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740.00116 European War 1939/1074 : Telegram

The Chargé in Argentina (Reed) to the Secretary of State

BUENOS AIRES, September 1, 1943.

[Received September 1—11:17 a. m.]

1997. Department's 1132, 13th [30th].¹⁶ Foreign Office made public last evening text of reply to British note regarding war criminal refugees. Communiqué stated similar reply made to this Embassy but we have not yet received it.¹⁷ Note states in substance that Argentine Government distinguishes between common crimes and political offenses; that it holds asylum should be granted only in case of political offense and that it will decide accordingly each case that may be presented. Note is couched in courteous terms and is accompanied by explanatory communiqué. Full text by mail.¹⁸

REED

740.00116 European War 1939/1088 : Telegram

Mr. Harold H. Tittmann, Jr., Assistant to the Personal Representative of President Roosevelt to Pope Pius XII, to the Secretary of State

VATICAN CITY, September 11, 1943—8 p. m.

[Received September 12—7:45 a. m.]

189. Under date of September 11, 1943, the following note has been received from the Cardinal Secretary of State.

"I have the honor to acknowledge the receipt of your communication No. 24 dated August 3 last relative to the asylum which neutral countries might possibly grant to persons termed in your letter 'war criminals'. After an attentive examination of the document, I have the honor to inform you that in the case of need, the Holy See will conform its decisions in the matter to the principles and the norms of natural and international law as well as to the dictates of Christian charity."

Foregoing is in reference to my telegram No. 143.¹⁹

TITTMANN

¹⁶ See footnote 5, p. 461.¹⁷ Copy of reply transmitted to the Department by the Chargé in Argentina in his despatch No. 11722, September 1.¹⁸ Copy of translation of the Foreign Office communiqué published in *La Nación*, September 1, 1943, transmitted to the Department by the Chargé in Argentina in his despatch No. 11795, September 4.¹⁹ See telegram No. 4845, August 9, 11 p. m., from the Minister in Switzerland, p. 464.INTEREST OF THE UNITED STATES IN MEASURES FOR
THE PROTECTION AND SALVAGE OF ARTISTIC AND
HISTORIC MONUMENTS IN WAR AREAS

840.403/10

The Chief Justice of the United States (Stone) to President Roosevelt

WASHINGTON, December 8, 1942.

MY DEAR MR. PRESIDENT: I write as Chairman Ex-officio of the Board of Trustees of the National Gallery of Art, to ask your support of a plan for the creation of an organization functioning under the auspices of the Government, for the protection and conservation of works of art and of artistic or historic monuments and records in Europe, and to aid in salvaging and returning to, or compensating in kind, the lawful owners of such objects which have been appropriated by the Axis powers or by individuals acting with their authority or consent. Beside the accomplishment of these worthy objects an incidental, but not unimportant advantage to be immediately gained is the proclamation to the world, friends and enemies, of our practical concern in protecting these symbols of civilization from injury and spoliation.

The Board of Trustees of the National Gallery considered the matter at a recent meeting and asked that I bring it to your attention. I have been in consultation also with Mr. Francis Henry Taylor, Director of the Metropolitan Museum of New York and Chairman of the Association of Art Museum Directors, and with Dr. William Bell Dinsmoor, President of the Archaeological Institute of America, who are equally concerned that steps should be taken to meet the present situation.

With the assistance of Mr. Taylor and Mr. Dinsmoor, and also Mr. Finley and Mr. Walker of the National Gallery, I have prepared the enclosed memorandum¹ which I submit for your consideration and earnestly hope that some measures may be taken for the formation of a Joint British and American Committee for putting into effect the suggestions made in the enclosed memorandum.

It is our thought that a committee such as is suggested will function best in connection with the organization headed by Governor Leh-

¹ Not printed; it was the same as the substitute memorandum enclosed with Chief Justice Stone's letter of December 23, 1942, *infra*, except that in this earlier memorandum no provision was made for the participation of the Soviet Union.

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man,² and in association with military officers attached to the command of our Armies of Occupation and specially charged with the protection of such artistic and historic objects.

Faithfully yours,

HARLAN F. STONE

840.403/70

The Chief Justice of the United States (Stone) to President Roosevelt

WASHINGTON, December 23, 1942.

MY DEAR MR. PRESIDENT: This is to supplement my letter of December 8th proposing, in behalf of my associates at the National Gallery, a program for the organization of a committee for the protection and salvage of historic monuments in Europe.

Those who were active in the preparation of this program have come to the conclusion that Russia should be asked to participate in the work of the committee. I approve of this suggested change and hand to you herewith a revised memorandum which may be substituted for the memorandum which I enclosed in my earlier letter.

Yours faithfully,

HARLAN F. STONE

[Enclosure]

Memorandum by the Chief Justice of the United States (Stone)

The following recommendations are submitted for the consideration of the President:

1. That the President appoint a Committee to be known as the American Committee for the Protection and Salvage of Artistic and Historic Monuments in Europe. The purpose of such a Committee shall be to aid in the conservation of artistic and historic monuments in Europe, and in the establishment of machinery to return to the rightful owners works of art and historic documents appropriated by the Axis Powers.

The Committee to function with:

The appropriate branch of the Army.
Governor Lehman's Rehabilitation Program.

The Committee to consist of:

A Chairman who shall be an officer of the United States Government with rank not lower than a member of the President's Cabinet.
Governor Lehman.

² Herbert H. Lehman, Director, Office of Foreign Relief and Rehabilitation Operations, Department of State.

The Librarian of Congress.
The Director of the National Gallery of Art.
The President of the Association of Art Museum Directors.
The President of the Archeological Institute of America.

2. That the United States Department of State be requested, through the appropriate officials in Washington, London and Moscow, to present a request to the British Government and the Government of the Soviet Republic for the formation of a British Committee and a Russian Committee to act with the American Committee in carrying out the work outlined above.

3. It is further recommended that the American, British and Russian Committees form a Subcommittee of Experts in the different fields of art such as:

The Chief Curator of the National Gallery of Art.
The Director of the Chicago Art Institute.
The Director of the Boston Museum of Fine Arts.
A representative of the Library of Congress.
A representative of the Archeological Institute of America.
Five representatives of equivalent institutions in England.
Five representatives of equivalent institutions in the Soviet Republic.

4. The function of the American, British and Russian Committees shall be:

A. During the War:

i. The American Committee to work with the appropriate branch of the United States Army, and the British and Russian Committees to work with the appropriate branches of the British and Russian Armies, for the purpose of furnishing to the General Staff of each Army, museum officials and art historians, so that, so far as is consistent with military necessity, works of cultural value may be protected in countries occupied by armies of the United Nations. There are, at present, serving in the armed forces of this country, (and also probably in the British and Russian Armies) qualified museum officials and art historians who could, if desired, be attached to general headquarters of armies on active combat in the European theatre of operation.

ii. To compile, through the assistance of refugee historians of art and librarians, lists of property appropriated by the Axis invading forces, by representatives of Axis governments, and by private citizens of Axis countries. This work should be begun and supervised by the American, British and Russian Subcommittee of Experts under the general direction of the three National Committees.

B. At the time of the Armistice:

i. The American, British and Russian Committees for the Protection and Salvage of Artistic and Historic Monuments should urge that the Armistice terms include the restitution of public property appropriated by the Axis Powers. Where it is not possible to restore such property, either because it has been destroyed or cannot be found,

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restitution in kind should be made by the Axis Powers to the countries from which the property has been taken. In such cases, the Subcommittee of Experts should recommend to the American, British and Russian National Committees a list of equivalent works of art or historic documents which should be transferred to the invaded countries from Axis museums or from the private collections of Axis leaders:

ii. The American, British and Russian National Committees should urge that restitution be made of private property appropriated by the Axis Nations. Claims for such property could be presented to and reviewed by the Subcommittee of Experts which would, in turn, report to the American, British and Russian National Committees and make recommendations for equitable settlements.

840.403/5a: Airgram

*The Secretary of State to the Ambassador in the United Kingdom (Winant)*³

WASHINGTON, April 19, 1943—7 p. m.

A-612. The Chief Justice of the United States acting in his capacity as Chairman ex officio of the Board of Trustees of the National Gallery of Art has submitted to the President a plan for the creation of committees in the United States, Great Britain and Russia, to cooperate in effecting a program for the protection and conservation of works of art and of artistic or historic monuments and records in Europe. The plan anticipates the formulation of a program which would enable the three committees to assist in salvaging and returning to, or compensating in kind, the lawful owners of such objects which have been appropriated by the Axis powers or by individuals acting with the latter's authority or consent.

The President has indicated his approval of the proposal in principle, and has requested the Department to give it further study. It is considered that the adoption of the proposal might have a moral effect of positive advantage to the Allied cause, serving as it would to underscore the criminal acts of the Axis and the determination of the Allies to restore order and justice. You are accordingly requested to approach the government to which you are accredited, inquiring what studies have been made of this problem and what plans have been considered for dealing with it, as well as whether that government would be prepared, in case the project meets with general approval, to appoint a national committee to cooperate with corresponding committees appointed by the other two nations concerned. Please report to the Department by airgram.

HULL

³ The same to the Ambassador in the Soviet Union as No. A-16, April 19, 5 p. m.

840.403/10

President Roosevelt to the Chief Justice of the United States (Stone)

WASHINGTON, April 24, 1943.

MY DEAR MR. CHIEF JUSTICE: In my letter of December 28, 1942⁴ I informed you that the proposal for the creation of an organization for the protection and salvage of artistic and historic monuments in Europe, as set forth in your letter of December 8 written as Chairman ex officio of the Board of Trustees of the National Gallery of Art, had been referred to the appropriate agencies of the Government for study.

Since the proposed American committee would necessarily have to work in close touch with the appropriate branches of the United States armed forces during the war, it was considered appropriate at the very outset to have the views of the Joint Chiefs of Staff. The matter was accordingly taken up with Admiral Leahy,⁵ who replied that, while this undertaking does not appear to promise any military advantage, the Joint Chiefs of Staff are in agreement as to its eventual desirability and will, when and if the committee is appointed, direct the American commanders concerned to give the committee every practicable assistance that does not interfere with their military operations.

Since your original memorandum suggested that Governor Lehman be a member of the American committee, a suggestion with which I am in hearty agreement, the proposal was next discussed with him. He replied that it is quite possible that if a United Nations relief and rehabilitation agency is created, it may be willing to interest itself in the plan, but that he cannot, of course, speak for the proposed agency. He added that if the suggested committee is formed, he will be glad indeed to serve as a member.

The next logical step, prior to the formal constitution of an American committee, would appear to be an approach to the British and Soviet Governments, inquiring whether each would be prepared, in case the proposal meets with general approval, to appoint a national committee to cooperate with corresponding committees appointed by the other two nations concerned. This step is now being taken by the American Embassies in London and Moscow. I shall keep you informed of any further developments.

Sincerely yours,

[FRANKLIN D. ROOSEVELT]

⁴ Not printed.

⁵ Adm. William D. Leahy, Chief of Staff to the Commander in Chief of the Army and Navy.

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840.403/6: Airgram

The Ambassador in the United Kingdom (Winant) to the Secretary of State

LONDON, June 7, 1943—12:20 a. m.

[Received June 12—4 p. m.]

A-435. Department's A-612, 7 p. m., April 19. The Embassy has received a note dated May 31, 1943, from the Foreign Office. After referring to the Embassy's note of May 3rd which transmitted as requested by the Department, the suggestion for the creation of Committees in the United States, United Kingdom, and Union of Soviet Socialist Republics to examine the question of works of art looted from European territory, and asked what study the British Government had made of this problem, the Foreign Office note continues as follows:

"2. His Majesty's Government have always had in mind that some sort of Reconstruction Commission, operating probably under the supervision of such United Nations authority as was deemed appropriate, would be required for the purpose *inter alia* of endeavouring to recover looted works of art, and to effect their return to their lawful owners. To the extent, therefore, that the committees, which the United States Government have in mind, could help the work of the Reconstruction Commission by preliminary study and by the collection of information, His Majesty's Government would be in favour of their establishment.

3. The question, however, of deciding on compensation, whether in kind or otherwise, in cases where works of art could not be found or had been damaged, raises problems of a different order. Such demands for compensation will be only one among many categories of claims made against the enemy countries after the war, and it does not seem possible to consider them in isolation. This question seems to His Majesty's Government to be essentially a matter for the Governments concerned, and one which could not usefully be discussed by committees of the kind proposed.

4. It is in any event clear that the machinery required for identifying and recovering works of art will be much the same as in the case of other looted property. It therefore seems important that the functions of the proposed committees should be clearly laid down, and the nature of 'works of art' strictly defined. Is it, for instance, intended that these should include historic and cultural treasures and the contents of libraries? His Majesty's Government would be glad to know what the United States Government have in mind in this connexion.

5. They would also be glad to learn the views of the United States Government on the manner in which such committees, if set up, would operate, and on their general composition and status. His Majesty's Government are not themselves primarily affected by the looting of works of art in Europe, and it seems to them that the major

contribution to the studies of such a committee, if set up in London, would necessarily come from the seven Allied Governments temporarily established in London and from the Greek Government, who maintain a nucleus staff here. This being the case, it would seem that an intergovernmental committee composed of representatives of these Governments and representatives or observers of the United States, Soviet and United Kingdom Governments, if they so wished, would be the most appropriate body for this work in London. His Majesty's Government presume that it would be the intention that the three committees should be given official status, and that the members should represent their respective Governments. If, however, their chief function was to identify works of art the members would presumably need to be experts.

6. His Majesty's Government have not given close study to this problem which, as explained above, is not of direct concern to them, though they are naturally interested in seeing that pillaged property is returned to its rightful owners. Nevertheless, there exists in London a purely unofficial Committee of the Central Institute of Art and Design of the National Gallery, which contains a number of foreign representatives and has already given a considerable amount of preliminary study to the subject. It might be possible to associate this committee with any new body which is set up in London, or at least arrange for the information collected by this unofficial committee to be made available to the new committee. The new committee would also no doubt enjoy the benefit of information collected by the committee set up under the Interallied Declaration of the 5th January, 1943, against Acts of Dispossession.⁶

7. Your Excellency will observe from the above that His Majesty's Government are in general favourably disposed to the suggestion contained in Your Excellency's communication, and they would be glad to have the observations of the United States Government on the points mentioned in this note."

WINANT

840.403/143

*The Secretary of State to President Roosevelt*⁷

WASHINGTON, June 21, 1943.

MY DEAR MR. PRESIDENT: I refer to a letter addressed to you by the Honorable Harlan F. Stone, the Chief Justice of the United States, dated December 8, 1942, concerning the creation of an organization to function under the auspices of the Government for the protection and conservation of works of art and of artistic or historic monuments and records in Europe, and to aid in salvaging and returning to the lawful owners such objects as have been appropriated by the

⁶ For text of declaration, see p. 443; also printed as British Cmd. 6418, Misc. No. 1 (1943): *Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation or Control.*

⁷ Marginal note: "CH OK FDR 6-23-43."

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Axis powers or by individuals acting under their authority or consent. Besides the accomplishment of these worthy objectives, an important advantage to be gained immediately by such an organization is the proclamation to the world, friends and enemies, of our practical concern in protecting these symbols of civilization from injury and spoliation.

In your reply to the Chief Justice, dated December 28, 1942,⁸ you advised him of your interest in the formation of such an organization, and stated that his letter had been referred to the appropriate agencies of the Government in order that the proposals set forth might be studied in detail. In your subsequent letter to the Chief Justice, dated April 24, 1943, you advised him of progress which had been made in securing the views of the Joint Chiefs of Staff and of Governor Lehman, and that inquiries are being made of the British and Soviet Governments through the American Embassies in London and Moscow, inquiring whether each Government would be prepared, in case the proposal meets with general approval, to appoint a National Committee to cooperate with corresponding committees appointed by the other two nations concerned.

I now have to inform you that, under the auspices of the War Department, a special section has been formed in the School of Military Government, functioning at Charlottesville, Virginia, under General Wickersham,⁹ with the idea of training certain officers in the Specialist Branch of the service so that they could be attached to the staffs of our armies to advise the commanding officers of such troops as to the location of, and the care to be given to, the various artistic and historic objects in occupied territories. It is contemplated that after the occupied territory has passed from a military to a civilian government, this work would be turned over to the properly constituted civilian authorities representing the United Nations.

It would seem, therefore, that it would now be appropriate to appoint a commission to be known as the American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe,¹⁰ such Commission to advise and to work with the School of Military Government at Charlottesville and subsequent organizations of civilian character which may take over control of occupied territories when it is possible to relinquish military control.

I would suggest for your consideration that Chief Justice Stone, who is Chancellor of the Board of Regents of the Smithsonian Institution and also Chairman of the Board of Trustees of the National

⁸ Not printed.

⁹ Brig. Gen. Cornelius W. Wickersham.

¹⁰ The title of the Commission was officially changed on April 21, 1944, by the substitution of "War Areas" for "Europe".

Gallery of Art, be requested to serve as Chairman of the Commission; that the Director of the National Gallery of Art, David E. Finley, be appointed Vice-Chairman; and that the other members of the Commission be as follows:

- Governor Lehman, Chairman of Foreign Relief and Rehabilitation Operations
- The Librarian of Congress (Hon. Archibald MacLeish)
- The President of the Archeological Institute of America (Dr. William Bell Dinsmoor)
- The Associate Director of the Fogg Museum of Fine Arts at Cambridge, representing American Universities (Dr. Paul Sachs)
- The President of the Association of Art Museum Directors (Mr. Francis Henry Taylor)

The Commission should be authorized to secure, on a volunteer basis, the services of a committee of experts composed of museum directors and other qualified persons to advise on the above project and to furnish information required for carrying it out. Some valuable preliminary work has already been done by individuals in compiling lists of artistic and historic monuments and works of art in both public and private collections in Europe and in compiling charts and maps showing the location of these objects. This material could be collected and made available to the Commission for the use of the armed forces.

The function of the Commission might be:

A. During the War:

i. To work with the appropriate branch of the United States Army, for the purpose of furnishing to the General Staff of the Army, museum officials and art historians, so that, so far as is consistent with military necessity, works of cultural value may be protected in countries occupied by armies of the United Nations. There are, at present, serving in the armed forces of this country, qualified museum officials and art historians who could, if desired, be attached to general headquarters of armies on active combat in the European theatre of operation.

ii. To compile, through the assistance of refugee historians of art and librarians, lists of property appropriated by the Axis invading forces, by representatives of Axis governments, and by private citizens of Axis countries.

B. At the time of the Armistice:

i. The American Commission for the Protection and Salvage of Artistic and Historic Monuments should urge that the Armistice terms include the restitution of public property appropriated by the Axis Powers. Where it is not possible to restore such property, either because it has been destroyed or cannot be found, restitution in kind should be made by the Axis Powers to the countries from which the property has been taken. In such cases, the Commission should recommend a list of equivalent works of art or historic documents

which should be transferred to the invaded countries from Axis museums or from the private collections of Axis leaders.

ii. The Commission should urge that restitution be made of private property appropriated by the Axis Nations.

I would suggest that the offices of the Commission be in the National Gallery of Art, in Washington, in order that the Commission may function in close contact with the War Department and with the State Department and other civilian agencies which will later be concerned in the affairs of liberated or occupied territories. I am advised that office space is available in the National Gallery for that purpose.

It is not foreseen that expenses of such a Commission would be an item of importance as it is contemplated that the members would serve without compensation; but I would suggest that from some funds already available about \$25,000 be set aside for such clerical and other expense as may be necessary.

If this proposal meets with your approval, I shall be glad to approach the various officials suggested above to ascertain whether they would be willing to serve on such a Commission.

I have consulted with Secretary Stimson¹⁰ concerning this matter and he is in accord with these suggestions.

Faithfully yours,

CORDELL HULL

840.403/10

*The Secretary of State to the Chief Justice of the United States
(Stone)*

WASHINGTON, July 16, 1943.

MY DEAR MR. CHIEF JUSTICE: I refer to your recommendations to the President concerning the creation of a national commission to function under the auspices of this Government and in conjunction with similar groups in other countries for the protection and conservation of works of art and of artistic and historical records in Europe and to aid in salvaging and returning to the lawful owners such objects as have been appropriated by the Axis Powers or by individuals acting under their authority or consent.

I am now glad to inform you that the President has approved the establishment of "The American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe". As you are aware, the President after receiving your recommendations requested the Department to seek the views of the appropriate officials of the Government. The Joint Chiefs of Staff and Governor Lehman

¹⁰ Henry L. Stimson, Secretary of War.

indicated a willingness to assist in this undertaking and I can assure you that this Department will be happy to collaborate in every possible way. Communications have also been sent to the British and the Soviet Governments inquiring whether they would be prepared to appoint similar national commissions.

It is contemplated that the members of the Commission will serve for a period of three years and will cooperate with the appropriate branches of the Army and of the Department of State, including the Office of Foreign Relief and Rehabilitation Operations, as well as with appropriate civilian agencies.

The President has now authorized me to inquire whether you are in a position to accept the Chairmanship of this Commission. I sincerely hope you will find it possible to undertake this important service.

Sincerely yours,

CORDELL HULL

840.403/24

The Secretary of State to President Roosevelt¹¹

WASHINGTON, August 4, 1943.

MY DEAR MR. PRESIDENT: I refer to previous correspondence concerning the establishment of "The American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe". You will recall that the plan contemplates that this national Commission shall function under the auspices of this Government and in conjunction with similar groups abroad. Its object is to protect and conserve works of art and artistic and historical records in Europe and to aid in salvaging and returning to the owners artistic objects which have been appropriated by the Axis Powers or by their agents.

In pursuance of this initiative you authorized me to inquire whether the following persons would accept membership:

- The Chief Justice of the United States, *Chairman*;
- The Honorable David E. Finley, Director, National Gallery of Art, *Vice-Chairman*;
- The Honorable Herbert H. Lehman, Chairman, Foreign Relief and Rehabilitation Operations;
- The Honorable Archibald MacLeish, Librarian of Congress;
- Dr. William Bell Dinsmoor, President, Archeological Institute of America;
- Dr. Paul Sachs, Associate Director, Fogg Museum of Fine Arts;
- Dr. Francis Henry Taylor, President, Association of Art Museum Directors.

¹¹ Marginal note: "CH OK very good FDR."

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The Chief Justice of the United States replied that he was obliged reluctantly to decline the invitation because his obligations to the Court preclude his assuming any other continuing responsibilities. The other persons who were invited to serve have accepted membership on the Commission.

Informal recommendations have been received that Associate Justice Owen J. Roberts be requested to accept the chairmanship of the American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe. I understand that the Chief Justice is agreeable to this designation. I heartily concur in this felicitous choice and I further suggest, after consultation with the appropriate officials, that Mr. Huntington Cairns, Secretary-Treasurer and General Counsel of the National Gallery of Art, be designated as Secretary-Treasurer of the Commission.

I shall appreciate your informing me whether these suggestions meet with your approval.

Faithfully yours,

CORDELL HULL

[For text of press release issued by the Department of State, August 20, 1943, announcing the establishment of the American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe, see Department of State *Bulletin*, August 21, 1943, page 111.]

840.403/36: Airgram

*The Secretary of State to the Ambassador in the United Kingdom (Winant)*¹²

WASHINGTON, October 8, 1943—11:10 a. m.

A-1370. Your A-435, June 7, 12:20 a. m. The President has approved the establishment of an American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe, composed of the following:

*Members:*¹³

Associate Justice Owen J. Roberts, United States Supreme Court,
Chairman;
The Honorable David E. Finley, Director, National Gallery of Art,
Vice-Chairman;

¹² Similar airgram sent on the same date to the Ambassador in the Soviet Union as No. A-24.

¹³ In a letter dated November 8, President Roosevelt inquired whether former Governor Alfred E. Smith of New York would be in a position to accept membership on the American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe. A certificate of designation, following his acceptance, was transmitted by the Secretary of State on December 31.

The Honorable Herbert H. Lehman, Special Assistant to the President;
The Honorable Archibald MacLeish, Librarian of Congress;
Dr. William Bell Dinsmoor, President, Archeological Institute of America;
Dr. Paul J. Sachs, Associate Director, Fogg Museum of Fine Arts;
Dr. Francis Henry Taylor, President, Association of Art Museum Directors.

Secretary-Treasurer:

Mr. Huntington Cairns, Secretary-Treasurer and General Counsel, National Gallery of Art.

The Department referred certain of the points raised in the note of the Foreign Office of May 31, 1943 to the Commission. As soon as the Commission's comments are received the Department will send a reply to the whole note.

