benefited from the partition had been granted by the treaty a like right to the restoration of their "intellectual patrimony." This territorial principle, long contested by Hungary, finally prevailed. On the whole, Austria appears to have succeeded in obtaining acceptance of the idea, clearly stated in the aforesaid Italo-Austrian convention (May 4, 1920) of the inviolability of the Viennese collections, the organic completeness of which is of unquestionable value to the entire world. In fact, the Hungarian Government finally consented to reduce drastically its original demands. Aside from objects specifically Hungarian in origin or character, the transfers to which Austria agreed were limited to a certain number of paintings and objects intended to make possible the reconstitution or improvement of certain collections of historical or artistic interest in Hungarian museums.⁴¹

The Treaty of Riga, March 18, 1921. The provisions concerning the restitution of art objects, collections of every character, archives, maps, registers, and miscellaneous documents, contained in the Treaty of Riga of March 18, 1921, between Poland, Russia, and the Ukraine are remarkable for their broad generality. By article 11 of this treaty, Russia and the Ukraine are to restore to Poland the following objects taken from the territory of the Republic of Poland to Russia and the Ukraine subsequent to January 1, 1772: "Libraries, archaeological collections and archives, collections of works of art, collections of any nature and objects of historical, national, artistic, archaeological, scientific and general educational value." (article 11, par. 1 (b).) This restitution was provided for "irrespective of the conditions under which, and the pretexts upon which they (the collections or objects) were carried off and irrespective of the authorities responsible for such removal and without regard to the person whether

⁴¹ See the article by Professor Hans Tietze in *Mouaison*, vol. 23-24, 1933: "L'accord austro-hongrois sur la répartition des collections de la Maison des Habsbourg."

physical or legal to whom they belonged prior to, or subsequent to their removal" (article 11, part. 1, last provision). By discarding an inquiry into the matter of origin or allocation, which is always a delicate one, this provision cut short the long discussions to which other cases of restitution have given rise. Paragraph 7 of the same article 11 is especially deserving of attention. No conventional text states more clearly the principle of the integrity of artistic collections in cases where impairment of the entity they constitute appears to be of a nature to compromise its value: "The two Contracting Parties fully recognize that the value of systematic, scientifically prepared and complete collections, such as form a fundamental part of collections of world-wide scientific importance, ought in no way to be impaired and accordingly agree to the following provisions: should the handing over of a certain object which is to be restored to Poland, under paragraph 1 (b) of this article, prove likely to impair the completeness of such a collection, such object shall, save where it is closely bound up with the history and culture of Poland, remain on the spot, subject to the approval of both Parties represented on the Mixed Commission referred to in paragraph 15 of the present article, it shall in that case be exchanged for an object of the same artistic or scientific value."

A few general ideas stand out in the conventional text which we have just cited:

- (1) Modern practice tends undeniably to be based on genuine interest in art or science, whether when favoring the reconstitution of a famous work, the parts of which have been dispersed, or when affirming the inviolability of collections forming an organic whole, the completeness of which is in itself of world-wide value, apart from any tie binding it to a certain nation. In either case, it is the unity or integrity of a work or the completeness of an artistic or intellectual collection that modern practice aspires to recreate or to defend.
- (2) As we have seen, in certain cases, treaties have approved the idea of a general repatriation of works of art to the districts where they originated or to the regions whose "intellectual patrimony" they form. We have here much vaguer ideas which, for want of clarity, might some-

times favor unfounded claims. A work of art may be associated with a country by the most diverse bonds. From this point of view one may consider the subject treated, the nationality or birthplace of the artist, the bond between the work and the nation's history, the artistic tradition inspiring it, or even its allocation to a certain place or for a given use. Certainly, it is conceivable that such ideas can serve as the basis for negotiations entered into voluntarily and freely carried on. It is sincerely to be recommended that they be imposed or that their use be systematized.

Chapter III. Protection of Historic Monuments and Works of Art From Destruction Through Acts of War

We know how disappointing World War I was in respect of the belligerents' observing the conventional provisions for restricting certain types of warfare, especially the provisions for regulating the use of weapons. The protection that certain of those provisions aimed at assuring to historical monuments and works of art did not escape the almost total breakdown of the laws of war. We shall make brief mention of the applicable texts and of the main reasons why they became ineffective.⁴²

The first Hague Conference (1899) adopted, in the regulations annexed to the convention respecting the Laws and Customs of War on Land, an article 27, which reads as follows:

"In sieges and bombardments all necessary steps should be taken to spare as far as possible buildings devoted to . . . art . . ., provided they are not used at the same time for military purposes.

"The besieged should indicate these buildings or places by some visible signs, which shall previously be notified to the assailants."

During the second Hague Conference (1907), the Greek delegation proposed that the Third Committee, which was charged with drafting the rules applicable to bombardment by naval forces, add "historic monuments" to the list of buildings that should be spared insofar as possible. The origin of this addition is found in article 56 of the Regulations of 1899, which, as we have seen, had already listed "historic monuments, works of art or science" among the establishments to be given special protection. It was accepted by the

WORKS OF ART AND HISTORIC MONUMENTS

Conference and appears in article 5, paragraph 1, of convention IX. Upon de Beernaert's suggestion, the Greek proposal was incorporated by the Second Committee in the revised text of article 27 of the Regulations concerning the conduct of land warfare.⁴³

The Regulations impose upon the besieged the duty of marking such buildings with visible signs, and of previously notifying the assailants of such signs. In view of the difficulty or the impossibility of giving such notification in advance in naval warfare, article 5 of convention IX concerning bombardment by naval forces specifies the method of marking to be used. The marks "shall consist of large, stiff rectangular panels divided diagonally into two colored triangular portions, the upper portion black, the lower portion white." This fixed method of marking, advocated by the Russian delegation, was accepted over certain objections raised by the delegations of the United States and Japan.

In order to determine the exact scope of those conventional regulations for affording certain buildings special protection, we must replace them in their original setting and take into account the far more general limits that the Hague Conferences had intended on land and naval bombardments. That limit was based on the distinction between defended and undefended places and buildings.

Article 25 of the Regulations Respecting the Laws and Customs of War on Land (1907 text) forbids "The attack or bombardment, by any means whatever, of towns, villages, habitations, or buildings which are not defended." From that time on, however, the serious restriction placed on this prohibition by article 2 of convention IX concerning bombardment by naval forces weakened the distinction between defended and undefended places and buildings. Article 2 reads: "Military works, military or naval establishments, depots of

⁴² It is not our purpose to recall the violations of international law committed during the World War by acts of pillage and of unnecessary and willful destruction, but to envisage the new conditions under which the protection of monuments and works of art presents itself by reason of the changes made in methods of warfare.

⁴³ Article 27 makes no provision for, and does not expressly condemn other practices, such as carrying off bronze statues and objects for use in war industries. They come under another provision, namely article 56, paragraph 2 of the above-mentioned Regulations.

Authority: IAD 999096
By: 71 NARA Date 7/6/99

DECLASSIFIED
59
RG Entry Box
5383

111497

WORKS OF ART AND HISTORIC MONUMENTS

arms or war material, workshops or plants which could be utilized for the needs of the hostile fleet or army, and ships of war in the harbor, are not, however, included in this prohibition. The commander of a naval force may destroy them with artillery, after a summons followed by a reasonable interval of time, if all other means are impossible, and when the local authorities have not themselves destroyed them within the time fixed."

Actually, the traditional distinction between defended and undefended places had, since before World War I, been overridden by the steady increase in artillery range, in land warfare, by the permission already given to naval forces to destroy military targets anywhere, in maritime warfare, and, in air warfare, by the quite recent progress in military aviation.

As we shall see, it was the very idea of delimiting or localizing the zone of operations that gradually gave way under the twofold pressure of military technique and a more and more general mobilization for war of all the resources of the belligerent countries. It is a decidedly regrettable but undeniable fact that the influence of these two factors tends to expose all or at least very large sections of the enemy's territory to the operations of the opposing forces. It became increasingly difficult to reconcile the idea of localizing hostilities in a restricted "combat zone"—a localization which formerly limited their effects to military forces concentrated within a restricted area—with the changes in modern warfare. The destructive effects of the long-range artillery introduced in World War I are no longer confined to a geographically limited combat zone. The natural extent of the bomber range and its ever increasing expansion constitutes a direct, constant threat to population centers in rear areas, even to those in the heart of the belligerent countries.

¹⁴ See *Revue générale de droit international public*, 1919, p. 319 ff.

¹⁵ More or less similar suggestions appear to have been made during the war by the German professor, Ernst Zitelmann, and the Bernese professor, Fernand Vetter. The idea of creating, in Bern, an International Bureau for the protection of monuments and works of art in time of war appears to have been given special consideration. In P. Clemen's work, *Kunstschutz im Kriege* (Leipzig, 1919), Franz W. Jerusalem gives details of a meeting of German and neutral archaeologists held in Brussels in 1915. The suggestions were not carried out.

As may be imagined, this unexpected increase in the methods of military action has made rather useless the protection that could be given to historic monuments by conventional regulations based on a localization, still strictly circumscribed, of the theater of operations. Henceforth, historic monuments—like the civilian population, alas, even in the localities farthest from the combat zones—will be exposed to the danger of bombardment, especially of aerial bombardment.

Other causes have contributed to this disappointing state of affairs. Among these, mention must be made of the proximity of certain historic monuments to military works such as arms or supply depots, workshops, or plants intended for the enemy's needs; allegations, whether founded or unfounded, that they are being used for military purposes; lastly, the resort, on the basis of such allegations, to reprisals which, being considered unjustified by the opposing side, call for counter reprisals.

In April 1918, at the very height of World War I, the Netherlands Archaeological Society, which was justly concerned over the destruction or damaging of historic monuments and works of art, undertook a study of ways and means by which they could be given more effective protection in time of war.¹⁴ In response to the initiative taken by the Society, the Netherlands Minister of Foreign Affairs invited it to draw up a report pointing out the causes of the inadequacy of the earlier regulations and formulating proposals that would be likely to achieve better results. A commission appointed for that purpose selected J. C. Overvoorde as its chairman and as its rapporteur Jonkheer W. J. M. van Eysinga, at that time Professor of International Law at the University of Leyden, and later a judge of the Permanent Court of International Justice. The report, which was handed to the Minister of Foreign Affairs on October 31, 1918, was presented in the form of a questionnaire accompanied by an explanatory memorandum. In May 1919 the Bureau of the Society sent the text of the report to the art associations of foreign States.¹⁵

Interesting observations and suggestions may be noted in that document, which was couched in discreet and guarded terms. The drafters of the report, desiring particularly to obtain from the belligerents any information which might shed

Documents & State Papers

light on the practical effect of the provisions relating to the protection of works of art contained in the conventions of the first and second Peace Conferences and, if necessary, to explain the failure of such protection, worked out a detailed questionnaire, the first paragraphs of which dealt with the actual situation, while the following ones enumerated, in the form of questions, the measures that might produce some improvement therein. Then and there, however, the report pointed out the following serious lacuna in the provisions of the Hague conventions: since those conventions are by their very purpose limited to the rules to be observed in the conduct of hostilities, they are not concerned with recommending preparation for the protection of monuments and works of art in time of peace. This lacuna is the more striking because modern war breaks out with lightning speed. "The protection of works of art," said the explanatory memorandum, "also requires mobilization, and such mobilization cannot any more than military mobilization be carried out at a moment's notice." As noted in another part of the explanatory memorandum, this statement is confirmed by the fact, observed during World War I, that the protection afforded was more effective in the countries that joined the belligerents later, than in those that entered the war in August 1914. The report suggested that the protection to be assured before a war started might possibly be worked out through an international bureau which would undertake to draw up a statement or inventory, which would be made public, of the buildings to be spared by enemy forces on condition that they would at no time be assigned to military purposes.

Besides this inviolability limited to certain specified structures, the report envisaged for a few historic centers of very special interest (Brussels, Florence, Nürnberg, Oxford, the City of Paris, Rome, Rothenburg, and Venice) complete demilitarization throughout their entire extent, entailing a state of neutrality.

Lastly, paragraph 8 of the questionnaire formulated an undeniably practical suggestion, which was destined to be brought up again a few years later, namely: "Is the inviolability of buildings (monuments) or entire cities possible without a supervision that is trusted by both parties? Can such supervision be effected without neutrals being

June 1949

WORKS OF ART AND HISTORIC MONUMENTS

responsible for it? If the answer is in the negative, would it not be possible to prepare the supervision in time of peace, for instance, by drawing up a list of trustworthy persons who would be willing to accept this international commission and who should perhaps be required to do so under oath?"

The observations and suggestions of the Netherlands Archaeological Society were not acted upon immediately. However, they were not without value for, as we shall see, they were up to a certain point the basis of the most recent proposals concerning the laws of war, that is, those drawn up in 1923 by the Commission of Jurists which had been instituted to carry out a resolution of the Washington Conference (resolution of February 4, 1922).

That Commission, to which representatives of the United States of America, the British Empire, France, Italy, Japan, and the Netherlands were appointed,¹⁶ drafted a body of rules concerning aerial warfare. The ones with which we are concerned here deal with bombing. Although those rules constitute merely a draft and cannot, as such, be considered as forming part of positive international law, they nevertheless represent an authoritative attempt to adapt the methods of warfare to the dictates of humanity.

The report of the Commission of Jurists calls to mind the impression of horror left in the opinion of the entire world by the indiscriminate discharge of bombs and projectiles upon the non-combatant population of towns and cities. "The conscience of mankind," it states, "revolts against this form of making war in places outside the actual theater of military operations, and the feeling is universal that limitations must be imposed."

The Commission's report explicitly rejects the test adopted in article 25 of the Regulations for land warfare. The distinction between defended and undefended places is replaced by a new test, now recognized as the only one applicable—the

¹⁶ The British delegation included Sir Rennell Rodd and Sir Cecil Hurst; the French delegation, Professors de Lapradelle and Baddevant; the Italian delegation, Senator Rolandi Ricci and Professor Cavaglieri; the Japanese delegation, Baron Matsui and Mr. Matsuda; the Netherlands delegation, Councilor of State Struycken and Professor van Eysinga. John Bassett Moore, first delegate of the United States, was elected Chairman of the Commission.

839

DECLASSIFIED
Authority: **AMD 99096**
By: **71 NARA Date 7/1/99**

RG 59
Entry 5383
Box

111498

WORKS OF ART AND HISTORIC MONUMENTS

military objective. "The nature of the objective or the use to which it is being put now becomes the test." The prohibitions set forth in article 24 of the Commission's draft rest mainly on this test: "Aerial bombardment is legitimate only when directed at a military objective, that is to say, an object of which the destruction or injury would constitute a distinct military advantage to the belligerent."

But there immediately appears in the economy of the draft the formidable problem raised before the laws and dictates of mankind by the fundamental changes in modern methods of warfare, namely, the mobilization of all the country's resources for war service, a mobilization which develops in all forms and is carried on in all parts of the territory, even those which are farthest from the "actual theater of military operations."

By recognizing this new situation, the Commission must necessarily have been led to broaden considerably the idea of a military objective subject to bombing. In fact, article 24, par. 2, lists among military objectives: "military forces; military works; military establishments or depots; factories constituting important and well-known centers engaged in the manufacture of arms, ammunition or distinctively military supplies; lines of communication or transportation, used for military purposes."

A glance over this list is sufficient to give one an immediate idea of the enormous territorial expanse of the area thus exposed to bombing. Henceforth, it is no longer in a strictly circumscribed area, but wherever military objectives are targets for the destructive activity of aviation, that the latter will extend its sphere of action. Now, let us recognize this fact: all over the territory of the belligerents, factories which yesterday were still engaged in industrial production, can, as soon as war is declared, be converted into centers for the manufacture of arms, ammunition, or products intended to supply the needs of the armies. Communication and transportation lines can be used for military purposes throughout the entire territory also.

Such dispersion of military objectives over the territory, tending, if not to destroy, at least to make practically impossible the distinction between a zone of operations and a zone in a rear area protected from enemy attacks, is neither the sole danger nor even the most serious one to which

civilian populations and the buildings or monuments not assigned to military purposes will henceforth be exposed. The danger most to be feared arises from the immediate proximity to population centers of certain military objectives, such as arms and munitions plants or railway lines used for the transportation of troops and war material.

The recommendations contained in paragraphs 3 and 4 of article 24 of the draft of the Commission of Jurists reveal how extremely difficult it is to regulate this matter at all. Both of these texts concerning the aerial bombardment "of cities, towns, villages, dwellings or buildings" make the following distinctions: Bombardment is considered legitimate as regards places, dwellings, or buildings situated "in the immediate neighborhood of the operations of land forces provided that there exists a reasonable presumption that the military concentration is sufficiently important to justify such bombardment, having regard to the danger thus caused to the civilian population".

On the other hand, bombardment is prohibited when the places, dwellings, or buildings "are not located in the immediate neighborhood of the operations of land forces." This prohibition, we may remark, is maintained even in the case, specifically envisaged in the last sentence of paragraph 3, where military objectives "are so situated, that they cannot be bombarded without the indiscriminate bombardment of the civilian population."

These provisions were obviously inspired by the desire to afford civilian populations and buildings not used for military purposes the greatest possible protection from aerial attacks. It was concern for such protection that inspired the distinction between places, dwellings, or buildings situated in the immediate vicinity of the operations of land forces, and places, dwellings, or buildings in rear areas, between a zone of operations exposed to all the risks of war by its location, and the rear area, where the basic principle of the immunity of noncombatants is still affirmed.

This is merely an affirmation of principle, it will be said, that clashes with the all too certain tendency of methods of aerial warfare to wipe out precisely this distinction between the two zones. The objection is serious, but it is not unanswerable. Places in the immediate vicinity of the operations can generally be evacuated by the civilian popula-

tion by order of the authorities, who thus become responsible for their safety.

This same concern to put first the security of civilian populations is expressed still more clearly in the prohibition to bomb even military objectives when, because of their location, such bombing would involve that of the civilian population. From the standpoint of the harsh realities of war, it may even be wondered whether that is not an over-stringent limitation—and therefore necessarily inoperative—imposed on aerial operations in time of war. Not only would it be extremely difficult, in actual fact, to restrain the military command from destruction which at times appears to be of paramount importance, but the possible abuses that such prohibition might entail in connection with defense must also be considered. On the one hand, placing the military command under the obligation of sacrificing military necessity to humane regulations should be avoided as far as possible. On the other hand, we must guard equally against holding out to belligerents the temptation to place military objectives under the protection given to civilian populations by systematically locating such objectives close to large urban centers.

