



Working Paper Series in Public and Cultural Diplomacy

ISSN: 2784-9589

Working paper no. 1
January 2021

Alternative Dispute Resolution Mechanisms for Nazi-looted Art: the European Panels

Arianna Lugoboni

Working Paper Series in Public and Cultural Diplomacy

Editor-in-Chief

Francesco Olmastroni

Editorial Board

Saverio Battente	Federico Lenzerini
Stefano Campana	Fabio Mugnaini
Cristina Capineri	Daniele Pasquinucci
Carlo Citter	Giovanna Pizziolo
Andrea Francioni	Lara Semboloni
Giovanni Gozzini	Gianni Silei
Mattia Guidi	Marco Ventura
Pierangelo Isernia	Luca Verzichelli

Editorial assistant

Alessandro Lamonica

Scientific Committee

Jo Beall
Silvia Colombo
Spinella Dell'Avanzato
Tommaso Fabbri
Marcin Grabowski
Valdimar Tr. Hafstein
Eleonora Insalaco
Yudhishtir Raj Isar
Andrew Murray
Marcello Scalisi

Layout and graphic design by
Gaea Riondino

A registered publication by
Department of Social Political and Cognitive Sciences
University of Siena
Via Roma 56, 53100 Siena, Italy
e-mail: wpspcd@unisi.it

© DISPOC 2021

DISPOC
Interdisciplinary
Department



UNIVERSITÀ
DI SIENA 1240

Alternative Dispute Resolution Mechanisms for Nazi-looted Art: the European Panels

Arianna Lugoboni

Abstract

During the Second World War, the biggest art plundering in history was carried out by the Nazis, especially at the Jews' expenses. Despite the subsequent recovery efforts, which enabled many victims to take their cultural property back, several works of art became ownerless property. In this paper, the attention is drawn to the international regulatory system for cultural heritage protection with the intention to prove its juridical inadequacy to solve the issue of Nazi-looted art restitution. The insufficiency is demonstrated throughout the paper for the reason that these agreements all suffer from a series of shortcomings, preventing them to do justice to the victims of spoliation: non-retroactivity, non-binding nature, clashes between public and private international law, statutes of limitations and absence of penalty mechanisms. In order to cross this legal impasse, the paper analyses the panels created in five European states (Austria, France, the United Kingdom, the Netherlands and Germany) after the adoption of the Washington Principles on Nazi-Confiscated Art in 1998, for the reason that they have proven to be true Alternative Dispute Resolution (ADR) Mechanisms to litigation through court, where the deck is stacked against the claimant from the start. Some loose comparative insights of these national solutions to Nazi-looted art restitution are drawn in order to investigate their differences and similarities. Waiting for the international community to adopt a binding cultural policy, the Network of the European Restitution Committees is setting the example at the international level.

Arianna Lugoboni graduated in Public and Cultural Diplomacy at the University of Siena with a thesis on "Nazi-looting and art restitution: the need for a binding international cultural policy". E-mail: lugoboniarrianna@gmail.com



Background: Nazi Art Looting during WWII

The history of the biggest art plundering dates back to 1938, with the German *Anschluss* (annexation) of Austria (12 March). The looting of the Austrian private collections was aimed at filling the almost emptied German museums, whose walls had been deprived of the modern works of art due to the Nazi policy on the so-called *Entartete Kunst* (degenerate art), a campaign of cultural cleansing aimed at removing from the Reich' museums all artworks considered as degenerate and subversive (Nicholas, 1994). The spoliation of private collections was justified by the Jewish origins of their owners, who were systematically dispossessed of their belongings. The next invaded states had to face the same destiny: Czechoslovakia, Poland, Belgium, and the Netherlands.

The Nazi plundering of the Jewish collections became even more organised after the occupation of France, on 14 June 1940. In the first phase, when the Reich Ambassador to France, Otto Abetz, was in charge of the looting operations in Paris (Valland, 2016), the plundered artworks were stored in the Reich embassy, the Hôtel de Beauharnais. Due to the extent of the plundering, Alfred Rosenberg, the ideologist of the Reich, and his task force, the ERR (*Einsatzstab Reichsleiter Rosenberg - Reichsleiter Rosenberg Task force*), were sent to Paris to manage the operations. For this second phase, the French museum of the Jeu de Paume was chosen by the ERR as the artworks' concentration camp (Valland, 2016). Once the plundered works of art had reached the Jeu de Paume, they were shipped to the Reich by train, to be collected in a museum or repository; otherwise, they were sold through the art market to fill in the *Nationalsozialistische Deutsche Arbeiterpartei's* (NSDAP - National Socialist German Workers' Party) bank account – this is mostly the case of artworks confiscated under the *Entartete Kunst* – or simply destroyed by fire (Polack, 2019). The operations of the ERR were secretly supervised by Rose Valland, a French curator who had been working in the Jeu de Paume for ten years and who, despite the Nazi occupation of the museum, decided to keep working there (Valland, 2016). Her dangerous job, supported by the Director of the French Museums, Jacques Jaujard, turned out to be vital for the following artworks' recovery mission carried out by the Monuments Men (Nicholas, 1994; see below), as she was able to locate many Nazi repositories. In the final phase, around 1942, the *Möbel Aktion-Bilder* (Furniture operation-Paintings) was launched, consisting of the pillaging of every object found inside the Jews' apartments (Valland, 2016).

Meanwhile, the American museum community started mobilising for the safeguarding of the European heritage, always more endangered by the Allied advance and the exacerbation of the war. When Sicily was invaded on the night between 9 and 10 July 1943, Captain Mason Hammond was sent to the Italian island as American Advisor on Fine Arts and Monuments, flanked by his British colleague Captain Fred H. J. Maxse, to deal with the destroyed cultural heritage and to protect it from pillaging (Edsel, 2009). Thereafter, President Franklin D. Roosevelt created the Roberts Commission, later integrated by the British-American Monuments, Fine-Arts, and Archives (MFAA) sub-commission¹ (Edsel, 2009). The MFAA was composed, among others, of the so-called Monuments Men: American and British art experts and professionals sent to Europe to save the continent's artistic history. To safeguard the recovered artworks, some collecting points were created in the major German cities, from

¹ The MFAA was administrated by the AMGOT (American Military Government for Occupied Territories) and depended on the M-5 division of the British War Office (Edsel, 2009).

where the shipments to the countries of origin were organised; it was then the states' task to return the private collections to their rightful owners (Edsel, 2009). By 1949, 90% of the works of art recovered in Germany were sent to the legitimate countries (Liechtenhan, 2017), but the collecting points kept working until 1952 when the United States closed them (Nicholas, 1994).

Research objective

At the end of WWII, the Nazi-looting of the European heritage forced the international community to deal with the issue of the protection of cultural heritage in order to prevent similar barbarities from happening again. In this paper, the attention is drawn on the international regulatory system for cultural heritage protection to prove its juridical inadequacy to solve the issue of Nazi-looted art restitution. This insufficiency is demonstrated throughout the manuscript for the reason that these agreements all suffer from a series of shortcomings, preventing them to do justice to the victims of spoliation. To cross this legal impasse, the core of the paper is centred on the qualitative and deductive analysis of the panels created in five European States (Austria, France, the United Kingdom, the Netherlands, and Germany) after the adoption of the Washington Principles on Nazi-Confiscated Art in 1998, for the reason that they have proven to be Alternative Dispute Resolution (ADR) Mechanisms to litigation through court.

