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RESTITUTION OF WORKS OF ART TO COUNTRIES
 VICTIMS OF EXPROPRIATION

Report of the Secretary-General

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I. INTRODUCTION

1. The question of restitution of works of art to countries victims of expropriation was first considered by the General Assembly at its twenty-eighth session in 1973 at the request of Zaire. 1/
2. At that session, in resolution 3187 (XXVIII) of 18 December 1973, the General Assembly affirmed that the prompt restitution to a country of its objets d'art, monuments, museum pieces, manuscripts and documents by another country, without charge, was calculated to strengthen international co-operation inasmuch as it constituted just reparation for damage done; recognized the special obligations in that connexion of those countries which had had access to such valuable objects only as a result of colonial or foreign occupation; called upon all the States concerned to prohibit the expropriation of works of art from Territories still under colonial or alien domination; and invited the Secretary-General, in consultation with the United Nations Educational, Scientific and Cultural Organization and Member States, to submit a report to the General Assembly at its thirtieth session on the progress achieved.
3. At its thirtieth session, the General Assembly, having considered the report of the Secretary-General (A/10224), adopted resolution 3391 (XXX) of 19 November 1975, in which it reiterated the main provisions of resolution 3187 (XXVIII) and invited Member States to ratify the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted by the United Nations Educational, Scientific and Cultural Organization in 1970. 2/ In paragraph 7 of the resolution the Assembly invited the Secretary-General, in consultation with UNESCO and Member States, to submit a report to the Assembly at its thirty-second session on the progress achieved.
4. Pursuant to resolution 3391 (XXX), the Secretary-General, on 13 September 1976, addressed a note verbale to all Member States transmitting the text of the resolution and inviting them to communicate to him, before 1 March 1977, the latest information regarding the progress achieved in implementing that resolution.
5. As at 1 August, replies have been received from the following Member States: Bahrain, Finland, Iran, Kenya, Netherlands, Norway, Oman, Panama, Poland, United States of America and Zaire. Kenya replied that its position remained the same as had been previously communicated (A/10224, para. 3) and indicated that it had nothing to report, as it was fortunate not to have been subjected to expropriation.

1/ Official Records of the General Assembly, Twenty-eighth Session, Annexes, agenda item 110, document A/9199.

2/ United Nations Educational, Scientific and Cultural Organization Records of the General Conference, Sixteenth Session, vol. I, Resolutions, pp. 135-141

Panama and Zaire replied that they had forwarded the Secretary-General's request to their authorities for appropriate action.

6. Those replies that contain substantial comments on the question are reproduced in section II below.

7. In accordance with paragraph 7 of resolution 3391 (XXX), the Director-General of UNESCO has submitted a report on the activities of the organization relating to the restitution of works of art to countries victims of expropriation (annex I).

8. A list of statements and proposals made by Member States on the restitution of works of art to countries victims of expropriation during the consideration of the item by the General Assembly at its twenty-eighth and thirtieth sessions is annexed to the present report (annex II).

II. REPLIES RECEIVED FROM GOVERNMENTS

BAHRAIN

/Original: English/

/9 December 1976/

The competent authorities in the Government of Bahrain fully support and subscribe to General Assembly resolution 3391 (XXX) of 19 November 1975, entitled "Restitution of works of art to countries victims of expropriation". It is the belief of the Government of Bahrain that the works of art constitute an important part of a country's national and cultural heritage; and restituting the works of art to the original owners will preserve the cultural personality and national identity of nations that are victims of such expropriation, thereby ensuring full independence. Therefore, the Government of Bahrain supports all international efforts aimed at achieving that goal which in turn will contribute to better understanding between peoples.

FINLAND

/Original: English/

/23 March 1977/

Finland, which has no colonial past, does not have pending problems of the kind referred to in General Assembly resolution 3391 (XXX) on the restitution of cultural property. Finland has consistently supported resolutions adopted by UNESCO and by the General Assembly stressing the need for restitution of works of art to countries victims of expropriation. Finland also voted in favour of the adoption of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 3/ adopted by the General Conference of UNESCO at its sixteenth session. The ratification of the Convention is still under consideration by the competent Finnish authorities, due to reasons related to internal legislation.

