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REPORT OF THE SPOLIATION ADVISORY PANEL IN RESPECT OF THREE RUBENS PAINTINGS NOW IN THE POSSESSION OF THE COURTAULD INSTITUTE OF ART, LONDON

The Right Honourable Sir David Hirst

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REPORT OF THE SPOLIATION ADVISORY PANEL IN RESPECT OF THREE RUBENS PAINTINGS NOW IN THE POSSESSION OF THE COURTAULD INSTITUTE OF ART, LONDON

Introduction

1. In 2006 the Trustees of the Samuel Courtauld Trust received a claim from Ms Christine Koenigs (the claimant) in respect of three paintings, more properly called oil sketches but known hereafter as "the paintings", by Sir Peter Paul Rubens (1577–1640), in the possession of the Courtauld Institute of Art (the Courtauld). The paintings in question are:

> *St. Gregory the Great with Ss. Maurus and Papianus and St. Domitilla with Ss. Nereus and Achilleus. 1606–1607;*
>
> *The Conversion of St. Paul, c.1610–1612;*
>
> *The Bounty of James I Triumphing Over Avarice, for the ceiling in the Banqueting House, Whitehall, c.1632–1633.*

2. The claimant is the granddaughter of Franz W. Koenigs (1881–1941), a German businessman and art collector. She claims on behalf of his heirs, other than his son W. O. Koenigs, who has not supported her claim. The Courtauld rejects this claim.

3. It is not in dispute that the paintings were owned by Franz Koenigs (Koenigs) who was by birth a German national and moved to the Netherlands between the wars. In 1935 he lent his considerable collection of Old Master drawings and paintings to the Boymans Museum, Rotterdam. In the same year he took out a loan from the Lisser & Rosenkranz Bank of Hamburg (the Bank), under an agreement formalising an earlier loan made in 1931. It is relevant to note that while Koenigs was not Jewish, the proprietors of this Bank were for the most part Jewish. To secure the loan, he provided his collection at the Museum as collateral. Subsequently the Bank moved to the Netherlands in the face of the Nazi oppression of the Jewish people in Germany. On 2 April 1940, on the eve of the German invasion of the Netherlands, the Bank went into voluntary liquidation and exercised its right to call in the loan. The liquidators advised the Museum of their intention to realise their security by taking possession of the works of art, with the knowledge of Koenigs. Some of these, including the three paintings in question, were bought in May 1940 by a well-known collector, Count Antoine Seilern. He subsequently bequeathed them to the Home House Society in 1978 as part of the Princes Gate Bequest. They are now owned by the Samuel Courtauld Trust (the successor body of the Home House Society) for the benefit of the Courtauld.

4. This change in ownership in early April 1940 was evidenced by three crucial letters to the Museum, two from the Bank and one from Koenigs himself, as follows, so far as relevant:

> **Bank to Museum 2 April 1940**
>
> "We are pleased to report that we have acquired by way of payment from Mr F. Koenigs the collection of drawings that he previously loaned to you (…). Following this transaction, which has transferred the said drawings to our full and unrestricted ownership, we intend to have the drawings removed by our shipping agent in the course of this week …"
>
> **Koenigs to Museum 2 April 1940**
>
> "Since I have not heard anything more from you regarding the collection of drawings that I previously loaned to you, I have been compelled to give these drawings by way of payment to N. V. Bankierskantoor Lisser & Rosenkranz (in liquidation) of this city, which means that full and unrestricted ownership of these drawings has been transferred to said party."

Bank to Museum 8 April 1940

"We are pleased to inform you that the paintings which Mr F. Koenigs previously loaned to you were transferred to our full and unrestricted ownership on 2 April 1940."

5. In 2003 the Dutch Restitution Committee, whose task is similar to our own, considered an almost identical claim from Christine Koenigs for numerous drawings still situated in Holland, and rejected it on the grounds that Koenigs lost the drawings for an exclusively economic or business reason resulting from the Bank's exercising its right to realise its security. Ms Koenigs disputes this finding, which is of course not binding on us.

