

THE EUROPEAN ROOMS

by

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PRELIMINARY REMARKS

The present study on the European Rooms is in certain specific ways different from other studies on cultural subjects undertaken at the request of the Commission of the European Communities. This is perhaps due in the first place to the subject itself; not because it is original, as this is so with all studies, but because it deals with a specific aspect, one involving a new form of European cooperation, with all that this implies in the way of doubts, unfamiliarity and the possibility of misunderstanding, even among colleagues anxious to be helpful. The real point of difference in the study, however, lies in the manner in which it has been produced, in that the task was given to two experts to perform, one British and one French, who did not even know each other before they were given this opportunity of meeting and getting to know each other and appreciating each other's qualities. But this mutual esteem did not extend to the merger of their respective contributions, which geographical distance alone would have made difficult. The joint report, although intended to represent a consistent whole, has therefore been made in two parts and in two languages and, it may be added, in terms of two different concepts regarding personal relations and organisation. One only has to read what the English part of the report has to say about the difficulties experienced with a big French museum to realise the truth of this. The request for loans of objects sent to the museum was couched in terms that were somewhat vague and imprecise, so that it did not feel called on to give a straight yes or no answer to proposals which it felt were too cursorily put; the request was at first felt by the French side not to have been studied carefully enough, and, no doubt, with too little motivation behind it for it to be taken as a really serious proposition.

Misunderstandings of this kind between colleagues who, nevertheless, respect one another are nothing new. One only has to think of the famous exchange between Lord Hay and the Comte d'Auteroche before the battle of Fontenoy: "Messieurs les Français, please fire first". "No, Monsieur, the honour is yours": this was the deaf talking to the deaf, with each speaker misunderstanding what it was exactly that the other wanted to happen. The result was a badly controlled battle, completely out of line with the accepted strategy of the times, and thousands of unnecessary extra casualties. There were less serious consequences, of course, from the misunderstanding over the Norwich exhibition, which could be cleared up by less violent means. But that it could happen in the first place shows that an essential condition for the execution of any European project is for the objectives and methods to be clearly defined right from the start, otherwise there is a risk of achieving different goals while pursuing the same ultimate objective. The authors of this bifid and bilingual report would like to hope they have made some contribution towards this.

Finally, a further difficulty arose from the study concept, which led to a division of tasks between the two authors. They agreed on the value of a dual approach to the problem: on the one hand a detailed description would be given of the course of events regarding an exhibition at Norwich on the subject of European links intended to foreshadow, in its nature, extent and duration, European Rooms; on the other hand a more abstract study would be undertaken on the problems, especially of a legal kind, inherent in organising such Rooms. The two parts of the study would be mutually supportive and complementary, with pioneer work in the field and logical analysis being constantly compared. For the reasons given in Part One, the Norwich experiment developed more slowly than had at first been envisaged. It was felt, however, that the production of the whole report could not be held up for any longer, with the result that it is less complete and less balanced than either of the museum experts concerned would have liked.

THE NORWICH PROJECT

This report is based on close and constant monitoring of the project from the first discussions with the Community until the completion of the design and handing over of the construction work to the contractors. A subsequent report will describe and analyse the reactions of the public to the European Rooms at Norwich.

What follows here is intended to provide not only an account of the problems which have arisen and of the solutions which have been found to them, but also some measure of guidance for future ventures in the same field. For these two reasons, the report is perhaps more concrete and factual than is normal in a document of this kind, although details of a purely personal or parochial nature have necessarily been either omitted or generalised. No attempt has been made to gloss over the difficulties which have arisen. To have done so would have been professionally dishonest and would have greatly reduced the usefulness of the report. It would have destroyed the essentially laboratory value of the Norwich experiment. One should, however, emphasise that difficulties do not imply incompetence. The future can only be forecast in broad terms and there would inevitably have been problems of a similar kind if the first European Rooms had been situated in, say, Lille, Wiesbaden or Utrecht.

NORWICH MUSEUM AND THE NORFOLK MUSEUMS SERVICE

The choice of Norwich for the pioneering European Museum Rooms was the result of considerable research and discussion. The Norfolk Museums Service is recognised to be one of the best in Britain, with a first-class central museum in Norwich and an associated network of specialist and local museums, which  
are/...

are of the same high quality as the Castle Museum itself. Norfolk, and especially its county town, Norwich, attracts a great many tourists each year, both from the Continent and from other parts of Britain. Because of the excellent ferry and air services, visitors from the Netherlands, Germany and Belgium are particularly numerous. By placing the European Rooms in Norwich, one could therefore be sure both that they would be visited by a large number of people during any given year and that a satisfactory proportion of these visitors would come from outside the immediate area.

The Director of the Norfolk Museums Service, who is also responsible for the day-to-day running of Norwich Castle Museum, is a person of the highest reputation in the museum field. In 1978-79 he was President of the Museums Association in Britain, a demanding rôle which, during the President's twelve months of office, always requires a great deal of travel throughout the country and, more particularly, frequent visits to the Association's headquarters in London. A point that should certainly be emphasised here is that 1978-79 was the most onerous Presidential term for many years, involving as it did the complete reorganisation of the Association's administrative structure and the discovery of new office premises, always a most difficult task in London.

The Director was therefore obliged to be away often from Norwich during a period when the Norfolk Museums Service was being subjected to additional pressures from several directions. One such pressure was, of course, the planning and organisation of the European Rooms, but there were others of a political and financial nature. These were partly national and partly local and it is essential that these should be frankly described and clearly understood.

Early in 1979 Britain had a General Election which resulted



in a new Conservative government, with the confidence that comes from a large Parliamentary majority and a commitment to a policy of making drastic reductions in all forms of public expenditure. Local authorities were instructed to make immediate cuts in their budgets and, inevitably, museums felt the effects of the general stringency. Vacant posts could not be filled without special permission and additional, and often badly needed, members of staff could not be appointed. The implementation of the new policy has meant that even the best managed museums now find themselves in a much more difficult situation than in 1978, forced to concentrate on survival and to abandon, at least for the time being, cherished and desirable schemes of expansion and improvement.

#### FINANCE

It was clearly understood from the beginning that the finance provided by the Community would not be sufficient to meet the whole cost of the European Rooms and that some form of contribution from the Norfolk Museums Service would be essential. In this connection, it was realised that the project would bring Norwich Castle Museum considerable advantages, certainly in prestige and publicity and probably also in increased attendances, and that a measure of local investment was consequently reasonable. The project has therefore been financed in three ways:

1. From the Community's contribution.
2. From the services provided by the staff of the Norfolk Museums Service, both at the headquarters museum in Norwich and at the branch museums at different points in the County.

3. From the co-operation of Continental museums which are making exhibits available.

The Assessors have looked carefully at the relative importance of these different types of contribution, and two general comments may be helpful.

- (a) Partly as a result of inflation, the budget has proved to be very tight and considerable ingenuity has been required in order to keep expenditure within the prescribed limits. Costs are, on the whole, lower in Britain than on the Continent, although the gap is narrowing to some extent, and it is probable that, in order to achieve a similar result in, say, France, Denmark or Germany, a good deal more money would have been needed, a point which will have to be kept in mind closely if and when other European Rooms are being planned. Allowing for the effects of inflation during the past two years, it would be necessary to allocate at least double the Norwich budget to further European Rooms, assuming that contracts to establish them were to be drawn up in 1980.
- (b) Some forms of help cannot be quantified, but they are none the less real and valuable. The transport of certain objects to Norwich from the Continent, for example, has been carried out personally by the Director of the Museums Service, who happened to be travelling abroad on other business. Equally, a number of Continental museums have provided hospitality to members of the Norwich staff who were making research visits during the planning stages of the European Rooms. Much goodwill and friendly assistance, in other words, has been required and fortunately available, in order to stretch the budget, and goodwill cannot be expressed in financial terms.

### PLANNING AND ORGANISATION

For various reasons, there were unforeseen delays in appointing a designer for the European Rooms, in making contact with museums on the Continent, and in arranging the contract for the constructional work required for displaying the exhibits. In addition, the original design had to be considerably modified at a late stage in order to overcome local political problems. It was in the skill and speed with which these modifications were made that the wisdom of choosing a designer of high quality and wide experience became apparent, although the demand for his services elsewhere has meant that the frequent changes of programme at Norwich have made his working life extremely difficult throughout the year. Other and in some cases more remunerative clients could not be expected to wait for attention until the problems of Norwich had been solved.

At this point, one has to turn to the matter of the exhibits themselves, and it is here, perhaps, that the Norwich experiment is likely to be of most value to the Community, indicating as it does the kind of difficulty which is likely to be met in the future and the steps which will have to be taken in order to find acceptable solutions.

### THEME AND DESIGN

A draft script for the exhibition was discussed at an early stage both with the designer and with the staff of the Norfolk Museums Service. The theme, Norfolk and Europe, was deliberately broad, partly in order to make it possible to involve as many different departments, branch museums and specialists within the Service as possible, and partly to provide a wide range of evidence and conclusions for subsequent discussion.

In their final form, the sections into which the exhibition has been divided are as follows:

The Land and the Sea

Geographically, geologically and culturally, Norfolk has close links with the countries on the other side of the North Sea.

Flora and Fauna

Many plants in Breckland and Broadland are also found in similar habitats in Germany, the Netherlands and Northern France. Birds migrating from Western Europe find their way to Norfolk.

Cultural Links in Prehistoric Times

Long before Britain was conquered and occupied by the Romans, there were close cultural and trading contacts between the British Isles and the Continent.

Norfolk and the Roman World

The import of a wide range of goods, especially from the Rhineland and Gaul, are evidence of the prosperity of Norfolk at this time, the result of the productivity of its agriculture.

The Anglo-Saxons

During the six and a half centuries between the end of the Roman occupation of Britain and the arrival of the Normans, there is archaeological and documentary evidence that people from North Germany and Denmark settled in Norfolk.

### Medieval Trade

From ports on the European mainland, from Scandinavia down to the Mediterranean, merchant ships brought a great variety of products to Norfolk. They were paid for largely by the export of wool and textiles.

### Pilgrimages

During the Middle Ages, Norfolk received a great many pilgrims, drawn from all social classes. They came especially to the famous Shrine of the Virgin Mary at Walsingham and they travelled from all over the Continent, as well as from other parts of Britain.

### Immigrants and Refugees

Norfolk has given a new home to many immigrants from the Continent. At the end of the sixteenth century, textile workers from the Low Countries brought new weaving techniques with them. As a consequence of this, Norwich became one of the wealthiest towns in Britain.

### Agriculture and Horticulture

For more than three hundred years, the County of Norfolk has been renowned for its advanced agricultural techniques. Many of the improvements pioneered here had their origins in the Netherlands.

### Artists

Artists and craftsmen from the Continent had a great influence on artistic life in Norfolk. Among them were the Dutch and Flemish painters whose work made a strong impression on the style and techniques of artists of the Norwich School in the seventeenth century.

### Tourism

Norfolk has 160 km. of coastal beaches. The tourist industry which has been based on them has made an important contribution to the economy of Norfolk. The development of the largest seaside resort, Great Yarmouth, can be compared to that of Scheveningen.

### Trade and Industry in the Twentieth Century

Until the middle of the nineteenth century, Norfolk's principal export was textiles. Since then, its range of products has considerably widened, engineering, shoe manufacturing and the production of animal feeding-stuffs being among the most important, especially for export.

### Transport

Until the coming of the railways in the nineteenth century and the airlines in the twentieth, sea transport was of great importance to Norfolk. The enormous amount of shipping passing through its dangerous coastal waters made it necessary for Norfolk to develop an efficient sea-rescue service.

### Architecture

The Dutch influence on the County's architecture, and especially on its seventeenth century houses, is very marked. French and Italian influence is also clearly noticeable.

## SELECTION OF EXHIBITS

With the overall plan and the subdivisions clear and accepted, the original intention was to draw roughly two-thirds

of the exhibits from museums within Norfolk and one-third from museums on the Continent. The problems which then arose can be conveniently studied under two headings - the strengths and weaknesses of the staff in Norfolk and organisational and bureaucratic obstacles, both in Britain and on the Continent.

The Director of the Norfolk Museums Service is well served by his colleagues, so far as their normal duties are concerned. Professionally, they are probably above average, but their knowledge and experience are relevant to the tasks for which they are employed. With two or three notable exceptions, they have travelled very little abroad and their contacts with foreign museums are very limited. To put the matter more bluntly, they have no great acquaintance, either at first or second hand, with the collections of Continental museums and they are consequently in a weak position when it comes to advising on possible sources of objects to be borrowed. This situation became apparent only when it became necessary to translate plans into action. There was no way in which it could have been prevented or avoided, and it demanded great tact and powers of leadership on the part of the Director. To begin with, it was not recognised for what it was, although, with hindsight, the symptoms seem plain enough - hostility to the idea of a European Room, difficulty or apparent difficulty in understanding the theme and purpose of the exhibition, insistence on the physical impossibility of the task. What lay behind this, however, was the fear of inadequacy.

As work on the project developed, this general fear became considerably less, largely as a result of the remarkable patience and understanding shown by the designer, who assumed functions beyond those normally associated with a designer. He has been in turn industrial relations officer, psychologist and father-confessor and, in the process, has helped individual members of the museum staff towards a much greater

confidence in their own abilities. This is not the place for a detailed discussion of this particular aspect of the project, but one can safely say that the value of the Norwich experiment is not to be assessed in purely professional or museological terms.

Briefly, some of Mr. Cheetham's colleagues have shown evidence of talents and knowledge - and therefore of a capacity for personal development - which their usual work did not demand, while others, equally clearly, had been functioning close to the limit of their capacity. When the European Rooms arrived to test them, it was apparent that they had nothing extra to give.

One senior member of the Museum staff, on the other hand, displayed during the period of research and planning a remarkable and somewhat unexpected breadth of practical knowledge and professional contacts abroad, extending a long way from her own specialist field. This did a great deal to compensate for what, simply from the point of view of the European Rooms, might be termed the shortcomings of some of her colleagues. To watch her gradually emerge as the lynchpin of the whole enterprise has been a most interesting and rewarding experience. The human dynamics of the process which has produced the first European Rooms deserve more skilled and detailed treatment than is possible in the present report.

#### OBTAINING THE EXHIBITS

One turns now to the problems presented by the exhibits themselves. The original intention, as we have already said, was to have about two-thirds of the items on display from Norfolk and one-third from Continental museums, and every attempt has been made to preserve this balance. In practice, there has



been considerable difficulty in borrowing objects from abroad, although some countries have shown much more co-operation than others.

In every case, the Director has written personally to those museums which seemed likely to possess the kind of material required, in some instances specifying precise objects which were known to be in a particular museum's collection. More than one museum ignored his letter completely - the fact that it was written in English may be a partial reason for this - and others have taken what can only be regarded as a scandalously long time to reply. In general, museums in Germany, the Netherlands and Scandinavia have written back promptly and constructively, while contact with French and Italian museums has been extremely difficult. This is probably due to some extent to the much greater degree of autonomy enjoyed by museums in what one has become accustomed to think of, so far as the Norfolk Project is concerned, as 'the easy countries'. Centralisation has real disadvantages, not least of which are an excessive bureaucracy and a tendency to seek a quiet life behind the provisions of legal documents.

As a not untypical example of the problems and frustrations which have had to be faced in dealings with museums organised in what one might perhaps be permitted to call the French way, one could mention the correspondence with a certain large and very well-known institution in the Paris area. Asked for the loan of one or two small and by no means rare archaeological items, the museum in question took no action whatever for four months. When a relatively junior member of the staff was eventually deputed to reply - the original letter had gone, of course, to the Director - he wrote in very formal terms to declare, first, that the museum had no authority to lend objects abroad - only the Comité des Conservateurs at the Louvre could give permission for that -

and, second, that such permission would never be granted for anything other than a temporary exhibition. To explain that the European Rooms do, in fact, constitute a temporary exhibition and that, because few museums anywhere are willing to consider loans for an indefinite period, it had always been envisaged that some changes of exhibits would be necessary each year; to wait until this information in its turn had filtered through to the Comité des Conservateurs; and then to await the permission or the refusal from the Comité - all this appeared on previous form to be likely to require a year at least, and the organisers of the European Rooms were not in the position to observe such a leisurely timetable.

With experiences of this kind still fresh in the memory, it is possible to make certain suggestions as to how the situation might be improved in the future. The Director in Norwich has had to perform several different tasks when making contact with museums on the Continent. They might be summarised as follows:

1. He has to identify and locate the objects it is desired to borrow. In a few instances, this information may already exist in a precise form, but normally it will be necessary to specify the kind of object that is needed - a medieval pilgrim's badge, a stone axe, a fabric - and to leave the exact choice to the discretion of the museum in question.
2. He has to put his request into its proper context, by explaining the general concept of the European Rooms and by outlining the theme which is being followed.
3. He has to set out the administrative arrangements, pointing out that loans may be for one, two or three years, according to local circumstances, and that the Norfolk

Museums Service accepts full responsibility for the safety of objects during transport and for the duration of the loan.

To do these things effectively in a letter is very time-consuming, and one can see, in retrospect, that (2) and (3) would have been best dealt with by means of a printed brochure, with a multilingual text. As it is, Norwich Castle Museum has had both to organise the European Rooms, a sufficiently large task in itself, and also to carry out international public relations for the scheme as a whole. Its staffing arrangements have not permitted both these duties to be carried out effectively within the time available, and one can be reasonably certain that any other museum would have experienced the same problem.

#### THE USE OF REPLICAS

There are, as is well known, influential traditionalists who will have no truck with replicas, regarding them as the work of the Devil and a form of museological bastardisation. This extreme view is both unrealistic and unhelpful. One can agree that, all other things being equal, an original is always to be preferred, but the fact of the matter is that, if one were always to insist on original objects, many excellent museum projects could not take place at all. To this, the purists would no doubt say, 'so be it', but that is a negative and sterile view. The main business of a public museum is to communicate - study collections introduce other considerations - and as a museum, to use three-dimensional objects as a tool with which to communicate. In saying this, one is not forgetting the magic which is present in an original object - the embalmed head of Lenin is not the same as a waxwork -

but for many museum purposes the magical element is not essential and in these cases replicas are perfectly justifiable. It goes without saying that all replicas should be good replicas.

More precisely, the European Rooms at Norwich, like the Museum of the Jewish Diaspora in Tel Aviv, would have been impossible without replicas and reconstructions, either because suitable originals do not exist or because the owners of those originals have refused to lend them. If one insists, inflexibly and dogmatically, on originals, there will be serious, possibly disastrous, gaps in the presentation or in the story.

Very different as they are in size and concept, the Museum of the Diaspora in Tel Aviv and the European Rooms have been faced with the same basic problem - they need international material for permanent exhibition, or at least for periods much longer than what is considered normal for temporary exhibitions. This does not necessarily mean that very choice objects are involved, stars in a museum galaxy. On the contrary, the items required may have spent many years buried in a reserve collection, unseen and unused by anyone. They may be intrinsically of small value, but culturally very important, especially to the museum wishing to borrow them.

With these general considerations in mind, one can distinguish several reasons for a refusal to lend originals, especially to museums abroad. It may be simply too much trouble, another thing to be done, a disturber of a peaceful routine. Many museum directors, alas, are exceedingly lazy people, with a well-established routine for doing the minimum and getting away with it. There may be large or small legal or bureaucratic problems to be overcome -

bureaucracy and the law are old friends - and little interest in finding a solution to them. There may be genuine fears of loss or damage. There may be an excessively well-developed miser-complex, which is nearly always present in embryo within any museum director. There may be a totally irrational hatred or mistrust of a particular country, museum or place, and a determination to do nothing whatever to help it. One should certainly not assume that all objections are rational.