Both primary and secondary sources (institutional websites, academic articles, and researches) have been collected to conduct a review and meta-analysis of the existing literature dealing with the international regulatory system and the European panels.

The Juridical Context: International Initiatives for the Protection of Cultural Heritage

From a juridical viewpoint, finding a universal definition of art is a perennial problem, which is why the notion of art has constantly evolved in the international legal framework. Of course, the legal discourse is on a lower level of aesthetic sophistication when compared to more philosophic definitions of art; however, legal answers to the issue are needed (Karlen, 1981). First of all, the juridical concern for art is mostly oriented towards the 'work of art', rather than the 'art' or the 'artist', which are ignored in statutes (Karlen, 1981). Secondly, in assessing whether an object is a work of art, courts have refrained from giving positive definitions; on the contrary, they have imposed negative limitations on what art is. As a consequence, a universal definition of art is still lacking, one of the reasons being that aesthetic problems would arise, and courts are not the proper forum to decide on beauty issues (Karlen, 1981). However, some institutions, such as UNESCO, have managed to find a compromise when defining cultural heritage of *outstanding universal value*, a rather loose interpretation of the notion which, however, enlarges the institution's intervention sphere (Meskell, 2013). The UNESCO example helps convey the fundamental concept that art-related legal terms should always be defined within the context of the agreement in which they appear to overcome the limitations in the legal definitions of art-related items.

Before WWII

The juridical void concerning the protection of cultural heritage was one of the factors which made the Nazi plundering possible. The Convention (IV) respecting the Laws and Customs of War on Land, ratified in The Hague on 18 October 1907, was the only existing multilateral treaty containing provisions on the protection of private property (Liechtenhan, 2017). According to Article 46, “*the honour and rights of families, the lives and private property of citizens, as well as religious convictions and practices will be respected. Private property will not be confiscated*” (Nicholas, 1994). Due to their importance for the international community, the provisions of the above-mentioned Convention became customary rules of international law, legally binding for states. When Hitler and the Third Reich violated article 46, they not only committed a crime under international law, but they also infringed the *opinio iuris sive necessitatis*, namely the will and need of the international community to be bound by a specific custom, which, thanks to this legitimation given by states, becomes a rule (Cassese, 2005).

After WWII

Even before the end of WWII, the Allied powers manifested their will “to do their utmost to defeat the methods of dispossession practiced by the Governments with which they were at war”² and to intervene to foster the restitution of the looted material (Liechtenhan, 2017). This commitment was demonstrated on two different occasions: the Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control, signed in London on 5 January 1943; the United Nations Monetary and Financial Conference, which took place in Bretton Woods in July 1944.

Waiting to adopt the first international agreement dealing with cultural heritage, two institutions were created: the United Nations Educational, Scientific and Cultural Organization (UNESCO), in 1945; the International Council of Museums (ICOM) in 1946. UNESCO and ICOM soon became the world’s leading institutions regulating cultural heritage on a global scale. The UNESCO Convention for the Protection of Cultural Property in the Event of Armed Conflict, its annexed regulations and Protocol I were signed in The Hague on 14 May 1954, while Protocol II was drafted in 1999. Besides having established a common definition of cultural property (Article 1), the importance of this convention, dealing with cultural assets, is to have laid in its provision referring to the protection of cultural possessions also in the event of occupation (Article 5), *de facto* declaring illegal any kind of spoliation or destruction during wartime (Liechtenhan, 2017).

Sixteen years later from its adoption, in 1970, the UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property was approved, aimed at fighting the illegal trafficking of works of art by introducing a series of measures to track the flows of artworks inside and outside the national territory. The most important initiative was the obligation to issue a certificate of exportation whenever an artwork was authorised to leave the exporting state (Article 6§1) (Prott, 1995); in the

² See the Commission for Looted Art’s website for the full text of the Inter-Allied Declaration Against Acts of Dispossession Committed in Territories Under Enemy Occupation or Control: <https://www.lootedartcommission.com/inter-allied-declaration>.

absence of such certificate, the exportation was prohibited (Article 6§2). Moreover, the Convention provided for active obligations at the national level directed at the protection of cultural property, such as the establishment of national inventories and lists of protected private and public cultural property (Article 5§2), or the commitment to give appropriate publicity when an artwork disappeared (Article 5§7).

After two years, in 1972, the UNESCO Convention Concerning the Protection of the World Cultural and Natural Heritage was drafted, creating the UNESCO system of World Heritage Lists of cultural and natural sites as we know it today, as well as the List of World Heritage in Danger (Article 11). Moreover, the loose concept of *outstanding universal value* was introduced as the *sine qua non* condition for being considered cultural heritage (Article 1). Contrary to the 1954 Convention, every reference to armed conflicts or war disappeared, contributing to spreading the idea that cultural heritage (now called world heritage) must always be safeguarded (Article 11§4).

The provisions of the 1970 UNESCO Convention echoed in a more recent agreement: the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects. UNIDROIT, the International Institute for the Unification of Private Law, is an independent intergovernmental organization based in Rome, created in 1926 as an auxiliary body of the League of Nations, but re-founded in 1940 with its statute. The force of the UNIDROIT Convention laid in its applicability to both stolen and illegally exported cultural objects, proposing common strategies for both situations at the international level, and in the principle that all cultural property must be returned. To make this last point effective, the document provides for the possibility to bring a restitution claim before the courts of the Contracting State where the object is located (Article 8). Moreover, the UNIDROIT Convention addressed for the first time the issue of the statute of limitations, namely the maximum time after an event within which legal proceedings may be initiated, unifying it at the international level. The limitation is set at “three years from the time when the claimant/requesting state knew the location of the cultural object and the identity of its possessor, and in any case within a period of fifty years from the time of the theft/date of the export” (Articles 3§3 and 5§5). Even though the presence of a statute of limitations represents a restriction *per se* of the juridical effects of a provision, the Convention was able to unify the time limitations at the international level, thus improving the countries’ legislations where the national jurisdiction was less favourable for claimants (O’Keefe, 2006). However, the UNIDROIT Convention is a non-retroactive agreement, meaning that its provisions shall only apply to cultural objects stolen or illegally exported after the entry into force of the document (Article 10).

Three years later, from 30 November to 3 December 1998, the Conference on Holocaust-Era Assets took place in Washington D. C., resulting in the adoption of the Principles of the Washington Conference with respect to Nazi-confiscated art, also known as Washington Principles. Despite the non-binding nature of the principles, fifty-three years since the end of WWII, an international agreement was finally dealing with Nazi-looted art and its restitution. The Washington Principles are constituted by a list of eleven provisions, preceded by a preamble, calling for the identification of Nazi-looted art (Principle 1), the accessibility of archives (Principle 2), the publicity of previously confiscated and not yet returned art (Principle 5), the establishment of a central registry collecting all the information on Nazi-looted art (Principle 6), the adoption of *just and fair solutions* with regard to pre-war owners, or their heirs, victims of spoliation (Principle 8) and for the development of national processes to

implement these principles, such as Alternative Dispute Resolution mechanisms to solve ownership issues (Principle 11) (Eizenstat, 1998).

