RETURN
TO AN ADDRESS OF THE HONOURABLE THE HOUSE OF COMMONS
DATED 24 NOVEMBER 2004
FOR THE

REPORT OF THE SPOLIATION ADVISORY PANEL IN RESPECT OF A PAINTING NOW IN THE POSSESSION OF GLASGOW CITY COUNCIL

The Right Honourable Sir David Hirst

Ordered by the House of Commons
to be printed 24 November 2004

HC 10 LONDON: The Stationery Office £5.50

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SPOLIATION ADVISORY PANEL

REPORT CONCERNING A CLAIM IN RESPECT OF A PICTURE NOW IN THE POSSESSION OF GLASGOW CITY COUNCIL

INTRODUCTION

1. The claimants are the heirs of the five former Jewish shareholders of an art gallery in Munich ("The Gallery"), comprising the grandchildren (and heirs of one grandchild) of three shareholders from one family, and the children of two shareholders from another family. They have asked to remain anonymous, and we have been advised that we should accede to this request having regard to the right of privacy enshrined in Article 8 of the European Convention on Human Rights.

2. The claim is in respect of a Still Life formerly attributed to Jean-Baptiste-Siméon Chardin (the painting), which is now in the possession of the Glasgow City Council (the respondents) as part of the Burrell Collection, which was donated to the Council's predecessor, the Corporation of the City of Glasgow, by the celebrated collector Sir William Burrell and his wife in 1944. The Collection is enormous, comprising nearly 8,000 items in various artistic categories, including no fewer than 696 pictures.

3. The claimants contend that the five former shareholders lost possession of the picture in June 1936 as a result of a forced sale. Consequently the claim falls prima facie within our jurisdiction as laid down by our Terms of Reference (Appendix 1), which provide that our task is "to consider claims from anyone (or from anyone or more of their heirs), who lost possession of a cultural object during the Nazi era (1933 to 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".

4. The claim, which was first presented to the respondents in August 2001, and which was referred to us by common consent, is either for the return of the painting or for compensation. The claimants rely on the moral strength of their claim, which our Terms of Reference oblige us to take into account, it not being disputed that the respondents' legal title is impregnable under limitation law. The respondents do not dispute the claim in principle, but are anxious to retain the painting in the Burrell Collection, stressing the importance of preserving the Collection's integrity.

5. The painting, together with a large number of other works of art, was sold at an auction held in Berlin on 16/17 June 1936, which is described on the cover page of the catalogue as a clearance sale from the property of the Gallery. It appeared in the catalogue as Lot 6 under the description "Stilleben (Still Life) by J-B-S Chardin" and fetched 7,000 Reichmarks (£560 sterling at the then rate of exchange). A few

days later the purchaser, who was an art dealer, resold the picture to Sir William Burrell in Munich for £647.15s. While at the time it was listed in the catalogue as a painting by Chardin himself, it is now described as a painting "attributed to Chardin". The auction catalogue also recorded that the painting had been purchased by the gallery at an auction in Paris in 1928.

6. The essence of the claimants' case is that the liquidation of the gallery's entire stock (including the painting) at the auction was forced on them in order to satisfy an extortionate tax demand, which they had to pay before they would be free to emigrate from Germany. They contend that this unjust demand was engineered by a newly appointed tax officer with Nazi sympathies who took over their affairs from the regular tax office which had previously handled their account.

7. While stating in this claim that there are "doubts" whether the sale price of 7,000RM could be considered fair, as clearance sales tend to depress prices, the claimants very candidly record that the price obtained at the auction was double the estimated price of 3,500RM, and disclose an article in the magazine Die Weltkunst (Art of the World) giving a retrospective view of the auction scene in 1936, and commenting that the sale provided "no disappointment" with regard to prices. Moreover, it must be borne in mind that the sale took place before the picture's attribution was downgraded, although some doubt had been cast on its authenticity in Georges Wildenstein's authoritative catalogue of Chardin's works published in 1933.