One complicating factor is that national and international loans between one museum and another have so far nearly always involved what are known as works of art, items of painting, sculpture or craftsmanship which fetch high prices in the auction room. Most legal provisions relating to the loan or export of museum objects have been created with this type of material mainly in mind. Anything of lesser money value, even of no value, is likely to be covered by the same restrictions. In most countries, the law makes no significant distinction between a Bernini and a beer bottle, a fact which the idle, unimaginative guardian of museum property is happy to exploit.

It is possible to believe that there have been more than enough international loan exhibitions relating to, say, the Post-Impressionists and Rembrandt, and that there is a rather greater need at the moment to develop temporary exhibitions, of varying duration, which try to present and interpret one country's way of life to another. This would, to a great extent, bypass the loan problem and therefore make irrelevant, one would hope, the legislation regarding loans, although the political obstacles will undoubtedly remain. Suppose, for instance, that a French museum wished to arrange an exhibition showing the clothing and household equipment of, for example, a Russian steelworker, and offered those of a French steelworker in exchange. For such an event, it would clearly be originals or nothing. A replica of a pair of French or Russian trousers

would be useless. It would have no impact. But in instances of this kind, there would be no reason to lend the items at all. One would give them and never expect to see them back. The museum world is not accustomed to gift exhibitions, although they have happened from time to time, but such an exhibition can give rise to problems of its own. The political and social implications of a pair of Russian shoes or trousers, or of a Russian saucepan, exposed to public view in Bordeaux, would be immense. As objects of exchange, they are politically far more sensitive than five Cézannes from The Hermitage. To people outside the Soviet Union, they would have a magical value, far exceeding their saleroom value.

None of the replicas displayed in the European Rooms at Norwich is likely to produce the same emotional response as a pair of Russian trousers. They are mostly concerned with prehistoric, Roman or medieval archaeology, and they are in their place in the appropriate sections of the exhibition because, for various reasons, the originals could not be made available.

Now that the European Rooms are open to the public, however, and their concept has become a reality, it is hoped that some at least of the replicas may, in due course, be replaced by their originals. The educational value of the project may well prove to be at least as great for governments and other museums as for members of the general public.

PART TWOGENERAL PROBLEMS OF THE EUROPEAN ROOMS PROJECT

The European Rooms project is intended to form part of something much wider: international cooperation between impartial institutions concerned with the conservation of cultural objects.

It must be noted straight away that there is a great multiplicity of such institutions, and that in Europe in particular they usually go under a variety of different names. The ones that normally come to mind in connection with the administration of tangible cultural objects are museums, but there are others to be added: departments responsible for the national heritage<sup>OR</sup>/classified historical monuments, for example (for, in the scientific usage of the term and according to its legal definition in the majority of countries, historical monuments can be both tangible and intangible), and above all libraries and archives, which, since one of their purposes is to conserve examples of intellectual and spiritual communication, can make an extremely valuable contribution to the European Rooms (1). And as to museums themselves, it is also important not to pay exclusive attention, as is the most usual practice, to museums of art and history, which are naturally the

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1) The UNESCO recommendation on the international exchange of cultural property rightly stresses the diversity of objects which can be exchanged to good purpose, since it includes, in Article 1, archaeological objects as well as those in the field of the plastic and decorative arts, and also archives and documents. (See text of the recommendation at Appendix 1).

kind primarily concerned, and not to neglect museums of natural science, science, technology and ethnology (1). These can play an even more important part in that they often have in their collections several examples of the same object, which can more easily be lent or donated than the "unique" pieces which normally comprise the collections of the first kind of museums. It should be understood, then, that though we shall be basically referring to museums, this will be for the purpose of convenience, to avoid having to refer all the time to "cultural institutions", which is a term that is more customary among international bodies than among the general public or the professions concerned.

Examples of cooperation between the very large number of such institutions (they are to be counted in thousands in the Europe of the Nine alone, of greatly varying importance it is true, but it often happens that a small museum or library of the second rank is the owner of objects of great cultural value) are extremely numerous, and it is a practice that has been in existence for a long time. Tens of thousands of loans of objects, to use the term in this context in the widest sense, are made every year, and the number of objects legally belonging to a particular institution which are for varying lengths of time looked after by another institution is far

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(1) The UNESCO recommendation on the most effective way of making museums accessible to everyone, adopted in Paris on 14 December 1960, defines "museum" as follows:

"For the purpose of this recommendation "museum" is taken to mean any permanent establishment administered in the public interest for the purpose of the conservation, study, restoration by various means and, above all, display for the enjoyment and education of the public a collection of objects of cultural value: collections of artistic, historical, scientific and technological objects, botanical and zoological gardens, aquariums". \*

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\* Translator's note: not the official translation



greater than is normally supposed (1). The picture of institutions full to bursting sitting on their reserve collections and obstinately refusing to let anybody have the benefit of them is certainly not entirely devoid of foundation or truth, but it is an exaggerated picture: mutual cooperation between museums in the same country and at international level is a living and long-standing fact.

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It is a fact that makes the present study both easier and more difficult: more difficult because of the problem of identifying, among these different kinds of cooperation, the particular features pertaining to the European Rooms; easier because one can benefit from the knowledge provided by these other forms of cooperation.

I. The specific features inherent in cooperation regarding the European Rooms project, in relation to those involved in other forms of cooperation, seem to us to be the following:

- a) the objective of the European Rooms project is to bring out the importance of the links of all kinds, artistic and technological, military or civil, which have existed between European States for centuries. It has already been observed that

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1) To take a concrete example, which applies equally well to many other cases : most of the pictures listed in the inventory kept by the Department of Painting of the Musée du Louvre are in the custody of provincial museums, some of them having been there for nearly two hundred years (the earliest records of such transfers date back to the start of the 19th century).

a number of European museums, especially history museums or art galleries, already have rooms which emphasise the links between this and that country. In the European Rooms a broader and more composite presentation should be attempted; it should be the aim to bring out not only the major external contributions but other less prominent contributions as well. They would still differ considerably between one another because the roles of these different contributions vary from country to country. (France has been more influenced by Italy than Denmark, Denmark has been more influenced by England than France, and so on). In short, the European Rooms ought to emphasise the close relationships which, willy nilly, and whether in a conscious sense or not, have existed for centuries between European States.

- b) The setting up of the European Rooms in each country should illustrate the present degree of cooperation between the different countries of Europe as it is today. There are already examples in all the countries concerned of the outside influences that have affected them. One can imagine that some countries will establish a European room or rooms by rearranging items which are already in the country, without any contributions from other countries. (The great museums of Amsterdam, London, Munich or Paris can clearly create European Rooms merely by displaying items from their own collections ..... and if ten medium-sized museums were to collaborate together, the same could be done in every country). But the underlying purpose of the project would then only be half achieved ; it not only needs to be shown that Europe is not an artificial creation, that it has deep and ancient roots, but to demonstrate that there is now a genuine desire for international cooperation. It is accordingly desirable for each European Room to exhibit objects sent

specially by other European Member States. The European Rooms will then underline the solidarity, this time of a conscious and deliberate kind, which is necessary between the European States today.

- c) The European Rooms should present some sense of permanence. The aim should not be to illustrate from time to time, for a period of a few months, the age and importance of the various currents which have contributed to a certain way of thought, a particular European society. This has already been done, in a very brilliant fashion, through the big European exhibitions sponsored by the Council of Europe, and it is still being done, in a somewhat incomplete way, through a number of different temporary exhibitions, such as those organised by the city of Strasbourg. The point now is for there to be, in each country, a museum or museums with a room or rooms depicting the European reality. This does not mean, of course, that the exhibits in these rooms should be final and "frozen" right from the beginning; on the contrary it is very desirable (and this also applies to the majority of museum galleries) that the displays should have a certain mobility, that exhibits should be changed now and then, and improvements introduced. There should not on the other hand be too much mobility; any new form of display entails a long preparation. Without presuming to lay down any theoretical outside limits, one might consider that major display changes every two or three years might be both feasible and sensible. Ideally, it seems clear, the European Rooms should be a permanent feature of the museum but displays should be changeable.
- d) The European Rooms should be set up, partially at least, as the result of "exchanges between European States". The word "exchanges" is taken here to indicate a special system of cooperation, involving not only reciprocal loans but also

transfers of objects on a long term or even permanent basis (in other words, exchanges involving a change of ownership and not merely of use). This fourth aspect is in fact the direct consequence, and to some extent the synthesis, of the aspects which we felt should be brought out in this connection at points b) and c). In any event it is of basic importance in the view of the European Economic Community, which has made it the essential point of Annex 1 of the agreement concluded between the Community and the experts selected to conduct the study. And indeed it is an absolutely vital point, since it is undoubtedly this aspect which is more innovatory than any other feature in relation to current practice.

II. On the second point, the wealth of experience already acquired in the area of exchanges of cultural objects, at first sight one feels there is more than enough to go on. Even if one restricts oneself to international exchanges, and to the contemporary period alone, there is still such a massive volume of reports and texts that on a first analysis it appears superfluous to add yet another one to the pile. On examination, however, they lead one to a less optimistic conclusion.

- a) The international exchange of cultural objects has over the past thirty years given rise to a multitude of studies and miscellaneous papers. The most important of them have been produced by two organisations which have worked very closely together, the second in the capacity of technical consultant to the first; these are UNESCO, which needs no introduction, and ICOM, the International Council of Museums, which is less well-known outside the professional milieu concerned. It is a non-governmental international organisation, which was set up in the form of an international

professional association of museums and museum staff (1). As the activities of these two bodies have been so closely linked, it would be artificial to try to separate them. We shall merely mention the most important of the projects undertaken in common on our particular subject.

In 1948, almost immediately after being set up, ICOM commissioned an expert, Professeur Leroi-Gourhan, to undertake a first study, which resulted in a report on "exchanges and transfers between museums". Another expert A.B. de Wries, produced another report in 1963 on measures designed to facilitate the circulation of exhibitions

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- 1) ICOM is undoubtedly one of the most important and most active of the non-governmental international organisations. It has several thousands members, grouped in different sections by country; the countries represented cover a wide international spectrum - East and West, rich and poor. ICOM has a programme of activities at international level. As a permanent feature, its headquarters in Paris is a meeting place for museum experts from all over the world, who come mainly to visit the documentation centre belonging jointly to ICOM and ICOMOS (International Council for Monuments and Sites), but administered by the former. The regular bulletin "ICOM News" is a link between museums throughout the world. On an ad hoc basis, the specialist international sections (art museums, archaeology, transport, etc.) organise colloquies, seminars, study meetings and so on at fairly frequent intervals. Finally the international congress of ICOM meets every three years in a different city, attended by several hundred museum experts from many different countries; the last three congresses were held in the USSR, Denmark and France, the next will be held in Mexico in 1980. ICOM has its headquarters in Paris at 1 rue Miollis.

of original paintings. In the same year ICOM organised, thanks to assistance provided by UNESCO, a meeting of experts resulting in the publication of a report entitled "A study on the measures to be taken to facilitate international exchanges of cultural objects" (1). In 1965 UNESCO published in the "Museums and Monuments", series a manual on "Temporary and Travelling Exhibitions". In 1973 it asked two experts, including the then director of ICOM, to produce a fresh study on the technical, juridical and administrative aspects of the exchange of objects and original specimens between institutions in different countries (2). In 1974 the general conference of UNESCO, at its eighteenth session (3), resolved to study the question of "an international regulation" on the subject. Following the normal procedure adopted by the Organisation, the study was entrusted to a group of experts, who met in Paris in March 1976. All this preparatory work finally led to the adoption by the nineteenth general conference of UNESCO of a recommendation on the international exchange of cultural objects which had been adopted at Nairobi on 26 November 1976, a recommendation which was specifically referred to by the Commission of the European Communities when commissioning the present study and by ICOM when setting up, following its 1977 general assembly in Moscow, a M.U.S.E.P. project, a program concerning exchanges between museums. Altogether, then, dozens of experts have between them turned out hundreds of pages of documents in the course of the past thirty years as preparation for the decisions adopted in principle at the highest level by

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- 1) ICOM Document 64/3 of 23-XII-1063
  - 2) ICOM - Report presented to UNESCO in 1974 by Messieurs Goy and Varine-Bohan
  - 3) UNESCO General Conference, 18th session - Document 18 C/29 of 23 August 1974

UNESCO and ICOM. It might be thought that the subject had been at least very thoroughly examined, and that all that remained after such long labours was merely to present the results.

- b) It would be discourteous, to say the least, to question the competence of so many experts chosen from among the best available in so many different countries, and certainly highly presumptuous to claim to be able to do better. On the other hand, the very fact that it has been found necessary to return to the same theme so often makes one think that the problem has not been so easy to resolve, and reading through the long and earnest documents in which this answer is given leaves one with, at the very least, a feeling of doubt. An explanation needs to be found, therefore, for why it was impossible to reach precise conclusions, accepted by all, on a subject that appears to have been clearly defined. It is due, no doubt, to the universalist nature both of UNESCO and ICOM. Both of them feel, at the different levels at which they are situated, a legitimate pride in this fact, and an enhanced moral authority; but it has resulted in the same difficulty with both of them. Although they use the same words, people from different cultures and educational systems tend to be talking about different things, and to view them in very different perspectives, so that the conclusions they come to are blurred. This, in our opinion, is what has happened in the matter of international exchanges.

The term "international exchanges" is in the first place used, in one document after another, in very different meanings. For some, exchange is a legal mechanism, of a technical character, which can be defined in precise terms. For instance, the Leroi-Gourhan report of 1948 refers to Article 1703 of the French civil code. For others, exchange merely indicates a desire for reciprocity, a certain climate of good neighbourliness in the sense that one uses

it when talking about exchanges of civilities, or courtesies; that is to say, without establishing a direct causal relationship between the reciprocal services of the parties concerned. But even on the assumption that exchange is thought to imply a certain balance, at any rate globally, in the services provided, it is still conceived in very different terms according to the countries involved. In the case of rich, well-endowed countries, exchange normally implies services of the same order; in the case of countries in a very different situation, it might present a totally different aspect. The 1963 ICOM report distinguishes, for example, between static and dynamic exchanges:

1) Static exchanges

The meaning of this term is clear enough: in this instance, as indeed in all the examples so far examined, exchanges are meant which concern known objects well defined in advance. It may however be different in certain specific cases, which are very important for the purpose of our study.

2) Dynamic exchanges

Exchanges of this kind, which are the most common, are those which give rise to agreements for sharing concluded in accordance with the recommendation defining the international principles to be applied regarding archaeological digs adopted by the general conference of UNESCO at its ninth session (1956). In fact many American or European expeditions in different countries in the Near East, outside the scientific research work which was their *raison d'être*, have led to a form of creative exchange, with a contribution of scientific staff on the one hand and the handing over of some of the pieces discovered in common on the other.

In the area of ethnology the analogous case can be mentioned of an ethnomusicologist from the Musée des Arts et Traditions Populaires in Paris who made several expeditions to Canada on behalf of one of that country's important museums and obtained as a counterpart for his own museum duplicates of the tapes he had recorded on the other side of the Atlantic.



Lastly, there is a completely new formula which also belongs to the category of dynamic exchanges, as represented in the agreement recently concluded between Belgium and Holland, whereby a sum of 15,000 guilders is placed at the disposal of Dutch museums to purchase modern works in Belgium. As a quid pro quo Belgium allocates the equivalent amount to its own museums for purchasing Dutch works.

Agreements of this kind are necessarily limited in scope, since they can only concern works of art that are being created now, but they have the great advantage of being beamed towards the future, and constitute one of the most original and up-to-date forms of patronage of the arts.

From this passage one can see the same term is taken to apply to two situations that are in fact very different. In the same way, a difference of views on the meaning of the same word can lead to very different conclusions. Thus, in the 1973 report by Goy and Varine-Bohan, exchange is thought of as a mechanism which, among other uses, can be applied to the solution of a particular problem the importance of which cannot indeed be denied - that of reparations for cultural damage attributable to the colonial era :

Restitution for damage caused. This involves a unilateral decision taken by an institution which has benefited in the past in the form of significant acquisitions from a third country, either as the result of a colonial type situation or acquired illegally, acquisitions over which it is unwilling or unable to enter fully into legal discussion. However, for moral or political reasons, or in the interests of science, or merely in order to be able to continue to cooperate with the other party concerned, this institution will donate to an institution in the third country objects or services by way of restitution, by mutual agreement, for the damage previously incurred.

Dealing with the question of exchanges within the limited context of the European Community makes it easier to talk a genuinely common language. The countries of the Europe of the Nine, as the Community

is comprised at present, are all at a similar, if not identical, level of wealth and development. None of them has ever been "colonised" by any of the others; all of them have a more or less identical concept of what is meant by institutions, objects or cultural exchanges. It is, therefore, legitimate to hope, without being improperly presumptuous, that it may be possible, within this restricted and comparatively homogeneous field, to reach firmer and more precise conclusions.

But it would still be wrong to try to evade the particular difficulties, despite this homogeneity, involved in a policy of exchanging cultural objects even within little Europe. Italy, France, Great Britain, and the rest, undoubtedly have a more or less similar conception as to the nature of the archives, museums or libraries which have been built up in their countries at much the same periods and under the same concepts. On the other hand, they all adopt, at any rate so far as the relevant professional circles are concerned, the same traditional and very strict rules. The London National Gallery, the Musée du Louvre or the Munich Pinakothek are great institutions, of incontestable prestige, but they all have the same conception of the rights they possess by virtue of the long and uncontested use they have enjoyed of the collections of which they are the appointed stewards, and

the same feeling about the extent of their competence and the immutability of their collections (1).

It is because of their shared concepts that one can hope to succeed in formulating conclusions, in their regard, which they will all interpret in the same way, although these will still be subject to the same fundamental reservations that are also held in common. This is what must now be attempted. The starting point must be the procedures that are followed at present, in the hope of being able to formulate proposals which may facilitate exchanges in the particular context of the European Rooms.

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- 1) This feeling can easily go as far as looking on any suggestion from outside as unacceptable, even if its sole intention is to help the museums. The fact that the present study on the European Rooms was instigated by the Commission of the European Communities was not favourably received by all the national sections of ICOM in the nine countries concerned, and some expressed indignation at what they considered to be excessive inquisitiveness and concern with their affairs. One cannot but see in this an essentially moving, though certainly exaggerated, manifestation of the fondness which many keepers feel for their museums. Museology is a very complicated art, for the need to care for the exhibits, which is basic for keepers, very often clashes with the need for them to be readily accessible, which is basic for museum visitors. A sensible compromise between these two considerations can only be found if both sides try to get to know and understand one another's concern. One of the purposes of the study is to encourage this mutual understanding.