In the face of the well-nigh insurmountable difficulty of formulating a rule assuring both the protection of noncombatants and the belligerents' right to destroy any military objective, apparently the only really effective means of protecting civilian populations against danger from the air must be looked for in their distance from any military objective the destruction of which is of such importance to the opposing forces that any prohibition of bombing would be in vain.

Before examining the two provisions of the 1923 draft dealing with the special protection of certain buildings and monuments, cognizance must be made of the general limitations placed on aerial bombardment by that draft. Article 25 of the draft is based directly on article 27 of the Regulations concerning land warfare, and article 5 of convention IX (1907) respecting bombardment by naval forces: "Buildings dedicated to public worship, art, science . . . historic monuments . . ." shall be spared as far as possible, on condition that they are not at the same time used for military purposes. By day, these privileged buildings must be indicated by marks visible to

WORKS OF ART AND HISTORIC MONUMENTS

aircraft. The marks agreed on are, in the case of buildings protected by the Geneva Convention, a red cross on a white ground, and in the case of other buildings protected by the Convention Respecting Bombardment by Naval Forces, a large rectangular panel divided diagonally into two triangular portions, one black and the other white. By night, the use of lights to make these special signs visible is optional, "because experience has shown that such lights may serve as guides to night-flying aircraft and may thereby be of service to the enemy."

In article 26 we come to the most important provisions of the 1923 draft from the special point of view with which we are here concerned. Here, for the first time, is an attempt to make detailed rules for the specific purpose of affording protection to historic monuments in time of war. The provisions of article 26 are due to the initiative of the Italian delegation, whose proposal was favorably received by all the delegations and was given special study by a Committee of Experts.

"Article 26. The following special rules are adopted for the purpose of enabling States to obtain more efficient protection for important historic monuments situated within their territory, provided that they are willing to refrain from the use of such monuments and a surrounding zone for military purposes, and to accept a special agreement for their inspection.

- (1) A State shall be entitled, if it sees fit, to establish a zone of protection round such monuments situated in its territory. Such zones shall in time of war enjoy immunity from bombardment.
- (2) The monuments round which a zone is to be established shall be notified to other Powers in peacetime through the diplomatic channel; the notification shall also indicate the limits of the zones. The notification may not be withdrawn in time of war.
- (3) The zone of protection may include, in addition to the area actually occupied by the monument or group of monuments, an outer zone, not exceeding 500 metres in width, measured from the circumference of the said area.
- (4) Marks clearly visible from aircraft either by day or by night will be employed for the purpose of insuring the identification by belligerent airmen of the limits of the zones.
- (5) The marks on the monuments themselves will be those defined in article 25. The marks employed for indicating the surrounding zones will be fixed by each State adopting the provisions of this article, and will be notified to other Powers at the same time as the monuments and zones are notified.
- (6) Any abusive use of the marks indicating the zones

DECLASSIFIED
Authority: 11D 999096
Date: 7/16/99
RG 59
Entry 5383
Box 1

WORKS OF ART AND HISTORIC MONUMENTS

The Italian Government, which was justly concerned at the memory of the irreparable damage done to historic monuments and works of art, especially in Venice and Ravenna, by bombing from enemy aircraft during World War I, based its proposal on two new suggestions. It first recommended the creation of a zone around each historic monument; this "neutralized zone" would be immune from bombardment on the express condition that the State would refrain from committing any act constituting use of the area for military purposes. This abstention must be strictly interpreted, and it includes a prohibition against the construction of plants and railways. Such a commitment is of value only insofar as there are attendant guaranties that it will be carried out. In this connection, the Italian delegation proposed setting up an inspection system to be entrusted to an inspection committee composed of three neutral representatives and to be constituted by the State which has claimed the benefit of the article in question. It is the principle of an international inspection voluntarily accepted by the State, not only in the interest of its own artistic heritage, but also in the superior, international interest which the protection of artistic and historic treasures represents. Moreover, adoption of the system contemplated is purely optional. States which deem it unnecessary to resort to it still have the benefit of the general provisions of article 25.

On the other hand, those who declare their readiness to submit to the special agreement prescribed by the new provision must take the following measures: 1. In peacetime the other Powers must be notified, through diplomatic channels, of the

adoption of paragraph 6 will be regarded as an act of

(1) A State adopting the provisions of this article must abstain from using the monument and the surroundings for military purposes, or for the benefit in any way of its military organization, or from committing within such monument or zone any act with a military purpose in view.

(2) An inspection committee consisting of three neutral representatives accredited to the State adopting the provisions of this article for their delegates, shall be appointed with a view to insuring that no violation is committed of the provisions of paragraph 7. One of the members of the committee of inspection shall be the representative (or the delegate) of the State to which (sic) has been assigned the interests of the opposing

monuments around which a zone of protection is to be established; the notification, which shall also indicate the limits of the zone of protection, may not be withdrawn in time of war. 2. Identification of the limits of the zones of protection shall be assured by the use of marks clearly visible to aircraft by day or by night, the said marks being, in the case of the monuments themselves, those specified in article 25, and, in the case of the zones of protection, marks to be notified to the other Powers, together with a list of the monuments and zones.

"The zone of protection may include," says article 26, par. 3, "In addition to the area actually occupied by the monument or group of monuments, an outer zone, not exceeding 500 metres in width, measured from the circumference of the said area." The size of this zone of protection which, at the time (1923) was considered more than adequate to assure the immunity of monuments, can, in the case of cities like Venice and Florence, which are particularly rich in treasures of the past, result in the protection of a large part of their territory. The Commission of Jurists was quite aware of such a consequence, which might lead to almost complete neutralization of an entire city, as the Netherlands Archaeological Society had already foreseen in 1919. But, as the report observes, the immunity accorded to monuments and the prohibition against any use of the area for military purposes are closely related.

By the very terms of article 26, this agreement for special protection is limited to "important historic monuments." The benefit of this designation, with the restrictions it imposes on the rights of belligerents, cannot result from a unilateral demarche; the report of the Commission of Jurists therefore makes it clear that "it will be open to any State receiving the notification" through diplomatic channels, "if it thinks it necessary to do so, to question within a reasonable time the propriety of regarding a particular place as an historic monument." Failure to raise any objection will be considered as equivalent to acceptance of the demand for immunity, and the immunity will then rest on an international agreement.

With this reservation, it must be pointed out lastly that the same report shows that the term "historic monuments" has a broad sense in the draft. The Italian proposal included not only

historic, but also artistic monuments. The Commission considered it preferable to omit the word "artistic" for fear of creating a divergence in the texts of the new provision and the preceding article, the wording of which was borrowed from the Hague Conventions (article 27 of the Regulations Respecting the Laws and Customs of War on Land, and article 5 of the Convention Respecting Bombardment by Naval Forces).

One can only approve unreservedly the lofty thought which inspired this first attempt to establish conventional regulations for the protection of monuments and works of art of the past, and hope to see them sanctioned one day by the adoption of a general convention. "They are illusive restrictions," it will be said, "a reversion to methods the ineffectiveness of which has all too often been proved." The experiences of the past are of course discouraging. Doubtless also, the military command will always be inclined to base its actions

PART II. THE PROTECTION OF NATIONAL ARTISTIC AND HISTORIC POSSESSIONS THE NEED FOR INTERNATIONAL REGULATION

Chapter I. Legislative Provisions Restricting Freedom of Trade in Works of Art and Objects of Historic Interest

Protective measures intended to assure the preservation of a country's artistic and historic possessions come primarily under domestic law. The modern State considers itself as being entrusted in this respect with a mission of general interest which, calling for increasing intervention on its part, at the same time requires the setting up of appropriate technical organizations and the exercise of juridical powers that at times limit the right of individual ownership. The general plan of this study does not permit of a detailed account of the procedures employed by the State for this purpose, the best known of which is the classification of historic monuments and art objects (as important to the national heritage). Our interest here is in the international aspect of certain measures enacted by States to prevent the exportation of works of art. Consequently, as a general rule it is solely to movable property that the prohibitive or restrictive measures to which our attention will be devoted apply. Nevertheless, in this respect, the controls on excavations constitute an important and very interesting exception.

WORKS OF ART AND HISTORIC MONUMENTS solely on the too well-known adage: *omnia licere quae necessaria sunt ad finem belli*, thus confirming Clausewitz's words: "War is an act of force, and there is not limit to the use of force." Rather than seek to impose on air-force operations restrictions that would not stand the test, it might be preferable to endeavor to abolish that deadliest of all types of warfare: aerial bombardment."

Nevertheless, from even this realistic point of view, the fact remains that the idea of the military objective will always determine the choice and use of the means of destruction. Therefore, if for no other motive than interest, regulations that would deprive belligerents of any reason for attacking historic and artistic monuments would be of a nature to safeguard those monuments from the dangers to which they are more and more being exposed by changes in the technique of modern warfare."

There is certain movable property which belongs to the public domain by reason of the use to which it is put, and is, as such, inalienable and

"We are familiar with the proposals made at the Disarmament Conference with a view to abolishing aerial bombardment. On June 8, 1934, the Conference adopted the following resolution: "The Conference, deeply impressed with the danger overhanging civilization from bombardment from the air in the event of future conflict, and determined to take all practicable measures to provide against this danger, records at this stage of its work the following conclusions:

"(1) Air attack against the civilian population shall be absolutely prohibited;

"(2) The High Contracting Parties shall agree as between themselves that all bombardment from the air shall be abolished, subject to agreement with regard to measures to be adopted for the purpose of rendering effective the observance of this rule."

"Even Vattel wrote (book III, chap. IX, par. 168): "Buildings which honor humanity and contribute nothing to increasing the enemy's power should be spared. . . . What is gained by destroying them? To deprive the human race, through sheer wantonness of these monuments of art, these models of taste, is to declare oneself its enemy."

"The preliminary draft international convention for the protection of historic buildings and works of art in time of war, 1937-38, is to be found in appendix A.

111500

DECLASSIFIED AUTHORITY: 100-99092-96066 BY: 71 NARA DATE: 7/16/99 RG 59 Entry 5383 Box 1

WORKS OF ART AND HISTORIC MONUMENTS

indefeasible. This includes pictures, statues, and art objects of every type forming the collections in museums, and of books, archives, and documents in the custody of State libraries. Since these things cannot be privately owned, they may always be claimed if found at any time in the territory of the State, even though, having been removed in the interval to another State, they have been alienated in a manner regular in the eyes of the *lex rei sitae*. Various legislations have explicitly forbidden their exportation.

Of even more delicate application in international relations are legislative provisions designed to prohibit either the sale or the exportation of works of art belonging to private individuals. A cursory review of modern legislation shows that the number of such provisions has increased appreciably during recent years.⁵¹ A study of jurisprudence will convince us at the same time that they have but little effect in relations between one country and another.

1. The origins of modern laws which more or less rigorously prohibit the exportation of works of art, even privately owned, may be found in Italian law, especially that of the former Papal States. The Popes, being anxious to keep in their States the artistic treasures which constituted both an element of prestige and, through *fidei-commissa*, a means of influencing the patrician families of Rome, had long since issued strict regulations to prevent both the sale and particularly the exportation of those treasures.⁵² Early in the nineteenth century, an especially severe edict, the Doria Pamphili Edict of October 2, 1802, issued during the pontificate of Pius VII, absolutely forbade the exportation outside Rome or the Papal States of any works of art whatsoever of ancient times or the Renaissance, and threatened with severe penalties both the person chiefly responsible for the exportation and such persons as assisted or abetted him in any way whatsoever. The famous Pacca Edict of April 7,

⁵¹ We are indebted to the International Museums Office for information on the most recent laws.

⁵² The origin of this legislation can be traced to a bull of Pius II (Enea Silvio de Piccolomini), dated Apr. 28, 1462.

⁵³ F. Lepelletier, "De la prohibition d'exporter des objets d'art à l'étranger d'après la législation italienne," *Cronet*, 1896, p. 962; A. Chrétien, "De la protection et de la conservation des monuments et objets d'art et d'antiquité," *Ibid.*, 1903, p. 738.

1820, which so often is quoted, was less severe in some respects: it authorized the sale, within the city of Rome, of art objects and antiques belonging to private individuals, but required the seller and the purchaser to give notice of the contract to the State for the purpose of permitting it to exercise a right of preemption; exportation itself was only relatively prohibited, it being possible to obtain permission to do so from the Papal Chamberlain. Lastly—and this was an innovation of considerable magnitude—the Pacca Edict initiated the application of the principle of classification to privately owned objects of very great value. It was these two edicts, which were applicable only throughout the Papal States, that the Italian Government cited in a case which created a great stir. In 1891, Prince Barberini Colonna di Sciarra had sold, in Rome, part of his collections to a French national residing there, and had been indicted for breach of the Doria Pamphili and Pacca Edicts, since the buyer, the Marquis de Ribiers, had shipped the purchased works of art abroad. The case, which reached the Court of Cassation, was settled by a decree of the Ancona Court on October 12, 1894. This decree, which reduced the penalty pronounced to a very small fine, thereby proved the ineffectualness of the old legislation based on the papal edicts.⁵³

Various proposals resulted in the passage of the Italian law of June 12, 1902, and later, the law of June 20, 1909, on antiquities and fine arts, which is still in force. This law renders inalienable not only all objects belonging to State collections, but also the objects owned by juridical persons, whether ecclesiastical or civil, which are of such value that they have been placed in a special category in the general cataloging of the kingdom's art treasures. The sale or exchange of these objects may be authorized by the Government, but only in favor of other juridical persons, and on condition that, as a result, there will be no danger of their not remaining in Italy.

Article 8 of the said law states the principle of prohibiting the exporting of all objects presenting such historic, archaeological, or artistic interest that their exportation would seriously prejudice the national heritage. It is incumbent on an owner or possessor of objects of art who proposes to export them to inform the Export Office of his intention to do so, and, except when appeal is made

to a higher council, the Office decides on its own responsibility whether or not exportation may be authorized. If it is authorized, the exportation is subject to a special tax (art. 10); if it is prohibited, the State is permitted to become the buyer before the expiration of 2 or 4 months. Should the price named by the exporter not be accepted by the Government, it may be fixed by a joint commission, but only with the consent of the exporter. If the exporter refuses to accept the procedure of the joint commission, or if the parties refuse to agree to the price fixed by it, the object, which up until then has been placed in the custody of the administration, is returned to the owner; but he is forbidden to export it and is under obligation to preserve it in accordance with the provisions of the law (art. 9).

2. In France, a body of laws which had been widely debated from the juridical point of view had, even prior to the law of March 30, 1887, compensated for the definite lack of provisions in the Civil Code relating to the terms of public ownership. It had acknowledged movable property of an historic or artistic nature as inalienable and indefeasible when such property was designated for public use. Such designation could be accomplished by either a formal decision of the competent authority or an instrument issued by the same authority publicly imparting to the objects in question a character of general utility, such as their deposit in a public museum or a national collection.⁵⁴

The law of March 30, 1887, while putting an end to the uncertainty resulting from inadequate legislative provisions, had refrained from any infringement of the right of private ownership. In fact, it applied the classification only to movable objects belonging to the departments, communes, and public establishments; it did not apply it to privately owned objects and excluded them from any protection.

Furthermore, the effects of classification differed according to whether it was a question of objects belonging to the State or objects belonging to the departments, communes, or public establishments. While the first were declared absolutely inalienable and indefeasible, the inalienability of the others was simply relative, since it was possible to transfer them on authorization from the Government.

WORKS OF ART AND HISTORIC MONUMENTS

This law's effect on previous legal status had, moreover, been debated. A decision of June 17, 1896, of the *Chambre des Requêtes* had decided that the purpose of the law of 1887 was not to exclude objects coming under the public domain of the departments and communes, from the protection accorded them by former laws; the distinction made by the law between objects classified as belonging to the State and those belonging to the departments and communes concerned only privately owned objects and not those classified as public property which, being indefeasible and inalienable, did not give rise to the application of article 2279 of the Civil Code and could be claimed permanently.⁵⁵

The law of December 31, 1913, which replaced that of March 30, 1887, clearly embodied the principle, which had already been set forth in the law of July 19, 1909, of classifying privately owned movable objects the preservation of which, from the point of view of history or art, is a matter of public concern.⁵⁶

But the effects of classification differ mainly according to whether it is applied to objects owned by the State or other communities, or to objects belonging to private individuals. Those which belong to the State are absolutely inalienable; classification of those owned by the departments, communes, public establishments, or even public-utility establishments, makes transfer thereof dependent upon rather stringent conditions.

⁵⁴ A State claiming movable property on this ground had the burden of proof of such designation. It was because of inability to furnish such proof that, in 1886, the French State failed in the claim to the famous tomb of Philippe Pot, now in the Louvre, which it maintained against a private individual, who, since he had acquired it openly, peacefully, permanently, unequivocally, in good faith, and as the owner, was protected by article 2279 of the Civil Code, Dijon, Mar. 3, 1886, *Parliamentary Decrees* 87, 2, 253 and note.

⁵⁵ *Parliamentary Decree*, 1897, 1, 257 and note of Mr. Guénée (claim by the city of Mâcon against a bona fide possessor of miniatures detached from the manuscript "La Cité de Dieu" belonging to the public library of the commune).

⁵⁶ Concerning this law, see H. Eygout, *Revue du droit public*, 1922, p. 460. For discussions on the evolution of French legislation, see J. Metzner: *La législation française relative à la protection des monuments historiques et des objets d'art* (Dijon, 1911); Boivin-Champeaux, *Des restrictions apportées à la propriété dans un intérêt esthétique* (Paris 1913); J. Estève, *L'Art et la propriété* (Nancy, 1925).

DECLASSIFIED
Authority: 100-999096
By: 71 NARA Date: 7/6/99

RG 59
Entry 5383
Box 1

111501

excavations on their own land: the authorization required from the Minister of Public Instruction to begin excavations; the close supervision thereof by the administration; the surrender to the State of half of the objects discovered. Article 44—the most interesting in the field of international relations—deals with the excavations and discoveries made by foreign institutions or foreign private individuals. This article renders them subject to the same treatment as nationals, but specifies that discovered objects which are left to them by the State may not be exported outside the kingdom when such exportation would be of such a nature as to prejudice seriously the national historic or artistic possessions.