8. Consequently, the main thrust of their claim is that the claimants were deprived of their freedom to retain or dispose of their property, including the picture, as and when they chose. They rely on the restitution principles adopted by the Allies after the war, epitomised in British Military Law No 59, which lays down that it shall be presumed in favour of a claimant that a transaction entered into between January 1933 and May 1945 which involves any transfer or relinquishment of property during a period of persecution by any person who was directly exposed to persecutory measures on racial grounds shall be presumed to constitute an act of confiscation; and that the presumption may be rebutted by showing that the transferor was paid a fair purchase price, provided the transferor was not denied the free right of disposal of the purchase price on *inter alia* racial grounds. The claimants contend that they fall into the latter category.

9. This restitution principle is in accord with the "Inter-Allied Declaration against acts of dispossession committed in territories under enemy occupation or control" (Appendix 2), to which all the Allies, including the United Kingdom subscribed, issued in London on 5 January 1943. The Governments making the Declaration reserved the right to declare invalid any transfers of, or dealings with, properties situated within the territories under enemy control which belonged to persons resident in such territories. This warning applied "whether such transfers or dealings took the form of looting or plunder, or of transactions apparently legal in form, even where they purport to be voluntarily effected". Although the Declaration was never embodied by statute into English Law, it gives most helpful guidance in principle.

10. The Cultural and Leisure Services Committee of the respondents, having considered the claim in great detail, accepted the validity of the claimants' case and agreed that they had established a moral case for reparation. However, they contend that they are legally debarred from returning the painting to the claimants under the terms of the gift, and they also contend that the making of any ex gratia payment to the claimants would be ultra vires. Consequently they submit that the Panel should recommend an appropriate ex gratia payment by Government.

THE CLAIMANTS' EVIDENCE

11. This evidence, quoted below in translations provided by the claimants, falls into two categories, viz:–

i) Formal declarations were given in 1954 by four members of the family, namely one of the original shareholders, and three widows of other original shareholders, all of whom had left Germany prior to the events in question. These declarations were made in support of a claim presented to the German Compensation Authority set up under the Federal Compensation Act (see below). These declarations were made less than 20 years after the events they describe, and although none of these witnesses had direct first-hand knowledge, the information they impart was clearly derived from those who did have such knowledge. We have edited the ensuing quotations to the extent of removing any identification of the gallery or of the claimants or of their forebears, and aggregating the various tax demands.

ii) Evidence given by two first-hand witnesses, namely:–

(a) Herr Ludwig Schmausser, who was the original tax inspector handling the Gallery's affairs, in an affidavit sworn in 1948.

(b) Professor Dr Carl Boettcher, who was the attorney-at-law representing the Gallery during the relevant tax proceedings, in a formal declaration made in 1953.

12. The four family declarations are in similar terms, and state as follows:–

"The firm of art and antique dealers, domiciled at its own premises in Munich, was one of the leading businesses in this line in Germany and in Europe. It had stocks with a value of several hundred thousand marks, modern showrooms and facilities to present individual items, a large art-science library containing catalogues of all museums, art dealers and art auctioneers, and had regular customers throughout the world. Sales amounted to several million marks per annum. The owners enjoyed a particular reputation on account of their expertise and sense of honour. The way they conducted their tax and foreign exchange affairs did not at any time give rise to any objections. The senior partner had the title "Geheimer Commerzienrat" (privy councillor).

Following seizure of power by Hitler, efforts were made by the partners, all of whom were Jewish, to continue the firm. This sealed its destiny. Destruction of the firm was carried out by the fiscal authorities in the form of Regierungsrat Schwarz, a person known for his brutality towards Jews, with the violence perpetrated by the National Socialists and its disastrous consequences that are described in the following.

The senior partner and the junior partner were still in Munich at the time of National Socialist violence and, hence, were exposed to it directly. The result of any form of resistance to this violence would have led to their being sent to a concentration camp. The other three partners had already left Hitler's Germany, but had left almost their entire and very substantial assets at the premises of the firm.