CHAPTER ICURRENT PRACTICE OVER EXCHANGES OF CULTURALGOODS IN THE COUNTRIES OF EUROPE OF THE NINE

First the scope of the subject implicit in the chapter heading should be defined.

a) If the wording "in the countries of Europe of the Nine" is strictly interpreted, it could be taken as referring only to exchanges between countries of Europe of the Nine, without the involvement of any other partners. But this would leave out of the subject for discussion a very important part of the actual situation, for many of the exchanges in which each of these countries engages are in fact with countries external to the group. Many of the important exhibitions organised in Paris and London, for instance, require the participation of cultural institutions in the United States or the Soviet Union. To examine the question of the exchanges to which they may ultimately give rise is not to stray outside our subject. Indeed, every time an institution in a country of Europe of the Nine takes part in an exchange, including one with a non-European country, it is legally completely free in its actions, so that studying the procedures that it follows or rejects will give a good idea of what it feels about exchanges in general. To be more precise, an exchange agreement between two museums, one in Mexico and the other in the United States, does not concern Europe except perhaps as an item of information; on the other hand exchanges between France and Mexico or Great Britain and the United States are elements affecting a European definition of exchange just as much as an agreement concluded between France and Britain direct.

b) Equally, it would surely not be right to keep to a strictly legal concept of exchange, such as that contained in Article 1702 of the French Civil Code which states: "exchange is a contract whereunder the parties respectively give to each other one thing for another", as this would rob our subject of almost all its matter. Such a definition implies reciprocal transfer of ownership; this, however, happens very rarely. To go further, one might be tempted to discuss exchanges (relating not to ownership but to temporary use of the objects concerned), that is to say loan exchanges, while treating as such only those transactions which are conceived from the start as formally implying reciprocity (museum X lends to museum Y an object A, or a series of objects, on condition that museum Y lends it to another object in return). But again this conception would be too restrictive in terms of actual practice. For one thing, it often happens, at any rate between museums in the same country, that an institution allows another one to have the use of one of the pieces in its collections for a certain period of time without expecting any quid pro quo. And when an important museum grants a lesser one the custody of an object it does not formally ask for any loan in return, which the other museum would in most cases not be able to provide anyway. The position is more complicated with cultural institutions of the first rank which treat on equal terms. There are certainly occasions when an agreement between two or more museums expressly entails reciprocal commitments. Thus, when the Louvre and the New York Metropolitan Museum decided to mount jointly an exhibition of the Impressionists, their agreement stipulated that the one would loan to the other such and such specific works for a certain specified period and the other would grant the reciprocal loan of such and such other works for another such period. In this case the exchange does not constitute a reciprocal transfer of ownership but mutual loans, in the sense that the loans made by the one are the consideration and condition in the legal meaning of the term for the loans made by the other. But agreements of this kind,

although not exceptional, are nevertheless rare. More often than not in fact, the concept of reciprocity remains only an understanding that is not spelt out. When one important museum makes a loan to another, it naturally expects that the other museum will perform a similar service for it one of these days, but it does not know when or what form precisely the service will take, nor does it impose any formal condition in the matter. In the strict sense of the term, therefore, no exchange takes place: museum X makes a unilateral loan to museum Y. All the same such a loan, although unilateral in the legal sense, is part of the general policy on "exchanges" between the two institutions. In practice, this implicit reciprocity is far more widespread than the explicit and specific kind considered above. It cannot, therefore, be left out of account in our study, though the concept of exchange thereby loses its strict legal meaning of a transaction entailing well-defined reciprocal services. One can, therefore, only talk of exchanges, in company with certain international reports, in a broad sense, in the sense of a certain climate, a general policy of mutual assistance that is implicitly accepted by fellow institutions. This conception of exchange corresponds with the realities of the situation but is largely incapable of analysis from the legal viewpoint, since it is not related to a specified procedure but rather to a climate, a psychological atmosphere, a policy entailing for its implementation procedures which although well enough defined are not technically exchanges but transactions of a different kind, usually loans, for a shorter or longer period, and in exceptional cases transfers of ownership.

The precise purpose of this first chapter is to examine these particular procedures, these specific agreements which are the instruments by which the general policy of cultural exchanges between European institutions is carried out. There are an extremely large number of transactions to be covered by such an examination. Each of the big European museums loan, borrow or transfer to custody elsewhere hundreds of different objects. For Europe alone, and only counting museums, the number of all these transactions in any one year must be counted in thousands; but it is not only museums that need to be considered, since, as has already been said, departments concerned

with the national heritage or historical monuments, archives, libraries, and so on, are also likely to be involved. From the legal viewpoint these transactions, despite their large numbers, assume a few simple forms which are the result of actual practice rather than of any regulations or, more simply, of systematic thought. (It is striking to note, for instance, that the handbook of temporary exhibitions published by UNESCO and prepared by ICOM makes no mention whatsoever of any legal instruments, which are of course an essential element in organising any exhibition). It is actual practice, therefore, which requires to be analysed, and an effort must be made to clarify the exact position. An attempt has been made to do this through personal contacts, by consulting the ICOM/ICOMOS document centre, and by means of a survey among some fifty of Europe's major museums, most of which agreed to reply to the detailed questionnaire reproduced at Appendix II. On the basis of this concrete information a description of current practice can be attempted (Section II). At the subsequent stage it is hoped that an analysis of this practice will identify the basic problems that are raised by the system of exchanges as it exists at present (Section II). These must in fact be clearly defined with a view to their easier solution if it is desired to go further in the way of exchanges.

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#### SECTION I - CURRENT PRACTICE

This usually consists of a series of unrelated transfers of goods with no specific legal connection between them. These are exchanges in the broad sense of the term. There are also some instances to be found of agreements whereby loans made by one party are equated with and a condition of loans by the other party. These are exchanges in the strict sense of the term.

Subsection I : In current practice, exchanges (in the broad sense) are effected in the form of unrelated transfers of between one institution and another

Such transfers are many and varied. Strictly speaking they are of two kinds and two kinds only:

- transfers of use, whereby the owner of an object grants its use by another party for a shorter or longer period,

- and transfers of ownership, whereby the actual ownership of the object concerned is permanently assigned.

But it has already been said that we are in the realm not of systematic reasoning but of practice, so that this logical dual division gives way more often than not to a tripartite division which is only superficially defined, but which amounts to a distinction between short term loans, long term loans or transfers of custody, and transfers of ownership. It is this traditional division which will now be explained.

1. Short-term loans

This is by far the commonest form of loan. There are innumerable examples, both at national and international level, directly related to the practice that is widespread throughout Europe of mounting temporary exhibitions. In Europe of the Nine alone there are probably several thousand works and objects of all kinds which are on loan. The general factual position with this extremely widespread practice is as follows:

1. Objects are seldom on temporary loan for more than a few months, three to six months being the most frequent loan period. It is only exceeded if an exhibition is held in several places in succession. But in this case too the total of the successive loan periods very seldom exceeds twelve months.



2. Each loan, or homogenous set of loans, is the subject of a specific agreement the terms of which obviously vary according to each particular case. In a very general way, it is customary for loans to be made on conditions stipulated by the lender and at the expense of the borrower. This expense falls under three main heads:

- costs of transport and packing, which can amount to a considerable sum in the case of especially fragile or precious objects which call for special precautions to be taken. In this connection the lender will often insist that objects are accompanied when in transit by one or more of the lender's staff.

- insurance. It is usual practice for the loan object to be insured from the moment of departure from the place where it is normally displayed to its return to the same place. This is the system known in France as "nail to nail insurance". Insurance can be taken out with different kinds of company, either in the public or private sector, but the insurers must always have the prior approval of the lending institution, which will sometimes stipulate a company of its own choice, and will in any case fix the amount of the sum assured and the nature of the cover. Insurance costs depend of course on the relative fragility of the insured objects, their value, and the period of the loan. They are always high: insuring a single picture of good quality, valued at five million French francs, for three to six months is in the order of 15,000 French francs. The insurance budget for a big exhibition can in these circumstances come to tens of thousands of pounds.

This burden explains why some countries have suggested a system of "government guarantees", to be issued gratis. This system which, on a first analysis, is practised in Europe only by Great Britain, naturally requires the agreement of the government putting up the guarantee and of the lender accepting it. It is doubtful whether this dual agreement will always be forthcoming for a number

of reasons, but we feel no further time should be spent on expatiating on this point since the question of insurance of works of art is to be the subject of another study commissioned by the European Communities.

- displaying the works at the exhibition. This involves a variety of expenses: erection of panelling, glass cases, costs of security measures, advertising, publication of catalogues, and so on.

## 2. Long term loans

This is a less closely defined category, as the concept of long term can only be defined in a negative sense: long term is what is not short term; the latter applying to a period not normally exceeding a few months, and never more than a year. And indeed, subject to a few exceptions, there is a real difference and hiatus here: on the one hand there are loans reckoned in months, and on the other those reckoned in years or, again, those which have no fixed term, that is to say, those granted for an indefinite period, or, which comes to more or less the same thing, those granted for a fixed period but which are readily renewable, especially by tacit renewal (unless express notice is given at the end of the stipulated period, the agreement is deemed to have been extended for a further period).

Other sub-categories could be thought up for these non-short term loans, such as for example medium term (2-3 years) and long term (over 5 years), etc. There would seem to be no reason to stop, since these sub-categories could be extended indefinitely, as with peas or boxers: good quality, fine quality, extra fine quality, or featherweight, welterweight, light middleweight, middleweight and so on.

In law the really important difference, to which we shall revert further on, is whether the loan object is insured or not for the duration of the loan period. In all cases, with both short term and long term loans, liability for damage caused to the loan object rests in principle with the borrower, since the borrower's first duty is to return the borrowed object, on termination of the transaction, in good condition. But there are in fact two methods of ensuring that this liability is operative. With short term loans the guarantee lies in insurance being taken out on the objects themselves. This is also sometimes the case with long term loans (these of course differ from the former only in the time factor, which is of no direct legal consequence). But in the great majority of cases such insurance is not imposed, as the resulting expense, supportable for a few months, would become exorbitant as the loan object continued to be held. The guarantee afforded by insurance is accordingly replaced by other guarantees. The system most often used is that the lender theoretically reserves the right to verify whether the conditions in which the borrower is making use of the loan object and the security precautions observed are in accordance with accepted professional practice, and the right to cancel the loan at any time if it is felt that such is not the case. It seems safe to say that these guarantees are in fact purely theoretical. The real means of pressure which the lending institution has over the borrower, if it is thought worth while to retain any, lies in refusal to renew the loan, if granted for a specified period, and, in particular, in the fact that it will not agree to any future loans if it believes that the objects previously lent have not been kept or used in proper conditions.

### 3. Full transfer of ownership

This is such a rare occurrence that there would be no need to mention it at all (examples where the big museums are concerned can be counted on the fingers) did it not exist in an indirect form, i.e. loans for an indefinite period (or for a period which is in theory fixed but which is indefinitely renewable, which comes to the same thing). In practice, if institution A decides to present an object to institution B it does not have recourse to an official presentation;

it makes a theoretical loan of the object, on the conditions described in the preceding paragraph, and waives reclaiming it. In this way there are objects which were loaned ten, twenty or a hundred years ago which have never been reclaimed by their theoretical owners. In a strictly legal interpretation such a long period of possession does not of course constitute transfer of ownership, since it is based only on a precarious and revocable title. In actual fact, however, it clearly leads to virtually the same result. An owner who has not reclaimed an object for ten, twenty or a hundred years will virtually never reclaim it, and, likewise, will refrain from making any claim for damages if the loan object should be damaged or even destroyed (1). This procedure of transfer of custody for an indefinite period is usually unilateral; it therefore constitutes a form of aid by institution A, which transfers the object, to institution B, which accepts it. It can also be reciprocal, officially or semi-officially, with each institution transferring an object and receiving another in its place. Its purpose, then, is to get round, where it exists, the inalienability rule applying to some public collections. This forbids assignments in the strict sense of the word (that is to say, of full ownership) but not simply transfers of custody, which are always revocable in law, even if it is tacitly understood that they will never be revoked in practice. It is this procedure of transferring objects to custody for an indefinite period which has been employed the most frequently for the few exchanges that have taken place between European museums over the past few decades.

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1) An example from France provides a typical illustration of this point. The Louvre Museum had transferred into custody (in other words, lent for an indefinite period and without stipulating any insurance) a very large number of antique items and paintings, especially Italian primitives from the Campana collection, purchased at great cost by the French state. A century later this same state decided to set up at Avignon a large museum of Italian primitive painting. It therefore set about reclaiming from the beneficiary museums paintings which had been entrusted to their custody for a hundred years but which were, in theory, still its own property. Nearly all the museums agreed to return the works, but asked for a quid pro quo, which was in fact agreed to. In one or two cases, where agreement was not reached, the paintings stayed where they had been deposited a hundred years earlier, the state not feeling it was in a position to take further steps to recover its property.

Sub-section II : In a few cases transfers are specified in an exchange agreement in the strict sense of the term

First of all, it must be emphasised that agreements of this kind are very rare. In the vast majority of cases, exchange policy is effected through a series of unrelated transactions of the kind described above. This does not mean that there is no policy, merely that it is not characterised by any specific legal agreements. An important museum will lend exhibits to another one, for a temporary exhibition, because it knows perfectly well that, on another occasion, it will be asking for a loan from this museum itself, but it will not make this a formal and explicit condition of the current loan. In the long run loans granted by one and the other institution will tend more or less to balance themselves out, otherwise indeed the general policy of exchanges would decline and eventually die. A museum, for instance, which is very difficult about lending any of its exhibits, or insists on very heavy insurance, would gradually find itself isolated from the international museum community and would no longer be able to obtain any items on loan that it would like to have. Naturally, though, when it was first given objects on loan there would have been no mention of reciprocity, and the "blackballing" which would follow from its refusal to cooperate would not be the subject of any formal decision. Here we have an example of reciprocity in practice which is not subject to analysis in terms of law. Its efficacy is nonetheless not to be denied. The world of culture and the arts, or at any rate the world of the major institutions which set the tone for all the other far more numerous ones which draw their inspiration from them (museums, libraries, archives, etc.), is after all a very small world. There are only a few dozen institutions which can provide the technical support required for international exchanges. Their directors are in direct personal contact, they meet one another, they correspond with one another, they take part in discussions in the same international organisations. In this restricted circle one soon learns to distinguish between the sheep and the goats among one's colleagues, and there is no need for the blackballing of an institution that has shown itself to be uncooperative to be officially announced for it to be effective; either it will have to

remain isolated and cut off from the mainstream of cultural exchanges or return to a better attitude of mind and show more practical cooperation. Again, this is not formulated in precise legal terms, but that it is a tangible reality is not contested in the professional circles concerned.

It is only exceptionally and in very few instances that one comes across a genuine exchange, in which loans by one side are strictly conditioned by loans from the other. There are virtually only two kinds that are known, one concerning temporary loans and the other transfers of custody for an unlimited period.

The first type of exchange relates to temporary exhibitions of exceptional importance. Outside Europe, for example, there is the example of the exchange of exhibitions between Soviet museums and the Metropolitan Museum in New York, with the former lending antique objects and a large part of the Scythian treasure, and the latter lending the USSR a hundred or so of its finest paintings. French state museums and the Metropolitan Museum also got together to mount the 1974 centenary exhibition of Impressionism, which was shown first in Paris and then in New York. Dutch museums and French museums jointly organised the exhibition "Dans la Lumière de Vermeer". All such cases involve not only reciprocal loans but the establishment of a proper temporary relationship sealed by a formal agreement, with both sides going beyond the stage of lending each other works of art and sharing in the work, responsibilities and costs under conditions specifically set out in a special agreement concluded for the occasion and for a well-defined purpose and duration.

As an example of the second kind are a few international exchanges of long duration. For instance, French and Algerian museums concluded

an agreement not long ago, a rather complicated one, in fact (1). A few years before that there were exchanges between France and Japan and France and Spain. But there are very few cases of this sort, and all of them were the subject of special agreements the general principles of which are not easy to define. What can be said is that none of these exchanges was really welcomed unless it had come about through unofficial agreements between museum keepers in the two countries concerned, which were later made official through the intervention of governments. In the two or three cases where governments took the initiative, and imposed their will on the professionals concerned, the latter clearly had to defer to the decision, but later they discreetly took their revenge by putting a stop to any further exchanges between the two countries concerned for a long time to come.

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This review, necessarily simplified, of exchanges in practice leads to two conclusions. For one thing a policy regarding the exchange of cultural objects between European countries (or between European and non-European countries) is a living fact involving considerable activity, but one that is largely restricted to the field of temporary exhibitions. For another thing the policy is far more often put into effect by a series of temporary transfers rather than through legal exchange agreements proper in the strict sense of the term. These examples of

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1) This was basically related to a restitution agreement. France decided to return to Algeria a series of art objects which had found their way to France as a result of the Algerian war. As an accessory and complement to this the two countries each decided, in the same agreement, to "transfer custody" to the other of certain pieces for which the holder had no valid use but in which the other side was interested.

policy solutions in practice may therefore seem fragmentary and incomplete. It is by no means certain, however, that they are not the most effective solutions, for they undoubtedly provide a partial answer at least, at any rate for the time being, to actual requirements while avoiding the basic problems which make it difficult to draw up genuine exchange agreements.

These basic problems must, however, be clearly identified, if possible, so that the right kinds of formula can be adopted for the expansion of exchanges.

## SECTION II - BASIC PROBLEMS

To start with, we propose to dismiss problems of a technical nature such as transport, packing and the provision of suitably secure conditions for the display of objects that are exchanged. All these problems are very well known to the professionals concerned. They have been the subject of numerous articles or papers in specialist journals (1), and are all capable of rational solutions provided that cultural objects are looked upon as precious objects, often fragile, which cannot be transported in the same way as ordinary goods, as less informed circles sometimes tend to think.

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1) See in particular the manual on temporary exhibitions published by UNESCO - Museums and Monuments X - 1965. Although a little old now, this remains a useful form of introduction to the problem. As for professional museum staff, they have a large volume of documentation on the subject, thanks to different publications both international, by UNESCO and ICOM (especially ICOM's Museum and News journals), and national, produced by museum departments or associations of museum keepers.



On a more theoretical level, we should clearly not continue to adhere to the traditional and very rudimentary distinction between short term loan, long term loan and transfer of ownership. This last is in fact virtually non-existent, and, on the rare occasions when one comes across it, usually takes the form in practice of a loan for an indefinite period. As for the distinction between short term, medium term and long term loans, this is purely of a temporal nature, besides which it is very imprecise and, essentially, has no real significance in law. We must, therefore, endeavour to go more deeply into the matter and try to identify the subjects or concepts which really create difficulties. There are two of them, in our opinion: responsibility for risks regarding objects that are transferred, and the inalienability, or so-called inalienability, in some States of items in national collections.

Sub-section I : Liability for insurance against damage to objects that are transferred

We should first explain the kinds of risk we have in mind. We intend to deal only with risks incurred while an object is in the hands of the temporary custodian (borrower or depositary), and leave out risks that are covered during transit from the place of departure to the place of arrival, and vice versa. These are by no means negligible; but they are not an inherent feature of the subject of loans, and are concerned rather with the subject of transporting works of art for whatever reason. Accordingly, no more will be said about them, and we shall limit ourselves to the first kind.

It also needs to be pointed out that risks incurred when an object is held in temporary custody will obviously cease to exist when a transfer becomes permanent in law; that is to say, in those rare cases of transfer of ownership. In that event, an object which until its transfer was the responsibility of owner A becomes after its transfer the responsibility of the new owner B; the only problem being cover for risks while the object is being transferred from A to B, which takes us back to the previous paragraph.

Reduced in this way to its basic elements, the problem is a classical problem par excellence, which is raised every time an object is held in the custody of an institution other than the rightful owner. If an event occurs resulting in damage to or the loss of the object, which should be liable for the consequences, the custodian or the owner? The answer to this question is not usually cut and dried: whereas it appears only right that the temporary custodian should assume liability for accidents caused through its own fault or negligence, the answer is less clear when an accident occurs as the result of a fortuitous event or force majeure against which the custodian was in no position to take preventive action, any more than the owner institution would have been in similar circumstances (1).