The Greek law of July 24, 1899, is one of the most stringent of the contemporary laws on excavations. It declares to be State property all antiquities discovered anywhere whatsoever in Greece and decrees the State's absolute monopoly on excavations and the preservation of the objects discovered. Mention may also be made of Rumania's law of November 17-29, 1892, Egypt's decree of August 12, 1897, and Spain's law of July 7, 1911.

Of greater interest from the international standpoint are certain conventions concluded between States for the purpose of regulating a foreign State's participation in carrying on excavations, or of determining the conditions under which foreigners may participate in such work.

The convention of April 13-25, 1874, between Germany and Greece regarding excavations at Olympia belongs to the first type.⁵⁹ Under article 1 thereof, the two governments each undertook to appoint a commissioner charged with supervising operations in connection with excavations on the territory of ancient Olympia. The Greek Government pledged itself to give those commissioners complete assistance and to compensate, at its own expense, the owners or holders of any title whatsoever to lands included in the excavations (art.

⁵⁹ Karl Strupp, *Documents pour servir à l'histoire du droit des gens*, 2d ed., Vol. I, p. 489, and by the same author: *Wörterbuch des Völkerrechts*, Vol. II, s. v. *Olympia-Ausgrabungen*. Cf. *ibid.*, Vol. I, s. c. *Denkmalspflege*, int.

⁶⁰ Karl Strupp, *Documents pour servir à l'histoire du droit des gens*. Vol. V, p. 335.

⁶¹ Karl Strupp, *ibid.*, p. 144.

2); for its part, Germany assumed responsibility for financing the entire enterprise, particularly the payment of the salaries and wages of the employees and workmen. Complete ownership of the objects discovered was reserved to Greece; "it rested with her alone to give Germany, in recognition of the work carried on jointly and the sacrifices agreed to by Germany, duplicates of the objects found during excavation" (art. 6). Germany furthermore obtained the exclusive right to make copies and castings of the objects discovered (art. 7).

The treaty concluded October 10, 1922, between Great Britain and Iraq contains an article 14, pursuant to which His Majesty the King of Iraq made a commitment to issue and enforce a "law on antiquities" based on the provisions annexed to article 421 of the Treaty of Sèvres of August 10, 1920.⁶² This law, which was intended to replace the old Ottoman law, was to assure complete equality of treatment, in connection with archaeological research, to the nationals of all States members of the League of Nations, and to those of any State to which His Britannic Majesty had, by convention, accorded the same rights as to the members of the League. Although the Treaty of Sèvres has not been ratified, it is interesting to recall such of its provisions as became applicable between Great Britain and Iraq in consequence of the aforesaid provision.⁶³ Article 421 of the Treaty of Sèvres required the Ottoman Government to issue new laws on antiquities, and to "assure the execution thereof on a footing of perfect equality among all nations." An annex to article 421 defined the rules on which such legislation was to be based. Those rules made the execution of any excavation enterprise dependent upon authorization from the Ottoman Government; they prohibited the alienation of any antiquity except in favor of the competent Ottoman ministry and unless the latter refrained from acquiring it; they forbade the exportation of any antiquity without a permit issued by the said ministry. Authorization to undertake excavations was to be granted only to persons providing adequate proof of archaeological experience, yet the granting of such authorization was not to tend to "eliminate, without valid reasons, the learned men of any nation." As for the distribution of the yield of excavations, it was to be made between the persons

who had engaged therein and the Ottoman ministry, in a proportion to be fixed by the latter.⁶⁴

5. Lastly we must point out the recent and highly significant provisions of Spanish legislation. Article 45 of the Republican Constitution of 1931 declares that "all of the artistic and historic wealth of the country constitutes the nation's cultural treasure and shall be placed under the protection of the State." Consequently, the State is empowered to forbid the exportation of objects of art and even to decree the expropriations which their security may require. For this purpose, it prepares the inventory of those objects and takes all measures necessary to safeguard and preserve them. The law of May 3, 1933, on the national artistic heritage makes exportation of any object of historic or artistic interest subject to administrative authorization. If the value of the object to be exported is greater than 50 thousand gold pesetas, authorization must be given by the *Junta superior del tesoro artistico* (Superior Board for Art Treasure) sitting in plenary session. Exportation is subject to payment of a graduated tax. In any case, the State may exercise the right of preemption.

Chapter II. International Effectiveness of Legislative Provisions Prohibiting the Sale or Exportation of Works of Art: Claims in Foreign Countries to Art Objects Irregularly Alienated, Lost, or Stolen

From the international point of view, the most important of the legislative provisions we have analyzed are those forbidding either the alienation or exportation of works of art forming part of public collections or belonging to private individuals. We shall see that their application in international relations is hardly certain. We shall also see that the diversity between bodies of law and the conflicts of laws resulting therefrom render fairly uncertain the protection that should be assured the work of art in case of irregular alienation, loss, or theft.

1. Art objects forming part of State collections, and, in certain countries, those belonging to public establishments or even to establishments of public service endowed with civil personality, are, as we have seen, rendered either absolutely or relatively inalienable. If sold in the same country which imposes such inalienability, and then exported

abroad, or if transported clandestinely to a foreign country and sold there, may those objects be claimed under conditions absolutely assuring their repatriation? We shall see that in the present state of laws this is far from being true.

In principle, it is the law of the place where the object is situated (*lex rei sitae*) at the time of its alienation which alone must be taken into consideration in determining the validity of the transfer of its ownership.⁶⁵ The sale of items of public property, especially museum pieces, must therefore be considered invalid in any country if it occurred in the actual country in which such articles are excluded by law from commercial transactions. The right to claim them from the foreign country to which, after such irregular sale, they have been transported clandestinely, must be allowed, subject, nevertheless, to the vested interests of bona fide third purchasers in that country (see below).

Is this likewise so when, aside from cases of theft, objects belonging to the State's public domain or, more generally, things excluded from commerce by the law of their original location have been sold in a foreign country after being clandestinely transported there?

In one system which seems to have won the approval of the Institute of International Law during its Madrid meeting (1911), it would always be solely the law of the place where the thing is situated that would be applicable in judging whether an object is alienable or inalienable. That was the answer given by Mr. Diena, rapporteur of the draft adopted by the Institute, to Edouard Clunet, who had stated the question clearly, pointing out particularly the case of the sale in France of a religious object which had belonged to the Cathedral

⁶² An international excavations conference has been held in Cairo (Mar. 1937), on the initiative of the International Museums Office, since this study was made. The Conference worked out an international excavations statute on which we have commented in section no. 4, 1937, of the *Revue de Droit International et de Législation comparée*. See also: E. Foundoukidis, *Acte Final de la Conférence Internationale des Fouilles, avec observations préliminaires*. Paris, International Museums Office, 1937.

⁶³ Pillet, *Traité pratique*, Vol. I, p. 732-733; Pouillet, *Manuel* No. 270; Niboyet, *Manuel* (1928), pp. 511-513; Arm-injon, *Précis*, Vol. II, No. 29-30. On the general question of the applicable law, see the resolutions adopted at its Madrid meeting (1911) by the Institute of International Law on the remarkable report of G. Diena, *Annuaire de l'Institut de droit international*, abridged collection, Vol. V.

of Burgos and which the Spanish law had excluded from commerce [case of the Duke de Frias vs. Baron Pichon].⁶⁴ This is the solution implied in the first part of article 3 of the resolution adopted by the Institute: "It is for the *lex rei sitae* to determine which things are susceptible of being the subject of a given real right, and to limit, or debar claims." In commenting on this provision, the eminent rapporteur wrote: "Only the law of the place where the object is situated at the time is, according to this text, applicable in determining, whether a movable object is alienable or inalienable in trade, or *extra commercium*."⁶⁵

Being bound up with economic prosperity, the free circulation of goods does, indeed, concern the local public order; it, therefore, does not call for other restraints than those permitted by the law of the place where the thing is situated.⁶⁷

Is this rule, which has the obvious advantage of providing a clear, logical solution to the conflicts of laws which may occur on this subject, acceptable in all its consequences in the country which en-

⁶⁴ *Annuaire de l'Institut*, Madrid meeting, 1911. Abridged collection, Vol. V, p. 1344. Cf. G. Diena, "Les conflits de lois en matière de droits réels à l'Institut de droit international," *Revue de droit international privé*, 1911, p. 561 and especially p. 581, note 1.

⁶⁵ *Revue de droit international privé*, 1911, loc. cit.—It must be pointed out that the aforementioned art. 3 of the text of the resolutions of the Institute does not, when referring to claims, consider the case of a movable object which, after being acquired regularly in a given country, is transported to another. Such a possibility is the subject of article 5 of the same resolutions, an article to which we shall have occasion to refer again (see below).— Cf. P. Arminjon, "La notion des droits acquis en droit international privé," *Recueil des Cours de l'Académie de droit international*, 1933, Vol. II, p. 73.

⁶⁶ J. Valéry, *Manuel*, no. 623.

⁶⁷ Niboyet, *Manuel* (1923), no. 513, p. 641; *Répertoire de droit international*, s. v. *Mobilier corporels*, no. 72-73. See also H. Desbois, "Des conflits de lois en matière de transfert de propriété," *Clunet*, 1931, p. 316: "This solution, according to which the location at the time when the claim originates is the one which must be considered, allows of only one exception: the part played by considerations of public policy, based on an irremedial conflict between the two laws of the successive locations, in exceptional cases justifies the application of the law of the present location by the courts of the State in which the property is actually located."

⁶⁸ However, certain laws permit compensating the bona fide acquirer with the purchase price (French law of Dec. 31, 1913, art. 20, pars. 2 and 3).

⁶⁹ *Dalloz périodique*, 1846, II, 212.

acted the inalienability? That is open to doubt. Rather, it seems that the object which is classified as inalienable will always retain that quality in the eyes of the law of that country. It follows that if this object, after being sold abroad, is again found in that country, it may still be claimed there by the state, without a third purchaser's being able to allege the perfect regularity of his acquisition thereof in a foreign country. The fact is that, in the country of its origin, this object will never be considered as susceptible of private ownership. This is the solution upheld by Mr. Niboyet. One is confronted with what our learned colleague calls a conflict over the very existence of the institution or law. Such conflicts cannot be settled. The fact of their entering into the question we are considering—international recognition of the inalienability of objects of art in public ownership—furnishes the strongest argument in favor of international regulation of the matter.⁶⁸

2. Aside from this question, there is the one brought up, in connection with objects which are public property, by the application to the bona fide purchaser of the safety rule for transactions: In the matter of movable property, possession is equivalent to ownership (art. 2279 of the Civil Code). It is well known that application of this rule in private international law is very much debated, largely because of the variations existing in domestic law as to its exact scope. Let us first recall that the purpose of the rule is to protect from the owner's real action the third bona fide purchaser who obtains the movable property merely from a precarious possessor, for example, from a depositary. On the contrary, the latter remains subject to both the claim action and the personal action for restitution. This being the case, it is self-evident that in a country where art objects are in public ownership, they are entirely and permanently free from the application of the maxim: in the matter of movable property, possession is equivalent to ownership.⁶⁹ Since such objects may not be privately owned in the said country, their possessor will never be allowed to assert his property rights against the State's claim. Such claim is even indefeasible. There is an old, well-established body of law on this point. As early as 1846, the Court of Paris⁷⁰ declared the purchaser of an autograph of Molière belonging to the Royal Library liable to the State's claim

thereto, thereby reversing a decision of the Court of Seine, which had stressed the good faith of a third purchaser and the absence of any distinctive mark on the diverted article indicating its origin and inalienability.

This is not the case when the object scheduled as public property has been sold by its possessor in a foreign country to which it was conveyed. In such case, application to the bona fide purchaser of the rule: in the matter of movable property, possession is equivalent to ownership depends entirely upon the law of its new location. If, therefore, that law recognizes the rule, in the matter of movable property, the bona fide third purchaser of an art object of public ownership will be protected from any claim to it.⁷¹

In the frequently cited case of the Duke de Frias vs. Baron Pichon the latter was sued in a claim involving a silver ciborium which had belonged to the Cathedral of Burgos and had been declared inalienable by Spanish law. The disputed object had been sold by the abbess of Santa Clara convent, in order to relieve the convent's financial distress, to persons who had taken it to France and sold it there to amateurs and connoisseurs of art. Note that it was in France, and not in Spain, that the defendant acquired it in good faith. The Court of the Seine⁷² merely ruled out the claim for restitution, stating that "the social interest which prompted the rule laid down by article 2279 of the Civil Code required the application of the French law alone." It must be pointed out that this decision, which appears at times to have been misinterpreted, was based solely on article 2279 considered as public policy in France, the court having stated explicitly that there were no grounds for considering the fact that the object might have been rendered inalienable by the Spanish law.

3. The circumstances attending the restoration to the Louvre, in 1913, of the famous painting, la Gioconda, which had been stolen 2 years previously, occasioned rather curious legal proceedings. The Florentine expert Géri had received from the thief, a certain Peruggia living in Paris, a written offer to sell the picture. He succeeded in persuading Peruggia to go to Italy with the stolen masterpiece. Upon his arrival in Florence, the thief was arrested, and the retrieved picture was returned to France by the Italian Govern-

ment. Subsequently, the expert Géri brought action against the French State for payment of a claim amounting to 20 percent of the value of the picture. He based this claim on article 718 of the Italian Civil Code, which grants the finder of a lost object compensation in proportion to the value of the object. The Court of the Seine⁷³ declared the claim unfounded. Its decision seems to us justified, because it was impossible, under the circumstances, to speak of a "lucky find" in the proper sense of the term, and article 718 of the Italian Civil Code was consequently inapplicable. The painting had not been "found" in the strict sense of the word, but offered by the thief to the person claiming to be the discoverer, who was entirely aware of its fraudulent origin. However this may be, this so-called lucky find does not appear to have been made in Italy, which evidently was the reason for invoking article 718 of the Italian Civil Code; the picture was in Paris, and not in Italy, at the time when the thief revealed its existence to the claimant. We cannot therefore agree with the criticism of this decision formulated by Pillet.⁷⁴ Only the grounds for the judgment, which attributes to article 718 of the Italian Civil Code the character of a "police and public security law", seem to us open to criticism. At the very least, there is incorrect wording there; the judgment in question is a matter of real law and not one of law and order.⁷⁵

4. The inalienability sometimes imposed on works of art and objects of historic interest may originate from an inalienability clause contained

⁷⁰ The same solution is accepted in Germany. See A. Nussbaum, *Deutsches Internationales Privatrecht*, p. 309.

⁷¹ Court of the Seine, Apr. 17, 1885, *Clunet*, 1885, p. 593. "Whereas", stated the Court, "it is unnecessary to ascertain whether, under the Spanish law, the object claimed by the Duke de Frias was, because of being a holy vessel, endowed with an indelible character implying absolute inalienability; . . . that, as regards movable property properly speaking, if it is a question, as here, of possession, the social interest which prompted the rule laid down in Article 2279 of the Civil Code requires that French law only be enforced; that in such cases, the real law must be enforced and, in truth, constitutes a police regulation binding; according to Article 3 of the Civil Code, on all persons living in French territory."

⁷² Court of the Seine, June 26, 1913, *Clunet*, 1913, p. 1249.

⁷³ *Traité pratique*, vol. I, p. 731.

⁷⁴ For the point of difference, see Niboyet, *Manuel*, no. 505.

DECLASSIFIED
 AUTHORITY: 100-99999
 DATE: 7/14/99
 RG 59
 Entry 5383
 Box 1

in an act under civil law between living persons or on the occasion of a death. The validity of such clauses depends entirely upon the law of the place in which the property is located. In English law, the trust may involve a dividing of the property (legal ownership and equitable ownership), or, more precisely, a radical change in the property's attributes which, due to the restrictions imposed by such change on the right of alienation, will generally be considered as contrary to the principle of free circulation of property if the movable objects entailed by the trust are located in Belgium or France. The case of Van der Heydt and Burth vs. Robert Peel constitutes an interesting precedent. In 1898 Sir Robert Peel had sold, in Paris, to a Mr. Kleinberger, a picture dealer, five oils of great value belonging to the Drayton Manor collection, which had been entailed, as had the manor itself, under a trust. The trustees had a writ issued against Peel, the holder of the entailed property, for nullity of the sale and recovery of the paintings. The Court of the Seine dismissed their case, declining the charge of inalienability resulting from the trust to be contrary to the public-policy rule on the free circulation of property.⁶⁵ In consequence of this judgment, the inalienability encumbering the objects sold ceased at the time of their being brought on French territory. Therefore, their sale by the holder of the entailed property; the trust for which did not affect his personal capacity to transfer them, had to be deemed valid in France, even though it would have been considered null and void in England. As a matter of fact, the management of movable property and the rights that it represents are matters of public order and, as such, come solely under the law of the place where the property is situated. Neither the

⁶⁵ Court of the Seine, June 28, 1901, *Parliamentary Decree*, 1902, 2, 361, with note by H. Decugis. This judgment is, moreover, open to criticism in the analysis it gives on the institution of the trust. Cf. Mr. Travers' study in the *Revue de droit international privé*, 1909 p. 521 ff.

⁶⁶ Decision reported by H. Lewald in the *Répertoire de droit international Lapradelle-Niboyet*, s. v. *Droit international privé*, Allemagne, No. 268.

⁶⁷ Court of Douai, Dec. 11, 1891, *Parliamentary Decree*, 1894, 2, 193, with note by Mr. Ch. de Boeck.

⁶⁸ For instance, this would be the case if the object was originally transferred by a precarious possessor, for example, a depositary, to a country where bona fide possession does not protect the purchaser from a claim brought against him.

nationality nor the place of residence of the persons concerned enters into the picture in this connection.

Germany has the same provision. An unpublished judgment of December 14, 1922, of the Court of the Empire recognized that when a piece of movable property forming part of a German trust, and consequently inalienable in Germany, is removed to a foreign country and transferred there, the question of inalienability depends solely upon the law of its new situation in that country.⁶⁷

These provisions appear incontestable. They apply the well-established rule whereby both movable and immovable property are governed by the law of their actual place of location when considered individually. The laws also thereby infer that the *lex rei sitae* is relevant when it is a question of deciding on priority suits, privileges, or other incidental rights, such as the right of retention.⁶⁸

5. Under article 2279 of the Civil Code, a claim may be brought against even the bona fide purchaser in case of loss or theft. On the other hand, if the owner has parted with the object voluntarily, for instance, by entrusting it to a person who has transferred it irregularly to a bona fide third party, a claim may not be brought against that third party. This is so in the case of a breach of trust. The same provision is generally recognized in the case of swindling, although it may be quite debatable here. In such cases, the owner can only bring suit against the person to whom he entrusted the object; he has no right to sue a third party to whom the object has been transferred.