The devastating blow against the reputable Jewish firm was carried out by the Munich North Tax Office, represented by Regierungsrat (government official) Schwarz, in the following way:

Regierungsrat Schwarz ordered a tax and foreign exchange investigation by ten members of the criminal investigation department in December 1935. The fiscal inspector in charge of the case, Mr Schmausser, who was not a supporter of Hitler and disapproved of acts of violence against Jewish firms, was barred as, following years of having inspected the firm, he was fully aware of its integrity in fiscal and foreign exchange matters. The inspection did not reveal anything detrimental from either a fiscal or foreign exchange point of view. The officials stated to the senior partner "we have not found anything".

Regierungsrat also said to fiscal inspector Ludwig Schwarz that the search had not revealed anything of an incriminating nature.

Following the entirely negative outcome of the search, Regierungsrat Schwarz then told the senior partner that he was required to sign a declaration of submission on behalf of himself and his partners. The content of this declaration was the confession that additional profits dating back to 1925 were liable to supplementary taxation totalling RM 608,796 for the year 1925-1934.

In addition, heavy fiscal penalties were set for fictitious fiscal offences.

The firm was not in a position to make a tax return for 1935 as all of its books and records had been confiscated by Regierungsrat Schwarz. Despite this, the firm was aware that it had suffered losses. Regierungsrat Schwarz turned these losses into "profit" and demanded immediate payment of taxes in respect of these profits in the form of a payment of RM 240,000 – in addition to immediate payment of supplementary taxes as of 1925 and immediate payment of the tax penalties totalling RM 307,599.70.

The amounts payable by the owners of the firm, on the basis of the above assessments and fiscal penalties, totalled RM 347,599.70.

This means that, all in all, the partners had to pay a total of RM 307,599.70 plus 240,000 – a total of RM 547,599.70 as subsequent payments, fiscal penalties and income tax not owed for the 1935 financial year, which was a year in which they made a loss. Immediate payment of the entire sum was demanded and any deferment of payment refused. In fact, no taxes were even due, a fact of which Regierungsrat Schwarz was perfectly aware. In view of the fact that even a major firm would not, given the circumstances, normally have been able to pay such a sum, there is no doubt that this was a premeditated move to destroy this Jewish firm.

The senior partner initially refused to sign the declaration of submission, which would have meant the sentence of the death for the reputable firm. In response, Regierungsrat Schwarz stated that if the declaration of submission was not signed he would pass the matter on to the public prosecutor for the purpose of a criminal investigation and would ensure that these criminal investigations were made public. The senior partner did not want to experience this disgrace. Together with the junior partner, who appeared at the same time as he did, he arranged for the declaration of submission to be signed on behalf of the firm. His infuriation at this humiliating and unfair treatment by Hitler's officials was so great that he suffered a stroke upon leaving the inland revenue office and died in a taxi shortly afterwards in the arms of the junior partner.

As Regierungsrat Schwarz insisted on immediate payment and rejected deferment in any form and, at the same time, confiscated all the assets of the firm in Munich in order to prevent payment in the form of regular sales from stocks, and in order to achieve the demise of the company, the partners were forced to carry out overhasty auctions of works of art and antiquities conducted by the firm of Paul Graupe, Berlin W 9, Bellvuestr. 9 on 17 and 18 June 1936. The costs of bringing the objects in question to the place of auction in Berlin and the costs of the auction itself were enormous. Above all, word had gone round in the art world that the highly respected Munich firm had been forced to auction the contents of its stocks of works of art and antiquities. This led to ruthless exploitation of its plight by those participating in the auction. The firm was not even in a position to set limits in the form of its purchase prices as it was forced to pay the total amount of RM 547,599.70 to the tax office of Munich North with immediate effect, without any possibility of deferring payment. In order to have the financial means to pay this enormous sum, it was forced to allow that most of the objects were auctioned at a value far below their purchase price. It goes without saying that the difference between the purchase prices and auction price is only part of the damage incurred. In normal circumstances such a firm would not have had any reason whatsoever to dispose of its stocks at purchase price."

13. Herr Ludwig Schmausser testified as follows:–

"After World War I, I entered the fiscal service and became a fiscal inspector at the tax office of Munich North. It was in this capacity that I processed the files of the firm and of the family, and I hereby confirm on the basis of my conviction that the senior partner on behalf of himself and his family always impeccably discharged his tax obligations in the form of tax returns and tax payments. I did not at any time have any

reason to file an objection. I processed the files until I passed them on to Regierungsrat Schwarz for the purpose of instigation of criminal proceedings. Regierungsrat Schwarz was known as a tough fiscal inspector. It seems that there was a highly controversial debate between Regierungsrat Schwarz and the senior partner, with the outcome that the latter collapsed upon leaving the fiscal office and then died in the arms of his son in a car. From this it can be deduced that the talks conducted between Regierungsrat Schwarz and the senior partner, who was already advanced in years, led to such an emotional condition that this cost him his life.

This is my recollection of what took place in 1936 or 1937.

I was informed that the senior partner was forced to pay the sum of approximately RM 500,000 on the basis of this negotiation with Regierungsrat Schwarz.

It is my opinion that this sum was far in excess of the amount of taxes owed. I do not know whether the relevant files still exist today. I heard that Regierungsrat Schwarz accused the senior partner of criminal matters relating to fiscal or foreign exchange matters. No details were made known to me. It is my opinion that there were no grounds for instituting criminal tax proceedings; I have no information as to any incorrectness regarding foreign exchange. Such charges would not appear plausible to me given the fact that I am convinced that the senior partner was a person of absolute integrity.

When I heard of the outcome of the aforesaid negotiation with Regierungsrat Schwarz, I was enraged as it was my conviction that the person that I held in such high esteem had suffered an injustice. At the time it was supposed to be a question of a declaration of submission. I recall that Regierungsrat Schwarz said that we did not find anything I the files that indicated tax misdemeanours."

14. Professor Dr Carl Boettcher testified as follows:–

"The inland revenue carried out an investigation of the bookkeeping and business records of the firm of antiquity dealers in 1935. As a part of this investigation, submission of the books of the firm's branch in Den Haag, and New York was required. These records were not submitted in view of the reservations expressed by the foreign advisors of these firms. Instead, balance sheets, confirmed by the accountants that audited them, were submitted to the German fiscal authorities; these balance sheets also formed the basis of taxation in Holland and the USA. As the German fiscal authority was not satisfied with this, the profit of two foreign firms in which the partners of the Munich firm had holdings was estimated.

Negotiations with the German fiscal authorities were conducted by me as the attorney-of-law of the Munich firm and its partners. The outcome of these negotiations was that the sum of around RM 500,000 was due and payable as a subsequent payment; this amount was due in respect of different taxes and different years. A partial amount of RM 50,000 was demanded as a fiscal penalty.

On the basis of my knowledge of the position at the time, I hereby confirm that the record of submission which took place on 8 February 1936 and in which the subsequent payments payable by all partners (including the penalty) and amounting to around RM 500,000 were recognised was clearly made under duress. On the one hand, the Jewish partners already had the feeling that they were "second-class" citizens as far as the German state was concerned; on the other hand, they knew that they had no choice other than to obtain tax clearance certificates as soon as possible in order to carry out the emigration that they were planning. It is conceivable that there would, had these circumstances, which led to an action carried out under duress, not have existed, have been a demand for payment of back taxes, however on no account to the extent named above.

This was my impression from the beginning and is still my impression today."

15. The family's testimony identifies two separate tax demands, namely the retrospective imposition of extra tax for the years 1925-1934 (the 1925-34 demand) and the imposition of tax for the current year 1935 (the 1935 demand).

16. Neither of the two independent witnesses mentions the 1925-34 demand, in the case of Professor Carl Boettcher not perhaps surprisingly since it appears from his statement that his role was confined to the 1935 demand.

17. However both the independent witnesses strongly corroborate the family's evidence concerning the 1935 demand, apart from one minor discrepancy viz whether the failure to submit a return was due to the confiscation of the firm's books, as the family say, or was due to the firm's unwillingness to hand over the books of the Den Haag and New York branches, as Professor Boettcher says; as the latter was the firm's professional adviser, it seems likely that his version is correct.

18. This evidence of the two independent witnesses is in our view very cogent, seeing that they were personally involved at the time, and had no axe to grind, so far as we can judge.