A confidential airgram has been received from the Embassy at Moscow,¹⁴ the pertinent portions of which are as follows:

"a note dated August 5, 1943, has been received from the Foreign Office in reply to the Embassy's note of May 31, concerning the protection of works of art and historical monuments. The reply states that:

'the questions referred to in this note fall within the competence of the Extraordinary Commission for establishing and investigating the crimes of the German-Fascist usurpers and their accomplices and the damage done by them to the citizens, collective farmers, public organizations, State enterprises and institutions of the USSR, established by the decree of the Presidium of the Supreme Soviet of November 2, 1942.

'Having in view the communication of the Embassy regarding the plan for the creation of a committee for collaborating in the realization of a program of preserving and guarding art monuments, historical monuments and works of art in Europe, the People's Commissariat hopes that the Embassy will be good enough to inform the People's Commissariat of further measures relating to this question'.

"The decree referred to was published in *Izvestiya* on November 6, 1942".

As approved by the President, the American Commission will cooperate with such other national commissions as may be established for the purpose of taking steps to protect and conserve works of art and artistic or historical monuments and records in Europe and to aid in salvaging and returning to the lawful owners such objects as have been appropriated by the Axis powers or by individuals acting under their authority or consent. Under the auspices of the War Department a special section has been formed in the School of Military Government at Charlottesville, Virginia, for the purpose of training certain officers in the Specialist Branch of the service so that they could

¹⁴ Airgram No. A-7, August 11, 4 p. m.

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be attached to the staffs of our armies to advise the commanding officers of such troops as to the location of and the care to be given to the various artistic and historic objects in occupied territory. It is contemplated that after the occupied territory has passed from a military to a civilian government, this work would be turned over to the properly constituted authorities representing the United Nations.

The Commission is to secure, on a volunteer basis, the services of a committee of experts composed of museum directors and other qualified persons to advise on the above project and to furnish information required for carrying it out.

The Commission will have its offices in the National Gallery of Art at Washington and will function in close contact with the War Department and the State Department, as well as civilian agencies which will later be concerned in the affairs of liberated or occupied territories.

HULL

840.403/883

The Assistant Secretary of State (Berle) to Justice Owen J. Roberts, Chairman of the American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe

WASHINGTON, October 15, 1943.

MY DEAR MR. JUSTICE: The President referred to the Secretary of State a letter of August 12, 1943 from the Honorable Archibald MacLeish suggesting the desirability of effecting some international agreement to restrict the transfers of valuable books in the liberated areas of Europe and to protect cultural materials against disposition under the pressure of economic distress. For your information a copy of Mr. MacLeish's letter is enclosed.¹⁵

Secretary Hull in a letter of September 13, 1943¹⁵ informed the President that he believed it would be desirable for the American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe to undertake a thorough study of this question and to make appropriate recommendations before any approaches are made to foreign governments in this regard. The Secretary added that if this procedure met with the President's approval, he would submit the question to your Commission and that he also had in mind consulting the appropriate national and international bodies with a view to obtaining technical information at their disposal as well as their suggestions concerning the most effective means of assuring

¹⁵ Not printed.

successful international cooperation in achieving the objectives described by Mr. MacLeish.

The President approved these suggestions and I am therefore writing to inquire whether the American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe will be willing to undertake a study of this proposal and communicate its recommendations to the Department.¹⁶ In the meantime, the Department will initiate its consultation with the appropriate national and international groups.

I am confident that Mr. MacLeish will be glad to assist the other members of the Commission in connection with the proposed inquiry.

Sincerely yours,

A. A. BERLE, JR.

[For texts of orders with respect to the protection of historic monuments issued on December 29, 1943, by General Dwight D. Eisenhower, Commander-in-Chief of the Allied Forces, and by General Walter Bedell Smith, Chief of Staff of the Allied Forces, see the *United Nations Review*, volume IV, 1944, No. 3, pages 93-94.]

¹⁶ In a letter dated October 19, 1943 (not printed), Mr. Justice Roberts informed Assistant Secretary of State Berle that the Commission would undertake a study of this proposal.

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DEPARTMENT
OF
STATE

**INCOMING
TELEGRAM**

**DIVISION OF
CENTRAL SERVICES
TELEGRAPH SECTION**

SFG-751

DEPARTMENT OF STATE
DIVISION OF

PLAIN

1945 FEB 4 AM 10 35

London

*Roberts
Com*

Dated February 3, 1945

COMMUNICATIONS
AND RECORDS
(LIAISON)

Rec'd 10:30 a.m.

Secretary of State

Washington

1197, Third

FOR CAIRNS ROBERTS COMMISSION FROM MULL. FOR
CONFIDENTIAL DISTRIBUTION

Ministry of Economic Warfare's proposal re tightening up of control over export of works of art particularly paintings and pictures to Western Hemisphere sent in letter of instructions to British Embassy Lisbon of 2 February 1945 and quoted in Embassy's Airgram A-107 2 February to State Department. Main points are as follows:

Since October 1941 system in spasmodic operation whereby photographs of pictures being sent or carried to Western Hemisphere taken and sent to London for investigation. Propose putting system into general operation for all paintings and pictures, etc, which it is desired to export except where certain that owner non-enemy and pictures in uninterrupted ownership since before September 3, 1939. Arrangement made with MacMillan Committee to

examine

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-2-#1197, Third, from London

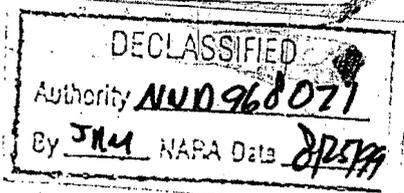
examine photographs to determine likelihood of looting or enemy "taint". Proposal discussed with American Embassy who are communicating it to Washington suggesting our authorities send parallel instructions to United States missions. Ministry of Economic Warfare believes that as double precaution photographs with details should also be sent to Washington to be examined there by Roberts Commission and associated agencies. (END SUMMARY)

winant for text

Can Roberts Commission make suitable arrangements for identification of pictures if MEW'S proposal is adopted by SAFEHAVEN authorities Washington. Full text of proposal follows in despatch but can be consulted in airgram A-107.

WINANT

WSB



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Box	1

DEPARTMENT OF STATE

Memorandum of Conversation

DATE: 10-1-45

SUBJECT: Proposal from London for Clearance of Export Licenses for Art Objects by Neutral States with U. S., U. K., and French Missions and the three Art Commissions.

PARTICIPANTS: Mr. Huntington Cairns, Secretary, Roberts Commission;
Mr. Charles Sawyer, Ass't. Secretary, Roberts Commission;
Mr. Stimson, ES, Department of State

COPIES TO:

Mr. Cairns and Mr. Sawyer cleared the proposal and the general terms of the Department's plan of procedures, as outlined by Mr. Stimson. Mr. Cairns suggested that Mr. Stimson discuss the matter with Mr. O'Flaherty, FFC, Treasury Department, who has recently discussed the matter with Mr. Cairns and appeared anxious to terminate the customs import controls re art objects.

Mr. Sawyer stated that he favored the retention of the U. S. import controls. The export controls which the neutrals may establish might not be effective. Customs officials are not good judges of art values, and might fail to clear license application for very valuable paintings.

Mr. Sawyer stated that the customs definition of art objects was interpreted in practice as covering art objects over a \$500.00 minimum value (i.e., the objects "of intrinsic, artistic, or historic, or scholarly interest irrespective of monetary value." \$5,000.00 is the minimum value for other objects.

(This suggests a lower minimum value than I have indicated in my drafts.) (Revise the same downward.)

ES:RHStimson:drc

10-4-45

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 By JW/NARA Date 11-5

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American Commission

May 23, 1946

My dear Mr. Rubin:

For your information we are enclosing here-
 with a carbon of a letter addressed to Mr. Schmidt
 recommending that T.D. 51072 be rescinded.

This is in line with our informal telephone
 conversation of some weeks ago at which time you
 suggested a delay of approximately one month be
 permitted before making a formal request to the
 Treasury Department.

Sincerely yours,

Lamont Moore
 Assistant Secretary

Mr. Seymour Rubin
 Chief
 Financial Control Division
 Department of State
 Washington 25, D. C.

1 Encl.

STATUS REPORT ON PRESENT AND FUTURE MONUMENTS AND FINE ARTS

SECTION ABROAD

June 20, 1946. Presented at Final Meeting of Commission

1. Mr. Wittmann's Mission: Mr. Otto Wittmann, representing the Financial Control Division of the Department of State, left this country this month to investigate the so-called "Safehaven" activities of German nationals who sold works of art in neutral and occupied countries. Mr. Wittmann will return on or about September 30th.

II. Germany.

A. Personnel in Germany: The Office of Military Government (U.S.) in Berlin will be operating for approximately the next year and consists of a Chief, Deputy Chief, Civil Arts Administrator, Field Inspectors, and clerical staff, numbering approximately fifteen individuals. One officer will continue as Chief for the Eastern Military District with headquarters in Munich. One officer will continue as Chief of the Western Military District with headquarters at Wiesbaden. Only one collecting point (Munich) will be maintained, with one American in charge. The Commission has recommended personnel for approximately half the positions which will be held by civilians employed by the War Department. Only one position remains to be filled and it is anticipated that the proper person will be found before July 1st.

B. Activities in Germany.

1. Restitution: It is estimated that by July 1st all the identifiable loot will be returned to the countries of origin. The survey of works of art from Germany and occupied countries, which were purchased by German museums at auction sales of private collections, has been completed and steps are being taken to have them returned to their rightful owners. Inter-zonal transfer of works of art from British to Americans and vice versa, French, etc., is being effected.
2. German Administration: As of July 1st the administration of collecting points, plans for rebuilding and restoring monuments, the reactivation of art institutions and libraries will be under the direction of German civilian staffs supervised by American Military Government Monuments and Fine Arts officers. All collections which should not be under German administration will be moved to the Munich Collecting Point which will probably be in operation for at least two years.
3. Problems: Lack of information from the Russian Zone and the refusal of the Russians to cooperate with the plans agreed upon by the quadrupartite powers makes difficult of solution such questions as consulting the records

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on the Linz Museum in Dresden: inter-zonal transfer of cultural objects and the movement of museum staff members out of Berlin to collecting points in the American Zone.

III. Japan.

A. Organization: The small Monuments and Fine Arts American staff in the Civil Information and Education Section at Supreme Headquarters in Tokyo consists of a Chief, Deputy Chief, Special Adviser, Field Inspector and several Japanese civilian assistants. The work of the Tokyo office is almost entire administrative and no collections or monuments have been taken into actual custody. The Japanese are charged with their care. In recent months the Commission recommended three American civilians to replace the Military Service personnel and they are on their way to Tokyo.

B. Problems: The chief problem in Japan is the locating of private Japanese collections which have gone underground because of unfounded rumors of confiscation for sale and reparations. To allay these fears, Langdon Warner, as Special Adviser, has been doing a notable job.

IV. Other Countries: There are no official Monuments and Fine Arts officers in countries other than Germany and Japan. With the closing of the Sub-Commission in Italy all problems, Collections, restorations, etc. have been taken over by Italian officials. The same is true of Austria. An American in the Military Government Section of the United States Forces, Austria, is charged with Monuments and Fine Arts responsibility in Vienna, but his duties in this work are only part time.

Signed:

Lamont Moore

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THE AMERICAN COMMISSION FOR THE PROTECTION AND SALVAGE OF ARTISTIC
AND HISTORIC MONUMENTS IN WAR AREAS

Owen J. Roberts, Chairman
David E. Finley, Vice Chairman
Huntington Cairns, Secretary
Charles A. Sawyer, Asst. Secretary
William Bell Hinsmoor
Herbert A. Lehman
Paul J. Sachs
Archbishop F. J. Spellman
Francis Henry Taylor
John Walker, Special Adviser
Sumner McK. Crosby, Special adviser

Office of the Secretary
National Gallery of Art
Washington 25, D. C.

June 30, 1946

My dear Mr. Secretary:

At the final meeting of The American Commission on June 20, 1946,
the members of the Commission unanimously passed the following resolution:

"The American Commission for the Protection and Salvage
of Artistic and Historic Monuments in War Areas recommends
that cultural objects belonging to any country or
individual should not be considered or involved in
reparations settlements growing out of World War II."

This resolution is respectfully submitted to you for your
consideration and such use as the Department of State might wish to
make of it, especially since the work of the Commission is being
continued by the Division of Occupied Areas, Office of International
Information and Cultural Affairs of the Department of State.

The Commission would look with favor upon releasing this statement
to the press, either as a joint statement or from the Commission with
your approval.

Very sincerely yours,

Huntington Cairns
Secretary

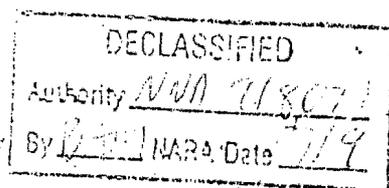
The Honorable

James F. Byrnes

Secretary of State

840.403/6-3046 CS/V

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Lot 620-A
Box 28

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A proposed solution of residual unidentified properties which it is believed would satisfy all claimant governments is retention of remaining objects not identified in official custody and the circulation of photos of these unclaimed and unidentified objects to all countries, as photos of missing looted art objects are circulated under International Agreement of July 8, 1946.

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By *[Signature]* NARA Date *7/9*

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First Draft

Memorandum for the United States Representative, Tripartite Study Group
on the Occupation Statute.

SUBJECT: External Restitution of Cultural Property.

A. HISTORY OF THE PROBLEM.

The United States Government took initial action in recognition of the impending problems of World War II concerning conservation of cultural property in 1942, when President Franklin D. Roosevelt approved the creation of the American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe "(as) an organization functioning under the auspices of the government ... to aid in salvaging and returning to the lawful owners of such objects which have been appropriated by the Axis powers ... with whose objectives I am confident there will be almost unanimous agreement." The entire program of recovery and restitution of cultural property has been accomplished ^{U.S.} ~~by the United States Government~~ ^{entirely} for the protection of the cultural heritage of Europe and particularly for the redress of wrongs suffered under the Nazi aggression. While the United States suffered no cultural losses and there were relatively few losses in Europe of American citizens, these policies have always received the full support

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of American public opinion in the United States. Great Britain likewise has carried on the cultural restitution program when its own losses of confiscated property were relatively small. France, which suffered major cultural losses, has recovered from the United States Zone of Germany the largest number of objects restituted to any country in Europe (see Table 1 below).

(These losses involve primarily masonic properties in the Hawaiian Islands)

The inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation or Control of January 5, 1943, issued as a warning that such acts would be rectified, specifically applied to works of art. The procedures for external restitution of looted cultural property ^{in Germany} were established by the Allied Control Authority in December, 1945, and received full approval of the ^{four} quadripartite powers (CGRC/P/(45)185(DRIR/P(45)14 Revise), 6 Dec 1945, "Interim Restitution Deliveries (Cultural Objects)", accepted by the Coordinating Committee, ^{ACA} ~~AGP~~, 12 Dec 1945).

The United States Government has developed a consistent policy with respect to cultural restitution, in the SHAEP directives of 1944 and 1945, in the directives of the Joint Chiefs of Staff (JCS 1067, April, 1945, and JCS 1779, July 11, 1947), in MG Law No. 52, and in Military Government Regulations Title 18, Monuments, Fine Arts and Archives, amended in Change No. 1, 12 February 1947. The latter contains not only the United States policy but also excellent instructions for carrying on the extensive operations in the United States Zone.

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Cultural materials to be restituted ^{are defined} by definition in MGR Title 18 are "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." In general the Monuments, Fine Arts and Archives operations have been solely concerned with works of art of museum quality. The ~~same~~ restitutions from the United States Zone of the Van Eyck, "Altarpiece of the Mystic Lamb" to Belgium on September 3, 1945, and the ~~Van~~ Stoss Altarpiece to Poland in April, 1946, which are of supreme importance to the cultural heritage of these countries, exemplify the character of the objects which have been restored to the claimant countries of Europe.

Cultural Restitution in the United States Zone of Germany.

By far the largest holdings of works of art and cultural property in Germany were found in the United States Zone. Collections had been sent by the Germans from all parts of Germany and from all the Nazi-occupied countries of Europe to the isolated repositories, as mines, churches, castles, barns, village houses, etc., in the United States Zone and Austria for safekeeping during the war.

Over 1,500 such repositories in the United States Zone have been reported, inspected and evacuated to Collecting Points, or returned to German custodians. ~~The United States Zone has received from~~

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As of Jan 1, 1948, the

~~claimant countries 1,422 claims for 100,000 cultural objects. The~~

restitution

~~claimant countries figures of cultural materials, including works of art~~

and been made to

~~and books, which have been returned to claimant countries under the~~

~~cultural restitution program in the United States Zone~~ *as follows:*

<u>Table 1</u>	<u>Items</u> <u>(Works of Art</u> <u>and Books)</u>
Austria	178,015
Belgium	20,947
Czechoslovakia	25,485
France	562,598
Great Britain	4,222
Greece	8,514
Luxembourg	estimated 10,000
Norway	1,074
Netherlands	336,532
Hungary	2,983
Italy	225,652
Poland	336,172
USSR	328,965
Yugoslavia	3,670
<u>TOTAL</u>	<u>2,098,879</u>

1. ~~As of Jan 1, 1948~~ *(A-472, USPOLAD, Berlin to DEPT*
June 7, 1948, the latest figures of items restituted
~~to each~~ *to individual countries have been requested*

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As of early 1950
 A total of over five hundred thousand works of art and two million books ~~have~~ ^{had} been recovered, identified, and transferred from the United States Zone to claimant governments. There ~~are~~ ^{remain} approximately 250,000 objects including books at the Wiesbaden and Munich Central Collecting Points to be processed. This processing can only be accomplished with the use of the extensive files of the United States Government including property cards itemizing every object in the Central Collecting Points, claims filed with OMGUS and HICOG by claimant governments, receipts for all cultural property which has been restituted, as well as records, inventories, bills of sale, and documents relating to Nazi art transactions.

No Deadline for Filing Claims for Cultural Property.

In the restitution of cultural property no restrictions have been issued in the United States Zone which limit the opportunity to recover looted cultural materials of value or importance to the cultural heritage of the claimant nation. Cultural property was specifically exempted from the cut-off date for the filing of claims established

April 30, 1948
in the U.S. Zone
~~for cultural property (IRIS/D(56)202), dated 23 April 1948.~~

No Time Limit for Filing Counter-claims for Cultural Objects Restituted by Mistake.

If any cultural object was delivered by mistake, the receiving government undertook (in the Receipt) to restore the object either to

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the Allied government from ^{whose territory} which it was removed or to the headquarters of the ~~zone~~ from which it was shipped, if it had not been removed from the territory of an Allied state. No time limit is specified in which such a mistake must be determined (CGRC/P(45)165 (DEUR/P(45) Revise) 6 December 1945). "hereas, if any identifiable economic property, other than cultural objects, was mistakenly delivered, determination must be made within one (1) year (Appendix "C" to CGRC/P(46)143, 17 April 1946).

In the Occupation Status April 8, 1949, drawn up by the governments of France, the United Kingdom and the United States defining the powers to be retained by the Occupation Authorities in Western Germany, those specifically reserved included under 2, c: "controls in regard to ... restitution."

Also in the Charter of the Allied High Commission, June 20, 1949, of the Supreme Allied Authority in the Federal Republic of Germany, paragraphs V, 2, c:

"Each High Commissioner shall be responsible to his government ... for ...

c. the delivery of ... restitutable property."

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B. DISCUSSION.

External restitution of cultural property in the British and French Zones has been carried forward under similar policies and directives as those of the United States Zone. In the British and French Zones, however, the operation was less extensive than in the United States Zone, as there were relatively fewer repositories in those zones containing restitutable items.

(Handwritten: at the workshop in HICOM)

(Handwritten: There is general agreement between the United States, France and Great Britain that external restitution of cultural property ^{should} continue after the program for external restitution of economic property is concluded.)

British Zone of Control.

In the British Zone a deadline for the submission of all claims both for economic and cultural property was originally established on June 30, 1949, and later extended to March 31, 1950.

The British have stated that they regard the restitution program as concluded, in so far as the acceptance of claims, including claims for cultural property, is concerned. They have indicated, however, that ^{the} restitution of cultural property will be continued, after the completion of all other restitution activities on September 30, 1950.

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French Zone.

In the French Zone claims for cultural property are still received unconditionally and external restitution of cultural property will be continued.

The French High Commissioner has urged in a paper submitted to the Council of the Allied High Commission (HICOM/P(50)57 and Appendix B, 27 March 1950)

- "1. The principle of the right to restitution resulting from the London declaration of 5 January remains unchanged. This right shall only be considered as invalid with an overall settlement which will have to come at the latest with the signing of the peace treaty."

And further, that "restitution operations through administrative procedure" be continued for specified categories including "4 (a) works of art, cultural possessions, collections archives."

Germany

In the consideration of the continuation of recovery and restitution of cultural property in Germany, the importance of the International Agreement with Respect to the Control of Looted Articles

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concluded at Paris on July 8, 1946, by the United States, the United Kingdom and France should be emphasized. This program originally devised for the recovery of looted and dispersed cultural property in neutral and liberated countries of Europe as well as in the United States, Great Britain and France, was extended by tripartite action following the ratification of the treaties of peace to those satellite countries which were willing to participate in the Agreement, i.e., Italy and Finland. There are now seventeen European nations participating in this Agreement.

It should be anticipated that the German Federal Republic will be invited by the United States, United Kingdom and France to join in the Agreement. It is reasonable to believe that missing works of art may be recovered in Germany for some time after the conclusion of the Allied restitution program and a final over-all settlement. Through the dispersal of German collections due to the hazards of war, Germany has also suffered cultural losses and may expect to gain as well as contribute through participation. The German art authorities are already aware of the benefits resulting from the Agreement. The United States Government, acting on behalf of the United States Zone of Germany in its application of the required measures under the Agreement, has listed the works of art and cultural articles looted or dispersed from the United States Zone of Germany and has recovered

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important objects in the United States and returned them to the rightful owners in the United States Zone. These objects have included four tapestries of the Bavarian National Museum, Munich, a Dürer engraving of 1513 of the Germanisches Museum, Nürnberg, a 14th century ivory diptych of the Cassel Museum, Rajput and Mughal miniatures of the Berlin State Library, and the 1457 Mainz Psalter of the Landesbibliothek, Dresden.

The effective measures for the recovery of works of art under the International Agreement are import and export controls.

The licensing of art dealers and the control of sale and export of works of art has been regulated at the Laender level in the United States Zone by the OMGUS directive of 6 December 1946, "Transfer of Works of Art or Cultural Materials of Value or Importance" (amended 3 December 1947). This directive and Laender regulations in pursuance of the directive should remain in force until appropriate legislation enacted by the German Federal Government becomes effective.

The Federation has exclusive legislation on customs (Basic Law Federal Republic of Germany, Article 73, paragraph 5). The Federation has also the right of concurrent legislation (with Laender) for "the ~~protection of German works of art against removal abroad~~ ^{against removal abroad of objects constituting a part of the cultural heritage}" (Ibid., Article 74, paragraph 5). Controls (as screening of art exports) ~~which will effectively prevent the export of works of art in German~~

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~~public collections (which is presumed to be the intent of the ambiguous wording of the above paragraph)~~ should make possible the discovery of items on the lists of missing objects circulated under the International Agreement.

C. RECOMMENDATIONS.

1. Internal restitution of cultural property under established procedures in the United States Zone should be continued by the Office of the United States High Commissioner for Germany, with the expectation that the restitution of objects presently held in the Wiesbaden and Munich Central Collecting Points will be completed before there is a fundamental change in the relationship of the Occupying Powers to the German Federal Government. The Office of the United States High Commissioner for Germany should continue to accept claims for cultural property of considerable value or importance to the cultural heritage of a claimant nation.

2. Tripartite agreement should be obtained for the continuation of cultural restitution in all three zones of Western Germany until such time as the continuing responsibilities for the recovery and restitution of cultural property can be fully assumed by the German Federal Republic.

3 (a). It should be anticipated that the Allied programs of cultural restitution will merge into a German program of recovery

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conducted by the German Federal Government under the International Agreement of July 8, 1946, and German laws and regulations.

(b). It is recommended that the United States, the United Kingdom, and France should jointly inform the German Federal Government that it will be invited, as soon as feasible, to participate in the International Agreement of July 8, 1946, and urge that the German Federal Republic enact appropriate Federal legislation for the control of looted and dispersed works of art and cultural materials.