Application of the rule: in the matter of movable property, possession is equivalent to ownership, and the restraint to be exercised in applying it in the case of loss or theft cause serious complications when movable property, such as a work of art, is transferred from one country to another.

One case does not give rise to any difficulty. A piece of movable property has been lost or stolen in Country A and has been purchased by no one prior to being conveyed to Country B.⁶⁹ Certainly, it is the law of the latter country, which alone governs the claim to the property. The owner of this object will therefore be able to bring claim for it in Country B against a bona fide purchaser only under the conditions and within the time limits fixed by the law of its new location; in Belgium and France these are contained in article 2279, par. 2 and article 2280. It is therefore the

law of the place where the present possessor has acquired the movable property that must be consulted. Consideration of the law of the country where the property was stolen, lost, or found is unwarranted.⁷⁰

The difficulties begin when a movable object, after being acquired in a given country, is removed to another country whose laws enforce the rule: in the matter of movable property, possession is equivalent to ownership.

Such difficulties stem from the opposition arising here between two conceivable titles to the purchase, governed by two different laws, one of which holds to the location of the object at the time of its purchase in Country A, while the other, for reasons of public policy, considers the mere possession of the object in Country B a case of new acquisition.

From the point of view of the law of the place where the object is situated at a time of its purchase, it may be said that removals following purchase nowise change the legal situation created under this law. It is therefore the latter which will govern the conditions and time limits of the claim. Thus it will be admitted that, if the law of the country where the property was acquired debars any claim against the bona fide purchaser of a lost or stolen object, the latter may avail himself of that law anywhere, and that he is protected from the application of article 2279, par. 2, which authorizes a claim for three years, even though the object is found in Belgium or France. In further application of the same idea, it must be admitted that if, on the other hand, the same law allows a claim to be made over a period of more than the 3 years fixed by article 2279, par. 2, the purchaser cannot take advantage of that article against the dispossessed owner, even if the object is found in Belgium or France.⁷¹ It would also follow that if the law of the original location authorizes a claim against the bona fide purchaser of movable property alienated through a breach of trust, the claim should be allowed even though the law of the place in which the property was located restricted it to a case of theft:

If, on the other hand, the very fact of possessing the object and bringing it into Belgium or France is regarded as a case of new acquisition (acquisition *lege* or, according to others, presumption of ownership) established by the Civil Code for rea-

sons which, based on the security of personal transactions, must be considered as in the public interest, this case of new acquisition necessarily takes precedence over any previously acquired right. To illustrate, it will follow that a claim to a lost or stolen object will always be limited in Belgium and France by the provisions of articles 2279 and 2280 of the Civil Code, regardless of the laws in force in the country in which it was acquired.⁷²

In this controversy there is no conflict, strictly speaking, between the principle of respect for vested interests and local public policy. Viewing the matter closely, it is a question of determining where the vested interest is, and, in order to decide that, to investigate whether, for reasons bound up with the local public policy, the law of the new place in which the object is situated must be considered as the sole law capable of creating a vested interest, rather than the law of the place where the object was acquired.

Each of these opinions has its advocates. After all, the contrast in these ideas can be explained by the divergence of opinions subsisting in domestic law on the scope of the maxim: in the matter of movable property, possession is equivalent to ownership. If it is regarded as a safeguard, not of mere bona fide possession as such, but only of bona fide acquisition by direct transfer, then article 2279 of the Civil Code will be declared inapplicable if purchase was made in a foreign country, "the ac-

⁷⁰ Pillet, *Traité pratique*, no. 362.

⁷¹ Niboyet, *Manuel* no. 374, 511, and *Répertoire de droit international*, s. v. *Meubles Corporels*: Poulet, *Manuel* no. 270; H. Desbois, *op. cit.*, *Journal du droit international*, 1931, p. 313, note 30.

⁷² Lerebours-Pigeonnière, *Précis de droit international privé*, no. 355, which shows very clearly that, while, in principle, a right to movable property regularly acquired in one country, in accordance with the law of its location at the time of acquisition, holds good despite transfer of the property to another country, this is not so when a new case of acquisition by a third party arises in opposition to the old right acquired as a result of the intervention of the law of the new location. Cf. Valéry, *Manuel*, no. 622.—For Germany, H. Lewald, who puts the question very well in the *Répertoire Lapradelle-Niboyet* (s. v. *Droit international privé*, Allemagne, no. 279 ff.) himself admits that if the law of the new place in which the object is situated recognizes the possibility of a bona fide possessor's acquiring an object taken from its owner in Germany, the German owner will be deprived of ownership, regardless of section 935 of the *B. G. B.*, a provision prohibiting acquisition in case of loss or theft.

tual making of the bona fide purchase implying that a stand is taken at the time of purchase.⁵² If, on the other hand, this maxim is considered as a provision safeguarding mere bona fide possession of all movable property found in Belgium or France, it will be admitted that article 2279 is applicable due to the very fact of transfer of the object to those countries.⁵³

The effects of the removal of property from one territory to another on real rights existing in connection with such property were discussed by the Institute of International Law during its Madrid meeting in 1911, Mr. Diena being the rapporteur. This question is the subject of article 5 of the resolutions, the first paragraph of which reads as follows:

"Art. 5. In case of removal of property from one territory to another, the real rights in the goods, validly acquired, in accordance with the rules set forth above, during the time of their location in a given territory, must be respected, even though they are later found in a different territory."

It should be noted that this text makes no provision for the case where, in accordance with the law of the place of its original location, there is a claim against the bona fide possessor. It was deemed that in such case there never is a vested interest.⁵⁴ The Institute's text provides only for the case where a claim is denied in accordance with the law of the original location. The discussions, limited to this subject, show that while the Institute did not succeed in defining the exact nature of the vested interest in the case where direct transfer of the object to a bona fide purchaser constitutes title to the acquisition, it did, however, intend to safeguard such purchaser against a claim for restitution when such claim is denied

⁵² H. Desbois, *op. cit.*, and also: Niboyet, *Manuel* no. 511; Pillet, *Traité pratique*, no. 361, in which the author points out, in support of his opinion, that if in the settlement of an estate there is an item of tangible movable property not belonging to the deceased, the heir cannot allege his good faith in refusing to give it up.

⁵³ Lerebours-Pigeonnière, *loc. cit.*

⁵⁴ Cf. *Annuaire de l'Institut de droit international*, abridged collection, vol. V, p. 1345, remarks of Mr. Pillet.

⁵⁵ Cf. the above-mentioned study of Mr. Diena, "Les conflits de lois en matière de droits réels à l'Institut de droit international," *Revue de droit international privé*, 1911, pp. 530-581.

by the law of the place where his acquisition was made. Mr. Strisower's amendment had stated the question clearly by proposing to specify that by the term "vested interest" there must be understood "particularly the vested interest of the possessor to reject a claim because of the special way in which he acquired the thing." This amendment was opposed by Mr. Jordan, who referred to the public policy character of article 2279. The remarks exchanged during the discussion tend to show that the Institute concurred in the idea on which the Strisower amendment was based. However, it would have been interesting, from the point of view of those who were in favor of the amendment, to confirm it by voting on a formal text. But the author of the amendment personally waived that, believing himself entitled to consider it as superfluous.⁵⁶

6. The classification of art objects belonging to private individuals does not, therefore, have the effect of excluding them from public dealings; in general, it entails only their owner's obligation to abide by certain formalities, particularly the one requiring him to inform the competent administration of any transfer, in order to permit the administration to follow up objects transferred to a new owner. The sale of classified objects of private ownership, even though agreed to in violation of this regulation, is nevertheless valid; it merely makes the seller liable to the penal sanctions enforced by law. On the other hand, exportation of registered objects outside the country is prohibited. What is the sanction for such prohibition in international relations? This question has come up in a few legal cases whose very rarity is explained by the purely territorial scope of such regulations and shows how ineffectual they are in the relations between one country and another.

The well-known case of the sale of the finest masterpieces in the Barberini collection authorized by Prince Colonna di Sciarra is of no real interest from the international point of view. True, the purchaser's transfer of those objects to France did give rise to an order to take them into protective custody, issued by the President of the Civil Court of Rome. Action was taken to prevent execution of the order in France; but for reasons of procedure, which have no bearing on the problem of international law brought up by the execution abroad of such decisions, the demand for exequatur was

rejected by both the Court of Paris and the Court of Cassation of France.⁵⁷

Interesting from another aspect is the decision handed down on July 31, 1918, by the High Court of Justice of England (Chanc. Div.) in the case brought by the Italian Government against the Marquis Cosmo de' Medici Tornaquinci et al.⁵⁸ The problem of international law is stated therein in a very clear fashion. The decision defines with perfect clarity the strictly territorial scope of any legislation prohibiting the exportation of works of art, and of the right of preemption reserved to the State.

Some family archives of great historic interest, known by the name of "the Medici Archives" had secretly been transferred from Italy to London, where they had been put up for public sale. In view of the excitement aroused by the announcement of the sale, particularly in Florence, the Italian Government instituted against the British authorities a summary action which, without prejudging the substance, that is, the character and ownership of the documents put up for sale, attempted to prevent the dispersion of this historic treasure by postponing the announced sale. The Italian Government based its claim on two distinct reasons. It claimed a large share of the documents as State documents (*atti di Stato*), which consisted chiefly of the diplomatic correspondence of the old governments of Florence although this correspondence had been allowed to fall into the hands of the Medici family, even so it constituted State property. Without expressing a definite opinion on the question of ownership, the High Court issued the court order requested by the Italian Government: there was a possibility, at least prima facie, that the claimed documents were in fact that Government's property.

But, aside from those documents, the archives put up for sale consisted of documents which the demanding government could not claim as State documents. In connection with these objects of purely historic interest, it invoked the right of preemption recognized to the State by article 9 of the law of June 20, 1909. Such claim, advanced on the basis of things no longer in Italy, was necessarily doomed to failure: although a manifestation of the territorial authority of the sovereign State, the right of preemption could not be exercised over objects situated under the jurisdiction of a

foreign State. The High Court stated that the Italian law of 1909 prohibiting the exportation of the objects referred to therein was applicable only while they were on Italian territory, and that it could not be incumbent upon the British authorities to order that objects illegally exported from Italy be returned, on their decision, to the place where they would have been situated if they had not been exported. In those circumstances, the British judge could not hand down a decision ordering that the sale of those objects in England be stopped.

Although the decision we have just analyzed was not followed by a decision on the merits—the case having ended in a compromise permitting the repatriation to Italy of the greater part of the documents of a truly historic character—it does make very obvious the purely territorial nature of the laws restricting the free exportation of works of art and documents of historic interest.

7. On various occasions the courts have been called upon for decisions on claims for restitution advanced by Russian refugees in connection with objects of art confiscated by the Soviet Government and discovered by their owners in foreign countries. Although this question does not, properly speaking, fall within the scope of this study, it may be interesting to mention the outcome of such claims because of the high feeling aroused in art circles through the sale and dispersion of those objects.

The expropriation, without compensation, of artistic possessions belonging to private individuals has been explained in Soviet Russia as a nationalization measure which must entail their designation to the public use and, therefore, their inalienability. As a matter of fact, numerous objects, after being placed for a short while in the custody of a museum or duly authorized institution, were put up for sale by the Soviet Government for purely financial reasons. Since the sales were often held in a foreign country, it was on such occasions that the dispossessed owners very often attempted to exercise their rights. But their claims appear generally not to have been sustained.

⁵⁷ See *Cronet*, 1892, p. 973; 1894, p. 811; 1895, p. 694. Cf. the aforementioned article by Lepelletier in *Cronet*, 1896, p. 962 and Pillet, *loc. cit.*, p. 730.

⁵⁸ See *Rivista di diritto internazionale*, series III, vol. I, 1921-1922, p. 194.

REPRODUCED AT THE NATIONAL ARCHIVES
DECLASSIFIED
AUTHORITY: 100-9999
BY: 71 NARA D216
68 76 69
RG 59
Entry 5383
Box 1

WORKS OF ART AND HISTORIC MONUMENTS

In England, the Court of King's Bench and the Court of Appeal denied the claim of a dispossessed owner in the following case.⁵⁹ Princess Olga Paley, widow of Grand Duke Paul of Russia, brought before the British authorities a claim to a collection of movable objects (hangings, pictures, rugs, etc.) against Norman Weiss and others who declared themselves the legitimate owners thereof because of having purchased them, in 1928, from Gostorg, a sales agency of the Soviet Government. It was proved that the objects claimed had actually belonged to the plaintiff; but the defendants invoked two Soviet decrees to prove that the disputed objects had been the property of the Russian State since 1918: the decree of March 18, 1923, which declared as national property the works of art and antiquities in the custody of the State museums; and the decree of November 19, 1920, which confiscated all the movable property of citizens who had fled from the country. The defendants' argument was recognized as well founded, and the claim was denied. The question of the incompatibility of the confiscation of the property with English public policy was not brought up by the judges. The well-known judgment handed down by the Court of Appeal in the case of Luther vs. Sagor had, moreover, already ruled out that objection in a similar case. The British judges merely deemed it proved, on the basis of the aforementioned decrees, that at the time when the objects claimed by Princess Paley were sold by the Soviet Government to the defendants, they belonged to the Russian State. It must be pointed out, in the case in question, that the defendants in the claim for restitution had ac-

⁵⁹ Court of King's Bench, Dec. 3, 1928; Court of Appeal, Mar. 21, 1929. *Revue de droit international privé*, 1929, pp. 321 and 662.

⁶⁰ Cf. *Revue de droit international privé*, 1929, the important note of Mr. Niboyet.

⁶¹ See, for example, the Optorg Case; Civ. Court of the Seine, Dec. 12, 1923, *Clunet*, 1924, p. 436.

⁶² *Clunet*, 1929, p. 184, and *ibid.*, p. 13, article by Mr. Philonenko.

⁶³ Berlin Court of First Instance, Nov. 1, 1928, *Clunet*, loc. cit., Cf. A. Nussbaum, *Deutsches Internationales Privatrecht*, p. 305.

⁶⁴ Court of Cassation, Mar. 5, 1928; *Revue de droit international privé*, 1929, p. 288.

⁶⁵ Cf. the above-mentioned note by Mr. Niboyet, p. 295 and 296.

⁶⁶ See appendix B.

quired their rights in Russia, and that that circumstance was considered as being particularly favorable for them.⁶⁰ Such jurisprudence is open to criticism in that it leans too heavily on the fact of recognition of the Soviet Government. The contrary solution prevailed in France.⁶¹

But it has happened that the Soviet Government itself has sold objects of an artistic character in a foreign country after confiscating them in Soviet Russia. This was true in the case of the auction in Berlin to which Prince and Princess Dabitscha-Kotromanicz raised objections.⁶² Nevertheless, the Berlin Court of First Instance dismissed the plaintiffs' suit; it expressly ruled out the objection based on the German public order (art. 30 of the Preliminary Law of the German Civil Code); declaring as compatible with the German law the transfer of property following what the judgment called an expropriation without compensation.⁶³ It appears certain that in France, on the other hand, the dispossessed owners would have been permitted to claim their property in such a case. This was the outcome of the well-known judgment delivered March 5, 1928, by the Chambre des Requêtees in the case of the Russian State vs La Ropit Company et al.⁶⁴

Assuming that the objects were sold in a country such as Germany where the law of their new location (*lex rei sitae*) deems the sale valid, the results of such sale must very likely be recognized in any country. The purchasers, being covered by a new right constituted independently of the force of the relevant law by reason of the situation of the property, will doubtless no longer find the spoliatory origins of their seller's right objected to in a third country. In any case, if, in agreement with certain authors and a few court decisions, article 2289 is considered as applicable by reason of the sole fact of the location of the sold objects at the time of the trial, bona fide possessors will be protected in Belgium and France by the maxim: in the matter of movable property, possession is equivalent to ownership.⁶⁵

Chapter III. International Sanction of Prohibitions Concerning Alienation and Exportation. Draft International Regulations ⁶⁶

Modern legislation protecting works of art and objects of historic character reveals a rather striking harmony of views, which is due primarily to

the growing interest of the public in most countries in the preservation of the nation's artistic and historic possessions. But it is no less true that the application of their regulations in international relations has remained rather limited to date. This situation may be explained by a great many reasons.

Even in the case of objects designated as public property such as those belonging to museums and public collections, international protection is far from always being effectual. Although the objects are inalienable and indefeasible, either because of belonging to the State or of having been classified, these characteristics do not follow them to a foreign country, since the law of their new situation alone is relevant in a decision on what is disposable or is not disposable in business transactions or outside them. Assuredly, if the clandestine exportation originates in theft properly so-called, the dispossessed administration may claim the stolen object anywhere, and there is but little doubt that in such a case it will almost always be assured of the courteous assistance of the public authorities of the foreign country, who will facilitate the search for, and restitution of, the object. Furthermore, the law of the place must not authorize the possessor of the stolen object to avail himself of the rule: in the matter of movable property, possession is equivalent to ownership. But, while the laws provide ample means for bringing claims against the thief himself, the instigator of the theft or, very frequently, even against a third non bona fide purchaser, and maintain the full length of the time limit with regard to those persons, the majority of the laws closely restrict the time limit for the claim against the bona fide possessor. Experience has borne out the fact that, in the matter of works of art, the three-year time limit, for instance, as fixed by article 2279 of the Civil Code, is often too short, since the thief or the non bona fide acquirer has every opportunity to conceal them during that period. At the expiration of the time limit, the bona fide third party to whom the object has been sold will, from the time of acquiring it, be protected from any claim for restitution.

Nor is this all. Under our laws, a claim against the bona fide possessor is allowed only in the case of loss or theft. It is not allowed, as we have seen, when the owner has been dispossessed by a misde-

WORKS OF ART AND HISTORIC MONUMENTS

meanor other than theft, even though it might be somewhat analogous to theft. Thus a claim is not allowed when dispossession is due to voluntary relinquishment, as in the case of a breach of trust, infringement of custody, or even, according to very general public opinion, swindling. There follows the very serious consequence that a claim for restitution is not applicable to art objects disposed of by the person in whose custody they were placed, from the moment they are in the hands of a third party who is a bona fide possessor.

