

UNESCO RECOMMENDATION CONCERNING THE INTERNATIONAL EXCHANGE OF CULTURAL PROPERTY

Editor's Note

The following Recommendation arose from the 19th Session of UNESCO's General Conference held in Nairobi in November 1976. It was forwarded to the Australian Society of Archivists, for information, by the Secretary of the Australian National Commission for UNESCO in August 1977, too late to be included in our previous issue. The Secretary, Mr J. L. Kennedy, said in his letter:

Unesco Recommendations are not legally binding on Member States, but are designed to encourage Member States to take action on matters related to Unesco's Program. This Recommendation is aimed at facilitating the exchange of items of historic, artistic, scientific or technical value between cultural institutions in different countries. In particular it aims to encourage the exchange or loan of original objects and specimens for purposes of research and cultural enrichment where in general the import or export of such objects is prevented by legislation designed to safeguard a country's cultural heritage.

Although 'archives and documents' are specifically included in the definition of 'cultural property', it would appear that the Recommendation is less relevant to archivists than to many other cultural custodians; nevertheless it has been thought worthwhile to circulate the Recommendation in this Journal. The Australian National Commission for UNESCO has indicated that it is interested in receiving comments on the provisions of the Recommendation with particular reference to its implementation within Australia. The Commission's address is P.O. Box 826, Woden, A.C.T. 2606.

Recommendation

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 of the value of the cultures of other nations making up the cultural promoting mutual understanding and appreciation among nations,

Considering that the international circulation of cultural property is 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 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 multi-lateral 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 to 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.