IRAN

/Original: French/

/17 March 1977/

1. On 22 April 1975 Iran became a party to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 3/ adopted in 1970 by the General Conference of the United Nations Educational, Scientific and Cultural Organization.

3/ United Nations Educational, Scientific and Cultural Organization, Records of the General Conference, Sixteenth Session, vol. I, Resolutions, pp. 135-141.

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2. The Iranian Government supports the principles contained in General Assembly resolution 3391 (XXX) of 19 November 1975, entitled "Restitution of works of art to countries victims of expropriation". However, in implementing that resolution certain difficulties and considerations of a practical nature should not be ignored.

Thus, where the remote past in particular is concerned, it is often difficult to determine the date and legality of the export or import of certain works of art and the manner in which those objects were brought into specific countries.

In practice, while the Iranian Government recognizes the illegality of any expropriation of art objects, the implementation of resolution 3391 (XXX) where past events are concerned seems relatively easy only in cases of war and invasion of one country by another, or in cases of colonial domination.

On the other hand, the resolution is of great importance for the future, with a view to effectively preventing any expropriation and illicit transfer of cultural property.

NETHERLANDS

[Original: English]

[2 June 1977]

The Netherlands delegation abstained from voting on General Assembly resolution 3391 (XXX) of 19 November 1975 concerning restitution of works of art to countries victims of expropriation as it could not subscribe to certain principles formulated in its text. No specific steps have been taken to implement this resolution. However, in the course of bilateral discussions between Netherlands and Indonesian experts concerning cultural co-operation in the field of museums and archives, including the transfer of objects, certain recommendations have been made which have been accepted by both Governments and which relate to some of the problems mentioned in General Assembly resolution 3391 (XXX) and subsequently resolution 3.428, adopted by the General Conference of UNESCO at its eighteenth session, on which the Netherlands delegation also abstained from voting.

These recommendations recognize inter alia:

1. That specific objects and specimens which are directly linked with persons of major historical and cultural importance or with crucial historical events in Indonesia, should be transferred to the country of origin;

2. That it is desirable to make cultural objects such as ethnographical and archival material available for exhibitions and study in the other country in order to fill the gaps in the already existing collections of cultural objects in both countries, with a view to promoting mutual understanding and appreciation of each others' cultural heritage and history;

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3. That it should be the general principle that archives ought to be kept by the administration that originated them.

Both parties continue to work out programmes and to develop co-operation along the broad lines defined above. Certain exchanges of microfilms in the field of archives already have been arranged.

In general, the Netherlands Government is of the opinion that the conclusion of bilateral arrangements is the most suitable way of solving possible problems connected with the transfer of works of art between two countries. It is for this reason that the Netherlands delegation at the nineteenth General Conference of UNESCO voted in favour of resolution 4.128, although the Netherlands Government does not agree with all elements of that resolution.

NORWAY

/Original: English/
/11 July 1977/

The Norwegian Government has so far taken no specific measure in order to implement General Assembly resolution 3391 (XXX) of 19 November 1975 on the restitution of works of art to countries victims of expropriation, in view of the ongoing consideration by the Government of the possibility of acceding to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. 3/

OMAN

/Original: Arabic/
/2 February 1977/

The Ministry of National Heritage has informed us that there are parts of the Omani national artistic heritage which have been removed from the Sultanate by aliens and have become private property. The Ministry feels that it is important that this heritage should be returned to the Sultanate for use by Omani and other researchers and students.

POLAND

/Original: English/
/28 January 1977/

The Polish People's Republic is a party to the Convention for the Protection of Cultural Property in the Event of Armed Conflict, done at The Hague in 1954, 4/ and

4/ United Nations, Treaty Series, vol. 249, p. 240.

to the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. 3/

As a country so often afflicted by wars in the course of its history, Poland is particularly interested in the restoration of its cultural property lost in wars and especially during the Nazi occupation.

Scattered all over the world, many priceless objets d'art owned by Poland are found in foreign countries with communities of citizens of Polish extraction formed by the emigration from Poland in the nineteenth century, at the beginning of the twentieth century and during the Second World War.