The Panel's Task

6. The task of the Spoliation Advisory Panel is to consider claims from anyone, or from their heirs, who lost possession of a cultural object during the Nazi era (1933-45) where such an object is now in the possession of a UK museum or gallery established for the public benefit, such as the Courtauld, and to advise the Secretary of State for Culture, Media and Sport on what action should be taken in relation to the claim (see our Constitution and Terms of Reference at Appendix 1).

7. In making the report which follows, we have considered the submissions and evidence submitted by the claimant, and by the Courtauld through its solicitors, in order to establish whether Koenigs was deprived of these paintings as a result of spoliation and if so, to assess the moral strength of the claimant's case, and whether any moral obligation rests on the Courtauld.

The Claimant's Case

8. Koenigs was born in 1881, the son of a prominent German banker and a Dutch mother. From an early age he was a collector of prints, drawings and oil sketches by the Impressionists and Old Masters. He represented his family in various companies. In 1921 he founded a business in the Netherlands and in 1923 he moved his family there from Berlin. The financial crash of 1931 caused a considerable threat to his interests: however, the claimant contends that by 1935 his debts had been paid off. In April 1935 he loaned his collection of 47 Old Master paintings and 2,535 drawings to the newly constructed Boymans Museum in Rotterdam. On 1 June 1935 he signed the agreement with the Bank for a loan in the amount of 1,375,000 Dutch Florins and £17,000 for five years at 4% interest. Koenigs had the right to pay off the loan before maturity and the lenders had the right to pre-payment in certain eventualities, including their own liquidation. Koenigs provided his collection at the Museum as collateral for this loan. The claimant says that it is not known why the loan was taken out, because Koenigs did not need it.

9. On 9 February 1939 Koenigs received Dutch citizenship. In 1939 and 1940 he was negotiating with the Museum to achieve the aim of changing the status of his collection from a long-term loan to a permanent fixture by way of part sale and part donation. The proposal was that Koenigs would donate two-thirds of his collection to the Museum and that the Museum would raise, through its Stichting (foundation), a sum equivalent to one-third of the value of the collection, which would then be used to discharge the loan to the Bank. War broke out on 3 September 1939. The claimant alleges that persons connected with the Museum, namely a director of the Museum, Dr Dirk Hannema and one of its benefactors, Mr D. G. Van Beuningen, conspired to take advantage of the situation.

10. By April 1940 it was widely anticipated that the Nazis would invade the Netherlands. The Bank had moved to the Netherlands and, with the object of avoiding confiscation in a Nazi-run Holland, it was put into liquidation on 2 April 1940. The claimant acknowledges that the Rubens oil sketches were among the paintings referred to in the letter quoted in paragraph 3 above, but she contends that all the drawings and 12 of the paintings were then bought at an undervalue by Van Beuningen, who had conspired to take advantage of the vulnerable position of the Jewish-owned Bank.

11. However, the paintings in the Courtauld came there by a different route. They were three of 35 paintings which were not sold to Van Beuningen but were entrusted to the art dealer, Jacques Goudstikker, whom the Bank informed by letter dated 8 April 1940 that negotiations regarding the sale of this part of the collection of drawings and paintings would take place only through him.

12. The claimant sets out in detail in her submission the exchange of telegrams in April and May 1940 which led to the sale of the paintings to Count Seilern, including one to the Count from Johannes Wilde, a Viennese professor and former tutor to the Count, who had fled from Vienna in 1939. Both were despatched from Wales, the first dated 24 April 1940 saying that "the paintings are not available at Goudstikker's", followed by another two days later saying that they "are now in the possession of Goudstikker". The claimant submits that the former undermined Goudstikker's authority.

13. The claimant states that the Count had dual Austrian and English citizenship from birth but, at the time in question, he had renounced his Austrian citizenship and was a British subject, recently relocated to England. Having agreed to buy the paintings, he did not in fact physically receive them until 1945. This was because Holland was invaded on 10 May 1940. However Count Seilern did pay for the paintings at the time and he also subsequently paid for storage and insurance charges, pending their delivery to him. Meanwhile, Goudstikker embarked for the USA to join his wife, who was already there; but he was killed in an accident on board shortly after the vessel's departure.