OEK:ILI:ARHall:mms

June 30, 1950

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Annex

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Note on French attitude towards ^{an} international
~~For the Information of the United States Representative.~~

*Program for restitution of art - provision
towards replacement - in-kind.*

The French representatives have implied in various ways that they do not expect the program of recovery of missing works of art under the International Agreement of July 8, 1946, to continue indefinitely or to continue after a final settlement of cultural settlement is reached. Instead, they have consistently pressed for replacement-in-kind of works of art.

In the preface of the List of Property Removed from France during the War 1939 - 1945, G. Glasser, Directeur des Reparations et Restitutions has stated:

"In the following list, works of art of undeniable cultural value are marked by asterisks. In case they should not be recovered, compensation for them would, in accordance with the quadripartite agreement, have to be taken from Germany's art treasures."

A draft international declaration for the Protection of Cultural Property in the Event of Armed Conflict was recently submitted by the French National Commission to UNESCO. The Director of the Museums of France is an official of UNESCO.

In this draft, it has been stated that the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas

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"was to draw up a list of cultural treasures belonging to public corporations in the Axis countries or to the private collections of the Axis leaders, which might furnish reparations of equivalent value."

Such a listing was never made by the American Commission. As a matter of fact, the American Commission unanimously resolved,

"that cultural objects belonging to any country or individual should not be considered or involved in reparations settlements growing out of World War II."

The lists of cultural property ^{for twenty-eight countries} to be protected during the war which ^{issued} were prepared by the American Commission and published by the United States Army are never mentioned. These included two manuals on France: Churches, Museums, Libraries and Other Cultural Institutions in France (Army Service Forces Manuals M352-17 and M352-17A).

The French draft declaration also includes an article reading,

"Although dealings in cultural property may be permissible in the course of an armed conflict, however the latter may be legally designated, it is for the person in whose possession the property is finally found, of whatever nationality, to establish the commercial legitimacy of the operations. This obligation to provide proof shall come to an end after a period of five years from the date of the cessation of hostilities."

~~This extraordinary article would appear to mean that the claimant does not prove that the property was looted or acquired under duress~~

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~~(as is the case under established Allied restoration procedures)~~

that if a looted object of art is concealed for five years after a war, it automatically will remain in the possession of the ~~person~~ ^{holder at} ~~where it is finally found.~~ ^{that time.}

This doctrine, which has been expressed on other occasions, would if obviously accepted provide a natural basis for claims for replacement in kind of looted objects not recovered.

OEX:ILI:ARHall:mms

June 30, 1950

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Box 5

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THE AMERICAN COMMISSION FOR THE PROTECTION AND SALVAGE
OF ARTISTIC AND HISTORIC MONUMENTS IN EUROPE

Thursday, February 3, 1944

A meeting of The American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe at the National Gallery of Art, Washington, D. C., convened at 10:00 a.m., Honorable Owen J. Roberts, Chairman, presiding.

... The following were present:

Owen J. Roberts, Chairman
David E. Finley, Vice Chairman
Huntington Cairns, Secretary-Treasurer
William Bell Dinsmoor
Herbert H. Lehman
Archibald MacLeish
Paul J. Sachs
Francis Henry Taylor

Sumner McK. Crosby
John Walker
John A. Gilmore

Brigadier General Henry C. Newton * ...

THE CHAIRMAN: Gentlemen, the hour has arrived, and I think we might come to order. There are several matters to come before the Commission for action, and we shall take them up, if you please, in this order: There is the question of a regulation which the Treasury, I understand, is ready to promulgate to freeze art funds and art objects that are attempted to be imported into the United States. Mr. Secretary, will you outline that to the Commission?

MR. CAIRNS: At a previous meeting of the Commission

* Present during latter part of meeting only. See page 46.

106540

R6 239

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it was agreed to ask the Foreign Funds Control of the Treasury Department if it could take any steps to detain looted objects, that might be imported into the United States or to seize them if they had slipped through Customs, in order to restore them to their lawful owners after the war. The Foreign Funds Control has studied the question, and it has submitted in draft form a proposed letter to the Commission and a proposed Treasury decision. It welcomes suggestions. I shall read the pertinent part.

"This Department is prepared to initiate the procedure outlined in the attached drafts, provided that the Commission assumes the responsibility of determining in each case whether an application for release of a particular art object should be denied on the ground that it may be looted property which the Commission is interested in preserving and protecting for future disposition."

The Treasury, in the proposed Treasury ^{decision} procedure, sets up a procedure for the importer to follow in order to get his object, but we will have to determine whether or not it may be looted property. I understand that the subcommittee of Mr. Walker and Dr. Taylor are prepared to do that.

It raises first the question, What is looted property? I suggested to the Treasury that, in replying to this letter, we would define looted property and get their approval of it. They would write back. It seems to be the opinion that looted

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property ought to embrace at least property sold at forced sales and confiscated property. If anyone has any further ideas on that definition, we should welcome them. That will be a responsibility of the Commission. The last paragraph reads:

"It will be appreciated if you will indicate your suggestions or comments with respect to the proposed procedure, including an assurance that the Commission will undertake the responsibility of determining in each case whether release of a particular art object should be withheld on the ground that it may have been looted."

That is the first point. There are a number of other points in the decision. Would you like to discuss that point or to have them all?

THE CHAIRMAN: Suppose we take that point first, in order to keep our thinking clear.

MR. TAYLOR: Mr. Justice, there is one question. What about reasonable suspicion? Where we do not know the actual facts and it is impossible to ascertain positive knowledge, what would our position be in regard to it?

THE CHAIRMAN: Of course, I am a little hampered because I once was a lawyer, and my lawyer's mind jumps to this thing: I don't like this Commission to have the responsibility. It seems to me it is the Treasury's responsibility, but that this Commission should present its views for the Treasury's action.

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MR. TAYLOR: As advisers?

THE CHAIRMAN: As advisers. In other words, I should think that this Commission should be asked to advise the Treasury that in its judgment it was so-and-so, but that letter seems to indicate that the Treasury is going just to act automatically and then say, "Well, an extra-judicial body (this Commission) told us so, and we acted." I think that is a weak position for the Treasury and an undesirable position for this Commission.

If the thing could be so arranged, this Commission would furnish its opinion on the subject, and then the Treasury if it cares to take that opinion, could act. Then, if there were a fight (as there might well be if someone insisted on bringing an article in), the Commission could furnish the Treasury solicitors with what information we had, and the Commission could testify, if they care to, in the administrative proceeding about it. That seems to me to be a little better arrangement.

I don't like the Treasury's putting itself in the position of saying, "We know nothing about this, but this body told us this was a looted object. Therefore, you can't bring it in." I think you are in a weak position with the importer if you take that stand. I think the Treasury ought to make the decision, based on the information that we furnish it. I may be all wrong about that. How about it? What do you think?

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MR. CAIRNS: I should prefer to have it that way. This was not discussed with me before it came down. This is their suggestion, and it is in accordance with their usual methods.

THE CHAIRMAN: My own thought would be simply to put it back to the Treasury on the point that we will furnish any information we have with respect to any article that is suspect and be prepared to give that information to the authorities for their action, and I wouldn't hesitate to go so far as to have a subcommittee of this Commission request the Treasury to rule that that article couldn't come in.

DR. DINSMOOR: Right.

THE CHAIRMAN: But it does seem to me that the constituted authority ought to take the decision, and not we, and have the Treasury be a mere rubber stamp in the matter.

MR. CAIRNS: I think that if we make the request or indicate that it is desirable that it not come in, it would satisfy the Treasury.

THE CHAIRMAN: That, I think, would be according to Hoyle.

Now, how about the definition? Mr. Taylor raises the question of the situation where there is a suspicion. I think it is perfectly proper, if we have a suspicion, that we communicate that suspicion to the Treasury, and the Treasury will then do something in the nature of a temporary injunction, withhold

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the thing awaiting investigation. We can assure the Treasury that, if we have a suspicion, we will give what effort we can to investigate and ascertain the facts on it while they hold the importation of it temporarily.

MR. MacLEISH: This relates, does it not, Mr. Justice to the question that Dr. Coudert and the International Law group are working on, as to whether or not it would be possible to draft a proclamation to be issued by the President or by the President in conjunction with other heads of nations, in effect outlawing transfers of property of a certain character after a certain date.

THE CHAIRMAN: Yes, it is ancillary to that.

MR. MacLEISH: If that existed, this problem would no longer present itself.

THE CHAIRMAN: Except that we would furnish information such as we had, upon request. You don't know anything about where that stands, do you?

MR. MacLEISH: No, sir. In theory, it is on the desk of Dr. Coudert.

THE CHAIRMAN: Is there objection to our saying that we would define looted articles as Mr. Cairns suggested and that we would add that where there is suspicion of an article falling in those classes, we would be glad to furnish such information as we had, including information that it is a suspect article, for action by the Treasury?

MR. TAYLOR: I so move.

THE CHAIRMAN: Is there no objection? It is carried.
Now, Mr. Cairns.

MR. CAIRNS: "The Treasury decision applies only to art objects which have been imported after March 12, 1938" That is the date of the invasion of Austria. Is that date satisfactory to the Commission?

THE CHAIRMAN: Any objection? I see none.

MR. CAIRNS: Imported after that date "from any foreign country other than one constituting a part of the British Empire."

The reason for excluding the British Empire is that there is a large trade between the United Kingdom and the United States in antiques and other objects which are sold on Madison Avenue. The Commission doesn't want the administrative burden of passing on those objects. A reason for not excluding the British Empire is that the looted objects may be sold in the British Empire. I mean, instead of coming over here, where we might have the benefit of them, they will go to the British Empire. Another point is that if the British Empire controls are not as rigid as these controls, the objects will then be sold in the British Empire, then be sold over here, and we will have no control over them.

I have taken the matter up (I took it up last night, because I didn't get this until last night) with Allardyce

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Nichol at the British Embassy. He called me this morning. He says the British Government is anxious to stop the trade in looted objects. We can count on their full cooperation. At present, no object more than seventy-five years old can be imported into the U.K. (he is speaking only for the U.K.) without a license. He has no information as to the Dominions.

His own opinion and the opinion of his colleagues at the Embassy, privately, is that it would be a pity to exclude the British Empire. He would prefer not to have it excluded. If we deem it wise, for administrative or other reasons, to exclude it, he would like a statement of explanation to be given out at the same time as the release of the Treasury decision.

Meanwhile, he is sending a cable to the Foreign Office today to find out what the controls are in the U.K. and in the British Dominions, and he will report back.

THE CHAIRMAN: I suppose we ought to act on this today, if we can, oughtn't we?

MR. CAIRNS: The Treasury, of course, will hold up this Treasury decision as long as we want them to. He anticipates a reasonably prompt answer.

THE CHAIRMAN: You mean that this, then, will have to pass until another meeting of the Commission?

MR. CAIRNS: No. I think that if the Commission will authorize certain of its members to negotiate with the British

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Embassy and to reach a conclusion which they think is administratively workable on the question of the exclusion or inclusion of the British Empire, that could be done. I don't know whether or not the Commission regards this as a vital point.

MR. TAYLOR: Mr. Chairman, there is one point in connection with this which I think is most important. The largest repository of naval control (that is to say, objects of art which have been taken by the British Navy from ships, particularly in the period from the fall of France in 1940 to Pearl Harbor) is in Bermuda, and that has been the point of control for objects coming to this country, particularly from France, and going to South America. It seems to me that the status of those works of art held at Bermuda should be one of the points taken up with this.

THE CHAIRMAN: This occurs to me, Mr. Taylor: If we did not except the British Empire, as a matter of administration the Commission could be relieved of looking after the junk dealers on Madison Avenue or wherever it is. In other words, we could close our eyes to that, and so could the Treasury, but we could leave the regulation broad enough to catch such things as you speak of and as Mr. Cairns speaks of, which have been piped through the British Empire.

Why wouldn't it be better for the Treasury not to make the exception, as the British apparently don't want it made and would want an explanation if an exception were made?

Why not ask the Treasury to make a broad regulation, and then in its administration we wouldn't need to watch a lot of junk dealers if we don't want to.

MR. CAIRNS: Mr. Chairman, this Treasury decision will go to the fifty-seven Collectors, and it has to be spelled out pretty carefully for them to know just exactly what they are to do. If you say they are to seize all art objects, they will seize them, everything.

MR. FINLEY: Could you not make an exception of objects, say, not of value or historic interest, and define them?

THE CHAIRMAN: That would be unworkable in the Collectors' problem.

MR. CAIRNS: It might be limited to the U.K., if we are satisfied with their controls.

THE CHAIRMAN: You mean exclude them?

MR. CAIRNS: Yes.

THE CHAIRMAN: Why not refer this matter to Mr. Cairns, with power, after he has investigated the situation? He knows the sense of this meeting now. Is there objection to that? Unless there is, it will be so decided.

MR. CAIRNS: "The term 'art object' is defined in the Treasury decision to include any of the articles listed therein. That list includes paintings in oil, and so on, statuary, rugs, sculpture, metal work, books, manuscripts, furniture, curios

of artistic or historic interest, chinaware, glassware, pottery, porcelain, and so on. "If there is reasonable cause to believe that the value of the article or lot of articles included in one importation, export shipments, or sale lot, is \$5000 or more...."

Yesterday we received from the Treasury Department twenty-some fifteenth century manuscripts that had been taken from a sailor who had just come from Naples. He claimed that the manuscripts had been presented to him by an Italian because of services rendered by the sailor to the Italian. The manuscripts are of great interest, but they are not worth \$5000. I feel that is the type of object that we should seize and return to the lawful owners when the occasion permits.

Mr. Walker suggested that this \$5000 figure either be modified or let remain as it is, but that an additional point be added that, if the art is of no value but is of obvious historic interest, it should be detained by the Collector. We want to exclude the junk that comes in from Mexico, native handcraft, and so on. If the Commissioner of Customs states that his Collectors will understand that phrase and can administer it properly, that may be the solution.

DR. DINSMOOR: Would they be able to understand manuscripts, books, and so forth?

MR. CAIRNS: I am sure they would understand the manuscripts; the other items, I don't know, but I could take

the assurances of the Commissioner of Customs on that, I think. He is an old-line bureaucrat.

THE CHAIRMAN: Why wouldn't it be well to leave that detail to negotiation with the Treasury, to qualify the regulation in some such way, as Mr. Cairns suggests? Is that satisfactory?

DR. DINSMOOR: So worded that if the object be of less value....

THE CHAIRMAN: Or of historic interest.

MR. CAIRNS: Is the Commission satisfied with the general figure of \$5000? Should it be raised or lowered.

DR. SACHS: I think a very large category of art objects commercially would not be worth \$5000 and would yet be of vast importance.

MR. TAYLOR: Yes.

THE CHAIRMAN: That is the thought I had. Why shouldn't that be reduced very drastically? Would it create too great administrative difficulties, do you suppose?

MR. CAIRNS: The Treasury ^{doesn't} care. They will put in any figure we want, but Mr. Taylor and Mr. Walker will have to pass on these objects.

THE CHAIRMAN: I would be inclined to make it \$500.

MR. MACLEISH: How about books and manuscripts, such as those that came in yesterday that you discovered were not valued at \$5000?

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MR. CAIRNS: They weren't valued at anything.

MR. MacLEISH: Were they valued by the people you talked to at \$5000?

MR. WALKER: We looked at them hastily, and they probably were part of the archives at Naples. The larger part had been destroyed, we believe, by the Germans, but apparently some of the manuscripts got out. From the symbols on the back of these papers and from the contents that we could read very hastily, it looked as if it were a part of the Naples inventory.

MR. MacLEISH: We will look at them, if we can get a crack at them, and have Professor Rand look at them, too. I think that raises the point very clearly, Mr. Chairman.

MR. WALKER: They were obviously fifteenth century manuscripts.

MR. MacLEISH: The archival material can be beyond price, while not being valued at any particular amount of money.

MR. CAIRNS: I think if we add the ^{general class} reason of no value but of obvious historic interest, it would catch that material. But now let's consider paintings. Do you want paintings that are worth \$4000 seized, rather than those worth \$5000?

THE CHAIRMAN: Why not?

MR. CAIRNS: Whatever the sense of the meeting is.

MR. TAYLOR: I would leave paintings and statuary at \$5000, the ordinary category.

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DR. SACHS: Yes. If somebody stole, as it was claimed, the Albertina collection, there would be hundreds of drawings there not valued at \$5000 but of immense importance.

THE CHAIRMAN: You say under \$5000?

DR. SACHS: Oh, yes.

THE CHAIRMAN: What is your suggestion, Dr. Sachs, as to value?

DR. SACHS: I think Mr. Taylor's idea about painting and sculpture is sound, but for all other artistic property I think the valuation should be decidedly less.

MR. TAYLOR: One thousand dollars.

DR. SACHS: Yes.

THE CHAIRMAN: A thousand. Then, unless there is a contrary view, Mr. Cairns will be instructed that as to sculpture and paintings the \$5000 limit stands; that as to all other art objects the limit will be \$1000; and that there be the addition that books, manuscripts, and other articles of historic interest, whatever the value, shall be retained.

DR. SACHS: And of artistic interest.

THE CHAIRMAN: Of what, now?

DR. SACHS: Of historic and artistic value.

MR. MacLEISH: And add "scholarly."

THE CHAIRMAN: Articles of historic, artistic, and scholarly value shall be retained, irrespective of value.

MR. MacLEISH: Do you have books, records, archival

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materials, and manuscripts, all four categories, there?

MR. CAIRNS: I have just books and manuscripts.

MR. MacLEISH: That ought to include records and archival materials.

THE CHAIRMAN: Will you add, then, "records and archival material, whatever the value"?

MR. CAIRNS: Those are the only points that arise in connection with the Treasury decision.

MR. TAYLOR: Mr. Chairman, in connection with this, it seems to me the burden of this may become rather great. Would it be proper for Mr. Walker and me to prepare a panel of museum officials, art historians, and other experts, who might be consulted on each point of interest?

THE CHAIRMAN: I should think so, certainly.

MR. MacLEISH: Would it be appropriate, Mr. Chairman, to have some representative of book and archival interest also in that group?

THE CHAIRMAN: Certainly. I think so. In other words, this is, so to speak, a panel or jury to whom you gentlemen can submit questions that arise if the Treasury seizes some of this stuff, whether it shall be held or whether it shall go through. Is that right?

MR. TAYLOR: Yes.

THE CHAIRMAN: I understand it is the sense of the meeting that the committee may do that, taking in all the fields

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that have been mentioned here.

There is nothing further on that, then?

MR. CAIRNS: I have nothing.

THE CHAIRMAN: My understanding is that Mr. Cairns is commissioned to work that out with the Treasury so that it shall not have to come back here.

A question has arisen, gentlemen, with respect to the list of art objects that is being compiled by this Commission. In what sense are those to be treated as confidential? Mr. Cairns, will you state how the question has arisen?

MR. CAIRNS: The question comes up in connection with the possible exchange of information between the Commission and the Foreign Funds Control of the Treasury Department. Foreign Funds Control will have listed certain art objects in its census of foreign-owned property. It is possible that we may want that information and, on the other hand, they will want information that comes originally to the Commission.

Mr. Walker has raised this question, and I think he has some views on it.

MR. WALKER: Mr. Chairman, my feeling about it is that in compiling these lists and in receiving reports from people who believe their property is looted, the Commission is actually doing them a favor in trying to restore the material to its original owners, and I feel, therefore, that it would be very difficult to consider the information that they give us

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as confidential information, but that, as a government agency, whatever information we have should be available to other government agencies.

THE CHAIRMAN: Is there any view to be expressed about that by any members? It seems to me eminently proper that we should give all that information to other government agencies. I can see no possible reason for withholding it. It is quite a different question from publishing a list in the public print.

Is there any objection to our furnishing information to and exchanging information with other government agencies on this point? If not, it will be considered that the committees are authorized to do that.

A third question comes up with respect to the publicity of this Commission. I may say that the policy we have followed thus far is to clear everything that comes from this Commission or a member of this Commission through OWI. OWI undertakes the obligation of clearing that with War or Navy or any other government department concerned, so that when we receive a clearance from OWI, we are perfectly at liberty to give out whatever information has come.

As you know, we have been receiving from the War Department statements about matters abroad which have been marked however they are marked.

DR. DINSMOOR: "Restricted."

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THE CHAIRMAN: "Restricted." Not "Confidential," but "Restricted." I am not clear whether we, as members of the Commission, are at liberty to use that or not or whether we should use it without first clearing it with OWI. How do you understand that, Mr. Cairns?

MR. CAIRNS: If it is marked "Restricted," we can't use it unless the authority that marked it "Restricted" consents. Some of this material is marked "Restricted" in the field, in Italy for example, and it is difficult for anyone in Washington to lift that restriction. It has to be referred to Italy.

THE CHAIRMAN: Perhaps I have a personal slant on this publicity business that is peculiar to myself. I am scared to death of giving out publicity to anybody at any time on anything. That is probably because I have been on the Court for thirteen years, where you have to keep your mouth buttoned up and say absolutely nothing about anything except the weather.

But I do think it is important that whatever goes out from members of this Commission should not be misconstrued as reflecting the official views of this Commission. That is highly important. We shall get into a jam, I think, if members of the Commission talk about its work and give out statements on their own about what is going on here. It will be thought that that is from the Commission. It seems to me that if the members wish to give anything out, they ought to clear

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it through the Secretary of the Commission first. That is just my own notion. You can depend on it that I won't give out any unless Huntington Cairns writes it.

DR. SACHS: Mr. Justice, what good purpose is served by any kind of publicity? I can't see it.

THE CHAIRMAN: I can't, either.

DR. SACHS: I don't see why we should give any.

MR. TAYLOR: I am afraid I raised this issue for the agenda, and I think that there is a very distinct purpose that can be served in the matter of information. Much of this material which is marked "Restricted" and has come to us through the Army from Italy has already appeared in the news columns of the New York Times particularly. A great deal of their material came through interviews with Herbert Matthews.

There is a great public curiosity about the general problem. I certainly don't feel that any publicity should be given that would in any way embarrass the work of the committees involved. On the other hand, it seems to me that there is a very great need for awakening the consciousness of the American public as to what is happening in Europe in the way of destruction. I don't feel that the publicity should be in the direction of what the Army is doing about it or what the State Department is doing about it or what the Commission as such is doing about it, but I feel that the records of information as to what the Nazi program of destruction of civilization

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is about should be published. It seems to me that the public is not sufficiently aware of that, and to get continued moral support for the work of this Commission it is a very important thing to present that case. I think Mr. MacLeish feels very much the same.

MR. MacLEISH: Yes, I do. I assume that there are two different questions involved. One is information about the activity of this Commission, and there I should think that the Chairman's view is quite obviously the only one that can be followed. I am quite sure we would all agree that the activity of the Commission ought to be described only by the Commission or through its proper officer, primarily the Chairman, who has expressed his views on that subject, which we all know.

The other problem, the problem of the extent of damage in Europe, seems to me to be not only a proper subject for information but almost, I should say, the most important single job now to be done. It seems to me that unless we can get a round-up of information on the extent of destruction of the educational establishment, libraries, museums, all the implements and tools of culture, we simply won't have backing in this country for the kind of activity that must be undertaken. It is an activity which I feel sure is not within the ambit of this Commission, which perhaps is not within the ambit of interest of UNRRA, but this Government is certainly at some time going to have to do something about it. There I should

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deplere the view that it was improper to put that information out.

THE CHAIRMAN: How do you think it ought to go out? Would it go out officially as from this Commission?

MR. MacLEISH: I shouldn't think so, sir. I have talked to Elmer Davis about that. Elmer's suggestion is that if the information that is available could be put together so that it could be issued as a round-up of what is now known, OWI would put it out as a basic news release, which would be the starting point for any discussion.

THE CHAIRMAN: Whose particular concern would it be to see that OWI does put it out and to see that it has in it what we think it ought to have, what the members of this Commission think it ought to carry to the public?

MR. MacLEISH: I would have to answer that in my capacity as Librarian of Congress. I feel that it is part of my responsibility to get information about the entry of library books, archival material, and so on, into the hands of OWI.

THE CHAIRMAN: So that press releases can go out?

MR. MacLEISH: Yes, sir.

THE CHAIRMAN: What about the art end of it?

MR. TAYLOR: Mr. Chairman, in regard to that, The Atlantic Monthly has asked me to do an article which is appearing in March, which I am doing not as a member of the Commission but as a representative of the Metropolitan Museum, not on

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the destruction of the museums abroad and the moral implications of destruction of the objects themselves, but on the destruction of personnel and what it is going to mean as a moral responsibility to the world at large.