Museums have two solutions in practice for dealing with these difficulties. In the first, which is almost invariably adopted for temporary exhibitions, the lender insists that the borrower shall insure the object he is being lent from the moment it leaves until it returns against all normal risks (2). Insurance, according to each particular case, is taken out either by the lender or the borrower (if the lender consents), but it is an almost invariable rule that in all cases the cost shall be borne by the borrower. The problem of risks is

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- 1) In French law the depositary is never held liable in any circumstances for accidents caused by force majeure (Article 1929 of the Civil Code).
  - 2) Most insurance policies exclude, for example, war risks or natural disasters like earthquakes, etc. These are only covered by additional insurance, if the lender insists on it. In actual fact, of course, a lender will not normally grant any loans to an institution which appears to be under serious threat of happenings of this kind. The problem does arise, however, with certain countries like Japan, when it is settled by special agreements which cannot be gone into here.

therefore resolved without any ambiguity; they are the entire responsibility of the borrower, or rather of the insurance company with which the borrower is insured.

In the other solution, and this is the one adopted for nearly all long term loans, the lender museum does not insist on insurance for the objects on loan. It does not in principle discharge the borrower museum from any liabilities it might incur but, in effect, is satisfied with theoretical guarantees: the right to go and verify the conditions in which the loan exhibits are kept and to revoke the loan or custody before the agreed term if it is discovered that the conditions are unsatisfactory. It has already been said that such guarantees usually remain purely symbolic. It is not psychologically expedient for the lender museum to monitor effectively the operating conditions of the borrower, and still less easy to pass judgment on the borrower officially by announcing withdrawal of the transferred items. Effective sanction lies in possible future action: if the borrower museum has once shown itself to be over-negligent, it will receive no further loans. As for the effects of such negligence on the objects originally lent, they will be rectified, if it is found that the objects have been damaged or even destroyed, one by one, and usually discreetly. It can be said, then, that where the lender institution agrees that objects on loan need not be insured it thereby also agrees, not explicitly but in effect, not to impute to the borrower institution the consequences of any negligence, or, in other words, to bear the consequences itself.

On this analysis of the question of liability in regard to risks we accordingly arrive at a dual distinction as to types of loan, one that is far less often made than the traditional triple distinction but which, in our opinion, is far closer to reality; loans that are insured and loans that are not insured.

These two different distinctions, the normal one based on duration and the one that we favour, based on the existence or non-existence of insurance, also overlap to a large extent, though not completely. As already said, short term loans are nearly always coupled with compulsory insurance (1), whereas those of medium or long term are usually not. In all cases this has a fundamental effect on the importance of a loan. If loan objects are insured, the lender museum may agree to lend objects of some or even considerable value; where, on the other hand, there is no insurance, the lender museum will not as a rule agree to lend anything but objects of fairly secondary importance which it is willing to face seeing lost without any recompense. But again, if the loan were one of the rare examples of a long term loan accompanied by insurance, the borrower museum would not in this case itself ask for objects of importance, since the cost of insuring them for a large sum of money, while bearable for a few months, would cease to be if payable over a period of years. Effectively, then, loans covered by insurance are almost inevitably short term, but can and often do comprise works of the first importance, whereas loans not covered by insurance can be and often are long term but almost inevitably consist of objects of secondary importance.

It follows from this analysis that the hurdle to be overcome if there are to be even medium term loans of really important works is that

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1) There are scarcely any exceptions to this save in very special cases, as for instance where two institutions are concerned which are legally and physically very close. In France, for example, temporary loans between the Bibliothèque Nationale and the Louvre, two state institutions less than a kilometre apart, are not, or at least have not been for some years, covered by insurance.

of insurance. As matters stand at present, this is taken out by, or at any rate subject to the approval of, the lender, but the cost is borne by the borrower, which is obviously the most unsatisfactory way of arriving at a really effective transaction. The cost is usually high and very soon, after more than a few months, becomes an insupportable burden for the borrower. Most countries that are anxious to develop international exchanges, either quantitatively, by increasing the number of medium and long term loans, or qualitatively, through loans of works of the first rank, are endeavouring to find new ways of resolving this problem of insurance which would cost less than commercial insurance, and are advocating other recipes. Some of these are only apparent, not real, or do no more than cover up the problem of accepting liability regarding risks. One such proposal that was thought worth putting forward was that valuations of works on loan should be systematically reduced by 10 or 20% in the case of certain privileged exhibitions. In our view this is logically indefensible; either loan exhibits are insured or they are not, but to decide deliberately to insure them inadequately has the disadvantages of both systems. On occasions something even more extreme has been advocated, namely that for certain specially privileged exhibitions the exhibits should not be insured at all. This is to solve the problem of insurance by refusing to pose it. There is only one formula, in fact, which at the present time appears to be realistic, that of government guarantees: under this system a government that is especially interested in a particular cultural event declares its readiness to bear, gratis or virtually gratis (for if it demands payment of a sizeable premium this method would be no more advantageous than the system of using commercial insurance companies, which at least carry the advantage of expertise gained from long experience), the risks relating to works lent or borrowed by an institution for which it is responsible. We do not, however, propose to go into any detail on the subject, which is being dealt with in a separate

study. We should merely like to observe that the system of government guarantees necessarily has its limits. For the state granting a guarantee, that is to say, which replaces an insurance company, the financial risk is greater than it might appear. True, works on loan seldom suffer total loss, but on the other hand secondary damage to works that are moved is far more frequent than is imagined, and can lead to damages that are far from derisory; above all, one case alone of serious damage to an important work would involve the state granting the guarantee in payment of a very large sum by way of indemnity. This has not to the best of our knowledge happened so far, but is bound to happen sooner or later.

From the lender's point of view, any government guarantee that may be offered will only be acceptable if it provides as good a cover as normal private insurance (the United States, it seems, has established a form of government guarantee excluding indemnity for damages above a certain sum, which has been viewed with some reservations by many lending institutions), and if it is set up by a state which is able to pay eventual compensation in convertible currency. We do not want to dwell on this particular condition, which is a reality in Europe of the Nine, but may not always be present in a wider international community.

Clearly, of course, in the present legal situation it is always for the lending institution to decide whether to insist on insurance or not and, if so, whether to agree to its replacement by a government guarantee. This can only be proposed, not imposed, for the lending institution always has the final say (except in exceptional cases where the decision is taken at government level for reasons of policy though, even in countries with highly centralised systems of government, such cases are very rare) on whether to agree or not to a loan request, on conditions that it considers to be acceptable.

Sub-section II - The inalienability of national collections

Most studies devoted to international exchanges consider this to be an obstacle against, or at any rate a brake on, the development of international exchanges (1). Others, while accepting that the principle may be waived, feel bound to point out that such a departure is by its very nature so exceptional that it must be accompanied by restrictions on the rights of the new owner, who

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- 1) To mention only the last official document on the subject, the recommendation adopted by the 19th general conference of UNESCO on 26-XI-1976 on the international exchange of cultural property contains the following passage at point 2 - 3 (b):

"Member States should .... amend existing laws or regulations or introduce new legislative provisions or regulations on the subject of public property .... to make possible or facilitate ..... the contingent alienation or declassification of cultural property belonging to a national organisation or a cultural institution ....." \*

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\* Translator's note: not the official translation

should not in turn be permitted, for example, to reassign the property assigned to him (1). It is accordingly advisable to examine more closely this principle of the inalienability of national collections. It emerges from this study that the principle is not followed by every country in Europe of the Nine, nor, in our view, is it fully observed even in those countries in which it is enshrined in positive law.

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- 1) Thus, the Goy-Varine report presented to ICOM in 1974 states in its provisional version : "We suggest, in cases of an exchange of gifts, that the absolute non-alienability of the property exchanged should be laid down". This is no more, however, than a mere suggestion, expressing the personal opinions of the experts concerned. It is more surprising to see that the French Act no. 56-631 of 29 June 1956, in reference to the remittance to the Tokyo National Museum, by way of exchange, of archaeological objects belonging to the Musée Guimet, sees fit to state in its single section that the objects handed over to the Japanese Government are ceded "in perpetuity and are indefeasible". The debates on the bill show clearly the embarrassed feelings of the French legislator of 1956 at subscribing to an exchange that was patently of benefit to both sides (it concerned the exchange between French and Japanese national institutions of archaeological objects of which both held a number of examples which were not held by the other). In order to justify the competence of the French Parliament in the matter it was even felt necessary to go back to debates in the Constituent Assembly of 1790! The explanation is, no doubt, that the French legislator of 1956 felt he should ensure his conscience was doubly clear by transferring to the Japanese Government an obligation of inalienability which he was about to depart from himself. It seems clear to us that a restriction of this nature is in fact valueless; if France felt in a position to assign property which up till then had been looked upon as inalienable, there seems no reason why Japan, the new owner of the objects, should not do the same one day, nor, for that matter, is it clear what recourse France would then have in international law against Japan or the new owner of the property in question. We have only seen fit to dwell on these provisions in order to show how strong the feeling is in France about the inalienability of museum collections. But we are of course fully convinced of the value for both sides of the exchange that took place.



In the first place, the principle is not admitted by every country of Europe of the Nine. In general, and without claiming to be presenting a full study of the subject, we think we can say that it is only considered essential by countries with legal systems based on Roman law, which are imbued with the old Roman conception of the majesty of the state, and in consequence, of an essential difference between public and private property. The other States, while indicating that the alienation of public collections must remain the exception, admit that this can be waived in special cases and, especially, in the case of objects which are not thought to be essential, in particular because there are a number of examples in the national collections.

Thus, in Holland, institutions as renowned as the Rijksmuseum in Amsterdam and the Mauritshuis in The Hague allow, in exceptional cases, pieces in their collections to be disposed of. The same applies in West Germany in the case of the Hamburg Kunsthalle or the Liden-Museum in Stuttgart. The Danish law on museums also admits "afgivelse", that is to say assignment in perpetuity. It is the same with the Scottish national museums, at any rate as regards exchanges between themselves, as also with the Ashmolean Museum in Oxford and the London National Gallery (to the benefit of the Tate Gallery). The British Museum Act of 1963 governs such assignments under Section 5: "The Trustees of the British Museum may sell, exchange, donate or otherwise dispose of any object ..... forming part of their collections if ..... etc. ...." \* (there follows an enumeration of instances when alienation is permissible). The conclusion to be drawn from all the replies received is that alienation, by way of exchanges or by some other means (sale, donation, etc.), must be considered as an exceptional transaction in principle and also one that very seldom takes place in practice, although in a good many countries it is not ruled out.

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\* Translator's note: not (necessarily) the original wording.

Things are no different, despite first appearances, in countries that are the most firmly attached to the principle of the inalienability of national collections, such as, in particular, France, which is at the top of the list of such countries. In 1948, for instance, the Leroi-Gourhan report observed that "objects comprising the collections of the national museums of art and history may not be alienated unless this is sanctioned by a special Act, whereas the national Natural History Museum enjoys wider facilities". The archives handbook published in 1970 by the Archives Directorate indicates that "documents in the public archives may lose their status by reason of official declassification, following confirmation that they are out of date and no longer of importance for the public collections. They may accordingly cease to be public property and become private property and be disposed of ....." (p.20).

For libraries a very old provision, a royal ordinance of 22 February 1838, stipulates as follows in its section 9: "The general administrator (of the royal library, now the National library) will not consent to exchanges, whether with private persons or with public establishments, save with the prior authority of our Minister of Education (now the minister for universities)", but forbids on the other hand "any form of gift or sale". Exchange is nevertheless admitted in principle (1).

Even where museums of art and history are concerned, which are the most rigid guardians of the principle of inalienability, there are a few examples here and there of assignment that can be mentioned though admittedly representing very exceptional cases. These, which remain very few, have been governed up till now by special Acts, such as that of 19 June 1956 already mentioned (the Franco-Japanese exchange) and that of 23 June 1941 "authorising assignment to

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1) This led the Bibliothèque Nationale to design, a few years ago, an "official cancellation stamp" which allows the other party to an exchange to dispose of works he has received without fear of any legal action, although some leaves may bear the stamp, in principle indelible, of the Bibliothèque Nationale.

Spain of various pieces from the Louvre and Cluny Museums".

The conclusion has been drawn from this fact in French museum circles that no pieces in museum collections can be alienated unless an Act is passed accordingly (though, in our opinion, a decree would suffice today through applying Articles 34 and 37 of the 1958 Constitution). This conclusion, to our mind, exaggerates the situation. Museum objects are inalienable insofar as they are the property of the State, but if they should cease to be so following an official decision to declassify them they would pass from public sector ownership to the private sector. This declassification procedure is for most areas outside museums provided for in special provisions, like those already cited in reference to archives and libraries. It is true enough that there is no such provision governing museums; but a solution might perhaps be found in the general theory of a "counter-provision". Failing any provision to the contrary, an administrative provision can be annulled through a contrary provision drawn up in the same form and following the same procedure. It would be enough, we feel, to permit an object to be removed from a museum collection if the same procedure were to be followed as that adopted for its assumption into the collection in the first place (ministerial decree preceded by mandatory consultation with various committees). It is, therefore, perfectly possible, even under French law, to have an object removed from a museum collection even where a national museum is concerned (and a fortiori with a museum of lesser importance). The truth is, however, this is not done, not for procedural reasons but for underlying reasons which need to be identified, since they explain why, whichever the countries concerned and whatever the legislation in force, assignment of pieces forming part of national collections remains a very exceptional occurrence, and there is no reason to expect any change in this connection, at least not for the foreseeable future. These reasons are partly, we feel, to do with the objects themselves and partly to do with people.

Objects, that is to say collection exhibits, especially those in art and history museums, have the peculiarity of increasing with age not only in material value (a factor of no interest in the case of pieces

that are unassignable) but in cultural value. It is perfectly conceivable that, even in countries like France where the idea of public property is very strictly maintained, various items in the public domain should be "declassified" so that they cease to be public chattels: military equipment, for example, which is an important aspect of publicly owned items, becomes out of date and superseded in a few decades at the most, and the same applies to the technical or scientific equipment belonging to a university, and so on. When it gets to this stage, such equipment is no longer usable, and it is sensible to declassify it so that it can be disposed of and replaced. It is quite a different matter with museum pieces, the prestige and importance of which goes on growing with the years. Obsolescence, which is sufficient justification in normal objects for them to be scrapped, only makes museum pieces increase in value.

The rarity factor does not have the same degree of importance for all types of object. It is understandable that a library should not keep ten completely identical copies of the same book, or archives ten copies of the same document. Where the arts are concerned (and to a large extent archaeology as well) the value of a series increases with its extent. A museum which possesses no example of a certain piece would like to acquire one, but a museum which has ten examples of the same piece is far more anxious to obtain an eleventh example to make up an exceptional series than to dispose of any of them.

Human factors operate in a similar way. Every keeper, and especially every keeper of an art or history museum, is above all basically a collector who feels just as attached to the items entrusted to his charge as a private collector to the items in his collection, and a true collector always dreams about enlarging his collection rather than reducing it. One may laugh, but one should not lose sight of the fact that a keeper who was not fired by this passion would not be a particularly good keeper.

This human factor operates especially outside museums themselves, in the peripheral milieu comprising collectors and donors. A very large part of the exhibits in European museum collections are donations, and one of the psychological motives for donating objects to museums is the collector's desire to find a safe haven for the objects he has collected and loved, away from the uncertainties of the future. Many donation deeds accordingly stipulate that the donated items shall not be assignable, or even that they should be displayed or arranged in a specific way. Even if there were no express stipulations of the kind, the fact remains that a museum which, because of a particularly flexible policy, treated its collections in too cavalier a fashion would not be thought highly of by the world of donors, and, from this fact, would lose its most potent potential source of enrichment.

All this must, as always, be interpreted with caution. The legal position, and, even more, the psychological climate, is different with a natural science museum and a history museum, with a museum and library, with France and Great Britain, and all the foregoing observations, which are necessarily generalised because of their global nature, need to be modified in each particular case. But it would still be a serious mistake to think that the inalienability of public collections, *de jure* or *de facto*, is no more than an outworn rule or practice, deriving from the pusillanimity of certain keepers of the old school which could easily be got rid of by a form of international agreement. It is in reality a wise rule, cemented and proved by long usage, even where it does not enjoy the force of formal law. And the European museums, which are old institutions, most of them with over a hundred years of existence, are respecters of hallowed usages. One can try to see that the rule does not atrophy, and become a constraint the origin and justification of which is no longer remembered. It would be good sense to make it more tractable. But it would be at the least unwise and probably illusory to want to abolish it.

CHAPTER IISUITABLE MEASURES FOR PROMOTING EXCHANGES

Now that the difficulties in the way of the development of exchanges have been brought out more clearly, we must see how they can be removed, or at any rate lessened. To have a chance of being effective the present study must tackle the problem head on, and take as a starting point the case of exchanges in the strictest sense, involving from the start loans and counter-loans even if performed at different times. To explain our proposed solutions we felt we could make use of deliberately simplified form of presentation, with A, B and C standing for institutions and X, Y and Z for the objects with which they deal. We must ask the reader to forgive the somewhat simple or rudimentary aspects of this way of expressing things. We must ask him to believe us when we say we are well aware that policies in general, and cultural policies in particular, lend themselves to refinements and subtleties, just as we know full well that cultural objects are imbued with beauty, feeling, history and poetry. But we also feel that just as a good marriage contract or a favourable will have never stopped husbands and wives or parents and children from loving one another, so precise formulas for cultural exchanges can only help to develop friendly relations and mutual assistance between cultural institutions in different countries.

The essential point on which to concentrate in formulating these proposals seems to us to be the actual content of possible agreements (Section I). But we also felt it would be helpful to say a few words about some ways in which these might be implemented (Section II).

There is one last point to be made. We have already said that we hoped to remain as concrete and practical as possible, without indulging in abstractions, even in legal aspects. Many of the formulas we suggest are little used in practice, but all of them, except one, have been employed at least once. Those in charge of this or that important institution in Europe or outside will therefore be able to recognise these behind the institutions A, B and C with which we shall be concerned. We did not feel we could identify them more explicitly since it would have been wrong to do so without having their express consent. We trust that, at occasion arises, they will forgive us for having tried to allow institutions other than their own to benefit from the risks they took in trying out formulas some of which were still new and imperfectly understood.

SECTION I - BASIC DIFFICULTIES

We should start by referring in particular to transfer of ownership, even though this is little used in practice, and by underlining the great advantage to be gained from resolving beyond any doubt the biggest problem of all, the question of liability regarding risks. through giving an absolutely straight answer; risks are borne by the owner of the object. This principle having been stated, the only problem over an exchange of ownership is the exact moment of its completion, when, in other words, transfer of ownership takes place. Once there is a consensus on this point, there can be no further dispute about it.

Let us say that institution A, the owner of object X, decides to assign it to institution B in exchange for object Y, which is owned by the latter. The exchange can be conceived as comprising two time elements: each institution holds its respective object at the disposal of the other, and it is at the moment when it hands it over to the other that transfer of ownership takes place, or it remains the owner of the respective object until this has been delivered at the other institution, and it is at this moment that transfer occurs. In any event, the exchange is completed when both transfers have been effected. All that is necessary is for the method of transfer to be agreed (each object being to be collected or delivered), and to make arrangements for handovers to be simultaneous. Until it is handed over, object X is still owned by A, and object Y by A, and each institution bears the risks pertaining to ownership. After transfer, A becomes the owner of object Y and B the owner of object X, and each then bears the respective risks. In this way everything is fully catered for, including the question of risks in transit, which are also of course the responsibility of the owner. (If the objects are to be collected, A keeps object X until B arranges to collect it, and is not of course concerned with any transit risks; conversely it is for A to collect object Y from B, when transit risks will be his responsibility, the formula being reversed if the objects are being delivered).