14. It is contended by the claimant that in August 1945 Count Seilern visited the home of Dr. J. G. Van Gelder, a leading Dutch art expert, and received the paintings, which had been stored in the Amsterdamsche Bank NV from 13 December 1940 to 8 August 1945.

15. The claimant also contends that:

(i) The three paintings were sold only because the Bank had to be put into liquidation as a Jewish bank to avoid seizure of its assets, in view of the impending Nazi invasion of the Netherlands.

(ii) Neither Koenigs nor the Bank had in fact given their consent to the sale of the paintings.

(iii) The payment by Count Seilern was not to the Bank (or Koenigs) but to Goudstikker's wife at the Bankers Trust in New York. Moreover the Bank subsequently received payment for the painting "*Gregory and Domitilla*", less a 20% unauthorised commission, but was never paid for "*The Conversion of St. Paul*" or "*The Bounty of James 1*", which were much more valuable.

(iv) Koenigs was strongly opposed to the Nazi regime and provided strategic economic information to Dutch military intelligence as early as 1938, and also assisted Jewish fugitives from Germany.

(v) Koenigs himself was murdered on Cologne Railway Station on 6 May 1941, most probably because he was a known anti-Nazi; otherwise he would have nullified the sales after the war.

(vi) After the war, the paintings were collected from the Amsterdamsche Bank by Count Seilern, dressed in his British army uniform and driving a jeep, and then illegally removed from Holland without the required export licence. The claimant accepts that while Count Seilern paid less than the asking price, the price he paid for the paintings was a fair one.

The Courtauld's Case

16. The solicitors for the Courtauld rely on the conclusion of the Dutch Restitution Committee concerning the realisation of the Bank's security. They point out that the Committee was satisfied that, in the 1939-40 negotiations, Goudstikker was acting on behalf of Koenigs with regard to the paintings and drawings. He was also aware that the Bank had an interest in the matter, in the light of both the correspondence with the museum (quoted in paragraph 4 above) and the Bank's letter to Goudstikker dated 8 April 1940 (referred to in paragraph 11 above).

17. The Courtauld stresses that in his letter of 2 April 1940 to the Museum, Koenigs himself wrote that he had been "*compelled to give these drawings by way of payment to NV Bankierskantoor Lisser & Rosenkranz (in liquidation) of this city, which means that full and unrestricted ownership of these drawings has been transferred to said party*". It is true the reference is to drawings, but the Courtauld suggests by implication that this must be true of the paintings also, as the Bank asserted in its letter of 8 April 1940. "*Compelled*" here is a reference to the Bank going into liquidation and therefore being lawfully entitled to call in its security. The Bank was certainly acting under the compulsion of the impending Nazi invasion, but the compulsion on Koenigs was his earlier loan agreement of 1935 with the Bank. What is significant, according to the Courtauld, is Koenigs' acknowledgement that the Bank now had "*full and unrestricted ownership of these drawings…*", together with the Bank's own reference in its letter of the same date to obtaining delivery of the paintings from the Museum. Pursuant to this, Goudstikker collected the 35 paintings not sold to Van Beuningen on 19 April 1940 from the Museum, for transportation to his gallery in Amsterdam on behalf of the Bank, which was duly informed.

18. The Courtauld asserts that the 1935 loan agreement with the Bank formalised the earlier loan of 1931, and that there is consequently no mystery about why the 1935 loan was needed, as the claimant suggests. Given that the claimant accepts the validity of the 1935 loan agreement, this issue is anyway irrelevant to the resolution of the matter.

19. The Courtauld contends that the issue of whether or not there was a conspiracy by Van Beuningen and Hannema in relation to the other drawings and paintings is also irrelevant, because it does not undermine the Bank's entitlement to the ownership of the paintings presently under consideration, nor that of its successors in title, Count Seilern and the Courtauld.