Many objets d'art are returned to Poland as gifts and legacies offered by owners in their lifetime or posthumously. However, their transfer to Poland is often hampered by difficulties arising from regulations enforced by the countries of deposition. It is believed that bilateral arrangements and multilateral agreements will help in removing the difficulties.

The example of such a bilateral agreement on the transfer of cultural property to the country of origin may be the return to France of the collection of French maps from the seventeenth and nineteenth centuries, as well as the restoration to Poland of the Polish treasures (silver and gold), deposited in France in September of 1939.

The Corinthian, sixth-century vase from the former Gołuchów collection of Izabella Działyńska, born Czartoryska, is another example of the restoration to Poland through a bilateral agreement with the Badisches Landesmuseum of Karlsruhe, Federal Republic of Germany.

In consideration of the complexity of the problem, it is necessary to call on public opinion to create a climate favouring voluntary transfers, restorations and returns of cultural property and objets d'art to their countries of origin. This may induce negotiations on bilateral arrangements between interested countries and help to establish an international instrument for general procedure in this field.

UNITED STATES OF AMERICA

/Original: English/
/10 March 1977/

As indicated in previous communications and statements on this subject, the United States Government vigorously opposes the illegal importation of works of art into the United States and provides legal remedies to those victims alleging their property to have been stolen and to be located within this country. The United States Government also supports the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. 3/ Both Houses of Congress are now considering legislation to implement the Convention, enactment of which is necessary before the United States can deposit its instrument of ratification.

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Annex I

Report of the Director-General of the United Nations Educational,
Scientific and Cultural Organization on the activities of UNESCO
concerning the restitution or return of cultural property lost
as a result of colonial or foreign occupation

/Original: French/

1. In pursuance of resolution 3.428 adopted by the General Conference of UNESCO at its eighteenth session (October–November 1974), UNESCO has since 1975 been engaged in a number of activities aimed at promoting the restitution or return of cultural property to the countries having lost it as a result of colonial or foreign occupation.
2. A Committee of Experts met in Venice from 29 March to 2 April 1976 to examine the main technical and legal questions arising in connexion with the restitution of cultural property and to define the most appropriate forms of action to be taken. That Committee, comprising 17 museologists and legal experts a/ attending in their personal capacity, reached a consensus on the principles which could govern the restitution or return of cultural property and the action which UNESCO could take in this area. UNESCO's programme for 1977–1978 gives effect to the principal suggestions of the Committee (see paras. 6–9 below).
3. Similarly, a recommendation to member States intended to encourage the international exchange of cultural property b/ was drawn up and adopted by the General Conference at its nineteenth session in Nairobi (October–November 1976). The application by member States of the measures it recommends should in particular facilitate donations and long-term loans of cultural property which is intended to form in the countries of origin representative collections of their cultural heritage.
4. The secretariat has continued its activity designed to improve the protection of movable cultural property, in particular against the dangers of theft and illicit trading. In this connexion, a study was prepared in 1975 on the security measures which should be taken in museums and other places to avert the various risks to cultural property and to reduce the cost of insurance cover of those risks. On the basis of that study, the General Conference of UNESCO decided at its nineteenth session that a recommendation to member States and, if possible, a convention on this question should be drawn up for possible adoption at its twentieth session, in 1978.

a/ From the following countries: Belgium, Egypt, France, Germany, Federal Republic of, Greece, Indonesia, Italy, Mexico, Nigeria, Poland, Senegal, Sweden, Thailand, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia and Zaire.

b/ Recommendation concerning the international exchange of cultural property.

5. Furthermore, the secretariat has made efforts to extend the application of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, adopted in 1970. By 30 June 1977, 33 countries had ratified or accepted the Convention, 8 of them in 1976-1977. In order to draw the attention of member States to the urgency of effective international co-operation in this area, and to make known the progress achieved and the difficulties encountered at the national level, the General Conference, at the suggestion of the Director-General, decided at its nineteenth session to invite member States to submit to it reports on the action they had taken to give effect to the Recommendation (adopted in 1964) on the means of prohibiting and preventing the illicit export, import and transfer of ownership of cultural property, and the 1970 Convention.