We are not, of course, overlooking the very considerable psychological difficulty which is such a limitation on transfers of ownership : the clash with the dogma of inalienability applying to national collections. We felt, however, that we should clearly bring out the simplicity and lack of complication in the operation, which is something that is not generally recognised, for it is an important point to be brought home to all those institutions for which the doctrine of inalienability is not an absolute dogma.

In normal practice, it must be agreed, exchanges are concerned with transfers of use and not transfers of ownership. It is to these last, then, that this Chapter is devoted. Transfers of this kind do not entail departure from the doctrine of inalienability of collections. They do, all the same, raise sensitive problems as to responsibility for risks involving the objects concerned. The most usual method is to resolve the matter by having such risks covered under an insurance policy, but this means that the transaction is saddled with the cost, which is a brake on the volume of exchanges. Accordingly we shall first examine the question of exchanges of object X against object Y, to see if the burden of insurance can be lessened. We shall then suggest more novel formulas for exchanges of use entailing not two objects but one; for, although they may not be very common at present, they are the only kind which in our view clearly resolve both the difficulty of the rule of the inalienability of collections and of liability in regard to risks.

Sub-section I : Exchanges involving  
more than one object

These are the simplest and commonest type: A lends B object X while B lends X object Y, either at the same time or at a later agreed date. It is only when loans made by the parties concerned are agreed from the beginning that there is a genuine exchange transaction, and it is therefore the underlying principles of this type that we propose to examine. In effect, the solutions proposed will of course be applicable a fortiori to cases of exchange in the broad sense of

the term, when, for instance, institution A lends object X to B without asking for any immediate quid pro quo, but merely reserves the right to approach B on another occasion, when it will be A's turn to do the asking.

The usual formula, whenever an item of some importance is concerned, is for A to consent to the loan (or A and B, if there is to be a genuine exchange) only on condition that the loan object is covered by insurance, usually taken out with a private company (1), while still under what is normal practice, each side fixes the value of the object being lent; indicates the risks for which cover is required (2), and chooses the insurers it desires. All the borrower then has to do is to arrange the insurance with the stipulated company, on the terms laid down, and to settle the premium.

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- 1) A government guarantee is at present available only in Great Britain, and then only in reference to certain exhibitions.
  - 2) As a rule it is the traditional "all risks" type of insurance that is indicated. This is so-called "nail to nail" insurance, covering items from their departure (from the moment they are taken down from the nail on which they are normally hung) until their return. But certain exceptional risks are excluded under this type of policy, such as war risks, natural disasters, etc. If the occasion arises, the lender institution will insist on additional cover. It may also stipulate special clauses to cover risks that are not normally defined in detail: for instance, a clause governing indemnity for the loss of value undergone by an object should it incur damage requiring restoration work. Naturally, an object that has been restored, even perfectly, is less valuable than an object in its original condition. But here there may be some doubt over the amount of the indemnity in the case of an unassignable object, one which cannot therefore be put up for sale: for it is only in the event of resale that any depreciation of a restored object will in effect make itself felt. A demanding lender may accordingly insist on specific provisions to cover such a case, which because they are more rigorous will call for a higher premium.

This traditional procedure is plainly the least satisfactory from the economic point of view, since it means that the institution fixing the terms of insurance is different from the one bearing the cost. In effect, the incidence of insurance is with many exhibitions very high, of the order of 30% or 35% of total expenses. Many big institutions participating in international exchanges have therefore thought it essential to try to find some way of reducing this particular expense, though without departing from the normal system of insurance payments.

1. An act of genuine exchange is in itself a limiting factor on the demands of either party. If museum A lends something to museum B unilaterally, there is no reason, apart from common sense or good faith, why it should not impose rigorous demands, especially as regards the value of the loan objects (1). If however A at the same time borrows something from B (even if the mutual loans are separated in time by a month or two), it will think twice before stipulating over-strict conditions, since by so doing it will risk having similar conditions imposed on itself. In this connection, and quite apart from the situation of trust and friendly relations it may bring about, a systematic exchange policy is more economical than a succession of unilateral loans.

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1) Contrariwise, there are motives, often unexpressed but valid enough, for raising its demands in this direction. The first is the wish to "upvalue" its collections, even if they are unassignable, assuming that they comprise pieces of the first rank. The second is the desire to curb a multiplicity of requests by stipulating a high rate of insurance, which allows the institution to have a clear conscience because ultimate responsibility for refusal of the loan does not lie with the potential lender, which in principle agrees to make the loan, but with the imprudent would-be borrower, which declines to bear the costs deriving from a successful request.

2. A genuine exchange transaction can also diminish or abolish the distinction between the party fixing the conditions (lender A) and the one bearing the insurance costs (borrower B).

1. The first formula is for lender A to agree to insurance of the objects being lent on conditions stipulated by itself but through insurers indicated by B (while B will do the same in regard to the objects it lends to A). The advantage may appear to be small but it is not illusory, at any rate in an exchange between two major cultural institutions. These are important clients for the insurance companies, which can be prevailed upon to grant special preferential terms. If A insists that B uses insurers with whom B has no regular business relationship there is no reason why they should grant him any rebate of premium; but if, on the other hand, A agrees that the objects he is lending should be insured with B's regular insurers, B will be able to put pressure on them to grant favourable terms. This is a method that is now fairly widely adopted among institutions that are in frequent contact and enjoy mutual trust.

2. The second formula is, with an exchange, for each side to insure for itself, on terms it stipulates itself, but at its own cost, the object it is lending. A lends object X to B and insures it, whilst B insures the object Y that it is lending as a counterpart. If both loans balance out, which is the essential element of a genuine exchange transaction, this formula does not theoretically alter the overall financial equilibrium of the transaction. But it has the great advantage of doing away completely with the distinction between the one laying down the conditions and the one who pays, both A and B having an interest in fixing conditions of insurance that are

reasonable since each is bearing the cost itself. There is at least one example that is known from actual practice where the conditions were particularly favourable. A and B, both institutions of the first rank, and both very accustomed to the handling of insurance, had organised jointly an exhibition in which all the major exhibits came from their respective collections, exhibits X being provided by A and exhibits Y by B; the exhibition was first put on in institution A and then in institution B. This was therefore an exchange transaction within the framework of an entirely joint venture in the success of which both parties were equally interested. A, instead of insuring exhibits Y lent by B, insured its own exhibits X and vice versa, so that both sides were induced to fix reasonable conditions and were able to obtain reduced premiums from their regular insurers.

3. The act of exchange, if the actual consequences are considered, should enable the cost of insurance to be done away with altogether, without any additional risks.

The reality underlying this concept<sup>is</sup> that the majority of the great cultural institutions with important collections do not insure them so long as they are under their own surveillance. The cost of doing so would very soon, in fact, become insupportable, besides which nearly all such institutions are provided with surveillance services and systems that are judged to be reasonably efficacious. Object X in the possession of A, for instance, will not usually be insured so long as it is hanging on its usual nail or kept in its usual glass case, and nor will object Y so long as it is in the custody of its owner B. If these objects are exchanged they are not in effect subjected to any additional risks except during the operations of transfer (packing, transport, unpacking), and these certainly need to be specifically covered, as they are very real; it is at this stage that the majority of accidents occur. But once they

are placed in the museum by their new temporary custodian, these objects run no more risks than they did when with their owner, as again, the level of surveillance in all the great institutions is more or less the same, and the same safeguards are exercised against major risks (notably fire and theft). By fully acknowledging this state of affairs those engaging in exchanges should accordingly be induced not to insist on insurance cover except for risks connected with physical transfer, and to waive it for the period when the loan objects are in the keeping of their opposite numbers in the exchange. Here too this basic formula, when applied to the same transaction (an exchange between A and B of objects X and Y), lends itself to two possible methods of procedure, it being understood that in both cases the objects will be covered during transport in both directions.

1. A and B waive holding each other liable in the event of an accident to the loan object while it is with the other party to the exchange (1). If, therefore, object X disappears when in the custody of B, A will do no more than report the loss exactly as it would have done if the disappearance had occurred when the object was with its real owner, without any further recourse. This formula may appear surprising, and even shocking, but, once more, it does no more than take account of realities. Every object, whatever it may be, and however well guarded and kept, is exposed to some risks; these are borne by the owner institution so long as the objects are in its charge, and they are neither greater nor smaller when the owner entrusts them to the custody of some other institution that is as prudent and circumspect

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1) Neither proposition, we feel, should be examined in detail.

We shall merely note that there are in effect two classes of accident; serious accidents, involving the total disappearance or destruction of an object (fire or theft), and minor accidents, taking the form of damage which, even if repaired by the best restorers, entails very little as a rule in relation to the overall value of the object. Presumably agreements between two partners in an exchange can contain a number of different solutions for different kinds of damage. We have deliberately taken the most serious type, total loss.

as it is itself. There is no obvious reason, therefore, why there should be any change in the respective liabilities for risks. The only argument that might be advanced to the contrary is of a psychological nature, namely that it might be feared that the institution in temporary charge of an object, knowing that it will not be held liable, may be unduly negligent over safeguarding it properly. In our view this is not psychologically convincing: well-bred people, as keepers of national collections normally are, tend to be even more careful of items entrusted to their custody than of their own, especially if they know that they are sufficiently trusted for the objects not to be insured. Nor is the argument more convincing on factual grounds; national collections consist of tens of thousands of items, and surveillance and monitoring systems are not designed to safeguard them individually but to protect the whole institution, or at least the most important rooms and galleries. The object lent by A, if it is placed among the collections kept by B, will enjoy precisely the same safeguards and run exactly the same risks, neither greater nor less, as these collections.

This solution of waiving the liability of the depositary is not purely theoretical. It is applied in fact, if not in law, whenever a major institution leaves an object with a lesser institution; that is to say, in the worst instance, where there are decidedly increased risks. As has already been pointed out, the guarantee which the party transferring the object reserves the right to exercise (the right to inspect the objects on loan and the right to retrieve them if it is found they are being looked after badly) is very theoretical,

and, what is more, can no longer operate if an object on loan is unexpectedly destroyed or disappears. In practice the additional risks deriving from the fact that an object left with a lesser museum will be more exposed are offset by a decision to transfer only mediocre items. The formula proposed is that items of quality should only be transferred to the custody of an institution which is as well equipped as the one it is leaving. To our mind this is a more logical and in practice a fairer solution.

The principle of waiving the liabilities of the borrower can, purely in terms of legal logic, be applied equally well both to short term and long term loans. But it is only in the latter case that it is of real importance, for the following reason. It is advocated that insurance should continue to be insisted on to cover items in transit both ways (including on both occasions packing, actual transit, and unpacking). Now, with a short term loan, there is very little difference in the total cost of insurance whether an object is merely insured against transit risks both ways or whether there is additional cover for risks undergone by the object during the short time it is in the custody of the borrower. In these circumstances it would seem worth while retaining the traditional method of nail to nail insurance, which has the advantage of being wellknown to everybody, and makes for reassurance. With long term loans, on the other hand, it is essential for insurance to be waived for the period when an object is held in custody, or, to put it more accurately, long term loans cannot take place at all unless insurance is waived. All the same, this is not done at present as much as might be wished. The progress that needs to be made in this direction is largely in the realm of psychology: keepers of important institutions must be brought to recognise that a museum piece, even a major piece, entrusted to the keeping of an institution of similar standing runs no greater risks than it would have done had it remained where it was, and that there is accordingly no valid reason either to have it insured during its stay nor to refuse to lend it solely because it would not be insured.



As for the legal form to be adopted for a long term loan with no insurance cover for the object while on loan, this amounts to the usual type of exemption clause in reference to liability of the sort found in the other types of agreement suggested later on. But to make the position clearer we also make a suggestion for a model agreement to cover this type of loan (see below, "Possible Forms of Agreement, 2").

2. Another possible arrangement, still with the same kind of formula, is for each party's loan exhibit to act as security for the other. Thus, A entrusts object X to B, while B entrusts object Y to A. If X is destroyed or disappears while in the custody of B, A would automatically become the owner of object Y. When one examines it closely, this formula is just as fair as the last one. For, provided that the exchange is a balanced one, it imposes on both parties the same risks and the same responsibilities. It can indeed be considered as being more ethical and more effective, since each party is ultimately answerable with his own property for the loss of the property entrusted to it. Against this, it has the serious disadvantage of putting at issue the inalienability rule, since in the event of the disappearance of object X, B would have to transfer ownership of object Y to A. It is also likely that its implementation would lead to bitterness: institution B, however imperfectly it may have fulfilled its duty to safeguard object X, might be reluctant to admit, in the event of an accident to it, that it should automatically renounce its ownership of object Y. We felt that we should mention this possible solution, though we do not feel impelled to recommend it. Moreover, there is no actual example of its having been used.

Sub-section II : Exchanges relating to  
a single object (or objects forming a single whole)

This is of course a surprising expression, since at first sight it is not clear how an object can be exchanged with itself, nor what possible advantage there could be from such a transaction. But with the addition of the time factor it is a different matter: it is then a question of an exchange between two alternating custodians of the same object, with A having the use of object X for a certain number of years and B subsequently having the use of it for the same number of years. From the start, then, exchanges "of use" only are involved and the problem of ownership of the items concerned the exchange is not at issue. In concrete terms, this formula seems to us to be particularly applicable to two circumstances: the first is the reassembly of items that have been dismembered, the second competition between cultural institutions to acquire the same object.

1. Reassembly of dismembered items

The reassembly of dismembered items is an immense and long-standing problem to which as yet no really satisfactory answer has been discovered. Everyone agrees that it is heartbreaking to find a polyptique shared by several different institutions, or pieces of a statue displayed in different locations, or the contents of a tomb split up. Efforts are made from time to time to remedy the situation, and on occasions advantage has been taken of a favourable set of circumstances to secure the reassembly of an item, which is then announced as a memorable event, and rightly so, indeed, since such successful acts of reassembly remain very infrequent. Why is there so little success, when all are agreed in deploring dismemberment as something outrageous and stupid? Because, at least as we see it, efforts have always been directed at finding the solution by regrouping the rights of ownership vested in the separate pieces rather than discussing the use of these pieces. Object X being shared between A and B, one or the other is asked to give up the part in its possession so that the other can have the complete object. A direct attack is made, in other words, on the inalienability rule,

or, to put it more simply, on the possessive instinct all collectors have, even when they are acting on behalf of the community as keepers of national collections. It is not surprising, then, that success in this respect should have been such an exceptional occurrence. If, however, the item is exchanged alternately between the parties in the matter at regular intervals the problem is solved without making an issue of its ownership. A, let us say, has got half  $X^1$  of object X and B has got the  $X^2$  half: rather than ask one or the other to give up its part, which is not easy psychologically and sometimes legally next to impossible (though it will be recalled that, in our view, absolute inalienability does not exist in any case), it is far simpler and more effective to ask A to lend its part  $X^1$  for a certain period to B, during which B can exhibit the whole object, while for the succeeding period B will lend A its part  $X^2$  so that it too can have use of the whole.

This amounts to a genuine exchange of use, that is to say, an alternating exchange of loans with the loans taking place at regular intervals. It raises, of course, the usual problems associated with an exchange, namely security against risks in transit, which we have already said we believe should be covered by insurance, and security against risks during the time when the whole object is in the possession of one of its dual owners when, it seems to us, insurance can be dispensed with where institutions of similar standing are concerned.

This formula, we believe, has been employed very seldom, because it was only conceived comparatively recently. A few cases are known, however, and we give in the appendices the text of a formal agreement which was concluded a few years ago between two cultural institutions of the first importance: the agreement is now being put into practice to the complete satisfaction of both parties (see below "Possible Forms of Agreement 3").

Considering the number and variety of transfers and sharing of works in Europe of the Nine, we feel absolutely convinced that a survey, even a brief one, of the instances of dismemberment which would be remedied through agreements of this kind (which need not be between two parties only but between a number of parties) would be extremely fruitful. The European Rooms project could be an excellent opportunity to bring about such reassemblies

based on alternating periods of use. Conversely, it would be a magnificent opportunity to demonstrate the importance of the European Rooms project if it could help towards the reassembling of dismembered items (1). (See below, "Possible forms of Agreement, 4").

2. Competition between cultural institutions to acquire the same object

It often happens that several cultural institutions covet the same object and, also very frequently, for equally valid motives; for instance, the object may have been created in country A but have been for a long time part of the collections of country B, while a cultural institution in country C may have specialised in studies of objects of the same type and acquired a worldwide reputation in this field. These rival interests are in the normal run only resolved through the auction room, with the object going to the institution that pays the highest price (2).

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- 1) The UNESCO recommendation of 26 November 1976 on the international exchange of cultural property expressly mentions this possibility of making use of exchanges at point III - 4 (page 12 in the French version). UNESCO acts on behalf of the whole of the international community, but the possibilities for reassembly of dismembered objects are undoubtedly more numerous and ought to be easier to implement within the smaller and more coherent circle of the European Community.
  - 2) This rivalry is plainly attenuated by traditions of courtesy, which are on the whole respected and, in some instances, by legal provisions. On the first point, it is customary for foreign institutions not to try to outbid a national institution if an object is up for sale which has manifest associations with the arts or history of the country concerned. On the second point, some countries have controls over the export of cultural property which limits competition. But not every country has such controls, and where they do exist, as in Italy and France and, to a lesser extent, in Great Britain, they are a blunt instrument which cannot be used too often if trade in art objects is not to be stifled completely.

Without wanting to distort the rules of the game applying to this free market (which are already distorted enough as it is by other questionable practices referred to in other studies), one can regret this over-sharp competition on the part of pecuniarily disinterested institutions, many of which do not have extensive funds. It would seem desirable for agreements to be reached between potential buyers with a clear legitimate interest. Sharing is once again the answer here, though this time in a more complex form, i.e. shared ownership followed by shared use.

Each of these two propositions must be further subdivided: one relating to a single object, the other to a set of objects. Paradoxically, the second is the easier of the two to apply.

With the first proposition, the only way of avoiding a conflict of ownership rights is to establish joint ownership, co-ownership. The object in this case, instead of being bought by A or B, is acquired by A and B jointly, which subsequently share its use for alternating lengths of time. This formula may appear to be surprising to the extent of being unacceptable. But a case is known of its being applied, which goes back several years, without any serious difficulty. It will certainly not be accepted readily, especially in countries practising the principles of Roman law under which public property is often the subject of special legal prerogatives which exclude co-ownership in principle, and in particular as applying to partners of different nationality. But we wanted to mention this particular formula, since there would seem to be no reason why it cannot be developed and applied provided due caution is employed.

The second proposition, of which admittedly no concrete example is known, concerns not one object but a set of objects for which several institutions are competing. This, as has been said, is easier to resolve because it is unnecessary to have recourse to the

unusual formula of co-ownership. Of a set comprising . . . items, for example, five might well be acquired by institution A and the other five by institution B, following which the two owners could agree to make alternate loans of their respective items, so that the full set of ten items could be exhibited first by A and later by B on the lines of the formula presented above for reassembly of dismembered pieces.

