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Anne Laure Bandle, Alessandro Chechi, Marc-André Renold

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## Case Sammlung 101 – City of Bremen, Kunsthalle Bremen and Russia

*Kunsthalle Bremen – Russia/Russie – City of Bremen – Artwork/œuvre d'art – Spoils of war/butins de guerre – Diplomatic channel/voie diplomatique – Ad hoc facilitator/facilitateur ad hoc – Negotiation/négociation – Settlement agreement/accord transactionnel – Ownership/propriété – Exchange/échange*

*In the 1990s, Russia and the City of Bremen began to negotiate for the return of "Sammlung 101", a collection of 101 drawings. The drawings were transferred from the Kunsthalle Bremen (Bremen Art Museum) to Russia in the aftermath of the Second World War by a Soviet soldier. The negotiation resulted in the return of "Sammlung 101" to Bremen in exchange for a Florentine mosaic and a chest of drawers from the Amber Chamber. Both handover ceremonies took place in April 2000.*

*I. Chronology; II. Dispute Resolution Process; III. Legal Issues; IV. Adopted Solution; V. Comment; VI. Sources.*

ART-LAW CENTER – UNIVERSITY OF GENEVA

PLATFORM ARTHEMIS

[art-adr@unige.ch](mailto:art-adr@unige.ch) – <https://unige.ch/art-adr>

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## I. Chronology

### Spoils of war

- **1943:** During the Second World War, the entire collection of the **Kunsthalle Bremen** (Bremen Art Museum) was evacuated to **the Castle of Karnzow** near Berlin for safekeeping (50 paintings, 1,715 drawings and about 3,000 graphic prints). The collection included the so-called **Bremen leaves collection** (“**Sammlung 101**”), which was comprised of 101 Old Master drawings (45 drawings and 56 prints) by Albrecht Dürer, Edouard Manet, Eugène Delacroix, Francisco de Goya and Henri de Toulouse-Lautrec.
- **1945:** The collection was found in a depository at the Castle of Karnzow by **Pjotr Barykin**, a former soviet soldier, who subsequently brought it to Moscow.
- **9 November 1990:** The Federal Republic of Germany and the former Soviet Union signed a **Treaty on Good Neighbourliness, Partnership and Cooperation**. Article 16(2) of the Treaty states that both parties “agree that lost or unlawfully transferred art treasures which are located in their territory will be returned to their owners or their successors”<sup>1</sup>.
- **16 December 1992:** The German and Russian Governments signed an **Agreement of Cultural Cooperation**. They confirmed their commitment to return all cultural objects which were lost or unlawfully transferred into their territory to their rightful owners or their legal successors (Article 15)<sup>2</sup>.
- **1993:** **Sammlung 101** was handed over to the German Embassy in Moscow, awaiting an export permit<sup>3</sup>.
- **21 April 1995:** The State Duma of the Russian parliament enacted a moratorium on further restitutions of cultural treasures brought to Russia as a result of the Second World War on the grounds that spoils of war transferred to Russia from Germany are Russian property<sup>4</sup>. The moratorium was valid until the implementation of Russian legislation regulating the matter accordingly<sup>5</sup>.
- **1997:** The **Russian** Parliament passed the **Law on Cultural Valuables**. This declared that all cultural materials transferred to Russia as a result of the Second World War are **Russian**

<sup>1</sup> Treaty between the Federal Republic of Germany and the Union of Soviet Socialist Republics on Good-Neighbourliness, Partnership and Cooperation, signed in Bonn, November 9, 1990, *ILM* 30 (1991): 504 et seq.

<sup>2</sup> Treaty between the Federal Republic of Germany and the Russian Federation on Cultural Cooperation (*Abkommen zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Russischen Föderation über kulturelle Zusammenarbeit*) signed in Moscow, December 16, 1992, *Bundesgesetzblatt Teil II* (1993): 1256, accessed July, 28 2011, <http://archiv.jura.uni-saarland.de/BGBI/TEIL2/1993/19931256.2.HTML>.