These same restrictions against lodging a claim for restitution obviously apply to objects of artistic or historic interest belonging to private individuals. On the other hand, we know that these objects may still be alienated, even if they have been classified. The only effect of classifying them is to prohibit their exportation, or to establish the State's right of preemption with respect to them. These measures are, at present, ineffectual outside the territory of the State enacting them. We shall have to consider whether there is need for contemplating international sanctions insofar as they are concerned.

It is understandable now, in the face of the uncertainty of the law and its only relative effectiveness in international relations, that the idea was conceived of adding to the protection given works of art and objects of historic interest the further guaranty of international regulations. This idea had long since found advocates in certain countries, especially Italy. It was considered in 1933 by the International Museums Office, which framed a preliminary draft international convention for the purpose of assuring "the repatriation of objects of artistic, historic, or scientific interest, if lost, stolen, or the subject of unlawful alienation or exportation." This preliminary draft was submitted to the governments for study, following a resolution adopted by the Assembly of the League of Nations during its fourteenth meeting.⁶⁷

As stated in the preamble of the preliminary draft, the starting point of the convention stems from the Assembly's recommendations under date

⁶⁷ See appendix B, 1. Concerning this preliminary draft, see in the review *Mouaison*, 1933, vol. 23-24, the report to the International Commission on Intellectual Cooperation, by Mr. E. Foundoukidis, Secretary General of the International Museums Office (Sept. 1932 to Sept. 1933), p. 242 ff.

111506

DECLASSIFIED
Authority: AUC 99096
By: TJ NARA Date: 7/6/99
RG 59
Entry 5383
Box 1

of October 10, 1932. Those recommendations, which were adopted by the Assembly upon the proposal of its Sixth Commission, were the outgrowth of a resolution dated July 23, 1932, of the International Commission on Intellectual Cooperation, wherein the said Commission expressed the desire to submit to the Member States of the League of Nations a group of recommendations deserving of close attention. In fact, one may find in them, fortunately very clearly expressed, the various considerations of a decidedly complex nature, which must be taken into account in any attempt to settle the matter by means of a convention.

In its resolution, the Commission laid special emphasis on the happy results that might be obtained from "an extensive movement of exchange and collaboration between public art collections, thus permitting the national spirit of the various peoples to radiate beyond the frontiers where it was given expression; enabling the museums to invest their collections with increasingly universal character; and, lastly, affording the public the opportunity of greater insight into the creative genius and civilization of other peoples." This broadly international concept of the role and mission of the work of art in the development of civilization had led the International Commission on Intellectual Cooperation to formulate the two following recommendations:

"That the public powers of the States lend each other mutual assistance for the recovery of objects abstracted from national collections or exported clandestinely, even though subject to national classification;

"That the States recommend to their administrations of the fine arts not to require classification, involving a prohibition on exportation, except in the case of works of particular interest to the artistic or archaeological treasures of their country."

Plainly, the Commission, on advocating the principle of mutual assistance for the recovery of a work of art had no intention whatsoever of favor-

⁸ For the various aspects of the problem, see the interesting study made by our colleague from Bologna, Scipione Gemma, *Per il libero commercio internazionale degli oggetti d'arte di ragione privata*: "Discorso inaugurale letto nell'Aula magna della R. Università di Macerata, il 18 novembre 1906."

ing the development of a narrow national spirit that would tend to multiply the prohibitions on exportation through an abusive use of classification.

Actually, there are two broad interests in contradiction, each worthy of respect, which must, up to a certain point, counterbalance each other. That the artistic possessions of a country, especially those highly representative of national traditions, constitute a national heritage to which any civilized nation is closely attached—this is a definite fact. No one will gainsay that the veneration in which they are held in the country of their origin is the surest guaranty of their preservation. Lastly, possession of them, especially in certain highly privileged countries, represents an important source of income from the throngs of foreign visitors attracted by them. That, however, is but one aspect of the question, even from the understandable viewpoint of the national interest. The dispersion abroad of works of art representative of a country's national spirit has always contributed a great deal to the fame of the schools which produced them. When the great painters and sculptors of earlier times worked for patrons of the arts in foreign countries, they carried their illustrious names to even the most distant countries; their works, which are preserved in public galleries abroad, still contribute to the artistic glory of their homeland.⁹ To increase indiscriminately the classification rules and, consequently, the prohibitions on exportation is, by yielding to a chauvinistic idea, tantamount to ignoring this radiating value of the work of art in a foreign country. Also, from a general and more lofty point of view, it means a curtailment of the eminently universal educational role of the work of art throughout the world.

These reservations appear to be well-founded particularly in respect of the works of art and objects of historic interest belonging to private individuals. And so, considering the hindrances that classifying them imposes on the exercise of the right to dispose of and export them, it is not surprising that classification has always met with resistance. It has been pointed out that it satisfies a genuine collective interest only in the case of works of art accessible to the public, to at least a certain extent, and that it is hardly consistent with the generally understood interest in art to

prohibit alienation, even to foreign countries of such works as their owner keeps to himself and jealously hides from others' view. Moreover, it may seem unjust to burden with the special responsibilities involved in classification such enlightened art lovers as have consented to allow the public to enjoy their artistic treasures. During recent years it was possible to note how heavily the prohibitions on alienation and exportation entailed by such responsibilities weighed on formerly well-to-do families who were driven by financial reverses to sell their collections. It may also be pointed out—from an over-all point of view—that, aside from the exceptional possibility of exchange between museums, only freedom of dealings in privately owned works of art permits public collections still to purchase from time to time, in foreign countries, works representative of the national art, and thus to build up collections of particular interest in the study of a given school.

We know, nevertheless, that despite these considerations, the fear, often justified, of seeing

APPENDIX A. TEXTS OF A DRAFT INTERNATIONAL CONVENTION AND A DRAFT INTERNATIONAL DECLARATION FOR THE PROTECTION OF MONUMENTS AND WORKS OF ART IN TIME OF WAR

Draft Declaration Concerning the Protection of Historic Buildings and Works of Art in Time of War, 1939

The Governments of Belgium, Spain, the United States of America, Greece and the Netherlands,

Convinced that the loss of a masterpiece is a cultural impoverishment, not only for the nation which has produced it, but also for the entire international community;

Recognizing that, through the development of the technique of warfare, monuments and works of art are in increasing danger of destruction and that it is the duty of all States to take steps to safeguard them from the destructive effects of war;

Being of opinion that it is necessary to insure by appropriate regulations the full respect of the stipulations of the Hague Conventions of 1907 concerning the wartime protection of historic monuments, works of art and buildings dedicated to the arts,

Declare their willingness to conform to the following rules:

Article 1

The Governments signatory of the present Declaration consider that it is the duty of every State to organize the material protection of historic buildings and works of art situated within its territory against the destructive effects

national artistic treasures pass into the hands of foreign countries, coupled with the chauvinistic tendency now fairly prevalent everywhere, has caused a sharp increase in the prohibitions on the exportation of works of art, even those in private ownership, and that this principle is embodied in several legislations.

By recommending the strengthening, through international collaboration, of domestic laws protecting works of art, the principle of reciprocal aid should be given substance, the need for which has long since been recognized.¹⁰ The recent drafting of several laws¹¹ inspired by like considerations also provides a new basis for an attempt at general regulation. It may be deemed that, at least among certain States which have affirmed their desire to protect their national artistic heritage by extremely stringent measures against the exportation of works of art, there exists a solidarity which sooner or later must lead them to agreement on a system of mutual aid.

of war and undertake, each for its own part, to insure such protection by all the technical means at their disposal.

Article 2

The signatory Governments agree to take all possible precautions to spare historic monuments and buildings dedicated to the arts during their military operations. With regard to buildings situated on their own territory, they shall abstain from using them and their surroundings for purposes likely to expose them to attack.

They agree that historic buildings and works of art shall be immune from reprisals.

Article 3

The signatory Governments undertake to issue to their armies such recommendations and instructions as may insure the respect of historic monuments and works of art during military operations and to take such steps as may be necessary rigorously to prevent the looting or damaging of historic buildings and works of art in time of war.

¹⁰ The idea has been developed, especially since 1905, by Commander Fiorilli in a communication to the International Art Congress at Venice.

¹¹ See appendix B.

DECLASSIFIED
 AUTHORITY: AD 990096
 BY: T1 NARA Date 7/1/99
 RG 59
 Entry 5383
 Box 7

PRODUCED AT THE NATIONAL ARCHIVES

WORKS OF ART AND HISTORIC MONUMENTS

Article 4

The signatory Governments undertake to refrain from any act of hostility directed against any refuge that a Government may have organized in its territory to shelter in time of war works of art or of historic interest that may be threatened by military operations. These refuges must, however,

(a) be situated at a distance from the most likely theatres of military operations, from any military objective, from any main line of communication and from any large industrial centre;

(b) not be used directly or indirectly for purposes of national defense.

Article 5

The signatory Governments declare their readiness to consider the conclusion, with any other Government, or special agreements recognizing the special protection, during hostilities, of certain monuments, groups of monuments or built-up areas, the safeguarding of which is of exceptional importance for the international community.

Article 6

The protecting mark which, in conformity with Article 27 of the Annex to the Fourth Hague Convention of 1907, is to indicate historic monuments and buildings dedicated to the arts, shall take the form of a light blue triangle inscribed in a white disc. Its use shall be confined to a limited number of essentially important buildings which under no circumstances are to be used directly or indirectly for purposes of national defense, and whose surroundings shall comprise no installation of a nature to constitute a military objective. The marks affixed to historic monuments shall remain until the cessation of hostilities. The illumination of the marks at night shall be left to the discretion of the military authorities, but arrangements shall be made for their illumination at any time, for example in the event of an attack in error.

The signatory Governments shall take the necessary steps to punish any abuse of the protecting mark. The mark shall not be affixed without the previous permission of the competent governmental authority, and this permission shall be granted for each individual case.

The fact that only a few essentially important buildings are to bear the protecting mark shall not exempt the signatory States from taking every possible precaution to ensure that other monuments of artistic or historic interest shall be protected during military operations.

Article 7

Should a State which is at war with another State feel called upon to place under shelter in the territory of another country all or part of the works of art in its possession, the signatory Governments will give it their friendly aid for the carrying out of the precautionary measures so taken.

Article 8

In militarily occupied territory, monuments and museums, as well as other buildings of artistic or historic

interest, shall be brought to the notice of occupying troops, who shall be warned that the preservation of these buildings is the concern of the entire international community.

During military occupation, the national staff appointed to preserve and guard refuges, museums, monuments or other buildings of artistic or historic interest must be retained in their employment unless there is any legitimate military reason for their dismissal. They shall, however, be in the same position in relation to the military authorities of occupation as the civil population of the occupied territories.

The authorities of the occupying State shall take all necessary steps for the preservation of any monuments which may be damaged. Such steps shall not, however, amount to more than temporary strengthening.

Article 9

The signatory Governments agree to have any acts committed in breach of the provisions of this Declaration established by a Commission of Inquiry composed of two members nominated by the Government of the belligerent State which alleges such breach, and two members nominated by the Government of the other belligerent State. These four members shall appoint a fifth, who will act as chairman.

The five members of the Commission of Inquiry shall be nationals of neutral countries, selected from among the higher staff of departments or institutions of antiquities and fine arts, the members of the Permanent Court of Arbitration or from among jurists of world-wide reputation.

The Commission may seek such technical collaboration as may seem necessary for the performance of its task.

The conclusions of the Commission of Inquiry shall be adopted by majority vote.

The Commission shall communicate its conclusions to each of the Governments bound or not bound by the present Declaration.

The Commission may fulfill any other mission entrusted to it by belligerent States with a view to insuring the protection aimed at in this Declaration.

Article 10

The signatory Governments undertake to afford each other every possible assistance in the execution of the provisions of the present Declaration.

They shall lend their good offices to the States at war regarding any measures taken for the protection of monuments and works of art, and for the settlement of any dispute concerning the execution or interpretation of the provisions of the present Declaration.

The signatory Governments shall make every effort to obtain the accession of the other Governments to the present Declaration.

Accessions may be expressed in the form of a simple communication addressed to one of the signatory Governments, which shall transmit it to all the others.

Preliminary Draft International Convention for the Protection of Historic Buildings and Works of Art in Time of War

The High Contracting Parties,

Whereas the preservation of artistic treasures is a concern of the community of States and it is important that such treasures should receive international protection;

Being convinced that the destruction of a masterpiece, whatever nation may have produced it, is a spiritual impoverishment for the entire international community;

Guided by the stipulations of the Hague Conventions of 1899 and 1907 concerning the protection of buildings dedicated to the arts;

Recognising that through the development of the technique of warfare monuments and works of art are in increasing danger of destruction, and that it is the duty of the High Contracting Parties to take steps to safeguard them from the destructive effects of war;

Being of opinion that such defensive action cannot be effectual unless it has already been prepared in time of peace organised both nationally and internationally;

Have appointed as their Plenipotentiaries:

Who, having exchanged their full powers, found in good and due form, have agreed upon the following provisions:

Article 1

The High Contracting Parties deem it to be incumbent upon every Government to organise the defence of historic buildings and works of art against the foreseeable effects of war, and undertake, each for his own part, to prepare that defence in time of peace.

Article 2

1. The High Contracting Parties agree to inform one another, whenever they see their way to do so, of the steps taken, prepared, or contemplated by their respective administrations in execution of Article 1 of the present Convention.

2. The administrations of the Contracting States may, if they so desire, secure the technical collaboration of the International Museums Office in organising the protection of their artistic and historic treasures.

Article 3

1. The High Contracting Parties undertake to introduce into their military regulations and instructions such recommendations as may ensure that historic buildings and works of art are respected.

2. Public authorities and military commands shall take steps to impress this conception of respect upon their troops, in order that the latter may co-operate in protecting historic buildings and works of art.

3. The High Contracting Parties undertake to take steps to punish in time of war any person looting or damaging monuments and works of art.

4. They will communicate to one another the texts of such laws or regulations as they may have enacted in application of this Article.

WORKS OF ART AND HISTORIC MONUMENTS

Article 4

1. The High Contracting Parties undertake to refrain from any act of hostility directed against any refuge that a High Contracting Party may have designated in his territory to shelter in time of war works of art or of historic interest that may be threatened by military operations.

2. The number of such refuges shall be limited; they may take the form either of buildings erected for the purpose or of existing historic buildings or groups of buildings.

3. To secure immunity, refuges must:

(a) be situated at a distance of not less than 20 kilometres from the most likely theatres of military operations, from any military objective, from any main line of communication, and from any large industrial centre (this distance may be reduced in certain cases in countries with a very dense population and small area);

(b) have already been notified in time of peace;

(c) not be used directly or indirectly for purposes of national defence;

(d) be open to international inspection during hostilities.

4. The military authorities shall have access to the refuges at any time for the purpose of satisfying themselves that they are not being used in any way contrary to the present Convention.

Article 5

1. The High Contracting Parties, acknowledging it to be their joint and several duty to respect and protect all monuments of artistic or historic interest in time of war, agree to take all possible precautions to spare such monuments during operations and to ensure that their use or situation shall not expose them to attack.

2. Special protection shall be given to monuments or groups of monuments which:

(a) are isolated from any military objective within a radius of 500 metres;

(b) are not directly or indirectly used for purposes of national defence;

(c) have already been notified in time of peace;

(d) are open to international inspection during hostilities.

Article 6

Any High Contracting Party may at any time declare that he is prepared to conclude with any other High Contracting Party, on a reciprocal basis, special agreements extending the immunity granted to refuges to certain monuments or groups of monuments the preservation of which, although they do not satisfy the conditions laid down in Article 4, is of fundamental importance to the international community.

English text of the International Museums Office. See League of Nations, Official Journal, Nov. 1938, pp. 937-941.

DECLASSIFIED AUTHORITY: DND 999096 BY: T1 NARA DATE: 7/6/99

RG 59 Entry 5383 Box 1

111508

WORKS OF ART AND HISTORIC MONUMENTS

Article 7

1. Refuges to which immunity has been granted and buildings enjoying the special protection provided for in Article 5, paragraph 2, shall be distinguished by a protecting mark.

2. This mark shall take the form of a light blue triangle inscribed in a white disc.

3. The location and degree of visibility of protecting marks shall be left to the judgment of the authorities responsible for defence.

4. The affixing of protecting marks in time of peace shall be optional.

5. The High Contracting Parties undertake to guard against any misuse of protecting marks, and to punish the same should occasion arise.

6. Monuments and museums shall be brought to the notice of the civil population, who shall be requested to protect them, and of the occupying troops, who shall be informed that they are dealing with buildings the preservation of which is the concern of the entire International community.

7. The manner in which this shall be done is left to the judgment of national authorities. In the case, however, of buildings to which special protection cannot be granted, the marks provided must be different from that described in paragraph 2 of this Article.

Article 8

The High Contracting Parties agree that historic buildings and works of art shall be immune from reprisals.

Article 9

1. Should a State which is at war with another State feel called upon to place under shelter in the territory of another country all or any of the works of art in its possession, the High Contracting Parties agree to grant immunity to the means of transport employed for that purpose, provided that the transfer is carried out under international supervision.

2. A belligerent State shall enjoy this immunity once only in respect of each work of art, and only in the direction of the country according to hospitality.

3. During transport and while stored abroad, works of art shall be exempt from confiscation and may not be disposed of either by the depositor or by the depository.

Article 10

The High Contracting Parties, recognising the necessity of extending the protection contemplated by this Convention to historic buildings and works of art threatened by disturbances of armed conflicts within a country, agree as follows:

1. They may lend their friendly assistance to the contending parties for the purpose of safeguarding the threatened historic and artistic treasures.

2. They may receive and shelter in their respective territories works of art coming from a country in which civil strife is prevalent, and endangered by acts arising out of such strife.

3. Museums and collections of a public character may store works of art abroad during a period of civil strife.

So long as such works remain abroad, the museums which deposited them shall be deemed their owners.

Such deposits shall not be restored until the civil strife is at an end.

During transport and for the period of their deposit, such works of art shall be exempt from confiscation, and may not be disposed of either by the depositor or by the depository.

4. Works of art in private ownership may receive protection in foreign territory, provided that they are there deposited on the responsibility and through the agency of a national museum or collection of a public character. The same rules concerning deposit and restoration shall apply, and restoration may be effected only through the agency of the depositing institution.