The adoption of the Washington Principles had a huge impact both in the art and political world, as it was able to re-introduce the issue of restitution in the public debate. The various international and European institutions started engaging in the drafting of documents concerning Jewish art restitution without, however, proposing anything new and without implementing the Washington Principles, some examples being the ICOM Recommendations concerning the Return of Works of Art belonging to Jewish Owners, the Resolution 1205 of the Council of Europe, the Vilnius Forum Declaration, the European Parliament Resolution on a legal framework for free movement within the internal market of goods whose ownership is likely to be contested, the Terezin Declaration, or the European Parliament Resolution on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars. In particular, this last resolution, signed on 17 January 2019, calls for the adoption of the UNIDROIT Convention for the settlement of future restitution cases at the European level, whereas, concerning past losses, it invites to follow the extra-legal 'ethical approach' – such as the use of ADR mechanisms or the introduction of general standards for provenance research – to solve restitution claims (Campfens, 2018). Another recent initiative, albeit a private one, is represented by the creation of the Court of Arbitration for Art (CAfA) in June 2018. Based in The Hague, this institutionalised ADR mechanism was born thanks to the cooperation between the Authentication in Art foundation (AiA) and the Netherlands Arbitration Institute (NAI), whose desire was to constitute a specialised tribunal providing for arbitration and, since January 2019, mediation to solve art-related disputes (Campfens, 2018).

Similarly, the United States aligned themselves with the restitution trend, by voting the Holocaust Expropriated Art Recovery (HEAR) Act in 2016, the Justice for Uncompensated Survivors Today (JUST) Act in 2017 and by adopting the Germany-USA Joint Declaration concerning the Implementation of the Washington Principles.

What has to be retained from the juridical context? Despite the drafting of conventions, declarations and resolutions, the agreements adopted by the international community all suffer from a series of juridical shortcomings that prevent their provisions from being adequate legal instruments able to solve the issue of Nazi-looted art restitution³. First of all, the soft law nature of the above-mentioned agreements results in their non-binding effect on states parties, which are not compelled to comply with their provisions. Moreover, except for the Washington Principles, the non-retroactivity of the concerned conventions precludes the possibility to overrule actions *ex post facto*. As previously mentioned, another shortcoming is represented by the presence of statutes of limitations that control the juridical effects of a norm over time. The conflict between public and private international law constitutes another juridical problem, as the issue of art restitution involves both the public and the private spheres, resulting in a juxtaposition of laws, none of which prevails. Finally, the absence of penalty mechanisms, an aspect which is linked to the non-binding nature of the conventions, does not dissuade the international community from breaking the agreed provisions. The existence of all these juridical shortcomings proves the inadequacy of the international agreements aimed at solving the issue of Nazi-looted art restitution adopted until now by states.

³ European Parliament resolution of 17 January 2019 on cross-border restitution claims of works of art and cultural goods looted in armed conflicts and wars (P8_TA(2019)0037). For the adopted texts, see: https://www.europarl.europa.eu/doceo/document/TA-8-2019-0037_EN.pdf, accessed 3 September 2020.

Alternative Dispute Resolution (ADR) Mechanisms: The Panels in Austria, France, the United Kingdom, the Netherlands, and Germany

The adoption of the Washington Principles in December 1998 finally re-introduced the issue of Nazi-confiscated art restitution on the public debate. In particular, Principle 11 called for the development of Alternative Dispute Resolution (ADR) Mechanisms to solve ownership issues at the national level. This invitation was welcomed by five European States, which created national art commissions aimed at implementing Principle 11.

Austria: the Kommission für Provenienzforschung and the Beirat

The context of creation

The case of Austria differs from the other four states which adopted art commissions because the Austrian government managed to introduce some provisions aimed at fostering Nazi-looted art restitution even before the Washington Conference. In fact, after the adoption of the Nullification Act in 1946, invalidating all legal transactions made under Nazi occupation, and seven Restitution Acts (*Rückstellungsgesetze*) between 1946 and 1949 (Marck and Muller, 2015), the Austrian museums and public collections were still lodging a large quantity of cultural property belonging to Jews, most of those did not survive Nazi persecutions and never claimed their property⁴.

During the 1990s, thanks to the change in the public debate concerning the issue of Nazi-confiscated art, Austria became the first European state to start investigating its public collections in order to trace the artworks with a problematic provenance, find their legal owners and propose their restitution. For this purpose, the *Kommission für Provenienzforschung* (Commission for Provenance Research) was created in February 1998, some months before the Washington Conference, to conduct provenance research on the federal collections (Marck and Muller, 2015). Moreover, the day after the end of the Washington Conference, on 4 December, the *Kunstrückgabegesetz* (Art Restitution Act) was passed, followed by the creation of the *Beirat* (Art Restitution Advisory Board) on 9 December, the first panel dealing with Nazi-looted art restitution. In November 2009, the Art Restitution Act was amended to enlarge the timeframe embraced by the rule, which now covers acts of spoliations committed from 30 January 1933 to 8 May 1945, as well as the nature of the looted objects, which now includes both works of art and other movable cultural property (Marck and Muller, 2015). However, the Art Restitution Act shall lapse in 2023 (Oost, 2012), so, if the legislation is not changed before, no more restitutions will be possible.

Functioning and activating mechanism

The relationship between the two Austrian restitution bodies is very close. The *Kommission für Provenienzforschung*, depending on the Federal Ministry of Art, Culture, Public Service and Sport, receives the files created by art historians and archivists on individual works of art

⁴ The *Rückstellungsgesetze* provided for the possibility to submit a claim for restitution until 31 December 1955 and, under specific circumstances, until 31 July 1956 (Marck and Muller, 2015).

and analyses them before transmitting them to the *Beirat* (Oost, 2012). In particular, according to the Art Restitution Act, the Commission shall describe the provenance of the concerned objects and the historical circumstances, as well as collect, process and archive the results of its research, which can form the basis for the recommendations issued by the Committee. In a second phase, the Committee, depending on the same Ministry, collects and studies the reports written down by the Commission to draft a recommendation to the Federal Minister of Art, Culture, Public Service and Sport. The document issued by the Committee, which is not legally binding, may propose returning the cultural object to its original owner or his legal heirs, or it may advise against its restitution, according to the evidence provided. The final decision falls on the Federal Minister, who is empowered to issue the authorisation to return objects in federal ownership under the Art Restitution Act, and who, in most cases, has implemented the recommendations of the *Beirat* (Marck and Muller, 2015).

When the *Beirat*'s recommendation provides for the restitution of the cultural object, the artwork is immediately returned to its legal owner or his heirs; however, if the identity of the original possessor is unknown, the *Beirat* orders to trace him or his successors (Oost, 2012). To facilitate the process of identification, the Austrian State has created a database (Art Database) of the cultural objects safeguarded in the federal collections whose ownership is still unknown. In those cases where it is impossible to locate the legal owners of the object, because, for instance, they did not survive Nazi persecutions, the artworks are labelled as ownerless property and they are transferred to the Austrian state (Oost, 2012). Successively, the state transmits the ownership to the *Nationalfonds* (national fund)⁵, which sells the cultural objects to use the proceeds of the sale for the benefit of the victims of the Nazi regime or to support research projects on National Socialism.

As we may evince from the functioning of the *Kommission für Provenienzforschung* and the *Beirat*, these two bodies are self-activating institutions, as the Art Restitution Act is an *Ermächtigungsgesetz* (Enabling Act) (Oost, 2012). In other words, private individuals are not allowed to submit a restitution claim; however, the information received by victims is followed up, even though it is not a precondition for the investigation (Marck and Muller, 2015). Finally, the Austrian art restitution policy provides that each year the Minister of Art, Culture, Public Service and Sport submits an annual Restitution Report to the National Council summarising the activities of the *Kommission für Provenienzforschung* and the *Beirat*, as well as its recommendations (Marck and Muller, 2015). The Report and the recommendations are all accessible on the *Kommission für Provenienzforschung* website⁶.