Here again we firmly believe that agreements of this sort are not only conceivable but also easy to implement, especially between European cultural institutions. The historical links between the countries of Europe are so close that there must be many objects/<sup>to</sup> which different countries can justifiably lay claim on various grounds. A regular system of joint purchase by two or three different European institutions of objects of this sort would have the double merit of avoiding the kind of competitive bidding that is disastrous for everybody and, no less important in our view, of creating among these cultural institutions the concept of a genuine European heritage of which for the time being the different national institutions would be the joint custodians before the establishment, one of these days, of European institutions proper. To take a concrete example, Napoleon's dinner service at Saint Helena (and here we should point out that it is not for sale) is of legitimate interest to both Great Britain and France. If a similar service or some different set of objects illustrating the ties or historical links between two or more countries of Europe were to become available, it is our belief that the proposed formula of simultaneous purchase by more than one institution, accompanied by an agreement on mutual loans at alternating successive periods, would without doubt, with the position in regard to national rights and national psychologies being what it is at present, be the best way of turning such objects into what they really are: European objects. Here too, if the setting up of a European Room or Rooms could be accompanied by transactions

of this sort, we feel that from this fact alone the project would have shown its usefulness and demonstrated that it had a future.

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## SECTION II - AIDS TO PROCEDURE

We should explain, to avoid any possible ambiguity, that we use the word procedure in its original and broader meaning of "means of proceeding", and not in the more restricted legal meaning in which it is more often used today.

This last section of the study is essential because of the importance attached by the various publications emanating from ICOM or UNESCO to the different ways by which these organisations believe exchanges can be developed. Finally, a few words must be said in conclusion about what the Commission of the European Communities can do in the same direction.

It has already been indicated earlier on that the International Council of Museums, ICOM, has undertaken studies at different times on the question of exchanges. Its work in this connection is continuing at the present time in the form of a MUSEP project (museum exchanges project) which is aimed at proving the case in action, that is to say, by promoting a number of concrete exchanges. This is an experiment which certainly merits approval, and which should

be followed and studied. But it is in the development stage at the present time, and it would be premature to claim that there are any lessons to be drawn from it as yet. There are on the other hand some earlier studies available carried out by ICOM, such as ICOM document 64/3 of 23 December, 1963 or the Goy-de Varine Bohan report prepared by UNESCO in 1964 which, although ICOM is not specifically committed, certainly reflects its way of thinking at the time, since the second of the signatories was then the director of ICOM. For UNESCO one can mention the work of a special expert committee which met in Paris in March 1976 and, above all, the recommendation adopted at the general assembly on 26 November, 1976. There can be no question of recapitulating all these documents in full, which have already been referred to in passing in the appropriate context. But we should say something at this point about the importance they attach to certain procedures, that is to say, to certain ways of implementing an exchange policy.

ICOM, for its part, essentially attaches very great importance to the idea of equality in exchanges and, as regards procedure, to the part to be played by the experts, acting either in their own or in a group, in encouraging exchanges and organising them, and in taking care to see that certain deontological principles are observed, such as in particular the concept of equality between the parties to an exchange (1). All these propositions deserve to be thought about. But they are, naturally enough, conceived for a setting that is very different from the European scene, that of a global international

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1) Although it cannot be given in its entirety, a few pages from the Goy-de Varine Bohan report of 1974 are reproduced at Appendix 2, which bring out these concerns very clearly. They are reflected in some of the provisions in the UNESCO recommendation of 1976.



community in which there are very big differences between states both as regards their needs and their means. It is indeed understandable that, in such a wide setting and with such a heterogeneous ambience, external intervention appeared to be necessary in order to promote exchanges between countries which do not always have the same cultural concepts or the same technical facilities. We do not feel that the same conditions are to be found in Europe of the Nine or that the same remedies are applicable.

UNESCO itself, in its 1976 recommendation, is more cautious and less doctrinaire. It endeavours above all to clarify the problem through a clearer establishment of the relevant data, and recommends that more information should be made available through the wide-scale circulation of data, via ICOM and with the assistance of interested governments, on the conditions in which existing agreements have been concluded and implemented. As regards the organisational side, UNESCO has recommended in particular the establishment in each country, or by cultural institutions that are not further designated, of a record system for keeping track of the supply and demand position with respect to cultural property available for international exchange, and has indicated the basic information which these systems should contain (see Recommendation 1976, 11.2 at Appendix 1). This proposition calls for one or two comments.

The idea of largely centralised records could resolve one difficulty which is undoubtedly an obstacle in the way of exchanges, namely the difficulty of arranging an exchange purely by means of bilateral agreements. Many cultural institutions are of a specialised nature, particularly in countries with a long history of development. Institution A say, has type X objects which it is willing to make available and will be anxious to obtain objects of type Y. Institution B, which it approaches, is very interested in receiving objects of type X, but unfortunately has no objects it can offer by way of trading currency except type Z objects, in which A is not interested. No exchange would be possible in this event unless,

for example, there happened to be an institution C which was very keen to obtain an object of type A but had almost no type Y objects. A situation of this kind would open the way to a triangular exchange.

The facts of the case can be represented symbolically as follows:

- institution A has a surplus of X type objects and would like to obtain Z type objects
- institution B has a surplus of Y type objects and would like to obtain X type objects
- institution C has a surplus of Z type objects and would like to obtain Y type objects.

Simple bilateral agreements between A and B, B and C and C and A would be of no avail, as in each case one of the parties to a bilateral agreement does not possess the kind of object in which the other party is interested. With a triangular agreement, on the other hand, the problem can be solved as shown in the following formula:

- A hands over type X objects and receives A objects from C
- B hands over Y objects and receives X objects from A
- C hands over Z objects and receives Y objects from B.

And, clearly, what is easier with three instead of two is easier still with four instead of three. Hence, on the whole, the idea of a file or files for keeping complete records of what objects are being offered by different colleagues, which every institution could consult to see if there are any offers to suit its own requirements.

Propositions of this nature, however worthy of interest they may be in theory, surely take too little account of psychological considerations, which are indeed a major factor, at least in the old continent of Europe. Cultural institutions, museums, libraries and archives, are for the most part institutions of long standing. Their directors are not all of the same level, for there are big and small institutions, the last being less endowed than the first in resources of all kinds, including technical staff. But all these directors have one thing in common: they have the same conception of culture and cultural property. They also belong to professional associations which are very active; they know that if they are in any doubt about the nature or value of a particular object they can always turn to such and such a colleague, unofficially and in person,

who has greater specialist knowledge. Finally, they all have in common a profound attachment to their collections, which they tend to treat (and to say this is meant as a compliment) as if they were their own. This means that they would not be very appreciative if one ventured to recommend to them too insistently experts or academics or arbiters from UNESCO or ICOM entrusted with the task of steering their actions. By the same token, if they were to be asked to indicate in advance, without any promise of a specific quid pro quo, the objects in their collections which they would be prepared to renounce, the changes are that they would only indicate, at best, very second-rate pieces, while keeping to themselves any possibilities of more worthwhile exchanges which they could try to exploit in more specific negotiations with a colleague or colleagues whom they knew well, and with whom they could discuss the matter discreetly.

Can one believe at the same time that in this little Europe of ours, which is comparatively homogenous, the European institutions, and in particular the Commission of the European Communities, could in fact play the part which it is not felt can be played effectively by UNESCO or ICOM? Indeed no: for this would be to overlook the touchiness which is such a prevalent feature among the keepers of national collections. We can cite a concrete example of this: we have said that a questionnaire, preceded by a few short explanatory notes on the subject of the European Rooms, was sent to a fair number of museums in the countries of Europe of the Nine. The distribution list was decided by the president of ICOM, and the author of the questionnaire and of this report is himself on good terms and in some cases on terms of friendship with many of the addressees. Yet 50% of the questionnaires remained unanswered and, what is more, some of the replies showed very clearly that the respondents were astonished or disquieted to find that the Commission of the European Communities was interesting itself in the museum world. One can laugh at this, or feel indignant about it. One cannot ignore it.

These psychological considerations are compounded by technical considerations. The modern world is a world of progress and the computer. Any proper file consists of thousands and thousands of records, which are transposed into punched cards before being stored on magnetic tape

This is beyond the present potential for exchanges of cultural property, and it is never a good thing to take, like the bear in the fable, a paving stone to kill a mouse. The wise thing to do, then, for European organisations is to help museums but to remain outside, and to make it clear that they do not intend to interfere in the way they operate.

It would be a good thing for the European Community to help in the circulation of all the documentation that can contribute to a proper understanding of what the European Rooms might be, set up in museums by museum people themselves. It would be particularly useful if it could assist in the concrete implementation of some of the measures suggested in the previous section (it could help, for example, by making a financial contribution to the joint purchase by two or three European museums of works of art with a European interest). Anything it can do in the way of information and the distribution of documentation will be welcome. On the other hand it would certainly be dangerously unwise to attempt to intervene too directly in the working of establishments whose traditional caution and reserve are features of the European cultural heritage.

POSSIBLE FORMS OF AGREEMENT

Most directing staff of cultural institutions, who are of course ultimately responsible for the development of a policy on cultural exchanges, know little about legal matters. We therefore felt it might be of help to them to provide a few sample formulas applying to the different kinds of exchanges that have been examined or suggested in the foregoing pages. We have been careful in composing them to make them as clear and simple as the subject permits, but our main concern has been to take account of the understandable concern on the part of directing staff to exercise caution. The suggested formulas do not for the most part amount to anything very new; the first, concerning loans for temporary exhibitions, is already very widely used in practice; the others are used very much less, and indeed in one case there is only one known example of their having been adopted, though this was to the satisfaction of both parties. It must be understood that they do not claim to be anything more than an outline formula in which the parties to a specific exchange can insert whatever special provisions they consider necessary.

To make these formulas easier to make use of a separate section has been reserved for each one. Each of these sections contains some explanatory notes, in square borders, which it was thought might be of assistance, with a margin of inverted commas against the text of the proposed formulas themselves.

SECTION I - SHORT TERM LOANS

This is by far and away the formula that is most commonly used, as it is instrumental for the organisation of the countless temporary exhibitions which are virtually the only way, at present, in which there is any practical implementation of an international policy regarding the exchange of cultural property.

It may appear surprising that there is no international codification of this kind of formula, if it is in such wide use. But in fact both the "Manual of temporary and travelling exhibitions" published by UNESCO in 1965 and "Guidelines for drawing up a loan agreement", published in "ICOM News" (1974, Vol.27 no.3), limit themselves to the technical aspects without paying any attention to the formulation of contractual agreements. One might be tempted to explain this apparent omission by attributing it to the small bent, which has already been pointed out, of keepers of cultural objects for legal matters; it would be truer to say, though, that the omission is more apparent than real, since, in the absence of any international codified formulas, a veritable system of international usage has grown up in this connection from the practice adopted by virtually all lending and borrowing institutions (each of them being sometimes in one role and sometimes in the other).

An essential part of this practice is the holding of preliminary discussions, generally informal, between the would-be borrower institution and potential lending institutions whose assistance is being sought; the potential lenders will find out all the essential information concerning the proposed loan: the kind of loan, the location and duration of the exhibition, the nature of the objects it is desired to borrow and it is agreed can be lent, and so on. It is not until agreement has been reached on all these points that a start is made on drawing up the agreement. This does not take the form of a proper contract, even though it is one, but of a seemingly unilateral document; the "loan sheet", which the borrower presents to the lender to be returned completed and signed. It nevertheless does constitute a bilateral agreement which fixes the obligations and responsibilities of both parties. The exact wording of "loan sheets" varies according to the institution concerned, but they always include, in a more or less complete and detailed form, the same essential indications.

As soon as the borrower has received back the "loan sheet", duly completed and signed, from the lender the loan can be proceeded with, in the terms specified in the agreement between the parties. Special importance must be given in this connection to the question of insurance for the objects to be loaned. The party stipulated as responsible for the insurance, normally the borrower, must present a certificate to the lender, before any objects are dispatched, from the insurance company certifying the object or objects requested have been effectively insured on the terms provided for in the loan sheet.

There appears to be no reason to abolish a practice which is so widespread, and which has proved its effectiveness in practice. We shall restrict ourselves, then, to presenting a sample loan sheet based on those used by the major cultural institutions.

LOAN SHEET

- " 1. Names of parties. The loan sheet is sent to the lenders by the borrower.  
 " It is therefore a printed form with a letter-head carrying the  
 " name, and address of the borrower and the usual additional information  
 " (telephone number, telegraphic address, etc.).
- "                   The names and addresses of the lenders, for which a blank  
 " space is left on the form, are filled in by each lender who has been  
 " approached.
- " 2. Nature, location, opening and closing dates of the planned exhibition  
 " (to be filled in by the borrower) (1)
- " 3. Detailed list of loan objects
- " 4. Insurance arrangements for loan objects
- " a) Sum assured, for each object
- " b) Nature of risks covered
- "     - usual risks (all risks) insurance
- "     - exceptional risks not covered by normal insurance, such as
- "       war, civil war, natural disasters, etc.
- " c) - nature of damage covered
- "     - in the event of total loss : replacement value
- "     - in the event of partial loss: cost of restoration,
- "       indemnity for depreciation of work after restoration
- " d) Financial liability for insurance (this is normally incumbent  
 " on the borrower, but costs may be shared, especially if borrower  
 " and lender are committed to a policy of alternating exchanges)

---

1) In regard to any other points, it is for the lender to stipulate the conditions for the loan he has been requested to make.

" 5. Provisions for transport of objects, in both directions

- " a) Method of transport; air, sea, rail, road
- " b) Name of carrier
- " c) Special conditions for packing and unpacking
- " d) Escort, if any, for objects in transit
- " e) Assumption of costs

" 6. Provisions for use of objects during term of loan

- " a) Special conditions as to display, particularly as regards security, lighting, hygrometry.
- " b) Whether or not photography permitted.

The loan sheet, having been drawn up in this manner, is sent in a minimum of two copies by the borrower to the lender. The latter, having completed the sheet and signed it, returns it to the borrower, keeping a copy for himself.



SECTION II - LONG TERM LOANS (OR TRANSFERS OF CUSTODY)

As indicated in the report, there is no clear distinction between short, medium or long term loans. In practice, therefore, the real distinction does not lie in the duration of the loan, which could involve the use of endless gradations, but in a difference in the form and substance of the actual agreement.

Form of agreement : a long term loan does not usually lend itself to the drawing up of an ordinary loan sheet but to the conclusion of a proper contract or the production by the lender of a document, prepared and drawn up by himself, in which he fixes the conditions of the loan, with the beneficiary merely accepting the conditions laid down before the loan is implemented.

Substance of agreement : the essential difference lies, if it exists, in the waiving of insurance for the loan objects, at any rate for the period they remain with the borrower (i.e. with the exception of insurance against transport risks in both directions). As a counterpart to waiving of insurance the lender normally reserves the right to inspect and control the manner in which the objects are being used, the sanction supporting this control being the threat to remove the loan objects before the agreed term should it be found that they are being improperly used or kept under unsatisfactory conditions.

The draft agreement given below should be interpreted in the light of these preliminary remarks.

AGREEMENT

- " 1. Particulars of the parties, names, addresses, etc.
- " - of the lender
- " - of the borrower
- " 2. Place where the objects will be displayed during the period of the loan and definition of loan term
- " - together with, where applicable, details of arrangements for
- " renewal of the loan on the expiration of the agreed term (e.g.
- " by tacit renewal for a further period of ..... failing
- " termination of the loan by either party within at least x months
- " before the expiration of the term initially agreed)

" 3. Detailed list of loan objects

" 4. Insurance arrangements for loan objects

There are two possibilities here:

1. Objects on long term loan can be insured on the same terms as those on short term loan. In this event there will be no real difference between the two loans, and all that needs to be done here is to repeat the arrangements for the insurance of loan objects provided for under clause 4 of the loan sheet on page 83 above.
2. Insurance of the objects is waived for the actual period of the loan, and in place of insurance an obligation of vigilance and care is imposed on the borrower. It is nevertheless still expedient to insure the objects during the two periods of transit, outward and inward, during which risks are particularly high.

The suggested text given below relates to this second proposition.

" A. Insurance during transit, both ways

" a) Sum assured, for each object

" b) Nature of risks covered

" - usual risks (all risks) insurance

" - exceptional risks not covered by normal insurance, such as war, civil war, natural disasters, etc.

" c) Nature of damage covered

- in the event of total loss : replacement value

- in the event of partial loss : costs of restoration, indemnity for depreciation of objects after restoration

" d) Financial liability for insurance (this is normally incumbent

" on the borrower, but costs may be shared, especially if

" borrower and lender are committed to a policy of alternating

" exchanges)

The only point that might cause difficulty is determination of the duration of the period of transport in relation to the total duration of the loan. It therefore needs to be stipulated precisely, both for outward and inward carriage, when the period of transport commences and terminates.

" B. Guarantee for period when objects are with the borrower

" The borrower undertakes to exercise due care  
" in the conservation of the loan objects in accordance with  
" the rules of professional practice. In return for this under-  
" taking, and for those stipulated in the following paragraphs,  
" the lender waives insurance of the loan objects (with the  
" exception of the periods of transport provided for above).

" In the event of loss or damage incurred during the period  
" of the loan the objects shall be restored at the cost of the  
" borrower, in a manner to be stipulated by the lender and  
" under the supervision of the lender. The borrower under-  
" takes to notify the lender without delay of any established  
" loss or damage and not to embark on any restoration work  
" without the lender's express prior consent.

" In the event of total loss, no indemnity for damages shall  
" be payable to the lender by the borrower (save if the loss  
" occurs during transit). The borrower undertakes to notify  
" the lender without delay of any accident or event giving  
" rise to such total loss.

" 5. Provisions for transport of objects, both ways

As a general rule, the provisions are the same as those for short term loans.

It must however be remembered that some time may elapse between dispatch and return (several years or, in some instances, several decades). It would appear sensible, therefore, initially to fix provisions for outward carriage only (from lender to borrower) and to draw up fresh provisions for return carriage. In this case the agreement will be worded as follows:

- " A. Carriage of the objects from the lender to the borrower shall
- " be effected under the following conditions
- " a) Method of transport : air, sea, rail, road
- " b) Name of carrier
- " c) Special conditions for packing and unpacking
- " d) Escort, if any, for objects in transit
- " e) Assumption of costs
  
- " B. The conditions of carriage of the objects on the expiration of
- " the loan will be the subject of a separate agreement, to be
- " concluded at least one month prior to the expiration date.
- " Should no such agreement be concluded, the provisions regarding
- " outward dispatch shall apply to return carriage.
  
- " 6. Provisions regarding use of objects

In the first analysis, a long term loan is motivated by a wish on the part of the lender to add to the borrower's resources as a source of cultural activities. It accordingly appears reasonable for the borrower to be left with a wide measure of freedom of action as to the manner in which he uses the loan objects. On the other hand, it is equitable that the service being provided by the lender to the borrower should be given due recognition and, moreover, it can in fairness be maintained that the waiving of insurance justifies the means of control accorded the lender over the use to which the loan objects are put (even though these are not believed to be effective). These considerations justify the suggested wording of clause 6 of the agreement as given below.

" The borrower, during the whole duration of the loan, shall treat  
" the loan objects as if they were his own property, subject to the  
" following conditions:

" a) The origin of the objects shall be mentioned on any labels or  
" in any catalogues or in any captions to photographs prepared by the  
" borrower or authorised by him in the form "Loaned by .....".

" b) Loans to third parties shall not be made save with the joint  
" agreement of borrower and lender. The loan sheet drawn up by the  
" borrower (in the sense of this agreement) shall be submitted  
" for prior inspection by the lender.

" c) The lender may, at reasonable intervals, demand to verify the  
" state of conservation of the loan objects. Should it be found  
" that the state of conservation is unsatisfactory, or that any  
" of the undertakings set out at subparagraphs a) and b) above  
" have not been fulfilled, the lender may draw the attention of the  
" borrower to such defects and demand their rectification.  
" Should the defects that have been observed not have been rectified  
" within a period of three months, the lender may revoke the loan  
" before the agreed date of termination.