I believe that one of the functions of this Commission would be for all of us who stand severally for various spheres of interest to do signed articles and to get other people in our professions also to speak with their own personal authority. For instance, the Writers War Board is extremely anxious to put at their disposal any of the writers who are working for them as ghost writers, if need be, for any professionals who can speak authoritatively on the subject.

THE CHAIRMAN: You wouldn't clear that Atlantic Monthly article with OWI, would you?

MR. TAYLOR: I shouldn't think it was necessary, because there is no mention of any activity of this Commission.

THE CHAIRMAN: As such.

MR. TAYLOR: As such, or of the Army and Navy as such. But I think we ought to have a clarification of this policy so that people like Professor Moore of Princeton, who is working on Dr. Dinsmoor's committee, are at liberty to make an eloquent statement of their own feeling about what is being destroyed.

MR. FINLEY: The question that is of great interest on the part of everyone is to know what has been destroyed in Europe and what has not been destroyed. The War Department has

marked that restricted as far as the Commission is concerned, and we have not been able to give it out. There is no reason in the world for that that I can see. There would be no harm to the interests of the War Department in announcing it in the papers so that anybody would have use of the material, showing what is destroyed in Europe.

DR. DINSMOOR: Some of this is nonsensical, because some of the restricted documents are the very type of documents one of which was submitted to Herbert Matthews. One is the interview with Herbert Matthews and the information given to him, marked "Restricted" but printed in the Times one month before it came here. Another is the document that was given to the British journalists, marked "Restricted" by the War Department.

MR. FINLEY: I asked that question, and as I understand it, it is partly due to the code in which the thing is sent from abroad. They mark it restricted if it comes in code. That is a matter for the field people to do. There is no necessity for marking them restricted when they come over here when national papers can use them, with facts of what has happened in Europe. That is a matter for the War Department to straighten out with their field offices, I think.

MR. TAYLOR: Mr. Justice, if I may jump to the next item on the agenda, which is the item of our letter, it is pertinent to this discussion.

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THE CHAIRMAN: Yes.

MR. TAYLOR: We were supplied by the War Department with a confidential document of three paragraphs which I should like to read. It is a letter from General Eisenhower to the troops, which I think is a most magnificent and eloquent statement of why we are in business, and it seems to me that it ought to be a statement issued from The White House on what this is all about. This is a general order to all commanders, saying:

"Today we are fighting in a country which has contributed a great deal to our cultural inheritance, a country rich in monuments which by their creation helped and now in their old age illustrate the growth of the civilization which is ours. We are bound to respect those monuments so far as war allows.

"If we have to choose between destroying a famous building and sacrificing our own men, then our men's lives count infinitely more and the buildings must go. But the choice is not always so clear-cut as that. In many cases the monuments can be spared without any detriment to operational needs. Nothing can stand against the argument of military necessity. That is an accepted principle. But the phrase 'military necessity' is sometimes used where it would be more truthful to speak of military convenience or even of personal convenience. I do not want to cloak slackness or indifference.

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"It is a responsibility of the higher commanders to determine through AMG officers the locations of historical monuments, whether they be immediately ahead of our front lines or in areas occupied by us. This information passed to lower echelons through normal channels places the responsibility on all commanders of complying with the spirit of this letter."

That is the complete story and is a statement not only to the American people but to the neutral countries and to everybody of what the American position is in the matter, which it seems to me is fundamental and should be given consideration.

THE CHAIRMAN: I agree, and I suppose that the Commission could well represent to The White House that if the President would give that out, it would come with a tremendous force to the country. I see no reason that the executives of the Commission should not be asked to see if the President will not do that, with a proper statement from him.

MR. MacLEISH: That would be grand.

THE CHAIRMAN: It would be wonderful. I think we all agree that that should be done. Is it the sense of the Commission that we should attempt to get the President to promulgate that letter?

DR. SACHS: I so move.

THE CHAIRMAN: It is so moved. No objection?

Carried.

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Now we go back to the other proposition. For myself, I can't see the slightest objection to Mr. Taylor's writing an article in the Atlantic Monthly, showing what the situation is and what the results may be and what the future portends, and all that. I don't see why his being a member of this Commission should prevent him at all, as an individual and a person who knows, from saying things of that kind. Is there any view contrary to that here?

MR. FINLEY: No. He represents the Metropolitan Museum, and Dr. Dinsmoor is head of the Archeological Institution.

THE CHAIRMAN: He is an informed person, that is all.

DR. DINSMOOR: There are comparable items. For instance, News Week, in the issue out now, has something about the museum catalog and goes from that particular catalog to this Commission. For their next week's issue they have obtained the release of some information in general, which they are going to send down and have it absolutely cleared before it is in final form. Also, they have obtained the release of one of the maps of one of the Italian towns which has already been occupied, and yesterday, after a telephone call from Mr. Cairns, I asked them to hold it up pending this meeting today.

THE CHAIRMAN: Yes.

DR. DINSMOOR: There is another instance in which it seems desirable to let one of those maps go out, if it can be

cleared, and already the text for that article has been written and already cleared, I understand. What is that periodical that you prepared, Mr. Crosby?

MR. CROSBY: That text was for the College Art Journal, and the same text has been rearranged for the Magazine of Art. The College Art Journal has no illustrations, but the Magazine of Art has illustrations, and it is in the latter one that we proposed, if a map could be released to News Week, that a map of a similar occupied town might be released for the Magazine of Art.

DR. DINSMOOR: In other words, these two periodicals supply the profession which has been helping us with material, and they all want to know what the problems are and what has been presented, and so forth, what has been done. A general article along that line was prepared and sent down here for clearance.

THE CHAIRMAN: And it was cleared?

MR. CROSBY: That was cleared by OWI.

MR. CAIRNS: It was cleared. The News Week situation is a little more complicated than that. News Week obtained a map of Foggia. I discussed it with the Army Air Corps, and Colonel Lowe in the Army Air Corps said that he thought the publication of that map would do positive good. I said that if he would give me that assurance, I wouldn't interpose any objection. I didn't want him to take the position that it

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wouldn't do any harm, but I wanted it positive rather than negative.

THE CHAIRMAN: Yes.

MR. CAIRNS: He gave me that assurance, and I said, "All right."

News Week somehow has obtained two other maps in addition to the Foggia map. They have obtained a map of Naples which has alarmed the Army Air Corps very much, and it was for that reason that the publication was delayed this week until the source of the Naples map was discovered and it was learned whether or not the Army Air Corps wanted it published. Their present view, as I understand it, is that they don't want it published because of the situation that obtains in Naples.

My only objection to the publication of any map is that the map is reduced to a minimum, and not all the cultural monuments are on these maps. Dr. Dinsmoor has put on the principal cultural monuments, but we will be bound to get a kickback. Some sacred shrine is omitted from the map, and there will be a complaint.

But I discussed that with the Army Air Corps, and they thought that in the instance of this one town we might try it and see what the results were.

THE CHAIRMAN: As I understand it, in that situation we have gotten clearance. In other words, nobody has attempted to step out and do something that might embarrass the situation.

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That is right, isn't it?

MR. CAIRNS: Yes. Except for the map of Naples, it seems to be cleared up.

DR. DINSMOOR: We convinced them that it was on too big a scale to be reduced to the size of News Week. That is out. Even though they did have these things released for publication by the Army public relations, I don't think they can possibly use them, if they wanted to. They would like to use the Foggia map.

THE CHAIRMAN: That is cleared.

DR. DINSMOOR: Would we then be permitted to submit the Benevento situation, the Benevento map, which is already an old story, that followed similar clearance with the Magazine of Art?

MR. CAIRNS: I would have to take that up with the Army Air Corps.

THE CHAIRMAN: That will have to be taken up with the Army. I think we understand the situation, that general articles by informed people are not at all cleared here, but that in a thing such as Dr. Dinsmoor has just been talking about, we know that Dr. Dinsmoor has been careful to see that it was cleared and had authority, that it was permitted.

MR. MACLEISH: Mr. Chairman, would it be a fair statement of the general position that, making a distinction between the work of the Commission (the publicity about which

should certainly be controlled by you or by the Executive Secretary) and news about injury to cultural, artistic, historical, and educational monuments in Europe, as regards the latter we should like to see as much information go to the American people as possible, provided that when the information has come from a restricted source it has been cleared with those who invoked the restriction?

THE CHAIRMAN: I think that is exactly the line. In other words, I take it that the article that Mr. Taylor speaks of requires no clearance because it doesn't purport to give specific details. Is that right?

MR. TAYLOR: It attempts to enunciate philosophy only.

THE CHAIRMAN: That is right. Where anything touches on things that have been marked restricted, even though we think it is improperly restricted, we would clear it with the Army before we used it. I think that clears that up. That is your point?

MR. MACLEISH: Yes.

THE CHAIRMAN: Now I want to bring to the Commission the story of the State Department's dealings with the British. The State Department submitted to us a letter to go to the British. We gave our views about it, and the result is this:

In May 1943 our Embassy in London put before the British Government the suggestion that commissions to examine the question of works of art looted from European territory be

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created here and in the United Kingdom and the Union of Soviet Socialist Republics. The British Foreign Office expressed very generally its views and asked for clarification of certain specific points. The State Department has withheld its reply until our views as a Commission could be obtained, and on October 25, 1943, we submitted our comments on the various points raised by the British.

In January 1944, the State Department sent its instructions to the American Embassy in London for a reply to the British Foreign Office. The delay was caused in large part by the fact that any views on the restitution of works of art necessarily would have an effect on the State Department's general program for reparations and restitution.

With the exception of point (2), dealing with the subordination of the proposed commission to a general "Reconstruction Commission," the views of this Commission were embodied in the instruction to our Ambassador. The substance of the instruction by paragraphs is briefly this:

(1) The objectives of the American Commission are set forth in the letter.

(2) The British Government had stated in 1943 that it had in mind a Reconstruction Committee operating under United Nations authority, and that the proposed commission might gather information for the use of such Reconstruction Committee. The State Department instruction sidestepped that

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issue, although this Commission expressed itself in favor of a British Commission which should not be subordinate to the Reconstruction Commission.

(3) The British note, in paragraph (3), stated that the question of deciding on compensation for lost or damaged works of art was not one which could be usefully discussed by Commissions of the kind proposed. The State Department agreed with that point of view. This Commission made no comment on the point.

(4) The British note, in paragraph (4), points out the necessity of defining "works of art." This Commission's working definition was quoted in the State Department's instructions to our Ambassador.

(5) The British note, in paragraph (5), inquired regarding the composition of the Commission and how it would operate, suggesting that the Allied Governments temporarily in London could make the greatest contribution. The State Department's instruction is not very clear on what reply should be given, but seems simply to set forth a further description of the manner in which the American Commission operates. As to the suggestion of the other Allied Governments participating, the State Department says that it assumes that such an "Inter-Governmental Committee" would be in addition to a British Commission.

(6) This paragraph relates to the possible

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participation of the unofficial Committee of the Central Institute of Art and Design, in London, with the new Commission. The State Department favored such suggestion.

(7) The State Department is gratified to note that the British Government is in general favorably disposed to the proposal.

The British have not come back since that, so that is the status of it.

Mr. MacLeish, I don't know whether you have time, in view of your other engagements, to present and to go into your views as to some additional activity that this Commission should father.

MR. MacLEISH: I should like to speak to that for a moment, Mr. Chairman. It isn't precisely a question of my views as to additional activities that the Commission should father. It is a question of whether or not that question is even a question for discussion.

Broadly speaking and as briefly as I can put it, I, in common with, I think, a good many other people in the Government and out of it, have been tremendously concerned by the question of intellectual rehabilitation in Europe. First of all, the need for it. The gravity of the need is very obvious to everyone. It is quite apparent that the exhaustion of all the cultural oxygen in Europe would injure the atmosphere here and throughout the world and might in the long run be a

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more fatal and disturbing thing than even the lack of food and medicine. I think a lot of us are disturbed by the fact that there is no apparent present plan in the Government anywhere for action on that front.

Of course, Governor Lehman will speak for UNRRA, and I have no right to speak about it at all except that it is my impression that UNRRA does not consider that the problem of intellectual rehabilitation as such falls within its responsibilities and duties. It is also my impression that there is no other agency of the Government which considers that it has a charge in this field. The State Department has its Division of Cultural Relations, which is now divided into two parts, about which I know a good deal. Neither of those two parts has any program seriously looking toward wrestling with this problem.

One result is that the Secretary of the Smithsonian Institution and the Archivist of the United States and I have addressed a memorandum to the President in our capacities as officers of the Government having certain cultural responsibilities, pointing out the general situation and pointing out our understanding that there is no present plan or agency of the Government to deal with the problem or even to begin to deal with it, expressing our urgent sense that something in that reference should be done.

Before I sent that memorandum in, I talked to the Vice Chairman of this Commission about it. He saw a copy of it.

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I talked to other members of the Commission about it. I thought it was only proper to raise here the question of the accuracy of my understanding that that is no part of our field of activity, that we are concerned with the restitution of works of art, advisory first-aid work, and so forth, but that the consideration of the rehabilitation of the intellectual life of Europe, a tremendous problem if there ever was one in view of what the Nazis have done, is not in our province.

THE CHAIRMAN: I certainly think that that is so, that that is not a thing that has been committed to us by any order of the President whatever; and I suppose, Governor Lehman, it is not within your province.

GOVERNOR LEHMAN: No, it is not.

THE CHAIRMAN: Your real problem, I take it, is whether some such project should be launched now.

MR. MacLEISH: Yes, sir.

THE CHAIRMAN: I think we all agree with Mr. MacLeish that that is not part of our job at this moment, and I should hope, for myself, that it wouldn't be made a part of it.

MR. MacLEISH: I don't see how it could be made a part of the job of an advisory commission made up of people who have other jobs to do.

THE CHAIRMAN: I don't, either.

MR. MacLEISH: That was primarily the question that I wanted to raise. It is not at all impossible that the President

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will refer this communication to this Commission.

THE CHAIRMAN: Then, if he does, I suppose we shall have to sit down and sharpen our pencils and try to determine how we should advise the President as to handling it--advise him, in so far as I am concerned, that I am not competent to advise him about it, but that I will do the best I can.

You merely wish to raise the question of whether we have any notion that that is our job at the moment.

MR. MacLEISH: That is it.

THE CHAIRMAN: I think the answer is plain, gentlemen don't you, that it is not?

DR. DINSMOOR: What is the position of the adviser who has been appointed to the State Department? I think his name is George Kefauver. Is he in that field?

MR. MacLEISH: I think both statements are correct.

THE CHAIRMAN: He would like to be, and is not?

MR. MacLEISH: He is not.

THE CHAIRMAN: I suppose there is no action that we should take on it now. You just want to be advised as to what the situation is.

MR. MacLEISH: I thought I ought to report this action of mine. I thought I ought to report my understanding here.

THE CHAIRMAN: I think you are acquitted of any secrecy or stealth in respect to it or that you are trying to

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load it on this Commission under cover.

MR. TAYLOR: Mr. Justice, would it be possible for the members of this Commission to be kept informed through Mr. Howland Shaw, Assistant Secretary of State, who has survey over all these matters now, as I understand it, of the correlated activity which touches upon our interests, so that we don't stick our necks out unnecessarily in a lot of things? It seems to me there could be some general understanding as to what their program is and whether the universities are going to be asked to undertake a project similar to our own.

MR. MacLEISH: I should like to move specifically, Mr. Chairman, if I may, that Mr. Howland Shaw, who now has responsibility in this field, to whom it has been definitely assigned through the reorganization of the State Department, be invited to come to us and tell us just exactly how he relates to us. We invited Mr. Charles Thompson, as you recall, to discuss this with us, but Mr. Thompson felt himself somewhat embarrassed to describe the policy of the Department, whereas Mr. Shaw would not.

GOVERNOR LEHMAN: Isn't it a fact, Mr. Chairman, that the State Department has sent an observer to London to sit in the meetings of this group of ministers of education of exiled governments? Have we had any report in regard to what happened?

THE CHAIRMAN: I think not, sir.

MR. WALKER: I talked to Mr. Turner, who, I believe,

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did sit with the exiled governments in London, and I have a report of our conversation here. If it would interest the Commission, I could read it to you.

THE CHAIRMAN: Do.

MR. WALKER: I asked what the exiled governments in London were doing about listing art treasures and preparing data on looting in their respective countries. I said that we had a subcommittee dealing with this problem and that we proposed to make a catalog of public collections and also, as far as we could, of private collections. Mr. Turner answered that he would write to London, and I found out today that the telegram is being sent off in the next couple of days, to find out just what the exiled governments are doing in regard to that particular point.

I asked with what agency should claims by individual claimants who have lost art treasures in the German-occupied areas now be filed in this country. I said I thought that the proposed Commission would be willing to receive such claims, and Mr. Turner said that, as far as he knew, the State Department would like the claims to be filed with the Commission.

He said that the Conference of Ministers held in London had a subcommittee that had considered the problem of restitution of art treasures in a general way and that the Conference had given some thought as to the legal procedure to be followed in handling claims.

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Mr. Turner stated that he did not think an American commission, a British commission, or a Russian commission could deal with problems of restitution and reparation for lost or damaged art treasures. In his judgment, the body to handle such matters would have to be an international body. This was the sense of the committee of exiled governments in London.

Mr. Turner said that he had prepared a purely tentative proposal that the Conference be made into a permanent international commission, to have charge of the cultural and psychological warfare problems requiring attention after the war. His proposal contemplates four subcommittees, one of which would be devoted to art treasures and historic monuments. Mr. Turner indicated that he felt that the American Commission for the Protection and Salvage of Artistic and Historic Monuments in Europe, as presently constituted, could not do the actual operation of restoring art objects and handling the settlement of the many claims that are certain to arise in this field.

Let me see if there is any more about what they are doing in London (referring to a paper).

He concluded that everything being done by the exiled governments in London was still in a tentative stage and, so far as he knew, they had not compiled definite lists or arrived at any definite conclusion as to what form they would recommend that a court of claims, whatever it might be called, should be.

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I think that is the state in which it now is.

MR. CAIRNS: He brought back some interesting documents which have been photostated and sent to the commissioners.

MR. MacLEISH: I have also talked to him at very considerable length and, as a result of my conversations with him, I was glad to hear the statement that the Chairman read with reference to the conversation with the British, that it was assumed that any Allied Nations or United Nations commission would be in addition to the British, because it is perfectly clear from his discussions and from reading the minutes of the meeting of the Inter-Allied Ministers of Education that they have so far gotten almost precisely nowhere. They have been meeting and talking for a very long time. They have no precise plans or programs, and they have been pretty largely under British tutelage in the whole operation. They are not quite an independent group.

THE CHAIRMAN: Would it not be well to ask Mr. Shaw to attend the next meeting of this Commission, and would it not be well in the meantime to have the Secretary advise Mr. Shaw that we look upon him as the liaison between the State Department and ourselves and that we would welcome cooperation and joint conference about anything that comes up? Can we do more than that at the moment?

DR. DINSMOOR: I move that that be done, Mr. Chairman

THE CHAIRMAN: All right, unless there is objection,

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that will be done.

GOVERNOR LEHMAN: Mr. Chairman, may I ask a question which may have been disposed of before I got here or at some previous meeting? Before the armed forces went into Italy, a very comprehensive directive was prepared and issued by the military command with regard to the conduct of the troops. That was also covered by the statement made by General Eisenhower. Is anything of that character being done with regard to Greece? I know nothing at all about the military situation, but it is quite conceivable that that campaign may be exclusively under the control of the British, so that the directives which our Army has issued for Italy might or might not be controlling there. I wonder if there was any contact made with the British with regard to that.

DR. DINSMOOR: I know nothing specifically about Greece, but I think no directives have been issued, so far as I have heard. The British have been issuing directives parallel to ours, however, with regard to Italy. Consequently, I should think that if they take the Greek campaign, the directives they have issued for Italy would be reissued for Greece. In other words, they have acted on parallel lines.

THE CHAIRMAN: I am interested to hear that. I knew that the British had been using our maps to prevent the bombing of art monuments and that they have asked for them and availed themselves of them. That is right, isn't it?

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DR. DINSMOOR: That is right.

THE CHAIRMAN: As the Governor says, there is a very detailed directive to every private in our Army as to how he should behave toward these things. You understand the British have a parallel system?

DR. DINSMOOR: I understood so. There have been references in some of the earlier reports when we were in Sicily to the fact that the British had issued directives. I haven't seen them.

THE CHAIRMAN: It might be a matter of some delicacy for us to inquire, but we might ask Mr. Shaw if the State Department would make inquiry of the British where they are conducting campaigns and doing the same thing.

MR. CAIRNS: I might suggest that perhaps that inquiry might be assigned to General Newton, who is going at once to Italy and will see General Montgomery. He might bring home specific information on that point.

GOVERNOR LEHMAN: The control, so far as civilian activities were concerned, was in the hands of the Allied Military Government. Now I think it is in the hands of the Allied Military Control Commission, but I am not certain that that same procedure of Allied Military Government will be set up for the Balkans.

THE CHAIRMAN: No.

GOVERNOR LEHMAN: It may be a separate command and

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quite independent of what has been done in the Italian theater.

THE CHAIRMAN: We ought to find out about that in some way, in a diplomatic way.

MR. TAYLOR: In reply to Governor Lehman's question, there was a very short item in the New York Times yesterday morning describing a reply by Sir James Gregg, the Under Secretary for War, to a question in the House of Commons, stating that directives had been given to an archeological committee by the War Office in cooperation with the work that the Americans were doing. So it seems that Sir James Gregg is probably a counterpart to Mr. McCloy, who was issuing those same orders.

THE CHAIRMAN: I think we might very well ask General Newton to make discreet inquiries about that and advise us or advise his superiors in the War Department to find out about it, or we could take it up through Mr. Shaw. Perhaps it would be well to ask Mr. Shaw if he knows about it.

MR. CAIRNS: Yes.

THE CHAIRMAN: I ought to say, gentlemen, if any of you are not acquainted with the fact, that, after intense search, we found a Brigadier General in the United States Army who is an architect of standing in the community, who was with troops, an extraordinarily good soldier, whom the War Department has looked over and whom they are willing to send abroad to coordinate the entire work of the Army in this respect.

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He is General Newton, a Lieutenant in the last war, a National Guard officer of California ever since, a man who went with the National Guard into the Service, who has apparently received the commendation of all his commanding officers, a man of presence and executive ability. As a result of representations by this Commission, the Assistant Secretary of War has detached him from his command of troops and is going to send him first to Italy and afterwards to London to coordinate all the work of the Army monument officers and to integrate this whole work in close liaison with this Commission. After he has done that, he will come back here and report to his superiors and to us just what the status of everything is.

It looks as if we are at least in a position really to head this work up in some way through a man who will be a staff officer and who can speak for the commanding general, so he won't have to go in with his hat in his hand like a Second Lieutenant and say, "Please, sir," thus and so, but will speak with some authority by reason of his rank and his commission and this job. He is here, and I think you gentlemen would like to meet him before he leaves.

MR. MacLEISH: Mr. Chairman, I have to run, unfortunately, for this other meeting, but may I make one request, if it is a proper request, that he be informed of the general statement as regards policy with reference to publicity for information bearing on destruction and that he be asked to try

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to secure for us, through British sources and others, information which is not otherwise available in this country?

THE CHAIRMAN: With respect to destroyed things and looted things.

MR. MacLEISH: Destroyed and looted things; simply adding to the information which we have stated we feel ought to get out to the people of the country.

MR. FINLEY: And to see if he can arrange to remove some of the restrictions which seem to be perfectly useless.

THE CHAIRMAN: Yes.

MR. CAIRNS: He hopes to be able to establish a direct liaison with the Commission, so that his replies won't have to go through the War Department but will come directly to us.

MR. MacLEISH: He felt that that was part of his responsibility.

THE CHAIRMAN: Yes.

DR. SACHS: I think he feels that very strongly, from the conversations I have had with him.

THE CHAIRMAN: Of course, his professional relation will bring that very strongly to his mind.

... Mr. MacLeish left the meeting room ...

GOVERNOR LEHMAN: I shall ask to be excused in a few moments.

THE CHAIRMAN: He will be only a moment. I just

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wanted him to meet you gentlemen. I think that it might help his morale a little bit if we all said "How do you do" to him and wished him well in his mission.

MR. FINELY: He was very anxious to be sure that we went over the point of view of the Commission. He may have a few words to say.

DR. DINSMOOR: I think it would be very interesting to draw him out.