Composition

As a consequence of the amendment of the Art Restitution Act in 2009, the composition of the *Beirat* has slightly changed since one new member was integrated. The Austrian Committee is a heterogeneous group, constituted by members belonging to different environments, such as politics, finance, history and art history. Concerning the political constituent, the *Beirat* counts one representative for each of the following Federal Ministries: Finance; Economic Affairs, Family and Youth; Justice; Art, Culture, Public Service and Sport; Defence

⁵ The *Nationalfonds für Opfer des Nationalsozialismus der Republik Österreich* was founded in 1995 in order to demonstrate the Austrian State's solidarity and responsibility towards the victims of the Nazi regime (Oost, 2012).

⁶ <http://www.provenienzforschung.gv.at/en/empfehlungen-des-beirats/>, accessed 12 May 2020.

(Oost, 2012). In addition to these five members, one delegate of the state attorney (*Finanzprokurator*) is appointed, as well as two experts in the fields of history and art history, chosen by the Austrian Universities, for a total of eight constituents, nominated for three years. The Minister of Art, Culture, Public Service and Sport appoints the chairman and the vice-chairman; moreover, a substitute is assigned to each member.

The *Beirat* usually meets five to six times per year to study the reports of the *Kommission für Provenienzforschung* and to transmit its non-binding opinions to the Minister (Marck and Muller, 2015). At present, the Austrian panel has issued 369 opinions, the last one on 25 September 2020⁷.

France: The Commission pour l'Indemnisation des Victimes de Spoliation

The context of creation

The French recovery and restitution effort was a huge mission initially carried out by the *Office des Biens et Intérêts Privés* (OBIP - Office of Private Property and Interests), a department of the Ministry of Foreign Affairs, established in 1919 (Marck and Muller, 2015). However, on 24 November 1944, the French Ministry of Culture decided to create a specific task force, the *Commission de Récupération Artistique* (CRA - Commission for Art Recovery), aimed at collecting the recovered artworks and managing the restitution requests submitted by the victims. Thanks to Rose Valland, appointed secretary of the CRA, 63,000 cultural objects were recovered out of about 100,000 Nazi-looted items; approximately 45,000 of them were returned to their legal owners before the dissolution of the CRA, which occurred on 30 September 1949 (Marck and Muller, 2015). In 1950, the OBIP, assisted by the *Direction des Musées de France* (French National Museums), took over the restitution mission, as too many artworks were still ownerless. In this context, the decision taken by the *Administration des Domaines* (State Property Authority) was to sell about 13,000 works of art between 1950 and 1953, after having appointed a *Commission de choix* (Selection Commission) aimed at selecting the most valuable recovered artworks, excluding them from the sell (Marck and Muller, 2015). The 2,143 masterpieces chosen by the Commission were labelled as MNR (*Musées Nationaux Récupération* - National Museums Recuperation) and entrusted to the *Direction des Musées de France*, which distributed them among the national museums for safekeeping (Marck and Muller, 2015); the Ministry of Foreign Affairs was appointed as legal supervisor of the MNR (Zivie, 2018).

Except for the MNR exhibition in Compiègne from 1950 to 1954, after which 24 artworks were returned to their legal owners, the French restitution policy was shelved until the 1990s (Polack, 2019). Thanks to the new attention towards Nazi-looted art brought in the public debate in the 1990s, the French attitude about restitution was questioned. As a consequence, on 25 March 1997, the French Prime Minister Alain Juppé appointed a study mission aimed at investigating the spoliation of the French Jews, *La Mission d'étude sur la spoliation des Juifs de France* (Study Mission on the Spoliation of Jews in France), also known as *Mission Mattéoli* (Marck and Muller, 2015). In 2000, the mission published a General Report, a Guide of Research in the Archives and nine volumes of specific studies, such as the

⁷ For the chronological list of decisions, see: <http://www.provenienzforschung.gv.at/en/empfehlungen-des-beirats/beschluesse/beschluesse-chronologisch/> (accessed 1 December 2020).

one concerning the MNR situation, *Le Pillage de l'art en France pendant l'Occupation et la situation des 2.000 œuvres confiées aux Musées nationaux* (The looting of art in France during the Occupation and the situation of the 2,000 works entrusted to the national museums) (Polack, 2019). What emerged from this report was that 163 MNR were most probably plundered, 1,817 MNR had an incomplete provenance history, and the remaining 163 MNR were not fitting the definition of spoliation (Polack, 2019). The complex MNR situation needed to be dealt with, so, on 10 September 1999, the *Commission pour l'Indemnisation des Victimes de Spoliation* (CIVS - Commission for the Compensation of Victims of Spoliation) was created as an independent body aimed at receiving private individuals' requests for restitution or compensation and advising the Prime Minister on their follow up (Marck and Muller, 2015).

Functioning and activating mechanism

The CIVS has the power to investigate all property plundered under anti-Semitic legislation in France between 1940 and 1944, which means that the CIVS mandate covers every kind of spoliation committed under the Occupation at the Jews' expenses (Marck and Muller, 2015).

To activate the CIVS investigation, private individuals shall submit a claim to the Commission, which then starts its enquiry by collecting all the available information from the claimants. In a second phase, the CIVS conducts its research, its primary sources being the French and the German archives (Marck and Muller, 2015), also thanks to the tight cooperation between the two countries. Once the CIVS has gathered all the evidence, the Commission submits those documents to a Rapporteur, a magistrate, whose task is to interview the claimants, in light of the CIVS discoveries, and to further research if needed (Marck and Muller, 2015). At the end of this investigation phase, the Rapporteur transfers a report containing a final advice proposal to the CIVS, which, after having consulted it, drafts its report and transmits it to the Rapporteur. Finally, a meeting of the Rapporteur and the CIVS⁸ is settled, to which also the claimants may assist, aimed at discussing the final report and drafting the recommendation to be addressed to the Prime Minister (Marck and Muller, 2015). The recommendation may propose compensation to the victim for the losses and damage suffered under anti-Semitic legislation; it may reject the claim; or it may advise for the restitution of the looted cultural object when this is kept in a public collection, which is the case of the artworks labelled as MNR (Marck and Muller, 2015). In almost all cases, the CIVS has proposed the payment of compensation to the victims⁹, while very few cases have dealt with the restitution of plundered items.

The French art restitution mechanism tends to be a long decision-making process; in fact, it usually lasts one to three years (Marck and Muller, 2015), as it involves many exchanges among the CIVS, the Rapporteur, but also the claimants, who are deeply involved in the procedure.

In conclusion, the CIVS recommendation, which is not published to grant the victims' privacy, and which is not binding, is transmitted to the Prime Minister, who has the power to

⁸ The CIVS composition during the session may differ according to the nature of the claim: one-member session (the Chair); three-members session; plenary session (Marck and Muller, 2015).

⁹ According to its website, the sum of the compensations recommended by the CIVS from its foundation to present days amounts to € 538,201,871. For estimates on the number of recommendations and dossiers, see: http://www.civs.gouv.fr/images/pdf/lacivs/Chiffres-cles_FEVRIER_2020_FR.pdf, accessed 12 May 2020.

implement or reject the CIVS advice; however, this is generally accepted (Marck and Muller, 2015). The claimant is granted the right to ask for a reassessment of the recommendation by the CIVS, as well as to appeal to the administrative court. More recently, the Prime Minister Édouard Philippe has entrusted the CIVS with a new instrument, as he announced on 22 July 2018: the power to recommend restitution or compensation on its initiative (Polack, 2019).

Composition

The decree issued on 7 May 2019 enlarged the CIVS composition from ten to fourteen members, appointed by the Prime Minister for three years. The CIVS is a very assorted group, as it is constituted by two councillors of the *Cour de Cassation* (Court of Cassation), two members of the *Conseil d'État* (Council of State), two delegates from the *Cour des Comptes* (Court of Audit), and eight *personnes qualifiées*, namely scholars and professionals chosen because of their expertise in arts and culture. Today, those experts are an auctioneer, an art historian, a museum curator and five Professors issued from the most renowned French universities. Moreover, the CIVS is chaired by a Director and a Principal Rapporteur and it is assisted by eleven rapporteurs, as well as by a team of permanent employees¹⁰.

The new 'démarche proactive'

The debate around Nazi-looted art and the MNR is still a current topic in France. In 2008, a major MNR exhibition was organised both in Paris and in Jerusalem to find the legal owners of the displayed paintings, as suggested by its title *Looking for owners/À qui appartenait ces tableaux?* (Polack, 2019). This was just the beginning of the new proactive approach started by the French Minister of Culture, Aurélie Filippetti, in 2013 when she gave birth to a workgroup (*groupe de travail*) composed of museum professionals, archivists and members of the CIVS aimed at doing provenance research on some selected MNR paintings (Polack, 2019). The reason behind the new *démarche proactive* was the Government's will to help victims to take back their cultural properties, by starting new investigations on its account. Fourteen paintings were returned to their rightful owners from 2013 to 2017 (Polack, 2019).

This approach was continued by Filippetti's successors, Fleure Pellerin, Audrey Azoulay, today's Director-General of UNESCO, and Françoise Nyssen. In May 2017, Minister Azoulay charged David Zivie, *conseiller chargé du patrimoine et de l'architecture* in the Ministry of Culture, with the creation of an MNR mission aimed at conducting provenance research to return the artworks looted between 1933 and 1945 to their legal owners (Zivie, 2018). In February 2018, Zivie submitted a Report to Minister Nyssen dealing with the MNR situation and presenting a list of thirty propositions directed towards better management of the issue (Zivie, 2018). The start of the *Mission de Recherche et de Restitution des Biens Culturels Spoliés entre 1933 et 1945* (M2RS) was finally announced in July 2018 and officialised on 16 April 2019. Today, Zivie's Mission coordinates and directs the provenance research work of different institutions – Ministry of Foreign Affairs, museums, libraries, archives, research organisations – to centralise the art restitution effort. For this reason and in order to unify the restitution procedures, the Mission works closely with the CIVS. Moreover, thanks

¹⁰ For the current composition of the CIVS, see the Commission's website at <http://www.civs.gouv.fr/fr/la-civs/son-organisation/>, accessed 15 May 2020.

to the Mission's budget, external research associations may be enrolled to join the provenance research effort.

The MNR issue has also reached the French *Sénat* and *Assemblée nationale*, which have passed the *Loi du 7 juillet 2016 relative à la Liberté de Création, à l'Architecture et au Patrimoine*, asking the Government to submit an annual Report on the MNR situation to the Parliament (Zivie, 2018).

United Kingdom: The Spoliation Advisory Panel

The context of creation

Before examining the British restitution panel, it is important to remind that the United Kingdom, contrary to Austria, France and the Netherlands, was never occupied by the Third Reich; as a consequence, it is unreasonable to speak about Nazi-looting for the British collections. This is why the British government did not undertake any restitution initiative before the resurgence of the issue of Nazi-looted art in the 1990s. In the British case, however, the possibility is to find cultural objects with a problematic provenance that were imported to the UK and entered the national collections. This is the reason why in June 1998, before the Washington Conference, the National Museum Directors' Conference (NMDC) established a Spoliation Working Group aimed at investigating the national collections to identify those artworks with a problematic history (Marck and Muller, 2015). This research resulted in the detection of around twenty works of art having a doubtful provenance (Oost, 2012).

In November 1998, the NMDC adopted a *Statement of Principles and Proposed Actions* regarding Nazi-looted art, an initiative followed also by the Museum and Galleries Commission, which issued a similar document concerning non-national museums, libraries and archives in April 1999. Moreover, the British Government launched the website *Cultural Property Advice*, a database containing the list of the objects with a problematic history from 1933 to 1945 (Marck and Muller, 2015).

The mobilisation of the British museum community around the Nazi-looted art issue was finally followed by a more concrete governmental action: the establishment of a national Spoliation Advisory Panel (SAP), depending on the Department for Digital, Culture, Media and Sport, as an alternative to litigation through the courts, in February 2000 (Marck and Muller, 2015).

Functioning and activating mechanism

The SAP was created to receive claims from anyone, or his heirs, who lost possession of a cultural object during the Nazi-era, from 1 January 1933 to 31 December 1945, where the cultural item is in possession of a British national collection or another British museum or gallery established for the public benefit (Marck and Muller, 2015). However, the panel's activity was undermined since the beginning by the governing museums' legislation¹¹, which prevented them from removing cultural objects from the national collections, thus obstructing

¹¹ The reference was to the British Museum Act 1963, the British Library Act 1972 and the Museum and Galleries Act 1992 (Marck and Muller, 2015).

any restitution to the claimants. This impediment was finally overcome in 2009, when MP Andrew Dismore submitted a Private Member's Bill to the House of Commons dealing with the national museums' permission to return artworks following a recommendation of the SAP and where the Secretary of State agrees (Marck and Muller, 2015). The Holocaust (Return of Cultural Objects) Act was passed into law on 13 January 2010, abolishing the legal barriers for restitution for eighteen British institutions (Marck and Muller, 2015). The sunset clause providing for the expiration of the Bill "at the end of the period of ten years beginning with the day on which it was passed" was recently removed by the British Parliament through the Holocaust (Return of Cultural Objects) Amendment Act, voted on 4 July 2019 (Network of European Restitution Committees on Nazi-Looted Art, 2019).

In addition to receiving claims concerning artworks belonging to public collections, the SAP may also offer advice about objects in private collections in those cases when both the claimant and the current owner agreed to settle the dispute through the panel (Marck and Muller, 2015).

The British art restitution commission was conceived as an alternative to litigation in court, an expensive process where time limitations usually prevent to do justice to the victims; on the contrary, the final aim of the SAP is to find fair and just solutions both to the claimant and the institution, following the Washington Principles. To do so, one of the main elements assessed by the panel is the moral strength of the case, of the claimant, compared to the moral obligation of the current owner/institution, rather than considering legal ownership issues (Marck and Muller, 2015). This particular approach of the SAP has raised some criticisms concerning the absence of a juridical structure allowing the panel to provide such kind of evaluations, so distant from the achievement of the legal certainty which should be essential when assessing claims (Oost, 2018). However, other criteria are taken into consideration by the SAP, such as the circumstances of the dispossession (theft, forced sale, sale at an undervalue) and the validity of both the claimant's and the institution's title to the object (Marck and Muller, 2015).

After a period of six to eight months, the SAP issues a recommendation to the Secretary of State for Digital, Culture, Media and Sport, as well as a public report for the claimant and the Parliament. The recommendation may advise to return the cultural item, to pay compensation, to make an *ex gratia* payment to the claimant, to display alongside the object of an account of its history, or to conduct negotiations with the successful claimant. Even though the SAP recommendations are not legally binding, they have always been accepted by the Secretary of State (Marck and Muller, 2015).

