RETURN
TO AN ADDRESS OF THE HONOURABLE THE HOUSE OF COMMONS
DATED 27 APRIL 2006
FOR THE

REPORT OF THE SPOLIATION ADVISORY PANEL IN RESPECT OF FOUR DRAWINGS NOW IN THE POSSESSION OF THE BRITISH MUSEUM

The Right Honourable Sir David Hirst

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REPORT OF THE SPOLIATION ADVISORY PANEL IN RESPECT OF FOUR DRAWINGS NOW IN THE POSSESSION OF THE BRITISH MUSEUM

INTRODUCTION

The Claim

1. This claim is brought on behalf of the heirs of the late Dr Arthur Feldmann in respect of four drawings now in the possession of the British Museum. The claimants contend that they lost possession of the drawings on 15 March 1939 when the drawings, together with the rest of Dr Feldmann's large collection, were seized by the Gestapo in his villa in Brno, on the day the Germans invaded Czechoslovakia.

2. The claim clearly falls within the ambit of our Terms of Reference (annexed at Appendix 1) which provide that our task is to "consider claims from anyone ... who lost possession of a cultural object during the Nazi era (1933-1945), where such object is now in the possession of a UK national collection ...".

3. Three of the drawings were acquired by the British Museum at auction from Sotheby's in 1946, and the fourth in 1949 as part of a substantial bequest from a former Keeper of Prints and Drawings, Mr Campbell Dodgson. The British Museum's legal title to the drawings is impregnable under the Limitation Acts; however, under our Terms of Reference, we are required to give weight to the moral strength of the claim.

4. The claim is supported by a joint submission on behalf of the claimants and the British Museum proposing, as a "preferred solution", that the claimants should be compensated for the full value of the drawings, and that the drawings should remain in the British Museum.

5. The claim was originally presented in May 2002 on behalf of the claimants by the Commission for Looted Art in Europe (CLAE). It sought the return of the drawings to the claimants, notwithstanding the terms of Section 3 of the British Museum Act 1963 requiring the Trustees not to dispose of objects vested in them as part of their collections, other than in the limited cases expressly permitted by the Act. Eventually the issue crystallised in an application by the Attorney-General in the Chancery Division in the case of HM Attorney-General v The Trustees of the British Museum (2005 EWHC 1089 (Ch) with the CLAE intervening by leave of the Court. The Vice-Chancellor, Sir Andrew Morritt, was asked to resolve the question whether, as a matter of law, where the British Museum considered they were under a moral obligation to return an object within their collection to a previous owner or his heirs, such a return was permitted, by reason of the circumstances of the acquisition of the object. In his judgement the Vice-Chancellor answered the question in the negative, thus ruling out such a return.

6. Subsequently the claimants revoked all authority for the CLAE and those whom it had instructed to represent them to pursue the claim on their behalf, and proceeded on their own account.

7. The joint submission relies on copious evidence originally submitted by the CLAE, from which we cite the relevant parts in due course.

The Four Drawings

8. The four drawings comprise:-

(1) *The Holy Family* by Niccolo dell'Abbate ("the Abbate"); this attribution is uncertain and the drawing has been variously attributed to other artists; because of its uncertain attribution it has interest mainly as a study piece.

(2) *An Allegory on Poetic Inspiration with Mercury and Apollo*, by Nicholas Blakey ("the Blakey"); this is a design for an unidentified book illustration by a little known British designer.

(3) *Virgin and Infant Christ, adored by St Elizabeth and the Infant St John*, by Martin Johann Schmidt ("the Schmidt"); this is a good drawing by an important 18th Century Baroque painter who specialised in religious paintings in churches and monasteries across Austria, Slovenia and Southern Germany.

(4) *St Dorothy with the Christ Child* by School of Martin Schöngauer ("the Schöngauer"); this is a rare school piece by an early follower of Schöngauer who was the most famous German artist prior to Dürer.

9. The descriptions in the preceding paragraph are drawn verbatim from the evidence of Mr Antony Vaughan Griffiths FBA, the present Keeper of Prints and Drawings at the British Museum.

10. The first three drawings were acquired by the British Museum at the 1946 auction and the fourth was the subject of the 1949 bequest.

THE FELDMANN COLLECTION

The Collection Itself

11. Dr Arthur Feldmann, a prominent Brno lawyer, was the owner of a collection of Old Master drawings kept in his villa at 13 Traubengasse, Brno. He was advised by Dr Otto Benesch, who was the Director of the Albertina Museum in Vienna until 1938 and one of the foremost experts on Old Master drawings in Europe. Dr Benesch knew Dr Feldmann from 1930 onwards and has testified as to the excellent quality, depth and range of the collection.

The 1934 Auction

12. In 1934 Dr Feldmann offered a large part of his collection for auction, as a result of financial difficulties, according to Dr Benesch. The sale was carried out by the auction house of Gilhofer and Ranschburg of Lucerne. The auction catalogue, including Dr Benesch's introduction, was provided in evidence to us.

13. The Feldmann drawings offered for sale, numbering over 300 in total, included the Abbate (item 202), the Blakey (item 34) and the Schöngauer (item 194).

14. The auction was held on 28 June 1934 in Lucerne. It was only partly successful. Several items remained unsold, including items 34, 194 and 202 mentioned above. This is vouched for by a letter dated 24 February 1999 from the present owner of the auctioneers, Axel Erdman, based on notes in the original catalogue, written by the assistant to the auctioneer of the firm at the time. Another note in the catalogue states that all the unsold items were returned to Dr Feldmann on 3 October 1934; this is also borne out by Dr Benesch. Moreover, two years later Dr Benesch himself published an article referring to the same three drawings as part of the Feldmann collection.

15. Thanks to recent conservation work on the drawings, described by Mr Griffiths, it has been possible to inspect the versos of the drawings, showing markings on the Abbate and the Blakey of their respective lot numbers in the auction sale.

16. There is thus compelling evidence that the Abbate, the Blakey and the Schöngauer were returned to Dr Feldmann's collection after the auction sale and were still there up to 1936. There is no comparable evidence from the 1930s as to the whereabouts of the Schmidt.

17. Mr Karl Feldmann, Dr Feldmann's son, has testified that following the auction (which he describes as being a forced sale owing to the financial crisis in Europe) no further items were sold and that, on the contrary, his father acquired a few more pieces in the ensuing three years or so.

Gestapo Seizure of the Collection

18. There is clear evidence proving that, on the day of the German invasion of Czechoslovakia on 15 March 1939, the Gestapo entered Dr Feldmann's house and seized his collection. Karl Feldmann said that he was present with his wife and other members of the family the day before and saw the drawings in their accustomed cupboards. Mrs Stepanka, who had been Dr Feldmann's housekeeper since 1929, has testified that she was present in the villa on 15 March when the Gestapo arrived and forced Dr Feldmann and his wife to depart, bearing only a suitcase and leaving behind the entire collection.

19. Dr Heinrich Rosorius, the Nazi-appointed Trustee of the Feldmann estate, gave evidence in a compensation claim made in Germany that, when he took over in 1940 or 1941, the Gestapo had seized everything other than the villa itself and a briefcase containing some artistic drawings. Otherwise there is no evidence of the whereabouts of the collection until after the war.

20. When, following his appointment as Trustee, Dr Rosorius visited Dr Feldmann, he found him a sick man. According to the evidence of his nephew by marriage, Hans Hoffman, Dr Feldmann was arrested and tortured by the Nazis in the Spilberg fortress, and died on 16 March 1941.

THE BRITISH MUSEUM'S ACQUISITION OF THE DRAWINGS

The 1946 Sotheby's Auction

21. A sale was held by Sotheby's on 16 October 1946. It featured a substantial catalogue in which one large group of drawings, lots 40 to 88 inclusive, was listed under the heading "The Property of a Collector". Lot 82 comprised the Abbate, the Blakey and the Schmidt, together with a fourth drawing with which we are not concerned.

22. Messrs Colnaghi, of 15 Old Bond Street, bought lot 82 on behalf of the British Museum and, in a letter dated 25 October 2000, they exhibit their account book for the day of the auction showing that it cost £9, plus 9 shillings commission.

23. On 9 November 1946 the Board of Trustees of the British Museum, presided over by the Archbishop of Canterbury, formally approved the purchase, as recorded in the minutes.

24. Sotheby's have researched their records in an effort to establish the identity of the anonymous vendor of lots 40 to 86, but their endeavours have proved fruitless, apart from the fact, recorded in their catalogue, that they were consigned on behalf of an anonymous collector by a Channel Islands' firm of solicitors called Bennett and Bennett, who are no longer in existence. By letter dated 23 October 2001, Sotheby's confirm that there are no surviving notes, memoranda or expertise for the drawings.