6. Furthermore, by its resolution 4.128 adopted at the nineteenth session, the General Conference invited the Director-General:

(a) To take all necessary measures with a view to the establishment, by the General Conference at its twentieth session, of an intergovernmental committee entrusted with the task of seeking ways and means of facilitating bilateral negotiations for the restitution or return of cultural property to the countries having lost it as a result of colonial or foreign occupation, and to convene for this purpose a committee of experts responsible for defining the terms of reference, means of action and working methods of such a committee;

(b) To launch an appeal to member States to take all measures likely to bring about a state of mind conducive to the return of cultural property to the countries of origin, especially with the aid of the mass communication media and educational and cultural institutions;

(c) To be guided by the Recommendation on the International Exchange of Cultural Property (19C/25);

(d) To be guided also, to that end, by technical reports which will be entrusted to competent non-governmental organizations, such as the International Council of Museums.

7. Pursuant to this resolution, the International Council of Museums (ICOM) was entrusted with the preparation of "technical reports" on questions of museum organization (conditions of transport, security, conservation and presentation of the various categories of cultural property) which may arise when cultural property is restituted or returned to its country of origin.

8. In addition, in a message to the General Assembly of ICOM held in Moscow in May 1977, the Director-General appealed to museologists to help countries which had no collections representative of their cultural heritage to build up such collections and to facilitate any bilateral negotiations which their Governments might undertake in that connexion. In response to this appeal, the General Assembly of ICOM decided to "contribute to the restitution or return of the most significant objects to their countries of origin", instructing an ad hoc committee to:

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- (a) Draw up a code of ethics for the restitution of such objects;
- (b) Gather information on those countries which seem to have been largely stripped of their cultural heritage;
- (c) Gather documentation on cultural objects;
- (d) Study the agreements concluded between the various countries, in particular their terms of reference and procedures;
- (e) Study, with the assistance of the national committees concerned, all the technical aspects of the restitution of cultural property;
- (f) Advise UNESCO on the role which its intergovernmental committee might play in the restitution or return of cultural property and on its working methods;
- (g) Propose to UNESCO practical measures to assist Member States in the conservation and enhancement of returned objects.

9. The Director-General will launch an appeal to Governments of member States and all those involved in this matter in the near future.

10. Preliminary studies on the establishment of the intergovernmental committee provided for in the resolution of the General Conference of UNESCO are under way. Detailed procedures will be discussed by a committee of experts which is to meet in Dakar at the end of 1977, with a view to submitting to the twentieth session of the General Conference (October-November 1978) specific proposals on the future mandate and status of this committee.

ANNEX II

List of statements and proposals made by Member States during
 the consideration of the item by the General Assembly at its
 twenty-eighth and thirtieth sessions

<u>Member States</u>	<u>Plenary meeting</u>	<u>Session</u>
Algeria	A/PV.2410	30
Belgium	A/PV.2410	30
Brazil	A/PV.2206	28
Byelorussian Soviet Socialist Republic	A/PV.2205 A/PV.2410	28 30
China	A/PV.2205	28
Egypt	A/PV.2410	30
Greece	A/PV.2205 A/PV.2410	28 30
Iceland	A/PV.2205	28
Ireland	A/PV.2206 A/PV.2410	28 30
Mali	A/PV.2205	28
Norway	A/PV.2410	30
Panama	A/PV.2206	28
Poland	A/PV.2410	30
Portugal	A/PV.2206	28
South Africa	A/PV.2206	28
Syrian Arab Republic	A/9683-S/11506 <u>a/</u>	
United States of America	A/PV.2205 A/PV.2410	28 30
Zaire	A/9199 <u>b/</u> A/PV.2205 A/PV.2206 A/PV.2355 A/PV.2410	 28 28 30 30

a/ Official Records of the Security Council, Twenty-ninth Year, Supplement for July, August and September 1974, document S/11506.

b/ Official Records of the General Assembly, Twenty-eighth Session, Annexes, agenda item 110.