<sup>3</sup> See Wolfgang Eichwede, “Trophy Art as Ambassadors: Reflections Beyond Diplomatic Deadlock in the German-Russian Dialogue,” *International Journal of Cultural Property* 17 (2010): 395.

<sup>4</sup> Decree of the State Duma of the Federal Assembly of the Russian Federation, “On a moratorium on the return of cultural valuables displaced in the years of the Great Fatherland [Second World War],” April 2, 1995, no. 725-I GD. *Sobranie zakonodatel'stva RF*, 1995, art. 6. Ref. and transl. Patricia Kennedy Grimsted, F.J. Hoogewoud and Eric Ketelaar, *Returned From Russia: Nazi archival plunder in Western Europe and Recent Restitution Issues* (Pentre Moel, Crickadarn, UK: Institute of Art and Law, 2007), 300.

<sup>5</sup> Grimsted, Hoogewoud and Ketelaar, *Returned From Russia*, 300.

- national property**<sup>6</sup>. The law was adopted notwithstanding a veto by Boris Yeltsin, president of Russia at that time<sup>7</sup>. Boris Yeltsin then took the law to the Russian Constitutional Court to have its conformity reassessed. Yeltsin argued that the law was incompatible with various provisions of the Russian Constitution and with international law, namely: (i) the principle of cooperation and the principle *pacta sunt servanda*; (ii) Article 4(3) of the UNESCO *Convention for the Protection of Cultural Property in the Event of Armed Conflict* of 1954 and Article I(3) of its First Protocol; (iii) the UNESCO *Recommendation on the Means of Prohibiting and Preventing the Illicit Export, Import and Transfer of Ownership of Cultural Property* of 1964; and (iv) Article 11 of the UNESCO *Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property* of 1970.
- In the meantime, the mosaic panel “**Sense of Smell and Touch**” (1716) from Florence and a **chest of drawers** (18th century), which were probably looted during the Second World War in “Peter the Great’s Amber Room” of the Catherine the Great Palace near St. Petersburg (Amber Chamber), were discovered and confiscated in Bremen and Berlin<sup>8</sup>. The discovery opened new ways for negotiation.
  - **6 April 1998**: The **Russian Constitutional Court** rendered its decision stating that the President was obliged to sign the “**Federal Law on Cultural Valuables Displaced to the U.S.S.R. as a Result of World War II and Located on the Territory of the Russian Federation**”<sup>9</sup>. The Court however did not completely foreclose “good-will gestures and exceptions to the rule”<sup>10</sup>. Boris Yeltsin signed the law on **15 April 1998**.

<sup>6</sup> Russian Federal Law on Cultural Valuables Displaced to the U.S.S.R. as a Result of World War II and Located on the Territory of the Russian Federation, N 64-FZ, April 15, 1998, transl. by Konstantin Akinsha and Lynn Visson, “Project for Documentation on Wartime Cultural Losses,” accessed August 8, 2011, <http://docproj.loyola.edu/rlaw/r2.html>. Another translation can be found in Wilfried Fiedler, “Documents - Russian Federal Law of 13 May 1997 on Cultural Values that have been Displaced to the U.S.S.R. as a Result of World War II and are to be Found in the Russian Federation Territory,” *International Journal of Cultural Property* 7 No. 2 (1998): 514 – 525.

<sup>7</sup> Fiedler, “Documents - Russian Federal Law of 13 May 1997,” 512. Decree of the Constitutional Court of the Russian Federation: “On the matter of the decision in the conflict between the Council of the Federation and the President of the Russian Federation, between the State Duma and the President of the Russian Federation on the imperative for the President of the Russian Federation to sign the approved Federal Law On cultural valuables displaced to the USSR as a result of the Second World War and located on the territory of the Russian Federation,” (transl. Grimsted, Hoogewoud and Ketelaar, *Returned From Russia*, 300 , 6<sup>th</sup> April 1998, no. 11-P. *Sobranie zakonodatel'stva RF*, 1998, no. 16 (20 April), st. 1879, 3624-3628, accessed August 8, 2011, <http://www.libfl.ru/restitution/law/law11.html>.