... Brigadier General Newton entered the room ...

THE CHAIRMAN: We all understand you are set to go.

GENERAL NEWTON: Not quite that well, but I shall be in a few weeks.

THE CHAIRMAN: Is there anything you want to take up with us?

GENERAL NEWTON: I made some notes last evening of some thoughts I had, predicated upon the brief study I have made of your problems since I have been here, and I should like to go over them with the Commission to get their reaction to them.

THE CHAIRMAN: Surely.

GENERAL NEWTON: I think we might consider rather briefly my relationship with the Commission from the standpoint of the War Department. My services, of course, will be with the War Department and to aid the Commission in its planning and whatever suggestions I can make, more or less as a liaison

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officer between the Department itself and the Commission and the work overseas.

Of course, there will be times, particularly in the active theaters of operations, when I shall be required to make immediate decisions or to suggest immediate decisions to the field commanders, which will be predicated upon the tactical situation. In other words, we can't lose sight of the fact, gentlemen, that the tactical situation in all of these operations has to receive the prominent position. It is the first consideration; as we say, the winning of the war.

THE CHAIRMAN: We understand that.

GENERAL NEWTON: I want you to feel, however, that deep in my heart, as most of you with whom I have discussed this problem realize, I am as vitally concerned with saving what is going to be left of the art and culture of Europe as anyone possibly could be.

I feel, from my discussions with Mr. Finley and the members of the Commission with whom I have been associated in the last few days here, that you have been very definitely handicapped by the fact that you haven't had someone as a liaison officer who could go to the active theaters and give you the situation as it exists. You have done a tremendous work on your cataloging of monuments and structures and the research work necessary in the preparation of the tactical maps and everything of that sort, but you don't know whether they

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are being used or whether they are being given proper consideration or not.

THE CHAIRMAN: How will your communication on such subjects come to the Commission, General? Will they have to clear through the War Department?

GENERAL NEWTON: That, Mr. Justice, is a very touchy subject.

THE CHAIRMAN: I realize it.

GENERAL NEWTON: I hope to be able to send you direct a copy of all my communications.

THE CHAIRMAN: General, a good many things that we have received through the War Department under the routine are marked "Restricted." A great many of them have appeared in print outside of the ken of this Commission, so, although restricted, they seem to get out to the public. When things are innocuous, whether they come directly from you, as I should hope they would, or whether they come through the Department, I wonder whether you can manage to lift that word "Restricted" from those that really would be valuable as information to the American people, for their morale, to show them what is being done to the culture of Europe by these Nazis. I wish you would keep in mind that we don't see any reason for the restriction of a good deal of the stuff that comes marked "Restricted." We have to clear it, and it makes a little bother.

GENERAL NEWTON: The restriction of documents of the

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War Department is to cover Army regulations, and the restriction is placed on the document by the issuing headquarters, you see. My influence there would be to talk to the G-2 of the Mediterranean Theater of Operations and to say, "I don't think that should be restricted." I shall attempt to draw those reports so that the restricted matter will be contained in certain types of reports, and that information which is not restricted can be made available to you.

THE CHAIRMAN: So that it can be used.

GENERAL NEWTON: The program, as I see it, divides itself into two general activities. First, the problem of the prevention of destruction of art objects and, secondly, the problem of rehabilitation.

Under prevention, I believe that more can be done in that field through a closer contact with the field commanders. The personnel that the Commission has under the Military Government is largely a highly specialized group, primarily concerned with the rehabilitation of works of art, classifying, cataloging, and all those various details. The fact that the Commission hasn't had an experienced officer from the standpoint of tactical operations in the field has undoubtedly handicapped the work of the subordinate officers who are trying to carry out your wishes. That is very important from the standpoint of prevention. In other words, have the officers who are commanding the divisions and the corps, even down to the regiments in

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the attack echelons, know something about the problems of the conservation of art.

I shall adopt in the active theater the attitude of going to the field commanders with the point of "What can we do to help you save this particular structure, this particular cathedral?" I think I know practically all the field commanders in Italy, all the division commanders, and the corps commanders. I am a very close friend of Lieutenant General Devers, the Deputy Theater Commander, and I know I can get that degree of cooperation there.

That much on prevention.

Then we have the problem of rehabilitation and salvage. Under rehabilitation, I have presumed from the information I have read that the Commission is primarily concerned with the temporary construction necessary to save what is left of these existing works and that you are not at the moment, from the military viewpoint, concerned with the permanent rehabilitation of these structures. I believe on that point I am correct, am I not, Mr. Justice?

THE CHAIRMAN: I believe you are.

GENERAL NEWTON: Then we have the problem in rehabilitation of checking the contents of these structures against loss and preventing the pilfering which is a characteristic of the American soldier. I think that we, as a people, are the Class 1 souvenir hunters of the world. I have noticed, even in

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maneuvers in some of the areas in Tennessee, when our soldiers got into vacant property, the first thing they started to look for was a souvenir. In fact, at Fort Knox we found them sending ammunition and things of that sort through the mails to their families as souvenirs of some of their operations. So we have that problem, which is a very definite problem.

THE CHAIRMAN: The directives that have been issued by the Army on that question are admirable. The question is how well they are being administered.

GENERAL NEWTON: They say in the Army that the issuance of an order is just 25 per cent, that 75 per cent is seeing that it is enforced, and that 75 per cent is the problem that I hope to solve from the standpoint of our problem.

You can understand that the corps commanders in charge of that landing south of Rome had a lot on their minds besides worrying about the monuments south of Rome.

THE CHAIRMAN: Of course.

GENERAL NEWTON: I have a thought that I think will help that situation considerably.

Now as to methods. I might give you just a moment on our tactical operations. An army operates in what we know as echelons. In other words, there is a forward echelon, which is the attack elements; and there is the rear echelon, which represents supply, the service installations, and all the vast maintenance necessary to equip and maintain an army in the

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theater of operations.

To accomplish our purpose, I feel that we should have two types of officers. One type should be tactically trained and should have professional background. This officer should be attached to the lowest unit, which I would say would be a division. Whether we obtain sufficient officers of this caliber is somewhat questionable. We might have to attach them to corps, which represent anywhere from two to four divisions. This officer would serve as an assistant G-2 in the corps or the division. The G-2 is the officer charged with all information and intelligence. That would be the logical place for us to have our contact. He would be in the forward echelon. In other words, as soon as the bridgehead south of Rome was three or four miles deep, that corps command group probably went ashore. With that corps command group would be their intelligence section, in which would be one of our officers. There he would be in a position to see exactly what was happening.

When they go into a city, he is right there, directly behind the last of the support waves of troops. He knows what is in that city, and he is in a position to suggest to the G-2, who is a staff officer, the division or corps commander, that these buildings be protected immediately from any possible pillaging of troops or any molesting by our forces.

That officer must be an officer who understands the tactical situation. I have a few of those in mind. Of course,

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they may be difficult to obtain because they must also have the professional background to be able properly to evaluate the situation which confronts the field commander and the buildings which we are trying to save.

Then we have the second group, who will be with the rear echelon, the group whom I designate as specialists, the officers whom you have now in the Italian and Mediterranean Theater of Operations. These officers are mostly museum specialists, and they are our rehabilitation group. So the moment that the rear echelon occupies an area after the forward echelon has vacated it, the liaison is right there between our officer in the forward echelon and our rehabilitation personnel coming up from the rear echelon. I know that no organization such as that exists at the present time.

THE CHAIRMAN: You know there is none?

GENERAL NEWTON: I can't say that I know, but I am of the opinion that there is none. In fact, I think if such an organization did exist, your reports would reflect it.

MR. CAIRNS: We have been informed by the War Department that there are no arts and monuments officers with the forward echelon.

DR. DINSMOOR: There is always a lag of a couple of weeks, something like that.

GENERAL NEWTON: That is the dangerous period.

DR. DINSMOOR: That is what we have been trying to

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point out.

MR. CAIRNS: The War Department stated that the men have not had the tactical training in order to put them in the forward echelon, that they would just be killed. If the General can find some with the training, they can be put forward.

GENERAL NEWTON: I might add that they are killed whether they have tactical training or not.

The specialists will have the problem of the rehabilitation and all the cataloging and checking of exhibits and everything of that sort in the rear echelon.

THE CHAIRMAN: Yes.

GENERAL NEWTON: We have the problem of obtaining these people. I have talked to Dr. Sachs any number of times since I have been here. I reviewed a list of names submitted to the War Department, and we find that 99 per cent of them are practically not available. We may be able to help that situation considerably because I do know that we have replacements here in the United States for officers whom we may need, unless the field commander is of the opinion that those officers cannot be spared. If the picture is properly presented to them, I think we can get the critical officers.

DR. SACHS: We have had no one to speak to that point in the War Department.

GENERAL NEWTON: I realize you haven't. Your contact

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is by one of your executives here with the War Department. They give it to an officer in the Personnel Section, who goes down the list. That is the way it is handled, which is a normal operation.

THE CHAIRMAN: Quite. We understand that.

GENERAL NEWTON: So I shall have to make a careful study with Dr. Sachs of some 500 names that he has. He has obtained these names after a great deal of effort from the various professional societies, but I am interested in seeing their records in the War Department. There is a definite tie-in between the record of the officer in the War Department and the professional record on the outside. Many officers do not show all their qualifications on their military personnel cards. If they were more complete on the personnel cards, then the officer looking after those records in the War Department would be more likely to see that you got those people. That is a liaison which will be quite important.

We have a number of naval officers serving in the committee, who are specialists, whom we will use in the rear echelon. Obviously, the officers who go in the forward echelon will have to be Army officers.

About my own plan of action to carry this out: As soon as I can return to Washington, I shall make a more studied report after going over the great mass of information which has been accumulated. Also, I shall have to make a study of just

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how the civil affairs groups of the War Department handle these matters in the active theaters. There is a lot of technic to Army operations which is different from civilian operations. When that is done, I can prepare a definite written report as to how I feel the operation should be handled and submit that to the Commission. Then, when it is approved, it can go to General Hildring and be a policy-shaping document for our operations overseas, which will help give us the support which we need, because we will need a lot of support.

THE CHAIRMAN: Certainly.

GENERAL NEWTON: When I return, I thought I would probably go up to Cambridge and go over all these records with Dr. Sachs there, go over the work they are doing at Cambridge; then come down to Commissioners Dinsmoor and Taylor in New York and go over the map work which they are doing there, which I think is a very remarkable thing. I have been very much impressed with the possibilities.

THE CHAIRMAN: It is one very constructive step.

GENERAL NEWTON: Then we will have a program from the standpoint of the Commission, and from General Hildring I shall immediately go to the active theaters of operation. First I shall go to the Mediterranean Theater, and there I would hope to confer with all our staff representatives in that theater. I want to see these gentlemen who have been in the field and find out from them just exactly what their problems have been;

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the opposition, if any; how they solved the problems; and their reaction to the attitude of the field commanders. By doing that I shall get a picture of the problem which I shall have to handle, predicated upon their original experiences. All of them have probably had considerable, from some of the things I have read.

Then I shall meet the field commanders of all our units in the active theater. As I said a few moments ago, I shall adopt the approach of what we can do to assist them. I can just imagine what some of them will say when I meet them the first time, particularly George Patton, whom I know very well. That will be a very interesting thing. You see, we have got to create a better relationship with the field commanders, because, after all, the field commanders are the men who are either going to save these things--

THE CHAIRMAN (Interposing): They are the bosses.

GENERAL NEWTON: --or going to blow them up. So it is a selling job, a job of public relations, nearly, in the Army. That is what it amounts to.

THE CHAIRMAN: Yes.

GENERAL NEWTON: By that time, I hope to have some of these tactical officers in the Mediterranean area or on the way there, so that when I leave there I can leave this setup with our field commander and leave one officer at the principal headquarters in Naples to coordinate all our work. I don't

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want these men just running all over, making a Cook's tour of the Mediterranean Theater of Operations. I understand we have one in Cairo now. I don't know what he is doing in Cairo. The monuments in Cairo have stood there for four or five thousand years, and I don't believe anybody is going to hurt them any.

DR. DINSMOOR: I think, General, he is looking toward the Balkan situation, because there are a lot of people on Relief, and so forth, who are concentrated in Cairo for Greece. I think that is why he is there. I am not sure.

GENERAL NEWTON: That may be. That is the problem of control of our officers so that we get the maximum work done. I can just imagine that the area in which the Commission's work is to be done is just a paradise to an archeologist; yet they have to do a certain job. They can do their study in Europe at their own expense when the war is over. (Laughter)

Then I shall leave the Mediterranean Theater to go to the European Theater of Operations and make the same study there. I imagine, from talking with Mr. Finley and Mr. Cairns, that our Allies will undoubtedly set up similar commissions there. In fact, some of that is being done now. There we will have the problem of meeting with these people, determining what they are going to do, their plan of operations, and how we can coordinate our work with theirs to avoid any overlapping of our responsibilities or any possible friction or anything

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of that sort. That will be quite an important point.

When that is all done, then I shall know exactly what we can accomplish and shall probably return to the United States and spend hours with the Commission and file a very complete report. But I shall do everything that I can while I am there. I don't propose to go over there and look and come back and tell you what can be done. I hope to leave here with sufficient authority that, when I find a condition that needs remedying, I will be there to take care of it. If this program which I speak of is approved by the War Department as their policy in these matters, then I will have the proper authority to insist with the theater commanders that they be carried out.

Of course, you can insist only so far and, if you go too far, the War Department will get a letter back here from Eisenhower and Devers, saying, "This man Newton is in my hair. Get him back to the United States." So you have to be very tactful in that situation.

I don't believe that my work can stop there. I think that the problem is so tremendous in Europe that it will need our constant supervision, because the officer I leave over there will be a younger officer of the field grade. They will constantly encounter problems.

I shall probably be here for a month or so and then go back to the European Theater and, if we are into France by that time, into France. Wherever there are particular problems

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that our staff officers couldn't solve, I would be available to go down there and smooth out a troublesome situation.

That is all the plan I have.

THE CHAIRMAN: It sounds like plenty to me.

DR. DINSMOOR: Mr. Chairman, would it be politic to mention a few topics that arouse our curiosity and interest, which the General might look out for while he is over there?

THE CHAIRMAN: Certainly.

DR. DINSMOOR: For instance, the point that Mr. MacLeish made just as he left; that is, that we would like to have a more constant flow of information coming in to us about destruction, looting, and so forth, than we get in these rather belated reports, which are very summary indeed; and we should like to know if all the officers over there couldn't be instructed to send in more information. So far, we have had only two or three who have been forwarding such material.

The second item is photography. We have been trying to get something from the Army Signal Corps and the Army Air Forces on the actual state of the monuments, but the Signal Corps photographs are of soldiers holding up trophies and that sort of thing, and we get very little that applies to our field. We should like to know if our AMG officers or Allied Control Commission officers could be asked to call on Army Signal Corps men to do some photography for them when they see something that is significant.

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THE CHAIRMAN: To give the people a vivid picture of what has been done to some of these things.

DR. DINSMOOR: So that we would also have records for our own knowledge of the condition of the monuments in their present state.

Also, if General Newton could look into the question of the utilization of the American Academy at Rome, on which there has been considerable correspondence. The Academy trustees held an emergency meeting Monday evening of this week to forward a letter to Mr. Cairns for transmission to General Hildring about the use of the Academy by AMG, but primarily for this monument service, if it can be used in that direction. That correspondence ought to be in your hands, too, General, so that you could look into that problem.

MR. CAIRNS: That letter came in this morning, but I haven't read it.

DR. DINSMOOR: You haven't had time, of course.

Then, fourth, there is the question of the British inter-relationship. Of course, the present acting head in Italy is Major Baillie-Reynolds, who is an English archeologist on the Roman field, and I think he probably captured General Eisenhower's interest because he has written a book on the fire department of Imperial Rome. The whole setup of the British framework which is interwoven with ours I think would be interesting.

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Those are the topics that are on my mind.

GENERAL NEWTON: Thank you. Do you wish me to comment on those?

DR. DINSMOOR: Those are just a few of the things. Yes, if you have any comments, make them.

GENERAL NEWTON: What holds up the flow of information is that the important information comes out first, I think and my idea would be to set up an officer in Naples (or perhaps by that time in Rome) to clear all that information to you, and reports of different character than the reports which you are getting now. You aren't getting any reports which cover the whole broad field of the activities there at all.

I was surprised when I went through the records and found that there weren't any photographs, because that is the thing that I want. We will have no difficulty getting photographs. As far as that is concerned, I will simply get Signal Corps photographers and some of these officers to go out and photograph the very things that we want photographed. We can obtain them. Of course, there is a shortage of film, and things of that sort.

MR. TAYLOR: There is one point which has occurred to me. I wonder whether it might be possible, General, to arrange with G-2 so that some of the officers in the rear echelon could interrogate German prisoners, particularly German officers, as to where some of the looted materials have been taken. Some of

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the refugees in New York (those who were in German museums previous to 1934) are under the impression that there are a great many dry calcium caves up in the area about Mulheim on the edge of the Black Forest, where a great deal of the stuff has been taken. As far as I know, there has been no interrogation of prisoners for the purpose of ascertaining where they might have been taken. If that could come under your command, it seems to me it would be well to do.

GENERAL NEWTON: It could be done. The interrogation sequence of questions of prisoners is on a document about that long (indicating). The officers are segregated from the noncommissioned officers, and the noncommissioned officers are segregated from enlisted men. We simply go down and pick so many men, and they are interrogated by what we call "prisoner of war interrogation teams," specialists attached to the G-2 section of the Army. I am quite sure that it can be done. One of our officers will have to do it. That is the reason I want our officers on the G-2 staff. He is the man in position to do that.

DR. DINSMOOR: One of the men who is attached to the Commission now, Technical Sergeant Bernard Peoples, had been doing just that, interrogating people, when he was pulled off that and attached to this. He might go back to that for our special purpose. He is in Italy now.

THE CHAIRMAN: Are there any other questions of the

General or any other comments? If not, I think we can adjourn. Is there any other matter to come before the Commission? If not, we will stand adjourned until the call of the Chair.

MR. TAYLOR: Would it be in order, Mr. Chairman, to thank God that we found the General?

... The meeting adjourned at 11:40 a.m. ...

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Entry NND 968071
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Box 1

American Commission

Monuments, Fine Arts and Archives Section, in Berlin or to General Headquarters, Supreme Commander for the Allied Powers, Civil Information and Education Section in Tokyo, for distribution to the military governments of the areas in which it originated. In cases of material the exact location of origin of which is not known, the offices would hold the material until it could be identified by local scholars and would then send it to its point of origin.

Objects from all other countries would be handled in the same manner as the material from Germany and Japan except that they would be shipped to the American Embassies in each country concerned, and returned to their points of origin through the Embassies.

It is anticipated that possessors of such material, at rather infrequent intervals during the next two years, would take it for advice to local museums, customs authorities, universities, libraries, and dealers. When they are informed that the material is from a museum collection or could be identified as properly belonging in the country of its origin, many possessors, of their own volition, would wish that the material be returned. Therefore, if this plan is approved, the Commission would undertake to circularize all institutions, dealers, etc., likely to receive this material, instructing them to gather all pertinent information on the objects at the time they are received for temporary custody, and to notify the War Department, Civil Affairs Division, requesting further instructions.

A copy of this letter is being presented simultaneously to General Hilldring, Assistant Secretary of State for Occupied Areas, for concurrence or suggestions on this plan as it might affect policy or administration.

Sincerely,

Huntington Cairns
Secretary-Treasurer

The Commission, to advise the possessor of such material to be advised to which authority to apply, would write letters to the individuals on the attached list, and also to the museums, libraries, etc., to which the material is known to be in the possession of the possessor. The letters would be sent to the possessor, and also to the local military government, together with all information concerning the material, and particularly its destination, if known. The War Department would be notified of the material, and the War Department would be requested to issue a receipt for it to the possessor. The material would be stored and shipped by the War Department, at expense of the possessor, and it is requested that the possessor be advised of the expense of shipping. A local museum official would be notified. Receipts throughout the machinery have indicated that the material would be provided by the services of their local military government.

Such material of German and Japanese origin would go direct to the Office of Military Government (U.S.) in Germany, France, etc.

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By JWA/NARA Date 11-5RG 59
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Box 1DRAFT OF LETTER TO ACCOMPANY LIST OF IMPORTATIONS BY MEMBERS OF THE ARMED
FORCES

American Commission

Dear Mr. Secretary:

At this time, the American Commission, anticipating the conclusion of its activities on June 30, 1946, respectfully submits to the War Department the following plan for the disposal of cultural objects imported into this country by returning members of the armed forces. This plan has been tentatively outlined in cooperation with the Office of the Chief of the Government Branch, Civil Affairs Division of the War Department.

The Commission, to assist in inaugurating a program for the return of such objects to the countries to which they rightfully belong, will write letters to the individuals on the attached list, who are the present holders of the objects, instructing them to inform the War Department that they are prepared to turn over the material to the local Service Command, together with all information concerning the material, and particularly its destination, if known. The War Department will then instruct the local Service Command to secure the material and give a receipt for it to its present holder. The material will be packed and shipped by the Quartermaster Division.

All material of German origin will go to the Office of Military Government (U.S.), Economics Division, Monuments, Fine Arts and Archives Section, in Berlin, for distribution to the military governments of the areas in which it originated. In cases of German material the exact location of origin of which is not known, the Berlin office will hold the material until it can be identified, and will then send it to its point of origin.

Objects from all other countries will be handled in the same manner as the material from Germany, except that they will be shipped to American Embassies in each country concerned, and returned to their points of origin

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through the Embassies.

It is anticipated that many possessors of such material, who of their own volition wish that it be returned, will take it for temporary custody and advice to local museums, customs authorities, universities, libraries, dealers. Therefore, if this plan is approved by the War Department, the Commission will undertake to circularize all institutions, dealers, etc., likely to receive this material, instructing them to gather all pertinent information on the objects at the time they are received for temporary custody, and to notify the War Department, requesting further instructions.

(War Department)

A copy of this letter is being presented simultaneously to the Department of State for concurrence or suggestions on this plan as it might affect policy or administration.

Sincerely,

Huntington Cairns
Secretary-Treasurer

The Honorable Robert P. Patterson
The Secretary of War
War Department
Washington 25, D. C.

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Entry	Lot 62-D. 4
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ES - Mr. Baker

July 10, 1946

ES - Mr. Stimson

Telephone conversation with Eugene Anderson, ADO.

I referred to my draft letters to Mr. Lamont Moore, Roberts Commission, and to Mr. Schmidt, FFC re customs control and clearance re lists of missing art objects, and to my telephone conversation with Lamont Moore on June 24, 1946.

Mr. Anderson stated that such matters should be cleared with him or Gordon Bowles. Miss Hall will handle detailed art questions relating to Europe as well as the Far East.

I referred to the agreements between Mr. Benton's office and the Roberts Commission under which OIC took over the functions of the Roberts Commission on June 30, 1946, and inquired whether OIC was receiving the reports from the Monuments, Fine Arts and Archives officers in Germany.

Mr. Anderson stated that OIC expected to receive such reports, and to send them to the National Archives when they had finished with them. He thought GA should be consulted regarding them because of their relation to German and Austrian affairs. I stated that ES was interested in them from the Safehaven and security angle.

Mr. Anderson stated that OIC and ADO were interested in them from the viewpoint of cultural cooperation, and assisting in the restitution of looted cultural objects.

I stated that I would telephone Miss Hall after I had talked with Mr. Baker.

ES:RHStimson:ar

DECLASSIFIED

Authority NND 968071
By JWA NARA Date 11-5RG 59Entry NND 968071File manz psalterBox 1FILE: Importations by
Members of Armed Forces -

DRAFT

American Commission

My dear Mr. Schmidt:

At the time the Commission advised in the establishment of Treasury Directive 51072 to prevent the importations of works of art confiscated or held by the Enemy, it was not known what collections of art would be found intact during the operations of war and subsequent period of Occupation.

In the light of imports during the past six months for which applications have been granted under advisement by the Commission, there have been no formerly Enemy owned objects.

It is, therefore, the recommendation of The American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas that this control be discontinued and works of art permitted to enter this Country under the normal Treasury controls and Customs controls.