X

X X

SECTION III - MUTUAL LOANS FOR SUCCESSIVE, ALTERNATING PERIODS OF  
THE SAME OBJECT OR OF OBJECTS FORMING A SINGLE WHOLE  
IN THE POSSESSION OF DIFFERENT OWNERS

(Loans as a means of reassembling dismembered objects  
or separated parts of a single whole)

The example given is based on an agreement concluded a few years ago between two important cultural institutions in different countries. The text refers to an object (in this case a statue) of which both parties to the agreement owned a part. But the same form of agreement can be used in the case not of a single object but of a number of objects, for example the different parts of a polyptique, or a set of tapestries. The essential point of this formula is that it does not raise the issue of the rights of ownership of the different parties to the agreement, since it is concerned only with the joint use of the various parts. It accordingly enables dismembered objects or separated groups of objects to be reassembled in fact without bringing up the awkward problems pertaining to a reassembly in law.

AGREEMENT

" An agreement has been concluded between institution A..... and  
" institution B....., as follows:

" Clause 1 - Subject-matter of the agreement

" Institution A and institution B have agreed to effect the  
" reassembly of the statue details of which are given below, the head  
" of which is owned by A and the torso by B. The purpose of this  
" agreement is to define the conditions agreed between the parties  
" on the subject of this work of art.

" Clause 2 - Restoration

" The work of joining together the two fragments of the statue will  
" be paid for jointly by the two parties. It must be approved by the  
" two keepers concerned, who will have full authority in this regard.  
" The restoration will be carried out in such a manner that the two  
" fragments can be disjoined again if necessary without causing  
" any damage to either one of them.

" Clause 3 - Ownership

" Each party retains full rights of ownership in the fragment  
"

" Clause 4 - custody of and liability for the object

" The object will be kept by each of the parties for successive  
 " and alternating periods of three years. The first such period will  
 " commence on the date of completion of restoration and the entrance  
 " into force of the agreement. Each party will observe all due care  
 " and precautions in regard to the safety and conservation of the  
 " object in accordance with the usual professional rules of practice.

" Accordingly neither of the parties to the agreement will be  
 " called on to insure the fragment of the statue in the ownership of  
 " the other party while it is in its possession, save in connection  
 " with the provisions in the next clause regarding period of transit (1).

" In the event of loss or damage to the fragment loaned by the  
 " other party, from whatever cause, it will be repaired at the cost of  
 " the party keeping the fragment at the time the loss or damage occurs.  
 " The conditions of repair will be agreed in writing between the parties  
 " before any repair work is undertaken.

" Clause 5 - Transport

" At the end of each period, the party keeping the statue will  
 " place it at the disposal of the other party, which will be  
 " responsible for bearing the costs:

- " - of insuring the object against all risks in transit
- " - of packing and carriage, the object to be in the charge of  
 an escort throughout.

" In the event of loss or damage incurred in transit, the sum  
 " received by way of indemnity from the insurance will be paid to both  
 " parties on a pro rata basis. The valuation of each fragment will be  
 " fixed by the respective owner in writing before the departure of the  
 " object.

---

1) This paragraph does not appear in the agreement taken as an example. We feel it safe to say, however, that such a provision corresponded with the spirit of amicable cooperation between the two parties, and that its omission was due to imperfect drafting, a natural accompaniment of a first attempt at the formulation of a form of agreement not hitherto used.

" Clause 6 - Display

" While the object is on display in institution A, the label will  
 " state that it is "on loan from institution B".... While the object  
 " is on display in institution B, the label will state that it is  
 " "on loan from institution A....."

" Clause 7 - Reproduction

" Either party may, during the period when it is in charge of the  
 " object, publish and sell studies and reproductions of the object as  
 " if it were the owner of the whole object. The party in charge of  
 " the object will keep the other party informed of all agreements and  
 " authorizations that may be conceded. Agreements and authorizations  
 " conceded by one of the parties are only valid for the period during  
 " which it is in possession of the object.

" Clause 8 - Loans to third parties

" Loans to third parties must be agreed to in writing by both  
 " parties. The decision in each case as to whether or not the term  
 " of such a loan is to be imputed to one of the three year periods  
 " will also be the subject of express agreement in writing. The  
 " The object will be insured by the third party against all risks,  
 " including loss of value (resulting from any damage it may undergo).  
 " It will be the responsibility of the party having the object in his  
 " charge at the time to verify that the third party has taken out  
 " insurance. Any compensation for damages received from a third party  
 " will be divided between the owners of the two fragments in  
 " proportion to their respective values.

" In the event of a claim for damages, the costs of proceedings  
 " against the borrower will be shared equally by the parties. However,  
 " failing any compensation from the insurance with respect to such  
 " loans, neither party will be liable for indemnifying any risks, loss  
 " or damage undergone by the object during the period of the loan.

X

X X



SECTION IV - LOANS IN RELATION TO JOINT PURCHASES

It will be recalled that this formula has been actually used on at least one occasion, and successfully, by two major cultural institutions which were also in different countries. There is no concealing, however, the legal and psychological hurdles which can arise from the use of this formula. On the other hand these disappear if the two parties, instead of purchasing a single object in common, each becomes the owner, at one and the same time, of two parts forming a single whole or jointly comprising a set.

This is the formula that is used with the form of agreement given below.

Reference is made, as appropriate, to the text of the agreement mentioned above, which of course related to a single object only.

AGREEMENT

" An agreement between institution A and institution B has been  
" concluded as follows:

" Clause 1 - Subject-matter of the agreement

" Institutions A and B are agreed to purchase at the same time the  
" items forming the group (or set) of objects on sale at .....  
" at the price of ..... .

" The purpose of this agreement is to stipulate the conditions of  
" the said purchase and the conditions under which the group acquired by  
" the two parties is to be subsequently displayed in its entirety  
" by one and the other party.(1)

" Clause 2 - Institution A is entrusted by institution B with the  
" task of negotiating and completing the purchase of the group. Once  
" the purchase has been completed, and before any registration is  
" effected, the group will be divided into two parts: the first will  
" remain the property of institution A and the other will become the  
" property of institution B which will remit to institution A half  
" of the purchase price and of the incidental costs incurred by  
" institution A in connection with the purchase of the group (1).

---

1) If a single object is concerned, clause 1 of the agreement provides for its acquisition under joint ownership.

" Each party, being the owner of a half of the group, undertakes not to  
 " assign it save to the other party and at the original purchase  
 " price (in order to take account of general depreciation in the  
 " value of money an indexation clause can be inserted at this point,  
 " provided it is completely clear and specific).

" Clause 3 - Custody of the group and liabilities

" The group will be kept by each party for successive, alternating  
 " periods of five years each. Institution A will keep it for the first  
 " of these periods. Each of the successive keepers of the group will  
 " undertake to treat the group, in all its aspects, with the due care  
 " and precaution required under the usual rules of professional  
 " practice. In return neither party will be called upon to insure  
 " the parts of the group entrusted to it by the other party, save  
 " in connection with the provisions in the next clause regarding  
 " periods of transit.

" In the event of loss or damage for whatsoever reason the keeper  
 " of the group at the time in question will arrange for the restoration  
 " of the parts entrusted to it by the other party under conditions  
 " to be mutually agreed.

" In the event of total loss of any of the parts entrusted to the  
 " keeper at the time by the other party there will be no liability for  
 " compensation.

" Clause 4 - Transport of the group

" On the termination of each five year period the last keeper  
 " will place the group in its entirety at the disposal of the other party  
 " which will be responsible for its transport and for bearing the costs  
 " thereof, consisting of, in particular:

" a) insurance of the group for all risks normally covered  
 " for the period of transit,

" b) cost of carriage and escort arrangements".

" In the event of loss or damage incurred in transit, the sum  
" received by way of indemnity from the insurance will be shared between  
" the parties in proportion to the damage suffered by each of the parts  
" of the group in the ownership of the parties (1).

" Clause 5 - Reproduction

" Either party may, at any time, publish and place on sale  
" scientific studies concerning the group. On the other hand commercial  
" publications containing in particular reproductions, postcards,  
" slides, photographs, etc., must be the subject of special agreement.

" Any publication produced by one of the parties to the agreement  
" of the group or a part making up the group must indicate that the  
" group is owned jointly by institutions A and B.

" Clause 6 - Loans to third parties

" Each of the parties undertakes not to loan without the consent  
" of the other party the part of group of which it is the owner, it being  
" understood that, subject to any special regulations mutually agreed,  
" the group will always be displayed in its entirety.

" Loans to third parties will be decided by mutual agreement, the  
" keeper of the group at the time being responsible for the whole of the  
" arrangements for the loan. In particular, the parties will jointly  
" decide the conditions of transport and insurance and as to during  
" which five year period the loan is to operate, or whether the loan  
" term is to cover both periods. In the event that no agreement is  
" reached on this point, the loan will be refused.

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1) With an agreement relating to a single object, provision is made for any  
indemnity to be shared equally between the co-owners.

United Nations Educational, Scientific and Cultural Organization  
Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura  
Organisation des Nations Unies pour l'éducation, la science et la culture  
Организация объединенных наций по вопросам образования, науки и культуры  
منظمة الامم المتحدة للتربية والعلم والثقافة

## Recommendation concerning the international exchange of cultural property

adopted by the General Conference at its nineteenth session  
Nairobi, 26 November 1976

## Recomendación sobre el intercambio internacional de bienes culturales

aprobada por la Conferencia General en su decimonovena reunión  
Nairobi, 26 de noviembre de 1976

## Recommandation concernant l'échange international de biens culturels

adoptée par la Conférence générale à sa dix-neuvième session  
Nairobi, 26 novembre 1976

## Рекомендация

## о международном обмене культурными ценностями

принятая Генеральной конференцией на девятнадцатой сессии,  
Найроби, 26 ноября 1976 г.

## توصية بشأن التبادل الدولي للممتلكات الثقافية

اقرها المؤتمر العام في دورته التاسعة عشرة

نيروبي ٢٦ نوفمبر/ تشرين الثاني ١٩٧٦



RECOMMENDATION CONCERNING THE INTERNATIONAL EXCHANGE  
OF CULTURAL PROPERTY

The General Conference of the United Nations Educational, Scientific and Cultural Organization, meeting in Nairobi from 26 October to 30 November 1976, at its nineteenth session,

Recalling that cultural property constitutes a basic element of civilization and national culture,

Considering that the extension and promotion of cultural exchanges directed towards a fuller mutual knowledge of achievements in various fields of culture, will contribute to the enrichment of the cultures involved, with due appreciation of the distinctive character of each and of the value of the cultures of other nations making up the cultural heritage of all mankind,

Considering that the circulation of cultural property, when regulated by legal, scientific and technical conditions calculated to prevent illicit trading in and damage to such property, is a powerful means of promoting mutual understanding and appreciation among nations,

Considering that the international circulation of cultural property is still largely dependent on the activities of self-seeking parties and so tends to lead to speculation which causes the price of such property to rise, making it inaccessible to poorer countries and institutions while at the same time encouraging the spread of illicit trading,

Considering that, even when the motives behind the international circulation of this property are disinterested, the action taken usually results in unilateral services, such as short-term loans, deposits under medium- or long-term arrangements; or donations,

Considering that such unilateral operations are still limited in number and restricted in range, both because of their cost and because of the variety of complexity of the relevant regulations and practices,

Considering that, while it is highly desirable to encourage such operations, by reducing or removing the obstacles to their extension, it is also vitally important to promote operations based on mutual confidence which would enable all institutions to deal with each other on an equal footing,

Considering that many cultural institutions, whatever their financial resources, possess several identical or similar specimens of cultural objects of indisputable quality and origin which are amply documented, and that some of these items, which are of only minor or secondary importance for these institutions because of their plurality, would be welcomed as valuable accessions by institutions in other countries,

Considering that a systematic policy of exchanges among cultural institutions, by which each would part with its surplus items in return for objects that it lacked, would not only be enriching to all parties but would also lead to a better use of the international community's cultural heritage which is the sum of all the national heritages,

Recalling that this policy of exchanges has already been recommended in various international agreements concluded as a result of Unesco's work,

Noting that, on these points, the effects of the above-mentioned instruments have remained limited, and that, generally speaking, the practice of exchanges between disinterested cultural institutions is not widespread, while such operations as do take place are frequently confidential or unpublicized,

Considering that it is consequently necessary to develop simultaneously not only the unilateral operations of loans, deposits or donations but also bi- or multilateral exchanges,

Having before it proposals concerning the international exchange of cultural property which appears on the agenda of the session as item 26,

Having decided, at its eighteenth session, that this question should take the form of a Recommendation to Member States,

Adopts, this twenty-sixth day of November 1976, the present Recommendation.

The General Conference recommends that Member States should apply the following provisions by taking whatever legislative or other steps may be required in conformity with the constitutional system or practice of each State, to give effect within their respective territories to the principles formulated in this Recommendation.

The General Conference recommends that Member States should bring this Recommendation to the attention of the appropriate authorities and bodies.

The General Conference recommends that Member States should submit to it, by dates and in the form to be decided upon by the Conference, reports concerning the action taken by them in pursuance of this Recommendation.

## I. DEFINITIONS

### 1. For the purposes of this Recommendation:

"cultural institution" shall be taken to mean any permanent establishment administered in the general interest for the purpose of preserving, studying and enhancing cultural property and making it accessible to the public and which is licensed or approved by the competent public authorities of each State;

"cultural property" shall be taken to mean items which are the expression and testimony of human creation and of the evolution of nature which, in the opinion of the competent bodies in individual States, are, or may be, of historical, artistic, scientific or technical value and interest, including items in the following categories:

- (a) zoological, botanical and geological specimens;
- (b) archaeological objects;
- (c) objects and documentation of ethnological interest;
- (d) works of fine art and of the applied arts;
- (e) literary, musical, photographic and cinematographic works;
- (f) archives and documents;

"international exchange" shall be taken to mean any transfer of ownership, use or custody of cultural property between States or cultural institutions in different countries - whether it takes the form of the loan, deposit, sale or donation of such property - carried out under such conditions as may be agreed between the parties concerned.

## II. MEASURES RECOMMENDED

2. Bearing in mind that all cultural property forms part of the common cultural heritage of mankind and that every State has a responsibility in this respect, not only towards its own nationals but also towards the international community as a whole, Member States should adopt within the sphere of their competence, the following measures to develop the circulation of cultural property among cultural institutions in different countries in co-operation with regional and local authorities as may be required.

3. Member States, in accordance with the legislation and the constitutional system or practice and the particular circumstances of their respective countries, should adapt existing statutes or regulations or adopt new legislation or regulations regarding inheritance, taxation and customs duties and take all other necessary measures in order to make it possible or easier to carry out the following operations solely for the purposes of international exchanges of cultural property between cultural institutions:

- (a) definitive or temporary import or export as well as transit of cultural property;
- (b) transfer of ownership or derestriction of cultural property belonging to a public body or a cultural institution.

4. Member States should foster, if they deem it advisable, the establishment either under their direct authority or through cultural institutions of files of requests for and offers of exchanges of cultural property made available for international exchange.
5. Offers of exchange should be entered in the files only when it has been established that the legal status of the items concerned conforms to national law and that the offering institution has legal title for this purpose.
6. Offers of exchanges should include full scientific, technical and, if requested, legal documentation calculated to ensure the most favourable conditions for the cultural utilization, the conservation and where appropriate, the restoration of the items in question.
7. Exchange agreements should include an indication that the recipient institution is prepared to take all necessary measures of conservation for the proper protection of the cultural property involved.
8. Consideration should be given to the granting of additional financial assistance to cultural institutions, or to the setting aside of part of the existing levels of financial assistance, to facilitate the carrying out of international exchanges.
9. Member States should give special attention to the problem of covering the risks to which cultural property is exposed throughout the duration of loans, including the period spent in transport, and should, in particular, study the possibility of introducing government guarantee and compensation systems for the loan of objects of great value, such as those which already exist in certain countries.
10. Member States, in accordance with their constitutional practice, should examine the possibility of entrusting to appropriate specialized bodies the task of co-ordinating the various operations involved in the international exchange of cultural property.

### III. INTERNATIONAL CO-OPERATION

11. With the assistance of all competent organizations, whether regional, national or international, intergovernmental or non-governmental, and in accordance with their constitutional practice, Member States should launch an extensive campaign of information and encouragement aimed at cultural institutions in all countries and at the professional staff of all categories - administrative, academic and scientific - who are in charge of the national cultural property, at the national or regional level, drawing their attention to the important contribution which can be made to the promotion of a better mutual understanding of all peoples by developing all forms of international circulation of cultural property and encouraging them to participate in such exchanges.
12. This campaign should cover the following points in particular:
  - (1) cultural institutions having already concluded agreements on the international circulation of cultural property should be invited to publicize all provisions which are of a general nature and could thus serve as a model, but not provisions of a special nature such as the description of the particular items in question, their evaluation or other specific technical details;
  - (2) the competent specialized organizations, and particularly the International Council of Museums, should produce or enlarge one or more practical handbooks describing every possible form of circulation of cultural property and emphasizing their specific features. These handbooks should include model contracts, including insurance contracts, for every possible type of agreement. With the help of the competent national authorities, the handbooks should be widely distributed to all the professional organizations involved in the various countries;
  - (3) in order to facilitate the preparatory studies for the conclusion of exchange agreements, the following should be widely distributed in all countries:
    - (a) various publications (books, periodicals, museum and exhibition catalogues, photographic documentation) produced in all countries by institutions which are custodians of cultural property;
    - (b) the files of exchange offers and requests compiled in each country;

- (4) the attention of cultural institutions in all countries should be drawn especially to the opportunities for reassembling a presently dismembered work which would be afforded by a system of successive loans, without transfer of ownership, enabling each of the holding institutions to take its turn to display the work in its entirety.
13. Should the parties to an international exchange of cultural property encounter technical difficulties in carrying out such an exchange they may request the opinion of one or more experts nominated by them after consultation with the Director-General of Unesco.

#### IV. FEDERAL STATES

14. In giving effect to the present Recommendation, Member States which have a federal or non-unitary constitutional system might follow the principles set forth in Article 34 of the Convention concerning the Protection of the World Cultural and Natural Heritage, adopted by the General Conference at its seventeenth session.

#### V. ACTION AGAINST ILLICIT TRADING IN CULTURAL PROPERTY

15. The development of international exchanges should enable the cultural institutions of the different Member States to enlarge their collections by acquiring cultural property of lawful origin, accompanied by documentation calculated to bring out their full cultural significance. Accordingly, Member States should take all necessary steps, with the help of the international organizations concerned, to ensure that the development of such exchanges goes hand in hand with an extension of the action taken against every possible form of illicit trading in cultural property.



EXTRACT FROM THE REPORT  
PRESENTED TO UNESCO IN 1974

BY MM. GOY AND DE VARINE-BOHAN

SYNOPSIS

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IV THE LEGAL SITUATION : THE INSTITUTIONAL FRAMEWORK

Exchanges of cultural property are governed by different sources of law. The agreements concluded for each transaction show certain constant regulatory provisions and certain habitual norms. Exchanges are regulated by standards, particularly in regard to conditions, laid down by international organisations. In particular they are governed in each different State by general provisions relating to contract and in particular exchange, as well as by provisions relating to cultural property and museum collections. They accordingly give rise to the problem of the law to be applied and of the competent judge, and are subject to the law and the competent judge selected in complete freedom of choice by the parties concerned, or else in accordance with the precepts, which in this case are somewhat hazardous, of international private law.