Article 11

1. International Commissions of Inspection shall satisfy themselves while military operations are proceeding that no breach of the provisions of this Convention is committed.

2. Offences committed in breach of the provisions of this Convention shall be established by the International Commission of Inspection operating in the territory in which they were committed.

3. Details of the constitution and operation of these Commissions are laid down in the Regulations for the execution of this Convention.

Article 12

1. The High Contracting Parties agree to meet from time to time in general conference to decide conjointly upon measures for ensuring the application of this Convention, and to review, if necessary, the Regulations for its execution.

2. The General Conference shall appoint its Standing Committee and Secretariat, whose powers in the intervals between sessions of the Conference shall be defined by the Regulations for the execution of this Convention.

Article 13

In the event of disagreement between the belligerents as to the application of the provisions of this Convention, the Contracting States entrusted with the interests of the belligerents and the Standing Committee of the General Conference shall lend their good offices for the settlement of the dispute.

FINAL PROVISIONS

Regulations for the Execution of the Convention

Article 1

As soon as the Convention comes into force, there shall be drawn up an international list of commissioners to whom missions arising out of the execution of the Convention may be entrusted during the period of hostilities. This list shall consist of persons of acknowledged impartiality, selected by the Standing Committee of the General Con-

ference on the nomination of qualified institutions in the contracting countries (Courts of Justice, Government Departments, Academies, Universities and Museums).

Article 2

1. As soon as the Convention has been ratified, each of the High Contracting Parties shall designate the refuges which are to enjoy in his territory the immunity provided for in Article 4 of the Convention, and the monuments which are to enjoy the special protection provided for in Article 5, paragraph 2.

2. Each High Contracting Party shall send to the Standing Committee of the Conference a list of the refuges and monuments designated, together with the written approval of the International Verification Commission referred to in Article 4 of these Regulations.

Article 3

1. The International Verification Commission shall certify that the refuges and monuments designated satisfy the conditions laid down in Articles 4 and 5 of the Convention respectively. It may also give an opinion on the number of refuges and the material conditions in which they are fitted up.

2. In the case of countries with a dense population and small area, it shall rest with the Commission to decide what minimum distance may be allowed between the refuges and the danger-points mentioned in Article 4, paragraph (a), of the Convention.

Article 4

The International Verification Commissions shall consist of:

(a) a representative of the State in whose territory the refuges and monuments have been designated;

(b) a commissioner on the international list, appointed by the Standing Committee, who shall act as Chairman of the Commission;

(c) a representative of each of such States as the Standing Committee may have named.

Article 5

1. Applications for the appointment of a Verification Commission must be sent to the Standing Committee of the Conference, together with a list of the refuges and monuments designated. The Standing Committee shall immediately carry out the necessary consultations with a view to the definitive appointment of the Commission, which shall meet at the invitation of the Government concerned and at such place as the latter may appoint.

2. The Commission's work of verification shall be conducted on the spot, and shall, if it thinks this necessary, deal separately with each of the refuges and monuments designated.

3. The conclusions of the Verification Commission shall be delivered to the member of the Commission representing the Government concerned.

4. The conclusions of the Verification Commission must be unanimously agreed by the members present.

WORKS OF ART AND HISTORIC MONUMENTS

Article 6

1. Each of the High Contracting Parties who has made the declaration referred to in Article 6 of the Convention shall forward to the Standing Committee of the General Conference, as soon as he thinks fit, a list of the monuments or groups of monuments for which he desires to secure immunity.

2. The Standing Committee shall communicate this list to each of the High Contracting Parties, and shall lend them its good offices with a view to the conclusion, on a reciprocal basis, of the immunity agreements contemplated in Article 6 of the Convention.

Article 7

1. For each of the Contracting States involved in the conflict, an International Commission of Inspection, as provided in Article 11 of the Convention, shall be appointed by the Standing Commission immediately upon the outbreak of hostilities. It shall comprise: a commissioner from a neutral country, selected from the international list and appointed by the Standing Committee to act as Chairman of the Commission; a representative of the State in whose territory the inspection is to be carried out; and a representative (or his delegate) of the State to which the interests of the other belligerent in the same territory have been entrusted. This last-mentioned member may likewise be selected from among the commissioners on the international list belonging to neutral countries.

2. The Chairmen of International Commissions of Inspection, or their delegates, may at any time inspect refuges and monuments enjoying the special protection provided for in Article 5 of the Convention.

3. The Standing Committee may attach additional commissioners to the Chairman of the Commission, as the requirements of inspection may dictate.

4. The Chairmen of International Commissions of Inspection may consult experts whose advice seems to them necessary in the performance of the missions entrusted to them.

5. The conclusions of International Commissions of Inspection shall be adopted by majority vote. The representatives of the parties concerned shall have no vote.

6. The conclusions of International Commissions of Inspection shall be submitted to the Standing Committee, which shall communicate them to each of the High Contracting Parties, and shall decide whether they shall also be made public.

7. The Standing Committee shall decide upon the procedure to be followed for establishing breaches of or exceptions to the Convention for which no special provision has been made.

Article 8

1. Works of art may not be transferred from one refuge to another unless this is necessary for their safety.

2. As soon as evacuation is completed, the protecting mark must be removed.

3. Exceptionally, should there be any obstacle to the transfer of works of art to a regular refuge, the respon-

DECLASSIFIED AUTHORITY: 11D 99098 BY: 71 NARA DATE: 11/16/99

RG 59 Entry 5383 Box

111509

WORKS OF ART AND HISTORIC MONUMENTS

sible authorities shall decide what steps are to be taken to store them temporarily in a place of safety. Such temporary store may be shown by the protecting mark, which shall be affixed by the International Commission of Inspection, the latter having the sole right to affix it.

4. In occupied territories, any other exceptional measures that may be dictated by unforeseeable circumstances and by the necessity of preserving monuments and works of art must be taken with the agreement of the International Commission of Inspection.

5. In occupied territories, refuges and monuments enjoying special protection shall be under the supervision of the International Commission of Inspection of the occupying State.

6. The International Commission of Inspection, jointly with the authorities of the occupying State, shall take all necessary steps for the preservation of any monuments which may be damaged. Such steps shall not, however, amount to more than temporary strengthening.

Article 9

During military occupation, the national staff appointed to preserve and guard refuges, museums, or monuments must be retained in their employment, unless there is any legitimate military reason for their dismissal. They shall, however, be in the same position in relation to the military authorities of occupation as the civil population of the occupied territories.

Article 10

In the event of the transfer of works of art to the territory of a foreign country as provided in Article 9 of the Convention, the following rules shall apply:

1. Transport shall be carried out in collaboration with the International Commission of Inspection, to which an inventory of the works to be transferred shall be delivered.

2. The International Commission of Inspection shall give notice of the proposed transfer to the Standing Committee of the General Conference, which shall inform the other belligerent or belligerents. Transport shall not take place until the latter have been so informed.

3. The convoy shall be covered by the protecting mark, and accompanied by a delegate of the International Commission of Inspection, or by a neutral Commissioner appointed for the purpose by the Standing Committee.

4. For transport otherwise than by land, the Standing Committee shall lay down such additional rules as may be applicable in each particular case.

Article 11

For the purposes of the application of Article 10 of the Convention, the Standing Committee of the Conference shall lend its good offices to the contending parties with a view to taking all necessary steps for the protection of monuments and works of art threatened by the operations.

Article 12

1. The General Conference provided for in Article 12 of the Convention shall consist of one representative of each of the Contracting States.

2. The General Conference shall meet whenever necessary, but at least once in every five years. Any State may entrust its representation to another Contracting State, which shall in such case have as many votes as the number of States it represents.

3. The first session of the General Conference shall be held in the year following the entry into force of the Convention.

4. The Conference shall fix the number and the term of office of members of its Standing Committee, and shall designate the States from which they shall be drawn. Any State may entrust its representation to another State represented on the Standing Committee, and such State shall then have as many votes as the number of States it represents.

5. The General Conference shall decide all matters connected with the application and proper operation of the Convention, and in general all questions relating to the protection of the artistic and historic heritage of the international community in time of war.

6. The Standing Committee shall perform the functions assigned to it by the Convention.

7. In the intervals between sessions of the Conference, the Standing Committee shall settle all questions relating to the application of the Convention, except as the Conference may otherwise decide.

8. The Standing Committee shall meet whenever necessary, but at least once in each year.

9. The Standing Committee shall elect its Chairman and shall determine the powers to be vested in him and in the Secretariat of the Conference during the intervals between the Committee's sessions.

10. The chairmanship may not be held in time of war by a national of a belligerent country.

11. In time of war, any belligerent countries which are not represented on the Standing Committee shall appoint representatives, whose term of office shall come to an end as soon as their respective countries cease to be belligerents. If, however, it is impossible to balance the votes of the representatives of the belligerent countries on the Standing Committee, the voices of all of them shall become purely advisory. If the number of deliberative voices is thereby reduced to less than three, the Standing Committee may unanimously co-opt members belonging to neutral countries as substitutes for other Contracting States.

12. The decisions of the Conference and of the Standing Committee shall be taken by a two-thirds majority of the members present; but unanimity must be secured for decisions of the Conference involving the special interests of Contracting States.

13. Two thirds of the members of the General Conference and of the Standing Committee shall form a quorum.

14. The General Conference and the Standing Committee shall themselves determine the venue of their meetings. Any State may invite the General Conference and the Standing Committee to hold their sessions in its territory.

15. In time of war, if the State in whose territory the Secretariat has its headquarters is a belligerent, the Standing Committee shall decide whether it shall be transferred to the territory of another State.

11510

WORKS OF ART AND HISTORIC MONUMENTS

tion, members of International Commissions of Inspection, Commissioners entrusted with missions, and members of the Standing Committee and the Secretariat shall enjoy all the privileges and immunities belonging to international agents.

16. Any High Contracting Party may at any time call the attention of the Standing Committee to any circumstance affecting the application or proper operation of the measures contemplated by the Convention.

17. In the discharge of their duties under the Conven-

APPENDIX B. TEXTS OF DRAFT INTERNATIONAL CONVENTIONS FOR THE PROTECTION OF NATIONAL COLLECTIONS OF ART AND HISTORY

Draft International Convention on the Repatriation of Objects of Artistic, Historical or Scientific Interest Which Have Been Lost or Stolen or Unlawfully Alienated or Exported

FIRST DRAFT, 1933

The High Contracting Parties,
Being anxious to conform to the spirit of the recommendations made by the Assembly of the League of Nations on October 10th, 1932;

And desirous of attesting their mutual confidence and friendship by insuring one another mutual assistance in the recovery of objects removed from their respective national artistic heritages;

Having concluded among themselves the following Convention:

Article 1

The High Contracting Parties undertake not to recognize the validity of transactions in regard to movable or immovable objects of an artistic, historical or scientific character in the event of any breach of the provisions whereby any one of the said Parties may, in accordance with its legislation, have prohibited the alienation or export of such objects.

Article 2

The High Contracting Parties undertake to lend one another their good offices with a view to the restitution or repatriation as speedily as possible of any object covered by the definition given in Article 1 of the present Convention which may have been introduced into their territory in consequence of loss, theft or alienation or illicit export.

Article 3

The bona fide purchaser shall be entitled to compensation not exceeding the price and the genuine costs of the contract actually paid by him.

Article 4

The bona fides of the purchaser may not be admitted if notice of the disappearance of the object and a description enabling it to be identified have been given, prior to the purchase, in an official publication of the International Museums Office attached to the League of Nations.

Article 5

In the event of the disappearance of any objects covered by the present Convention, the institutions or persons en-

titled to claim them must notify the International Museums Office, which will publish periodical lists of objects that have disappeared.

Article 6

No claim can be accepted unless notice has been given of the disappearance of the object, as specified above. Claims must be made within five years of such notification; otherwise limitation shall operate.

Furthermore, each of the High Contracting Parties reserves the right to require, as an additional condition, the insertion of a notice in a Government publication, such Party itself to arrange for the insertion within fifteen days of the receipt of the publication of the International Museums Office in which notice of the disappearance of the object is given.

Article 7

Should any dispute arise between the High Contracting Parties as to the interpretation or application of the present Convention, and should it be impossible to reach a satisfactory solution of such dispute through diplomacy, it shall be settled in accordance with the provisions in force between the Parties with reference to the settlement of International disputes.

Should no such provisions exist between the Parties to the dispute, the latter shall be submitted to an arbitral or judicial procedure. Failing agreement upon the choice of some other tribunal, the Parties shall, at the request of any one of them, submit the dispute to the Permanent Court of International Justice if they are all Parties to the Protocol of December 16th, 1920, regarding the Statute of the aforesaid Court, or, if they are not all Parties to the Protocol, they shall submit the dispute to a Court of Arbitration constituted in accordance with the Hague Convention of October 18th, 1907, for the Pacific settlement of International Disputes.

Article 8

The present Convention, of which the French and English texts are equally authentic, shall bear this day's date, and shall be open until for signature on behalf of any Member of the League of Nations or any nonmember State to which the Council of the League shall have communicated a copy of the said Convention for that purpose.

English text of the Intellectual Co-operation Organization, League of Nations.

DECLASSIFIED
Authority: AFD 99096
By: T. MARA Date: 7/16/99
59 5383
RG Entry Box

Article 9
The present Convention shall be ratified. The instruments of ratification shall be sent to the Secretary-General of the League of Nations, who shall give notice of the ratification to all the Members of the League and to the nonmember States referred to in the preceding article.

Article 10
After the ratification of the present Convention by any Member of the League of Nations and any nonmember State referred to in Article 9, the instruments of accession shall be sent to the Secretary-General of the League of Nations, who shall give notice of the deposit thereof to all the Members of the League and to the nonmember States referred to in the preceding article.

Article 11
The present Convention shall come into force when the Secretary-General of the League of Nations shall have received two ratifications or accessions. It shall be registered by the Secretary-General of the League of Nations on the day of its entry into force.

Article 12
The present Convention may be denounced by a notification addressed to the Secretary-General of the League of Nations. Such denunciation shall take effect one year after its receipt. The Secretary-General shall notify all the Members of the League and the nonmember States referred to in Article 9 of any denunciations so received.

Article 13
The cost of repatriation of the objects to which the present Convention applies shall be borne by the claimant State, which may, if necessary, take proceedings against the parties benefiting by the said repatriation. Similarly, any costs incurred in connection with the publication to which 12 (a) relates, shall be borne by the claimant State.

Article 14
The present Convention shall not in any way prejudice agreements already in existence, or hereafter to be concluded, between the High Contracting Parties with regard to judicial assistance in criminal cases.

Article 15
Subject to the provisions of Article 2, all communications regarding the application of the present Convention shall take place through the diplomatic channel. Nevertheless, in urgent cases, communications between the interested administrations may be with direct or through the International Museums Office.

Article 16
The High Contracting Parties undertake to communicate to one another as speedily as possible, through the International Museums Office, the names of the persons who have been named as their plenipotentiaries.

Article 17
The High Contracting Parties, on receipt of the publication of the International Museums Office containing the notice of the disappearance of the object, shall communicate to their respective frontier authorities a description of the object that has disappeared. They shall also give the widest publicity to the description of the object.

Article 18
The State applied to shall lend its good offices with a view to the repatriation as speedily as possible of any object referred to in Article 1. It shall afford the claimant State all such assistance as its laws permit, especially in administrative and fiscal matters.

Article 19
If necessary, the authorities of the State applied to shall, at the request of the claimant State or of their own motion, seize the object claimed, and take any other conservatory measures in accordance with their laws. The object seized shall in such case be deposited, for preference, in the custody of a Museum Conservator.

Article 20
The State which has paid the aforesaid compensation shall retain the right to take proceedings against all non-bona-fide third parties.

Article 21
In the absence of an agreement, the compensation referred to in the preceding article may be decided by arbitral procedure, by common consent of the parties. The International Museums Office shall draw up to that end specimen arbitral procedure rules for submission to the parties.

archaeological, historic or artistic interest which are in its (the former's) territory in consequence of having been lost or stolen or alienated or exported contrary to the laws of the claimant State.

Article 2
The authorities of the claimant State shall be the sole judges of the nature and value of the aforesaid objects.

Article 3
In the cases referred to in Article 1, the Governments, or such qualified institutions as they may have named when depositing their ratifications or subsequently, must notify the International Museums Office of the disappearance of the object with a description sufficiently complete to enable it to be identified exactly.

Article 4
1. The International Museums Office shall publish periodical lists of objects that have disappeared. 2. Furthermore, each of the High Contracting Parties may lay down, as an additional condition, that a notice be inserted in an official publication of its own country, the insertion of such notice to be effected by the High Contracting Party aforesaid within thirty days of the receipt of the publication of the International Museums Office in which notice of the disappearance of the object is given.

Article 5
1. The High Contracting Parties, on receipt of the publication of the International Museums Office, shall communicate to their respective frontier authorities a description of the object that has disappeared. 2. They shall also give the widest publicity to the description of the object.

Article 6
1. The State applied to shall lend its good offices with a view to the repatriation as speedily as possible of any object referred to in Article 1. It shall afford the claimant State all such assistance as its laws permit, especially in administrative and fiscal matters. 2. If necessary, the authorities of the State applied to shall, at the request of the claimant State or of their own motion, seize the object claimed, and take any other conservatory measures in accordance with their laws. The object seized shall in such case be deposited, for preference, in the custody of a Museum Conservator.

Article 7
1. Public documents drawn up in the territory, of the claimant State by the authorities of the same and bearing an official seal shall have the same force of authenticity, when produced in the territory of the State applied to in support of a claim for repatriation, as public documents drawn up in the territory of the State applied to, and shall not require legalization by the diplomatic or consular authority. 2. On receipt of an official request submitted through the intermediary of the International Museums Office, the Minister of Justice or other competent authority of any High Contracting Party shall furnish the texts of the laws in force in the territory of the said High Contracting Party, together with information upon any point of law in dispute, should such texts or information prove to be needed in connection with a claim for repatriation.

Article 8
A bona fide acquirer shall not be required to surrender an object claimed without compensation, such compensation to be paid by the claimant State.