<sup>8</sup> The mosaic was offered for sale at auction in Bremen on behalf of Hans Achtermann, the son of a former German soldier at the Eastern front, who obtained the mosaic in unknown circumstances (see Konstantin Akinsha, “Why Can’t Private Art “Trophies” Go Home From the War?,” *International Journal of Cultural Property* 17 (2010): 268). The Amber panels were allegedly looted from the Catherine the Great Palace by Hitler in 1941, brought to Germany and disappeared when they were stored in 1945 for safekeeping from the Russian invasion. Until their discovery in the 90s, their whereabouts remained unknown. The panel at stake in this case was stolen by a German soldier at the end of the war. See Jeanette Greenfield, *The Return of Cultural Treasures*, 3<sup>rd</sup> ed. (Cambridge: Cambridge University Press, 2007), 185 – 186.

<sup>9</sup> Translated by Konstantin Akinsha and Lynn Visson, “Project for Documentation on Wartime Cultural Losses” Accessed August 8, 2011, <http://docproj.loyola.edu/rlaw/r2.html>.

<sup>10</sup> See Eichwede, “Trophy Art as Ambassadors,” 395.

- **October 1999:** Negotiations between the Russian (including President Putin) and German governments regarding **Sammlung 101** began. A first attempt to exchange the art objects failed. The German Ministry for Foreign Affairs and the German Ministry for Media and Culture prevented the City of Bremen from acting unilaterally and insisted that Bremen should wait for contractual provisions from the federal level<sup>11</sup>.
- **29 April 2000:** Trumping over federal diplomacy, Bremen organised an exchange. The **return ceremony for the confiscated Florentine mosaic** took place between the Director of the Palace-Museum of Tsarskoe Selo (Ivan P. Sautov), the German Minister for Media and Culture (Michael Naumann) and the Russian Minister of Culture (Mikhail E. Shvydkoi)<sup>12</sup>.
- **30 April 2000:** The **101 drawings were handed over** to the custodian of the **Kunsthalle Bremen** (Willy Athenstädt) by the director of the Research Centre for East European Studies at the University of Bremen (Wolfgang Eichwede), who was involved in the negotiations<sup>13</sup>.

## II. Dispute Resolution Process

### Diplomatic channel (Russia, Germany) – Ad hoc facilitator (“*Forschungsstelle Osteuropa*” headed by Wolfgang Eichwede) – Negotiation – Settlement agreement

- The restitution process of Sammlung 101 was very lengthy, mainly due to the uncooperative attitude of the Russian and German governments. **Russia openly denied the existence of the trophy art** until the early 1990s<sup>14</sup>. Until then, Germany was unaware of their location<sup>15</sup>.
- During negotiations, both governments changed their attitudes. At first, Russia was cooperative and flexible on the terms of restitution. Germany insisted on affirming the illegitimate possession of the drawings on the part of Russia and on the legitimacy of its restitution claim. With the development of Russia as a nation, the country’s politics hardened in the mid 1990s. It considered trophy art to be a rightful compensation for the losses sustained during the Second World War. At the same time, Germany increasingly realized there to be a need to adopt a more flexible position in order to obtain a settlement<sup>16</sup>.
- A first step towards bilateral negotiations regarding the trophy art was the **bilateral treaties of 1990 and 1992**. By signing these treaties, both countries expressed their desire to “transform earlier confrontation and demarcation into a reliable partnership and to build a

<sup>11</sup> See Akinsha, “Why Can’t Private Art “Trophies” Go Home From the War?,” 269.

<sup>12</sup> The Amber Room was restored in time for the city of Saint Petersburg 300<sup>th</sup> anniversary in 2003, funded to one-third by German corporate sponsorship. The opening ceremony was attended by President Vladimir Putin and Chancellor Gerhard Schröder (see Greenfield, *The Return of Cultural Treasures*, 186 and 188).