20. The Courtauld disputes the claimant's suggestion that Goudstikker did not have the authority to act on the Bank's behalf, and says that the Bank's letter of 8 April 1940 to him provided such authority: the only query posed by the claimant against his authority is the telegram of 24 April 1940 from Johannes Wilde to Count Seilern (referred to in paragraph 12 above) saying that the paintings were "not available at Goudstikker's". It is suggested by the Courtauld that this could either be a typographical error (i.e. "not" instead of "now") or a mistake on the part of Wilde who was not in the Netherlands at the time but in Wales. The first telegram hardly seems enough to contradict the other clear evidence of Goudstikker's appointment as an agent of the Bank, particularly in the light of the second telegram two days later, apparently contradicting the first.

21. As to the claimant's contention that Count Seilern's own acquisition was tainted because he was taking advantage of the Nazi oppression of the Bank, the Courtauld argues that this allegation appears to be based on a series of suppositions and inferences with little or no evidential basis. In any event the Courtauld emphasises that the price paid by Count Seilern was consistent with insurance valuations and that the claimant herself concedes that the price Count Seilern paid for the paintings was a fair one. This affords strong evidence that there was therefore no wrongful taking by him of the Bank's property, let alone of Koenigs' property. The Courtauld also notes that, in his 1955 publication "*Flemish Drawings and Paintings at 56 Princes Gate London SW7*", Count Seilern wrote openly about the provenance of the paintings.

22. The Courtauld states that in any event, under the law of the United Kingdom, which is the relevant law for these purposes, any claim by Ms Koenigs is time-barred by the limitation period laid down by the Limitation Act 1939 (as amended). The Act was in force in 1978, when the Courtauld acquired the paintings. This, the Courtauld contends, is a conclusive answer to all the issues of Dutch law raised by or on behalf of the claimant.

23. The Courtauld also quotes the Inter-Allied Declaration against Acts of Dispossession of 1943 (see Appendix 3) and submits that the acts of Count Seilern could not be designated as looting or plunder under the terms of the Declaration.

Expert Evidence

24. The claimant submitted a legal opinion from Professor H. C. F. Schoordijk, Emeritus Professor of Civil Law at the Universities of Tilburg and Amsterdam.

25. Professor Schoordijk states that Goudstikker's authority to sell the paintings to Count Seilern was uncertain; that under Dutch law the transfer of ownership of the paintings to the Bank in April 1940 was fiduciary and that, consequently, the Bank would have been obliged to sell the collection by public auction. He also states that the sale of the pictures to Count Seilern did not confer title until the goods were actually delivered to him.

26. In response to questions submitted by the Panel, Professor Schoordijk reiterated his opinion, which was supported by Dr. Th. M. de Boer, Professor of Private International Law and Comparative Law at the University of Amsterdam.

27. Also in response to our questions, the Courtauld submitted a legal opinion on the Dutch law issues provided by A. B. van Rijn and W. I. Wisman of Pells Rijcken & Droogleever Fortuijn, advocates and notaries of The Hague. They contend that the views of the claimant's experts are ill-founded as a matter of Dutch law.

28. As an appendix to her submission, the claimant annexed a report by Dr H. B. Junz, an economist, written in response to the findings of the Dutch Restitution Committee. Dr Junz contends that the transaction could only have taken place under duress, since neither the Bank nor Koenigs was subject to the financial pressures which the Committee identified as the deciding factor: this she describes as the only logical explanation.