Composition

The British panel, reconstituted on 12 April 2010, after the adoption of the Holocaust Act, is formed by ten members, appointed by the Secretary of State for Digital, Culture, Media and Sport. Today, the group of experts is composed of two Chairs, who are former Lord Justices of Appeal, two Deputy Chairs, who are a Circuit Judge and a Provost, and six other members issued by the most important British universities and museums, as well as one art dealer¹². The result is a heterogeneous group whose independence is granted by the fact that its

¹² For the current composition, terms of reference and rules of procedures, see the panel's webpage: <https://www.gov.uk/government/groups/spoliation-advisory-panel#members>, accessed 18 May 2020.

members belong to different environments, none of which is linked to the executive. Moreover, the SAP may consult external experts to assess the claims, before submitting them to the Secretary of State (Marck and Muller, 2015).

By now, the SAP has dealt with 22 cases, the last one on 10 February 2016¹³, and there are currently no claims being considered by the panel.

The Netherlands: the Restitutie Commissie

The context of creation

The Dutch experience concerning spoliations, the recovery of the looted artworks and the restitution to their legal owners is very similar to the French one, at least until the 1990s. Right after the end of WWII, the *Raad voor het Rechtsherstel* (Council for the Restitution of Rights) was created as a legal department aimed at dealing with restitution claims until 1 July 1951 (Marck and Muller, 2015). That same year, the *Stichting Nederlands Kunstbezit* – STK – (Netherlands Art Property Foundation), comparable to the French CRA, was established to manage the recovery and restitution process. In this context, many recovered ownerless property was auctioned and the proceeds of the sell were transferred to the Dutch State (Marck and Muller, 2015). In 1950, the STK was replaced by the *Bureau Herstelbetalings-en Recuperatie-goederen* – Hergo – (Bureau for Restoration Payments and the Restoration of Property), which, however, was dismissed later in the 1950s. As a consequence, the *Nederlands Kunstbezit-collectie* (Netherlands Art Property collection - NK collection) was created to gather around 3,800 recovered items which integrated the Dutch National Art Collection (Marck and Muller, 2015), recalling the French MNR collection.

After the resurgence of the Nazi-looted art issue on the public debate in the 1990s, also the Dutch museum community started mobilising towards a solution of the matter. The Netherlands Museum Association launched a two-stage investigation in the public collections: the first one, from 1998 to 1999, aimed at researching into the museums' acquisitions from 1940 to 1948; the second, from 2009 to 2013, consisting of a much larger analysis of the museums' acquirements from 1933 onwards (Marck and Muller, 2015). The Dutch government contributed to the art restitution effort as well, by establishing the *Bureau Herkomst Gezocht* – BHG – (Origins Unknown Agency) to conduct provenance research on the NK collection, from 1997 to 2004. In particular, the BHG operated under the supervision of the *Commissie Herkomst Gezocht* (Origins Unknown Advisory Committee), also known as Ekkart Committee, which issued a series of recommendations in 2001, 2003 and 2004, asking for a more generous restitution policy (Marck and Muller, 2015). Thanks to the work done by the Ekkart Committee, on 16 November 2001, the Advisory Committee on the Assessment of Restitution Applications for Items of Cultural Value and the Second World War, also known as *Restitutie Commissie* (Restitution Committee), depending on the Ministry of Education, Culture and Science, was finally created as the Dutch panel for Nazi-looted art restitution.

¹³ For the list of reports issued by the SAP, see: <https://www.gov.uk/government/collections/reports-of-the-spoliation-advisory-panel> (accessed 18 May 2020).

Functioning and activating mechanism

The *Restitutie Commissie*, whose Establishing Decree was amended in 2012, was created to fulfil two tasks: the first one is to advise the Minister of Education, Culture and Science on Nazi-looted art restitution claims concerning cultural objects owned by the Dutch State; the second one is to issue opinions on Nazi-looted art restitution disputes between the original owner and the current owner when the latter is not the Dutch State (Marck and Muller, 2015).

Concerning the first task, the recommendation issued by the Committee is not legally binding, as the final decision on the restitution (financial compensation is not an option) is up to the Minister, who, however, has always accepted it (Marck and Muller, 2015). On the contrary, the opinions issued by the *Restitutie Commissie* when fulfilling its second task are binding on the parties, who, having voluntarily turned to the Committee, formally pledge to implement its decisions. In this sense, the Dutch panel, like the British SAP, represents a true ADR mechanism to litigation through court, allowing both the claimant and the current owner of the artwork to find a just and fair solution. For this reason, regulations were drawn up to manage the Committee's decision-making procedure.

In a first phase, the Committee questions the parties to collect all possible information on the case and, when needed, it may conduct additional research; then, it writes down a draft report to be transmitted to the parties, who should formulate their response to the report. At this stage, the Committee, according to the responses received, may decide to further investigate, to bring the parties to hearing or to start a consultation between them before issuing its binding opinion (Marck and Muller, 2015). In particular, according to Article 3 of the above-mentioned regulations, the Committee takes into consideration existing principles, such as the Washington Principles, the circumstances of the loss and of the acquisition of the item, the applicant's effort to recover it, as well as its importance to the current owner, to the applicant and the general public. By doing so, the Dutch panel aligns itself with the morality-driven approach sponsored by the British panel when assessing art restitution claims, rather than sticking to a more legal procedure aimed at identifying the actual owner of the object. Finally, the opinion issued by the Committee may provide for a variety of different just and fair solutions, as regulated by Article 11: the return of the object to its previous owner; the return to the applicant by way of a set consideration to the current owner; the return subjected to further provisions; the payment of a set consideration to the applicant, while the object remains to the current owner; the exhibition of the artwork and its provenance history; the rejection of the claim (Marck and Muller, 2015).

In conclusion, the *Restitutie Commissie* advises on restitution claims dealing with both public and private collections by following the principles of fairness and reasonableness, although this approach may be criticised. However, the procedure provides for the possibility to request for a revised recommendation or binding opinion when new facts emerge which could change the Committee's decision (Marck and Muller, 2015).

Composition

The Dutch panel is an independent committee composed of seven members, appointed by the Minister for Education, Culture and Science for three years. Concerning the members' expertise, the Chair and Vice-Chair must have a master's degree in law; moreover, one expert in the history of WWII must be part of the Committee, as well as one expert in art history and

museology (Marck and Muller, 2015). At present, the other three members are lawyers¹⁴. Moreover, a permanent advisor, currently a historian, has integrated the Committee since May 2019, enlarging the group's composition to eight members¹⁵. The work of the *Restitutie Commissie* is supported by a Secretariat composed of a General Secretary and an Office Manager¹⁶.

At present, the Dutch panel has issued 162 recommendations, the last one on 13 July 2020¹⁷.