<sup>13</sup> Ibid.; see also Kunsthalle Bremen Press Release, “Bremen – Moskau – Bremen. Die Sammlung 101. 1943 ausgelagert – zurückgekehrt 2000,” accessed August 12, 2011, [http://www.kunsthalle-bremen.de/upload/Presse/Texte/PM\\_Sammlung101\\_neu.pdf](http://www.kunsthalle-bremen.de/upload/Presse/Texte/PM_Sammlung101_neu.pdf).

<sup>14</sup> Lina M. Monten, “Case Notes and Comments: Soviet World War II Trophy Art in Present Day Russia: The Events, the Law and the Current Controversies,” *DePaul Journal of Art and Entertainment Law* 15 (2004): 64.

<sup>15</sup> Ibid.

<sup>16</sup> See Osteuropa, “Freundschaft ja, Dürer nein. Wolfgang Eichwede über die Abgründe des Beutekunstrechtsstreits zwischen Russland und Deutschland,” *Osteuropa* 56 (January – February 2006): 76.

- future in which the two countries [...] can develop forward-looking bilateral relations that fit smoothly into a merging, democratic Europe”<sup>17</sup>. Although the content of both treaties somehow reiterated the content of existing international conventions, they served as an important basis for the German-Russian negotiations over looted cultural property<sup>18</sup>.
- Very early, the Kunsthalle Bremen and the Federal State Government of Bremen realized that Russia could not be persuaded to return the stolen objects without Bremen giving something in return<sup>19</sup>. Therefore, they **commissioned the research institute “Forschungsstelle Osteuropa” of the Bremen University**, to study cultural war losses suffered by the Soviet Union<sup>20</sup>. The research also extended to losses caused by other countries than Germany.
  - The German Federal Government favoured an opposite approach. This was based on the assumption that the cultural objects retained by Russia were unlawfully removed and hence should be returned to Germany without having to deliver something in return<sup>21</sup>. Ingrained in this attitude, the German Government missed several occasions to settle in the 1990s<sup>22</sup>.
  - Wolfgang Eichwede, head of the “Forschungsstelle Osteuropa”, intervened in the negotiations on the Bremen side. He contacted the Russian Minister of Culture and asked how Bremen should proceed in order to obtain the return of the drawings. In its reply, the Russian Government required Bremen to prove their property title of the drawings<sup>23</sup>. When Bremen informed the German Federal Government on the initiation of confidential negotiations with Russia, the Federal Government stated that it would “remain outside”<sup>24</sup>.
  - Negotiations became increasingly difficult as Russia’s approach toughened, following the implementation of a national law on cultural valuables<sup>25</sup>. Experts and diplomats realized the negative influence of the Russian law on negotiations and warned the German Government, but it was to no avail<sup>26</sup>. A settlement had to be found without triggering negative reactions from Russian nationalists.
  - By finding the mosaic and the chest of drawers in 1997, the German Government obtained a valuable bargaining tool.
  - The former head of *Deutsche Bank*, Wilhelm F. Christians, suggested “an informal, highly confidential round of talks”<sup>27</sup> between Germany and Russia and that the resulting settlement

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<sup>17</sup> Armin Hiller, “The German-Russian Negotiations over the Contents of the Russian Repositories,” in *The Spoils of War: World War II and Its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property*, ed. Elizabeth Simpson (New York: Harry N. Abrahams, Inc., 1997), 179.

<sup>18</sup> Ibid.

<sup>19</sup> Osteuropa, “Freundschaft ja, Dürer nein,” 72.

<sup>20</sup> Ibid.

<sup>21</sup> Ibid., 73.

<sup>22</sup> Ibid., 74 and 76.

<sup>23</sup> See Akinsha, “Why Can’t Private Art “Trophies” Go Home From the War?,” 269.

<sup>24</sup> Ibid.

<sup>25</sup> Russian Federal Law on Cultural Valuables Displaced to the U.S.S.R. as a Result of World War II and Located on the Territory of the Russian Federation, translated by Konstantin Akinsha and Lynn Visson, “Project for Documentation on Wartime Cultural Losses,” accessed August 8, 2011, <http://docproj.loyola.edu/rlaw/r2.html>.

<sup>26</sup> Osteuropa, “Freundschaft ja, Dürer nein,” 76.