The legal system governing exchanges of natural and cultural property supposes therefore that the direction indicated by comparative law and the principles of international private law will be adopted, and that of the different possible solutions those solutions will be chosen which appear to be best suited to the particular requirements of exchanges. This system poses, however, two major difficulties: that of the institutional framework of exchanges and the contractual mechanism employed.

Exchanges of natural and cultural property can be regulated and facilitated by the different institutions responsible for such property, namely international institutions and government authorities.

A. THE ROLE OF INTERNATIONAL INSTITUTIONS (77)

Exchanges of natural and cultural property depend in the first instance on the international institutions responsible : global organisations such as UNESCO and ICOM, regional organisations like the Council of Europe, the Organisation of American States and the African Cultural Association, or specialist bodies such as the International Committee on the History of Art or the International Study Centre for the Conservation and Restoration of Cultural Property.

These organs have both a juridical and a technical role to play.

1. The juridical role of international institutions is diverse.

- a) First comes information on matters of law : here the task is to collect any relevant information on legal or legislative matters, and to publish it, notably in journals such as Museum and ICOM News. This concerns primarily national legislation on the subject of exchanges, institutions and agreements themselves, particularly those relating to the system with respect to property, liabilities and insurance. It may also include texts of the main agreements.
- b) Consultation on legal matters consists in advising and guiding institutions and departments concerned with the study and preparation of agreements and in solving any problems of interpretation and enforcement that might derive from them in matters of law.
- c) Their normative role is the most important one, International organisations (UNESCO, ICOM, etc.) can in the first place draw up rules on the ethics of exchanges on the lines of the ethical rules regarding acquisitions recently laid down by ICOM experts (78).

They can recommend to States that they should ratify specific international conventions, introduce certain internal regulations, and amend national legislation with a view to facilitating exchanges, eliminating obstacles and harmonising the different systems.

2. Their administrative role is similar.

- a) Their information role consists of collecting and where suitable publishing factual information concerning exchanges. It can be information of a kind likely to facilitate future exchanges. It has been suggested that there should be an annual newsletter, to appear in ICOM News or be published separately, indicating the possibilities of exchanges or transfers with various museums (79). It has also been proposed that a list should be drawn up on a world basis of reserve collections, museum by museum, indicating the conditions on which they would be prepared to proceed with exchanges (80).

Information supplied could also cover the items transferred.

The institutions involved in an exchange should operate a record system for transfers to confirm the arrival of the object concerned, and record its condition and description. ICOM would maintain a central file of items transferred, which could be useful for analysis purposes and for the preparation of expert opinions in the event of a dispute over the value or state of conservation of items (81).

b) Their role in the matter of advice and expertise relates to the condition and valuation of objects. The competent institutions can advise and guide the parties concerned over exchange projects, especially on the advisability of an exchange and on the conditions under which it should be carried out at each stage.

They can assist over appraisals, especially as regards valuations. They can help parties over the choice of experts in two different ways. They can set up a team of experts, a standing committee can be nominated by the general conference which would be called upon to make a decision in the event of a dispute concerning the value of major pieces, one or two members of which could be entrusted with matters of detail on a permanent basis (82), and a list of experts can be drawn up by the organisation and sent to governments to assist them in their choice. Alternatively, although experts can be nominated by the parties by common agreement, they can also be appointed by the director of the relevant international institution if the parties so request. These experts must in general come up to the required standards of technical competence, and in particular be specialists in all the disciplines with a bearing on the exchange, and must be independent in regard to the parties, especially in the matter of nationality.

Expert appraisal may be required to perform a number of different functions, according to the requirements and wishes of the parties concerned. It can in the first place be required to appraise the cultural and scientific value and estimate the degree of equivalence of exchanged objects; the difficulties of comparing objects offered and requested for exchange between governments and institutions in different countries of different cultures are of course well known (83). It can also assist in appraising the condition of pieces received, or their state of conservation at the end of the loan period.

The expertise provided can vary greatly in its application. It can take the form of advice on a technical matter requested by the parties to an exchange. It can apply to a settlement, good offices, an act of reconciliation, or mediation to facilitate and help conclude negotiations between the parties. It can also apply to arbitration to settle a dispute of a technical nature, the findings having the force of a binding decision which they must undertake beforehand to observe.

c) A more active role can also be played by international institutions. In the first place they have the function of coordinating national initiatives. They can coordinate and harmonise measures taken by different countries, and especially those by partners of different nationality with an interest in the same national institution (for example, during the creation of the gallery of western art in the National Museum in New Delhi).

In the second place, they have an enlivening role. They can appoint a highly experienced technical expert to act as a kind of museum secretary to stimulate activities, collect information, make suggestions and formulate programmes.

Finally, they have an administrative function. The international institution concerned could administer an international pool of objects for exchange. All the museums and collections concerned would contribute to it, either as instructed by governments or on the basis of voluntary cooperation, and it would be built up either through the operation a special acquisitions fund or through contributions of objects from national or private collections in different countries. This would ensure that objects would be available for exchange on a reciprocal basis between different countries. The procedure would also have the advantage of getting round national legislation prohibiting the alienation of museum collections (84).

#### B. GOVERNMENTS

Governments have the major responsibility for regulating and facilitating the mutual exchange of natural and cultural property.

1. Their role is in the first place a normative one. They must introduce

provisions regulating and facilitating exchanges, either through enforcement of measures recommended by international institutions or by initiating measures of their own. Their function is to pass laws and regulations, draw up cultural cooperation agreements, and adapt and amend the legislative provisions in force (85).

a) Governments should first and foremost relax provisions, which are in many cases highly protectionist, relating to the exchange of natural and cultural property. They could for instance relax the inalienability rule, where this exists. As is known, in some countries, such as France, national museum collections are public property, and as such inalienable, while certain classified or listed objects are likewise inalienable; they remain unassignable so long as they remain classified, and they can only be declassified by a special Act of Parliament to that effect. Governments could relax the conditions of classification; some experts have even advocated that works of art should be able to be acquired without their automatically having to be listed as national monuments (86). But, rather than this, classification could perhaps be relaxed in the case of an item destined to be exchanged, with simplification and relaxation of the procedure of declassification, or - a revolutionary solution - objects could even be replaced by a simple process of subrogation by counterpart objects in an exchange transaction, to the extent that their alienation entailed a fair and valid exchange with an equivalent object.

Governments could also relax the ban on export. As is known, in some countries certain items of cultural property of major importance can only be exported with the specific authority of the department responsible for their protection. Governments could relax the regulations providing for such authority and the procedure for obtaining it; they could, for instance, waive the need for an export permit if agreement to an envisaged exchange is dependent on the same government, or even where there is to be a simple substitution in the case of the items being exchanged.

b) Governments should also relax measures, which are often very restrictive, concerning the movement of objects and facilitate movement both in exports and imports. They should adapt their customs regulations to incorporate various preferential arrangements in regard to exchanged objects.

1) They should facilitate the granting of import licences.

The need to apply for and obtain these documents hampers and delays exchange transactions and causes exchange items to be held up, and in some cases puts them in danger of being damaged (as was the case in Japan, for example, in 1957). The need to obtain a licence should, therefore, be abolished or at any rate the procedure should be relaxed by being made easier and speeded up. Naturally there will always be some prohibitions or restrictions on the movement of certain items for reasons of security, morality or public order, but it is difficult to imagine them applying to many items of cultural or natural property.

2) Governments should alleviate imposts on exchanged objects.

Fiscal legislation varies a great deal according to country, the nature of the exchange and the type of item. Under some systems dues are payable on donations, others, like the Japanese, make no charge on donations but impose heavy dues on loan objects (87). In general customs dues should be abolished on exchanges of natural and cultural property; all imposts, taxes, costs, charges and dues levied by customs on importing and at the time of arrival in the country of these items should be replaced merely by the amount payable for services rendered (survey fees, statistical records charge, and so on).

3) Governments should facilitate the granting of foreign currency.

By this is not meant that the importing of items should be financed: exchanges rightly avoid the need for financing in foreign currency, so that a shortage of foreign currency is not an issue any more than are foreign exchange controls in regard to the finance of natural and cultural property. Nevertheless, a certain amount of foreign exchange needs to be granted for settling certain expenses in connection with the exchange of museum objects, as, for example, freight charges relating to carriage from the frontier of arrival to the place of destination when transport is at the cost of the sender.

4) Finally, governments should simplify customs formalities in respect of these items and facilitate speedy clearance of objects being exchanged, while still, of course, taking all necessary precautions to ascertain that the items concerned are indeed exchange items. They could perhaps arrange for labels to be affixed to such items

to allow ease of clearance; this method has already been instituted following a 1957 recommendation regarding items for exhibitions sponsored by ICOM. They can always insist on the presentation of a copy of the agreement attesting to the exchange and furnishing positive proof that the item enjoying privileged treatment has been exchanged against an object that has been exported.

2. The technical role of governments in connection with facilitating exchanges is also very important.

a) Governments must first appoint officials responsible for administering a policy on the exchange of natural and cultural property.

In the first place they must have a proper administrative structure. They should set up a museums directorate to ensure proper control and protection for national museums and the regulation and control of private museums and collections; they must enable those in charge to carry out their responsibilities by providing them with adequate resources in the way of staff and funds. The cultural relations department in the ministry for foreign affairs should also be associated with the problem.

Governments must also see to it that as many specialists as possible are brought in to help determine an exchanges policy. They must set up a working group to study what has been learnt about the subject and to consider what the policy should be and how it should be implemented. They should encourage consultation with universities and research institutes in the process of fixing exchanges policy.

b) Governments should facilitate and encourage the technical measures required for facilitating and creating the possibilities for exchanges of cultural items. They should in this connection further the establishment of reserve collections by museums and other institutions concerned with the natural and cultural heritage. Some experts have recommended the collection of "a sufficient number of objects" with a view to international exchanges and have put forward the idea that "collections assembled for purposes of exchanges should



include items of high quality, to elicit exchanges of items of similar quality<sup>89</sup>.

Governments should encourage departments responsible for the national heritage - especially museums - to draw up inventories of items on exhibition or held in reserve, study the latter and publish the results<sup>90</sup>. In this way, information on items available for exchange - and requirements - will be generally available.

They should also disseminate information on items available and needs in relation to their museums. Of course, museums are sometimes able to provide this information themselves; but, frequently, particularly in developing countries, this task needs to be done by the responsible authorities, through the publication of a periodical<sup>91</sup>.

Governments should promote a system of compensation or deposit to enable national museums to carry out multilateral exchanges, both between themselves and with museums in other countries<sup>92</sup>.

They could also facilitate the joint acquisition of cultural goods, for example by jointly offering credit for the purchase of items on the market of each participating country<sup>93</sup>. Here, it is not goods which are being exchanged but credit facilities, or in some cases goods that have not yet been exhibited by a public institution.

International organizations and Governments could and should take action to set up a framework to facilitate the exchange of natural and cultural goods between museums and other public institutions which can then organize actual exchanges covered by contract.

Q U E S T I O N N A I R E

CONCERNING REGULATIONS GOVERNING LOANS  
AND EXCHANGES OF ART OBJECTS BETWEEN  
CULTURAL INSTITUTIONS OF DIFFERENT COUNTRIES

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PRELIMINARY REMARKS

A. The aim of this questionnaire is to define in what way the dispositions currently in force in the various countries of the EEC concerning the legal status of public collections (or collections with non-profitmaking aims open to the public) facilitate or allow for the setting up of European galleries in a certain number of cultural institutions of these countries.

These European galleries will have the following characteristics:

- a. Their aim will be to illustrate the importance and the antiquity of all kinds of links existing between the countries of Europe.
- b. They will be composed of elements coming from cultural institutions of the various European countries.
- c. If they are to fulfil their role properly their duration should be intermediary between that of temporary exhibitions (limited to a few months) and permanent exhibitions. A duration of three years would appear at first sight to be ideal, without being imperative.

B. The term "art objects" is intended to be taken in the widest sense as being collection objects of all kinds, whether artistic, historical, archaeological, etc.

The term "cultural institution" may also cover various bodies or services such as museums, archaeological depositories, university

collections, etc. However, only non-profitmaking institutions are concerned.

Loans or exchanges are bi-lateral or multi-lateral operations which may take various forms. A loan contract may be envisaged either by the lender or by the borrower (just as a sale contract may be envisaged both by the vendor or by the buyer). However, to avoid repetition and overlapping it has been decided that the contract shall be drawn up, systematically, by the holding institution which will be solicited to lend or transfer ownership of an object to another institution, i.e. in the case of a loan the contract will be drawn up by the lender and not by the borrower.

c. The object of this questionnaire is simply to enable a comparative study of existing regulations and it can in no way be used as an engagement or preliminary to an engagement whatsoever on the part of those supplying replies.

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QUESTIONNAIRE

I. - SHORT-TERM LOANS

1. Does your institution agree to lend objects from its collections? .....

If yes: Are such loans frequent, rare, or exceptional? .....

If no: Is your refusal imposed by a definite legal ruling, or is it simply the result of internal custom? .....

2. On what conditions are loans granted?

PROCEDURE:

- Are requests for loans submitted for study to various consultative bodies (administrative board, committee of curators, etc.)? .....

- Who has the final responsibility for granting or refusing a loan? (The Director of the institution, the administrative board, the curator in charge of the collection holding the object requested, etc.) .....

CONDITIONS

On what conditions is a loan granted (see below):

Duration:

- What is the normal duration of loan? .....

- Do you agree to the object lent being presented in several successive exhibitions before being returned to you? .....

Insurance:

- Must objects loaned be obligatorily insured? .....

If yes:

- Do you insist that the borrower use your insurance broker or an insurance broker designated by you? .....
- Or do you accept the insurance broker chosen by the borrower? .....
- Who pays the insurance premium? .....
- Is there a governmental indemnity scheme existing in your country? .....

If yes:

- Under what conditions does it come into force? .....
- Can this guarantee be made to cover the objects belonging to your collections when on loan .....
- Can this guarantee be made to cover objects which you borrow from other institutions, both national and foreign? .....
- In either case, is coverage by governmental indemnity free of charge, or is there some kind of payment to be made? .....

COMPLEMENTARY QUESTIONS

Transport:

- Are objects lent by you insured by you whilst in transport? .....
- Or by a transporter of your choice? .....
- Or by the borrower? .....
- Who covers the cost of transport? .....

Escorting:

- Do you impose, on the outward or the return journey, an escort appointed by you to control transporting, unpacking, and re-packing of objects loaned? .....

II. - LONG-TERM LOANS

This term is understood to mean those loans, however they are called, which exceed the normal duration of temporary exhibitions (2,3,10 years), or for which no duration is specified (permanent loans).

1. Are the regulations for these loans different from those governing short-term loans? .....

If not: there is no need to reply to Section II of this questionnaire.

If yes: please state special conditions governing long-term loans (see below):

2. On what conditions are long-term loans granted?

PROCEDURE:

- Are requests for loans submitted for study to various consultative bodies (administrative board, committee of curators, etc.)? .....
- Who has the final responsibility for granting or refusing a loan? (The Director of the institution, the administrative board, the curator in charge of the collection holding the requested object, etc.) .....

CONDITIONS

- If granted, to what conditions is the loan submitted? (see below):
- Duration:
- What is the normal duration of loan?.....
- Do you agree to the object lent being presented in several successive exhibitions before being returned to you? .....

Insurance:

- Must objects loaned be obligatorily insured? .....

If yes:

- Do you insist that the borrower use your insurance broker or an insurance broker designated by you? .....
- Or do you accept the insurance broker chosen by the borrower? .....
- Who pays the insurance premium? .....
- Is there a governmental indemnity scheme existing in your country? .....

If yes:

- Under what conditions does it come into force? .....
- Can this guarantee be made to cover the objects belonging to your collections when on loan? .....
- Can this guarantee be made to cover objects which you borrow from other institutions, both national and foreign? .....
- In either case, is coverage by governmental indemnity free of charge, or is there some kind of payment to be made? .....

COMPLEMENTARY QUESTIONS

Transport:

- Are objects lent by you insured by you whilst in transport? .....
- Or by a transporter of your choice? .....
- Or by the borrower? .....
- Who covers the cost of transport? .....

Escorting:

- Do you impose, on the outward or the return journey, an escort appointed by you to control transporting, unpacking, and re-packing of objects loaned? .....

Does your institution reserve a right of control or inspection of the use made of objects on long-term loan? .....

III. - SPECIAL PROCEDURES FOR DEVELOPING INTERNATIONAL EXCHANGE OF COLLECTION OBJECTS OTHER THAN SHORT- OR LONG-TERM LOANS STATED ABOVE

A. EXCHANGE: consists of granting a loan to another institution in exchange for an advantage.

Strictly speaking, an exchange loan consists in an object being lent in exchange for another, also on loan. However, other advantages can be conceived of (e.g. reception by the borrower of trainees appointed by you, granting of material advantages, etc.).

- Do you practise such an exchange system?  
That is, do you lend objects from your  
collections in exchange for advantages in  
kind granted by the borrower? .....

If yes, please give concrete examples.

.../...



B. SUCCESSIVE LOAN EXCHANGES WITH A VIEW TO RE-ASSEMBLING A DISPERSED SERIES

A concrete example is as follows: an object (or a series) has been divided into several parts which are now distributed amongst several owners. One part is held by institution A, and the other by institution B. There are two possible solutions to ending this division:

- Either one or the other institution relinquishes ownership of the part it holds in favour of the other institution and the object is definitively re-constituted in the latter, or,
- Each of the two institutions agree to lend each other successively the part it holds so that, without any legal change in ownership occurring, the re-constituted object is presented alternatively for, for example, three year periods now in institution A, now in institution B. This formula is little used, though there are some examples to be found, and it can provide a solution to the problem of dispersed series.

QUESTION:

- Has your institution ever participated in operations of this kind? .....

If yes: please give concrete examples.

C. ACQUISITION BY CO-OWNERSHIP

This hypothesis is exceptional up till now but, if clearly regulated from the start, is one which could resolve certain problems of competition between institutions, belonging either to the same country or to different countries.

It sometimes happens that several institutions covet the same object, and they may all have good reasons for wanting to acquire it (e.g. an archaeological object originating from country A but discovered in country B might legitimately interest cultural institutions of both countries). Currently, they enter into competition with each other and finally one of them obtains the object, either by paying a higher price or by imposing legal prerogatives. A formula could be conceived of whereby rather than competing with each other they agree to acquire the object as co-owners and share its use between each other.

Though perhaps surprising at first glance, such a formula could provide a highly concrete and tangible basis for the creation of a cultural heritage truly common to several institutions or to several countries.

QUESTION:

- Has your institution ever participated in operations of such a nature? .....

If yes: please give concrete examples.

D. OTHER FORMS OF CO-OPERATION enabling several institutions to profit from the same object can be envisaged.

- If you have ever been involved with any other form of such co-operation please give examples.

IV. - RELINQUISHING OF OWNERSHIP

This formula consists of the holding institution effectively relinquishing ownership of an object. In practice, the permanent loan system has practically the same result as relinquishing of ownership. However, as long as the title of property has not been transferred, the rightful owner of the object may legally request its return or pretend to a right of control on the use to which the object is put.

It is therefore necessary to make a clear distinction between these two hypotheses and to isolate the case of relinquishment of ownership from that of a permanent loan.

QUESTION:

- Does the possibility of relinquishment exist in your museum? .....

If yes: Is it in fact practised? .....

On what conditions? :

- Preliminary procedure to relinquishment:

- Conditions governing relinquishment:

- Donation,

- Sale, for a monetary payment,

- Exchange for other objects.

- Conditions, if any imposed on the acquiring party: