

advisory panels, or other alternative dispute resolution mechanisms comprised of balanced membership – including representation of victim groups – as an alternative to judicial proceedings to determine ownership issues and rights of claimants to confiscated property. Such mechanisms should have full transparency, include clear rules and procedures, and require the publication of decisions, recommendations, and terms of reference.

- ▷ Where necessary, states should enact or modify legislation in order to ensure the identification and recovery of looted artwork and cultural assets by original owners or their legal successors and to implement the principles contained herein.
- ▷ The Participating States should report on the implementation of these principles – including, but not limited to, the state of provenance research and its publication and the status of the restitution of artwork and cultural property – to an appropriate international entity. These reports should be publicly available.

For Classification and Summaries of Countries – see annex p. 1210.

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**THE RENEWAL OF THE RESTITUTION PROCESS:
ALTERNATIVE DISPUTE RESOLUTION METHODS**

**I. ALTERNATIVE METHODS OF DISPUTE RESOLUTION:
THE VARIOUS MECHANISMS**

Washington Principles on Nazi-Confiscated Art, December 3, 1998, Principle N° XI: “Nations are encouraged to develop national processes ... in particular as they relate to alternative dispute resolution mechanisms for resolving ownership issues.”

Claims for restitution and court proceedings: advantages and disadvantages.

Arbitration

The international basis for arbitration in the field of cultural property.

International arbitration in practice: the awards in *Maria Altmann et al. v. Republic of Austria* (January 15, 2006 and May 7, 2006).

Mediation and Conciliation

The international basis for mediation and conciliation in the field of cultural property.

A recent example of a successful mediation in a dispute relating to ancient manuscripts looted during the 18th century religious wars in Switzerland (mediation agreement of April 27, 2006).

Negotiation

- ▷ Inter-state negotiations through the diplomatic channels;
- ▷ Negotiations between states and museums or other entities (public or private);
- ▷ Negotiations between private individuals;
- ▷ Some (unpublicized) examples.

II. POSSIBLE SUBSTANTIVE SOLUTIONS

Washington Principles on Nazi-Confiscated Art, December 3, 1998, Principle N° VIII: "... [S]teps 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."

A particular restitution agreement can simultaneously contain other specific substantive solutions (e.g., the April 2006 ancient manuscript mediation agreement in Switzerland, where the following solutions were adopted cumulatively: restitution, formal recognition of the cultural significance of the non-returned objects involved, long-term loan, donation, making of a copy of one of the cultural objects at stake).

Restitution

- ▷ Unconditional restitution (e.g., the 5 Klimt paintings returned to Mrs. Maria Altmann in January 2006; the restitution of Pissarro's *Quai Malaquais et l'Institut* to Mrs. Bermann-Fischer in 2008);
- ▷ Conditional restitution.

Loans

- ▷ The long-term loan (e.g., the ancient manuscript mediation in Switzerland);
- ▷ The short-term loan mediation (e.g., the *Benvenuto Missal* returned by the British Library following the UK Spoliation Advisory Commission Recommendation of 2004).

Donations

A long-term loan can ultimately be transformed into a donation (e.g., in the cultural heritage field, the 1997 loan granted by the Geneva Art and History Museum to the municipality of the place of origin of the medieval *Casenoves* frescoes in France; in 2003, the loan was unilaterally transformed by the Genevan authorities into a donation).

Other examples taken from recent practice (e.g., donation of a manuscript in the context of the Swiss mediation on the ancient manuscripts).

Setting Up a Specific Ownership Status (Co-Ownership, Trust, etc.)

The out of court settlement (August 1998) relating to a painting by Degas, *Landscape with Smokestacks*, looted by the Nazis and later acquired by a North American collector: the collector donated half of the interest in the painting to the Art Institute of Chicago and the other half went to the descendants of the victim of the spoliation, who could sell their share to the Institute for half of the value of the painting as determined by an expert appointed by both parties.

Making Copies

This technique was used in the Swiss mediation on the ancient manuscripts and other cultural goods: one of the parties was allowed to keep the original of the terrestrial and celestial globe of Prince-Abbey Bernhard Müller (1570 AD), but it had to make, at its expense, a perfect copy of the globe, which it was to donate to the other party.

The Formal Recognition of the Significance of the Cultural Properties to the Claimant's Cultural Identity

The Swiss ancient manuscripts agreement provides that the objects not returned to one party (Saint-Gall) are nevertheless expressly recognized by the other party (Zurich) as having for the former an important identity value.

Cultural Cooperation Agreements

In the field of antiquities, recent agreements between states and museums provide for the restitution by the museums of certain

cultural objects to the state of origin, but they simultaneously put into place long-term cooperation between these museums and that state, by providing for loans of certain important objects to these museums and the establishment of common international exhibitions (e.g., agreements entered in 2006 and 2007 between North American museums and Italy).

Other Possible Solutions

- ▷ The transfer of ownership to a third party not linked to the restitution claim;
- ▷ The withdrawal of the restitution claim in exchange for financial indemnification (e.g., the settlement of the litigation regarding Kandinsky's *Improvisation N° 10* in Basel);
- ▷ The re-purchase of the object by the person claiming restitution;
- ▷ The re-purchase of the object by the person/institution facing the restitution claim.

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ASSOCIATION OF ART MUSEUM DIRECTORS, USA

SELECTED ISSUES FOR AMERICAN ART MUSEUMS REGARDING HOLOCAUST ERA LOOTED ART

This paper is presented on behalf of the Association of Art Museum Directors (AAMD) to the *Looted Art Working Group* of