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MAR**HOLOCAUST ERA ASSETS CONFERENCE
PRAGUE, JUNE 26-30****WORKING GROUP LOOTED ART
LEGAL ISSUES
JUNE 28, 2009****THE RENEWAL OF THE RESTITUTION PROCESS: ALTERNATIVE METHODS OF DISPUTE RESOLUTION**

BY

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ATTORNEY-AT-LAW, GENEVA**INTRODUCTION****I. ALTERNATIVE METHODS OF DISPUTE RESOLUTION : THE VARIOUS MECHANISMS****a. In general**

- 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.

b. 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* (15 January 2006 and 7 May 2006).

c. Mediation and Conciliation

¹ The present contribution is related to a common research effectuated by the author in cooperation with Mrs Marie Cornu, Directrice de recherche at the CNRS, Paris which has been published in French in the *Journal du Droit International (Clunet)* April-May-June 2009, n° 2/2009, pp. 493-533. An English version of this article is being prepared with the help of UNESCO.

- 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 27 April, 2006).

d. Negotiation

- Inter-State negotiations through the diplomatic channel.
- Negotiations between States and museums or other entities (public or private).
- Negotiations between private individuals.
- Some (unpublicised) examples.

II. POSSIBLE SUBSTANTIVE SOLUTIONS

a. In general

- 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).

b. Restitution

- The 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).
- The conditional restitution.

c. 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).

d. 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 Geneva 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).

e. Setting up of 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 donates half of the interest in the painting to the Art Institute of Chicago and the other half goes 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 determined by an expert appointed by both parties.

f. The making of 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 A.D.), but it had to make at its expense a perfect copy of the globe which it was to donate to the other party.

g. The formal recognition of the significance of the cultural property's for the claimant's cultural identity

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

h. 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 a long term cooperation between these museums and that State, by providing for loans of certain important objects to these museums and the setting up of common international exhibitions (e.g. agreements entered in 2006 and 2007 between North-American Museums and Italy).

i. 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 a 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.

CONCLUSION

CHECK AGAINST DELIVERY