The Panel's Conclusions

29. The paramount purpose of the Panel, pursuant to paragraph 11 of its Constitution and Terms of Reference (see Appendix 1), is to achieve a solution which is fair and just, both to the claimant and to the institution. For that purpose it shall make such enquiries as it considers appropriate and take the various other steps set out in paragraph 12 of the Terms of Reference. One of those is to "*examine and determine the circumstances in which the claimant was deprived of the object, whether by theft, forced sale, sale at an undervalue, or otherwise*". It is the Panel's view that the claimant's grandfather was deprived of the paintings neither by theft, nor by forced sale or by sale at an undervalue, but as a result of the Bank calling in the loan and realising its security. Any forced sale stemmed from the Bank's own need to sell because of the impending German invasion of the Netherlands. The Bank had the right to sell the paintings because of the loan agreement entered into by Koenigs in 1935, formalising the earlier 1931 loan agreement. This was a loss suffered by Koenigs for commercial reasons and not as a result of Nazi spoliation or any form of duress. This is sufficient to resolve the case in the Courtauld's favour. However, we propose, in fairness to both sides, to examine the remaining issues.

30. It cannot be disputed, and is not disputed by the claimant, that Koenigs had very substantial debts and creditors in 1931, although his business subsequently returned to profit and repaid its foreign debts by 1934. But again, there is no doubt that the loan agreement of 1 June 1935 between Koenigs and the Bank did provide that Koenigs' drawings and paintings would serve as security for the loan. We note the careful exposition of the facts by the claimant in her reiteration of her claim. She lays stress on the sale, ultimately to Hitler via Van Beuningen, of the other part of the art collection at an apparent undervalue. Nevertheless we conclude that the probable reason why Koenigs failed to discharge the loan to the Bank in early 1940 was because he could not, or chose not to do so. The inevitable inference must be that, although he probably realised that the bulk of his collection was being sold at an undervalue, he was not in a position, either in practical financial terms or perhaps in law, to buy the collection back himself from the Bank.

31. We record in paragraph 15 (iii) above the claimant's assertion that Count Seilern failed to make due payments to the Bank. The supporting evidence is very thin but, even assuming these assertions are correct, they do not avail the claimant, since any loss incurred would have been suffered by the Bank and not by Koenigs. We also record in para 15 (iv) above the claimant's assertion that Koenigs was strongly opposed to the Nazi regime but we do not consider that this attitude, however commendable, has any bearing on the claim.

32. The questions of Dutch law referred to above are complex, but it is unnecessary for us to resolve them, given that, as the Courtauld rightly contends, any legal claim to the paintings is time-barred. The Limitation Act 1939 (as amended) extinguishes an owner's right to sue, even against a thief, thus rendering the Courtauld's legal title impregnable under English law. In reaching this conclusion, we are fulfilling our obligation in paragraph 12 (f) of our Terms of Reference, to "*evaluate, on the balance of probability, the validity of the institution's title to the object*".

33. Under paragraph 12 (e) the Panel must "*give due weight to the moral strength of the claimant's case*". It is right to recognise that the removal of the paintings from the Netherlands by Count Seilern, albeit with the assistance of a prominent member of the Dutch art establishment, Dr van Gelder, may have been somewhat unorthodox, although there is no concrete evidence to support the claimant's graphic portrayal of the precise circumstances. The Panel notes, moreover, that the moral character of the person who ultimately acquired the object at the time is not an express consideration which the Panel is asked to address under paragraph 12 (e), in contrast to the moral obligation on the institution currently holding the objects in question.

34. The Panel tested this matter in another way by taking the contentions of the claimant and her advisers at their highest to see where they lead. If they had been correct in saying that there was not a valid transfer of legal title to the paintings to Count Seilern in either 1940 or 1945, despite his payment of a fair price to Goudstikker, would the claimant then be morally entitled to succeed in her claim to restitution or other relief?

35. In answer to this question, it must be borne in mind that it is an intrinsic part of the claimant's case, (see paragraph 9 above), that it was Koenigs' intention in 1939 and 1940 that about two-thirds of his collection would remain in the Museum, where it was then on loan; and that the smaller part would be sold to discharge the loan owed to the Bank, which she legitimately points out was about a third of the then estimated value of the collection. Consequently, it is hard to see why she or any other descendants of Koenigs have any moral claim at all. There is no evidence that he ever intended to leave these drawings and paintings to his heirs. If anyone suffered here it was one of two other parties. Either the Bank suffered because Goudstikker did not pay it the money that it was owed and, therefore, its assets were reduced; or the Museum suffered because otherwise it would have acquired more of Koenigs' art collection. In these circumstances the Panel cannot see what moral claim the claimant has to the paintings.