19. We accept this evidence, and have therefore concluded that the partners were confronted with, and most unwillingly acknowledged, an extortionate tax demand for 1935, and that the clearance sale was a direct consequence. This finding, reinforced by the Allied Law of Restitution and the London Declaration referred to above, is sufficient to establish a strong moral case in the claimants' favour without recourse to the 1925-1934 demand, where the evidence is significantly weaker.

THE AUCTION SALE OF 16-17 JUNE 1936

20. The details of this sale, comprising the entire inventory of the gallery, are fully documented. It was conducted in Berlin by the auction house of Paul Graupe on the instruction of the Gallery. In all, 513 objects were sold, including inter alia paintings, drawings, statues, armoury, furniture, porcelain, tapestries, and carpets; it raised a grand total of RM 400,872, ie a sum somewhat in excess of two-thirds of the

amount needed to pay the 1935 demand. Sir William Burrell's purchase took place shortly afterwards on 22 June 1936.

SIR WILLIAM BURRELL'S DONATION

21. By a memorandum of agreement dated 30 March and 6 April 1944 between Sir William Burrell and Lady Constance Burrell on the one hand (the donors) and the Corporation of the City of Glasgow on the other hand (the donees) the donors gave their entire collection of works of art, including the painting, to the donees. Part of the collection vested in the donees forthwith, and the remainder on the death of the survivor of the donors. It is not entirely clear into which of the two categories this picture fell, but in either event it is common ground that the limitation period had expired, rendering the respondents' legal title unassailable.

22. The memorandum stipulated that "the donees shall not be entitled on any pretext whatever to sell or donate or exchange any item or part of the Collection once it has formed part of the Collection; but the donees shall be entitled to lend temporarily to responsible bodies any article forming part of the Collection as they may think fit for exhibition in any public gallery in Great Britain". The respondents contend that this stipulation has the status of a contractual term binding upon them, and that consequently they are debarred from returning the painting to the claimants.

THE MORAL POSITION OF THE RESPONDENTS

23. We asked the respondents for details of the steps taken by their predecessors to confirm the picture's provenance at the time they took possession. They replied that the only information they had was that Sir William Burrell had recorded in his purchase book all that he knew of the painting's provenance, and that when they took over the Collection there was only one keeper for all the works and he never had a chance to ascertain any further information about the paintings. Since, regrettably it was not practicable to clarify the paintings' provenance at this juncture having regard to the size of the collection and the lack of available resources, we accept the respondent's explanation and make no criticism of them or their predecessors on this count.

COMPENSATION RECEIVED FROM THE GERMAN GOVERNMENT

24. Following their claim under the Federal Compensation Act referred to above, the shareholders were paid DM 75,000 by the German Government as compensation for their loss on the sale. In answer to our enquiries whether this included any particular compensation for the loss of the painting, it was confirmed that the compensation sum represented an overall payment for the entire loss, and could not be broken down for particular individual objects. In any event only a tiny fraction of the compensation would be attributable to the painting.

VALUATION

25. We commissioned a valuation of the picture from Sir Jack Baer, who is an acknowledged expert in this field. Sir Jack recorded that "in 1983 Pierre Rosenberg, a great authority on the works of Chardin, and at that time Director of the Louvre, published his "L'Opera Completa di Chardin" in which he includes this picture as erroneously attributed to the artist". Sir Jack assessed the picture as "of very poor quality", and advised that if it was sold at auction today the estimate would be a modest figure of £7,500.

REMEDIES

26. We are satisfied for all the above reasons that, while no moral blame attaches to the respondents, the claimants have established a sufficiently robust moral case to justify the award of a remedy.

27. As already noted, the claimants seek either the return of the picture or an ex gratia payment, while the respondents contend that they are debarred from granting restitution under the terms of the memorandum of agreement, and that any ex gratia payment would be ultra vires, and should therefore be funded by the Government. Both these remedies fall within the scope of our Terms of Reference.