<sup>27</sup> Eichwede, “Trophy Art as Ambassadors,” 391.

should be financially supported by German companies<sup>28</sup>. Two years later, in July 1999, the German firm *Ruhrigas* offered to bear the restoration costs for the Amber Chamber<sup>29</sup>.

- In October 1999, diplomatic negotiations started between the Senate of Bremen and the Russian Ministry of Cultural Affairs regarding Sammlung 101. An agreement was reached in 2000<sup>30</sup> through Bremen's initiative and a legal backdoor<sup>31</sup>.

### III. Legal Issues

#### Ownership

- The prevalent legal issue in this case was the **ownership title** to the loot held in both countries as a result of the spoliation carried out during the Second World War.

#### The German Position Based on International Law and on the Bilateral Treaties

- Germany argued that Russia's confiscation of art occurred in violation of international law<sup>32</sup>. In particular, Germany based its restitution claim on the Hague Convention of 1907<sup>33</sup>. It prohibited the seizure or destruction of cultural assets during war time (Article 23(g)). Therefore, Germany insisted on obtaining an unconditional restitution, considering that public international law had to be strictly observed<sup>34</sup>.
- In addition, the two Russian-Germany treaties required the return of "lost or unlawfully transferred art treasures" (Article 16 of the Good Neighbourliness Treaty of 1990<sup>35</sup> and Article 15 of the Cultural Cooperation Agreement)<sup>36</sup>. However, the two States had a different understanding of the concepts "lost cultural property" and "unlawfully transferred"<sup>37</sup>.
- Germany countered Russia's contention to retain cultural property on grounds of (unilateral) compensation with its unlawfulness according to international law, especially Article 53 in

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid., 395.

<sup>31</sup> See chapter III below.

<sup>32</sup> See Monten, "Case Notes and Comments: Soviet World War II Trophy Art in Present Day Russia," 65.

<sup>33</sup> Hague Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land, The Hague, October 18, 1907, accessed August 10, 2011, <http://www.icrc.org/ihl.nsf/full/195>.

<sup>34</sup> Osteuropa, "Freundschaft ja, Dürer nein," 76.

<sup>35</sup> Treaty between the Federal Republic of Germany and the Union of Soviet Socialist Republics on Good-Neighbourliness, Partnership and Cooperation, signed in Bonn, 9 November 1990, *ILM* 30 (1991): 504 et seq.

<sup>36</sup> Treaty between the Federal Republic of Germany and the Russian Federation on Cultural Cooperation (*Abkommen zwischen der Regierung der Bundesrepublik Deutschland und der Regierung der Russischen Föderation über kulturelle Zusammenarbeit*) signed in Moscow, 16 December 1992, *Bundesgesetzblatt Teil II* (1993): 1256, accessed 28 July 2011, <http://archiv.jura.uni-saarland.de/BGBI/TEIL2/1993/19931256.2.HTML>.

<sup>37</sup> See Hiller, "The German-Russian Negotiations over the Contents of the Russian Repositories," 177.

connection with Article 56 of the Hague Convention of 1907<sup>38</sup>, Article 4 of the Hague Rules of 1954<sup>39</sup> and Article I(3) of the First Protocol of the Hague Convention of 1954<sup>40</sup>. It is, however, to be noted that the Hague Convention of 1954 and its Protocol are not applicable to events which occurred prior to their entry into force<sup>41</sup>. Moreover, Germany asserted that the idea of unilateral compensation was retained neither in Article 16 nor in Article 15 of the Treaties of 1990 and 1992<sup>42</sup>.

### **The Russian Position Based on the National Law on Cultural Valuables**

- Prior to the enactment of the Law on Cultural Valuables<sup>43</sup>, Russia refused to relinquish cultural property considering the Soviet expropriation measures performed between 1945 and 1949 to be “part of the denazification, demilitarization and democratization plan of Germany”<sup>44</sup>. By signing the bilateral treaty of 1990, Germany and which Germany conceded being irreversible in signing the bilateral treaty of 1990; a contention which, however, has no foundation<sup>45</sup>.