36. While this is a conclusive answer to the moral claim, the Panel is fortified in its conclusion by a further consideration. Even if it were the case that Count Seilern acted in breach of Dutch law, the facts remain that he brought the paintings to England, he conserved them, he wrote about them and without seeking any payment he passed them on by way of legacy to the Courtauld for the benefit of the public and scholars. The Panel does not consider that the grandchildren of Koenigs, who himself pledged the paintings initially as security, and who intended them ultimately to remain at the Museum, could ever have had a superior moral claim to the paintings than that of the Courtauld, who hold them for the public benefit and received them from a man who paid a fair value for them.

37. Finally, we consider it right to record our opinion that no criticism attaches to the Courtauld in respect of the manner and circumstances of its acceptance of the bequest of these paintings. In our view the Courtauld had no occasion to question the title of Count Seilern or the moral propriety of his acquisition of the paintings.

Conclusion:

38. It is the recommendation of the Panel that this claim be rejected.

28 November 2007

The Rt Hon Sir David Hirst – Chairman
Sir Donnell Deeny
Professor Richard J Evans
Sir Terry Heiser
Professor Peter Jones
Martin Levy
Peter Oppenheimer
Professor Norman Palmer
Ms Anna Southall
Dr Liba Taub
Baroness Warnock

APPENDIX 1

SPOLIATION ADVISORY PANEL CONSTITUTION AND TERMS OF REFERENCE

Members of the Panel

1. The members of the Spoliation Advisory Panel ("the Panel") will be appointed by the Secretary of State on such terms and conditions as he thinks fit. The Secretary of State shall appoint one member as Chairman of the Panel.

Resources for the Panel

2. The Secretary of State will make available such resources as he considers necessary to enable the Panel to carry out its functions, including administrative support provided by a Secretariat ("the Secretariat").

Functions of the Panel

3. The task of the Panel is to consider claims from anyone (or from any one or more of their heirs), who lost possession of a cultural object ("the object") during the Nazi era (1933-1945), where such object is now in the possession of a UK national collection or in the possession of another UK museum or gallery established for the public benefit ("the institution"). The Panel shall advise the claimant and the institution on what would be appropriate action to take in response to such a claim. The Panel shall also be available to advise about any claim for an item in a private collection at the joint request of the claimant and the owner.

4. In any case where the Panel considers it appropriate, it may also advise the Secretary of State:

(a) on what action should be taken in relation to general issues raised by the claim, and/or

(b) where it considers that the circumstances of the particular claim warrant it, on what action should be taken in relation to that claim.

5. In exercising its functions, while the Panel will consider legal issues relating to title to the object (see paragraph 7 (d) and (f)), it will not be the function of the Panel to determine legal rights, for example as to title.

6. The Panel's proceedings are an alternative to litigation, not a process of litigation. The Panel will therefore take into account non-legal obligations, such as the moral strength of the claimant's case (paragraph 7 (e)) and whether any moral obligation rests on the institution (paragraph 7 (g)).

7. Any recommendation made by the Panel is not intended to be legally binding on the claimant, the institution or the Secretary of State.

8. If the claimant accepts the recommendation of the Panel and that recommendation is implemented, the claimant is expected to accept the implementation in full and final settlement of his claim.

Performance of the Panel's functions

9. The Panel will perform its functions and conduct its proceedings in strictest confidence. The Panel's "proceedings" include all its dealings in respect of a claim, whether written, such as in correspondence, or oral, such as at meetings and/or hearings.

10. Subject to the leave of the Chairman, the Panel shall treat all information relating to a claim as strictly confidential and safeguard it accordingly save that (a) such information which is submitted to the Panel by a party/parties to the proceedings shall normally be provided to the other party/parties to the proceedings in question; and (b) such information may, in appropriate circumstances, including having obtained a confidentiality undertaking if necessary, be communicated to third parties. "Information relating to a claim" includes, but is not limited to the existence of a claim, all oral and written submissions, oral evidence and transcriptions of hearings relating to a claim.