Germany: the *Beratende Kommission*

The context of creation

Even more than the other states occupied by the Nazis, the German population had to deal with the anti-Jewish legislation adopted by the Third Reich. At the end of WWII, Germany was divided into four occupation zones and some collecting points were established in the major cities to organise the looted artworks restitution; a mission which, for Germany, was double, as it concerned both the *äußere Restitution* (external restitution) and the *innere Restitution* (internal restitution). In this context, the restitution procedures were very similar in each collecting point, as they mainly consisted in receiving a claim before a set deadline; however, this was not true for the Soviet zone, where no restitution took place (Marck and Muller, 2015). When the German Democratic Republic (GDR) was constituted in 1949, the situation concerning Nazi-looted art restitution did not change; on the contrary, in the Federal Republic of Germany (FRG), not only the restitution policy was carried on, but it started assessing claims dealing with lost property as well. Moreover, in 1957, the FRG adopted the *Bundesrückerstattungsgesetz* (Federal Restitution Law), providing for financial compensations for cultural assets looted as a consequence of the *Möbel Aktion* also outside West Germany (Marck and Muller, 2015). Thanks to the German unification process, which began in the 1990s, the GDR finally started to be involved in the restitution activity, by adopting the *Gesetz zur Regelung offener Vermögensfragen* (Law for the Settlement of Open Property Questions).

One of the most important initiatives was undertaken on 14 December 1999, when the German Federal Government, the *Bundesländer* (German states) and the leading municipal associations signed the *Gemeinsame Erklärung* (Joint Declaration) aimed at identifying and returning all Nazi-looted items, and inviting private-law organizations and individuals to adhere (Marck and Muller, 2015). In particular, the Joint Declaration provided for the establishment of an online database for those cultural items with a problematic provenance history, the Lost Art Internet Database, created in 2000 and managed by the *Koordinierungsstelle Magdeburg* (Magdeburg Coordination Centre). Moreover, the *Beauftragte der Bundesregierung für Kultur und Medien* (Federal Government Commissioner for Cultural Affairs and the

¹⁴ For the current composition of the committee, see its website (accessed 22 May 2020): https://www.restitutiecommissie.nl/en/the_restitutions_committee_and_the_secretariat.html

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ For the full list of recommendations, see: <https://www.restitutiecommissie.nl/en/adviezen.html> (accessed 31 August 2020).

Media) issued the *Handreichung*, a manual aimed at guiding towards the implementation of the principles of the Declaration (Marck and Muller, 2015).

In 2003, the *Beratende Kommission* (Advisory Commission) was finally created by the Federal Government, the *Bundesländer* and the leading municipal associations as the national panel for the mediation on ownership disputes.

Functioning and activating mechanism

The *Beratende Kommission* shall mediate restitution claims concerning cultural objects looted by the Nazis from 30 January 1933 to 8 May 1945, when both parties agree to turn to the Commission. Private-law organizations may also request the panel's mediation after having formally endorsed the Washington Principles¹⁸. However, the opinion issued by the *Kommission* is not legally binding on the parties (Marck and Muller, 2015). Because of these major obstacles, at present, the *Beratende Kommission* has issued only seventeen recommendations, even though it is currently working on four more cases (Network of European Restitution Committees on Nazi-Looted Art, 2020).

To request the *Beratende Kommission's* intervention, the applicant shall send the request to the Secretariat at the German Lost Art Foundation¹⁹, an organization created in 2015 as the German centre for art restitution, gathering all the pre-existing associations involved in the restitution effort (Marck and Muller, 2015). Once the parties have agreed to let the *Kommission* assess the dispute, they shall provide the existing documentation to the panel, which formulates its opinion to find a just and fair solution under the Washington Principles, the Terezin Declaration, the *Gemeinsame Erklärung* and the *Handreichung*.

As a matter of fact, like the British and the Dutch panels, also the *Beratende Kommission* has adopted a morality-driven approach, to become a true ADR mechanism to litigation through court. That is why the recommendations issued by the Commission, which are all published²⁰, reflect the ones which are usually formulated by the Dutch panel²¹.

Composition

As a consequence of the revision of the agreement at the basis of the *Beratende Kommission* in November 2016, the German panel is constituted, at present, by ten members, appointed by the *Beauftragte der Bundesregierung für Kultur und Medien*, with the agreement of the Conference of Ministers of Education and Cultural Affairs (KMK) and the leading municipal

¹⁸ See the Commission's website for the full text of *The Accord between the Federation, the federal states and the national associations of local authorities on the establishment of an Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property*: https://www.beratende-kommission.de/Webs_BK/EN/accord/Index.html (accessed 24 May 2020).

¹⁹ See the Commission's website for the *Rules of Procedure of the Advisory Commission on the return of cultural property seized as a result of Nazi persecution, especially Jewish property*: https://www.beratende-kommission.de/Webs_BK/EN/Rules-of-Procedure/Index.html (accessed 24 May 2020).

²⁰ For the full list of recommendations, see the dedicated page of the Commission's website: https://www.beratende-kommission.de/Webs_BK/EN/Recommendations/Index.html (accessed 24 May 2020).

²¹ *Supra*, p. 15.

authorities, for maximum ten years²². The independence of the panel is assured by the fact that its members work in an honorary capacity and that they shall not hold prominent political office²³. Concerning the constituents' background, they are all experts in law, ethics, culture or history; the Chair of the *Kommission* is the former President of the Federal Constitutional Court²⁴.

Some Loose Comparative Insights

The analysis of the European panels has let emerge their similarities, but most of all their differences. First of all, a separation line may be drawn between the youngest panels, namely the SAP, the *Restitutie Commissie* and the *Beratende Kommission*, and the oldest ones, that is, the *Beirat* and the CIVS, for the reason that the art commissions of the first group have all adopted a morality-driven approach when assessing restitution claims, rather than following a strictly legal procedure only aimed at solving ownership issues. This attitude finds its origins in the Washington Principles, in particular in Principle 11, calling for the adoption of national ADR mechanisms to litigation through court (Eizenstat, 1998), where the presence of many juridical shortcomings usually prevents to do justice to the victims.

In this sense, the adoption of an approach embracing the principles of fairness and reasonableness, completely different from the one followed in courts, embodies a truly alternative way to assess art restitution claims. For this reason, the set of recommendations issued by the British, Dutch and German panels shall be considered just and fair solutions aimed at finding a mediation between the parties, rather than definitive opinions on ownership disputes. Once again, the inspiration comes from the Washington Principles, in particular Principles 8 and 9, concerning the achievement of just and fair solutions for cases concerning Nazi-looted art and their pre-War owners (Eizenstat, 1998).

Another characteristic that differentiates the two groups of panels is that the youngest art commissions provide for the possibility to assess restitution claims also when cultural objects belong to a private collection, prior consent of both parties to submit the dispute to the panel's mediation. In this case, the recommendations issued by the *Restitutie Commissie* are also legally binding on the parties, an added value to the Dutch panel. However, the consent of the parties to request the intervention of the *Beratende Kommission* shall be manifested also when assessing claims dealing with public collections, resulting in the German panel's main shortcoming. Concerning the 'older' panels, they do not openly embrace such a flexible approach when judging Nazi-looted art restitution claims, as they stick to a more legal methodology. However, this characteristic does not undermine their activity; quite the opposite, the *Beirat* and the CIVS are the most active national art commissions, as they have issued many more recommendations when compared to their European counterparts.

Another contrast may be found in the *Beirat*'s composition, as it is the only panel also composed of political members who, besides, outnumber the experts, so preventing its recommendations from being true neutral opinions on ownership disputes. Moreover, the *Beirat*

²² For the current composition of the panel, see the Commission's website: https://www.beratende-kommission.de/Webs_BK/EN/Members/Index.html (accessed 24 May 2020).

²³ *Ibid.*

²⁴ https://www.beratende-kommission.de/Webs_BK/EN/Members/Index.html, accessed 24 May 2020.

is the sole panel presenting a sunset clause; in fact, the Austrian Art Restitution Act shall lapse in 2023, so, if the legislation is not changed before, no more restitutions will be possible.