25. There is, however, other evidence linking lots 40 to 88 with the Feldmann collection, which is important in relation to all four drawings, and in particular in fixing the provenance of the Schmidt. One copy of the Sotheby's catalogue has been supplied by the Director of "Collection Fritz Lugt", of 121 Rue de Lille, 75007 Paris. Fritz Lugt (1884-1970) was an art historian of the highest authority, and the author of a reference work running to nine volumes which, according to the *Grove Dictionary of Art 1996*, laid the foundation of the history of collecting prints and drawings, and became the basis for all later research. According to Mr Griffiths, Fritz Lugt had intimate knowledge of the art market from the First World War until his death. In this copy of the catalogue, the heading to lots 40-88 "The Property of a Collector" is annotated "Feldmann" in Fritz Lugt's handwriting. Mr Griffiths, in our view correctly, stresses the significance of this evidence for the provenance of lots 40 to 88.

The Campbell Dodgson Bequest

26. Mr Campbell Dodgson (1857-1948) was Keeper of Prints and Drawings at the British Museum from 1912 until his retirement in 1932. As well as being custodian of the British Museum's collection, he was also a substantial collector of prints, drawings and illustrated books in his own right. On his death he bequeathed his entire collection to the British Museum, including the Schöngauer. There is no evidence as to when or how he himself acquired the Schöngauer.

27. The bequest was approved by the Trustees at their meeting on 9 April 1949 as minuted in the following terms:-

> "The Trustees accepted a bequest by the late Campbell Dodgson ... of a notable collection of prints and illustrated books and a smaller, but hardly less remarkable, collection of drawings. Mr Dodgson had collected prints most of his life with the intention of bequeathing them to the British Museum so that almost all the collection would fall naturally into its place in the Department without overlapping. The drawings numbered 135, including 33 German, mainly of the 15th and 16th centuries."

ANALYSIS OF THE FACTUAL EVIDENCE

Provenance of the Abbate, the Blakey and the Schöngauer

28. As already noted, there can be no doubt that these three drawings formed part of the Feldmann collection, following their return unsold from the 1934 auction, and thereafter up to the publication of Dr Benesch's article in 1936. There is then a gap of three years up to the Gestapo's seizure of the collection in 1939. While it is conceivable that Dr Feldmann could have sold them during this interval, it is extremely improbable, seeing that a sale at their market value (£9 at 1941 prices) would have had no material impact on his financial problems. On the other hand, there is the positive evidence of Karl Feldmann that his father sold no further items following the 1934 auction, fortified by Fritz Lugt's identification of lots 40 to 86 at the 1946 auction as part of the Feldmann collection. All in all, we are satisfied that, on the balance of probabilities, these three drawings were part of the Feldmann collection on 15 March 1939.

29. The Schmidt is in a different category, as there is no similar evidence fixing it as part of the collection in the 1930s. However, it is noteworthy that it was entered in the 1946 auction as part of the same lot as the Abbate and the Blakey, and within a much larger group (lots 40 to 86) identified by Fritz Lugt as part of the Feldmann collection. Although the evidence is more insubstantial, we have concluded on the balance of probabilities that the Schmidt also formed part of the collection on 15 March 1939.

30. It follows that we have concluded that Dr Feldmann lost possession of all four drawings on 15 March 1939, due to the spoliation committed by the Gestapo on that day.

THE MORAL ISSUES

The Panel's Task

31. Under paragraph 7(c), (e), (g) and (h) of our Terms of Reference, we are obliged to:

(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;

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

(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 powers of disposal.

The Two International Instruments

32. Our duty to give weight to moral considerations is founded on the terms of two important international instruments. The "Inter-Allied Declaration against Acts of Dispossession committed in Territories under Enemy Occupation or Control" was issued in London on 5 January 1943 and is annexed at Appendix 2. All the Allies, including the United Kingdom, subscribed to this Declaration, which is in the following terms:-

> "The Governments hereby issue a formal warning to all concerned, but in particular for 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 countries and people who have been so wantonly assaulted and despoiled. Accordingly, the Governments making this Declaration 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 to or have belonged to 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."

33. Although the Declaration was never embodied by Statute into English law, it gives most helpful guidance on the underlying principle. This was echoed in December 1998 in the Declaration of Principles issued by the Washington Conference on Holocaust-Era Assets, which is annexed at Appendix 3, and which stresses the need to achieve a just and fair solution.

The Claimants' Position

34. Dr Feldmann was deprived of all four drawings by a gross act of spoliation by the Gestapo, furnishing an unassailable moral strength to this claim by his heirs.

The British Museum's Position

35. As the British Museum acknowledges, there is no evidence of any investigation of the provenance of the drawings, either at the time of their acquisition or subsequently, until the topic became a live issue in the late 1990s, not least as a result of the Washington Declaration.