11. In performing the functions set out in paragraphs 3 and 4, the Panel's paramount purpose shall be to achieve a solution which is fair and just both to the claimant and to the institution.

12. For this purpose the Panel shall:

(a) make such factual and legal inquiries (including the seeking of advice about legal matters, about cultural objects and about valuation of such objects) as the Panel consider appropriate to assess each claim as comprehensively as possible;

(b) assess all information and material submitted by or on behalf of the claimant and the institution or any other person, or otherwise provided or known to the Panel;

(c) examine and determine the circumstances in which the claimant was deprived of the object, whether by theft, forced sale, sale at an undervalue, or otherwise;

(d) evaluate, on the balance of probability, the validity of the claimant's original title to the object, recognising the difficulties of proving such title after the destruction of the Second World War and the Holocaust and the duration of the period which has elapsed since the claimant lost possession of the object;

(e) give due weight to the moral strength of the claimant's case;

(f) evaluate, on the balance of probability, the validity of the institution's title to the object;

(g) consider whether any moral obligation rests on the institution, taking into account in particular the circumstances of its acquisition of the object, and its knowledge at that juncture of the object's provenance;

(h) take account of any relevant statutory provisions, including stipulations as to the institution's objectives, and any restrictions on its power of disposal;

(i) take account of the terms of any trust instrument regulating the powers and duties of the trustees of the institution, and give appropriate weight to their fiduciary duties;

(j) where appropriate assess the current market value of the object, or its value at any other appropriate time, and shall also take into account any other relevant circumstance affecting compensation, including the value of any potential claim by the institution against a third party;

(k) formulate and submit to the claimant and to the institution its advice in a written report, giving reasons, and supply a copy of the report to the Secretary of State, and

(l) formulate and submit to the Secretary of State any advice pursuant to paragraph 4 in a written report, giving reasons, and supply a copy of the report to the claimant and the institution.

Scope of Advice

13. If the Panel upholds the claim in principle, it may recommend either:

(a) the return of the object to the claimant, or

(b) the payment of compensation to the claimant, the amount being at the discretion of the Panel having regard to all relevant circumstances including the current market value, but not tied to that current market value, or

(c) an ex gratia payment to the claimant, or

(d) the display alongside the object of an account of its history and provenance during and since the Nazi era, with special reference to the claimant's interest therein; and

(e) that negotiations should be conducted with the successful claimant in order to implement such a recommendation as expeditiously as possible.

14. When advising the Secretary of State under paragraph 4 (a) and/or (b), the Panel shall be free to recommend any action which they consider appropriate, and in particular may, under paragraph 4 (a), direct the attention of the Secretary of State to the need for legislation to alter the powers and duties of any institution.

APPENDIX 2

WASHINGTON CONFERENCE ON HOLOCAUST-ERA ASSETS

PRINCIPLES WITH RESPECT TO NAZI-CONFISCATED ART

In developing a consensus on non-binding principles to assist in resolving issues relating to Nazi-confiscated art, the Conference recognizes that among participating nations there are differing legal systems and that countries act within the context of their own laws.

I. Art that had been confiscated by the Nazis and not subsequently restituted should be identified.

II. Relevant records and archives should be open and accessible to researchers, in accordance with the guidelines of the International Conference on Archives.

III. Resources and personnel should be made available to facilitate the identification of all art that had been confiscated by the Nazis and not subsequently restituted.

IV. In establishing that a work of art had been confiscated by the Nazis and not subsequently restituted, consideration should be made for unavoidable gaps or ambiguities in the provenance in the light of the passage of time and the circumstances of the Holocaust era.

V. Every effort should be made to publicize art that is found to have been confiscated by the Nazis and not subsequently restituted in order to locate its pre-War owners or their heirs.

VI. Efforts should be made to establish a central registry of such information.

VII. Pre-War owners and their heirs should be encouraged to come forward and make known their claims to art that was confiscated by the Nazis and not subsequently restituted.