A further comparative insight is to be found in the timeframe covered by the activity of the panels. In this sense, the *Beirat*, the SAP and the *Beratende Commission* may be gathered because their mandate applies to all spoliations committed from January 1933 to May/December 1945²⁵. On the contrary, the CIVS is empowered to judge on restitution claims when the spoliation has occurred in the years from 1940 to 1944, which coincide with the Occupation of France. Concerning the *Restitutie Commissie*, no reference to a specific timeframe is made; the choice of the periphrasis “*due to circumstances directly related to the Nazi regime*”²⁶ in its Establishing Decree opens a window for a wider intervention of the Dutch panel.

More recently, the five panels have established the Network of European Restitution Committees, aimed at creating a strong link while respecting their differences, and most of all at sharing information about the cases dealing with the return of Nazi-looted art. In particular, the idea to link the European Committees originated during the Conference “Fair and Just Solutions?”, organised by the Dutch panel in The Hague in 2012. However, only in September 2017, the SAP brought together the panels for the conference “70 years and counting: the final opportunity”, and the plan to establish a permanent secretariat of the European Committees was finally recommended. The following year, the panels gathered in London; this time, it was the CIVS which took the initiative by proposing to become the Network’s permanent secretariat during its first year. As a consequence, in January 2019, the Network of European Restitution Committees was finally established under the CIVS’s presidency. The year 2019 was important to the French panel also because it celebrated its 20th anniversary since its creation; for this reason, the spoliation conference “Twenty years of reparations for anti-Semitic spoliations during the Occupation: between compensation and restitution” was organised in Paris on 15 November. The presidency of the CIVS closed with the publishing of a “Guide to the work of the Restitution Committees”, presenting an overview of the five approaches²⁷. Austria is chairing the Network in 2020.

Conclusion

This paper has pointed out the inadequacy of the international regulatory system for cultural heritage protection by analysing its main shortcomings. However, the adoption of the Washington Principles in 1998 has opened a window for the introduction of national solutions to the issue of Nazi-looted art restitution, such as the panels created in Austria, France, the United Kingdom, the Netherlands and Germany, which have imposed themselves as ADR Mechanisms to litigation through court, in the application of Principle 11. While the creation of the Court of Arbitration for Art (CAfA), based in The Hague, in June 2018, provides for another major ADR Mechanism in the art field, the European Parliament Resolution on cross-

²⁵ In particular, the *Beirat*’s and the *Beratende Kommission*’s mandates cover the time span going from 30 January 1933 to 8 May 1945; the SAP’s one is from 1 January 1933 to 31 December 1945.

²⁶ For the full text of the decree, see: <https://www.restitutiecommissie.nl/sites/default/files/Decreetvalidfrom2-Oct-2018.pdf> (accessed 1 September 2020).

²⁷ The guide is available at the following link: [http://www.civs.gouv.fr/images/pdf/CIVS-GUIDE-web\(dec2019\).pdf](http://www.civs.gouv.fr/images/pdf/CIVS-GUIDE-web(dec2019).pdf) (accessed 28 May 2020).

border restitution claims of works of art and cultural goods looted in armed conflicts and wars, adopted in January 2019, is a promising indication for the future resolution of art-related disputes at the European level.

Of course, Nazi-looted art is only one example fitting the wider category of artistic spoliations occurred in different historical periods. Other researches, for instance, could deal with the issue of the repatriation of the cultural objects removed from the former French and Belgian colonies, still safeguarded in the national museums, or with the spoliations in war zones such as Syria or Iraq: the juridical context will not change.

Waiting for the international community to adopt a binding cultural policy, the Network of the European Restitution Committees is setting the example at the international level.

References

- Campfens, E. (2018). Restitution of Looted Art: What About Access to Justice? In: *Santander Art and Culture Law Review*, Vol. 2/2018, No. 4, pp. 185-220.
- Cassese, A. (2005). *Diritto Internazionale*. Bologna: Il Mulino.
- Edsel, R. and Witter, B. (2009). *The Monuments Men: Allied Heroes, Nazi Thieves and the Greatest Treasure Hunt in History*. New York: Center Street.
- Eizenstat, S. E. (1998). *Presentation at the Washington Conference on Holocaust-Era Assets*, Washington, DC. <<https://fcit.usf.edu/holocaust/resource/assets/art.htm>>, accessed 7 September 2020.
- Karlen, P. H. (1981). Art in the Law. In: *Leonardo*, Vol. 14, No.1, pp. 51-56.
- Liechtenhan, F. D. (2017). *Le Grand Pillage. Du Butin des Nazis aux Trophées Soviétiques*. Rennes: Ouest-France.
- Marck, A. and Muller, E. (2015). National Panels Advising on Nazi-looted Art in Austria, France, the United Kingdom, the Netherlands and Germany. In: E. Campfens, ed., *Fair and just solutions? Alternatives to litigation in Nazi-looted art disputes: status quo and new developments*. The Hague: Eleven International Publishing, pp. 41-89.
- Meskill, L. (2013). UNESCO's World Heritage Convention at 40: Challenging the Economic and Political Order of International Heritage Conservation. In: *Current Anthropology*, Vol. 54, No. 4, pp. 483-494.
- Network of European Restitution Committees on Nazi-Looted Art (2019). Newsletter. No. 3 August, accessed 18 May 2020, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859848/Network_Newsletter_-_August_2019.pdf.
- Network of European Restitution Committees on Nazi-Looted Art (2020). Newsletter. No. 5 January, accessed 18 May 2020, available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/859939/Network_Newsletter_-_January_2020.pdf.
- Nicholas, L. H. (1994). *The Rape of Europa. The Faith of Europe's Treasures in the Third Reich and the Second World War*. New York: Knopf.

- Oost, T. I. (2012). *In an Effort to do Justice? Restitution Policies and the Washington Principles*. Amsterdam: Centre of Art, Law and Policy, University of Amsterdam.
- Oost, T. I. (2018). Restitution Policies on Nazi-Looted Art in the Netherlands and the United Kingdom: A Change from a Legal to a Moral Paradigm? In: *International Journal of Cultural Property*, 25, pp. 139-178.
- O'Keefe, P. (2006). Using UNIDROIT to avoid cultural heritage disputes: limitation periods. In: *Willamette Journal of International Law and Dispute Resolution*, Vol. 14, No. 2, pp. 227-242.
- Polack, E. (2019). *Le Marché de l'Art sous l'Occupation. 1940-1944*. Paris: Tallandier.
- Prott, V. L. (1995). The Experience of UNESCO with the Return of Cultural Objects. In: *Proceedings of the Annual Meeting (American Society of International Law)*, April 5-8, Vol. 89, *Structures of world order*, pp. 443-447.
- Valland, R. (2016). *Le Front de l'Art. Défense des Collections Françaises, 1939-1945*. Paris: Réunion des Musées Nationaux – Grand Palais.
- Zivie, D. (2018). *“Des traces subsistent dans des registres...”*. *Biens culturels spoliés pendant la Seconde Guerre Mondiale: une ambition pour rechercher, retrouver, restituer et expliquer*. Paris: Ministère de la Culture.

Working Paper Series in Public and Cultural Diplomacy



A registered publication by
Department of Social Political and Cognitive Sciences
University of Siena
Via Roma 56, 53100 Siena, Italy
e-mail: wpspcd@unisi.it