<sup>38</sup> Art cannot be seized as means of compensation. See Wilfried Fiedler, “Legal Issues Bearing on the Restitution of German Cultural Property in Russia,” in *The Spoils of War: World War II and Its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property*, ed. Elizabeth Simpson (New York: Harry N. Abrahams, Inc., 1997), 178; Susanne Schoen, “Die Rückgabe der kriegsbedingt nach Russland verbrachten Fenster der Marienkirche aus politischer Sicht,” in *Der Antichrist. Die Glasmalereien der Marienkirche in Frankfurt (Oder)*, ed. Ulrich Knepfelkamp et al. (Leipzig: Edition Leipzig, 2008), 199. In 1939, the Hague Convention of 1907 “was the only comprehensive multilateral international agreement in effect in Europe dealing with the protection of cultural property during wartime.” Larry Kaye, *Laws in Force at the Dawn of World War II: International Conventions and National Laws*, in *The Spoils of War: World War II and Its Aftermath: The Loss, Reappearance, and Recovery of Cultural Property*, ed. Elizabeth Simpson (New York: Harry N. Abrahams, Inc., 1997), 102.

<sup>39</sup> The Hague Convention on the Protection of Cultural Property in the Event of Armed Conflict of 14 May 1954. Art. 4 (3) commits contracting states to “undertake to prohibit, prevent and, if necessary, put a stop to any form of theft, pillage or misappropriation of, and any acts of vandalism directed against, cultural property. They shall refrain from requisitioning movable cultural property situated in the territory of another High Contracting Party.”

<sup>40</sup> Ibid. Art. I(3) explicitly forbids the retention of cultural property as war reparation.

<sup>41</sup> See Andrea Gattini, “Restitution by Russia of Works of Art Removed from German Territory at the End of the Second World War,” *European Journal of International Law* 7 (1996): 83.

Greenfield, Jeanette. *The Return of Cultural Treasures*, 3<sup>rd</sup> ed. Cambridge: Cambridge University Press, 2007.

<sup>42</sup> See Fiedler, “Legal Issues Bearing on the Restitution of German Cultural Property in Russia,” 178.

<sup>43</sup> Russian Federal Law on Cultural Valuables Displaced to the U.S.S.R. as a Result of World War II and Located on the Territory of the Russian Federation, N 64-FZ, April 15, 1998, transl. by Konstantin Akinsha and Lynn Visson, “Project for Documentation on Wartime Cultural Losses,” accessed August 8, 2011, <http://docproj.loyola.edu/rlaw/r2.html>. Another translation can be found in Wilfried Fiedler, “Documents - Russian Federal Law of 13 May 1997 on Cultural Values that have been Displaced to the U.S.S.R. as a Result of World War II and are to be Found in the Russian Federation Territory,” *International Journal of Cultural Property* 7 No. 2 (1998): 514 – 525.

<sup>44</sup> Gattini, “Restitution by Russia of Works of Art,” 79 (referring to *Die vertraglichen Vereinbarungen zwischen Deutschland und Russland zur Rückführung kriegsbedingt verbrachter Kulturgüter - Die Rechtslage aus deutscher Sicht*, Veröffentlichung des Ausw. Amtes (1994) n. 13-22).

<sup>45</sup> Ibid.