Sincerely yours,

David E. Finley
Vice-ChairmanMr. Orvis A. Schmidt
Director
Foreign Funds Control
Treasury Department
Washington 25, D. C.CC - Mr. Seymour Ruben
Chief of Financial Controls
State Department

106609

DECLASSIFIED
Authority <u>NND 968 071</u>
By <u>JM</u> NARA Date <u>8/25/77</u>

RG <u>59</u>
Entry <u>Lot 62-D-4</u>
Box <u>1</u>

DEPARTMENT OF STATE

Memorandum of Conversation

DATE: Feb. 12, 1948

SUBJECT: Dept. of Justice assistance in recovery of looted art

PARTICIPANTS: Telephone Conversation with MR. JULIAN SIMPSON, DIAL 197, EXT. 698.
Department of Justice, Criminal Division

COPIES TO:

GPO 1-1498

Mr. Simpson prosecutes customs cases if they are brought to court.

I called to ask him if the FBI might assist in the recovery of looted works of art.

He said that the FBI PUBLICITY gives out publicity on stolen property

It might also be worth while to get a writer for TRUE DETECTIVE STORY MAGAZINES to write about missing objects, picking out notorious losses. They are read by many more people than one might think. (It would arouse interest, perhaps, of men that have to do the job of investigating and GI's who might know of looting that went on.) Stories must be slanted in the right way.)

As for CONTROL BY CUSTOMS, he said that the objects imported should be declared and identified, so that FALSE DECLARATION CAN BE USED AS XX A BASIS OF ACTION OF FORFEITURE.

He said that he would ask in FBI about what they could do and call me back. He did so, and said he had talked with a friend, Charley Appel, who was a handwriting expert. And he said that the FBI maintains a list in the National Stolen Property Index, sent to police. Missing art could be placed on this list. It would be used constantly by dealers. Would apply to objects worth more than \$5,000. Dept. of State list of missing objects could be circulated and sold to dealers interested for 10 or 25 cents.

Suggested I get in touch with Mr. Rosen, Branch 571 in FBI. Did so.

106610

DECLASSIFIED
Authority <u>NU0968071</u>
By <u>JM</u> NARA Date <u>8/25/77</u>

RG	<u>59</u>
Entry	<u>Lot 62-D-4</u>
Box	<u>1</u>

DEPARTMENT OF STATE

Memorandum of Conversation

DATE: February 12, 1948

SUBJECT: FBI ASSISTANCE IN RECOVERY OF LOOTED ART

PARTICIPANTS: Telephone Conversation with MR. A. ROSEN, FBI, DIAL 172, EXT. 571
on Feb. 12, 1948Telephone Conversation with MR. McCABE, Assistant to Mr. Rosen
(on another extension ?) Feb. 20, 1948

COPIES TO:

GPO 1-1463

Mr. Rosen said that if an art object was found to be in USA, the FBI could assist.

Transportation of stolen art would violate interstate commerce.

List of missing art objects could be placed in "NATIONAL STOLEN PROPERTY INDEX"

Local police can help.

On February 20th, 1948 called Mr. Rosen again and talked with Mr. McCabe, Assistant to Mr. Rosen, and he said that the FBI would place 1457 Psalter in Nat. Stolen Prop. Index and would probably be willing to undertake an investigation of this and other cases. They should be sent to FBI in separate letters as they would come up for separate consideration.

106611

DECLASSIFIED	
Authority	NND 968071
By	JRM NAPA Date 8/25/99

RG	59
Entry	Lot 62-D-4
Box	1

DEPARTMENT OF STATE

Memorandum of Conversation

DATE: Feb. 22, 1948

SUBJECT: T. D. for importations of art: Mr. Stephens suggestion on "Trade Marks".

PARTICIPANTS: Telephone conversation with Mr. Stephens.

COPIES TO:

Called Mr. Stephens to ask him about his recommendation that missing art could be treated in same manner as Trade Marks.

He said that in accordance with Section 526 of the Tariff Act which prohibits the use of American Trade Marks. If a copy of certification of registration of said Trade Mark is filed with the Secretary of Treasury The Treasury has regulations setting forth that they will accept a facsimile of the Trade Mark which is placed on file with the Sect. of Treasury and sent to ports of entry.

Photographs of missing loot could be treated in the same manner.

DECLASSIFIED

Authority NUD 968 071By JM NARA Date 8/25/99RG 59
Entry Lot 62-D-4
Box 1

DEPARTMENT OF STATE

Memorandum of Conversation

DATE: April 6, 1948

SUBJECT:

PARTICIPANTS: Mr. Stephens - Bureau of Customs
Ardelia R. Hall - ILI

COPIES TO:

1-1483

Mr. Stephens said take custody of it for foreign owner and foreign government. United States not to take title.

Report it to customs if no regular entry smuggled into country - Treasury will seize it. While entitled to free entry. Regular entry should be made for customs to decide.

OEX: ILI: ARHall: mms

106613

DECLASSIFIED
Authority: NUD968071
By: JM NARA Date: 8/25/99

RG 59
Entry Lot 62-D-4
Box 1

Mr. Stephens, Chief, Enforcement Div. Bureau of Customs told me that a petition to the Department of Treasury (Bureau of Customs) for remission of forfeiture, and release of objects seized, should include:

Address to Secretary of Treasury, signed by Secretary of State or Assistant Secretary of State for Secretary.

1. Recite the facts
2. Identify as looted property
3. State where now located
4. Disposition under SWNCC 322
5. Request objects be sent to Washington under Government bill of lading, ~~express collect~~, to remain in Government custody.
6. State that objects will be exported under Customs Supervision, when the Customs at port of exit will be notified.

DECLASSIFIED	
Authority	NND 968071
By	JM NARA Date 8/25/94

RG	59
Entry	1 of 62-D-4
Box	1

STANDARD FORM NO. 64

Office Memorandum • UNITED STATES GOVERNMENT

TO : ESP - Mr. Rubin
 ES - Mr. Baker
 Mr. Surrey

FROM : ES - Mr. Stimson

DATE: July 18, 1946

SUBJECT: Telephone Conversation with Mr. Frank Russell,
 Bureau of Customs, Treasury Department.

Mr. Russell stated that the Treasury Department (Bureau of Customs) had made 3 or 4 seizures or sequestrations of looted cultural objects seeking entry into the United States. The objects are being kept under customs control pursuant to the Geneva Convention (and the Hague Conventions), War Department Regulations and Treasury Regulations, in various ports of entry, including New York, Chicago, and St. Louis, because of the possession by the collectors of customs of evidence that the objects are loot. In several instances, the responsible parties have admitted the looting. In one instance, the objects were looted from a European Museum by U.S. soldiers. Some of the objects have been held by the Customs authorities for eight months.

The Treasury Department has informed Mr. Huntington Cairns and the Roberts Commission of the above facts and requested instructions for disposing of the objects. The Treasury Department has offered to seize the objects pursuant to the Geneva (and the Hague) Conventions, War Department Regulations and Customs Regulations and turn them over to the responsible agency charged with making restitution to the rightful owners; but no response has been received.

I explained that the Roberts Commission was going out of existence, that its functions are being transferred to OIC in the Department of State and that ES is interested from the Security angle. I mentioned the primary responsibility of the War Department for making restitution of art objects found in Germany and Austria. I pointed out, however, that the draft agreement on restitution and replacement had not yet been approved by the ACA Germany or by the four powers represented thereon. No international agency or procedure had been set up to accomplish restitution, especially of objects found outside Germany and Austria. No agency had been set up in

the United States

106615

DECLASSIFIED
Authority NUD 968071
By JM NARA Date 8/25/99

RG 59
Entry Lot 62-D-4
Box 1

- 2 -

the United States to receive the art objects held by the customs authorities and to transport, transfer or reconstitute them to their countries of origin and rightful owners.

I stated that there was some evidence that these matters might be settled in the not too distant future.

RMS
ES:RHStimson:ar

DECLASSIFIED	
Authority	NND 968071
By	JM NARA Date 8/25/74

RG	59
Entry	62-D-4
Box	1

ESP - Mr. Rubin
 ES - Mr. Baker
 Mr. Surrey
 ES - Mr. Stimson

July 18, 1946

Telephone Conversation with Mr. Frank Russell,
 Bureau of Customs, Treasury Department.

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the United States

DECLASSIFIED

Authority NUD 968 071

By JRM NARA Date 8/25/99

RG

59

Entry Lot 62-D-4

Box 1

- 2 -

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Es:REStinson:ar

DECLASSIFIED
Authority: NUD968071
By: JRM NARA Date: 8/25/99

RG 59
Entry Lot 62-D-4
Box 1

NOV 30 1946

In reply refer to
ADO

The proposed licensing agreement for importations of works of art - was requested on June 12, 1946, at the request of the War Relocation Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas.

My dear Mr. Secretary:

In order to maintain the Government policy of aiding in the recovery and restoration of art and other cultural objects plundered during the war, the Department of State is reexamining the legal grounds for the apprehension of looted or stolen cultural objects brought to the United States.

Under the former agreement between the Bureau of Customs and the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas (F. D. 51072; Title 19 - Customs Duties; Chapter I - Bureau of Customs; Part 52 - Regulations under the Trading with the Enemy Act) we have been informed in a letter from the Commissioner of Customs dated September 9, 1946, that "art objects when imported contrary to law would be seized by customs officers under section 593 (b) of the Tariff Act of 1930 (USC Title 19, Section 1593 (b)), a petition would be filed by the Roberts Commission as an interested party under Section 618 of the same act (USC, Title 19, Section 1618) for remission of the accrued forfeiture, the petition would be given favorable consideration, and the property would be released to the petitioner which would arrange for restoration through appropriate channels."

The Department of State would appreciate receiving the opinion of the Legal Division of the Treasury Department on the present and future adequacy of this law or other existing laws, and the necessary procedures by which looted cultural property imported either by returned members of the armed forces or through trade channels can be seized by the United States Government.

Sincerely yours,

Dean Acheson

Acting Secretary

The Honorable
John W. Snyder,
Secretary of the Treasury.

ADC: ARHall: mjk
11/14/46

WTS rub
CIC A-H ES

Mr. Ransom absent.
a-B

XR 800.515

840.403/11-3046

C/S/A

840.403/11-3046

NOV 25 10:44 P.M.
NOV 27 10:46 P.M.
NOV 29 1946



DECLASSIFIED

Authority: AND 968071By: JM NARA Date: 8/25/78RG 59Entry Lot 62-D-4Box 1

The T. D. 51072 - a licensing system for importations of works of art - was revoked on June 13, 1946, at the request of the American Commission for the Protection and Salvage of Artistic and Historic Monuments in War Areas; this letter asking for the legal opinion of the Treasury Department has been drafted in order to obtain the basis for a new ruling.

DECLASSIFIED	
Authority	NND 968071
By	JM NAPA Date 8/25/77

RG	59
Entry	Lot 62-D-4
Box	1

DEPARTMENT OF STATE
Telephone
Memorandum of Conversation

DATE: October 7, 1946

SUBJECT: Proposed customs control over the importation of looted or stolen cultural objects - question of the legal basis for.

PARTICIPANTS: Mr. Frank Russell, Bureau of Customs, Treasury Dept.
Mr. Ralph H. Stimson - ES

COPIES TO:

... 1-1403

Mr. Russell stated that the nature of the legal basis for seizure by customs officials depended upon whether it was a case of (1) attempted illegal entry or (2) attempted legal entry. The attempted illegal entry of any object into the United States subjects it to seizure by customs officials. In the case of attempted legal entry, under the laws of the United States, the person who has an indorsed bill of lading or carrier's certificate asserting his ownership of his objects seeking legal entry is accepted by customs officials as the consignee and legal owner of the merchandise. The customs officials accept the above-mentioned documents as conclusive proof of ownership. The property cannot be released to any other person. Claims by third parties to such objects in customs custody would not be heard or recognized by customs officials. However, if such third party could present a valid court order or decree granting his claim to the objects such a court order would be recognized by customs officials and the objects released to such third party.

Mr. Karasik's letter to Mr. Schmidt, of Foreign Funds Control, proposed customs control of the importation of cultural objects also. This proposal was brought to the attention of the Bureau of Customs by a memorandum of the FFC and the proposal, especially the question of the legal basis therefor, has been considered by Mr. Johnson and Mr. Russell of the Bureau of Customs. The Bureau of Customs is willing to cooperate in

carrying

106621

DECLASSIFIED
 Authority NND 968071
 By JM NARA Date 8/25/77

RG 59
 Entry Lot 62 - D- 4
 Box 1

- 2 -

carrying out a plan of control but feels that the legal situation is unfavorable. Mr. Johnson feels that the responsibility for finding a legal means or authority for seizing, forfeiting, or vesting looted cultural property seeking legal entry into the United States rests with the State and Treasury Departments. During the existence of TD 51072 the Roberts Commission prepared a list of possible authorities for the seizure of looted cultural objects. The Bureau of Customs, however, rejected this legal basis as inapplicable. Mr. Russell stated that there is no existing treaty, law, or regulation prohibiting the entry into the United States of looted cultural objects. Nor is there, at present, any legal provision establishing a prerequisite (such as licensing) to be met before such importation. The treaty with Canada relating to stolen property applies only to property seized for smuggling or violation of customs laws. If the property so seized is proved by the Canadian Government to have been stolen in Canada, it is released by customs to the Canadian Government. This is the only treaty of its kind to which the United States is a party.

Customs officials can only seize objects under Section 593b of Customs Regulations or Title 19, Section 1593 of the U. S. Code, if it is sought to import or export the objects in violation of some treaty or other United States law or regulation. The Bureau of Customs could seize cultural objects or forfeit them to the United States Government if there was an attempt to import objects without license. Title to the objects would then rest with the United States Government. The Bureau of Customs could then release the merchandise to the Department of State upon the filing by the State Department of a petition under Section 618 of the Customs Regulations or Title 19, Section 1618 of the U. S. Code.

Mr. Russell suggested that the FFC could issue a general ruling under the Trading with the Enemy Act or the War Powers Act requiring the licensing of imports of cultural objects. Applications for licenses could be cleared by U. S. Consuls in the foreign countries and with the Department of State. The FFC could reject applications for licenses in case evidence indicated the object was looted or Axis-owned. In such cases, our Consul could notify the foreign government in which looted property was located of its presence there, for seizure and restitution by the foreign government under its laws and regulations. Safehaven committees or trustees could take

over

106622

DECLASSIFIED

Authority 100968071By JM NARA Date 8/25/79RG 59
Entry 6262-D-4
Box 1

- 3 -

over as enemy external assets the legally-owned enemy cultural property brought to light in foreign countries by the license applications.

Cultural property attempted to be brought into the United States without a license could be seized by customs, forfeited to the U. S. Government, and released to the Department of State for restitution, or to the APC for vesting as enemy property.

Mr. Russell suggested that I discuss the above proposal with Mr. Rains of the FFC.

Such a licensing system based on the authority of the Trading with the Enemy Act and the War Powers Act would probably terminate with the promulgation of a treaty of peace regarding Germany and Japan. It would be a temporary emergency measure to deal with the uncontrolled situation resulting from the repeal of TD 51072. Since the system of customs control, to be effective, should extend over a period of about 20 years, it would be wise to begin work on an international convention prohibiting the importation, exportation, and intransit shipment of looted or stolen cultural objects. A draft treaty should be prepared and a draft law or bill for introduction in Congress.

Mr. Russell stated that the Bureau of Customs has detained a number of art objects looted by GI's from European museums, on the grounds that illegal entry was attempted in violation of TD 51072 and of customs laws and regulations. Treasury has not forfeited these to the U. S. Government because when that is done the objects would have to be sold if not released for restitution. The Roberts Commission and the Department of State have not yet presented a concrete plan for restituting the objects and paying their transportation back to Europe. Treasury feels that the objects should be restituted rather than sold. It is continuing to detain the objects pending receipt of instructions from the Department of State.

ES:REStinson:mik

106623

MAILING & CUSTOMS
12 February 1947

MAILING OF WORKS OF ART

1. The mailing of works of art must be in conformity with USFET Circular 140, 26 September 1946. Briefly its provisions are that anything must have been acquired for a legal price and for the personal use of the purchaser.

2. It is further the responsibility of the individual to make sure that his title is clear. Stolen goods or goods removed by the Germans from countries occupied by them may always be confiscated. Be sure you are not in possession of stolen or looted art objects.

3. Usual customs regulations also prevail. In general, works of art over a hundred years old are not dutiable, but should nevertheless be declared.

4. Special care should be taken with respect to purchases made in Berlin, since AG Letter 6 Dec 46 "Transfer of Works of Art and Cultural Objects of Value or Importance" is not in effect in this city, and all dealings in such material are forbidden by MG Law 52 unless licensed under the above letter.

106624

200/81

OUTGOING TELEGRAM

Department of State

Hell
03599

INDICATE: COLLECT
 CHARGE TO

SECRET

RECEIVED DC/T
ACCEPTANCE UNIT

OCT 9 7 10 PM '51

SENT TO: Hicog FRANKFORT 1303

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Origin
GER
Info:
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RPTD INFO: Amembassy LONDON BY POUCH
Amembassy PARIS BY POUCH

Part II, ART 5, Hicog Draft Convention on Acts, Programs, etc. WLD be SATIS contract on external restitution with FOL amendments:

- 1) Proposed cut-off date for filing claims for looted cultural property SHLD be deleted. Such provision was considered and rejected during Study Group discussions. Large percentage of items eligible for restitution under definition QTE cultural property UNQTE probably will have been looted from public collections; few, if any, of great public collections have been completely checked and inventoried and we can not assume this will be done by any fixed date. If GERS SHLD raise question, suggest you point out US GOVT has no cut-off date and proposes continue indefinitely acceptance claims for looted cultural property and procedures for search, recovery, and restitution to country of origin, including FEDREP. In this connection you may find ART in State DEPT Bulletin No. 635, AUG 27, 1951 useful.
- 2) Provision that FEDREP need not accept previously rejected claim for looted property SHLD also be made applicable jewelry, silverware, and antique furniture.
- 3) Definition of loot and duress in PARA 1 (b) SHLD be modified to conform with PARAS (d), (e), and (f) of Annex A to Appendix I to

IGG/P(51)89 Final.

Drafted by:

GER: GEA: GNBaker: am 10/3/51
Circulances:

GPA Hillenbrand L/GER Raymond ICD Hall

ACHESON
Telegraphic transmission and
classification approved by:

William A. Fowler
~~XXXXXXXXXXXXXXXXXXXX~~

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Entry Lot 62D-4
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Authority: NND 968071
By: JA - NARA Date: 8-16
REPRODUCED AT THE NATIONAL ARCHIVES

GRAM

Department of State

03602

INDICATE: COLLECT
 CHARGE TO

SECRET

RECEIVED DC/T
ACCEPTANCE UNIT

OCT 9 7 10 PM '51

SENT TO: Hicog FRANKFORT 2306

RPTD INFO: Amembassy LONDON BY POUCH
Amembassy PARIS BY POUCH

26
Origin
GER
Info:
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Re Part VI, ART 13, QTE Possible Claims by GERS UNQTE, Hicog draft
Convention on Acts, Programs, etc. and PARA 24(f) FONMINS INSTRS.

DEPT notes certain differences in wording between ART 13 and PARAS 2 and 6
of IGG/P(51)91 Final. Believe latter more precise and SHLD be used. Contract
SHLD also provide specifically that FEDREP will take appropriate action to
insure accomplishment purposes of PARAS 2 and 6.

Separate INSTRS being sent on footnote 1 to ART 13.

ADHESION

Dist.
Desired
(Offices
Only)

Drafted by: GER:GEA:GWBaker:gr 10/9/51
Telegraphic transmission and classification approved by: W.A. Fowler

Clearances: L/GER Raymond GPA Hillenbrand

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10-514

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By: JIA NARA Date: 2-16
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THE NEW YORK TIMES, Friday, March 31, 1950, p. 12

Allies Order Bonn to End Restitution.

High Commission Acts to Wind Up Return of Property Nazis Looted during the War.

Frankfort, Germany, March 30. -- The Western Allied High Commission ordered the termination today of the program for restitution of properties looted from German-occupied countries during the war, although it recognized that despoiled nations would maintain the right to "clearly restitutable property" that subsequently might be found.

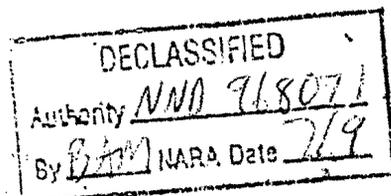
This decision foreshadows the end of a program in which nearly \$300,000,000,000 worth of art works, machinery, horses, jewelry and other valuables have been returned to sixteen nations of Europe, including Russia, from the United States zone alone.

At the same time, non-official sources expressed dissatisfaction at the "red tape" involved in the restitution of properties to individuals wrongfully deprived of them by the Nazi regime. In the American zone, only 20 per cent of the claims that were expected to sustain validity have been settled thus far.

April 1 is Deadline

April 1 is the deadline for filing claims under a German general claims law for indemnification of victims of nazism who suffered monetary loss or were persecuted.

RG 59
Lot 62D-4
Box 28



1066

While the Western Allies, especially the United States, have repeatedly affirmed their intention to carry out the restitutions program, most of the work has been left to the German state governments, which have displayed marked resistance to the entire idea, according to an authoritative source.

In one instance, a Restitutions Minister was ordered to take a leave of absence he had not requested. In three other instances, Restitutions Ministers were eased out of their jobs, according to an official Western Allied source.

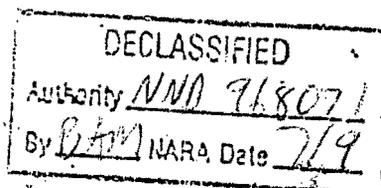
In announcing tonight's decision affecting large restitutions to governments, the High Commission pointed out that the restitutions operations in the British zone would end tomorrow night except for action on material already located.

No Claims Since June

With the exception of works of art, the United States has not accepted claims since last June. France imposed a "theoretical" deadline October 19, 1948, after which she agreed to consider claims only when a despoiled nation could furnish proof that it had not been aware in time of the existence of the property in question.

The commission also agreed in principle on a law implementing the establishments of the Military Security Board, providing for the prohibitions and limitations imposed to prevent German industrial

RG 59
Lot 620-4
Box 28



106628

rearmament. The text will be published in the near future, it was said. It also agreed on a definition of the term "steel industry" in response to a request by Chancellor Konrad Adenauer concerning the form of control the Security Board would exert on this industry. The text of the commission's letter to Dr. Adenauer also will be published soon.

R6 59
Lot 62D-4
Box 28

DECLASSIFIED
Authority <u>NND 968071</u>
By <u>BAM</u> NARA Date <u>7/9</u>

*106629

Hall

INCOMING TELEGRAM

Department of State

TELEGRAPH BRANCH
PLAIN

A

15
Action
GER

Control: 13356
Rec'd: May 31, 1950
8:55 a.m.

FROM: Frankfort
TO: Secretary of State
NO: 4633, May 31.

Info
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In 1946 Office of Military Government in each land in United States zone directed Minister Presidents to issue proclamation and notice requiring all persons having information on property removed from areas occupied by German forces to declare such property on a form prescribed by Military Government. Proclamation and notice was enacted by all Laender in identical language with force of law.

In addition to duty to declare, Article II of said proclamation and notice required all persons to hold all such property and not to transfer, deliver or otherwise dispose thereof, pending further instructions of Military Government.

Since the external restitution program required that all claims for such restitution (except cultural properties) be filed by June 30, 1949 and since, except for restitution of cultural properties, the program is now virtually completed in United States zone, we propose to lift restrictions imposed upon property declared under the proclamation and notice, but which has never been claimed, or which, if claimed, has not been found to be subject to restitution.

We, therefore, propose to advise Minister Presidents that officials to be designated by them may receive and approve requests by present holders for the removal of any restrictions imposed by operation of Article II of the proclamation and notice, with proviso that approval may be given upon presentation and approval of certification by applicant that:

A. He has declared the property as required pursuant to proclamation and notice, and that

B. He does not know and has no reason to know that a claim has been filed against the property, or that, if filed, it has been dropped or rejected by Military Government (HICOQ).

Foregoing would

PLAIN

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DECLASSIFIED

Authority: NND 968071

By: JA NARA Date 8-16

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Box 26

PLAIN

-2- 4633, May 31, from Frankfort

Foregoing would not apply to cultural properties held in Munich and Wiesbaden collecting points.

Above proposal has received concurrence of interested offices in HICOG. We intend to proceed as indicated above, unless Department indicates objection prior to June 12.

MCCLOY

BB:KC

PLAIN

106631

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Authority: NND 962071

By: JA - NARA Date 8-16

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RG 59
Entry Lot 62D-4
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COUNCIL
of the
ALLIED HIGH COMMISSION

QUESTION OF THE TERMINATION OF EXTERNAL RESTITUTIONS

(Note by Secretariat)

This paper, which is a French proposal on this subject, is submitted for the consideration of the Council at its 22nd meeting on 30 March 1950.