36. By modern standards this omission would be unacceptable, but the question should be judged by reference to the much less rigorous standards previously applicable. We must also bear in mind that the three drawings bought at auction, apart possibly from the Abbate, were comparatively minor works, as exemplified by their modest purchase price; and that the fourth falls into a similar category.

37. Accordingly, while the lack of investigation is with hindsight regrettable, we refrain from criticising the British Museum on this count.

Remedies

38. In view of the agreement between the parties as to the "proposed solution", we do not recommend the return of the drawings to the claimants.

39. That leaves two possible remedies as stipulated in our Terms of Reference, compensation or an *ex gratia* payment. We do not think it would be appropriate to award compensation in the legal sense, seeing that the claimants have no legal claim. We have, however, concluded that the strength of the claimants' moral claim should be reflected in an *ex gratia* payment.

Valuation

40. Both the British Museum and the claimants have submitted valuations of the drawings from Christie's and Sotheby's respectively and we ourselves have commissioned a valuation by Sir Jack Baer, the eminent art consultant. We tabulate the three valuations as follows:-

Christie's for the British Museum

	Drawing	Value £
1	The Blakey	200
2	The Schöngauer	60,000
3	The Abbate	150,000
4	The Schmidt	1,250
Total		**211,450**

Sotheby's for the Claimants

	Drawing	Value £
1	The Blakey – omitted	4,000
2	The Schöngauer	18,000
3	The Abbate	160,000
4	The Schmidt	16,000
Total		**198,000**

Sir Jack Baer for the Panel

	Drawing	Value £
1	The Blakey	1,000
2	The Schöngauer	25,000
3	The Abbate	155,000
4	The Schmidt	5,000
Total		**186,000**

41. Significantly, Christie's and Sotheby's are in virtual agreement on the value of the Abbate, which in each case constitutes over 70% of the total. The disparity lies in relation to the other three drawings on which Sir Jack rightly concentrated.

42. Sir Jack commented on each of these three drawings as follows:–

> "In the case of the Schöngauer, for a drawing with an uncertain attribution, I think that Christie's have overvalued it, and I would suggest a likely auction result would be no more than £25,000, and this figure would be higher than any drawing attributed to the master that I can find in the saleroom results over the last 15 years.

> In the case of the Schmidt, I can find no recent auction record of a sale of this master which could justify a figure of £16,000; handsome drawing though it is, I would value it at only £5,000.
>
> In the case of the Blakey, the only pen and ink drawing by this artist which I can find in recent sale records is an unsigned "Statue of Louis XV as Benefactor of the People", which was estimated at £600–£800 by Sotheby's on 10 November 1994 (lot 18), but which was unsold. The museum drawing is, of course, the more attractive of the two and is also signed. I suggest a valuation of £1,000. "

43. We find Sir Jack's reasoning persuasive, making reference as it does to recent sale prices, and accordingly propose to adopt his valuation of £186,000 for the four drawings.

Ex Gratia Payment

44. In fixing the amount of the proposed *ex gratia* payment, we have a wide measure of discretion which must be exercised in the light of the facts of the particular case. In our previous report concerning the Griffier painting in the Tate Gallery (January 2001 HC 111, paragraph 62) we took into account, in addition to the valuation, three types of expense which the claimants would have occurred had they retained the picture, viz conservation costs, insurance, and/or potential sale expenses if they themselves had sold the picture in the meantime.

45. In the present case the British Museum have informed us that, unlike the Tate in the Griffier case, they have incurred no material conservation expenses. That leaves insurance and potential sale expenses. We do not attempt to put a precise figure on them, but think it would be fair to adjust the valuation of £186,000 to £175,000, and accordingly recommend an *ex gratia* payment in the latter sum.

46. As we advised in the Griffier case, where no legal liability or moral blame rested on the institution, it would not be appropriate to burden the British Museum with responsibility for redress. Moreover, as we noted in the Griffier case, the public and scholars have had, and will continue to have, the opportunity for access to and enjoyment of these works, and we do not think it unreasonable that, on this occasion also, the public, in the shape of the general body of taxpayers, should fund this public benefit.

47. Prior to the establishment of the Panel, when foreshadowing our work, the Lord Chancellor, on behalf of the Government, wrote as follows:–

> "It is envisaged that the recommendation on all claims will be made, in the first instance, to the Government. Claims against institutions in England would be made to the DCMS. It would then be for the Government to discuss the matter with the institution concerned; but, at the end of the day, it will be the Government which either has to provide financial compensation or, where necessary, introduce legislation to enable an object to be returned."

48. Accordingly, we recommend that the Government should make an *ex gratia* payment of £175,000 to the claimants.

27 April 2006

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. (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 claim.

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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