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Comments on the redrafted Principles Relating to Cultural Objects Displaced in Relation to the Second World War

We welcome the redrafted Principles Relating to Cultural Objects Displaced in Relation to the Second World War. We believe these principles could, upon appropriate adjustment, contribute to resolving the disputes relating to those objects.

The principles of course apply to the injuries caused to the property of the victims of the Holocaust. It is fully in the interests of the Czech Republic to ensure that these injuries are at least partly rectified. The Czech Republic, in fact, has been taking appropriate measures in this respect on the basis of its national legislation (Act no. 122/2000 on Act on Alleviation of Certain Property Injustices Caused by the Holocaust and on Amendment to Act No. 243/1992 Regulating Certain Issues Relating to Act No. 229/1991 on Regulation of the Property Relations to Land and other Farm Property, as amended under Act No. 93/12992, as amended) and on the basis of certain other regulations.

However, the Principles apply not only to the injustice caused to the victims of the Holocaust, but they cover a much wider range of cultural assets – those that have been removed from, or the possession of which has been lost within a territory during or in connection with hostilities or occupation related to the Second World War, even if such occupation was total or partial or had met with no armed resistance. As said in the Secretariat's commentary, such removal or loss of possession was to take place in connection with hostilities or occupation related to the Second World War. However, this formulation is inaccurate and might allow for a construction to the detriment of the countries that were subject to aggression or occupation during World War II or to the detriment of the persons that lived in the occupied territories, as far as they received – in accordance with the post-war treaties – at least a partial compensation for what they had suffered and lost directly due to aggression or occupation, such compensation being based on the use of the enemy's property in their territory.

In this respect, therefore, the Principles would not contribute to resolving the disputes and could even be posed against other international legal instruments such as, for example, the Agreement on Reparation from Germany, on the Establishment of Inter-allied Reparation Agency and on the Tripartite Commission for the Restitution of Monetary Gold, agreed in Paris on 21 December 1945. Hence, it must be clearly and expressly stated in the Principles that the Principles may not be applied so as to challenge the already existing international instruments and property changes, which occurred as a result of such instruments' application.

The Czech Republic has gathered extensive experience with returning cultural property after 1989. The identification of cultural property is the most difficult problem in the restitution efforts because the initial owners do not exist any longer. In some recorded cases the applicant first requested museums to issue lists of the objects they had acquired, and having received such lists he marked objects on the list as property of his ancestor or relative without proving that such a person had really owned such an object. It is necessary that the proposed Principles should specifically provide for the documentation (evidence) of the initial ownership or initial location (as during World War II the hostile troops or occupation administration removed objects without change of ownership).

Now we refer to the individual principles:

Principle I

If the Principles are not to apply to the entire range of issues concerning enemy property seized as a result of World War II in favour of the countries and persons who were victims of previous war aggression or occupation – and if as such the Principles are not eventually to be considered as partial revision of the post-war treaties and agreements, though just at a soft-law level – then the loss of possession or the removal should be restricted so as to avoid applying them to the cultural property covered by those treaties and agreements, including the resulting ownership relations.

Principle II

The definition of loss of possession or removal is the key issue of the application of this principle. Again, we can refer to our practical experience, as in certain cases there was no evidence at all to prove the initial ownership. If it happens that the need for proving the pre-expropriation ownership is not respected, unauthorised issue of property might affect other authorised interests.

Principle XI

It would be useful to specify more closely the concept of ‘relevant scientific and technical documentation’. Only copies of restoration reports or other documents relating to the physical substance of the object should be issued, rather than the scientific and research results achieved in connection with the object, as such scientific and research efforts often consisted in activities other than investigation focused on the provenance of the object itself or did not result in identifying the provenance. Hence, it should be left on the issuing parties to decide whether to hand over such results or not. Such scientific and research results are often subject to copyright and other related rights, which must not be violated as a result of the application of the Principles.