G.P. CLAIN

L. HANDLEY-DERRY

J.E. SLATER

Allied General Secretariat

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Lot 620-4
Box 20

Authority NND 96807
By J. NARA Dept
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QUESTION OF THE TERMINATION OF EXTERNAL RESTITUTIONS

The principle of restitution of looted property in the occupied countries was solemnly recognized by the London Declaration on 5 January 1943. It was confirmed and finalized by the Control Council's decision of 20 January 1946 (CONL/P(46)3 revised) which defines the right of restitution. Interpretation of this text was given by the Coordinating Committee on 23 March 1946 (CORG/P(46)110). A common restitutions procedure was agreed upon in Berlin on 17 April 1946 (CORG/P(46)143); its implementation, however, remained within the sole jurisdiction of each Military Governor so that the actual operations assumed an individual aspect in each Zone.

The U.S. authorities endeavored to have restitution operations rapidly concluded by using every possible means to liquidate undisputed claims already submitted, but they also took a further decision at the same time not to recognize any claim, even a meritorious claim, after 1 June 1949.

In the British Zone, the deadline for the submission of claims, originally set for 30 June 1948, was applied with a certain degree of flexibility, but the end of restitutions operations is now established as 31 March 1950.

In the French Zone, a theoretical deadline of 31 October 1948 was set for the submission of claims. However, the decision allowed for the late submission of claims if the despoiled nation could prove it had not been informed in due time of the existence of the property in question.

- (A special system was provided for in the U.S. and French Zones for works of art. In the U.S. Zone, claims covering works of art are still accepted provided they are meritorious claims and the delay justifiable. In the French Zone, they are still acceptable unconditionally.)
- 1.
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The extension of restitution operations in the British and French Zones has been worthwhile, since between 1 Jan 1949 and 28 Feb 1950, concerning France alone, 757 claims were released in the British one 1,104 claims in the French Zone. (See Statistics attached as Appendix A)

In view of the extensive spoliations of which France was the victim, the French Government considers it most desirable that the right of restitution be maintained in principle in accordance with the United Nations declaration dated 5 Jan 1943. Nevertheless, the progressive slowing down in the rhythm of operations in the British and French Zones has given rise to an increasing disproportion between the expenses attached to the organic restitutions service and the results obtained, and there comes a time when circumstances demand the closing down of operations. The date of this must, however, vary according to the nature of the property claimed.

The French Government is of the opinion that the problem thus raised is one of the subjects reserved to the High Commission and that it falls to the latter to make a decision with regard to the measures to be adopted.

As an answer to this problem, the French High Commissioner is

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desirous of obtaining the agreement of the Council of the Allied High Commission to the procedure laid down in the draft attached hereto as Appendix B.

Apart from the exceptions specifically listed it is proposed in Article 2 of this draft to suspend restitution operations by way of administrative procedure.

The exceptions for which provision is made, are of two kinds:

Those referred to in Article 3 have already been subject, in each Zone, to special measures and on this point the draft is limited to a restatement of facts.

Article 4 deals with those exceptions which concern works of art and cultural possessions which had already been excluded from a deadline in accordance with the U.S. paper DRDR/P(46)101 dated 22 April 1946 to which British agreement was obtained at that time.

As for the works of art and cultural possessions, there is indeed no reason for giving up the search - these works are scarcely depreciated by time and there are definite indications that interested German circles are willing to facilitate the task of the Allies. The draft consequently provides for the enlistment of their help.

By virtue of Article 5 this procedure would be extended to winding up files still outstanding in Allied agencies and to considering cases of looted property retained in contravention of Allied legislation in force.

It is of course understood that in view of the small percentage of property recovered by France (6.25% of declared spoiliations of identifiable property and 1.20% of all spoiliations committed in France) the French Government reserves the possibility of availing itself of the rights in this matter to which it would be entitled by the overall settlement provided for in Article 1 of the draft.

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APPENDIX A to
HICOM/R(50)57

STATISTICS

in connection with French restitution claims in the US Zone

Claims recorded by the US Claims Office 8258

of which 4019 are vehicle claims

and 483 meritorious claims

Approximately 50% of these claims are related to property of which French "persons" + have been despoiled.

(a) releases ++ - 2879, approx 35% of the total

(b) rejections - 5379, " 65% of the total

As regards the rejections in (b) the reasons are in the following proportions:

(a) claims for which location has proved inaccurate - about 4.8%

(b) claims rejected for lack of evidence - about 1.5%

(c) claims rejected for insufficient value +++ - about 12.5%

(d) claims rejected for various reasons ++++ - about 38%

+ National Corporations, various syndicates, shipping firms, etc., also enter into that category

++ The 2879 total represents the number of released claims, although often only a part of the property claimed had been recovered

+++ Particularly 260 claims on furniture which represent a total value of 300,000 RM (1938)

++++ Non returnable property (Normal Business transaction), scrap or wreck, frozen for the German economy, of uncertain location claimed with insufficient information.

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APPENDIX A to
HC/MAC/50.57 (cont.)

STATISTICS

In connection with French restitution
claims in the British Zone

	<u>as of 1.1.1949</u>	<u>as of 1.3.1950</u>	<u>between these two dates</u>
Claims submitted	9,064	9,410	346
Claims released	2,226	2,983	757
Claims settled	1,397	2,520	1,123
Claims rejected	1,625	2,317	692
Claims, the presumed location of which proved inaccurate	1,372	1,789	417
Claims on which a decision has yet to be taken	3,841	2,421	
Value in RM (1938) of property forwarded	50,536,000	63,529,000	12,993,000

STATISTICS

In connection with French restitution
claims in the French Zone

	<u>as of 1.1.1949</u>	<u>as of 1.3.1950</u>	<u>between these two dates</u>
Claims submitted	16,052	17,105	1,053
Claims released	7,368	8,472	1,104
Claims settled	7,228	8,418	1,190
Claims rejected	3,084	4,992	1,908
Claims, the presumed location of which proved inaccurate	2,276	1,800	476
Claims on which a decision has yet to be taken	3,324	1,841	
Value in RM (1938) of property forwarded	55,484,400	59,278,900	3,794,500

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APPENDIX B to
HICOM P(50)57

The French High Commissioner proposes that the following text serve as a basis for discussion:

1) The principle of the right to restitution resulting from the London declaration of 5 January 1943 remains unchanged. This right shall only be considered as invalid with an overall settlement which will have to come at the latest with the signing of the peace treaty.

2) Restitution operations through administrative procedure are suspended, except as regards the property mentioned in paras 3, 4 and 5 below.

It is pointed out, however, that releases already granted shall be carried out.

3) Stocks and shares, and certificates in lieu thereof, currencies, railroad rolling stock and river craft - shall continue to be the subject of negotiations with the competent Allied Occupation Authorities, at least until the date when the Allied High Commission agrees to subject certain property to the procedure provided for in paras 6 and 7 below, or to any other procedure it may deem appropriate.

4) (a) Works of art, cultural possessions, collections, archives.

(b) Precious stones, pearls, jewellery, silverware, precious or rare metals and their compounds (particularly radium) shall continue to be subject to restitution in accordance with the procedure outlined in paras 6 and 7 below.

5) The same shall apply on the one hand to looted property which had not been subject to the compulsory declaration provided for in the Allied Legislation (Proclamation and Notice 18,504 - General Order No. 6 - Ordinance 19) and on the other hand, to property the restitution of which is awaiting settlement. A list shall be drawn up by Allied agencies in each Zone.

6) Tracing and identification of property covered by paras 4 and 5 above shall be carried out by the accredited representatives of the claimant countries as well as by the competent German authorities.

7) Proposals for restitution or, in case of litigation, points of disagreement shall be submitted to the Allied High Commission for a decision (or to such agencies as it shall appoint).

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A. R. Hall

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CFMP D-5/15

May 18, 1949

CFM PREPARATORY PAPERS

Restitution from Germany

The attached paper, prepared by Mr. Kiefer in EP (and its annex prepared by Miss Hall in ILI) discusses the steps which should be taken in the field of external restitution from Germany in the event of establishment of an all-German government. Five specific recommendations appear on pages 13-14.G.

An annex entitled "Return of Cultural Property" is attached at the end. This paper is circulated for the information and possible comment of CFMP recipients.

Brad Patterson
Secretary

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Restitution from Germany

I. The Problem

To determine the steps to be taken in the field of external restitution from Germany in the event of the establishment of a Government for all of Germany.

II. Discussion

A. Present Status of Restitution Material

L. U.S. Zone

The U.S. policy on restitution has its legal basis in the United Nations Declaration of 1943, the ACA agreements of 1946 on restitution, and the restitution provisions of the Treaties of Peace of 1947. Pursuant to this policy, restitution of identifiable looted property has been made since 1945 from the American Zone of Germany to the governments of the countries from which the property was taken. More recently it has been U.S. policy that restitution will not be made to claimant governments of property claimed independently by non-nationals or refugee nationals of claimant countries and of goods claimed by countries in the Soviet orbit which are included in the lists of proscribed exports.

Criteria of restitutability vary, depending on whether the claimant country is a wartime United Nation or a former ally of Germany, but in general it is the U.S. position that claims must arise from some element of dispossession. Since 1947 it has been the stated U.S. policy that property removed as a result of a transaction essentially commercial in character does not meet this standard and is not eligible

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for restitution.

Only a relatively small quantity of restitutable property which is or may be found in the American Zone remains to be disposed of. Included in this category is a quantity of property restitutable to Hungary, the restitution of which has been suspended since the expulsion of the Hungarian Restitution Mission early in 1948. It is unlikely that restitution of this property will be resumed during the period of Military Government. It is thought that the most appropriate solution for this property will be to effect restitution, after the new regime for Germany has gone into effect, of any property which remains subject to restitution upon conclusion of the rigorous screening process which is currently underway.*

Restitutable property remaining to be dealt with in the U.S. Zone also includes securities (see special note on securities below) and property which has been the subject of so-called "meritorious claims" (see note on termination dates below).

As of this writing, all restitution missions are understood to have been withdrawn from the U.S. Zone. Any remaining restitution activities

*General Clay expelled the Hungarian repatriation and restitution missions early in 1948 following an incident in Hungary involving a repatriation train from the American Zone of Germany. Restitution from the American Zone of Germany to Hungary subsequently became involved in the 1948 US-Hungarian talks in Budapest on U.S. claims against Hungary under the Peace Treaty which ended inconclusively, in view of which it was decided that restitution would continue to be suspended. In order to reduce the size of the problem the Department recently recommended to USFOIAD and OIGUS that U.S. Forces take as war booty all Hungarian property which can qualify as such under the laws of war; that restitutable Hungarian IA and IB goods be sold in the German economy; that restitutable property claimed independently by non-nationals or refugee nationals of Hungary be disposed of to the claimants; and that in general the most restrictive interpretation of the restitution article of the Peace Treaty be applied in determining the restitutability of Hungarian property.

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activities are handled in most cases by the consular representatives of the respective countries.

The Report of the Military Governor for February 1949 contains the following information on the status of restitution claims for non-cultural property, exclusive of securities (as of February 28, 1949):

Total Claims Received	20,498
Total Claims Rejected	11,789
Total Claims Satisfied	8,724
Net Active Claims	85
Value of Claims Restituted RM 306,002,796 (1938 value)	

2. U.K. Zone

The policies which have been applied to restitution in the British Zone are thought to be substantially the same as those in the U.S. Zone. The following statistical information is contained in the monthly report of the Control Commission for Germany (British Element) for February 1949:

Total Claims Received	27,036
Total Claims Rejected	6,514
Total Claims not Located (this category is probably included with rejected claims in the U.S. Zone statistics)	6,772
Total Claims Satisfied	5,424
Claims released but not yet delivered	2,962
Claims still under investigation	5,364

The British figures probably do not include claims relating to securities and cultural property. The category of "Claims Still Under

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Investigation" probably includes for the most part so-called "dormant" claims, which are never likely to be satisfied and which in the U.S. Zone would have been closed out in one way or another. On this assumption, it would not be inappropriate to state that restitution from the British Zone has progressed to approximately the same level as in the U.S. Zone.

3. French Zone

No recent statistics have been seen concerning the status of restitution in the French Zone. Little is known about the policies which have been applied to restitution.

4. Soviet Zone

There is little information concerning the policies which are being applied to restitution in the Soviet Zone. It is clear that the major share of restitution from the Soviet Zone has been to the East, but it is not known whether this is due to geographic propinquity or to specific policy.

No recent information is available on the progress of restitution in the Soviet Zone. However, up to the time when quadripartite reporting ceased in March 1948, the total of claims satisfied had always been only a fraction of claims filed.

5. Special Notes

a. Termination Dates for Filing of Claims. The following table indicates the termination dates which have been set in the various Zones for the filing of claims to the indicated categories of property:

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property:

	Securities	Cultural	All Other (except rolling stock)	"Meritorious"*
US Zone	12/31/48	9/15/48	4/30/48	None
UK Zone	12/31/48	6/30/48	6/30/48	6/30/49
French Zone	12/31/48	not available	not available	not available
Soviet Zone	no dates available			

(*Meritorious" Claims are those claims which have been accepted in the US and UK Zones subsequent to the general deadline for the filing of claims. The category was designed to accommodate claimant countries in cases where restitution claims could not have been filed prior to the general deadline. In the US Zone, a meritorious claim is admitted only when it can be established that the delay in filing resulted from the fact that the German holder of the claimed property conspired to conceal its existence. This limited basis has led to representations by the Italian Government, and it is hoped that OMCUS will shortly review late Italian claims with a view to according consideration to the additional fact that some of the inventories of the ROGES and RUK, the German looting organizations, were given to the Italians only immediately prior to the general deadline or subsequent thereto. The basis for meritorious claims in the UK Zone is probably broader than in the US Zone, but no details are known.)

b. Restitution from the Western Sectors of Berlin is understood to have been suspended to all claimant countries during the time of the blockade. It is not known how much remains to be done in this field as a result of this measure.

c. Rolling Stock.

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c. Rolling Stock. Bizone policy has been to predicate restitution of rolling stock on agreement to return German wagons held abroad. Accordingly, special agreements have been made between the Bizone and the Netherlands, Italy, France, and the French Zone providing for a practical one-for-one exchange of cars without prejudice to the legal claims involved. Similar exchange arrangements have been made between the Bizone and Belgium, Denmark, Czechoslovakia and Greece. Little is known of the practice of the French Zone, except that there is an agreement between France and the French Zone for exchange on a car-for-car basis.

France has been acutely sensitive on the rolling stock question, taking the position that French rolling stock in Germany, which has been considerable, should be returned without reference to the needs of the German railways and the large quantities of German rolling stock abroad which are claimed by the French and some other countries as German external assets. The Bizone-France car-for-car exchange agreement of 1948 was thought to represent a solution of the impasse but was not fully implemented by France. In April 1949 the U.S. and U.K. made a further proposal to France for settlement of the question; it is hoped that this will be accepted, thus finally closing the matter.

No official information is available concerning the restitution of rolling stock in the Soviet Zone, although it is understood that there have been some instances of such restitution.

d. Securities. Under Military Government Law 53 all securities of non-German issue in the Western Zones were required to be placed under Military Government control, thus enabling the Military Commanders
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in the three Western Zones to develop comprehensive programs for the disposition of this type of property. Correlated trizonal programs were subsequently initiated in regard to external and internal restitution, recognition of legitimate ownership rights, and disposition of German external assets. In the field of external restitution the three Commanders prepared summary lists of all non-German securities under their control, which were made available to all claimant nations as a guide to the filing of claims, for which a trizonal deadline was set at December 31, 1948. Because of the complexities encountered, this program was slow in getting underway, and although subsequent progress was rapid, considerable numbers of securities may still remain to be disposed of by way of external restitution.

The trizonal program for the restitution of securities does not, however, affect the much larger quantity of non-German securities which at the end of the war were located principally in what became the Soviet sector of Berlin. The non-German securities in the Soviet area were brought under Soviet Military Government control by a marshaling law similar to that in the Western areas. Nothing has become known of the Soviet policy in regard to this type of property. However, there have been several known instances of restitution and, more significantly, quantities of non-German securities known to have been in the Soviet area of control have been offered for sale from time to time in the neutral markets in Europe.

c. Monetary Gold. Disposition of all monetary gold in western Germany is made pursuant to the Paris Reparations Agreement. There remains only an insignificant quantity of gold which may be

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subject to transfer to the Tripartite Gold Commission under this arrangement.

B. Considerations Bearing on Future Action

1. French attitude on restitution.

From the time of the first international discussions on restitution France has rather consistently taken the position that restitution is to be made of everything which was removed from a German-occupied country without "effective economic equivalence" being received in return. Under this theory, restitution is based not only on the use of force or duress but also the fact of purchase with occupation currency; account is taken, furthermore, of the considerable German debits on clearing account with the countries in question. Considerably narrower criteria have been employed in practice in the U.S. Zone and, somewhat less so, in the U.K. Zone.

France has also at various times advanced the general argument that replacement in kind should be provided for looted property which is not restituted. This principle found no acceptance in the relevant international agreements, but it was again advanced by France with specific reference to machine tools as recently as May 1948; this latter French proposal was rejected by the U.S. some months later.

In August 1948 the French indicated a willingness to waive further claims in connection with their "inextinguishable right to restitution," it being then obvious that the U.S. and British Zones were rapidly moving in the direction of early termination of the program. The consideration for this was to be a lump-sum payment of 350 million RM allocated among the four Zones and to be paid before March 31, 1950. Payment was to be made in machine tools and shares in plants

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shares in plants originally intended for reparations but subsequently not allocated; later the French indicated a willingness to abandon machine tools as a means of payment, if necessary. A draft reply to the French proposal is now under consideration in the Department. If cleared it will reject the French proposal.

A French draft of an ordinance to deal with restitution under the Occupation Statute was given to the Department in April. The French suggest that agreement be reached on a uniform text of such an ordinance to be promulgated in the three zones following Zonal fusion. The French draft envisages the creation of restitution services by each of the Land Governments; a redefinition of what property is subject to restitution (including property for which no "economic equivalence" was furnished by Germany); restitution in kind for restitutable property retained in Germany by order of the Zone Commander; cooperation between the Germans and the Allied Missions in the search for identification and restitution of property; settlement of disputes by the Zone Commander; and miscellaneous provisions.

Of the foregoing items contained in the French draft, the following have in the past been the subjects of significant disagreement as between France and the United States: absence of "economic equivalence" as a basis of restitution, and search for looted property by missions of claimant countries. Restitution in kind for restitutable property retained by order of the Zone Commander presents an awkward issue which is not known to have been raised previously; the French undoubtedly have in mind OMGUS' abandoned practice of retaining restitutable property required by the German economy.

2. Soviet Attitude on Restitution.

Up to the autumn of 1947 the Soviet Union manifested only passing

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interest in restitution. Such Soviet claims as were received in the American Zone as a rule contained inadequate supporting data; when Soviet property was found and released there were frequently long delays before the Soviets took delivery, and there was often no Soviet restitution mission at all. When possible termination dates for restitution were discussed in the ACA in 1946, the Soviets were prepared to accept the most limiting proposals.

At the time of announcement (October 1948) of the termination date for the filing of claims in the American Zone, the Soviet Deputy Commander stated that he thought the setting of such a date was premature in view of what he regarded as the unsatisfactory progress of restitution. The Soviet official furthermore specifically raised objection to the fact that property looted from the Baltic countries was not being given to the Soviet Mission in the American Zone.

In March 1949, Marshal Sokolovsky in a letter to General Clay in effect accused American authorities of sabotaging restitution to the Soviet Union and requested enlargement of the Soviet Restitution Mission in the American Zone and permission for it to inspect German plants and museums for restitutable material. General Clay's reply categorically denied all charges and pointed out that restitution to the Soviet Union had been hampered by failure of the Soviet Union to cooperate fully.

3. Considerations Bearing on the U.S. Position.

It has been one of the OMGUS objectives to bring the restitution program in the American Zone to a definite end by the time a new regime is set up in Germany. Although, as indicated in an earlier part of this paper, there will undoubtedly remain a number of problems, it will be possible for the U.S. to assert that there is no need, after the

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termination of Military Government, for anything but a very brief wind-up period for restitution, at least as far as the American area of Germany is concerned. However, such a position, if taken too inflexibly on all aspects of restitution from the entire German area, probably would involve acrimonious debate with the French and perhaps with the Russians. Furthermore, it would not do full justice to the facts of the situation.

The U.S. position should take account of the fact that there is probably still a restitution problem of some size in the Soviet Zone, particularly as regards securities. Recognition should also be given to the need for additional time to take care of such residual problems as may remain in the Western Zones. On the other hand, it should be recognized that too much time has elapsed since the end of hostilities for any substantial quantity of restitutable property not previously traced to be uncovered now. Account should also be taken of the considerable deterioration which such property is likely to have undergone in the past five years. These factors make a strong argument against any proposal, such as may be advanced by the French, for the creation of a new German restitution organization. They indicate, furthermore, the desirability of reaching agreement on the earliest definitive termination of the whole program that can be considered reasonable in view of all relevant factors.

It would not be in the U.S. interest or helpful to expeditious termination of remaining restitution questions to reopen the debate on precisely what constitutes "looted property." As pointed out above, the French concept has become almost a matter of tradition and is considerably more inclusive than the U.S. or U.K. concept; the possibility of adjusting

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of adjusting this difference is considered to be a doubtful one and probably not worth exploiting in view of the relatively small part of the restitution program which remains. For this reason it would be well to avoid any attempt to draw up a new uniform restitution code - of which the restitutability concept must be a basic element - unless there is a clear indication that rapid agreement thereon can be reached. It is considered that the restitution agreements of the ACA and the restitution provisions of the Peace Treaties, whatever their defects may be, can provide a reasonably adequate regulatory framework for the concluding period of restitution.

It is believed that the restitution function should be retained by the Allied High Commission. Accomplishment of the program would be expedited by delegation of this responsibility to quadripartite Allied entities. This would have the disadvantage of permitting Russian participation in the restitution program in the Western Zones; on the other hand, Allied participation in restitution from the Soviet Zone would have the advantage of forestalling the Russians from removing, under the guise of restitution, properties which they could not obtain on some other pretext, such as reparations.

In connection with the restitution program and otherwise, the U.S. has felt a particular responsibility for the protection of the cultural heritage of all countries. Cultural property was the first category of looted property to be restituted from the U.S. Zone, and since then the U.S. has in several instances given special consideration to the problems presented by this type of property. In accordance with this position the U.S. should seek agreement that upon termination of the general restitution program under Allied responsibility, the German Government

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Government will assume some measure of responsibility for further restitution of cultural property. (In this connection the German Government should be invited to adhere to the Tripartite Agreement for the restitution of looted cultural property, signed at Paris in July 1946. The original parties thereto were France, the U.S. and U.K., and other countries [not the USSR, although requested] adhered subsequently. The Agreement provides for the mutual exchange of lists of looted cultural property and, acting in the spirit of the Agreement, the U.S. has returned to Germany quantities of German cultural property wrongfully removed to the U.S.) Attached hereto is a study entitled "Return of Cultural Property" giving further details concerning this aspect of the restitution problem.

The Recommendations developed below have been designed to take account of the foregoing considerations.

4. Probable U.K. Attitude.

It is considered likely that the U.K. will be influenced by similar considerations as the U.S. and that substantial U.S.-U.K. agreement will be manifested in the course of any negotiations on restitution.

III. Recommendations.

1. Any effort to set up a new German restitution organization with responsibility of indefinite duration should be resisted.

2. ^{all} Responsibility for the residual phase of restitution should be placed in the Allied High Commission, which should delegate administrative responsibilities to ^{the Allied authorities in the Land capitals} ~~four member quadripartite bodies~~, all ~~decisions should be by majority vote.~~ Regulations in force in each

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Annex to CFMP
D-5/15
May 18, 1949

RETURN OF CULTURAL PROPERTY

I. Present Status in the U.S. Zone of Germany

The recovery and return of looted or displaced cultural property in the U.S. Zone of Germany has been carried on by specialists in art, libraries, and archives, serving as Monuments, Fine Arts, and Archives officers and as Art Intelligence officers.

The Monuments, Fine Arts, and Archives Section (MFA & A) was formerly under the Restitution Branch, Economics Division of OMGUS. It is now under the Cultural Affairs Branch, Education and Cultural Relations Division of OMGUS. The parallel MFA & A sections in the British and French Zones have always been under education and cultural divisions.

Two Central Collecting Points in the American Zone remain in operation: (1) at Munich for works of art recovered in Germany to be screened for restitution. Here all cultural objects in Nazi collections and from numberless repositories have been assembled; also the extensive and meticulous Nazi records, such as those of the Einsatzstab Reichsleiter Rosenberg (ERR) captured at Weischwanstein and those of the Hitler collection, photostats of which were given the U.S. by the USSR. Since the close of the war, approximately 500,000 works of art and 4,000,000 books have been returned to owner-nations outside Germany, (2) Wiesbaden, for works of art from German Public Collections. Here have been assembled, stored, and exhibited German State, Laender, municipal and university collections.

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collections. As soon as the museums and universities in the American Zone have been able to repair buildings suitable to house their collections, the objects were returned to the institutions and communities which owned them. The most important public collections still held at Wiesbaden are those from the Berlin Museums.^{1/}

II. Continuing Phases of the Cultural Program.

The continuing phases of this program include:

A. Recovery and Return of Looted Cultural Property. The restitution of looted cultural property is today and will probably remain for many years one of the troublesome problems arising from World War II.

Germany will undoubtedly prove to be the area where most of the looted art has been secreted until it is believed safe to dispose of it. (Thirty paintings stolen from the Hitler Collection in the Fuhrerbau were recently recovered in Munich and on May 7, 1949, a cache of 19th century impressionist paintings looted from France was found.) It is of advantage to each of the four powers to continue the investigation and screening of German collections, sales, and exports for looted art.

On July 3, 1946, the US, UK, and France signed an agreement to institute controls aimed at facilitating the discovery and restitution of missing cultural objects. All European nations have been invited to adhere to this agreement. This program makes possible the recovery and return of looted and dispersed cultural objects at any time in the future from all countries wherever the objects are found. Under this Agreement, the Department

of State

^{1/} Department of State Bulletin, Vol. XX, No. 513 (May 1, 1949), pp. 545 ff., "The Returned Masterpieces of the Berlin Museums."

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of State has received lists of approximately 15,000 missing objects from France, Belgium, Poland, Austria, Germany, etc., and a preliminary consolidated list in English is being prepared for circulation in the United States. The U.S. hopes to gain the widest possible international adherence to the Agreement. To that end, the U.S., ^{U.K. & France} probably will propose ^{jointly} that the International Council of Museums (ICOM) at UNESCO House in Paris set up a central bureau to issue future consolidated lists for all countries and to keep the lists up to date by informing participants regularly of deletions (when objects are found) and additions through the ICOM publications, ICOM News and Museum. It probably will also be proposed that a convention be drafted in UNESCO on the basis of the International Agreement. It is believed that the implementation of this International Agreement by ICOM, UNESCO, the UN nations and Germany will afford a satisfactory solution to this problem.

B. The Return and Reconstitution of German Collections in All Zones of Germany. Interzonal Exchange. The inter-zonal

return of German collections, libraries, and archives to the locality where they belong and to the jurisdiction (State, Laender, municipal, etc.) which formerly controlled them is the second Allied responsibility to be completed in Germany.

Appropriate steps should be taken by all zones leading to the legal transfer of this property to a German federal government and Laender, such as have already been taken by the American Military Government under

Article VI

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Article VI and XII of Law No. 19, "Disposing of Properties in the United States Zone of Occupation and the United States Sector of Berlin having belonged to the former German Reich and to the former German States, Laender or Provinces (including the State of Prussia)."

The destruction of museums and lack of buildings to house works of art and other collections have of necessity delayed the physical return and reconstitution of German collections. The Berlin collections recovered in the American Zone are stored at Wiesbaden. A large part of the Berlin collections were removed by the USSR for safe keeping to the Soviet Zone from war storage in Berlin, such as the flak towers. The Dresden collections are likewise held by the USSR. It is, of course, impossible to return these collections to the devastated Zwinger in Dresden or damaged and roofless Staatliche Museen in Berlin. However, the means of returning German collections to other buildings suitable for storage and limited exhibition in these and other cities where they were originally located should be sought.

III. Anticipated Positions of the other Powers.

It may be anticipated that the fullest cooperation will be obtained from the Allied Powers in reaching a satisfactory settlement for cultural property. The Allied powers all share the same international obligations for the protection of art: the Hague Convention (IV) of 1907; the Inter-^{1/}Allied Declaration of January 5, 1943; Article 6 of the Final Act of the

Bretton

1/ The Inter-Allied Declaration of January 5, 1943 by the US, UK, USSR, and the French National Committee and others, specifically pledged the cooperation of the Allied governments in the solution of such problems of recovery and restitution of works of art extending across national frontiers and requiring action by two or more governments.

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Bretton Wood Conference, July 1-22, 1944; Resolution 19 of the Inter-American Conference at Mexico City; Articles 2(c) and 3 of the UNESCO Constitution.

The MFA & A officers of Great Britain and the United States have worked "in particularly happy accord" for the protection and salvage of artistic and historic property. The UK has upheld an official policy of respect for cultural institutions and cultural property for well over a century and a half; for example, following the Napoleonic Wars, England helped restore much of the art plundered by Napoleon; in the War of 1812, England returned to the Pennsylvania Academy of Arts paintings taken as a prize from an American vessel.

The French Government has fully supported the program. It has, however, been insistent at every opportunity upon a policy of replacement of cultural objects. The US has not accepted and should resist such a policy. Any replacement requiring the seizure of works of art belonging to another country has so many undesirable aspects that it has been generally renounced in modern times. The French view conflicts with accepted principles of respect for the cultural heritage of all peoples and is inconsistent with the program for the recovery of missing objects of art under the International Agreement of July 8, 1946.

The USSR has shown great pride in the cultural heritage of its own people and has scholars of high attainments in art and archaeology. The

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The Czarist government proposed the original and basic article contained in the Declaration of Brussels of 1874 and the Hague Conventions of 1899 and 1907 for the respect and protection of cultural property under international law. Following World War I, the Soviet Government drafted admirable treaty articles ^{1/} for the return of cultural property to the rightful owners. Charles De Visser, Judge on the International Court of Justice, has said that the Treaty of Riga of March 18, 1921 is remarkable for the breadth of its provisions concerning the restitution of art objects and collections of every character. ^{2/} The USSR recognized the Czarist signature to the Hague Convention (IV) of 1907 on November 25, 1941.

1/ Treaty of Tartu (with Estonia), February 2, 1920, Article 12, League of Nations. Treaty Series vol. II (1922) p. 65.

Treaty of Moscow (with Lithuania), July 12, 1920, Articles 9, 10(1), Loc. cit. vol. 3 (1921) p. 129.

Treaty of Riga (with Latvia), August 11, 1920, Articles 11, 12(1), 15, Loc. cit vol. 2 (1920-1921) p. 221.

Treaty of Dorpat (with Finland), October 14, 1920, Article 29, Loc. cit. vol. 3 (1921), p. 72.

Treaty of Riga (with Poland), March 18, 1921) Article 11, Annex 3 Loc. cit vol. 6 (1921), pp 138

Treaty of Moscow (with Estonia), November 25, 1921, Article 7, Loc. cit vol. 11 (1922), p 137.

2/ office International des musées, Art et Archeologie, Recueil de legislations comparee et de droit international, no. 2, 1940

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March 24, 1948

DRAFT
THE PROBLEM

Drafted by
 Ardella R. Hall,
 Arts & Monuments
 Officer — Position
 was not
 accepted.

1. To consider the disposition of cultural property acquired by Nazi officials of Hitlerite Germany and Austria from the countries under Nazi domination or influence: i.e., Germany, Austria, Italy, Hungary, Rumania, Bulgaria, Albania and Finland, during the Nazi regime. *of rest. with existing policy.*

FACTS BEARING ON THE PROBLEM

The Nazi officials acquired a large quantity of cultural property through ^{out} the Nazi regime from their own country, from Austria, or from friendly nations by various methods of dispossession, by transfer, exchange, gift and purchase, which has not been included in the policies approved by SWNCC.

The restitution directive, SWNCC 204/2, deals only with restitution to United Nations.

The restitution directive, SWNCC 204/21 (Third decision amending SWNCC 204/5) deals only with restitution of property forcibly removed or removed without compensation during the individual periods that these nations were subjected to German military occupation.

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DISCUSSIONHistory of Problem

1. During the entire period of the Nazi regime, important Nazi officials were acquiring cultural property for their private collections. As early as March, 1938, Hitler had plans for the Linz Museum under discussion.

Their depredations began in Germany by confiscations from "enemies of the Reich", by gifts received from their friends, and other important Nazis, or transfers through the connivance of Nazi museum officials from public German collections; and by extensive purchases. In Austria the removals began with the Anschluss from March 12, 1938, the first long list of confiscated Jewish collections is dated 20 October 1939. From Italy, many valuable cultural objects were obtained from Fascist officials or purchased from collaborationist art dealers and exported in violation of Italian law. The bulk of the purchases in Italy for Hitler's museum at Linz was made before December, 1942. The most active periods of Nazi acquisition of works of art are, therefore, prior to the date for restitution given in the treaty text.

The chief considerations should be the source of the cultural property and the mode of its acquisition.

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Examples of Nazi Acquisitions from public ownership and private owners are detailed below.

I. Removed from Public Ownership.

1) Germany: Gift from City of Cologne to Goering

Three paintings from Alte Pinakothek, Munich sold to Hitler in 1941 by Buchner, Nazi director general of the Bavarian State Museums (CIR #4, p. 56)

Fifteen paintings from Bavarian State Gallery acquired by Hitler on 21 March 1940 (CIR #4, p. 56, Attachment 76).

2) Italy: The Vipiteno (Sterzing) Altarpiece (painted in 1458) in the possession of the town of Vipiteno was presented by Mussolini to Goering as a birthday present on January 12, 1942, in violation of Italian law, in spite of protests of the townspeople and opposition of the Amministrazione delle Arti (CIR #2, pp. 98, 99; Despatch No. 147 dated February 20, 1947, American Embassy, Rome to Department of State, paragraph II).

3) Austria: Statue of Venus of Leptis Magna, presented to Goering by Balbo in 1939. Two 15th century wood carvings removed from Vienna Academy of Fine Arts in 1943 by Von Schirach for birthday present to Goering.

a. Listz

a. Lists painting taken from Abbey in Salzburg and presented to Goering in 1938.

b. Coin collections of 13 religious foundations in Austria, notably that of Klosterneuberg confiscated and listed in a report of 28 February 1941 (CIR #4, p. 21, Attachment 21).

II. Confiscation from Private Owners.

Austria: Document dated 20 October 1939, lists Jewish property (including Rothschild's) confiscated in Austria. (CIR #4., p.4)

Disposition of 22 Jewish-owned paintings (CIR. #4, Attachments 72, 73). Outmann Library and Art collection in Vienna. (CIR. #4, Attachment 71 A.)

"Linz Armor collection was built up almost entirely from confiscated sources, Prague and Vienna being most important". (CIR. #4., p. 28.)

Italy: Painting by Malkart, The Plague in Florence, Villa Landau-Finaly, Florence, in which the painting was housed was sequestered by Italian authorities on 29 September 1940 and painting presented by Mussolini to Hitler through the efforts of Posse and Bormann (CIR #4., p. 28, Attachment 24.).

III. Cultural Objects Exchanged or Purchased and Removed in Contravention of National Law.

Exchange:

Italy: Goering-Ventura Exchange. Italian Government has returned nine paintings received by Ventura in exchange

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in exchange for the (11 or 12?) sent to Goering. Eleven pictures were exported from Italy to Goering by the dealer, Ventura, in exchange for looted Jewish paintings, without a permit of the Minister of Education in violation of the Italian National Treasure laws. List given (CIR #2, p. 136) "Goering conspires with a citizen of a foreign country to evade the law" (CIR #2, pp. 98, 99, 139)

"In view of the fact that the Italian government has sequestered the works in Ventura's possession and returned them to the French Government, according to the provisions of Legislative Decree No. 601 dated May 24, 1946, Italy is entitled to get back the works given in exchange for them. Of course the twelve pieces will not be returned to the dealer, Ventura, but will be confiscated by the Italian Government, if for no other reason, than because they were illegally smuggled out of Italy.

IV. Purchases, Germany--Large number of purchases by Goering in Germany listed in CIR # 2, pp. 118 to 127.

Hitler's Purchases in Italy:

Italy: "According to the final inventory of 12 May 1942 a total of 40,179,742.45 lire (5,022,467.80 RM) was expended in Italy for the Linz collection". (CIR # 4, supplement, p.2).

Large number of purchases by Philip von Hessen in 1941 listed CIR #4, p. 58, attachments 24, 24a, 65, 66, 67, Supplement, p. 2, including the Memling purchased

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purchased from Corsini on 3 September 1941 for 6,900,000 lire (862,500 RM at official rate of exchange).

Posse died in December, 1942, all purchases by Posse and von Hessen date before this time.

Goering purchases in Italy: Lists totalling roughly 25,000,000 lire include sculpture, paintings by Tintoretto, Veronese, Titian, Masalino, Rubens, Botticelli, etc., furniture, textiles purchased in 1941 - 1943 (CIR #2, pp. 99 ff.).

Statue of Lancelotti Discobolus sold to Reich by Mussolini in June 1938.

"Contravention of Italian National Law by Nazi and Fascist Leaders.

"Purchases for the Linz Museum together with those made for Goering reached such a degree on 9 May 1942 the Minister of Education, Bottai, felt called upon to publish a new law against exportation of works of art ". (CIR #4, p. 10)

Austria: The purchase of the Czernin Vermeer for 1,650,000 RM was the largest purchase made in Austria (CIR #4, p. 35, 69).

Partial list of purchases made in Austria, (CIR #4, Attachment 74).

Hungary: Records of Nazi purchases in Hungary are in Special Files, Central Collecting Point, Munich, (CIR #4, Supplement, p. 1, para. 2).

Switzerland: Few purchases were made in Switzerland because of unfavorable exchange, as far as known, exported without violation of law.

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CONCLUSIONS

Restitution of Cultural Property to Ex-Enemy Nations,
Italy, Austria, Hungary

cultural

1. Identifiable/objects, formerly of public ownership, removed under any terms of transfer by the Axis powers, officials or agents, during the period of their authority shall be restored to the claimant nation for return to the rightful public ownership.

2. Cultural objects of private ownership which have been removed by force or duress to Germany or forcibly removed through confiscation, sequestration, or forced purchase, where duress is amply proven, by the Axis powers, officials or agents, during the period of their authority, shall be restored to the claimant government for return to the rightful owners.

3. Cultural objects of private ownership which have been received as a gift, purchased or exchanged by the Axis powers or their agents, and removed from the territory of the claimant government in contravention of the national law of the claimant nation, shall be restored only if the claimant government is prepared to make equitable compensation for the object.

4. Otherwise, all cultural objects, received as a gift or exchanged or purchased by the Axis powers, officials or agents, shall be held for use as replacement in kind to the Allied nations.

OR

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Authority WNO 968071By AT NARA Date 7-7-99STATE-ARMY-NAVY-AIR FORCES COORDINATING COMMITTEERESTITUTION OF CULTURAL PROPERTY FROM GERMANYReferences: SWNCC 204/2
SWNCC 204/5THE PROBLEM

1. To establish comprehensive principles for the disposition of cultural property in Germany which in the course of the Nazi regime was removed from other nations when such removal (1) involved confiscation or other forms of looting, (2) in the absence of looting would nevertheless not have been permitted normally under legislation or regulations for the protection of national cultural treasures, (3) after confiscation or other means of procurement, represented gifts from officials collaborating with the Nazis.

FACTS BEARING ON THE PROBLEM

2. During the war large quantities of cultural property were looted from countries under German occupation by force or duress or under other circumstances constituting dispossession. Disposition of such property presents no problem, being clearly governed by the ACA agreements on restitution (CORC/P(46)143), the Treaties of Peace with the ex-enemies (for the periods of the war subsequent to the respective armistice dates), SWNCC 204/2 (which has been superseded by the ACA agreements), and SWNCC 204/5, as amended. It is understood that restitution to the appropriate countries has been completed for most of the cultural property in this category.

2a. Examples of German looting of this type. In Italy the most notorious example of looting (according to the Office of Strategic Services, Art Looting Investigation Unit) "the only case where Germans are known to have looted works of art

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from a public museum" (Consolidated Interrogative Report No. 2, p. 31) was the removal by the Hermann Goering Division of 300 cases of art from Italian museums which had been sent to Montecassino for safety. The major portion of these objects has been recovered and returned to Italy. A small number of these objects is still missing (Despatch No. 147, February 20, 1947, American Embassy, Rome, to Department of State, reproduced as Appendix B). However, it has been reported that 1500 other objects belonging to Italian museums, churches and institutions, ~~for which details of removal are not known,~~ are still to be recovered and returned to Italy. *(Despatch No. 1903, Nov. 18, 1947, Ambr. Embr. Rome & Jap. Appendix 51)* Among these unrecovered objects are two Pollaiuolos, a drawing^s by Tintoretto, and a self-portrait by Lorenzo di Credi from the Uffizi and Pitti galleries (New York Times, November 9, 1947); 100 antique gold pieces from Pompeii and Herculaneum and 500-600 paintings (Washington Post, November 9, 1947); gilt silver chased plate (XVI century) from Museo degli Argenti of Florence, Migozzi watercolor and antique goldsmith's work (Appendix B).

3. During the course of the Nazi regime significant quantities of cultural property were acquired in various countries, including Italy, against payment in money or other adequate compensation, or by exchange. These purchases were in many cases bona fide transactions made from legitimate owners or on the art market. However, there is extensive evidence that important works of art were involved the exportation of which would not normally have been permitted under legislation or regulations for the protection of national cultural treasures in the countries concerned

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concerned (relevant excerpts from the Italian law are reproduced as Appendix C). Such improper exportation included cases where a proper permit was not obtained from the appropriate authorities or where there was flagrant evasion of existing law by the Nazis or collaborating government officials and dealers in the countries concerned. Also included are situations, as in Austria after the Anschluss, where existing legislation may have been without effect during the German occupation.

3a. Examples of Purchases made by Germans abroad. Full information about hundreds of purchases made outside Germany by Nazi officials, with description of object, by and from whom purchased, date of purchase, and price paid, are in the Art Looting Investigation Unit Reports. The purchase program for the Hitler Museum in Linz had by 1942 amounted to 5 million Reichsmarks in Italy alone (CIR No. 4, Supplement p. 2). The extensive purchases by Prince Philip of Hesse in 1941 are listed in CIR No. 4, p. 53, Attachments 24, 24a, 65, 66, 67, Supplement p. 2, and include the Memling painting purchased from Corsini on 3 September 1941 for 6.9 million lire (also referred to in CC 1838 from OMGUS to War, 3 October 1947). Goering purchases in Italy totalled at least 25 million lire in 1941-3 (CIR No. 2, pp. 99 ff.). Purchases made in Austria and Hungary are indicated in CIR No. 4, Attachment 74 and Supplement p. 1. The Ventura exchange (referred to in Appendices B, C, and D, and described in CIR No. 2, p. 136), is the outstanding example in Italy of the system of exchange widely used by Goering.

It is stated in CIR No. 4, p. 10, that "purchases for the Linz museum by Hitler, together with those by Goering reached

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such a degree on 9 May 1942 that the Minister of Education Bottai felt called upon to publish a new law against exportation of works of art". It is also stated (CIR No. 2, p. 97) that "Goering's correspondence shows that he had difficulty in getting his purchases out of Italy and had to make diplomatic demarches through Ambassador von Mackensen to obtain their release". The Ventura exchange is known to have involved the use of the diplomatic courier service and is regarded as one example of evasion of Italian law by Goering and his agents. (See also Appendices B and F.)

3.b. SWNCC 204/2 requires restitution of cultural property if removed from United Nations regardless of the circumstances of acquisition or removal, but the applicability of the ACA agreements to situations involving bona fide acquisition and wrongful exportation is not clear. SWNCC 204/5 embodies the same principle ^{as} SWNCC 204/2 for cultural property removed after certain specified dates from former German allies, Austria, and Albania; restitution under the Treaties of Peace is limited to property removed by force. In some cases under the SWNCC directive cultural property would be returned to the respective country which had been properly acquired, which the appropriate authorities would normally have allowed to be sold abroad and the exportation of which therefore involved no loss to the nation's cultural treasures. On the other hand, SWNCC 204/5 contains no authorization for restitution of this cultural property properly acquired if it was illegally exported prior to the specified dates in the Directive, although return of such property may be in the interest of equity.

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4. There are furthermore numerous cases of cultural property transferred during the Nazi regime to Germany as gifts to Nazi officials and institutions from officials of states collaborating with Nazi Germany. Included in this category may also be cultural property transferred in this manner from United Nations territories by quisling officials. Restitution of such cultural property transferred to Germany from the former German Allies and from Austria and Albania would appear to be called for under SWNCC 204/5, but only if the transfer occurred after certain dates, which provision in some cases, particularly Italy, is considered to be unrealistic. The relevant provisions of the Treaties of Peace with the former German allies are even more limited in this respect. Insofar as cultural property may have been transferred by collaborating officials from United Nations territories under German occupation restitution thereof would appear to be called for under SWNCC 204/2, although the applicability of the ACA agreements is on doubt.

4a. Examples of gifts of cultural property to Nazi officials and institutions from outside Germany. The Vipiteno (Sterzing) Altarpiece (see Appendix B and CIR No. 2 pp 98, 99) illustrates the varied methods used by the Nazis in their attempts to obtain possession of works of art which they desired. Goering first spoke to his agent Hofer in 1941 about acquiring this great masterpiece (painted in 1458), saying he intended to propose to Mussolini an exchange with some well-known Italian work located in Germany. Hofer was sent to Vipiteno

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to investigate and reported to Goering the conditions under which the panels could be purchased. After several months Goering told Hofer that the matter had been settled; he subsequently received the altarpiece as a birthday present from Mussolini on January 12, 1942. Goering also received as a gift from Balbo in 1939 the antique Greek marble Venus of Leptis Magna (Appendix F and CIR No. 2, p 172).

CONCLUSION

5. It is the policy of this Government to respect the integrity of the cultural heritage of all countries and, so far as it lies within the power of the United States, to restore to the various national collections the cultural property of which they were despoiled in any way by the Nazis or their collaborators. It is not the policy of this Government to effect restitution of cultural property which was transferred into Germany during the Nazi regime as the result of commercial transactions when such transfers do not constitute, in the opinion of the competent national authorities, a ^{significant} loss to the cultural heritage of the respective countries.

6. Existing directives to the Theater Commander and existing ACA agreements or Treaties to which this Government is a party do not adequately reflect the foregoing policies. SWNCC 204/2 provides for the restitution from Germany of all cultural property if it was acquired during the war from a United Nation under German occupation, regardless of whether the transaction underlying the acquisition and the subsequent exportation to Germany was in every way proper or not. This would involve return of cultural property in some cases without

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regard to the basic consideration underlying all restitution policies of undoing wrongful acts. The applicability of the ACA agreements on United Nations restitution to cultural property transferred to Germany as a result of normal commercial transactions but in violation of export regulations and to cultural property presented as gifts is not clear. SWNCC 204/5 contains a similar provision as SWNCC 204/2; furthermore, there is no possibility, under this Directive, for the restitution of cultural property improperly transferred to Germany prior to the specified dates (which are usually the dates when the respective satellite governments fell or were deposed by the Nazis, and puppet governments set up). The Treaties of Peace do not provide for restitution of cultural property other than that removed by the Germans by force subsequent to the various armistice dates.

7. The following principles should obtain for the disposition of the indicated categories of cultural property in Germany:

a. Cultural property removed to Germany during the Nazi regime from other countries as a result of acts of force or duress or other circumstances constituting dispossession, should be subject to restitution without qualification.

b. Cultural property removed to Germany during the Nazi regime from other countries as a result of normal commercial transactions against adequate compensation should be subject to restitution only to the extent that there is a showing, by the competent agencies of the respective countries, that the exportation of the property to Germany constitutes a

loss

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loss ~~to the~~ ^{of} national cultural treasures which would normally not have been permitted.

c. Cultural property removed to Germany during the Nazi regime from other countries in the form of gifts to Nazi officials and institutions from officials of States collaborating with Germany or from quisling officials of occupied nations, should be subject to restitution.

RECOMMENDATION

8. It is recommended that the Directive contained in Appendix A be approved and transmitted to the Commanding General, Office of Military Government (U.S.) in Germany.

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