Article 9
1. The bona fides of the acquirer may not be admitted if he has acquired the object more than one month after the appearance, as provided in Article 3, of the official publication of the International Museums Office containing the notice of the disappearance of the object. The said term of one month for the protection of the acquirer's bona fides shall apply in the case of European countries, countries other than European bordering on the Mediterranean, and the United States of America or Canada; in the case of other countries, the term shall be three months. 2. Should the State applied to decide to make an additional publication of the kind for which Article 3 provides, the term shall be thirty days from the date of the appearance of the additional publication.

Article 10
1. The compensation due to the bona fide acquirer under Article 8 shall consist of the price and the genuine costs of the contract actually paid by him. Any expenditure incurred by the acquirer which was necessary for the restoration and preservation of the object shall also be refunded. 2. The State which has paid the aforesaid compensation shall retain the right to take proceedings against all non-bona-fide third parties.

Article 11
1. In the absence of an agreement, the compensation referred to in the preceding article may be decided by arbitral procedure, by common consent of the parties. 2. The International Museums Office shall draw up to that end specimen arbitral procedure rules for submission to the parties.

Article 12
The Office may appoint the arbitrators and, when necessary, the umpire.

Article 13
1. No claim for repatriation based on the present Convention shall be allowed save as hereinafter provided—that is to say: (a) The notification for which Article 2 provides must have been made to the International Museums Office and published in an official publication of the latter, as provided in Article 3; (b) The claim must have been made within five years of publication; (c) The object must have been in the possession of the bona-fide acquirer for less than ten years. 2. In the calculation of the last-named term, the period during which the object has been in the possession of the predecessors in title, being likewise bona fide, of the person against whom the claim is directed shall also be taken into account. 3. The application of the provisional measures to which Article 5, paragraph 2, relates shall not be subject to the conditions stipulated in subparagraphs (a) and (c) of the present article.

Article 14
1. The cost of repatriation of the objects to which the present Convention applies shall be borne by the claimant State, which may, if necessary, take proceedings against the parties benefiting by the said repatriation. 2. Similarly, any costs incurred in connection with the publication to which 12 (a) relates, shall be borne by the claimant State.

Article 7
1. Public documents drawn up in the territory, of the claimant State by the authorities of the same and bearing an official seal shall have the same force of authenticity, when produced in the territory of the State applied to in support of a claim for repatriation, as public documents drawn up in the territory of the State applied to, and shall not require legalization by the diplomatic or consular authority. 2. On receipt of an official request submitted through the intermediary of the International Museums Office, the Minister of Justice or other competent authority of any High Contracting Party shall furnish the texts of the laws in force in the territory of the said High Contracting Party, together with information upon any point of law in dispute, should such texts or information prove to be needed in connection with a claim for repatriation.

Article 8
A bona fide acquirer shall not be required to surrender an object claimed without compensation, such compensation to be paid by the claimant State.

Article 9
1. The bona fides of the acquirer may not be admitted if he has acquired the object more than one month after the appearance, as provided in Article 3, of the official publication of the International Museums Office containing the notice of the disappearance of the object. The said term of one month for the protection of the acquirer's bona fides shall apply in the case of European countries, countries other than European bordering on the Mediterranean, and the United States of America or Canada; in the case of other countries, the term shall be three months. 2. Should the State applied to decide to make an additional publication of the kind for which Article 3 provides, the term shall be thirty days from the date of the appearance of the additional publication.

Article 10
1. The compensation due to the bona fide acquirer under Article 8 shall consist of the price and the genuine costs of the contract actually paid by him. Any expenditure incurred by the acquirer which was necessary for the restoration and preservation of the object shall also be refunded. 2. The State which has paid the aforesaid compensation shall retain the right to take proceedings against all non-bona-fide third parties.

Article 11
1. In the absence of an agreement, the compensation referred to in the preceding article may be decided by arbitral procedure, by common consent of the parties. 2. The International Museums Office shall draw up to that end specimen arbitral procedure rules for submission to the parties.

Article 12
The Office may appoint the arbitrators and, when necessary, the umpire.

Article 13
1. No claim for repatriation based on the present Convention shall be allowed save as hereinafter provided—that is to say: (a) The notification for which Article 2 provides must have been made to the International Museums Office and published in an official publication of the latter, as provided in Article 3; (b) The claim must have been made within five years of publication; (c) The object must have been in the possession of the bona-fide acquirer for less than ten years. 2. In the calculation of the last-named term, the period during which the object has been in the possession of the predecessors in title, being likewise bona fide, of the person against whom the claim is directed shall also be taken into account. 3. The application of the provisional measures to which Article 5, paragraph 2, relates shall not be subject to the conditions stipulated in subparagraphs (a) and (c) of the present article.

Article 14
1. The cost of repatriation of the objects to which the present Convention applies shall be borne by the claimant State, which may, if necessary, take proceedings against the parties benefiting by the said repatriation. 2. Similarly, any costs incurred in connection with the publication to which 12 (a) relates, shall be borne by the claimant State.

Article 15
The present Convention shall not in any way prejudice agreements already in existence, or hereafter to be concluded, between the High Contracting Parties with regard to judicial assistance in criminal cases. The provisions concerning such assistance shall likewise be applicable in cases of unlawful export, if such export is a criminal offence under the law both of the claimant State and of the State applied to. The term stealing as used in Article 1 shall cover any offence in criminal law against public or private property rights.

Article 16
Subject to the provisions of Article 2, all communications regarding the application of the present Convention shall take place through the diplomatic channel. Nevertheless, in urgent cases, communications between the interested administrations may be with direct or through the International Museums Office.

Article 17
The High Contracting Parties undertake to communicate to one another as speedily as possible, through the International Museums Office, the names of the persons who have been named as their plenipotentiaries.

Article 13
1. No claim for repatriation based on the present Convention shall be allowed save as hereinafter provided—that is to say: (a) The notification for which Article 2 provides must have been made to the International Museums Office and published in an official publication of the latter, as provided in Article 3; (b) The claim must have been made within five years of publication; (c) The object must have been in the possession of the bona-fide acquirer for less than ten years. 2. In the calculation of the last-named term, the period during which the object has been in the possession of the predecessors in title, being likewise bona fide, of the person against whom the claim is directed shall also be taken into account. 3. The application of the provisional measures to which Article 5, paragraph 2, relates shall not be subject to the conditions stipulated in subparagraphs (a) and (c) of the present article.

Article 14
1. The cost of repatriation of the objects to which the present Convention applies shall be borne by the claimant State, which may, if necessary, take proceedings against the parties benefiting by the said repatriation. 2. Similarly, any costs incurred in connection with the publication to which 12 (a) relates, shall be borne by the claimant State.

Article 15
The present Convention shall not in any way prejudice agreements already in existence, or hereafter to be concluded, between the High Contracting Parties with regard to judicial assistance in criminal cases. The provisions concerning such assistance shall likewise be applicable in cases of unlawful export, if such export is a criminal offence under the law both of the claimant State and of the State applied to. The term stealing as used in Article 1 shall cover any offence in criminal law against public or private property rights.

Article 16
Subject to the provisions of Article 2, all communications regarding the application of the present Convention shall take place through the diplomatic channel. Nevertheless, in urgent cases, communications between the interested administrations may be with direct or through the International Museums Office.

Article 17
The High Contracting Parties undertake to communicate to one another as speedily as possible, through the International Museums Office, the names of the persons who have been named as their plenipotentiaries.

DECLASSIFIED
Authority: AWD 999096
By: 71 NARA Date: 7/16/99

RG 59
Entry 5383
Box 1

111511

WORKS OF ART AND HISTORIC MONUMENTS

national Museums Office, the text of such laws and regulations as may be enacted for the purpose of carrying out the present Convention.

Article 17

1. Any High Contracting Party may declare at the time of its signature, ratification or accession that it limits its obligations to the protection of objects belonging to the State or to public bodies.

2. It may declare that, so far as objects belonging to individuals are concerned, it limits its obligations to the case of objects which are in its territory as a result of loss or theft.

3. It may also declare that it intends to make the acceptance of any application for repatriation dependent upon fulfilment of the additional condition regarding the insertion of the notice provided for in Article 3, paragraph 2.

4. Any High Contracting Party may at any moment notify the Secretary-General of the League of Nations that it waives the reservations of the present article.

5. The Secretary-General shall notify all the Members of the League of Nations and the nonmember States referred to in Article 19 of any declarations received under the present article.

Article 18

1. Should any dispute arise between the High Contracting Parties as to the interpretation or application of the present Convention, and should it be impossible to reach a satisfactory solution of such dispute through the diplomatic channel, it shall be settled in accordance with the provisions in force between the Parties with reference to the settlement of international disputes.

2. Should no such provisions exist between the Parties to the dispute, the latter shall be submitted to the judicial procedure provided in the Protocol of December 16th, 1920. If they are not all Parties to the Protocol, they shall, at the request of any one of them, submit the dispute to a Court of Arbitration constituted in accordance with the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 19

The present Convention, of which the French and English texts are equally authentic, shall bear this day's date and shall be open until . . . for signature on behalf of any Member of the League of Nations or any nonmember State to which the Council of the League shall have communicated a copy of the Convention for that purpose.

Article 20

The present Convention shall be ratified. The instruments of ratification shall be deposited with the Secretary-General of the League of Nations, who shall give notice of the deposit thereof to all the Members of the League and to the nonmember States referred to in the preceding article.

Article 21

1. On and after . . . any Member of the League of Nations and any nonmember State referred to in Article 19 may accede to the present Convention.

2. The instruments of accession shall be deposited with the Secretary-General of the League of Nations, who shall give notice of the deposit thereof to all the Members of the League and to the nonmember States referred to in the aforesaid article.

Article 22

1. The present Convention shall come into force sixty days after the Secretary-General of the League of Nations has received two ratifications or accessions.

2. It shall be registered by the Secretary-General on the day of its entry into force.

3. Subsequent ratifications or accessions shall take effect sixty days from the date of their receipt by the Secretary-General.

Article 23

1. The present Convention shall be valid for five years from its entry into force. It shall remain in force for a further period of five years, and so on successively, in respect of such Contracting Parties as have not denounced it at least six months before the expiry of the term.

2. The Secretary-General shall notify all the Members of the League and the nonmember States referred to in Article 19 of any denunciations so received.

3. It is understood that the present Convention shall apply only to disappearances of objects occurring after the assumption by the High Contracting Parties of their present obligations.

Article 24

1. Steps shall be taken to review the present Convention, on request to that effect being made to the Secretary-General of the League of Nations by one quarter of the States Parties to the Convention.

2. The Council of the League of Nations may also take the initiative with a view to revision of the Convention.

Article 25

1. Any High Contracting Party may declare, at the time of its signature, ratification or accession, that, in accepting the present Convention, it assumes no obligation in respect of all or any of its colonies, protectorates, overseas territories or territories placed under its suzerainty or mandate.

2. Any High Contracting Party may subsequently notify the Secretary-General of the League of Nations that the present Convention is to apply to all or any of the territories in respect of which it has made a declaration as provided in the preceding paragraph.

3. The Secretary-General shall notify all the Members of the League and the nonmember States referred to in Article 19 of any declarations received under the present article.

Documents & State Papers

Draft International Convention for the Protection of National Collections of Art and History

THIRD DRAFT, 1939

Final text to be submitted to the Diplomatic Conference

The High Contracting Parties, . . . Noting the too frequent occurrence of acts prejudicial to the integrity of the artistic and historic possessions of States.

And being desirous of facilitating by international mutual assistance the restitution of objects abstracted from their respective national collections.

Have appointed as their Plenipotentiaries:

Who, having communicated their full powers found to be in good and due form, have agreed upon the following provisions:

SECTION I. General Provisions

Article 1

1. The present Convention concerns objects of palaeontological, archaeological, historic or artistic interest belonging to, or in the custody of, the State or of Public institutions.

2. For the purposes of the present Convention, "public institutions" shall be taken to mean institutions recognized as such in their respective countries.

3. The present Convention shall apply only to objects individually catalogued as having formed part of the collections belonging to the High Contracting Parties before the dispossession giving rise to a claim for restitution.

Article 2

1. Claims for restitution may be made in respect of any of the objects referred to in Article 1 which may be found on the territory of a High Contracting Party as the result of a loss or of an infringement of property rights punishable under the criminal law of the claimant State.

2. Claims may also be made for the restitution of objects transferred to the territory of a High Contracting Party with a view to exhibition, temporary deposit, expert examination or repair, in cases where the dispossession occurring in the country to which the object has been transferred is the result of a loss or of an act that would constitute infringement of property rights under the criminal law of the claimant country if such act had occurred on the territory of that country.

3. The present Convention shall apply only to acts of dispossession subsequent to the engagement entered into by the High Contracting Parties.

4. The provisions of the present Convention shall in no way affect the right of the claimant State to take such action as may be open to it under its internal legislation.

Article 3

1. The Governments of the High Contracting Parties shall keep the International Museums Office informed of

June 1949

WORKS OF ART AND HISTORIC MONUMENTS

any acts of dispossession suffered by their collections, of their claims for restitution and of the results of such claims.

2. The International Museums Office shall assist the competent departments of the High Contracting Parties in all matters concerning the application of the present Convention.

3. The Office shall in particular publish the notifications of dispossession addressed to it by the Governments of the High Contracting Parties or by the institutions which they shall have designated for that purpose. Each notification of dispossession shall be accompanied by a description permitting the identification of the object to which it refers. The costs of the publication provided for in the present paragraph shall be borne by the country from which the request for publication has been received.

SECTION II. Administrative Assistance

Article 4

1. The claim for restitution submitted in virtue of the provisions of the present Section shall be made through the diplomatic channel.

2. The country to which the claim is addressed shall, at the earliest possible date and in conformity with its legislation, take all necessary steps to locate the object, prevent its export or its acquisition by its collections and induce the holder to surrender it voluntarily.

Article 5

The country to which the claim is addressed may, if it be found that the object in question is in the possession of a bona fide possessor, decide that it shall be surrendered against the payment by the claimant country, of compensation to said possessor.

Article 6

The cost of repatriating surrendered objects shall be borne by the claimant country.

SECTION III. Judicial Claims for Restitution

Article 7

Any of the High Contracting Parties shall have the right to institute legal proceedings with a view to the restitution of the objects referred to in the present Convention.

Article 8

1. The Court shall, subject to the following conditions, order even a bona fide possessor to surrender an object:

(a) A bona fide possessor shall be ordered to surrender an object only against compensation to be paid in advance by the claimant State when the domestic law of the country to which the claim is addressed allows the said possessor either to retain the object or to demand compensation.

English text of the Intellectual Co-operation Organization, League of Nations.

869

DECLASSIFIED AUTHORITY DD 99091 BY T1 NARA Date 7/16/99

RG 59 Entry 5383 Box 1

111512

WORKS OF ART AND HISTORIC MONUMENTS

(b) If the bona fide possessor has acquired the object in virtue of a contract of sale and if the sale price can be proved, the amount of compensation shall consist of the sale price and the genuine costs of the contract actually paid by him. In the contrary case, the amount of compensation shall be assessed at a reasonable figure, due account being taken of attendant circumstances.

(c) The possessor shall be entitled to the refund of expenditure which was necessary for the preservation of the object and he shall be liable for any damage thereto due to any wrongful act or default of which he, or the persons for whom he is responsible, may have been guilty.

2. Compensation shall be paid within six months from the date on which the judgment of the court becomes final, otherwise the judgment shall cease to have effect.

Article 9

Any claims for damages not provided for by the present Convention and any proceedings which the claimant State may take against third parties shall be determined in accordance with the respective national legislations.

Article 10

1. Claims for restitution shall be allowed against any person detaining the object who, personally or through his predecessors in title, has not been in possession of it for a period of at least ten years.

2. Claims for restitution shall continue to be allowed even against a person detaining the object who, personally or through his predecessors in title, has been in possession of it for a period of at least ten years in all cases where such claims are allowed under the legislation of the country to which the claim is addressed.

SECTION IV. Optional Provisions

Article 11

1. Any of the High Contracting Parties may, at the time of its signature, ratification, accession, or at any other time, declare in a notification addressed to the Secretary-General of the League of Nations that, subject to reciprocity, it extends the application of the provisions of the present Convention to objects belonging to corporations or to individuals and recognized to be of national interest by an official act prior to disposition.

Article 12

1. Any High Contracting Party may, at the time of its signature, ratification or accession, declare that in accepting the present Convention it assumes no obligation whatsoever in respect of the whole or part of its colonies, protectorates, overseas territories placed under its sovereignty or territories for which a mandate has been entrusted to it.

2. Any High Contracting Party may subsequently declare, in a notification addressed to the Secretary-General of the League of Nations, that the present Convention shall apply to the whole or part of the territories forming the subject of a declaration in the terms of the preceding subparagraph.

Article 13

The Secretary-General shall notify all the Members of the League of Nations and the non-member States referred to in Article 15 of the declarations received in virtue of Articles 11 and 12.

SECTION V. Final Provisions

Article 14

1. Should any dispute arise between the High Contracting Parties as to the interpretation or application of the present Convention, and should it be impossible to reach a satisfactory solution of such dispute through the diplomatic channel, it shall be settled in accordance with the provisions in force between the Parties with reference to the settlement of international disputes.

2. Should no such provisions exist between the Parties to the dispute, the latter shall be submitted to the judicial procedure provided in the Protocol of December 18th, 1920. If they are not all Parties to the Protocol, they shall at the request of any of them, submit the dispute to a Court of Arbitration constituted in accordance with the Hague Convention of October 18th, 1907, for the Pacific Settlement of International Disputes.

Article 15

The present Convention, of which the French and English texts are equally authentic, shall bear this day's date, and shall be open until _____ for signature on behalf of any Member of the League of Nations or any nonmember State to which the Council of the League shall have communicated a copy of the Convention for that purpose.

Article 16

The present Convention shall be ratified. The instruments of ratification shall be deposited with the Secretary-General of the League of Nations, who shall give notice of the deposit thereof to all the Members of the League and to the nonmember States referred to in Article 15 of the present Convention.

Article 17

1. On and after _____ any Member of the League of Nations and any non-member State referred to in Article 15 may accede to the present Convention.

2. The instruments of accession shall be deposited with the Secretary-General of the League of Nations, who shall give notice of the deposit thereof to all the Members of the League and to the non-member States referred to in the aforesaid article.

Article 18

1. The present Convention shall come into force sixty days after the Secretary-General of the League of Nations has received two ratifications or accessions.