28. We have carefully considered the possibility of an ex gratia payment, but are not persuaded that this would be an appropriate remedy for several reasons. The full price received at the auction in 1936 was for a picture listed in the catalogue as a genuine Chardin, albeit subject to a modicum of doubt cast upon it by Georges Wildenstein. Seen in the light of present knowledge the price achieved at the auction seems more than generous, since the picture's attribution has now been firmly downgraded, resulting in a modest valuation of £7,500 or thereabouts. Furthermore, while we would be prepared to disregard the tiny fraction of the compensation received from the German Government, we would need to make some allowance for the expenses (eg insurance and conservation) which the claimants would have incurred if they had retained possession during the last seventy years or so. It follows that the amount of an ex gratia payment would perforce be restricted to an amount representing the claimants' loss of their right of disposal; together with some allowance in recognition of the public benefit derived from the respondents' possession of the work over that period. Although we would not shrink from proposing a figure if this were the only course available, we doubt whether such an assessment would seem fair to either side.

29. We have therefore devoted careful consideration to the alternative remedy of restitution, focussing our attention first on whether there is any statutory or contractual obstacle precluding such a remedy.

30. In the present case, there is no statutory impediment, since, unlike the principal national collections, the Burrell Collection does not come within the

terms of the Museums and Galleries Act 1992, or of the associated statutes governing the British Museum and the British Library, which prohibit disposal of objects vested in them.

31. Turning to the contractual position, the respondents rely on the stipulation in the memorandum of agreement quoted above. We ourselves consulted Scottish lawyers, and were advised that "it is arguable that the provision of this stipulation would be binding upon Glasgow. If that were so, we believe that this would not permit Glasgow to return the painting to the claimants, although we believe that it might be arguable that "donation" would not necessarily prevent "restitution"". We regard this qualification as significant, and are not persuaded that restitution falls within the scope of the prohibited transactions ("sale, donation or exchange"). Consequently, we think it is incumbent on the respondents to reconsider this legal aspect, perhaps with the assistance of the Scottish Law Officers.

32. Quite apart from any contractual impediment, the respondents are understandably anxious to preserve the integrity of the Collection, and we give full weight to their concern. On the other side, however, there is the powerful, and to our minds morally preponderant, consideration that those who lost possession of their property as a result of Nazi oppression should be entitled to its return where, as here, any alternative remedy is inappropriate, and so long as there is no legal impediment. We think that this approach is fully in accord with the spirit of the 1943 Inter-Allied Declaration, and that it is also in line with the post-war restitution principles adopted by the allies, both of which we have cited above. It also seems to us to be in accord with the views expressed by the Select Committee on Culture, Media and Sport in their report dated 18 July 2000. However it is important to bear in mind that this approach applies only to cases within the period prescribed by our Terms of Reference (1933-1945).

33. We have also explored with our Scottish legal advisers the possibility of Sir William Burrell's estate waiving the stipulation in the memorandum of agreement. They expressed some doubts whether this was feasible, but did not rule it out. This is also an avenue which should be explored by the respondents.

34. The respondents should, no doubt, retain in their object file full details of the picture and a photograph, for the assistance of future scholars.

35. Throughout our deliberations we have been guided by the "Principles with respect to Nazi-confiscated art" laid down by the Washington Conference on Holocaust Era Assets dated December 1998 (Appendix 3), as reiterated in our Terms of Reference.

CONCLUSION

36. We are unanimously of the opinion that the just and fair solution in the present case is restitution of the picture to the claimants, and we recommend that the respondents should proceed urgently to achieve this result in the light of the opinions expressed in paragraph 31 – 34 above.

24 November 2004

The Rt Hon Sir David Hirst - Chairman
Judge 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: Terms of Reference

Appendix 2: Inter-Allied Declaration

Appendix 3: Washington Declaration

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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) an 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. (a) 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;

(b) 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));

(c) Any recommendation made by the Panel is not intended to be legally binding on the claimant, the institution or the Secretary of State;

(d) 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 clai m.

PERFORMANCE OF THE PANEL'S FUNCTIONS

6. 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.

7. 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 powers and duties, including 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 applicable, 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

8. 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 in 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, and

(d) in the case of (b) or (c) above, 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.

9. 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

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 to-day 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

January 5, 1943

APPENDIX 3

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.

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