- The Russian Government's position is clearly evidenced by the content of the Law on Cultural Valuables. It justified the appropriation of looted objects as a compensation for the losses suffered during the war<sup>46</sup>.
- Basically, according to Article 6 of Law on Cultural Valuables, “[a]ll displaced cultural valuables imported to the U.S.S.R in realization of its right to compensatory restitution and located on the territory of the Russian Federation [...] **are the property of the Russian Federation and are federally owned**”. The actual property prevails “irrespective of the actual possessor and the circumstances leading to this actual possession” (Article 3).
- One of the provided exceptions allowed Germany to file a claim for restitution if it showed that it “presents evidence of having filed a claim before [February 1, 1950]” (Article 8 (1)). In the present case, the German Government was unaware of the location of the drawings until 1990 and was therefore unable to file a claim in due time<sup>47</sup>.
- The law merely guarantees the ownership rights of certain countries which were victims of German aggressions during the Second World War, namely Belarus, Latvia, Lithuania, Moldova, Ukraine and Estonia (Article 7). Germany was excluded from the list of potential beneficiary countries.
- According to Wolfgang Eichwede, Director of the research institute “*Forschungsstelle Osteuropa*”, who also intervened in the negotiations, both the Russian position based on the right to be compensated and the German position based on public international law deserved appreciation. During negotiations they were however played off against each other<sup>48</sup>. Russia alleged that its idea of compensatory restitution occurred not *during* the Second World War but *outside* the war, and would therefore not be governed by the Hague Convention of 1907<sup>49</sup>. Paradoxically, the Soviet Government made it difficult to ascertain the legitimacy of its ownership over German “trophy art”, given its attitude of complete secrecy as to the existence and location of these cultural objects during almost 50 years since the end of the Second World War<sup>50</sup>. Its attitude has been criticized for being “not easily reconciled with the current will to regard the removed German cultural property as legitimately owned as reparations”<sup>51</sup>.
- Ultimately, in the context of Sammlung 101, **the Russian Constitutional Court's decision** of 6 April 1998 indirectly facilitated the exchange by implementing three exceptions to the nationalization of cultural property in the 1998 law (Article 8). It explicitly reinforced property titles of states which were not allied with Germany, of religious organizations or private charitable institutions, and of individuals and private institutions which had suffered

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<sup>46</sup> See Monten, “Case Notes and Comments: Soviet World War II Trophy Art in Present Day Russia,” 67-68; see also Osteuropa, “Freundschaft ja, Dürer nein,” 76.

<sup>47</sup> Note that the time limitation has been abandoned with the amendment of the law on May 25, 2000 (Federal Law No 70-FZ 2000).

<sup>48</sup> See Osteuropa, “Freundschaft ja, Dürer nein,” 76.

<sup>49</sup> See Amelia Borrego Sargent, “New Jurisdictional Tools for Displaced Cultural Property in Russia – From “Twice Saved” to “Twice Taken”,” in *Yearbook of Cultural Property Law 2010*, ed. Sherry Hutt et al. (Walnut Creek: Left Coast Press, 2010), 190.

<sup>50</sup> Gattini, “Restitution by Russia of Works of Art,” 82.

<sup>51</sup> Ibid.



national socialist reprisal, such as the Kunsthalle Bremen, which is privately held since 1849<sup>52</sup>.

- Russia officially accepted the exchange with the Kunsthalle by underlying that it was making an exception since the drawings “were stolen by an individual and not removed by Stalin’s official teams of art-robbers”<sup>53</sup>.

#### IV. Adopted solution

##### Exchange

- Germany returned the Florentine mosaic “Sense of Smell and Touch” (1716) and a chest of drawers (18th century), originally from the Amber Chamber of the Yekaterina Palace, to Russia. The Amber Chamber, heavily damaged during the war, was reconstructed thanks to the generous contribution of the German company *Ruhrgas*<sup>54</sup>.
- In exchange, Russia returned Sammlung 101 to the Kunsthalle Bremen. In the agreement between the Russian Ministry of Culture and the City of Bremen, it was “specified that the panel would go back to Russia and that simultaneously the Russian side would give their permission for the drawings in the German Embassy to be returned to Germany legally”<sup>55</sup>.

#### V. Comment

- Despite the overall diplomatic standstill between Russia and Germany on the issue of lost or displaced cultural property as a result of the Second World War, the return of Sammlung 101 was possible thanks to Bremen’s local authorities<sup>56</sup>. They considered the case of Sammlung 101 as the first step for further negotiations regarding other looted artworks, such as the Baldin collection<sup>57</sup>.
- During the years of negotiations, the German and Russian Governments had internal disagreements. The Duma repeatedly defeated the resistance of Boris Yeltsin. Bremen had to

<sup>52</sup> Sebastian Preuss, “Privatbesitz gilt wieder was in Russland,” *Berliner Zeitung*, May 2, 2000, accessed August 12, 2011, <https://www.berlinonline.de/berliner-zeitung/archiv/.bin/dump.fcgi/2000/0502/feuilleton/0003/index.html>.