VIII. If the pre-War owners of art that is found to have been confiscated by the Nazis and not subsequently restituted, or their heirs, can be identified, steps should be taken expeditiously to achieve a just and fair solution, recognizing this may vary according to the facts and circumstances surrounding a specific case.

IX. If the pre-War owners of art that is found to have been confiscated by the Nazis, or their heirs, can not be identified, steps should be taken expeditiously to achieve a just and fair solution.

X. Commissions or other bodies established to identify art that was confiscated by the Nazis and to assist in addressing ownership issues should have a balanced membership.

XI. Nations are encouraged to develop national processes to implement these principles, particularly as they relate to alternative dispute resolution mechanisms for resolving ownership issues.

APPENDIX 3

INTER-ALLIED DECLARATION AGAINST ACTS OF DISPOSSESSION COMMITTED IN TERRITORIES UNDER ENEMY OCCUPATION OR CONTROL (WITH COVERING STATEMENT BY HIS MAJESTY'S GOVERNMENT IN THE UNITED KINGDOM AND EXPLANATORY MEMORANDUM ISSUED BY THE PARTIES TO THE DECLARATION).

London, January 5, 1943

His Majesty's Government in the United Kingdom have today joined with sixteen other Governments of the United Nations, and with the French National Committee, in making a formal Declaration of their determination to combat and defeat the plundering by the enemy Powers of the territories which have been overrun or brought under enemy control. The systematic spoliation of occupied or controlled territory has followed immediately upon each fresh aggression. This has taken every sort of form, from open looting to the most cunningly camouflaged financial penetration and it has extended to every sort of property – from works of art to stocks of commodities, from bullion and bank-notes to stocks and shares in business and financial undertakings. But the object is always the same – to seize everything of value that can be put to the aggressors' profit and then to bring the whole economy of the subjugated countries under control so that they must slave to enrich and strengthen their oppressors.

It has always been foreseen that when the tide of battle began to turn against the Axis the campaign of plunder would be even further extended and accelerated, and that every effort would be made to stow away the stolen property in neutral countries and to persuade neutral citizens to act as fences or cloaks on behalf of the thieves.

There is evidence that this is now happening, under the pressure of events in Russia and North Africa, and that the ruthless and complete methods of plunder begun in Central Europe are now being extended on a vast and ever-increasing scale in the occupied territories of Western Europe.

His Majesty's Government agree with the Allied Governments and the French National Committee that it is important to leave no doubt whatsoever of their resolution not to accept or tolerate the misdeeds of their enemies in the field of property, however these may be cloaked, just as they have recently emphasised their determination to exact retribution from war criminals for their outrages against persons in the occupied territories. Accordingly they have made the following joint Declaration, and issued the appended explanatory memorandum on its meaning, scope and application:–

DECLARATION

The Governments of the Union of South Africa; the United States of America; Australia; Belgium; Canada; China; the Czechoslovak Republic; the United Kingdom of Great Britain and Northern Ireland; Greece; India; Luxembourg; the Netherlands; New Zealand; Norway; Poland; the Union of Soviet Socialist Republics; Yugoslavia; and the French National Committee: Hereby issue a formal warning to all concerned, and in particular to persons in neutral countries that they intend to do their utmost to defeat the methods of dispossession practised by the Governments with which they are at war against the countries and peoples who have been so wantonly assaulted and despoiled.

Accordingly, the Governments making this Declaration and the French National Committee reserve all their rights to declare invalid any transfers of, or dealings with, property, rights and interests of any description whatsoever which are, or have been, situated in the territories which have come under the occupation or control, direct or indirect, of the Governments with which they are at war, or which belong, or have belonged, to persons (including juridical persons) resident in such territories. This warning applies whether such transfers or dealings have taken the form of open looting or plunder, or of transactions apparently legal in form, even when they purport to be voluntarily effected.

The Governments making this Declaration and the French National Committee solemnly record this solidarity in this matter.

London

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