2. It shall be registered by the Secretary-General on the day of its entry into force.

3. Subsequent ratifications or accessions shall take effect sixty days from the date of their receipt by the Secretary-General.

Article 19

1. The present Convention shall be valid for five years from its entry into force. It shall remain in force for a further period of five years, and so on successively, in respect of such Contracting Parties as have not denounced it at least six months before the expiry of the term.

2. The Secretary-General shall notify all the Members of the League of Nations and the non-member States referred to in Article 15 of the declarations received in virtue of Articles 11 and 12.

(These essays on the protection of monuments and works of art were written by Charles De Visscher, Judge on the International Court of Justice. The English translation has been edited by Ardelia Ripley Hall, Arts and Monuments Officer, Department of State. Miss Hall also compiled the related appendixes.)

WORKS OF ART AND HISTORIC MONUMENTS

of the League of Nations and the nonmembers States referred to in Article 15 of any denunciations so received.

Article 20

1. Steps shall be taken to revise the present Convention on request to that effect being made to the Secretary-General of the League of Nations by one quarter of the States Parties to the Convention.

2. The Council of the League of Nations may also take the initiative with a view to the revision of the Convention.

DECLASSIFIED
Authority: OAD 99096
By: 71 NARA Date: 7/6/99

RG 59
Entry 5383
Box 1

U.S. Delegation Report on FAO: November 1948

BACKGROUND

Although the first of the postwar specialized agencies of the United Nations to be created, the Food and Agriculture Organization is only 3 years old.

Previous conferences had of necessity given much emphasis to building the organization and determining its functions. Furthermore, the earlier sessions had been held in times of acute world food crisis when there were demands for immediate action. Though both of those factors were still present at this session, organizational matters were not quite so pressing, and the food situation had improved sufficiently to enable member nations to take a somewhat long-time view.

To appreciate this setting, it is well to keep in mind the high points of what had gone before.

The first session of the Conference was held in Quebec in the fall of 1945, shortly after victory over the enemy had been achieved. That was of necessity an organizational meeting. At that time neither the extent of the war damage nor the length of the food crisis was fully realized. It was hoped that relief and rehabilitation problems could be left to the newly created United Nations Relief and Rehabilitation Administration, and that FAO could concentrate on the long-time problems of increasing production, improving nutrition, and stabilizing prices.

Shortly after the first session of the Conference closed, however, the world food crisis intensified, rather than lessened, and it became apparent that FAO would have to give attention to the current situation. Therefore, in May 1946, FAO convened a Special Meeting on Urgent Food Problems which met in Washington. One result of this meeting was the creation of the International Emergency Food Council to recommend the allocation of food commodities in short supply. This Council, now the International Emergency Food Committee of FAO, has continued this function until the present time.

However, the Special Meeting on Urgent Food

Problems also discussed FAO's long-time job—the need for increasing nutritional levels of much of the world's population and the problems of managing possible surpluses which might develop. Sir John Orr, the Director General, was asked to study these problems and work out plans for maintaining a stable and adequate food supply at fair and stable prices.

The second session of the Conference was held in Copenhagen in August and September 1946, 2 months earlier than originally scheduled, in order to hear Sir John Orr's "Proposals for a World Food Board," which were drawn up in response to the earlier instructions. These proposals shared the Conference limelight with the many organizational problems which had arisen out of FAO's first year of existence.

The heart of Sir John's proposals was the idea of a World Food Board which would purchase key commodities in years of surplus and sell them in years of shortage. Special provisions were included which would aid nations with low nutritional levels to buy extra quantities of surplus foods at reduced prices.

The Conference, after prolonged discussion, accepted the objectives of Sir John's proposal but did not recommend the establishment of a World Food Board. It decided to establish a Preparatory Commission on World Food Proposals, consisting of representatives of 17 nations, to examine Sir John's and other proposals for achieving these objectives. The Commission met for 3 months in Washington beginning in October 1946.

The Commission recommended two steps:

First, it proposed that the national policy-making officials in the fields of agriculture and nutrition meet each year, review the world situation, and consult with each other as to how national programs might be improved so as to further the objectives of FAO and decide whether new types of international action were called for;

Second, to help solve the special problems of instability of supplies and prices of primary agri-

872

Documents & State Papers

111514

RG 59
Entry 5383
Box 1

DECLASSIFIED
Authority: 100-99096
By: T/ NARA Date: 7/6/99

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)
Office of the Military Governor
APO 742

AG OC7 (ED)

10 May 1947

SUBJECT: Performance of MFA&A Functions

TO : Directors, Office of Military Government for Bavaria
Office of Military Government for Hesse
Office of Military Government for Wuertemberg-Baden
Office of Military Government for Berlin Sector

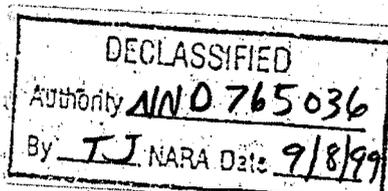
Monuments, Fine Arts and Archives functions, including operation of art and archival collecting points, disposition of repositories, investigation of cases involving missing looted art objects, screening of German collections and restitution to the governments of former occupied countries are a continuing responsibility of Military Government which by their nature and because of quadripartite commitments cannot devolve upon German agencies. Despite, therefore, reductions in personnel in other functions, MFA&A functions as required by MGR Title 18, Change No. 1 and the approved Functional Program must be continued.

BY DIRECTION OF THE MILITARY GOVERNOR:


G. H. CARDE
Lieutenant Colonel, AGD
Adjutant General

Telephone BERLIN 12381

DISTRIBUTION VJHU



RG 260
Economics
Division
Box 115

111515

REPRODUCED AT THE NATIONAL ARCHIVES

177

007
X CME/ag
322

OFFICE OF MILITARY GOVERNMENT FOR GERMANY (U.S.)
Economics Division
Restitution Branch
APO 742

26 May 1947

SUBJECT: Performance of MPAA Functions in Württemberg-Baden

TO : Col. Wilkinson

1. It has been learned from the present MPAA officers for Württemberg-Baden that the Director, Office of Military Government for Württemberg-Baden, Mr. Sewall, in spite of the statement contained in AG 007 (ED), 10 May 1947, "Performance of MPAA Functions," that MPAA functions "must be continued," does not intend to retain a place for a last MPAA officer on the T/O after 30 June. This directive was issued after full concurrence by the Control Office and approval by the Chief of Staff. Since the last MPAA officer is the sole person performing MPAA functions in Württemberg-Baden, this presents a most serious problem. The present incumbent, military category 1, is scheduled for rotation and redeployment to the GI by August at the latest.

2. It is recalled that at a conference with General Clay on 7 November 1946, attended by General Draper, Col. Allen, Mr. Falso and Mr. Fleischner, General Clay stated that there would continue to be at least one MPAA officer in each Land.

3. The continuation of the restitution functions of MPAA is of the greatest importance, as a responsibility of the United States Government, involving its prestige with the other United Nations, especially those formerly occupied by Nazi Germany. Neither the restitution function of MPAA in Württemberg-Baden, nor that of the return of German-owned cultural materials after screening for loot is completed nor will it be for another eight months at the earliest.

4. Attention is invited to the following comment, paragraph 1, Recommendation to Approve Functional Program of Restitution Branch Responsible for Cultural and Non-Cultural Restitutions (MPAA and Restitution Sections), OO to C/S, 13 February 1947:

"Because the nature of restitution precludes transfer of responsibility to German administration neither the policies nor the program of this Branch (Restitution and MPAA Sections) have been greatly influenced by the passage of the Lander Constitutions or the policy decision of the MG to return maximum responsibility to German administration."

and to the following, paragraph 4 of the same:

177

DECLASSIFIED
Authority AIN 0765036
By TJ NARA Date 9/8/99

RG 260
Economics
Division
Box 115

111516

REPRODUCED AT THE NATIONAL ARCHIVES

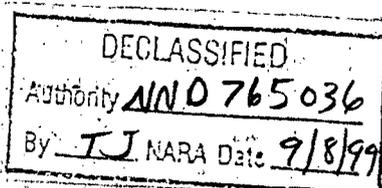
"Because of the importance to U.S. international policy of the successful execution of cultural and non-cultural restitutions by MIA, the problem of adequate staffing of this function has been made the subject of a memo to the Organization Planning Branch of Control office for consideration by the Manpower Utilization Board since understaffing is reported to be an obstacle to fulfillment of actions planned for the period."

5. There is available, to fill the MIA position in Quarterberg-Baden, a qualified, experienced person who has been with MIA since April 1946, and who is thoroughly familiar with its policies and procedures and with Army channels, etc. Since he is already on contract and scheduled to leave for the U.S. in the very near future, his services are in danger of being lost to Military Government. To recruit another person in the U.S. and bring him to Germany would require, on the basis of past experience, many months; in addition, he would be of little value for several months after his arrival, whereas the individual now available in the theater could assume full responsibility at once.

JOHN H. ALLAN
Colonel MIA
Chief, Restitution Branch

1 Incl. - AG 007 (MIA),
10 May 1947, "Performance
of MIA Functions"

Telephone 42304



RG 260
Economics
Division
Box 115

111517

007
X
000.4

FR AG GARDE

AG 007 (ED)

January 1947

SUBJECT: Protection of Cultural Structures in Germany

TO: Commanding General
Headquarters, United States Force
European Theater
AFG 757, U. S. Army

1. By a directive letter (AG 000.4-1 GE-AGM 27 October 1944) the Headquarters of the Allied Expeditionary Force crystallized the policy for protection of cultural monuments within its responsibility and issued an attached official statement with a list of German structures which by command of General Eisenhower were to be protected and placed out-of bounds. (Inclosure 1).

2. This SHARP Monuments, Fine Arts and Archives Official List of Protected Monuments in Germany has been modified, changed, and added to as more complete knowledge of the structures has been gained and as conditions since the cessation of hostilities, the reestablishment of responsible German civilian agencies and the redeployment of American forces have created different situations.

3. It now appears appropriate that the U.S. policy of respect for cultural monuments be reaffirmed and that an Official List of Protected Structures or Installations of Architectural, Artistic, Historic or Cultural Importance in the American Zone of Germany be reissued. The SHARP letter (Inclosure 1), together with the regulations and the former list should be rescinded. The following changes from the original SHARP List are considered necessary and advisable:

- a. Limitation of buildings to those within the American Zone.
- b. Removal of antique ruins from special military protection.
- c. Removal of religious structures (churches, monasteries etc.) since they are forbidden for any purpose



Comback Copy to Econ. Div.

UUN

DECLASSIFIED
Authority AND 765036
By TJ NARA Date 9/8/99

RG 260
Economics
Division
Box 115

111518

REPRODUCED AT THE NATIONAL ARCHIVES

Protection of Cultural Structures in Germany
AG 607 (2D), OIGUS, January 1947

other than religious except with full approval of the ecclesiastical authorities.

d. Removal of destroyed, and at present, unused buildings, all former value of which has ceased to exist.

e. Addition of certain castles of singular importance which in most cases have been under the surveillance of the German Denkmalpflege and which by a directive of 13 November 1945, were designated as museums and as such should be incorporated in an Official List.

f. Indication of specific portions of certain buildings which will permit some solution of the humanitarian problem of the housing of displaced persons and also insure protection of irreplaceable art treasures.

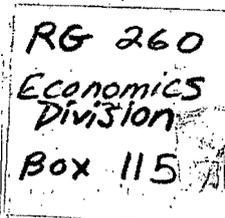
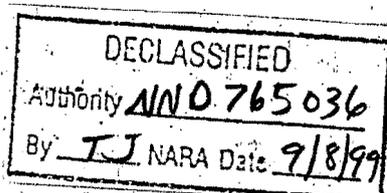
4. Request that draft of new directive, together with revised list and prefatory statement (Inclosure 2) be approved substantially as written, signed and distributed to all Occupation Forces and Military Government units, to American Red Cross establishments, and to UNRRA agencies.

FOR THE DEPUTY MILITARY GOVERNOR:

Incls: a/s

Telephone BERLIN 45420

G. H. GARRE
Lieutenant Colonel, AGD
Adjutant General



111519

C O N F I D E N T I A L

18th, August, 1944

ORDINANCE NO:

PROPERTY CONTROL

Article I

Categories of Property

(1) Property owned or controlled directly or indirectly, in whole or in part, by any of the following is subject to direction, management, supervision or otherwise being taken into control by Military Government.

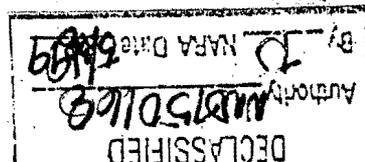
- a. The German Reich, or any of the Lander, gae, or provinces, or any agency or instrumentality, thereof, including all utilities, undertakings, public corporations or monopolies under the control of any of the above;
- b. Governments, nationals or residents of Nations still at war with any of the United Nations, or of nationals, residents or governments of territories occupied by such nations;
- c. Other Enemy States, or governments, of any agency of instrumentality thereof;
- d. The NSDAP, all offices, departments, agencies and organizations forming part of, attached to, or controlled by it; its officials and such of its leading members or supporters whose names are published by Military Government;
- e. All persons held under detention or any type of custody by Military Government; all organizations, clubs or other associations prohibited or dissolved by Military Government;
- f. Property of absent owner, including property of United Nations government and nationals thereof;
- g. All persons whose names are announced by Military Government by publication of lists or otherwise.

(2) Property which has been the subject of duress, wrongful acts of dispossession or spoliation from territories outside Germany is equally subject to direction, management, supervision or otherwise being taken into control by Military Government.

Article II

Transfers Prohibited

Except as hereinafter provided or when licensed or otherwise authorized or directed by Military Government, no person shall acquire or receive, sell, transfer, export, hypothecate or otherwise dispose or, destroy, damage, conceal or surrender possession, custody or control of any property enumerated in



C O N F I D E N T I A L

Article I hereof; or any property owned or controlled by any Dreis or municipality; or of any institution dedicated to public worship, charity, education, or of the arts and sciences; or any work of art or cultural material of value or importance not otherwise covered by Article II.

Article III

Responsibilities for Property

(4) All custodians, curators, officials, or other persons having possession, custody or control of property enumerated in Article I hereof shall:

a. Hold the same subject to the directions of the Military Government, and pending direction to transfer, deliver or otherwise dispose of the same; preserve, maintain and safeguard or otherwise cause or permit any action which will impair the value or utility of such property and maintain accurate records and accounts with respect thereof and the income thereof. Industrial and commercial and other income producing properties shall be operated and normally maintained, and shall not be improved or extended without express authority from Military Government. Property described in Article I (1) (a) shall be used for its normal purposes, unless otherwise directed by Military Government.

b. When and as directed by Military Government:

1. File reports furnishing such data as may be required with respect to such property and all receipts and expenditures received or made in connection therewith;
2. Transfer and deliver custody, possession or control of such property and all books, records and accounts relating thereto, and
3. Account for the property and all income and products thereof.

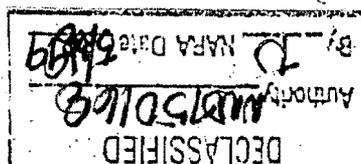
Article IV

Voidable Transfers

Any prohibited transaction effected without a duly issued license or authorization from Military Government and any transfer or contract made, whether before or after the date of this ordinance with the intent to evade the powers of Military Government, or the restitution of any property to its rightful owner, may be declared null and void by the Military Government.

C O N F I D E N T I A L

111521



C O N F I D E N T I A L

Article V

(6) All laws, decrees, and regulations inconsistent with the provisions of this ordinance are hereby suspended or modified to conform to such provisions. All laws, decrees and regulations providing for the seizure, confiscation or forced purchase of property enumerated in Article I, otherwise than by the Military Government are hereby suspended.

Article VI

Definitions

(7) For the purposes of this Ordinance, the following terms are defined as follows:

- a. "Person" shall mean and include any natural person and any entity under public or private law having legal capacity to acquire, occupy, control or dispose of property or interests therein;
- b. "Enemy states and governments" shall mean and include all states and governments which were at war with any of the United Nations on 1 September 1939 or at any subsequent date;
- c. "Property" shall mean and include all movable and immovable property and all legal, equitable or economic rights and interests in or claims to such property, and shall include, but shall not be limited to, land and buildings, money, stocks, shares, or other evidences of ownership, and bonds, bank balances, claims, obligations and other evidences of indebtedness, and works of art and other cultural materials;
- d. A "National" of a state or government shall mean and include a subject or citizen and any corporation, partnership or other juridical person existing under the laws of, or having any office in the territory of, such state or government;
- e. "United Nations" shall mean United Nations as defined in Ordinance No. _____.

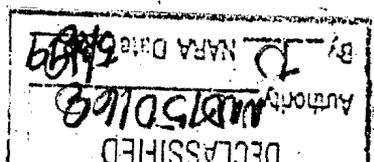
Article VII

Penalties

(8) Any person violating the provisions of this ordinance shall, upon conviction by an Allied Military Court be liable to any lawful punishment other than death as the court may determine.

C O N F I D E N T I A L

111522



C O N F I D E N T I A L

Article VIII

Effective Date

(9) This ordinance shall take effect throughout occupied Germany on the date of its first promulgation.

Dated: _____, 194__.

SUPREME COMMANDER
ALLIED EXPEDITIONARY FORCE

C O N F I D E N T I A L

111523

DECLASSIFIED
Authority: 10050169
By: J. NARA Date: 5/18/99

DECLASSIFIED
 Authority NND775057
 By SR NARA Date 8-23-99

RG 260
 Entry Ardelia Hall
 File Collection
 Box 267

OFFICE OF MILITARY GOVERNMENT FOR BAVARIA
 APO 170
 Monuments, Fine Arts, and Archives Section

Date 16 Aug 46

SUBJECT: Plan for Recovery of Stolen Art Objects

TO : Capt RAE

1. In order to implement the completion of a list of art objects allegedly stolen or looted by American troops or agencies it is suggested that the following steps be taken:

a. The procuring of a list of all such objects from German agencies, compiled by the Ministry of Education and Religious Affairs.

b. ~~a~~ circular letter to the Public Safety Officers of all local MG detachments requesting lists and records of all such objects.

c. ~~a~~ search of all available documents at the CCP Claims and Documents Office for records of such objects.

2. It is recommended that a different color of file card be used to avoid confusion with similar cards now used for art objects looted by Germans.

Samuel R. Rosenbaum
 SAMUEL R ROSENBAUM
 US Civilian MFA&A Officer

111524