<sup>53</sup> Ian Traynor, “Russian to Return Looted Art, But Not to Germany,” *Guardian*, April 21, 2000, accessed August 12, 2011, <http://www.guardian.co.uk/world/2000/apr/21/russia.iantraynor>.

<sup>54</sup> See Sylvia Hochfield, “The German-Russian Stalemate,” *ARTnews*, February 1, 2011, accessed March 5, 2012, <http://www.artnews.com/2011/02/01/the-german-russian-stalemate/>.

<sup>55</sup> Akinsha, “Why Can’t Private Art “Trophies” Go Home From the War?,” 269.

<sup>56</sup> Eichwede, “Trophy Art as Ambassadors,” 388.

<sup>57</sup> To date, the two governments have not found an agreement regarding the Baldin Collection, which encompasses 362 drawings and two paintings from the Kunsthalle Bremen. Similarly to the present case, the artworks were secured by a Soviet officer, Baldin, during the Second World War and brought to Moscow. The representatives of the Russian and German governments were very close to reach an agreement, but protests by the Russian media and the Duma prevented them from doing so. See Eichwede, “Trophy Art as Ambassadors,” 396; see also Konstantin Akinsha and Grigorii Kozlov, *Beutekunst: Auf Schatzsuche in russischen Geheimdepots* (Munich: Deutscher Taschenbuch Verlag, 1995), 289 et seqq.

- convince not only the Russian Government, but also the German Ministry for Foreign Affairs and the Naumann-office (Ministry for Media and Culture).
- The outcome of the dispute under consideration constitutes an interesting solution. However, the German Government did not want to make this case seem like an exchange<sup>58</sup>. As Eichwede communicated at the beginning of the negotiations, “[i]t wasn’t an exchange but two independent developments at the same time”<sup>59</sup>. Later on, he admitted that he had denied the idea of an exchange in order to avoid any confrontation with the German Government and in particular with the Foreign Office<sup>60</sup>. Russia, on the other hand, suggested the exchange but was cautious not to evidence a reduction of its opposition to the restitution of war spoils.
  - Russia is unlikely to return any additional trophy art, as it is doubtful whether Germany is in possession of Russian cultural property to offer in exchange.
  - In November 2005, the Kunsthalle Bremen joined the initiative “*Deutsch-Russischer Museumsdialog*”<sup>61</sup>. It gathers 80 German museums and encourages the exchange of information, collaboration and access to the collections held in the museums of both States<sup>62</sup>. Collaboration would be intensified by the organisation of joint exhibitions and Russian museums hosting German experts<sup>63</sup>.
  - According to Wolfgang Eichwede, Germany could have reached a far more advantageous agreement regarding the other art objects retained by Russia, if it had been more cooperative in the beginning of the negotiations<sup>64</sup>.

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<sup>58</sup> Sebastian Preuss, “Privatbesitz gilt wieder was in Russland.”

<sup>59</sup> Akinsha, “Why Can’t Private Art “Trophies” Go Home From the War?,” 269.

<sup>60</sup> Ibid.

<sup>61</sup> “Die Initiative Deutsch-Russischer Museumsdialog,” Kulturstiftung der Länder, accessed August 12, 2011, <http://www.kulturstiftung.de/aufgaben/deutsch-russischer-museumsdialog/>.

<sup>62</sup> See Kunsthalle Bremen Press Release, “Bremen – Moskau – Bremen. Die Sammlung 101. 1943 ausgelagert – zurückgekehrt 2000,” accessed August 12, 2011, [http://www.kunsthalle-bremen.de/upload/Presse/Texte/PM\\_Sammlung101\\_neu.pdf](http://www.kunsthalle-bremen.de/upload/Presse/Texte/PM_Sammlung101_neu.pdf).

<sup>63</sup> Ibid.

<sup>64</sup> Osteuropa, “Freundschaft ja, Dürer nein,” 76.

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